

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill No:** HB 373a

**49th Legislature, 1st Session, 2009**

**Short Title:** School Board Approval of Personnel Decisions

**Sponsor(s):** Representative Roberto “Bobby” J. Gonzales and Others

**Analyst:** James Ball

**Date:** February 18, 2009

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**AS AMENDED**

The House Consumer and Public Affairs Committee (HCPAC) amendment strikes language in the title of the bill:

- allowing a local school board to assume the powers and duties of the superintendent when that position is vacant; and
- subjecting the local school board’s actions to review by the Public Education Department (PED).

The HCPAC amendment also inserts language in the title allowing personnel actions to be appealed to PED.

**Original Bill Summary:**

House Bill 373 amends two sections of the *Public School Code* dealing with the powers and duties of local school boards and the powers and duties of superintendents.

Regarding the powers and duties of local school boards, HB 373:

- gives local boards approval or disapproval over the employment, salary determination, assignment, termination, or discharge of district school administrators and administrative department heads; and
- permits local boards to appeal to the Public Education Department (PED) if a board has determined by a majority vote that the superintendent has taken a personnel action that adversely affects the district. PED would then issue a final decision either to concur with or to overrule the appeal.

Regarding the powers and duties of the superintendent, HB 373:

- deems the local superintendent to be the instructional leader and manager of the schools instead of their chief executive officer; and
- requires the local superintendent to obtain approval of the local school board prior to hiring, fixing the salaries of, assigning, terminating, or discharging school administrators and administrative department heads, subject to any appeal by the board to PED.

HB 373 also contains some minor non-substantive clean-up language.

### **Fiscal Impact:**

HB 373 makes no appropriation.

### **Issues:**

According to PED, HB 373 “turns back the clock” somewhat on major reforms that were enacted in 2003. The bill would have the effect of putting local boards back into the school employee hiring cycle by barring a superintendent from making certain hiring, job assignments, salary determinations, discharges, and terminations without obtaining prior board approval. PED further states that HB 373 also “turns back the clock” to the mid 1980s by putting PED into the personnel termination/discharge appeal cycle. In those days the State Board of Education made final decisions on school employee terminations.

PED also states that the district superintendent’s taking of a “personnel action *that would adversely affect the school district*” is highly subjective, could lead to abuse, and could plunge PED into endless appeals and resulting litigation. Simply because HB 373 provides that PED’s determination is final would not prevent an aggrieved administrator from suing the local board or PED over a personnel decision. Moreover, having PED make these determinations essentially injects PED into the role of making judgment calls on a superintendent’s actions with which the board disagrees and ultimately supervising that superintendent. Given that local boards hire their superintendents, it follows that they should make those judgment calls through performance evaluations and decisions to renew or not renew superintendents’ contracts. The implication of this language in HB 373, the PED analysis further contends, is that local boards would be abdicating their responsibilities in favor of having a state agency make their decisions for them.

In its analysis of HB 373, the Department of Finance and Administration (DFA) states that HB 373 also reclassifies the job description of local superintendents, striking language that indicates that a local superintendent is the “chief executive officer” and instead defining a local school superintendent as the “instructional leader and manager” of the district. This distinction is important because it implies that the superintendent does not have leading executive authority over the day-to-day operations of a local school district, but instead is a “manager.”

### **Technical Issues:**

PED states that the term “administrative department heads” is unclear in the bill and should be defined.

### **Background:**

In 2003, the New Mexico Legislature passed and Governor Bill Richardson signed comprehensive public school reform legislation (HB 212) that had been endorsed by the Legislative Education Study Committee. Among the changes in HB 212 was a limitation of the powers and duties local school boards have in respect to school personnel matters, authorizing them only to “employ a local superintendent for the school district and fix the superintendent’s salary.”

The DFA analysis states that critics of these changes have argued that the reduction in school board authority has been too broad and too severe, pushing local school boards into a position of limited utility. In 2008, the New Mexico School Boards Association’s legislative program

indicated that the organization supported legislation that “restores authority of local school boards to approve the offer of administrative level employment within local school districts.”

**Related Bill:**

HB 436 *School Employee Termination Process*