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F I S C A L   I M P A C T   R E P O R T

ORIGINAL DATE 02/26/09
SPONSOR Thomas **LAST UPDATED** 03/16/09 **HB** 721/aSEC

SHORT TITLE Educational Retirees Returning To Work **SB**

ANALYST Aubel

REVENUE* (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	$4,146.2	$4,146.2	Recurring	Educational Retirement Board

(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
Public Schools		Up to $3,684.3	Up to $3,684.3	Up to $7,368.6	Recurring	Various**
Special Schools		Up to $2.8	Up to $2.8	Up to $5.5	Recurring	Various*
State Agency		Up to $38.2	Up to $38.2	Up to $76.4	Recurring	General Fund
Higher Institutions		Up to $420.9	Up to $420.9	Up to $841.9	Recurring	Various**
Total		Up to $4,146.2	Up to $4,146.2	Up to $8,292.4	Recurring	Various**

(Parenthesis ( ) Indicate Expenditure Decreases)

*Revised estimate based on FY08 data provided by ERB that was not available for the original analysis. Although providing more detail, the annual fiscal impact is not significantly different from the original overall $4.2 million estimate developed for the original bill analysis. The final incremental impact to operating budgets will depend on how employers treat RTW salaries. To the extent they reduce RTW salaries by 7.9 percent to pay for the ERB employee contribution, there will be no fiscal impact.

**General fund, federal funds and other state funds.

Duplicates SB 145 and SB 476/aSEC
Conflicts with ERB RTW provisions in CS/HB 573/HJCS/aHFl#1/aHFl#2

SOURCES OF INFORMATION

LFC Files

Responses Received From (Original Bill)
Educational Retirement Board (ERB)
Public Education Department (PED)
State Personnel Office (SPO)
Higher Education Department (HED)

SUMMARY

Synopsis of SEC Amendment

The Senate Education Committee Amendment to House Bill 721 strikes reference to the new sunset date of 2022, effectively extending the REB return-to-work program indefinitely.

SIGNIFICANT ISSUES

The amendment eliminates a scheduled legislative review of the ERB RTW program in ten years.

CONFLICT, DUPLICATION, RELATIONSHIP

HB 721 duplicates SB 476 and SB 145.

HB 721 relates to CS/HB 573/SJCS, as amended, which proposes several adjustments to the pension plans and includes the same provisions regarding the ERB RTW program except it retains the sunset date of 2022. CS/HB573/SJCS also requires employer and employee contributions to Retiree Health Care Authority for RTW employees.

Synopsis of Original Bill

House Bill 721 extends the current sunset date for ending the Educational Retirement Board return-to-work (RTW) program from 2012 to 2022; clarifies statutory language to aid in the program's administration; and adds the requirement that employers pay both the employee and employer contributions to ERB. The bill is effective July 1, 2009.

FISCAL IMPLICATIONS

Section 22-11-25.1 (D) specifies that a retired member who returns to employment pursuant to the RTW program does not make the employee contribution of 7.9 percent to ERB. Unlike PERA, ERB statute does not require the employer pick up this cost to help maintain fund solvency. Thus, a RTW employee represents lost revenue to the fund versus a regular employee filling that position under the current program structure. PED reports 1,343 RTW retirees worked in the 2008-2009 school year. Based on the reported RTW salaries, the amount estimated not paid into the ERB fund by these RTW employees is approximately $4.1 million. HB 721 amends and renumbers this section to require the employer to pay both employee and employer contributions for the retired member. This contribution represents added revenue to the fund, replacing what the fund would have received if the positions had been filled by regular employees.

The fiscal impact to the operating budgets is less certain. The 7.9 percent employee contribution is part of the salary budgeted for an employee. Assuming employers have not already reduced salaries by 7.9 percent to compensate for the employee not paying this contribution, employers could reduce RTW salaries by the 7.9 percent to cover the added employee amount and there would be no fiscal impact. However, to the extent that RTW salaries are not reduced by 7.9 percent, this would represent an incremental cost to the employer -- and operating budgets for FY10 would need to absorb the amount. An indeterminate amount would be recurring, again, depending on whether salaries are reduced to compensate for the extra payment to ERB. Exact funding sources are unknown but generally include general fund, federal fund and other state revenues.

According to the February 2009 revenue estimate, FY10 recurring revenue will only support a base expenditure level that is $575 million less than the FY09 appropriations before the 2009 solvency reductions. All appropriations outside of the general appropriation act will be viewed in this declining revenue context.

The HAFC recommendation for general appropriations includes reductions in some areas where federal funds can be used. These reductions will have to be made up to maintain the current level of appropriations in FY11 and FY12. In FY11, $150 million will have to be restored and in FY12, $330 million will have to be restored. This is in addition to other appropriation increases required in FY11 to maintain current service levels or to implement statutorily scheduled funding increases, such as ERB contributions, instructional material funding replacement, and restoring Medicaid funding from the general fund instead of the tobacco settlement program fund. These add up to $80 million to $100 million.

The Public Employees Retirement Association (PERA) also has a RTW program. The agency's actuary determined that its RTW program would be "cost neutral" to the fund by requiring the employer to make both employee and employer contributions, covering between 90 percent to 110 percent of the normal cost depending on the plan.

SIGNIFICANT ISSUES

Program Continuation

This statute was enacted in 2001 to attract and retain quality teachers in New Mexico, allowing retired or eligible-to-retire educators to receive retirement benefits and salary following a 12 month break in service beginning January 1, 2002, and continuing until January 1, 2012. HB 721 would extend the 2012 end date to 2022, thereby continuing the program for 10 years.

According to PED, the ERB RTW program provided over 1,300 teachers statewide in 2007-2008 -- approximately 5 percent of the New Mexico teacher pool in public schools. The department claims that if the program is allowed to expire on January 1, 2012, removing this number of teachers could cause serious teacher shortages and would adversely impact New Mexico's ability to meet the "highly qualified" teacher requirements under No Child Left Behind (NCLB) program. HED indicates that HB 721 would allow K-12 schools fill math and science positions, where there seems to be shortages, as well as allow higher education institutions to address shortages in many fields of medicine.

Extending the sunset date for 10 years would allow the program to continue with a future scheduled legislative review.

ERB Contributions

The current program does not require anyone to pay the employee portion of contributions, which represents almost a $4 million "loss" to the fund during a period when the fund has suffered significant losses due to market conditions. HB 721 would rectify this funding issue and will benefit the fund. However, the employers may incur higher employee benefit costs at a time when budgets are being reduced. In general, employee contributions are not required from RTW employees due to concerns over possible lawsuits because they do not accrue service credit and are not eligible for refunds. Because the RTE employee will not draw benefits and cannot request refunds, the contributions remain in the fund to help pay down other pension liabilities.

Program Administration

According to ERB, the current RTW statute is confusing and is difficult to administer. HB 721 would clarify how the 12-month break in service would function; specify the services that a retiree cannot perform for an employer during the "layout" period; require a retiree to submit an application form for the RTW program, which must be approved by ERB; and defines an employer ("local administrative unit") for purposes of RTW.

RTW Provisions

The bill clarifies who can participate in the RTW program without suspension of benefits, as follows:
Beginning July 1, 2003 and continuing through July 1, 2022:

- A member who retired after July 1, 2001 and has not rendered service to an affiliated employer for at least 12 consecutive months after the date of retirement;
- A retired member who was retired on or before January 1, 2001 and has not subsequently suspended or been required to suspend retirement benefits;
- A retired member who retired on or before January 1, 2001, who subsequently voluntarily or was required to suspend benefits and who has not rendered service to an affiliated employer for at least 90 days (that does not include any part of the summer or other scheduled break or vacation period) and was not employed for an additional 12 or more consecutive months after the initial date of retirement.

The bill places in statute the ERB rule that an application to begin the RTW work program has been submitted to ERB and approved by the Board.

PERFORMANCE IMPLICATIONS

Both HED and PED express concern on well public schools would be able to fill teacher shortages if the RTW program is allowed to sunset. According to PED, the RTW program provides opportunities for districts to hire high-need area educators with specific technical skills. Based on FY 08 information, the following teacher shortages exist: bilingual/TESOL, 279 teachers; elementary, 179; math, 663; science, 391; and special education, 145. The shortages total 1,657.

PED notes that districts may not have the resources to pay the members' portion to the retirement fund, which would result in a decline in the number of retirees hired to return to work.

ADMINISTRATIVE IMPLICATIONS

The proposed changes may simplify administration.

CONFLICT, DUPLICATION, RELATIONSHIP

HB 721 duplicates SB 476.

HB 721 conflicts with SB 145, which deletes the sunset date to extend the RTW program indefinitely.

HB 721 relates to HB 573/HECS, which proposes several adjustments to the pension plans and includes the same provisions regarding the ERB RTW program. The only difference is that

HB573/HECS also requires employer and employee contributions to Retiree Health Care Authority for RTW employees.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

ERB's RTW program will expire in 2012. ERB interprets the statutory language to suggest that "those ERB retirees who wish to work for an ERB employer after retiring, including those in the RTW program at that time, would have to either (a) limit the income they earn from an ERB employer to the greater of 0.25 FTE or $15,000, or (b) suspend their retirement and return to work for an ERB employer as regular, contributing member of the retirement fund. Retirees who chose to suspend retirement to work for an ERB employer would earn additional service credit, increasing their retirement benefit upon re-retirement."

POSSIBLE QUESTIONS

1. Has an actuarial study been done of for the ERB RTW program, and has it determined that paying both employer and employee contributions to ERB will make the program cost neutral to the fund?

2. If the bill is not enacted, does that mean that all teachers currently working as RTW employees would be subject to the .25 work limitation or $15,000 limitation?

3. How would the public education system replace these 1,343 teachers, assuming they are all fulltime employees?

4. How will this impact student achievement and New Mexico scores on NCLB tests?

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