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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/13/09  
 SPONSOR Gonzales LAST UPDATED 2/16/09 HB 373/aHCPAC  
 SHORT TITLE School Board Approval Of Personnel Decisions SB \_\_\_\_\_  
 ANALYST Haug

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Finance and Administration (DFA)

Public Education Department (PED)

### SUMMARY

#### Synopsis of HCPAC Amendment

The House Consumer and Public Affairs Committee amendment revises the bill title by deleting “ALLOWING THE LOCAL SCHOOL BOARD TO PERFORM THE POWERS AND DUTIES OF THE LOCAL SUPERINTENDENT WHEN THE POSITION IS VACANT; SUBJECTING THE BOARD’S ACTIONS TO REVIEW BY THE PUBLIC EDUCATION DEPARTMENT” and replacing with “ALLOWING PERSONNEL ACTIONS TO BE APPEALED TO THE PUBLIC EDUCATION DEPARTMENT.”

#### Synopsis of Original Bill

House Bill 373 amends two sections of the Public School Code that set forth the duties and responsibilities of a district’s superintendent and local board in hiring and firing district employees.

The bill:

- requires the local board to approve or disapprove the employment, assignment, termination or discharge of administrators, and administrative department heads including their salaries;

- permits the local board, after a majority vote determining the district’s superintendent had taken a personnel action that would adversely affect the school district, to appeal to the Public Education Department (PED) who would issue a final decision to either concur with or overrule the appeal;
- deems the local superintendent as the instructional leader and manager of the schools instead of its chief executive officer; and
- requires the local superintendent to obtain approval of the local school board prior to hiring, fixing the salaries, assigning, terminating or discharging school administrators and administrative department heads subject to any appeals by the board that must be determined by the PED.

The bill also inserts some clean-up language relative to using the masculine possessive pronoun and references to the former State Board of Education.

### **FISCAL IMPLICATIONS**

There are no apparent fiscal implications for House Bill 373.

### **SIGNIFICANT ISSUES**

The PED comments:

While the Public School Code defines “school administrator” as “a person licensed to administer in a school district and includes school principals and central district administrators,” the use of “administrative department heads” is not clear and should be defined.

This bill “turns back the clock” somewhat to what 2003’s House Bill 212 (Education Reform Laws) enacted. It puts a local board back into the school employee hiring cycle by barring a superintendent from making certain hiring, job assignments, salaries settings, terminations and discharges without obtaining prior board approval.

The DFA notes with respect to the changes enacted in House Bill 212, 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. HB 373 seeks to strengthen local school board authority, particularly in the area of school personnel issues. 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.”

This bill also “turns back the clock” to the mid 1980s by putting the PED into the personnel termination/discharge appeal cycle. (Formerly, the State Board of Education made final decisions on school employee termination decisions.)

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 the PED into endless appeals and resulting litigation. Just because the bill provides that the PED’s determination is final does not prevent an aggrieved administrator from suing the local board or the PED. Moreover, having the PED make these determinations essentially injects the PED into the role of making judgment

calls on a superintendent's actions that a board disagrees with and supervising that superintendent. Given that local boards hire their superintendent, it follows that they should make those judgment calls through performance evaluations and decisions to renew or not review their superintendent's contract.

The DFA notes that:

HB 373 also proposes to amend 22-5-14 NMSA 1978, section A by reclassifying the job description of the local superintendent, striking language that indicates that the local superintendent is the "chief executive officer" and instead defining a local school superintendent is the "instructional leader and manager" of the district. This is an important distinction. It implies that the superintendent does not have leading authority over the day-to-day operations of a local school district, but instead is a "manager."

These proposed changes to legislation are potentially problematic because they may lead to delays in critical personnel action by the superintendent, as well as increased potential for the politicization of personnel issues regarding senior district staff and school principals. In addition, the Public Education Department points out that a "school administrator" is defined by law as "a person licensed to administer in a school district and includes school principals and central district administrators," but "administrative department head" is not defined by law, however, and it is unclear what types of district or school-level positions are intended.

### **TECHNICAL ISSUES**

The PED notes that concurring with or overruling an appeal are not typical decisions made in an administrative appeal. Instead, affirming or reversing an administrative decision would be the appropriate decisions.

The PED suggests removing the appeal-to-PED provisions.

### **POSSIBLE QUESTIONS**

The PED asks at what point are a superintendent's personnel actions adverse to the school district? The implication of this bill is that local boards are abdicating their responsibilities in favor of having a state agency make their decisions for them.

GH/mc:mt