

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: SB 423

50th Legislature, 1st Session, 2011

Tracking Number: .184834.1

Short Title: Auditor to Perform School District Audits

Sponsor(s): Senator Cynthia Nava

Analyst: Eilani Gerstner

Date: February 17, 2011

Bill Summary:

SB 423 adds a new section to the *Audit Act* to require the State Auditor to:

- provide for internal audits of school districts and charter schools to deter and investigate fraud;
- evaluate:
 - the effectiveness and efficiency of school district or charter school operations;
 - reliability and integrity of financial and operational information;
 - safeguarding of assets; and
 - compliance with contracts and state and federal laws and rules;
- consult with the Public Education Department (PED) when determining a school district or charter school to audit.

SB 423 also transfers three full-time equivalent positions (FTEs) in PED's Office of Inspector General (OIG) and appropriations that support those positions to the Office of the State Auditor (OSA).

The provisions in SB 423 are effective July 1, 2011.

Fiscal Impact:

SB 423 does not contain an appropriation.

Technical Issues:

SB 423 transfers "[t]he three" FTEs in PED's OIG to the OSA; however, PED currently has six FTEs assigned to the OIG. The sponsor may wish to consider amending the bill to replace the phrase "The three" on line 3 of page 2 with "Three of the six".

PED notes in its analysis that SB 423 does not specify which three of the six existing OIG positions would be transferred to the OSA.

Fiscal Issues:

PED notes that:

- the OIG positions are funded with both General Fund dollars (45 percent) and federal funds (55 percent);
- the six positions currently in the OIG are:
 - one General Manager I;
 - one Administrative Operations Manager II;
 - three “Accountant and Auditor” positions;
 - one Financial Coordinator – Operational; and
- if the intent is to transfer the three Accountant and Auditor positions, the salaries and benefits total approximately \$165,486.

PED indicates that the following positions are currently filled:

- General Manager I;
- Administrative Operations Manager II; and
- one Accountant and Auditor.

Substantive Issues:

- On January 26, 2011, the chairs of the Legislative Education Study Committee (LESC) sent a letter to the House Appropriations and Finance Committee to request that the committee consider including in the *General Appropriation Act of 2011* the transfer of the six positions in PED’s OIG to the OSA, and that those positions be dedicated to education-related reviews.
- The request was a recommendation of the LESC School Finance Work Group (see “Background,” below), which the LESC convened during the 2010 interim to evaluate the adequacy and effectiveness of New Mexico’s laws and regulations relating to public school finance.
- In a presentation to the work group from PED on the duties of the OIG, then-Secretary Susanna Murphy reported that all but two of the six positions were vacant and that the department has had difficulty filling the vacant positions.

- Representatives from both PED and OSA agreed that the six positions may be better utilized at OSA to provide further audit oversight of both public schools and institutions of higher education.
- The LESC felt that placing the six positions at OSA – rather than at another office in the executive branch – would afford the auditors the independence they need in order to fulfill their duties.
- Finally, according to the OSA analysis of SB 423, the office plays a critical role in the oversight and protection of public education funds and resources:
 - The office staff examines all annual financial audits of school districts and institutions of higher education, and it monitors compliance with government auditing standards, including the Statement on Auditing Standards No. 99: Consideration of Fraud in a Financial State Audit.
 - The State Auditor has also worked to bring school districts in compliance with the *Audit Act* by monitoring those districts that have failed to submit timely audits.
 - Furthermore, the OSA has called upon school districts and charter schools to take immediate corrective action on audit findings, has conducted training sessions for school board members, and has identified risk areas in certain public schools that require additional audit oversight.
 - Finally, the State Auditor’s special audit of the Jemez Mountain Public Schools identified an embezzlement scheme in which the former business manager of the district stole millions of dollars.
 - Additional resources dedicated to these functions would strengthen protection and oversight of public school funds.

Background:

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 OSA, 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.

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.

Related Bills:

HB 66a *Transfer Depts. & Services to DFA*

HB 98 *Charter School Audit Monitoring*

HB 411 *State Agency Submission of Timely Audits*

HB 424 *Auditor Agency At-Risk for Fraud Designation*

SB 83 *Create State Inspector General Office*