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**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
**BILL ANALYSIS**  
**54th Legislature, 1st Session, 2019**

<b>Bill Number</b>	<u>HB659/aHLVMC</u>	<b>Sponsor</b>	<u>Trujillo, C.</u>
<b>Tracking Number</b>	<u>.213722.3</u>	<b>Committee Referrals</b>	<u>HLVMC/HJC</u>
<b>Short Title</b>	<u>Public Employee Bargaining Changes</u>		
<b>Analyst</b>	<u>Force</u>	<b>Original Date</b>	<u>3/4/19</u>
		<b>Last Updated</b>	<u>3/10/19</u>

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**BILL SUMMARY**

Synopsis of HLVMC Amendment

The House Labor, Veterans' and Military Affairs Committee Amendment to House Bill 659 (HB659/aHLVMC) adds to the bill a newly amended section of the Public Employee Bargaining Act – Section 10-17E-18 NMSA 1978, Impasse Resolution – to the bill, clarifying that, if an impasse is reached during negotiations between parties, they need not wait until October 1 for an agreement to be reached before requesting mediation services from the labor board. Mediation services shall be provided until parties reach an agreement, the mediator believes services will no longer be helpful, or 30 days pass from the time mediation was requested.

Synopsis of Original Bill

House Bill 659 (HB659) proposes to amend the Public Employee Bargaining Act to address the powers and duties of labor boards. Specifically, the bill amends remedies available for imposition by labor boards when adjudicating disputes.

**FISCAL IMPACT**

HB659/aHLVMC does not contain an appropriation.

**SUBSTANTIVE ISSUES**

Notably, HB659/aHLVMC would make collective bargaining agreements executed under the Public Employee Bargaining Act supersede other, previously enacted law and rule, other than the:

- Bateman Act, which comprises Sections 6-6-11 and 6-6-13 through 6-6-18 NMSA 1978, and addresses funding the floating indebtedness of counties, boards of education, municipal corporations, and school districts;
- Group Benefits Act, Article 7B of Chapter 10 NMSA 1978, which addresses group benefit coverages for state agencies, participating local public bodies, participating small

employers, and participating soil and water conservation districts and their respective employees;

- Per Diem and Mileage Act, Article 8 of Chapter 10 NMSA 1978, which establishes standard rates of reimbursement for travel for certain public officers and employees;
- Retiree Health Care Act, Article 7 of Chapter 10 NMSA 1978, which provides comprehensive core group health insurance for certain retired public servants and their dependents.
- Tort Claims Act, which establishes tortious liability and its limitations for governmental entities and persons; and
- Other public employee retirement laws.

The New Mexico Municipal League (NMML) notes the assertion of collective bargaining agreements' supersession of other law is "bold," as it gives negotiated agreements the force of law, even potentially overriding other current law. However, the bill would provide the state and local labor boards' powers parallel to the National Labor Relations Board (NLRB), and negotiated collective bargaining agreements can, in certain circumstances, supersede other laws. For example, federal overtime laws may be superseded by contracts that go beyond federal minimal overtime requirements, by providing for more than the one and one half times federal overtime pay rate, or by stipulating "overtime" begins at some point less than the federal demarcation of 40 hours.

Public employees who are not management or confidential employees would have the right to engage in concerted activities other than collective bargaining for mutual benefit. "Management employees" is defined as those who engage primarily in and devote a majority of their time to executive and management functions. "Confidential employees" is defined as those who devote a majority of their time to assisting and acting in a confidential capacity for a person who formulates or executes management policy.

Under HB659/aHLVMC, The Public Employee Labor Relations Board (PELRB) and local labor boards may delegate authority, subject to its final review, to third party employees or contractors as it deems necessary to carry out its functions. The bill would extend to the PELRB and local labor relations boards the authority to enforce the Public Employee Bargaining Act through the imposition of compensatory damages, whole relief or other equitable remedies, declaratory or injunctive relief, provisional remedies such as restraining orders or injunctions, or other appropriate remedies. Actions by local labor boards would be subject to approval by PELRB. The federal NLRB has been invested with quasi-judicial powers since its inception, although it is always subject to judicial review by the courts. Nothing in HB659/aHLVMC would remove the right of parties to seek judicial review when aggrieved by a decision or action of the PELRB or local boards.

HB659/aHLVMC proposes to require rules promulgated by local labor relations boards conform with rules adopted by PELRB to the greatest extent possible; local board rules would not become effective without PELRB approval. Local labor boards are creations of the state, but must be approved by PELRB under Section 10-7E-10 NMSA 1978; giving PELRB approval powers over rules promulgated by local boards under Section 10-7E-11 NMSA 1978 seems a logical extension of that authority.

The bill strikes a provision that notes elections to decide whether and by which labor organizations public employee units should be represented will be valid only if 40 percent of eligible employees vote in the election. The removal of this provision may result in a small minority of eligible employees exercising authority over an otherwise potentially large body of employees.

HB659/aHLVMC bars claims that exclusive representatives have violated their duties of representation if not brought within six months of the date on which the employee know, or reasonably should have known, of the violation.

Finally, the bill provides that ordinances, resolutions, and procedures adopted by public bodies other than the state may only continue in force if they provide equal or greater relief than those available under the Public Employee Bargaining Act. Any public body that has ordinances, resolutions, or policies that do not meet that condition has 90 days from the effective date of the bill, June 14, 2019, to cure that deficiency.

### **RELATED BILLS**

HB47, School Employee & Assistants Probation Time, reduces the length of probationary periods for licensed educational assistants and nonlicensed school employees.

HB431, Termination of School Employees, amends procedures for termination of school employees in the School Personnel Act.

### **SOURCES OF INFORMATION**

- LESC Files
- Legislative Finance Committee (LFC)
- Public Employee Labor Relations Board (PELRB)
- New Mexico Municipal League (NMML)

**RKF/mc/mhg**