

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 66a

50th Legislature, 1st Session, 2011

Tracking Number: .182861.5

Short Title: Transfer Depts. & Services to DFA

Sponsor(s): Representative Luciano “Lucky” Varela

Analyst: David Harrell

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FOR THE GOVERNMENT RESTRUCTURING TASK FORCE

AS AMENDED

The amendments by the House Health and Government Affairs Committee delete all provisions applicable to the General Services Department, the Purchasing Division of the General Services Department, and the Purchasing Division of the Department of Finance and Administration that HB 66 would have created.

Original Bill Summary:

HB 66 adds new sections to and amends the *Department of Finance and Administration Act*. Among its provisions, the bill creates the Department of Finance and Administration (DFA) as a cabinet department with the following “organizational units”:

- Office of the Secretary;
- Administrative Services Division, which includes the Executive Services Bureau and the Capital Outlay Planning and Monitoring Bureau;
- Board of Finance Division;
- Educational Finance and Accountability Division;
- Financial Control Division;
- Local Government Division;
- Purchasing Division, which includes the Management and Contracts Review Bureau;
- State Budget Division; and
- State Personnel Division.

The bill also allows the secretary to transfer or merge functions among the divisions “in the interest of efficiency and economy”; but also requires the secretary to present the organization to the Legislature for statutory revision and prohibits the secretary from creating new divisions without the express authority of the Legislature.

Along with the organizational units enumerated above, HB 66 makes a number of agencies administratively attached to DFA:

- the Acequia Commission;
- the State Board of Finance;
- the Personnel Board;

- the New Mexico Community Development Council;
- the Civil Legal Services Commission; and
- the Land Grant Council.

Of particular interest in terms of public education is the creation of the Educational Finance and Accountability Division, which supersedes the current Office of Education Accountability (OEA).

The primary duty of the Educational Finance and Accountability Division is to “monitor and oversee public school and higher education finances and budgets and provide an independent evaluation of how well the two public education systems are performing and how well the public education department and higher education department perform in holding those systems accountable to students, taxpayers and citizens.”

Among its other provisions, HB 66:

- provides for a director of the Educational Finance and Accountability Division, appointed by the secretary of DFA with the consent of the Governor, who must be “skilled in accountancy and auditing” and familiar with the budgets and finances of public schools and postsecondary institutions;
- requires the Public Education Department (PED), the Higher Education Department (HED), school districts, public postsecondary educational institutions and other state agencies to cooperate with the division and provide information as requested;
- requires the division to conduct ongoing evaluations of a number of programs and activities, among them:
 - the P-20 educational data system;
 - PED’s monitoring public schools for compliance with the *Public School Code*, including specified provisions of the *Assessment and Accountability Act*; the *School Personnel Act*; the *Compulsory School Attendance Law*; the *Audit Act*; such federal laws as the *Individuals with Disabilities Education Act (IDEA)*; and “other requirements and measures intended to improve the administration and delivery of public education and improve outputs and outcomes, including decreasing dropout rates, increasing graduation rates, preparing students for college or careers, and decreasing the need for remediation in higher education”;
 - HED’s monitoring postsecondary educational institutions; the *Post-Secondary Education Articulation Act*; the use of common student identification numbers and the P-20 data system; the review of capital expenditures by HED and the State Board of Finance; and “other requirements and measures intended to improve the administration and delivery of post-secondary education and improve outputs and outcomes, including decreasing dropout rates, increasing graduation rates, particularly baccalaureate graduation within four or five years, and preparing students for professional or vocational careers”; and
 - any other matters pertaining to pre-kindergarten through postgraduate education that the Legislature or the Secretary may assign.

Fiscal Impact:

HB 66 makes no appropriation; however, it does provide for the transfer of appropriations, property, contractual obligations, and statutory references corresponding to the reorganization of certain state agencies and the expansion of duties of DFA.

The fiscal impact report (FIR) by the Legislative Finance Committee (LFC) provides detailed cost and savings estimates that might result from transferring certain agencies to DFA. Overall, however, the LFC anticipates a total cost over three years of nearly \$2.3 million.

The PED analysis says that, because the bill “does not clearly define ‘monitoring’ and ‘oversight’ and also expands upon an office that currently exists [OEA], the fiscal impact regarding staffing is unknown at this time.”

Substantive Issues:

Despite the charge to the Government Restructuring Task Force (GRTF) to examine all of state government and to make recommendations leading to increased efficiencies and reduced costs (see “Background,” below), HB 66, at least in terms of its provisions for the Educational Finance and Accountability Division, adds a layer of governmental oversight and, presumably, increases costs because of the staff that the new division will need to perform its duties.

While the bill grants broad monitoring and oversight authority to the new Educational Finance and Accountability Division, it seems to ignore – or at least de-emphasize – what has been one of the most useful services provided by OEA: educational research, together with data compilation and analysis.

- Under current law, two of the explicit duties of OEA are (1) to verify the accuracy of reports of public school, school district, and state performance; and (2) to conduct studies of other states’ efforts at assessment and accountability and educational reform. HB 66 repeals this language, along with the rest of the section.
- Examples of activities related to these duties include the annual *Ready for College* report and initiatives such as the joint study, with the Legislative Education Study Committee (LESC) and the LFC, of the three-tiered teacher licensure and salary system; implementation of the recommendations of SJM 3 (2008) on school leadership; and evaluations of New Mexico PreK and the K-3 Plus Program.
- Although such activities may still be permissible under HB 66, the bill directs the agency’s focus almost exclusively to fiscal matters, as suggested in other analyses.

Analyses by affected agencies have raised a number of issues, among them:

- noting the credentials required of the director, the analysis by HED says that the bill is written “to give a person without education credentials a good deal of authority over programmatic direction and quality of education programs, including federal educational programs – a fact that may cause a shift in higher education policy from educational expertise to fiscal expertise”;

- similarly, the PED analysis says that requiring only training and experience in auditing “is not sufficient and would leave the evaluator unprepared to make accurate inferences about high-stakes data” regarding public education;
- the analysis by the General Services Department suggests, “Generally accepted auditing provisions may be challenged with the organization alignment of SPD [State Purchasing Division] reporting directly to DFA”; and
- the analysis by the State Personnel Office (SPO) says that the reorganization proposed by HB 66, regarding the SPO in particular, “would essentially eliminate efficiency, accountability and consistency, and [it] fails to account for the oversight and review functions, all of which are currently performed by the SPB [State Personnel Board] and the office. Additionally, it is eliminating the checks and balances provided by the SPB.”

The PED analysis raises still other concerns, among them certain constitutional points:

- a conflict with the state constitution in that, because PED is created in the constitution and DFA is not, “the Legislature cannot dilute the Constitution by delegating oversight of the PED’s public school financial duties to the proposed division or the DFA,” a conflict compounded by the use of the term “oversee,” which suggests that PED’s authority is “intended to be subservient to the division/DFA”; and
- another constitutional issue regarding separation of powers, in that the Legislature – or, presumably, a committee thereof – is allowed to assign additional duties to the Director of the Educational Finance and Accountability Division.

“To achieve the goals of this bill,” the PED analysis states, “would require a constitutional amendment.”¹

The PED analysis also identifies a statutory conflict in that, under current law, which HB 66 does not amend, PED has the responsibility of enforcing the provisions of the *Public School Code*, a responsibility that “oversight (i.e. *supervision*) of the PED [emphasis in the source]” by this division of DFA would dilute.

In addition, the PED analysis questions how knowledgeable and effective this division of DFA could be in overseeing the federal programs that PED administers, given the variety among their requirements; however, the analysis further suggests that PED might benefit from technical assistance with IDEA if the new division could offer advice on increased efficiency or effectiveness in the Integrated Fiscal Accountability process that IDEA requires.

Finally, noting the bill’s requirement that PED and other state agencies provide information as requested, the PED analysis notes a potential conflict with the federal *Family Educational Rights and Privacy Act*.

¹ Although it had not been introduced at the time of this writing, another measure endorsed by GRTF would amend Article 12, Section 6 of the state constitution to eliminate the Public Education Commission and to remove the authority of the Secretary of Public Education over “functions relating to the distribution of school funds and financial accounting for the public schools.”

Background:

Legislation enacted in 2010 (HB 237, or Laws 2010, Chapter 101, with emergency clause) created GRTF, a 17-member body that was charged to examine all of state government and to make recommendations leading to increased efficiencies and reduced costs.

Among its more specific duties, GRTF was directed to:

- study “the current resources of the state’s agencies, programs, services, funding and policies and the public needs served by them”;
- study the recommendations, initiatives, and statutory changes that occurred between 1975 and 1978 in reorganizing state government;
- examine “the statutes, constitutional provisions, rules and court decisions governing state government and reorganization and recommend legislation or changes”; and
- solicit public input.

The membership of the task force comprised:

- five House members appointed by the Speaker of the House and five Senate members appointed by the President Pro Tempore of the Senate, in both cases so that the two major political parties in each house have the same proportional representation on the task force as in the respective house;
- six public members who possess expertise in public and private sector organizational structure and who reflect the ethnic, cultural, and geographic diversity of the state, three appointed by the Speaker of the House and three by the President Pro Tempore of the Senate; and
- the Secretary of Finance and Administration.

In addition to these members prescribed by law, the task force included eight advisory members: four representatives and four senators, appointed by the leader of each house, respectively.

Among its other provisions, the legislation:

- required DFA and “the various agencies of the state” to cooperate with the task force “and provide the task force with information regarding budget, staffing, organizational structure and other information” as requested; and
- required the Legislative Council Service, the LFC, the LESC, and DFA to provide the staff for the task force.

Finally, beginning with its first meeting in April 2010, GRTF met at least once each month during the interim to hear a wide variety of testimony and to consider recommendations for legislation during the 2011 session.

Related Bills:

HB 88 *Executive Branch Entity Sunsets*

HB 130 *Extend Government Restructuring Task Force*

HB 230 *Merge HED with DFA*

SB 83 *Create State Inspector General Office*

SB 158 *Repeal Certain Boards & Commissions*