

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill Number:** SB 329aa

**50th Legislature, 1st Session, 2011**

**Tracking Number:** .183753.1SA

**Short Title:** ERB Members to Appoint Designees

**Sponsor(s):** Senator Cynthia Nava

**Analyst:** Craig J. Johnson

**Date:** March 30, 2011

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**AS AMENDED**

**The House Education Committee amendments:**

- **remove the requirement that appointees receive Senate approval; and**
- **require that appointees have a background in investments, finance, or pension fund administration.**

**The Senate Education Committee amendments:**

- **require members appointed by the Governor to be approved by the Senate and have a background in investments, finance, or pension fund administration; and**
- **specify that the new membership requirements do not affect the status of the existing appointees.**

**Original Bill Summary:**

SB 329 authorizes each of the two *ex officio* members of the Educational Retirement Board (ERB) – the State Treasurer and the Secretary of Public Education – to appoint a designee to serve on the ERB.

The bill requires that the designees:

- be New Mexico residents;
- be current employees of the State Treasurer’s office or the Public Education Department (PED), respectively; and
- possess experience relevant to the financial or fiduciary aspects of pension or investment fund management.

SB 329 further requires that each designee have the same responsibilities, duties, liabilities, and immunities as the respective *ex officio* members. The *ex officio* member will be responsible for the actions of the designee.

**Fiscal Impact:**

SB 329 does not contain an appropriation.

**Substantive Issues:**

The analysis by the ERB notes that the duties and the demands on the *ex officio* members due to their respective offices make it difficult for them to attend each ERB meeting, sometimes adversely affecting the ERB's ability to have a quorum. SB 329, this analysis continues, would help the ERB fulfill its duties, to the benefit of the Educational Retirement Fund and the agency.

In a similar vein, the analysis by the State Treasurer's office notes that the State Treasurer is a member of 14 boards and commissions and currently serves on the executive committees of two national organizations: the National Association of State Treasurers and the National Association of State Auditors, Controllers and Treasurers. Given these commitments, allowing the treasurer to appoint a qualified person as a designee would enhance the work of the ERB.

The analysis by PED raises questions about the personal liability that the State Treasurer and the Secretary of Public Education may incur through actions of their designees. However, the analysis by the Attorney General's Office indicates that this relationship does not create any liability that did not previously exist; it merely creates an agency relationship.

**Related Bills:**

HB 294a *State Treasurer to Designate Board Designees*