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## FISCAL IMPACT REPORT

ORIGINAL DATE 3/7/2007

SPONSOR HJC LAST UPDATED \_\_\_\_\_ HB 570/ HJCS

SHORT TITLE School Volunteer Background Checks SB \_\_\_\_\_

ANALYST Schuss

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB 210/ SJCS

### SOURCES OF INFORMATION

LFC Files

### SUMMARY

#### Synopsis of Bill

The House Judiciary Committee substitute for House Bill 570 requires reports of employee misconduct, providing that settlement agreement confidentiality provisions do not relieve responsibility for reporting. HB 570 defines ethical misconduct.

### FISCAL IMPLICATIONS

Local superintendents, charter school administrators or directors of a regional educational cooperative could incur litigation costs of investigating any allegations of ethical misconduct by a school employee.

### SIGNIFICANT ISSUES

HB 570 defines ethical misconduct as unacceptable behavior or conduct engaged in by a licensed school employee and includes inappropriate touching, sexual harassment, discrimination and behavior intended to induce a child into engaging in illegal, immoral or other prohibited behavior.

HB 570 states that a local superintendent, *charter school administrator or regional education*

*cooperative* shall report to the department any known conviction of a felony or misdemeanor involving moral turpitude of a licensed school employee that results in any type of action against the licensed school employee.

The bill adds that a local superintendent, charter school administrator or director of a regional education cooperative or their respective designees shall investigate all allegations of ethical misconduct about any licensed school employee who resigns, is being discharged or terminated or otherwise leaves employment after an allegation has been made. If the investigation results in a finding of wrongdoing, the local superintendent, charter school administrator or director of a regional education cooperative shall report the identity of the licensed school employee and attendant circumstances of the ethical misconduct on a standardized form to the department and the licensed school employee within thirty days following the separation from employment. Copies of that form shall not be maintained in public school, school district or regional education cooperative records. No agreement between a departing licensed school employee and the local school board, school district, charter school or regional education cooperative shall diminish or eliminate the responsibility of investigating and reporting the alleged ethical misconduct, and any such agreement to the contrary is void. Unless the department has commenced its own investigation of the licensed school employee prior to receipt of the form, the department shall serve the licensed school employee with a notice of contemplated action involving that employee's license within ninety days of receipt of the form. If that notice of contemplated action is not served on the licensed school employee within ninety days of receipt of the form, the form, together with any documents related to the alleged ethical misconduct, shall be expunged from the licensed school employee's records with the department and shall not be subject to public inspection.

The secretary may suspend, revoke or refuse to renew the license of a local superintendent, charter school administrator or regional education cooperative director who fails to report as required by the information added to this section.

## **ADMINISTRATIVE IMPLICATIONS**

The Public Education Department will have to create a reporting form and administer receipt and processing of these forms.

## **RELATIONSHIP**

The House Judiciary Committee substitute for HB 570 is very closely related to the Senate Judiciary Committee substitute for Senate Bill 210. SB 210 defines ethical misconduct differently and SB 210 does not specify that the standardized form for a finding of wrongdoing be sent to the licensed school employee in addition to the department.

## **TECHNICAL ISSUES**

AGO noted this issue in the original bill:

NMSA Section 22-10A-31 already provides procedures for denial, suspension or revocation of education licenses by reference to the Uniform Licensing Act, NMSA 1978, Section 61-1-1 et seq. That act generally sets a two-year “limitations” period for issuing a notice of contemplated action. See NMSA 1978, Section 61-1-3.1. This bill appears to attempt to establish a new 90-day limitations period for issuing a notice of contemplated action to certain

former school district employees. Although the bill does not expressly prohibit PED from taking action against the former employee after that period of time, it does provide that all documents relating to the allegations must be “expunged,” which could have the same effect.

BS/mt