

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill No: SB 210**

**48th Legislature, 1st Session, 2007**

**Short Title: School Volunteer Background Checks**

**Sponsor(s): Senators Cynthia Nava and Mary Kay Papen**

**Analyst: David Harrell**

**Date: January 29, 2007**

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**FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE**

**Bill Summary:**

SB 210 amends the background check portion of the *School Personnel Act* to make two major changes:

- to require local school boards, charter schools, and regional education cooperatives (RECs) to require background checks on applicants for unlicensed positions and on unlicensed volunteers, contractors, and contractors' employees who have unsupervised access to students; and
- to require a superintendent, a charter school administrator, or a director of an REC to investigate all allegations of unethical conduct by a licensed school employee who leaves employment after the allegation has been made and, if the investigation produces evidence of wrongdoing, to report to the Public Education Department (PED), on a standardized form, the identity and attendant circumstances of the employee, regardless of any confidentiality agreement between the employer and the licensed school employee.

Regarding the first change – to require background checks on applicants for unlicensed positions and on volunteers, contractors, and contractors' employees with unsupervised access to students – SB 210:

- defines the term “contractor or contractor’s employee” as “a person who, in the course of performing duties under contract with a public school, school district or regional education cooperative, has unsupervised access to public school students”;
- defines the term “volunteer” to mean “a person who donates time or services to a public school, school district or regional education cooperative and who has unsupervised access to public school students”;
- requires local school boards, governing bodies of charter schools, and RECs to develop policies to require background checks on applicants for unlicensed positions and unlicensed volunteers, contractors, and contractors' employees, all of whom may be required to pay the cost of obtaining the background checks;

- provides that background check records and related information are privileged and not to be disclosed except to a person directly involved in the public school's, school district's, or REC's decision to employ an applicant, to contract with a contractor or allow a contractor's employee to work, or to allow a person to volunteer; and
- requires a charter school administrator and an REC, in addition to the current requirement of a local superintendent, to report to PED any known conviction of a felony or misdemeanor involving moral turpitude of a licensed school employee that results in any kind of action against the employee.

Regarding the second change – to require reporting of unethical conduct relating to separation from employment – SB 210:

- requires the report to PED within 30 days following the separation from employment;
- prohibits the public school, school district, or REC from keeping copies of the report; and
- requires PED to serve the employee with a notice of contemplated action within 90 days of receiving the report; otherwise, the reporting form and related documents must be expunged from the employee's record.

Finally, regarding both changes, SB 210 also:

- allows the Secretary of Public Education to suspend, revoke, or refuse to renew the license of a superintendent, charter school administrator, or REC director who fails to report either a conviction or the results of an investigation; and
- provides that anyone who, in good faith, files either of the required reports may not be held liable for civil damages as a result of the report.

### **Fiscal Impact:**

SB 210 makes no appropriation.

PED reports that the department charges \$34.00 to process a background check.

Another bill introduced during the 2007 session, SB 96, appropriates \$500,000 from the General Fund to PED for FY 08 to pay the costs of background checks for parent volunteers in public schools.

### **Issues:**

At least since 2003, when the committee heard an extensive presentation from the School Safety Task Force, the Legislative Education Study Committee (LESC) has been concerned about the issues addressed in SB 210. During the testimony in 2003, the committee heard concerns of school personnel and other parties about volunteers and contractors' employees who may, in the course of their activities on campus, have unsupervised access to students. Although state law currently makes no provision for background checks of volunteers, some school districts – Las Cruces Public Schools, for example – have required them for years. The requirements in SB 210 would support such local initiatives and provide a measure of uniformity to the practice

statewide. Regarding contractors and their employees, current law does require local school boards and RECs to develop policies requiring background checks, but the language is at best ambiguous whether school personnel are entitled to see the results of background checks on contractor's employees. SB 210 would make that access unequivocal.

More recently (during the 2006 interim), the LESC heard additional testimony related to the other major amendment in SB 210. Although it seems not to happen often, there have been instances in New Mexico's public schools in which, after being charged with a serious form of ethical misconduct, like inappropriate contact with a student, a teacher or other employee agrees to leave the district quietly and the district agrees not to reveal or report the incident. While such arrangements may protect the first school district from the employee, they can put subsequent school districts – and the children in them – in jeopardy. The 2006 Legislature attempted to address this issue with Senate Bill 473, *Require School Employee Misconduct Reports*, but the bill failed; afterward, the LESC put the issue on its workplan for the 2006 interim.

The testimony during the 2006 interim came principally from three parties: PED, the New Mexico Public School Insurance Authority (NMPSIA), and the AFT (American Federation of Teachers) New Mexico.

- The PED discussed some of the dimensions of the issue and presented both a draft bill, similar to SB 210, and proposed amendments to the PED rule on the Code of Ethical Responsibility, among them adding a definition of the term “ethical misconduct” and adding several new prohibitions under the duty to the profession.
- Testimony from NMPSIA provided some examples of misconduct cases that have occurred in New Mexico, noted NMPSIA's efforts to help districts screen applicants, and illustrated the financial costs involved: between school years 1994-1995 and 2005-2006, NMPSIA has incurred nearly \$14.4 million for improper touching/sexual misconduct claims involving a public school staff member and a student, including nearly \$3.4 million for a single claim in school year 2001-2002.
- Testimony from the AFT New Mexico identified three points that must be addressed: the protection of children from employee misbehavior, the protection of school districts from unwittingly employing troubled employees, and the protection of school employees against false or malicious charges.

Finally, on a technical point, the PED analysis suggests striking the word “school” in the phrase “school employee” on page 6, line 21 because the definition of the term “school employee” elsewhere in the *Public School Code* – “licensed and nonlicensed employees of a *school district* [emphasis added]” – would exclude charter schools and RECs from the investigating and reporting requirements of this part of SB 210.

### **Related Bills:**

SB 96 *School Volunteer Background Checks*

\*HB 399 *Fee for Certain Background Checks*

\*HB 455 *School Construction Project Bid Requirements*