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FISCAL IMPACT REPORT

ORIGINAL DATE 03/10/09
 SPONSOR HJC LAST UPDATED 03/16/09 HB CS/436/aSEC
 SHORT TITLE School Employee Termination Process SB _____
 ANALYST Varela/Wilson

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with HB 373

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Public Education (PED)

Department of Finance and Administration (DFA)

SUMMARY

Synopsis of SEC Amendment

The Senate Education Committee amendment to the House Judiciary Committee substitute for HB 436 clarifies that a local superintendent or governing authority of a state agency may terminate an employee with fewer than three years of consecutive service for any reason the local superintendent or governing authority deems sufficient.

In many sections the substitute assigns responsibilities and requires certain actions by a school board. The amendment replaces the school board with the local superintendent. In addition, the amendment clarifies that hearings will be conducted by the superintendent or governing authority of a state agency--not by a school board.

For a hearing before the governing authority of a state agency changes governing authority to a state agency administrator.

The amendment removes language allowing a school employee to appeal the final decision of the local superintendent to the local school board and setting out the procedure for the hearing.

In appeals each party has the right to be represented by a person of the party's choice at the hearing before the independent arbitrator. The person does not have to be an attorney.

The amendment restores previous language by stating that a licensed school employee who receives a notice of intent to recommend discharge pursuant to Subsection A of this section may exercise the right to a hearing before the local superintendent or governing authority by giving the local superintendent or state agency administrator written notice of that election within five working days of the licensed school employee's receipt of the notice to recommend of discharge.

The amendment also removes the word “appeal” when referring to a discharge hearing.

The amendment restores language stating that a local superintendent or state agency administrator shall have the burden of proving by a preponderance of the evidence that, at the time of the notice of intent to recommend discharge, the local superintendent or state agency administrator had just cause to discharge the licensed school employee.

The amendment clarifies that that a notice of discharge is in fact a notice of intent to discharge in the supervision and correction procedures section.

The amendment also adds clarifying language and clean-up.

Synopsis of Original Bill

The House Judiciary Committee substitute for House Bill 436 amends the School Personnel Act to clarify procedures for termination and discharge of school personnel. This bill provides clean-up language, removing text that states that employees can be discharged or terminated by the local school board, and provides new material describing procedures for discharge and termination of school employees by the local superintendent, as well as appeal procedures. The substitute removes definitions as used in the School Personnel Act.

FISCAL IMPLICATIONS

HB 436 does not contain an appropriation. The Public Education Department (PED) does not indicate any additional costs associated with implementing the proposed legislation.

SIGNIFICANT ISSUES

The Office of Educational Accountability (OEA) reports that in 2003 the New Mexico Legislature passed and Governor Bill Richardson signed HB 212, the Public Schools Reform Act. This legislation redesigned much of the structure of public education statewide with regards to assessment, accountability, and educator quality. HB 212 also outlined a blueprint for re-envisioning leadership and management of public school districts, reducing much of the power of local school boards and transferring that power to the local superintendent, who was designated the chief executive officer of the district, in charge of managing all other school personnel within that district.

HB 436 seeks to provide clarifying language to termination and discharge procedures for school employees. According to the Public Education Department, HB 436 is seeking to reconcile “apparent inconsistencies between 22-5-14 [NMSA 1978] (making all employees hiring,

termination and discharge decisions to be determined by the superintendent) and 22-10A-24 [NMSA 1978] and 22-10A-27 [NMSA 1978] (making all termination and discharge decisions to be determined by the local board.)

OEA notes that this bill first seeks to amend current statute (22-10A-2 NMSA 1978) to clarify discharge and termination procedures for certified versus licensed school district employees. It also amends language to specify that school employees are contracted not with the local school board, but with the district or state agency, which is consistent with the powers and duties of the superintendent.

According to OEA, HB 436 provides new material that clarifies reemployment of school district employees. It establishes a deadline for principals and superintendents to provide letters of reemployment or intended termination. It specifies that if principals and superintendents do not provide such letters, employees will be reemployed for the next school year under their current year contract terms. HB 436 specifies that once employees receive a letter of reemployment, they have 15 days to accept, and that contracts may not exceed three years for school administrators.

HB 436 provides new language for the termination of licensed school employees as well as revises procedures regarding arbitration of termination proceedings, and burden of proof.

According to PED, the bill prevents a school district from terminating a non-licensed employee absent a showing of just cause unless that employee is probationary. The 2001 New Mexico Supreme Court case of *Franco vs. Carlsbad Municipal Schools* demonstrates how things can go very wrong for school districts when non-licensed employees are given diminished procedures that effectively deprive them of due process. Although Mr. Franco was terminated (i.e., not rehired for appropriate reasons amounting to misconduct), the district did not provide him with all of the reasons in writing that they used against him; nor was he told that he could attend a board hearing and state his side of the story. He later was awarded \$50 thousand in damages in a lawsuit he brought against the district for wrongful termination. Mr. Franco was a 5-year veteran custodian with the district at the time of his termination.

ADMINISTRATIVE IMPLICATIONS

PED indicates that it may need to amend licensure and contract rules to comply with changes proposed in HB 436, and that other state agencies affected by this bill would need to enact similar rules. However, the department does not indicate that such rule-making would result in any cost to the department.

CONFLICT

According to OEA, this bill is in conflict with HB 373, which seeks to increase the power of the local school board by providing local school boards the power to approve or disapprove assignment, termination or discharge of certain school district administrators and administrative department heads and the salaries of those employees.