

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: CS/SB 263

52nd Legislature, 1st Session, 2015

Tracking Number: .199967.2

Short Title: Auditor Rules for Education Policies

Sponsor(s): Senator Howie C. Morales

Analyst: Heidi L. Macdonald

Date: March 17, 2015

SENATE EDUCATION COMMITTEE SUBSTITUTE FOR SENATE BILL 263

Bill Summary:

CS/SB 263 creates a new section of the *Public School Code* to require audits of teacher evaluations, merit pay, and school ratings pursuant to the *A-B-C-D-F Schools Rating Act* in accordance with the *Audit Act* and rules adopted in accordance with that act.

Finally, the audits shall test the:

- soundness of programmatic designs and the formulas used to calculate teacher quality and pay;
- selection of teachers to receive merit pay;
- performance grades issued to public schools; and
- accuracy of data relied on and the calculations used to evaluate people, salary increases, and public schools.

Fiscal Impact:

CS/SB 263 does not contain an appropriation.

Technical Issues:

Although the bill requires that audits of teacher evaluations, merit pay, and school ratings be conducted “in accordance with the Audit Act and rules adopted in accordance with that act,” it does not specify which agency is to conduct the audits under those terms. Given the context, the State Auditor seems a likely choice, as the original SB 263 had prescribed; however, the original bill would have amended the *Audit Act*, whereas CS/SB 263 amends the *Public School Code*. Without an explicit directive, the party responsible for conducting the audits seems unclear.

Substantive Issues:

Testimony presented to the Legislative Education Study Committee (LESC) suggests that an external examination of the policies addressed by CS/SB 263 may be in order. To illustrate,

during the 2014 interim the LESC heard testimony on the evaluation of teachers and the grading of schools from the Coalition for Excellence in Science and Math Education (CESE).¹

First addressing the *A-B-C-D-F Schools Rating Act*, this testimony noted that the act helps New Mexico schools in two ways: by providing immediate relief from requirements of the federal *No Child Left Behind Act of 2001* that all students be proficient in reading and math content areas by 2014; and by setting new goals for improvement through student growth targets. However, according to this testimony, the methods of grading the schools, which employ value-added modeling (VAM), appear to be too complex to show a path to improvement, without which schools are unlikely to show real improvement. As an alternative, the CESE testimony suggested another method that includes (1) mapping which schools significantly exceeded or significantly underperformed relative to their predicted performance; and (2) utilizing observation teams to visit those schools identified for best practices or areas for improvement.

Turning to the state's teacher and principal evaluation system, the CESE testimony identified several issues with the requirement that 50 percent of a teacher's evaluation be based on his or her students' performance growth, among them:

- student growth can be volatile with no distinct trend;
- an average teacher's ranking is determined primarily by the previous two teachers' performance;
- standardized test score data indicate certain trends through grade levels that are likely not attributable to teacher performance, for instance a consistent upward trend between sixth, seventh, and eighth grade; and
- regarding the use of the VAM, the American Statistical Association suggests that, aside from teachers accounting for only between 1.0 percent and 14 percent of the variability in test scores, using VAM scores to rank teachers can have unintended consequences that reduce quality.

The CESE testimony concluded with the statement that the best way to evaluate any professional is through rigorous observation, not, in the case of teachers, through reliance on a VAM measure of student performance growth.

The Public Education Department (PED) analysis on the original SB 263, which required the State Auditor to conduct the audits, contends that the State Auditor lacks the authority to conduct audits of the sort required by the bill; however, the Office of the State Auditor (OSA) analysis of the original bill says:

- that the office could implement the provisions of the bill with existing resources; and
- that, in order to maintain its audit oversight and independence, the OSA may review required audits conducted by PED and schools, which would then be subject to OSA's review authority as currently provided in the *Audit Act* and in audit rules.

On this point, the analysis of CS/SB 263 by the Office of the Attorney General questions whether the State Auditor has the authority to conduct the sorts of audits that the bill requires.

¹ The CESE describes itself as a nonprofit, non-partisan 501(c)(3) charitable corporation, whose members include national laboratory personnel and retirees, industrial scientists, educators, parents, college professors, and others. CESE has analyzed New Mexico public education data and policy issues for more than 15 years, with a primary focus on helping improve New Mexico schools using data unique to the state.

Finally, the PED analysis of the original SB 263 offers a number of points that it says provide evidence of the accountability and accuracy of both the school grading system and the teacher effectiveness system.

Background:

A-B-C-D-F Schools Rating Act

Enacted in 2011, the *A-B-C-D-F Schools Rating Act* created a new public school accountability system that, beginning in school year 2011-2012, was to operate in addition to, and separate from, the existing adequate yearly progress system created in state and federal law. Among its provisions, the legislation requires that:

- all public schools be graded annually on an A-F scale;
- the rating scale for elementary and middle schools include factors such as student proficiency and growth, as well as growth of the lowest 25th percentile of students;
- the rating scale for high schools include additional academic indicators such as high school graduation rates and growth in those rates;
- parents of a student in a public school rated F for two of the last four years have the right to transfer the student to any public school in the state or continue schooling through the statewide cyber academy; and
- PED ensure that a local school board or charter school governing body is prioritizing the resources of a public school rated D or F until the school earns a grade of C or better for two consecutive years.

While the overall grading system is prescribed in law, the details and many of the substantive provisions are in PED rule, first promulgated in December 2011 and then revised in May 2012.

Teacher and School Leader Effectiveness Evaluations

Adopted in August 2012 and amended in September 2013, the PED rule, *Teacher and School Leader Effectiveness*, implements an evaluation program for public school teachers and administrators called the Effectiveness Evaluation System (EES), sometimes also called the NMTEACH Effectiveness Evaluation System. Under this system, districts have the option of using the plan developed by PED or submitting a custom plan to PED for department approval.

In general, 50 percent of a teacher's evaluation is based on student achievement measures, whether derived from the state standards-based assessments or some other student assessment. Details vary, however, depending upon whether a teacher is a member of Group A, Group B, or Group C:

- Group A teachers teach subjects tested by the standards-based assessments in those grades in which the assessments are administered;
- Group B teachers teach either non-tested subjects or tested subjects in grades in which the standards-based assessments are not administered; and
- Group C teachers teach in grades K-2.

Briefly, the rule requires that:

- school districts use a department-adopted student achievement growth measure or, with department permission, use a combination of PED-approved growth measures and, for non-tested subjects or grades, a PED-approved alternative measure;
- whenever possible, the performance rating include three years or more of student achievement growth data; and
- if a school district has not implemented appropriate course assessments or adopted a comparable measure, student achievement growth be measured by:
 - the growth achievement of the classroom teacher’s students on state assessments;
 - the school’s A through F letter grade for courses in which enrolled students do not take the state assessment, provided that a school district may assign instructional team student achievement growth to classroom teachers in lieu of using the school grade growth calculation; or
 - state-developed end-of-course examinations or other PED-recommended options.

Upon request by the school district, the rule allows the rating for teachers who are assigned to courses not associated with state assessments to include achievement growth that is demonstrated on state assessments as a percentage of the overall evaluation. In addition, student achievement growth is measured through a VAM, which, according to PED, accounts for the individual student’s background by using three years’ worth of data.² Those years of data produce a teacher’s overall value-added score (VAS).

For the remainder of a teacher’s evaluation:

- 25 percent is based on teaching observations by one of two types of observers – either “approved” or “certified” – using the NMTEACH rubric or protocol; and
- 25 percent is based on “multiple measures,” which vary, again, according to the group to which the teacher belongs.

Audit Act

Under Section 12-6-3(A) of the *Audit Act*, “the financial affairs of every agency shall be thoroughly examined and audited each year by the state auditor, personnel of the state auditor’s office designated by the state auditor or independent auditors approved by the state auditor.” Section 12-6-3(C) states that, in addition to the annual audit, the state auditor may cause the financial affairs and transactions of an agency to be audited in whole or in part.

Merit Pay

On December 9, 2014, the PED announced 21 awardees in the state’s first educator performance pay pilot programs. In all nine school districts and 12 charter schools received a total of over \$7.0 million to implement two programs, one to recognize individual educator success in raising student achievement and one geared toward group performance. The awardees are as follows:

² VAM uses statistical models to predict student test performance, controlling for potential variables that could affect performance such as student, teacher, or school characteristics. The difference between the predicted and actual scores, if any, is assumed to be due to the performance of the teacher, rather than to the student’s natural ability or socioeconomic circumstances.

- school districts include:
 - Santa Fe;
 - Pojoaque;
 - Floyd;
 - Hobbs;
 - Gallup;
 - Farmington;
 - Raton;
 - Lordsburg; and
 - Des Moines; and

- local and state charter schools include:
 - Public Academy for Performing Arts;
 - Native American Community Academy;
 - La Promesa Early Learning Center;
 - New Mexico School for the Arts;
 - North Valley Academy;
 - South Valley Academy;
 - Academy for Technology and the Classics;
 - La Tierra Montessori;
 - Christine Duncan;
 - Creative Education Preparatory Institute;
 - La Resolana Leadership Academy; and
 - East Mountain High School.

Committee Referrals:

SEC/SPAC

Related Bills:

HB 285 *Auditor Rules for Education Policies*