

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill No: SB 392

49th Legislature, 1st Session, 2009

Short Title: School Class Size Load Waiver

Sponsor(s): Senator Mark Boitano

Analyst: Kathleen Forrer

Date: February 17, 2009

Bill Summary:

SB 392 amends the *School Personnel Act* to provide a procedure by which an individual school in a school district with an enrollment of more than 40,000 students¹ may waive class size requirements for itself:

- the proposed waiver must first be approved by the school principal, the affected teacher, and at least 75 percent of the parents of children in the class “for which a waiver is being sought”;
- the school principal must notify the local superintendent of an approved waiver; and
- in determining the maximum class size, when the percentage is not a whole number, the number must be rounded down to the next whole number.

In addition, SB 392 specifies that teachers who agree to teach the larger classes will receive additional compensation as follows:

- 7.0 percent of the teacher’s negotiated contract rate for waived class loads of 15 to 19 percent above statutory class requirements; and
- 12 percent of the teacher’s negotiated contract rate for waived class loads of 20 percent or greater above statutory class requirements.

Fiscal Impact:

SB 392 makes no appropriation.

Fiscal Issues:

The cost and/or savings implicit in the provisions of SB 392 are difficult to determine because there is no way of knowing how many schools in the Albuquerque Public Schools (APS) would grant themselves waivers and for how many classes. Although the district could see some savings because it would not have to hire additional teachers to staff additional classes, it would be required to pay the stipends required in SB 392.

According to the Public Education Department (PED), the 40th day reports for school year 2008-2009 show that the average teacher’s salary is \$45,843. Therefore, a teacher who is making the average salary and who agrees to accept a class overload that is between 15 and 19 percent

¹ Currently, only Albuquerque Public Schools has an enrollment of more than 40,000 students.

higher than the statutory class requirements would receive an additional \$3,209 for a total salary of \$49,052. A teacher who is making the average salary and who agrees to accept a class overload that is 20 percent or more higher than the statutory requirements would receive an additional \$5,501 for a total salary of \$51,344.

Overload	Average Salary	Additional Compensation		Total Compensation
		Percent	Amount	
15% - 19%	\$45,843	7.0%	\$3,209	\$49,052
20% or more	\$45,843	12%	\$5,501	\$51,344

The actual number of students constituting an overload will vary, based on grade level and on whether or not, for grades 7-8 and for grades 9-12, the classes involved are English courses. (See “Background” for the specific statutory class load requirements.)

It appears that the additional compensation would become part of the teacher’s annual salary for purposes of calculating retirement contributions and benefits in accordance with the *Educational Retirement Act*.

Issues:

The *School Personnel Act* (act) requires school districts to report to PED the size and composition of its 40th day and December 1 classes and authorizes the Secretary of Public Education to disapprove a school district’s budget for failure to meet class load requirements within two years. The act also requires PED, by November 30 of each year, to report to the Legislative Education Study Committee (LESC) each school district’s ability to meet the class load requirements prescribed in law.

PED’s 80th day *Class and Teacher Overloads* report received by the LESG on February 17, 2009 lists the following class overloads for APS for school year 2008-2009:

**CLASS AND TEACHER OVERLOADS: ALBUQUERQUE PUBLIC SCHOOLS
SCHOOL YEAR 2008-2009
(80th Day Report)**

School Type	Kindergarten classes greater than 15 but less than 20 without an aide	Kindergarten classes greater than 20			
Public	334	25			
Charter	0	2			
Total Overload	334	27			
School Type	1st grade classrooms with 21 or more students without an aide	Average classroom size for grades 1-3 greater than 22			
Public	96	33			
Charter	0	0			
Total Overload	96	33			
School Type	Average classroom size for grades 4-6 greater than 24				
Public	5				
Charter	3				
Total Overload	8				
School Type	Teacher class loads for grades 7-12 greater than 160	Required English for grades 7-8 exceeds 135 students per teacher	Required English for grades 7-8 greater than 27	Required English for grades 9-12 exceeds 150 students per teacher	Required English for grades 9-12 greater than 30
Public	201	19	8	74	16
Charter	14	3	2	78	4
Total Overload	215	22	10	152	20

Technical Issues:

In its analysis of SB 392, PED notes that because there is no upper class size limit specified in the bill, the increased monetary incentive for teachers to allow a class in excess of 20 percent of the current statutory requirements could lead to the approval of large class loads. For example, the current daily teaching load for a teacher of subjects other than English in grades 7-12 is 160. A 20 percent increase would result in a daily teaching load of 192; a 25 percent increase would result in a daily teaching load of 200.

The sponsor may wish to consider an amendment to SB 392 requiring a school to request a waiver from PED if the proposed class size exceeds a specified limit.

Background:

Class Load Requirements

While there are exceptions for students receiving special education services, band and music classes, and athletic electives, the *School Personnel Act* establishes limits on the size of individual classes and the average class load or daily teaching load of teachers in kindergarten through twelfth grade as follows:

- 20 students per kindergarten teacher; provided that a class load of 15 to 20 students entitles the teacher to the assistance of an educational assistant;
- 22 students per teacher, when averaged among grades 1, 2, and 3; provided that any teacher in grade 1 with a class load of 21 or more shall be entitled to the full-time assistance of an educational assistant;
- an average of 24 students per teacher in grades 4-6;
- a daily teaching load of 160 students per teacher in grades 7-12; and
- for teachers of required English courses:
 - a maximum of 27 students per class and a daily teaching load of 135 student per teacher in grades 7 and 8; and
 - a maximum of 30 students per class and a daily teaching load of 150 students per teacher in grades 9-12.

Waiver of Class Load Requirements

Among its other provisions, the *School Personnel Act* allows the Secretary of Public Education to waive individual school class load requirements for not more than two consecutive years if a school district demonstrates that:

- no portable classrooms are available;
- no other available sources of funding exist to meet its need for additional classrooms;
- the school district is planning alternatives to increase building capacity for implementation within one year; and
- the parents of all children affected by the waiver have been notified in writing:
 - of the statutory class load requirements;
 - that the school district has made a decision to deviate from these class load requirements; and
 - of the school district's plan to achieve compliance with the class load requirements.

The secretary may also waive the individual class load and teaching load requirements upon a demonstration of a viable alternative curricular plan and a finding that the plan is in the best interest of the school district and that, on an annual basis, the plan has been presented to and is supported by the affected teaching staff.

However, the act requires that if a waiver is granted, the average class load for elementary school teachers at that school is not to exceed 20 students in grade 1 and not to exceed 25 students when averaged among grades 2-6.

Related Bills:

HB 158 *Decrease Class Size for Grades 4, 5 & 6*

HB 474 *Reduce School Class Sizes*