

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill No:** HB 588a

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

**Short Title:** Educational Retirement Local Audits

**Sponsor(s):** Representative Bill B. O'Neill and Others

**Analyst:** Kathleen Forrer

**Date:** March 16, 2009

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**AS AMENDED**

**The Senate Education Committee amendment, by striking “or has reason to believe”, requires the director or the director’s designee to find, during the course of an audit, that financial controls or procedures are not adequate for an LAU to properly account for and pay required contributions.**

**Original Bill Summary:**

HB 588 amends the *Educational Retirement Act* (ERA) to authorize the director of the Educational Retirement Board (ERB) or the director’s designee to conduct an audit at any time of any local administrative unit (LAU) in order to ensure compliance with the act and board rules. The audit may include interviews with employees of the LAU, which is directed to cooperate with the director and to provide access to “records, information and employees.”

Should the audit determine that discrepancies or violations of the act or ERB rule exist or that financial controls or procedures are not adequate to allow the local administrative unit to properly account for and pay required contributions, the director must:

- order the local administrative unit to implement remedial measures;
- submit a report to the ERB, the State Auditor, the Public Education Department (PED), or the Higher Education Department (HED) as appropriate; and
- if criminal activity is found or suspected, notify the Attorney General, the State Auditor, and the appropriate law enforcement agency.

**Fiscal Impact:**

HB 588 makes no appropriation.

**Fiscal Issues:**

According to the ERB, HB 588 should have an undetermined positive effect on the fund because “past experience indicates that the majority of errors LAUs make in remitting contributions to the ERB involve either underpayments or not making any payment.”

In its analysis of HB 588, HED suggests that the ERB will require an additional three to five employees at a cost of \$350,000 to implement the provisions in the bill. ERB indicates it will have to develop an audit procedure but does not indicate if additional staff will be necessary. In its analysis of a duplicate bill, SB 399, ERB stated: “The ERB internal auditor would be detailed to perform limited scope compliance audits in the event of a discrepancy. Scheduled internal audits identified in our audit plan would be delayed until the special audit is complete.”

## **Issues:**

According to the ERB website, HB 588 incorporates a 2009 legislative priority of the board:

ERB is seeking audit authority to ensure that all local administrative units (LAUs) are paying the correct contributions, employee and employer, for all eligible members on time and in full. Providing audit authority will create a venue for the ERB to work cooperatively with the LAUs on administrative issues. By proactively identifying compliance issues, early negative consequences can be avoided and the fund will receive the correct amount of contributions.

In support of this request, in its analysis of HB 588, ERB notes that:

Currently, ERB must rely on LAUs to voluntarily report any errors made in calculating and paying contributions. ERB does not have any means of verifying the accuracy of the contributions paid. While most LAUs generally comply with the Act, errors do occur. This bill grants ERB necessary tools to help LAUs comply with the Act by submitting the correct contribution amounts. By utilizing the information gathered in the audits, LAUs also will be able to improve their reporting procedures.

## **Background:**

In 1957, the Legislature enacted the ERA to provide the education community with a vehicle for retirement through establishment of the Educational Retirement Fund.

According to the ERB, as of February 2, 2009, there are 183 contributing employers, including public school districts and charter schools, higher education institutions, special schools such as the New Mexico School for the Blind and Visually Impaired, and other state agencies such as PED (see Attachment).

Management of the Education Retirement Fund is under the ERB, which consists of a board of seven members, the categories of which are statutorily determined and include the Secretary of Public Education, the State Treasurer, one member elected by the members of the New Mexico Association of Educational Retirees, one member elected by the National Education Association-New Mexico, one member elected by the American Association of University Professors, and two members appointed by the Governor.

## **Related Bills:**

HB 453 *Educational Retirement Service Credits* (As introduced, HB 453 and SB 623 are duplicates.)

HB 525a *Alternative Educational Retirement Plans*

\*CS/CS/HB 573 *Adjustment of Retirement Plans* (ERA, PERA, Retiree Health Care)

CS/HB 631 *Educational Retirement Eligibility*

HB 721a *Educational Retirees Returning to Work*

HB 722a *Disclosure of Educational Retirement Info*

HB 854a *PERA Member & State Contribution Changes* (PERA, ERA, *Judicial Retirement Act*, *Magistrate Retirement Act*)

HJM 45 *Public Employee & Education Solvency Plans* (ERA and PERA)

SB 145 *Eliminate End Date for Return to Work*

SB 399a *Local Educational Retirement Unit Audits* (As introduced, HB 588 and SB 399 are duplicates.)

SB 476a *Educational Retirees Returning to Work*  
SB 490a *Educational Retirement Info Disclosure*  
\*SB 572a *Alternative Educational Retirement Plans*  
SB 623 *Educational Retirement Service Credits*

**EDUCATIONAL RETIREMENT BOARD  
CONTRIBUTING EMPLOYERS  
(February 2, 2009)**

**SCHOOL DISTRICTS**

Alamogordo	Las Cruces
Albuquerque	Las Vegas
Animas	Las Vegas West
Artesia	Logan
Aztec	Lordsburg
Belen Consolidated	Los Alamos
Bernalillo	Los Lunas
Bloomfield	Loving
Capitan	Lovington
Carlsbad	Magdalena
Carrizozo	Maxwell
Central Consolidated	Melrose
Chama Valley	Mesa Vista
Cimarron	Mora
Clayton	Moriarty
Cloudcroft	Mosquero
Clovis	Mountainair
Cobre Consolidated	Pecos
Corona	Peñasco
Cuba Independent	Pojoaque Valley
Deming	Portales
Des Moines	Quemado
Dexter Consolidated	Questa
Dora Consolidated	Raton
Dulce	Reserve
Elida	Rio Rancho
Espanola	Roswell
Estancia	Roy
Eunice	Ruidoso
Farmington	San Jon
Floyd	Santa Fe
Fort Sumner	Santa Rosa
Gadsden	Silver Consolidated
Gallup-Mckinley Co.	Socorro
Grady	Springer
Grants-Cibola	Taos
Hagerman	Tatum
Hatch Valley	Texico
Hobbs	Truth or Consequences
Hondo Valley	Tucumcari
House	Tularosa
Jal	Vaughn
Jemez Mountain	Wagon Mound
Jemez Valley	Zuni
Lake Arthur	

## **CHARTER SCHOOLS**

La Academia de Lengua y Cultura	La Resolana Leadership Academy
Academy for Technology and the Classics	Las Montanas Charter School
AIMS@UNM (Albuquerque Institute of Math and Science)	Learning Community Charter School
Albuquerque Talent Dev. Sec. Charter School	Lindrith Area heritage School
Aldo Leopold High School	Los Puentas Charter School
Alma D'Arte Charter High School	Monte del Sol
Amy Biehl High School	Montessori Elementary
Anansi Charter School	Montessori of the Rio Grande
Bataan Military Academy	Moreno Valley High School
Bridge Academy Charter School (CLOSED 06/30/08)	Mosaic Academy Charter
Career Academic Technical Academy	Mountain Mahogany Community School
Carinos de los Ninos	Native American Community Charter
Cesar Chavez Community School	North Albuquerque Cooperative Community Charter
Charter School 37	North Valley Academy (formerly Horizon Academy Northwest)
Christine Duncan Community School	Nuestros Valores
Corrales International School	Public Academy for Performing Arts
Cottonwood Classical Prep School	Ralph J. Bunche Academy
Cottonwood Valley	Red River Valley
Creative Education Preparatory Institute #1	Robert F. Kennedy
Creative Education Preparatory Institute #2	Roots and Wings
Deming Cesar Chavez	San Diego Riverside
Digital Arts and Technology Academy	School for Integrated Academics and Technologies
East Mountain High School	Sidney Gutierrez
El Camino Rael Academy (Horizon Academy South)	South Valley Academy
Gordon Bernell Charter School	Southwest Primary Learning Center
Horizon Academy West	Southwest Secondary Learning Center
Jefferson Montessori Academy	Taos Municipal
La Academia de Esperanza	Turquoise Trail
La Academia Dolores Huerta (La Academia de Idiomas Y Cultura)	Twenty-First Century
La Luz del Monte Learning Center	Village Academy
La Promesa Early Learning Center	Vista Grande High School
	Walatowa
	Youth Build Community School

## **OTHER PUBLIC SCHOOLS**

Valmora High School

## **COLLEGES AND UNIVERSITIES**

Central New Mexico Community College	NM State University
Clovis Community College	NM Institute of Mining & Technology
Eastern NM University (Portales)	Northern NM Community College
Eastern NM University (Roswell)	San Juan College
Luna Community College	Santa Fe Community College
Mesalands Community College	University of New Mexico
NM Highlands University	Western NM University
NM Junior College	

## **SPECIAL SCHOOLS**

NM Military Institute	NM School for the Visually Handicapped
NM School for the Deaf	University Hospital

## STATE AGENCIES

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Central Regional Education Coop  
Department of Finance and Administration<sup>1</sup>  
High Plains Regional Education Coop  
Lea Regional Education Coop #7  
NM Activities Association

Northeast Regional Education Coop  
Pecos Valley Regional Education Coop #8  
Regional Educational Center #6  
Region IX Educational Coop  
Southwest Regional Education Coop #10

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<sup>1</sup> DFA sends the ERF contributions to the ERB for state agencies that have employees covered by the *Educational Retirement Act*. The agencies listed in the Educational Retirement Board's 2007 *Annual Report* are the Department of Corrections, the Public Education Department, the Department of Health, the Department of Vocational Rehabilitation, the Educational Retirement Board, and the Youth Diagnostic Center.