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FISCAL IMPACT REPORT

ORIGINAL DATE 02/24/09

SPONSOR Griego, P. LAST UPDATED _____ HB _____

SHORT TITLE PERA Eligibility For Mutual Domestics SB 231

ANALYST Aubel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$.01*	\$.01*	\$.01*	Nonrecurring	PERA

(Parenthesis () Indicate Expenditure Decreases)

*Minimal

Relates to HJM 45, HB 79, HB 236, HB 246, HB 271 and companion HB 355, HB 351 and duplicate SB 366, HB 353, HB 453, HB 573, HB 616, HB 631, HB 648, HB 683, HB 684, HB 721, HB 731, HB 765, HB 798, HB 854, SB 145, SB 261, SB 428, SB 476, and SB 499

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Employees Retirement Association (PERA)

New Mexico Environment Department (NMED)

SUMMARY

Synopsis of Bill

Senate Bill 231 amends the Public Employee Retirement Act to allow members of mutual domestic water consumers associations (MDWCAs) to be eligible for membership in PERA. Staff members of MDWCAs, including water system operators, would be able to participate in the a defined benefit plan.

FISCAL IMPLICATIONS

PERA indicates SB 261 will have a minimal fiscal impact on PERA because current contributions would cover the normal cost of new members. However, adding members would indicate increased liabilities, which in the case of MDWCAs would not seem to be significant. PERA would incur some operating costs to process applications and hold elections for affiliation by MDWCAs, which would be minimal.

NMED notes that it is possible that the MDWCA may not have the resources to hire an operator at a competitive salary if PERA is mandatory. The employer contribution for State General Plan 3 is 15.54 percent.

SIGNIFICANT ISSUES

NMED provides the following background information:

Currently, there is little incentive for water system operators and other water system staff to maintain long-term careers with smaller MDWCAs because those organizations can not compete with the salaries or benefits provided by municipalities and water and sanitation districts. Typically, water system operators begin their careers with MDWCAs but quickly move on to municipalities or water and sanitation districts because of the better benefits and/or salaries. That inability for MDWCAs to compensate water operators can have an adverse impact on public health because water system operators provide the first line of defense against water borne disease outbreaks. In addition, the inability to attract and retain competent, well trained water system operators can cause water systems to be out of compliance with New Mexico drinking water regulations that require every public water system is required to retain a certified water system operator. Approximately 40 percent of public water systems do not retain a certified operator and are out of compliance with this important regulation. SB 231 would give MDWCAs an additional tool to attract and retain staff, meet the requirements of retaining a certified operator, and potentially attract more people to the water industry.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 231 relates to the following bills:

HJM 45 – PUBLIC EMPLOYEE & EDUCATION SOLVENCY PLANS STUDY
HB 65 – LEGISLATIVE RETIREMENT CONTRIBUTIONS
HB 79 – PUBLIC EMPLOYEE RETIREMENT INFO DISCLOSURE
HB 236 – PERA SERVICE CREDIT PURCHASE (Expands service credit purchase)
HB 246 – PERA RETURN TO WORK FOR CERTAIN EMPLOYEES
HB 271/HB 355 – REOPEN MUNICIPAL EMPLOYEE RETIREMENT PLAN 4
HB 351/SB 366 – RETIREE HEALTH CARE FUND CONTRIBUTIONS
HB 525 – ALTERNATIVE EDUCATIONAL RETIREMENT PLANS
HB 573 – ADJUSTMENT OF RETIREMENT PLANS
HB 616 – PUBLIC RETIREES RETURNING TO WORK
HB 631 – EDUCATIONAL RETIREMENT ELIGIBILITY
HB 648 – JUDICIAL RETIREMENT FROM GENERAL FUND
HB 683 – RETIRED PUBLIC EMPLOYEE RETURNING AS SHERIFF
HB 684 – CONGRESSIONAL EMPLOYEE NM SERVICE CREDIT
HB 721 – EDUCATIONAL RETIREES RETURNING TO WORK
HB 731 – SESSION EMPLOYEE PERA CREDIT PURCHASES
HB 765 – PUBLIC EMPLOYEES RETURNING TO WORK
HB 798 – NEW PERA MEMBER ELIGIBILITY
HB 854 – PERA MEMBER & STATE CONTRIBUTION CHANGES
SB 145 – ELIMINATE END DATE FOR RETURN TO WORK
SB 428 – RETIREE HEALTH DEFINITIONS & CONTRIBUTIONS
SB 499 – MOTOR TRANSPORTATION OFFICER RETIREMENT

TECHNICAL ISSUES

PERA provides the following discussion on whether MDWCAs qualify as a governmental plan:

The PERA Act specifically provides that only "public employers" can affiliate with PERA so long as they fall within the meaning of "governmental plan" as used in Section 414(d) of the Internal Revenue Code. The Internal Revenue Code requires that to qualify as a "governmental plan," a plan must be "established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of the foregoing."

Currently, the statutory definition of "public employer" includes "the state, any municipality, city, county, metropolitan arroyo flood control authority, economic development district, regional housing authority, soil and water conservation district, entity created pursuant to a joint powers agreement, council of government, conservancy district, irrigation district, water and sanitation district, water district and metropolitan water board, including the boards, departments, bureaus and agencies of a public employer."

Since 2006, a mutual domestic water consumers association has been defined by law as a political subdivision of the state. NMSA 1978, Section 3-29-3 (2006). In Moongate Water Company, Inc. v. Dona Ana Mutual Domestic Water Consumers Association, 2008-NMCA-143, the New Mexico Court of Appeals concluded that a mutual domestic water consumers association is a "special function governmental unit" immune from suit under the New Mexico Antitrust Act. Nevertheless, although the PERA Act's definition of "public employer" already includes the "state" and its "boards, departments, bureaus and agencies," the Act does not specifically encompass "political subdivisions" or "special function governmental units."

The Internal Revenue Code broadly includes plans established and maintained for employees by a "political subdivision" of the state within the ambit of governmental plans. Therefore, SB 231's proposed expansion of the statutory definition of "public employer" to include mutual domestic water consumers associations as one of the enumerated entities eligible for PERA affiliation will comply with the requirements of the Internal Revenue Code and is consistent with the tax-deferred status of PERA as a 401(a) governmental plan.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

NMED concludes that MDWCAs would continue to compete on an unequal footing with municipalities and water and sanitation districts for competent, well trained staff.

MA/svb