

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 02/05/09
LAST UPDATED 03/16/09 **HB** _____

SPONSOR Morales

SHORT TITLE Local Educational Retirement Unit Audits **SB** 399/aHEC

ANALYST Aubel

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Non-Rec | Fund Affected |
|-------------------|---------------|---------------|----------------------|---------------|
| FY09 | FY10 | FY11 | | |
| | Indeterminate | Indeterminate | Recurring | ERB |

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY09 | FY10 | FY11 | 3 Year Total Cost | Recurring or Non-Rec | Fund Affected |
|--------------|------|---------------|---------------|-------------------|----------------------|---------------|
| Total | | Indeterminate | Indeterminate | Indeterminate | Recurring | ERB |

(Parenthesis () Indicate Expenditure Decreases)

Duplicates House Bill 588/aSEC

SOURCES OF INFORMATION

LFC Files

Responses Received From (Original Bill)

Public Employees Retirement Association (PERA)

Educational Retirement Board (ERB)

Department of Finance and Administration (DFA)

Higher Education Department (HED)

SUMMARY

Synopsis of HEC Amendment

The House Education Committee Amendment to Senate Bill 399 strikes the phrase “or has reason to believe” as one of the enabling causes for ERB to order the employer remedy a deficiency in financial controls or procedures. The resulting language allows ERB – if during the course of an audit or if ERB finds that an employer does not have adequate financial controls or procedures in place – to order the employer “to implement measures to remedy those matters, including payment to the fund of any contributions not properly calculated or paid, together with interest thereon at a rate to be established by the board.”

SIGNIFICANT ISSUES

The Higher Education Department provides the following clarification:

SB399 requires ERB to submit a report to NMHED if it finds a discrepancy, violation or failure to maintain adequate financial controls or procedures at a postsecondary institution. NMHED has no legal authority over internal financial controls of postsecondary institutions. ERB indicates that the report would be for information-only purpose.

Synopsis of Original Bill

Senate Bill 399 amends Section 22-11-22 NMSA 1978 regarding payments from the local administrative units to the Education Retirement Board (ERB) to authorize ERB to conduct audits of the financial books and records of local administrative units to ensure compliance with the Educational Retirement Act and ERB regulations. For purposes of the Educational Retirement Act, “local administrative units” means an employing agency directly responsible for paying compensation for the employment of ERB members or participants.

FISCAL IMPLICATIONS

ERB would need to dedicate additional staff time to perform the audit functions called for in the bill, which would most likely be minimal because ERB states that irreconcilable inconsistencies arise “infrequently.” Any additional payments made to the ERB fund for contributions found in arrears would increase revenue by an indeterminate amount.

SIGNIFICANT ISSUES

ERB states that employer reports are generally reconcilable by the ERB contribution accounting team. Infrequently, the agency identifies non-compliance issues. When these items are identified, the ERB has no statutory authority to validate non-compliance issues and must rely on the reporting entity. ERB maintains that most non-compliance issues are unintentional and, through a limited scope audit, the ERB could identify additional issues and educate the team at the local administrative unit.

SB 399 authorizes the ERB director or designee to audit the financial affairs, books and records, and may interview employees, of any local administrative unit at any time to ensure compliance with the Educational Retirement Act and rules adopted by the board.

The bill calls for reporting of discrepancies or violations of the Educational Retirement Act or rules adopted by the board.

ADMINISTRATIVE IMPLICATIONS

ERB indicates that the agency’s internal auditor would perform limited scope compliance audits in the event of a discrepancy. Scheduled internal audits identified in the agency’s audit plan would be delayed until the special audit is complete.

OTHER SUBSTANTIVE ISSUES

ERB details an example where an administrative unit closed in FY08 because of financial difficulties. Without audit authority, ERB has to accept undocumented payroll information.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

ERB would need to continue to rely solely on self compliance for contribution accounting. ERB might not receive the correct amount of contributions.

MA/svb:mc