

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 264

50th Legislature, 1st Session, 2011

Tracking Number: .184523.1

Short Title: School Board Election, Appointment Limits

Sponsor(s): Representative Nora Espinoza

Analyst: Kevin Force

Date: February 15, 2011

Bill Summary:

HB 264 proposes to create a new section of the *Public School Code* to prevent a person who, within the previous 24 months, has been an employee or contractor of a public school district from serving on that district's school board, either via election or appointment to a vacant seat.

Fiscal Impact:

HB 264 does not contain an appropriation.

Substantive Issues:

- According to the Public Education Department (PED):
 - HB 264 addresses the issue of misconduct by contractors who might attempt to advance their business interests and receive benefit from their association with a school board, should they be elected or appointed to that office;
 - the issue of employee and contractor misconduct in these circumstances is already addressed by provisions of the *Public School Code*, which:
 - make it a 4th degree felony for a school board member to directly or indirectly sell, or be a party to a transaction to sell, items or services to their district; and
 - provide that a member of a school board shall serve without compensation and cannot be employed by their district in any capacity during their school term;
 - HB 264 may violate Article VII, Section 2 of the New Mexico Constitution, which provides that, "Every citizen of the United States who is a legal resident of the state and is a qualified elector therein, shall be qualified to hold *any elective public office* except as otherwise provided in this constitution." (Emphasis added by PED.);
 - the bill creates a new qualification for persons who seek to run as a candidate for a school board office by depriving them of the right to run for a particular office due to their status; and
 - finally, PED states that HB 264 may implicate issues of equal protection under the 14th Amendment of the US Constitution, because the law currently:

- considers a “qualified elector” to be “any person who is qualified to vote under the provisions of the constitutions of New Mexico and the United States;”¹ and
 - only requires a person seeking election to a school board to be a “qualified elector,” and physically reside in the school district where the person is a candidate.²
- HB 264 may interfere with the rights of school district employees or contractors to participate in the political process. Equal protection and due process considerations require a legitimate governmental interest in denying or infringing upon these persons’ rights to participate, and requires HB 264 to accomplish the government’s legitimate objective in a rational manner. Therefore, two particular issues are implicated by HB 264:
 - Is there a rational and legitimate interest in denying a school district employee or contractor the right to seek election or appointment to their school board; and
 - is there a rational and legitimate interest in denying a *recent former* employee or contractor of a school district the right to seek election or appointment to their school board?

The former issue, regarding a current school district employee’s or contractor’s right to seek election or appointment to their board, seems to have been settled in New Mexico:

- as PED states in their analysis, the *Public School Code* prohibits school board members from receiving compensation for serving, and from being employed by their district in any capacity during their term, and makes it a 4th degree felony to sell goods or services to their board;
- the New Mexico School Boards Association’s *Code of Ethics for New Mexico School Board Members* states, “I will . . . [a]void being placed in a position of conflict of interest and refrain from using my board position for personal or partisan gain; and
- the *Governmental Conduct Act*, while not directly pertinent, is at least analogous, and includes Section 10-16-4.B, which states, “A public officer or employee shall disqualify himself from engaging in any official act directly affecting his financial interest.”

The latter issue, regarding a school district’s recent former employee or contractor is less clear. It is uncertain what, if any, influence a former employee or contractor of the school district might have over the board, and what financial or personal interest that person might have with the district or board once their term of employment has ended, or their contract fully executed. Current law and policy would require such a person to forgo continuing a business relationship with their school district while serving on the school board.

¹ Section 1-1-4, NMSA 1978

² Section 1-22-3(A), NMSA 1978

Background:

Similar legislation has been introduced in recent years, but has not passed, including proposals to:

- amend the *Public School Code* to impose greater and more specific liability and legal and ethical obligations or penalties upon school board members; and
- amend the *Governmental Conduct Act* to include local school board members.

Related Bills:

HB 86 *School Board Employee Decisions*

HB 277 *School Board Campaign Reporting Act*

SJR 7 *Increase Size of Certain School Boards, CA*