

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: SB 143

50th Legislature, 1st Session, 2011

Tracking Number: .183637.1

Short Title: Define School Personnel “Ethical Misconduct”

Sponsor(s): Senator Cynthia Nava and Representative Jimmie C. Hall

Analyst: Eilani Gerstner

Date: February 16, 2011 (revised)

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

Bill Summary:

SB 143 amends the *School Personnel Act* to include “financial malfeasance or misfeasance”¹ in the definition of ethical misconduct.

Fiscal Impact:

SB 143 does not make an appropriation.

Substantive Issues:

- Adding financial mal- and misfeasance to the definition of “ethical misconduct” in law would heighten awareness of financial misconduct and allow school districts, state-chartered charter schools, and regional education cooperatives to specifically report such abuses to the Public Education Department (PED).
- In 2007, Legislative Education Study Committee (LESC)-endorsed legislation amending the *School Personnel Act* was enacted to require that “ethical misconduct” means “unacceptable behavior or conduct engaged in by a licensed school employee and includes inappropriate touching, sexual harassment, discrimination and behavior intended to induce a child into engaging in illegal, immoral or other prohibited behavior.”
- According to PED’s ethical misconduct reporting form provided to LESC staff during the 2010 interim, the ethical misconduct categories include eight selections for misconduct with a minor and one selection for “other;” no selection is provided for financial misconduct.
- In response to an LESC inquiry, PED indicated that no cases of financial misconduct have been reported to PED using the ethical misconduct reporting form.

¹ According to *The American Heritage Dictionary of the English Language* (Third Edition):

- malfeasance is defined as “misconduct or wrongdoing, especially by a public official”; and
- misfeasance is defined as “improper and unlawful execution of an act that in itself is lawful and proper”.

Background (revised):

During the 2010 legislative session, the LESC endorsed SJM 24, *Study School District Finances & Operations*, requesting that the Office of Education Accountability, in collaboration with PED and in consultation with the Office of the State Auditor, form a work group to examine public school finance issues.

Although the joint memorial did not pass, in keeping with the LESC's focus on public school finances during the 2010 interim, the LESC requested that an LESC work group be formed to "evaluate the adequacy and effectiveness of New Mexico's laws and regulations relating to public school finance, including the financial capacity and controls of school districts and charter schools statewide."

The LESC requested updates on the progress of the work group at each interim meeting, with a final report to the LESC in December 2010.

The Attachment to this bill analysis includes the membership of the work group.

Activities of the LESC School Finance Work Group

The activities of the work group included:

- reviewing laws, rules, and policies governing school finance, including the implementation of two provisions effective in 2010 that:
 - require local school boards and charter school governing bodies to create finance subcommittees and audit committees; and
 - allow PED to impose sanctions for failure of school districts or charter schools to submit timely audits to the State Auditor, including withholding up to 7.0 percent of a school district's or charter school's State Equalization Guarantee distribution and suspending the board of finance, effective July 1, 2010;
- investigating whether the tiered audit process for local public bodies, effective July 1, 2010 or a similar tiered audit process may be appropriate for public schools;
- reviewing current licensing and training requirements for school business officials and current training offered for boards of finance;
- investigating the availability of qualified school business officials and independent auditors with a focus on the needs of small, rural school districts;
- examining the internal financial controls within school districts and charter schools, including segregation of duties and the bank reconciliation process; and
- examining the supply and demand of school business officials, including the capacity of institutions of higher education to train future school business officials.

During the 2010 interim activities, the work group heard testimony about concerns that school business officials (SBOs) who are being investigated for financial misconduct may leave one school district and obtain employment in another, without the outcome of the investigation being

reported to PED. Because a process already exists in law for reporting ethical misconduct, the work group felt that adding financial mal- and misfeasance would require those types of misconduct to be specifically reported to PED.

Recommendations of the LESC School Finance Work Group

SB 143 is one of the recommendations of the LESC School Finance Work Group.

The other recommendations of the work group endorsed by the LESC during the 2011 legislative session are:

1. Amend the *Audit Act* to remove the requirement that the Public Education Department (PED) approve the selection of an independent auditor by a school district. **(Provisions in SB 141a, No Education Dept. Auditor Approval)**
2. Amend the *School Personnel Act* (provisions in SB 203a, *School Business Official Licensure*) to require PED to:
 - provide by rule for licensure of SBOs, including initial and continuing licensure, competencies, ethics and reporting requirements, and a savings clause;
 - track the denial, suspension, or revocation of SBO licenses and determine if these actions occur in a timely manner;
 - assess the quality of and enforcement of training requirements for SBO licensure; and
 - require mandatory training for superintendents on the evaluation of SBOs, including training in the assessment of SBO competencies.
3. Include language in the *General Appropriation Act* to transfer the positions (six) in the Office of Inspector General at PED to the Office of the State Auditor for education-related reviews. **(Letter sent to the House Appropriations and Finance Committee)**
4. Introduce a joint memorial requesting that PED, in collaboration with the Office of Education Accountability, the Office of the State Auditor, Regional Education Cooperatives, Cooperative Educational Services, and other stakeholders to determine the cost and feasibility of (1) consolidating certain business services for small school districts, (2) providing support services to small districts through a regional system, and (3) operating one or more pilot projects to determine the effectiveness of such proposals; and provide a report to the LESC before October 31, 2011. **(Provisions in HJM 11a, Small School District Service Consolidation)**

Related Bills:

SB 141a *No Education Dept. Auditor Approval*

SB 203a *School Business Official Licensure*

HJM 11a *Small School District Service Consolidation*