

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill No: SB 399a

49th Legislature, 1st Session, 2009

Short Title: Local Educational Retirement Unit Audits

Sponsor(s): Senator Howie C. Morales

Analyst: Kathleen Forrer

Date: March 17, 2009

AS AMENDED

The House Education Committee amendment, by striking “or has reason to believe”, requires the director or the director’s designee to find, during the course of an audit, that financial controls or procedures are not adequate for an LAU (local administrative unit) to properly account for and pay required contributions.

Original Bill Summary:

SB 399 amends the *Educational Retirement Act* (ERA) to authorize the director of the Educational Retirement Board (ERB) or the director’s designee to conduct an audit at any time of any local administrative unit in order to ensure compliance with the act and board rules. The audit may include interviews with employees of the local administrative unit, which is directed to cooperate with the director and to provide access to “records, information and employees.”

Should the audit determine that discrepancies or violations of the act or ERB rule exist or that financial controls or procedures are not adequate to allow the local administrative unit to properly account for and pay required contributions, the director must:

- order the local administrative unit to implement remedial measures;
- submit a report to the ERB, the State Auditor, the Public Education Department (PED), or the Higher Education Department (HED) as appropriate; and
- if criminal activity is found or suspected, notify the Attorney General, the State Auditor, and the appropriate law enforcement agency.

Fiscal Impact:

SB 399 makes no appropriation.

Fiscal Issues:

According to the ERB, SB 399 should have little or no fiscal impact.

In its analysis of SB 399, HED suggests that the ERB will require an additional three to five employees at a cost of \$350,000 to implement the provisions in the bill. However, ERB indicates that no additional resources will be necessary: “The ERB internal auditor would be detailed to perform limited scope compliance audits in the event of a discrepancy. Scheduled internal audits identified in our audit plan would be delayed until the special audit is complete.”

Issues:

According to the ERB website, SB 399 incorporates a 2009 legislative priority of the board:

ERB is seeking audit authority to ensure that all local administrative units (LAUs) are paying the correct contributions, employee and employer, for all eligible members on time and in full. Providing audit authority will create a venue for the ERB to work cooperatively with the LAUs on administrative issues. By proactively identifying compliance issues, early negative consequences can be avoided and the fund will receive the correct amount of contributions.

In support of this request, in its analysis of SB 399, ERB cites the following instance: “An administrative unit ran into financial difficulty and closed in FY 2008. Legal disputes resulted from the closure and consequently they refused to provide accounting documentation to the ERB. Without audit authority the ERB has no recourse but to accept undocumented payroll information.”

Finally, the Department of Finance and Administration (DFA) notes that implementation of SB 399 “could provide for better accountability and payment of contributions by administrative units to the [ERB].”

Background:

In 1957, the Legislature enacted the ERA to provide the education community with a vehicle for retirement through establishment of the Educational Retirement Fund.

According to the ERB, as of February 2, 2009, there are 183 contributing employers, including public school districts and charter schools, higher education institutions, special schools such as the New Mexico School for the Blind and Visually Impaired, and other state agencies such as PED (see Attachment).

Management of the Education Retirement Fund is under the ERB, which consists of a board of seven members, the categories of which are statutorily determined and include the Secretary of Public Education, the State Treasurer, one member elected by the members of the New Mexico Association of Educational Retirees, one member elected by the National Education Association-New Mexico, one member elected by the American Association of University Professors, and two members appointed by the Governor.

Related Bill:

HB 588a *Educational Retirement Local Audits* (As introduced, HB 588 and SB 399 were duplicates; HB 588a and SB399a are duplicates.)

**EDUCATIONAL RETIREMENT BOARD
CONTRIBUTING EMPLOYERS
(February 2, 2009)**

SCHOOL DISTRICTS

Alamogordo	Las Cruces
Albuquerque	Las Vegas
Animas	Las Vegas West
Artesia	Logan
Aztec	Lordsburg
Belen Consolidated	Los Alamos
Bernalillo	Los Lunas
Bloomfield	Loving
Capitan	Lovington
Carlsbad	Magdalena
Carrizozo	Maxwell
Central Consolidated	Melrose
Chama Valley	Mesa Vista
Cimarron	Mora
Clayton	Moriarty
Cloudcroft	Mosquero
Clovis	Mountainair
Cobre Consolidated	Pecos
Corona	Peñasco
Cuba Independent	Pojoaque Valley
Deming	Portales
Des Moines	Quemado
Dexter Consolidated	Questa
Dora Consolidated	Raton
Dulce	Reserve
Elida	Rio Rancho
Espanola	Roswell
Estancia	Roy
Eunice	Ruidoso
Farmington	San Jon
Floyd	Santa Fe
Fort Sumner	Santa Rosa
Gadsden	Silver Consolidated
Gallup-Mckinley Co.	Socorro
Grady	Springer
Grants-Cibola	Taos
Hagerman	Tatum
Hatch Valley	Texico
Hobbs	Truth or Consequences
Hondo Valley	Tucumcari
House	Tularosa
Jal	Vaughn
Jemez Mountain	Wagon Mound
Jemez Valley	Zuni
Lake Arthur	

CHARTER SCHOOLS

La Academia de Lengua y Cultura	La Resolana Leadership Academy
Academy for Technology and the Classics	Las Montanas Charter School
AIMS@UNM (Albuquerque Institute of Math and Science)	Learning Community Charter School
Albuquerque Talent Dev. Sec. Charter School	Lindrith Area heritage School
Aldo Leopold High School	Los Puentas Charter School
Alma D'Arte Charter High School	Monte del Sol
Amy Biehl High School	Montessori Elementary
Anansi Charter School	Montessori of the Rio Grande
Bataan Military Academy	Moreno Valley High School
Bridge Academy Charter School (CLOSED 06/30/08)	Mosaic Academy Charter
Career Academic Technical Academy	Mountain Mahogany Community School
Carinos de los Ninos	Native American Community Charter
Cesar Chavez Community School	North Albuquerque Cooperative Community Charter
Charter School 37	North Valley Academy (formerly Horizon Academy Northwest)
Christine Duncan Community School	Nuestros Valores
Corrales International School	Public Academy for Performing Arts
Cottonwood Classical Prep School	Ralph J. Bunche Academy
Cottonwood Valley	Red River Valley
Creative Education Preparatory Institute #1	Robert F. Kennedy
Creative Education Preparatory Institute #2	Roots and Wings
Deming Cesar Chavez	San Diego Riverside
Digital Arts and Technology Academy	School for Integrated Academics and Technologies
East Mountain High School	Sidney Gutierrez
El Camino Rael Academy (Horizon Academy South)	South Valley Academy
Gordon Bernell Charter School	Southwest Primary Learning Center
Horizon Academy West	Southwest Secondary Learning Center
Jefferson Montessori Academy	Taos Municipal
La Academia de Esperanza	Turquoise Trail
La Academia Dolores Huerta (La Academia de Idiomas Y Cultura)	Twenty-First Century
La Luz del Monte Learning Center	Village Academy
La Promesa Early Learning Center	Vista Grande High School
	Walatowa
	Youth Build Community School

OTHER PUBLIC SCHOOLS

Valmora High School

COLLEGES AND UNIVERSITIES

Central New Mexico Community College	NM State University
Clovis Community College	NM Institute of Mining & Technology
Eastern NM University (Portales)	Northern NM Community College
Eastern NM University (Roswell)	San Juan College
Luna Community College	Santa Fe Community College
Mesalands Community College	University of New Mexico
NM Highlands University	Western NM University
NM Junior College	

SPECIAL SCHOOLS

NM Military Institute	NM School for the Visually Handicapped
NM School for the Deaf	University Hospital

STATE AGENCIES

Central Regional Education Coop
Department of Finance and Administration ¹
High Plains Regional Education Coop
Lea Regional Education Coop #7
NM Activities Association

Northeast Regional Education Coop
Pecos Valley Regional Education Coop #8
Regional Educational Center #6
Region IX Educational Coop
Southwest Regional Education Coop #10

¹ DFA sends the ERF contributions to the ERB for state agencies that have employees covered by the *Educational Retirement Act*. The agencies listed in the Educational Retirement Board's 2007 *Annual Report* are the Department of Corrections, the Public Education Department, the Department of Health, the Department of Vocational Rehabilitation, the Educational Retirement Board, and the Youth Diagnostic Center.