

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill No: SB 644

49th Legislature, 1st Session, 2009

Short Title: Educational Employees as Legislators

Sponsor(s): Senator Eric G. Griego and Others

Analyst: David Harrell

Date: February 24, 2009

Bill Summary:

SB 644 amends two sections of statute pertaining to the legislative branch to allow employees of a state educational institution recognized in Article 12, Section 11 of the state constitution (see “Background,” below) to serve as state legislators.

Fiscal Impact:

HB 644 makes no appropriation.

Issues:

The two sections of statute amended by SB 644 – Section 2-1-3 NMSA 1978 and Section 2-1-4 NMSA 1978 – have been in law at least since 1941, and they address the same circumstance from two different directions.

- The first prohibits a member of the Legislature from receiving any compensation as an officer or employee of the state other than the compensation that the member receives through service as a legislator; and the second prohibits an officer of the state from paying a legislator any compensation for state service other than what the member receives through service as a legislator.
- In other words, as the analysis of SB 644 by the Office of the Attorney General (AG) states, “[c]urrent law effectively prevents a state employee from serving in the State Legislature.”
- In addition, the prohibitions in each section correspond to Article 4 of the state constitution. As stated in Section 3 of that article: “No person shall be eligible to serve in the legislature who, at the time of qualifying, holds any office of trust or profit with the state, country or national governments, except notaries public and officers of the militia who receive no salary.”

At the risk of oversimplifying the legal and constitutional issues involved, the situation that SB 644 addresses seems to be the result of a series of AG opinions and at least one court case related to these two sections of law (see “Background,” below), which together determined:

1. that employees of state institutions enumerated in the constitution are state employees and, as such, may not serve in the Legislature; and

2. that public school employees are not state employees and, as such, may serve in the Legislature.

By stipulating that “an employee of the state [as used in those two sections] does not include an employee of a state educational institution pursuant to Article 12, Section 11 of the constitution of New Mexico,” SB 644 allows an employee of one those institutions to serve in the Legislature.

However, the provisions in SB 644 may not be the complete resolution of the issue.

- For one thing, as the Higher Education Department (HED) analysis suggests, the bill must be accompanied by an amendment to Article 4 of the state constitution, cited above. Such an amendment is the purpose of Senate Joint Resolution 14, also introduced during the 2009 session. As the AG’s analysis of SJR 14 states, both SB 644 and SJR 14 must be enacted in order to allow employees of those state educational institutions enumerated in the constitution to serve in the Legislature and to receive compensation from both entities.
- For another thing, the AG’s analysis indicates that, even if both SB 644 and SJR 14 are enacted, there may be a conflict with another section of the state constitution: Article 3, Section 1 (commonly known as the “separation of powers” clause), which prevents someone charged with the exercise of power of one branch of government from performing, or encroaching on, the powers of another.

Finally, the HED analysis suggests that, even if these legal and constitutional issues are resolved, there is a potential for a conflict of interest in that a legislator who is also an employee of a state institution will be in the position of influencing legislation and appropriations that affect the institution where the legislator is employed.

Background:

Listed below are the decisions that seem to have led to the issue that SB 644 seeks to resolve (see the AG and HED analyses for more details):

- An AG opinion in 1957 found that state legislators are prohibited from employment at a state educational institution pursuant to the two sections of law amended in SB 644.
- An AG opinion in 1988 found that public school instructors and administrators are state employees within the constraints of the prohibition against serving in the Legislature while receiving compensation as a state employee.
- A court case in 1991 nullified the 1988 AG opinion by ruling that public school teachers and administrators are not state employees within the meaning of the sections of law in question.
- Finally, an AG opinion in 1991 found that the court ruling in the 1991 case does not alter the prohibition against a person simultaneously serving in the Legislature and serving as an employee of a state educational institution, such as the University of New Mexico.

In the words of that opinion, “[a]bsent amendment by the legislature, Sections 2-1-3 and 2-1-4 as they are now drafted prohibit state legislators from receiving compensation for services rendered as professors and employees of state educational institutions.”

Listed below are the institutions referenced in SB 644, from Article 12, Section 11 of the state constitution:

- the University of New Mexico;
- New Mexico State University;
- New Mexico Highlands University;
- Western New Mexico University;
- Eastern New Mexico University;
- the New Mexico Institute of Mining and Technology;
- the New Mexico Military Institute;
- the New Mexico School for the Blind and Visually Impaired;
- the New Mexico School for the Deaf; and
- the Northern New Mexico State School.

Related Bill:

SJR 14 *Educational Employees as Legislators, CA*