FISCAL IMPACT REPORT

		ORIGINAL DATE	03/05/09		
SPONSOR	HAFC	**LAST UPDATED**	03/19/09	**HB**	CS/616/aHFl#1/aSFC
SHORT TITLE	Public Retirees Returning To Work			**SB**	
				ANALYST	Aubel

Note: Narrative for original bill has been updated.

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	**FY10**	**FY11**		
	$495.7*	$495.7*	Recurring	Retiree Health Care Fund

(Parenthesis ( ) Indicate Revenue Decreases)

* Estimate based on PERA RTW data and current statutory employer and employee rates.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected**
Employee Contribution to PERA		($1,900.0)	Material Savings	Material Savings	Recurring	Various
Employer Contribution to RHCA		$330.5	$330.5	$661.0	Recurring	Various
RIO		$7-$50.0		$7-$50.0	Nonrecurring	PERA

(Parenthesis ( ) Indicate Expenditure Decreases)

**Could include general fund, federal funds and other state funds.

Duplicates PERA RTW provisions in HB 573/HAFCS
Conflicts with HB 246, HB 683/aSAPC, HB 765 and HB 867
Relates to HJM 45, HB 65, HB 236, HB 271/HB 355, HB 525, HB 601, HB 631, HB 648, HB 684, HB 731, HB 854, SB 145, SB 231, SB 428, SB 499

Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION
LFC Files

Responses Received From
Public Employees Retirement Association (PERA)
State Personnel Office (SPO)

Prior Responses Received From
Department of Finance and Administration (DFA)
Administrative Office of the Courts (AOC)
Administrative Office of the District Attorneys (AODA)
Corrections Department (CD)

Other Responses Received From
New Mexico Municipal League

SUMMARY

Synopsis of SFC Amendment

The Senate Finance Committee Amendment extends the time that non-managerial police officers and non-managerial, fulltime nonvolunteer firefighters, whose governing body has adopted a resolution pursuant to the bill, can work in the return-to-work program without the $30,000 salary limit. The amendment provides the same provision as for the small public employer, which is July 1, 2015 for those retired members employed on or after July 1, 2012, or another three years after the two-year anniversary of the commencement of reemployment for a total of five years.

Synopsis of HFl Amendment #1

The House Floor Amendment #1 corrects a drafting error.

Synopsis of Original Bill

The House Appropriations and Finance Committee Substitute for House Bill 616 redesigns the PERA RTW program to essentially limit RTW employment to $30,000 annually for state agencies, as follows:

- Those employees in the RTW program before July 1, 2009 will be subject to the $30,000 earnings cap after July 1, 2010, unless qualifying under the "small employer" rules or the "critical need" resolution;
- These RTW employees that are employed by a "small employer" may continue to work without subject to the $30,000 limit until July 1, 2015;
- These RTW employees that are employed by according to a "critical need" resolution may continue to work without subject to the $30,000 limit until July 1, 2012;
- On or after July 1, 2009, the separation of service or "wait out" time for retirees entering PERA's RTW program increases from 90 days to 12 months;

- For those entering RTW after July 1, 2009, the retiree must either be 65 or have "maxed out" (worked the required number of years to reach the pension cap, which is 80 percent for most employees at 26.8 years of service credit) under his or her retirement plan;
- These retirees qualifying to enter the RTW program after July 1, 2009, will be subject to a $30,000 annual earnings limit unless qualified under the "small employer" rules or "critical need resolution;"
- Unless so qualified, pension benefits will be suspended on the first day of the month following the month in which total annual earnings exceeds $30,000;
- After July 1, 2009, the $30,000 limit and the 12-month wait-out period shall not apply to certain retirees whose employer is deemed a "small employer" and has adopted a resolution that is good for five years;
- After July 1, 2009, the $30,000 limit and the 12-month wait-out period shall not apply to certain retirees whose employer's governing body has adopted a resolution good for two years declaring the employment as a "critical need;"
- Retirees entering the RTW program under either the "small employer" rule or the "critical need" exemption will be subject to a 90 day "wait out" period;
- The RTW employees exempted from the $30,000 salary cap either through a "small employer" resolution or a "critical need" local governing body resolution become subject to the cap once the initial five-year and two-year periods are ended;
- Both employer and employee shall pay the statutory contributions to the Retiree Health Care Authority; and
- RTW employees shall pay the employee PERA contribution.

The effective date is July 1, 2009.

FISCAL IMPLICATIONS

The bill requires both employer and employee contributions to the Retiree Health Care Authority. The Revenue Table indicates the additional revenue to RHCA based on the current employer rate of 1.3 percent and the employee rate of 0.65 percent. The employer contribution represents a recurring fiscal impact to employer operating budgets. The amounts indicated in the Operating Budget Table are based on the current 1.3 employer rate. If this rate increases pursuant to the enactment of HB 351 or similar legislation that increases the rate over a three-year period, the amounts would be $421.9 thousand for FY11 and $466.2 thousand for FY12.

HB 616/HAFCS requires that the qualifying RTW employee pay the employee portion, which is the statutory rate or the actuarial rate determined by PERA. Currently, the employer pays this on behalf of the RTW employee on the salaries currently in place. The number of new RTW employees working under the $30 thousand limit, the small employer exemption, or the critical need exemption is unknown. However, assuming all current RTW employees continue to work through the one-year grace period, an approximate savings to PERA-affiliated employers for FY10 is $1.9 million based on the 7.42 percent contribution rate for General Plan 3.

Various unknowns limit the ability to project the savings to employers beyond FY10: the number of RTW employees making $30 thousand, which plan the RTW employees are under (the employee rates range from 4.78 percent to 16.65 percent), and the number of RTW employees qualifying under the bill's requirements after July 1, 2010. Thus, the savings accruing to agencies by the employee picking up the employee contribution is indeterminate. It can be assumed to be materially positive. In many instances, it can be assumed that the RTW employee will be replaced by an active employee, which will represent a positive fiscal impact to the various funding sources, including general fund.

PERA notes it will incur operating costs related to printing, postage and dissemination of information associated with implementing the earnings limit threshold, changes to procedures and employer reporting. In addition, PERA will require increased staff utilization in order to review reporting records and to suspend pensions under the new earnings limit. These operating costs are most likely recurring but not significant. Changes in qualification requirements and reporting will require revisions to PERA's pension administration system ("RIO"), and PERA will be required to seek a BAR to cover the costs of these system changes. Prior RIO changes have ranged from $7 thousand to $50 thousand, which would be non-recurring.
According to the December 2008 revenue estimate, FY10 recurring revenue will only support a base expenditure level that is $293 million, or 2.6 percent, less than the FY09 appropriation. All appropriations outside of the general appropriation act will be viewed in this declining revenue context.

SIGNIFICANT ISSUES

PERA provides the following detail for the proposed RTW program:

<u>For Retirees in RTW before July 1, 2009</u>
Beginning July 1, 2010, all retirees who had RTW before July 1, 2009 will become subject to a $30,000 annual earnings limit unless they are employed by a political subdivision with a population of less than 50,000 ("small employer"). If employed by a small employer, the retiree may continue to do so until July 1, 2015. If employed under a "critical need" resolution, the retiree may continue to do so until July 1, 2012. Shifts the responsibility of the employee contributions back to the retiree; both employee and employer contributions will be required an all postretirement earnings from the commencement of employment.

<u>RTW after July 1, 2009</u>
On or after July 1, 2009, PERA retirees who RTW will be required to sit out 12 consecutive months. In order to be eligible to return to work, a PERA retiree must meet either of two criteria: 1) have either "maxed-out" under their retirement plan; or 2) be 65-years old. Violators of either of these statutory conditions for RTW will have their pensions immediately suspended. Shifts the responsibility of the employee contributions back to the retiree; both employee and employer contributions will be required on all post-retirement earnings from the commencement of employment.

For those eligible to RTW, pension benefits will suspended on the first day of the month following the month in which their total annual earnings from subsequent employment exceeds $30,000.

<u>"Critical Need" Exemption</u>
After July 1, 2009, the $30,000 earnings limit and the 12-month sit out will not apply to certain retirees whose employer's governing body has adopted a resolution declaring the employment to be fulfilling a "critical need" for a period not to exceed two years. Retirees hired under a critical need resolution shall be subject to a 90-day sit out period. Governing bodies are defined as follows:

1. Political subdivision if the affiliated public employer is a political subdivision of the state;
2. Supreme Court if the affiliated employer is in the juridical branch of government;
3. The District attorney Personnel Review Board if the affiliated employer is a District Attorney;
4. The New Mexico legislative Council if the affiliated public employer is in the legislative branch of state government; or
5. The Personnel Board if the affiliated public employer is not included above.

Small employers, defined as political subdivision with a population of less than 50,000 in the last federal decennial census, may adopt a 5-year critical need resolution. Retired member and employer contributions will be paid respectively from the commencement of such employment.

PERA notes the following policy decisions:

- Whether to reinstate an earnings limitation of $30,000 for PERA retirees after July 1, 2010, before suspension of pension benefits;

- Whether to allow public-affiliated employers to employ certain retired members if their governing bodies have adopted a resolution declaring the employment to be fulfilling a “critical need;” and

- Whether to allow small employers to employ certain critical need positions for up to 5 years.

Prior testimony on the PERA RTW program has indicated that state employees may feel low morale and perceive a ceiling for advancement because retirees return to top-level positions. This bill would address this concern.

PERA expresses a concern in requiring employees to pick up the PERA contribution, as follows:

> Effective July 1, 2009, HAFC CS/HB 616 would once again shift the responsibility for paying a portion of the applicable contribution rate back to the re-employed PERA retiree. PERA believes that any statutory provision requiring PERA retired members to make nonrefundable contributions without receiving any associated benefit may violate the Federal Age Discrimination in Employment Act (“ADEA”).

DFA notes the following:

> The claim that RTW employees are a drain on the retirement fund is misinformation. In fact, because return to work employees do not receive any secondary pension, and the employee and employer contributions are still made, there is no actual "drain" on the fund but additions to the fund since contributions continue to be made -- but those making the contributions do not receive a benefit. In effect, retirees who have returned to work are helping to subsidize the fund for other workers… Studies have been done which prove that these retiree contributions (because there is no concomitant payout) are beneficial to the fund.

PERFORMANCE IMPLICATIONS

DFA provides the following potential impact of changing the PERA RTW program on state government:

> Dissuading retired employees from returning to work would have a negative effect on the efficiency of state government. By keeping these retirees from being rehired to do certain work, the experience and knowledge these persons have gained in their careers and making it unavailable to the state would be lost.
>
> Further, some positions become difficult to hire for and retirees who wish to return to work are often the only available candidates for these. The bill recognizes this in its exceptions for certain police officers, but there are others as well. A good example would be accountant positions. It is often difficult to find good, experienced accountants who wish to work for government when the salaries are not commensurate with what they might obtain in the private sector. Retirees are the perfect fit to fill such voids.

Demographic projections that indicate a declining labor pool could be a potential issue by reducing the pool of skilled employees the state could draw upon.

ADMINISTRATIVE IMPLICATIONS

PERA notes that HB 616/HAFCS will have an administrative impact on PERA. In the short term, PERA will be required to implement new electronic employer reporting procedures to address the two different groups of retired members - those reemployed under the new law in “critical need” positions and those reemployed who will be subject to the $30,000 earnings limit after July 1, 2010. PERA anticipates employer reporting confusion regarding post-retirement employment in the short term.

SPO notes the bill would require that agency to review the criticality of an executive agency’s need to fill a position with a retired affiliated public employee. State Personnel Office staff is currently performing a similar function for filling positions in relation to the Governor’s hiring freeze. SPO states it could establish a business process to address this requirement and provide the required information to PERA as needed but concludes this might significantly delay the hiring process because the State Personnel Board meets approximately every six weeks.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 616/HAFCS duplicates PERA RTW provisions in HB573/HECS

HB 616/HAFCS conflicts with the following bills:

HB 246 – PERA RETURN TO WORK FOR CERTAIN EMPLOYEES
HB 765 – PUBLIC EMPLOYEES RETURNING TO WORK
HB 683/aSPAC -- RETIRED PUBLIC EMPLOYEE RETURNING AS SHERIFF
HB 867 -- PUBLIC EMPLOYEE RETURN TO EMPLOYMENT CHANGES

HB 573/HECS relates to the following bills:

HJM 45 – PUBLIC EMPLOYEE & EDUCATION SOLVENCY PLANS STUDY
HB 65 – LEGISLATIVE RETIREMENT CONTRIBUTIONS
HB 236 – PERA SERVICE CREDIT PURCHASE (Expands service credit purchase)
HB 271/HB 355 – REOPEN MUNICIPAL EMPLOYEE RETIREMENT PLAN 4
HB 525 – ALTERNATIVE EDUCATIONAL RETIREMENT PLANS
HB 573 – ADJUSTMENT OF RETIREMENT PLANS
HB 601 – PERA EXCLUSION OF SENIOR EMPLOYMENT TRAINEES
HB 631 – EDUCATIONAL RETIREMENT ELIGIBILITY
HB 648 – JUDICIAL RETIREMENT FROM GENERAL FUND
HB 684 – CONGRESSIONAL EMPLOYEE NM SERVICE CREDIT
HB 731 – SESSION EMPLOYEE PERA CREDIT PURCHASES
HB 854 – PERA MEMBER & STATE CONTRIBUTION CHANGES
SB 145 – ELIMINATE END DATE FOR RETURN TO WORK
SB 231 – PERA ELIGIBILITY FOR MUTUAL DOMESTICS
SB 428 – RETIREE HEALTH DEFINITIONS & CONTRIBUTIONS
SB 499 – MOTOR TRANSPORTATION OFFICER RETIREMENT

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The PERA RTW program will continue as structured, including the employer paying the employee portion of PERA contributions. RHCA contributions for PERA RTW employees will not be paid unless this provision provided through other legislation that is enacted.

MA/svb