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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/10/11  
 LAST UPDATED 03/18/11    **HB** \_\_\_\_\_

SPONSOR Nava

SHORT TITLE ERB Members to Appoint Designees    **SB** 329/aSEC/aHEC

ANALYST Aubel

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		NFI				

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to House Bill 294

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Educational Retirement Board (ERB)  
 Office of the Attorney General (OAG)  
 State Treasurer's Office (STO)

#### No Response From

Public Education Department (PED)

### SUMMARY

#### Synopsis of HEC Amendment

The House Education Committee Amendment to Senate Bill 329 eliminates the requirement for Senate approval of the governor appointees but continues the requirement that the two governor appointees "shall have a background in investments, finance or pension fund administration."

#### Synopsis of SEC Amendment

The Senate Education Committee Amendment to Senate Bill 329 makes three additional changes regarding board members:

1. Requires the two governor appointees receive Senate approval;
2. Requires these two governor appointees have "a background in investments, finance or pension fund administration"; and
3. Applies these new qualifications for the two governor appointees prospectively, from the effective date of June 17, 2011. Thus, the amendment would not apply to governor appointees currently serving or appointed to the board prior to that date.

Synopsis of Original Bill

Senate Bill 329 allows both the Secretary of the Public Education Department and the State Treasurer, who are ex officio members of the Educational Retirement Board (ERB), to appoint designees to fulfill the duties associated with being members of the board.

ERB provides additional detail:

SB 329 would authorize the two ex officio members (the State Treasurer and the Secretary of Public Education) of the Educational Retirement Board (“ERB”) to each appoint a designee to serve on the ERB. The designees must be New Mexico residents, current employees of the State Treasurer’s Office or the Public Education Department, respectively, and possess experience relevant to the financial or fiduciary aspects of pension or investment fund management. Each designee will have the same responsibilities, duties, liabilities and immunities as the respective ex officio Board member, including the indemnification provided by Section 22-11-13(H) NMSA 1978. Appointment of a designee will not relieve the ex officio Board member of that member's responsibilities, duties, liabilities and immunities as a Board member and the Board member will be fully responsible and liable for the actions of the designee while serving on the Board.

**FISCAL IMPLICATIONS**

There is no fiscal impact associated with this bill.

**SIGNIFICANT ISSUES**

ERB provides an explanation of the primary issue related to the ex officio members sitting on the ERB:

Two of the ERB’s seven board members serve as ex officio members: the Secretary of Public Education and the State Treasurer. The duties and demands of their respective positions can make it difficult to attend ERB board meetings. For example, pursuant to state statute the State Treasurer serves on 14 boards. This can adversely affect the Board’s ability to have a quorum and fulfill the duties that under New Mexico law, only the Board can perform. This also affects the ability of the Board to schedule special meetings when necessary and to hold meetings in New Mexico other than in Albuquerque and Santa Fe. It also affects the Board’s ability to establish committees, such as the Investment Committee, and have the necessary quorum at committee meetings.

OAG confirms ERB’s analysis concerning the fiduciary duty relationship of the designee:

There isn't any new liability language in the bill. There is language that makes any designee of the Secretary or the Treasurer a true agent. That means that the principal (the Secretary or the Treasurer) would be liable for any misdeeds by the agent, but that isn't creating any liability that didn't previously exist. It's just creating an agency relationship.

STO comments on this issue: “The bill...provides for the designee to have the same indemnifications that are provided for board members.”

STO points out that under current statutes and policies, “the State Treasurer is authorized to appoint a qualified designee to serve in his absence as a voting member on seven of the boards

and commissions he serves on. When a designee attends a meeting on the Treasurer's behalf, the designee fully informs the Treasurer of the issues discussed and the actions taken at the meeting."

### **ADMINISTRATIVE IMPLICATIONS**

STO addresses a couple of issues relating to administrative implications:

Administrative implications would be positive since having a designee is more likely to assure a quorum at board meetings. Additionally, the designee would be able to provide a better briefing to the board member, having attended the meeting in person.

The State Treasurer's Office (STO) would only send a designee in rare events of conflict, which do occasionally arise since the NM State Treasurer is a member of 14 boards and commissions, and is currently serving on the executive committees of the National Association of State Treasurers (NAST) and the National Association of Auditors, Controllers and Treasurers (NASACT). Agendas of ERB board meetings are sent out in advance, and therefore issues that would arise during a board meeting can be discussed beforehand. In addition, this bill allows only qualified individuals to serve as designees.

Thus, it appears that the bill improves administration of the ERB while allowing the State Treasurer more flexibility in meeting his or her obligations.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB 329 is related to HB 294. HB 294 which would allow the State Treasurer to designate qualified individuals to act as designee on the boards of ERB, SIC and PERA, in the event of a conflict.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

STO summarizes the consequences as follows:

If this bill is not enacted then the status quo will remain whereby the Treasurer who serves on 14 different boards, and is sometimes added as a board member to new boards and commissions without prior notification, will not be represented at a meeting because of a conflict. This has happened on rare occasions, and there has been some concern on the part of ERB and its board that there would not be a quorum, even though important issues may be on the agenda.

MA/svb:mew