

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

ORIGINAL DATE 2/11/09

SPONSOR D. Kintigh LAST UPDATED \_\_\_\_\_ HB 648

SHORT TITLE Judicial Retirement From General Fund SB \_\_\_\_\_

ANALYST Sanchez

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
NA	\$2,370	\$2,370	Recurring	General Fund
	(\$2,370)	(\$2,370)	Recurring	Employer's Accumulation Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>	Indeterminate	\$1,200	\$1,200	\$2,400	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Bernalillo County Metropolitan Court (BCMC)  
 State Personnel Office (SPO)  
 Public Employee Retirement Association (PERA)

### SUMMARY

#### Synopsis of Bill

HB648 amends Section 10-12B-11, Section 10-12C-11 and Section 35-6-1 NMSA 1978. The bill, related to judicial retirement, changes the percentage of retirement paid by the courts for each member in office from twelve percent to thirty one and thirty-nine hundredths percent of salary. HB6487 changes the state retirement contribution, through the administrative office of the courts, from eleven percent to twenty eight and ninety-two hundredths percent of salary for each

member in office. HB648 does away with the provision requiring monies to be deposited into the Employer's Accumulation Fund.

HB648 requires that the civil case docketing fee of \$25.00 for each case, be deposited into the General Fund. The bill also requires the jury fee of \$10.00 be deposited into the General Fund. Both fees are currently deposited into the Employer's Accumulation Fund.

The effective date of this bill is July 1, 2009.

### FISCAL IMPLICATIONS

According to the State Personnel Board (SPO), HB 648 will significantly impact the general fund. Although the courts and AOC are currently contributing money collected in fees to the Employer's Accumulation Fund that should offset the original 12%, the remaining amount would come out of the general fund.

According to the AOC, in FY 2008, judges' contributions to the JRA and MRA were 7.5% of salary, while the State paid from the general fund 11% (MRA) and 12% (JRA), and docket fees contributed 17.92% of salary to the MRA and 19.39% of salary to the JRA. According to the PERA's analysis of June 30, 2008, the total funding that was required for full funding was 45.87% in the JRA and 40.25% in the MRA. Thus, contributions from the docket fees and general fund total 28.92% in the MRA (11 + 17.92), and 31.39% in the JRA (12 + 19.39). After adding in the judges' 7.5%, the total funding as a percentage of salary is 36.42% in the MRA and 38.89% in the JRA. The resulting funding shortfall in the MRA is 3.83% and in the JRA is 6.98%. However, the % contributed by the docket fees varies from year to year and necessarily decreases as a percentage of salary any time there is a salary increase, because the fees are static.

According to the AOC, the PERA repeated this year that the most significant risk to these retirement funds is the designation of docket fees as a funding source. Instead, all contributions should be related to payroll. As stated in the PERA's June 30, 2008, Executive Summary at pages 18 (JRA) and 23 (MRA), severing the link between docket fees and these funds "is paramount to the long-term health" of these funds. SB 648 would accomplish this in FY10, at no cost to the general fund, because the general fund would pay as a percentage of salary 28.92% to the MRA and 31.39% to the JRA (these are the combined payments, as a percentage of salary, made to these funds from the combination of general funds and docket fees in FY08). Although this would leave in place the other factors about which PERA has expressed concerns, it would solve the issue that PERA has identified as paramount to the long-term health of the JRA and MRA.

The following chart shows docket fee funding of the JRA and MRA in the years FY03 – FY08, as a percentage of judicial salaries:

Judicial Retirement Fund						
	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Docket Fee %	19.77%	18.46%	17.77%	19.19%	17.35%	19.39%
Docket Fee Amt.	1,779,718	1,775,910	1,843,947	2,027,260	2,141,499	2,370,360

Magistrate Retirement Fund						
	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Docket Fee %	14.13%	16.05%	14.32%	15.96%	15.22%	17.92%
Docket Fee Amt.	457,116	510,814	480,395	527,814	553,753	629,957

As the chart shows, the docket fee contribution varies each year. That is an important reason identified by PERA for divorcing the fees from retirement funding. It is possible that the impact over time will be that the general fund contributes more than 19.39% to the JRA and 17.92% to the MRA. However, the general fund contribution would have to increase 5% from current levels (11% to MRA and 12% to JRA) to approach the 16.59% general fund contribution the general fund makes to PERA Fund #3, the largest fund that covers most state employees.

### **SIGNIFICANT ISSUES**

Under current law, docket fees are the major source of contribution revenue to both the Judicial and Magistrate Retirement Funds and account for approximately 50% of contribution revenue. Docket-fee revenue is related to the volume of judicial and magistrate court activity. Conversely, the principal source of the retirement funds obligations derive from a pension benefit that relates to judicial and magistrate payroll. Historically, PERA's actuaries have indicated that a poor correlation between docket fees and judicial/magistrate payroll exists. PERA's actuaries have consistently recommended that all employer contributions for both the judicial and magistrate retirement funds be related to payroll. HB 648 addresses this recommendation and is essential to the long-term health of these retirement funds.

According to PERA, correlating employer contributions to judicial and magistrate payroll is a positive step in meeting the long-term obligations of the retirement funds. HB 648's proposed statutory contribution rates are insufficient to meet the required statutory contributions necessary to meet the obligations of the funds. The basic funding objective of the retirement funds is to avoid the transfer of costs of statutory obligations between generations of taxpayers. This objective is met if the funding sources are sufficient to fund costs allocated to the current year on account of service rendered by the judiciary (Normal Cost) and fund over a 30-year period the costs of service rendered by the judiciary in prior years (Unfunded Actuarial Accrued Liability or UAAL). For example, HB 648 increases the employer contribution to the Judicial Retirement Fund for each judge covered by the Act from 12 % to 31.39 % of salary. While this amount combined with the employee contribution of 7.50% is sufficient to fund the Normal Cost of 35.21%, it will not meet the total statutory contribution of 45.87% needed to fund the benefit.

According to PERA, HB 648 increases the employer contribution to the Magistrate Retirement Fund for each magistrate covered by the act from 10% to 28.92 % of salary. While this amount combined with the employee contribution of 7.50% is sufficient to fund the Normal Cost of 35.89%, it is insufficient to meet the total statutory contribution of 40.25% necessary to fund the benefit.

According to SPO, HB648 does not specify where the new amount collected from the courts and the State for retirement is to be deposited. Section 3 of the bill requires additional docket fees to be deposited into the general fund, but it is unclear if these are the same funds referenced in Sections 1 and 2. HB 648 also does not specify how the accumulated funds, if any, within the Employer's Accumulation Fund will be dispersed. The bill also does not address the disposition of the Employer's Accumulation Fund after these changes are made.

According to SPO, HB 648 drastically increases the employer's contribution amounts. Section 1 changes the amount the member's court (except Magistrate) contributes from 12% to 31.39% (161% increase) of the Judges salary and Section 2 changes the amount the state, through the AOC, contributes for Magistrate Judges from 12% to 28.92% (141% increase).

By the state contributing the employer's portion of retirement contribution out of the general fund it would be more programmatically aligned with other state retirement plans in PERA.

### **OTHER SUBSTANTIVE ISSUES**

As stated in the PERA's June 30, 2008, Executive Summary at pages 18 (JRA) and 23 (MRA), severing the link between docket fees and these funds "is paramount to the long-term health" of the JRA and MRA.

According to the AOC, HB 648 will accomplish objective II (4) of the New Mexico Judiciary Long-Range Strategic Plan 2008-2013; "legislation that will ensure actuarial soundness of the judicial and magistrate retirement plans, specifically eliminating dependency on docket fees as a source of funding for each plan."

According to the AOC, once the reliance on the fluctuating docket fees is eliminated, the PERA will be able to assess the actuarial status of the funds from a much more certain perspective, and so will be able to identify what level of total contributions, as a percentage of salary, will make the funds sound. The judiciary can then seek appropriate contributions from either employee or employer, or both, to ensure the funds are sound. Part of that effort will be to have the general fund more closely contribute in the JRA and MRA the 16.59% of salary that is contributed to the PERA's largest fund, the one that covers most state workers, instead of the 11% now contributed to the MRA and the 12% now contributed to the JRA.

According to the Bernalillo County Metropolitan Court (BCMC), changing the funding of judicial retirement contributions from portions of civil docket and jury fees to direct employer payroll allocation will increase each agency's operating costs. Accordingly, each agency must be provided sufficient budget to offset their anticipated contribution allocations. This is especially important for large courts with significant judicial payrolls, as their operating costs will increase significantly.

### **ALTERNATIVES**

The AOC could report to the Legislature every year the actual % contributed by the general fund to the JRA and MRA, in order for the Legislature to track how the general fund contribution varies from the current 11% (MRA) and 12% (JRA). Experience indicates the general fund contribution to both funds would vary between 10% and 13% under any reasonable view of the history of the fee contributions, still well short of the 16.59% contributed to PERA Fund #3.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Judges covered by the Judicial Retirement Act will continue to pay employee contributions of 7.5% of salary and the state will continue to make employer contributions of 12% of salary on their behalf to the Fund. Docket fees paid to the retirement fund will continue to make up approximately 50% of the contribution revenue. As Judges' pay increases, the deficit between the required contributions to fund the benefit obligations and the actual contributions will continue to grow.

Magistrates covered by the Magistrate Retirement Act will continue to pay employee contributions of 7.5% of salary and the state will continue to make employer contributions of

**House Bill 648 – Page 5**

11% of salary on their behalf to the Fund. Docket fees paid to the retirement fund will continue to make up approximately 50% of the contribution revenue. As Magistrates' pay increases, the deficit between the required contributions to fund the benefit obligations and the actual contributions will continue to grow.

CS/mt