

LESC bill analyses are available on the New Mexico Legislature website (www.nmlegis.gov). Bill analyses are prepared by LESC staff for standing education committees of the New Mexico Legislature. LESC does not assume any responsibility for the accuracy of these reports if they are used for other purposes.

LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
54th Legislature, 2nd Session, 2020

Bill Number	<u>HB364/HLVMCS</u>	Sponsor	<u>HLVMC</u>
Tracking Number	<u>.217717.1</u>	Committee Referrals	<u>HLVMC;SPAC</u>
Short Title	<u>Public Peace, Health, Safety & Welfare (Public Sector Collective Bargaining Changes)</u>		
Analyst	<u>Waite/Bedeaux</u>	Original Date	<u>2/17/2020</u>
		Last Updated	<u>2/18/2020</u>

BILL SUMMARY

Synopsis of Bill

The House Labor, Veterans' and Military Affairs Committee Substitute for House Bill 364 (HB364/HLVMCS) modifies the Public Employee Bargaining Act to clarify remedies available to the Public Employees Labor Relations Board (PELRB), eliminates local labor boards with exceptions, and repeals and reenacts sections of public law relating to public officers and employees.

This analysis focuses on HB364/HLVMCS's impact on public schools and public school employees.

HB364/HLVMCS grants local labor relations boards the same powers and duties reserved under current law to the PELRB. These include establishing procedures for designating bargaining units, selecting and decertifying exclusive representatives, hearing complaints, issuing subpoenas and imposing administrative remedies. HB364/HLVMCS also clarifies the types of relief local boards and PELRB are allowed to execute, including the authority to impose actual damages related to dues, back-pay with benefits, reinstatement of the employee with the same seniority status, declaratory or injunctive relief, temporary restraining orders, and preliminary injunctions. Boards may not, however, award punitive damages or attorney fees.

HB364/HLVMCS allows a local board or PELRB to delegate any or all of its authority to third parties, subject to final review by PELRB.

The bill stipulates rules adopted by local boards shall conform to state law and the rules of PELRB. However, the section allows local boards to adopt other rules if they comply with state law, subject to approval by PELRB. PELRB would be required to maintain a website showing the current versions of PELRB rules and local board rules. The website will also be required to list members of PELRB and each local board. Local boards have 30 days to notify the state boards of changes in membership or rules. Local boards would be required to submit copies of rules to PELRB by April 30, 2021, or else cease to exist. PELRB would review the rules and determine whether they

meet the rules of PELRB or vary for good cause. Rules determined to be out of compliance must be amended by June 30, 2021, or the local board will cease to exist.

HB364/HLVMCS allows the continued existence of current local labor relations boards if they meet certain criteria by December 31, 2020. A revised local ordinance, resolution, or charter amendment must accomplish the following:

- Authorize continuation of the local board;
- Provide the same or greater to public employees and labor organizations as the Public Employee Bargaining Act;
- Allow for the determination of, and remedies for, an action that would constitute a prohibited practice; and
- Contain impasse resolution procedures equivalent to those in Section 10-7E-18 NMSA 1978.

PELRB will be required to review the submitted ordinances, resolutions, and charter amendments; those that fail to meet the above requirements by June 30, 2021 will cease to exist.

To continue operating, local boards will be required to obtain an affirmation that the public employer and each labor organization under the local board's jurisdiction have elected to continue operating under the local board by December 31, 2021 and each subsequent odd-numbered year. Additionally, local boards will cease to exist if they have a vacant position for more than 60 days. Local labor boards that cease to exist may not be revived. PELRB would be granted jurisdiction over all public employees, public employers, labor organizations, and all pending matters under local boards that are abolished by the bill.

After June 30, 2020, no new local boards may be created.

HB364/HLVMCS would grant labor organizations the status of "exclusive representatives" over public employees in a collective bargaining unit. Exclusive representatives would be granted "reasonable access" to employees, including the right to meet with employees at their place of work during regular working hours without penalty to the employee or undue interference from the employer. A public employer would be required to allow use of their facilities or property to conduct meetings as long as meetings do not interfere with the employer's operations. Additionally, the employer must provide personal information of each employee to labor organizations, including the employee's name, date of hire, contact information, job title, salary, and work site.

Under HB364/HLVMCS, public employers would be prohibited from using public funds to influence employees to support or oppose a labor organization. However, this prohibition would not apply to expenses incurred while negotiating with an organization, allowing an organization to use facilities, performing an act required by law or a collective bargaining agreement, paying wages to an employee represented by the organization, or representing the public employer during a proceeding before PELRB or the local labor relations board.

HB364/HLVMCS provides that, even after a collective bargaining agreement is agreed upon, both public employers and labor organizations maintain the ability to bargain in "good faith" over wages, hours, and all other conditions of employment, unless the parties clearly and unmistakably waived the right to do so. However, this section does not allow parties to be compelled to renegotiate any terms already agreed upon. Notably, a collective bargaining agreement that

provides greater rights or remedies than included in state statute would not be considered to be in conflict with state statute, but an agreement that exceeds the requirements of state law would not be held in conflict with the law.

HB364/HLVMCS would give employees the formal right to opt out of payroll deductions, including membership dues, to labor organizations if they do so within a 10-day annual opt out period established by the employer and the labor organization.

HB364/HLVMCS would prohibit the collection of “fair share” fees, fees collected from public employees regardless of their membership in a labor organization. In 2018, the U.S. Supreme Court ruled the collection of fair share fees violated employees’ rights. The bill would establish employers and labor organizations are not liable for fair share fees collected prior to the Supreme Court’s ruling.

HB364/HLVMCS gives public employees the right to engage in “other concerted activities for mutual aid or benefit.” However, this section explains the rights shall not modify the state’s prohibition on employee strikes set forth in Section 10-7E-21 NMSA 1978.

HB364/HLVMCS would require a public employer to provide the elected labor organization employee names, job titles, work locations, home addresses, personal email addresses and home or cellular telephone numbers of any public employee in the proposed bargaining unit within 10 business days of acceptance of a valid petition. The labor organization must keep the employee information confidential. SB110/SJCS also adds language giving the state or local board the authority to verify union cards and certify the labor organization as the exclusive representative of all public employees. Employers would be able to challenge the verification of the board or local board.

HB364/HLVMCS states the Public Employee Bargaining Act (PEBA) shall not supersede the state’s Personnel Act in cases of conflicts between the two.

SUBSTANTIVE ISSUES

Under current law, public employers have a right to create their own local labor boards that have the same duties and responsibilities as the PELRB. HB364/HLVMCS attempts to standardize local board practices under PELRB rules, and would abolish local boards that fail to meet the rigorous criteria, and would not allow the creation of new local boards after June 30, 2020. New Mexico currently has 56 local boards, approximately 20 of which represent New Mexico school districts or institutions of higher education. Local boards currently implement varied policies, and some have vacancies. Stakeholders have also voiced concerns that local boards consist of volunteers who are not necessarily trained in labor relations. HB364/HLVMCS responds to concerns by imposing stringent requirements on local labor boards, and providing for the termination of local boards if certain conditions are not met.

Collective Bargaining. In 2018, the Supreme Court ruled in *Janus v. AFSCME* that public employees are not required to pay fees to unions to cover the cost of collective bargaining, even if the employee is covered by the union-negotiated contract. Prior to the decision, 22 states including New Mexico, had “fair share” statutory provisions that required people who were not union members, but were nonetheless represented by the union in collective bargaining, to pay fees to cover the cost of collective bargaining activities. The Supreme Court ruled that being forced to pay these fees was an infringement on employees’ First Amendment Rights. Section 2 of

HB364/HLVMCS strikes the “fair share” definition in state law, which has been rendered null by the Supreme Court’s decision.

Impacts for Teachers’ Unions and Members. Policy analysts at the Illinois Economic Policy Institute and the University of Illinois at Champaign-Urbana, among others, had predicted that the *Janus* decision would reduce union membership, resulting in lower pay and benefits for public-sector employees, including teachers. Unions have responded to the *Janus* ruling by making more direct attempts to reach potential members and developing more robust benefits programs. The process of recruiting new members is bolstered by the ability to access public employees and their personal information. These union rights are outlined in **Bill Summary**.

OTHER SIGNIFICANT ISSUES

State Public Employees Bargaining Act. HB364/HLVMCS makes some modernizing and clarifying updates to the New Mexico PEBA. The purpose of PEBA is “to guarantee public employees the right to organize and bargain collectively with their employers, to promote harmonious and cooperative relationships between public employers and public employees, and to protect the public interest by ensuring, at all times, the orderly operation and functioning of the state and its political subdivisions.” PEBA establishes PELRB as the administrative board to ensure compliance with the Act, and allows for the establishment of both a single state board – the PELRB – and various local boards under the oversight of the PELRB. The board consists of three members appointed by the governor.

In addition to enforcing the provisions of PEBA, PERLB has the power to designate bargaining units; oversee "selection, certification, and decertification of exclusive representatives"; hear prohibited practices complaints; conduct studies; and approve the creation of local boards. HB364/HLVMCS clarifies certain remedies available to the PERLB when enforcing the provisions of the PEBA. Notably, remedies do not include the ability to award punitive damages or attorney fees.

New Mexico School District Labor Relations Boards. HB364/HLVMCS would provide PELRB specific authority to ensure local ordinances comply with the PEBA. The following existing local boards relate to New Mexico public school systems:

- Alamogordo Public Schools Labor Management Relations Board
- Albuquerque Public Schools Board of Education
- Aztec Municipal School District Labor Management Relations Board
- Belen Consolidated School District Labor Management Relations Board
- Chama Valley Independent School District Labor Management Relations Board
- Clovis Municipal Schools Labor Management Relations Board
- Cuba Independent Schools Labor Management Relations Board
- Dulce Independent Schools
- Gadsden Independent Schools Labor Management Relations Board
- Lake Arthur Municipal School District Labor Management Relations Board
- Los Lunas Public Schools Labor Management Relations Board
- Loving Schools Labor Management Relations Board
- New Mexico Highlands University Labor Management Relations Board
- New Mexico State University Labor Management Relations Board
- Northern NM College Labor Management Relations Board

- Rio Rancho Public Schools Labor Management Relations Board
- Ruidoso Municipal School District Labor Management Relations Board
- San Juan College Labor Management Relations Board
- Santa Fe Community College Labor Management Relations Board
- Socorro Schools Labor Management Relations Board

The preceding local boards may be abolished if HB364/HLVMCS is enacted, unless PELRB certifies their practices and ordinances are in compliance with the law. PELRB has not confirmed these approved local boards have three appointed board members, and it is unclear whether all boards have procedures necessary to be considered a fully functioning board.

TECHNICAL ISSUES

Page 25, lines 18 and 20 of the bill reference “fair share dues,” a definition that was struck earlier in the act and is not defined in SB110/SJCS.

RELATED BILLS

Duplicate of SB110/SJCS, Public Sector Collective Bargaining Changes.

SOURCES OF INFORMATION

- LESC Files
- State Personnel Office (SPO)
- NM Public Employees Labor Relations Board (PERLB)

JLW/tb/mc/sgs