

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 41

52nd Legislature, 2nd Session, 2016

Tracking Number: .202258.2

Short Title: School Superintendent Contract Criteria

Sponsor(s): Representative William “Bill” R. Rehm

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Bill Summary:

HB 41 amends a section of the *School Personnel Act* to note that one of the duties of a local school board is to employ a superintendent pursuant to a written employment contract. The bill also creates a new section of the *Public School Code* regarding the details of employment contracts between school boards and superintendents. Finally, HB 41 creates a new section of the *School Personnel Act* that exempts local superintendents, assistant superintendents, and school district or school employees who earn more than \$150,000 per year from the provisions of the act.

Fiscal Impact:

HB 41 does not contain an appropriation.

The proposed limitation of severance pay to only four weeks' salary could save school districts an indeterminate sum when terminating superintendents without cause, as may those provisions barring any severance pay for a superintendent who is terminated with cause.

At a Glance:

- HB 41 proposes to remove superintendents from the *School Personnel Act*, but does not address the many sections of statute within the act that include references to superintendents and their prescribed duties.
- The bill creates limitations on potential contract negotiations between local school boards and prospective superintendents by limiting potential severance packages before they are included as terms of a superintendent's employment contract.

Detailed Provisions:

Section 1 amends the powers and duties of local school boards by noting that school boards are to employ a local superintendent pursuant to a written employment contract.

Section 2 establishes the elements of the relationship between school boards and superintendents, as well as the terms of the employment contract, which shall be a written public record, as follows:

- a local superintendent is an at-will employee of the school district, subject to the terms of their employment contract, but not subject to the *School Personnel Act*;
- the contract must include the amount of a superintendent’s salary and list of benefits, the superintendent’s minimum duties, and the dates of the employment period, which may not exceed two years;
- renewal of the contract may be executed no earlier than six months before the end of the initial contract period;
- termination of a superintendent might occur in several ways:
 - at the end of the contract period, with no severance pay;
 - during the contract period, with at least four weeks’ notice of resignation from the superintendent, with no severance pay;
 - by a vote of a majority of the school board members at a public meeting:
 - without cause, with no more than four weeks’ salary as severance; or
 - with cause, with no severance.

Section 3 creates a new section of the *School Personnel Act* that exempts from its provisions superintendents, assistant superintendents, and school district or school employees who make more than \$150,000 per year.

Substantive Issues:

The position of “superintendent,” relative to the *School Personnel Act*, is unclear under current law. According to definitions in the *School Personnel Act* and in general provisions of the *Public School Code*, a superintendent is the chief executive officer of a school district, and the only employee hired directly by a local school board. It is less clear whether superintendents fall under any other defined terms, such as:

- “a school administrator,” which is a person licensed to administer in a school district and includes school principals, central district administrators (an undefined term) and charter school head administrators;
- a “school employee,” which includes both licensed and unlicensed employees of the school district;
- a “certified school employee,” which means a licensed school employee;
- a “licensed school employee,” which means teachers, school administrators and instructional support providers.

Also unclear is whether local superintendents are already exempted from certain provisions of the *School Personnel Act*. For instance, the following employees are exempt from the “termination” provisions in Section 22-10A-22 through 22-10A-25 NMSA 1978:

- a certified school instructor employed to fill the position of a certified school instructor entering military service;
- a person who is employed as a certified school administrator; or
- a non-certified school employee employed to perform primarily district wide management functions.

These exceptions do not apply to the parallel provisions for “discharge” decisions.

While a superintendent is not typically employed as a certified instructor, they might be considered a certified school administrator, except that this term lacks a definition in either the general provisions or the act; and while they might be considered an employee who performs district-wide management functions, a superintendent does require a license, and would therefore be considered a certified school employee. None of these exceptions clearly apply to a superintendent. HB 41 attempts to address this issue by directly removing superintendents, assistant superintendents, and employees earning more than \$150,000 per year, from the provisions of the *School Personnel Act*.

However, these blanket exemptions remove those sorts of employees entirely from the purview of the *School Personnel Act*, while many of those provisions directly refer to superintendents and their responsibilities, especially with regard to their management of other school employees. HB 41 does not address how superintendents' personnel-related functions under the act are to be executed if they are no longer subject to these statutory requirements. For example, in Section 22-10A-5 NMSA 1978, superintendents are directed to take a number of actions relating to the possible termination of employees, such as providing written reasons for the potential termination, and providing a factual basis for the determination that just cause exists for the employee's termination.

Current language in sections like Section 22-10A-5 NMSA 1978, however, is also problematic, as the actions required of a superintendent in these sections can be read as being applicable to superintendents as school employees, as well as to superintendents acting in their administrative capacity. Using this interpretation of statute and applying it to the example above would require a superintendent to provide written reasons for their own potential termination or discharge, creating a conflict of interest.

Background:

Several high profile instances of superintendents resigning and receiving substantial payments to buy out the remaining years of their contracts prompted discussion over the past year of limiting the term of superintendent contracts statewide and the amount of severance payments. In particular, during the summer of 2015, a situation at Albuquerque Public Schools (APS) originating from the hiring of a deputy superintendent without the completion of fingerprinting and background checks eventually prompted the superintendent's resignation after only three months in his position, with APS buying out the remainder of his contract for \$80,000; the previous APS superintendent also resigned after having his contract bought out for \$350,000.

Related Bills:

HB 127 *School District Employee Background Checks*