

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill Number:** HB 187

**52nd Legislature, 1st Session, 2015**

**Tracking Number:** .198930.1

**Short Title:** Public Education Nepotism Rule Waiver

**Sponsor(s):** Representative Matthew McQueen

**Analyst:** Kevin Force

**Date:** February 3, 2015

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**Bill Summary:**

HB 187 would permit, upon application from a local superintendent, Public Education Department (PED) to waive the nepotism rule for family members of a local school board, if the superintendent shows:

1. that the family member being considered for employment is qualified for the position;  
and
2. other good cause.

**Fiscal Impact:**

HB 187 does not contain an appropriation.

**Technical Issues:**

Although HB 187 proposes to amend provisions in the *Public School Code* dealing with local school boards, to permit waiver of the nepotism prohibition on the hiring of family members of school board members,<sup>1</sup> the bill does not address the parallel prohibition against the hiring of family members of a governing body of a charter school.<sup>2</sup>

**Substantive Issues:**

Currently, the law allows the local school board to waive the prohibition against the superintendent's hiring his or her own family members. HB 187 proposes to allow PED to waive the prohibition barring the hiring of family of members of a local school board by a superintendent for a family member who is qualified for the position on a showing of "other good cause," but does not define the term "good cause." Without any specificity or parameters, the circumstances permitting the waiver of the nepotism prohibition are open to wide, and possibly inconsistent, interpretation.

The issue of nepotism and hiring of superintendents' family members has been adjudicated by the New Mexico Supreme Court,<sup>3</sup> which found that the hiring restrictions did not apply to the

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<sup>1</sup> Section 22-5-6 NMSA 1978.

<sup>2</sup> Section 22-8B-10 NMSA 1978.

<sup>3</sup> New Mexico State Board of Education v. Board of Education of Alamogordo Public School District No. 1, et al., 95 NM 588, 624 P. 2d 530 (1981).

retention of an already-hired employee upon the election of a family member to the school board. Rather, according to the court:

- the office of the Attorney General consistently had applied the hiring prohibition in question only to initial hires;<sup>4</sup>
- teachers whose contracts are renewed are considered to have been continually employed, absent explicit notice of termination;<sup>5</sup>
- the object of the prohibition in question is to prevent nepotism in the hiring of school employees, where the employment of a superintendent's or a school board member's family would naturally arouse suspicions of hiring for reasons other than merit;<sup>6</sup>
- such suspicions, however, would relate only to initial hires, as the continued employment of a teacher whose competency has been established by years of service should not be cause for concern merely because a family member is elected to the school board, subsequent to the employee's initial hire;<sup>7</sup> and, finally,
- the nepotism prohibition serves the public purpose of promoting employment based on merit, rather than on politics or whim.

The provisions of HB 187, allowing exceptions from the prohibition against hiring family of school board members, would appear to align with the Supreme Court's findings in the cited case. By allowing the nepotism provision to be waived upon both a showing of the prospective employee's qualifications and other good cause, HB 187 focuses the hiring decision on merit-based factors explicitly other than a prospective employee's relationship to a superintendent or school board.

### **Committee Referrals:**

HRPAC/HEC

### **Related Bills:**

HB 76 *Teacher Licensure Levels & Advancement* (Identical to SB 91)

HB 144 *Teacher & School Leader Effectiveness Act*

HB 181 *Adjunct Instructors Act* (Identical to SB 228)

SB 91 *Teacher Licensure Levels & Advancement* (Identical to HB 76)

SB 228 *Public School Adjunct Instructors* (Identical to HB 181)

SB 273 *Charter School Governance*

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<sup>4</sup> Id., p. 590.

<sup>5</sup> Id.

<sup>6</sup> Id., p. 591.

<sup>7</sup> Id.