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FISCAL IMPACT REPORT

ORIGINAL DATE 02/10/10

SPONSOR Griego, E. LAST UPDATED _____ HB _____

SHORT TITLE Educational Employees as Legislators SB 52

ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	No Appropriation		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
Public Education Department (PED)
Higher Education Department (HED)

SUMMARY

Synopsis of Bill

Senate Bill 52 amends Sections 2-1-3 and 2-1-4 to exclude state educational institution employees from being categorized as a state employee as it relates to pursuant to Article XII, Section 11 of the New Mexico Constitution.

SIGNIFICANT ISSUES

The Public Education Department identified the following points of interest:

- In State ex rel. Stratton v. Roswell Independent Schools, 111 N.M. 495, 806 P.2d 1085 (Ct. App. 1991), the New Mexico Court of Appeals considered legislative intent and concluded that public school teachers and administrators were not state employees within the meaning of Sections 2-1-3 and 2-1-4 NMSA 1978. The proposed amendments would express the legislative intent with respect to employees of state educational institutions as enumerated in Article XII, Section 11 of the New Mexico Constitution.
- In the cited case, the Court of Appeals also addressed challenges under Article III,

Section 1 and Article IV, Section 28 of the New Mexico Constitution, concluding that Article III, Section 1 (separation of powers) applies to public officers, not employees, in different branches of government, and that, with respect to Article IV, Section 28, an appropriations bill does not “authorize” a contract of employment with the state within the meaning of the provision.

- Attorney General Opinion 06-01 (January 26, 2006) concluded that a legislator could serve as the president of a vocational-technical institute without resigning office and without running afoul of Article 4, Sections 3 or 28 of the New Mexico Constitution or Section 2-1-3 NMSA 1978. With respect to Article IV, Section 3 (“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, county or national governments ...”), the opinion concluded that the president of a technical and vocational institute was not a “state, county or national office.” The opinion also concluded that, in the absence of the vesting of some portion of sovereign power, a government position is merely one of public employment and not a public office.

TECHNICAL ISSUES

SB52 cites the educational institutions included in Article 12, Sec. 11 of the Constitution. This section only includes state educational institutions and does not specifically include branch colleges or community colleges. It is unclear whether SB52 intends to incorporate these schools to allow employees of these institutions to also serve as legislators.

OTHER SUBSTANTIVE ISSUES

According to PED, it is possible that certain entities within the university structure may be subject to the provisions of the Hatch Act [10-9-21, NMSA 1978], which provides that employees may not be candidates for public office in a partisan election. This would require a case-by-case determination and may require future litigation to determine the Hatch Act’s applicability.

State educational institutions are political subdivisions of the state. As such, an unintended consequence of this bill if passed would be the apparent conflict of interest inherent in an employee (possibly a dean) of a state educational institution who might be voting on an appropriation or other substantive bill that directly affected that educational institution. Such an arrangement might erode public confidence in the integrity of state government. It might be suggested that such a legislator/state educational institution employee is actually a lobbyist paid by the state both as a legislator and as a state employee.

EO/mew