

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: SB 581

51st Legislature, 1st Session, 2013

Tracking Number: .192389.1

Short Title: School Personnel Record Confidentiality

Sponsor(s): Senator Linda M. Lopez

Analyst: Kevin Force

Date: March 2, 2013

Bill Summary:

SB 581 proposes to amend the *School Personnel Act* in several respects. Specifically, SB 581 adds definitions of the following terms:

- “personal information,” which means a school employee’s name, age, gender, social security number, contact information, medical history, employment history, current employer or supervisor, job duties or responsibilities, personal financial data, marital status dependents or beneficiaries;
- “personnel records,” which means any personal information related to a current prospective or past school employee and any information on that employee’s application, such as, selection or non-selection, licensure, promotion or demotion, transfer, leave, salary, benefits, employment contracts, and performance evaluations; and
- “sabbatical leave,” which means leave of absence with pay as set by the local school board or governing authority of a state agency during all or part of a regular school term for purposes of study or travel related to an employee’s duties and of direct benefit to the instructional program;

SB 581 also:

- identifies information that is to be considered privileged and confidential and that may not be disclosed to anyone not directly involved in the licensure and employment decisions affecting an applicant, including:
 - personnel records of applicants for a teacher’s license; and
 - results of an evaluation of a teacher or principal, except that school districts and the Public Education Department (PED) may aggregate data from the evaluation results for each school district when the aggregated data contain no personal information, as defined by the provisions of the bill; and
- stipulates that the annual educator accountability report may not include any personal information, as defined by the provisions of the bill.

Fiscal Impact:

SB 581 does not contain an appropriation.

Substantive Issues:

The analysis from the Attorney General's Office suggests that the Legislature may wish to review several questions when considering the provisions contained in the bill, including:

- whether the definitions of "personal information" and "personnel records" may be too broad;
- how the provisions of SB 581 might affect application and enforcement of the *Inspection of Public Records Act*¹; and
- whether personnel records or the results from teacher and principal evaluations should be confidential and privileged, with disclosure limited to people directly involved in a licensure or employment decision.

The PED analysis notes that:

- the provisions of SB 581 may limit the ability of a district to collect and calculate data that are part of the total evaluation of teachers and principals;
- the inability to disclose information that is part of the evaluation may limit data sharing, thus affecting the proper analysis of data; and
- because a portion of a principal's evaluation is included on a school's grade, as determined by the provisions of the *A-B-C-D-F Grading Act* and rules, a portion of the principal's evaluation would be publicly available.

Regarding potential conflict with the *Inspection of Public Records Act*, certain matters are specifically exempted from the act's provisions, including²:

- letters of reference concerning employment, licensing, or permits³;
- public records containing unredacted protected personal identifier information; and
- material identified by other provisions of law.

Committee Referrals:

SEC/SJC

Related Bills:

None as of March 2, 2013.

¹ Chapter 14, Article 2 NMSA 1978

² Section 14-2-1 NMSA 1978

³ According to Attorney General No. 68-110, dated October 38, personnel actions, supervisor's ratings, arrest records, letters of commendation or condemnation from the employing agency, present employment history, the job application itself and educational history in an employee's file held by the state personnel office is a matter of public record.