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FISCAL IMPACT REPORT

ORIGINAL DATE 02/24/09
LAST UPDATED 03/16/09 **HB** 588/aSEC

SPONSOR O'Neill

SHORT TITLE Local Educational Retirement Unit Audits **SB** _____

ANALYST Aubel

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	Indeterminate	Indeterminate	Recurring	ERB

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Indeterminate	Indeterminate	Indeterminate	Recurring	ERB

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB399/aSEC

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Employees Retirement Association (PERA)

Educational Retirement Board (ERB)

Department of Finance and Administration (DFA)

Higher Education Department (HED)

SUMMARY

Synopsis of SEC Amendment

The Senate Education Committee Amendment strikes the phrase “or has reason to believe” as one of the enabling criterion for ERB to order the employer remedy a deficiency in financial controls or procedures. The resulting language allows ERB – if during the course of an audit or if ERB finds that an employer does not have adequate financial controls or procedures in place – to order the employer “to implement measures to remedy those matters, including payment to the

fund of any contributions not properly calculated or paid, together with interest thereon at a rate to be established by the board.”

SIGNIFICANT ISSUES

The Higher Education Department provides the following clarification:

HB588 requires ERB to submit a report to NMHED if it finds a discrepancy, violation or failure to maintain adequate financial controls or procedures at a postsecondary institution. NMHED has no legal authority over internal financial controls of postsecondary institutions. ERB indicates that the report would be for information-only purpose.

Synopsis of Original Bill

House Bill 588 amends Section 22-11-22 NMSA 1978 regarding payments from the local administrative units to the Education Retirement Board (ERB) to authorize ERB to conduct audits of the financial books and records of local administrative units to ensure compliance with the Educational Retirement Act and ERB regulations. For purposes of the Educational Retirement Act, “local administrative units” means an employing agency directly responsible for paying compensation for the employment of ERB members or participants.

FISCAL IMPLICATIONS

ERB would need to dedicate additional staff time to perform the audit functions called for in the bill, which would most likely be minimal because ERB states that irreconcilable inconsistencies arise “infrequently.”

According to ERB, HB 588 will have an undetermined positive effect on the fund. Past experience indicates that the majority of errors in remitting contributions to the ERB involve either underpayments or not making any payment. HB 588 will assist the ERB to collect the contributions due to the fund, which in turn will better enable the ERB to fulfill its statutory mission and fiduciary duty. Any additional payments made to the ERB fund for contributions found in arrears would increase revenue by an indeterminate amount.

The bill does not cover instances where the entity overpays ERB.

SIGNIFICANT ISSUES

Sections 22-11-21 and 22-11-22 NMSA 1978 of the Educational Retirement Act (“the Act”) require ERB employers to make contributions to the Educational Retirement Fund, which are invested to provide pensions to educational system employees. The contributions include a portion paid by employees (“members”) through payroll deductions and a portion that is paid by the employers.

HB 588 would grant ERB the authority to audit employers’ records to ensure compliance with the Act and ERB rules. ERB states that employer reports are generally reconcilable by the ERB contribution accounting team. Infrequently, the agency identifies non-compliance issues. When these items are identified, the ERB has no statutory authority to validate non-compliance issues

and must rely on the reporting entity. ERB maintains that most non-compliance issues are unintentional and, through a limited scope audit, the ERB could identify additional issues and educate the team at the local administrative unit.

HB 588 authorizes the ERB director or designee to audit the financial affairs, books and records, and may interview employees, of any local administrative unit at any time to ensure compliance with the Educational Retirement Act and rules adopted by the board.

HED provides additional detail:

HB588 indicates that if, during the course of the audit, the director or the director's designee finds discrepancies or violations of the Educational Retirement Act or rules adopted by the board, or if the director or the director's designee finds or has reason to believe that a local administrative unit does not have adequate financial controls or procedures in place to allow the local administrative unit to properly account for and pay required contributions to the board, the ERB director can order the local administrative unit to implement measures to remedy those matters. Actions include payment to the fund of any contributions not properly calculated or paid, together with interest thereon at a rate to be established by the board. The local administrative unit shall promptly comply with that order.

HB588 requires the ERB director to submit a report describing the discrepancy, violation or failure to maintain adequate financial controls or procedures to the board, the state auditor and the Public Education Department or the Higher Education Department as may be appropriate.

HB 588 requires that the ERB director is required to notify the attorney general, the state auditor and the appropriate law enforcement agency of any suspect criminal activity with respect to contributions, payments or the management of funds.

ADMINISTRATIVE IMPLICATIONS

ERB indicates that the agency's internal auditor would perform limited scope compliance audits in the event of a discrepancy. Scheduled internal audits identified in the agency's audit plan would be delayed until the special audit is complete.

DUPLICATION

Duplicates Senate Bill 399.

OTHER SUBSTANTIVE ISSUES

ERB details an example where an administrative unit closed in FY08 because of financial difficulties. Without audit authority, ERB has to accept undocumented payroll information.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

ERB would need to continue to rely solely on self compliance for contribution accounting. ERB might not receive the correct amount of contributions.

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