

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 3/01/2007
 LAST UPDATED 3/12/2007 HB _____

SPONSOR SJC

SHORT TITLE School Volunteer Background Checks SB CS/210/aHEC

ANALYST Schuss

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

SUMMARY

Synopsis of HEC Amendment

The House Education Committee amendment redefines ethical misconduct to read:

Unacceptable behavior or conduct engaged in by a licensed school employee and includes inappropriate touching, sexual harassment, discrimination and behavior intended to induce a child into engaging in illegal, immoral or other prohibited behavior.

The amendment also adds the licensed school employee as one who is to receive a report of the ethical misconduct on a standardized form in a case where there is a finding of wrongdoing.

Synopsis of Original Bill

The Senate Judiciary Committee Substitute for Senate Bill 210 requires reports of employee misconduct, providing that settlement agreement confidentiality provisions do not relieve responsibility for reporting. SB 210 defines ethical misconduct.

FISCAL IMPLICATIONS

Local superintendents, charter school administrators or directors of a regional educational cooperative could incur litigation costs of investigating any allegations of ethical misconduct by a school employee.

SIGNIFICANT ISSUES

SB 210 defines ethical misconduct as behavior or conduct engaged in by a licensed school employee that violates the standards of accepted ethical behavior and the standards of professional conduct adopted and promulgated by rule of the department.

SB 210 states that a local superintendent, *charter school administrator or regional education cooperative* shall report to the department any known conviction of a felony or misdemeanor involving moral turpitude of a licensed school employee that results in any type of action against the licensed school employee.

The bill adds that a local superintendent, charter school administrator or director of a regional education cooperative or their respective designees shall investigate all allegations of ethical misconduct about any licensed school employee who resigns, is being discharged or terminated or otherwise leaves employment after an allegation has been made. If the investigation results in a finding of wrongdoing, the local superintendent, charter school administrator or director of a regional education cooperative shall report the identity of the licensed school employee and attendant circumstances of the ethical misconduct on a standardized form to the department within thirty days following the separation from employment. Copies of that form shall not be maintained in public school, school district or regional education cooperative records. No agreement between a departing licensed school employee and the local school board, school district, charter school or regional education cooperative shall diminish or eliminate the responsibility of investigating and reporting the alleged ethical misconduct, and any such agreement to the contrary is void. Unless the department has commenced its own investigation of the licensed school employee prior to receipt of the form, the department shall serve the licensed school employee with a notice of contemplated action involving that employee's license within ninety days of receipt of the form. If that notice of contemplated action is not served on the licensed school employee within ninety days of receipt of the form, the form, together with any documents related to the alleged ethical misconduct, shall be expunged from the licensed school employee's records with the department and shall not be subject to public inspection.

The secretary may suspend, revoke or refuse to renew the license of a local superintendent, charter school administrator or regional education cooperative director who fails to report as required by the information added to this section.

ADMINISTRATIVE IMPLICATIONS

The Public Education Department will have to create a reporting form and administer receipt and processing of these forms.

TECHNICAL ISSUES

AGO noted this issue in the original bill:

NMSA Section 22-10A-31 already provides procedures for denial, suspension or revocation of education licenses by reference to the Uniform Licensing Act, NMSA 1978, Section 61-1-1 et seq. That act generally sets a two-year “limitations” period for issuing a notice of contemplated action. See NMSA 1978, Section 61-1-3.1. This bill appears to attempt to establish a new 90-day limitations period for issuing a notice of contemplated action to certain former school district employees. Although the bill does not expressly prohibit PED from taking

action against the former employee after that period of time, it does provide that all documents relating to the allegations must be “expunged,” which could have the same effect.

BS/mt:csd