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## FISCAL IMPACT REPORT

ORIGINAL DATE 01/24/11

SPONSOR Begaye LAST UPDATED \_\_\_\_\_ HB 86

SHORT TITLE School Board Employee Decisions SB \_\_\_\_\_

ANALYST Haug

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
NFI	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Education Department (PED)

### SUMMARY

#### Synopsis of Bill

House Bill 86 proposes to include in the powers and duties of local school boards, the power to approve or disapprove the employment, termination or discharge of all school employees and certified school personnel of the school district. This could only be done upon the recommendation of employment, termination or discharge by the local superintendent. Any employment relationship shall continue until the final decision of the board

### FISCAL IMPLICATIONS

House Bill 86 has no direct fiscal impact.

### SIGNIFICANT ISSUES

Section 22-5-14 NMSA 1978 currently provides that the local superintendent has the power to “employ, fix the salaries of, assign, terminate or discharge all employees of the school district.” In 2003, the Legislature in House Bill 212, removed the local school board’s authority over these matters and assigned them to the local superintendent.

The PED states:

This bill attempts to reassign the hire and fire authority to the local school board, yet they can only do so upon recommendation of the superintendent.

Assigning the power to hire and fire school employees to the local school board may make employment decision at local school districts less efficient since school boards do not meet on a day-to-day basis and could only make these decisions when a quorum meets. This may cause difficulties in situations where an employee may need to be hired or fired quickly. Further, the process for hiring and firing may be prolonged since a majority of board members would have to come to an agreement as to the hiring and firing of school employees rather than resulting from the decision of just one superintendent. Further, under this bill, the recommendation of the superintendent would be necessary as well. As a result a number of people, rather than just one, must come to a meeting of the minds before a hiring or firing decision takes place.

Also, the length and nature of local school board meetings may change since under this bill, all hiring and firing decisions within a school district will have to be taken at board meetings. This may take a substantial amount of time in large school districts with many employees. Further it may cause an indirect chilling effect on transparency to the public since personnel matters which involve the discussion of hiring, dismissal or resignation are not subject to the open meetings act, and school boards may close a meeting to the public to discuss hiring or firing of individual employees of the school district. Although such executive sessions are legal under the Open Meetings Act, it may create board meetings in which school districts may be spending a substantial amount of time in closed session to discuss individual employment decisions. There are statutory requirements not to discuss other matters in executive session that school boards would have to adhere to. Nonetheless, the appearance to the public may be that local school boards are doing more work behind closed doors and away from the eyes of the public.

## **TECHNICAL ISSUES**

House Bill 86 amends section 22-5-4 of the Public School Code to grant local school boards the power to employ or terminate members of the school district. It will conflict with section 22-5-14 NMSA 1978, not amended in this bill, which provides that the local superintendent shall “employ, fix the salaries of, assign, terminate or discharge all employees of the school district”. In order to avoid conflict of statutory provisions, section 22-5-14 would need to be amended to exclude the powers of hiring and firing of employees by the superintendent.

## **OTHER SUBSTANTIVE ISSUES**

The PED notes that the bill does not mention the powers to fix salaries of, demote or promote school employees. Presumably, these powers would also be transferred to the local school board, but the language of the bill is unclear in this regard.

GH/bym