FISCAL IMPACT REPORT

BILL NUMBER: House Bill 40

SHORT TITLE: Temporary ERB Member Payment

SPONSOR: Reps. Borrego, Sanchez and Chavez/Sen. Stefanics

LAST UPDATE: 02/03/26 **ORIGINAL DATE:** 01/26/26 **ANALYST:** Hanika-Ortiz

APPROPRIATION*
(dollars in thousands)

FY26	FY27	FY28	Fund Affected
	$65,500.0	Nonrecurring	General Fund

*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 41

Sources of Information

LFC Files

Agency or Agencies Providing Analysis
Educational Retirement Board

SUMMARY

Synopsis of House Bill 40

House Bill 40 (HB40) would provide additional payments to those receiving pension benefits from the Educational Retirement Board (ERB) in FY27 and FY28. Payments would be equal to 2 percent of the benefit payment from the prior fiscal year. The additional payments would not be considered when calculating future cost-of-living adjustments (COLAs).

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, which is May 20, 2026. However, the financial impact of the bill applies specifically to fiscal years 2027 and 2028.

FISCAL IMPLICATIONS

The appropriation of $65.5 million contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY28 shall not revert to the general fund. The bill relies on ERB to time the payments appropriately over the two-year period.

HB40 would provide for a temporary increase in benefits paid by ERB. Article XX, Section 22, of the New Mexico Constitution prohibits the Legislature from enacting any law that increases the benefits paid by ERB unless adequate funding is provided. That section assigns ERB sole and exclusive power to adopt actuarial assumptions, based on recommendations from an independent actuary. According to ERB, HB40 provides sufficient funding for these temporary, non-compounding payments without increasing fund liabilities.

For a retiree with a median monthly retirement benefit from ERB of $1,834.85, the additional, non-compounding payment in the bill would mean an additional $37 a month.

These temporary payments are in addition to the compounding COLA under existing law. In 2013, to put ERB on a sustainable path, Senate Bill 115 (SB115) changed the ERB COLA for all retirees, including for those who had already retired, to one dependent on the plan's funded ratio (assets/liabilities) and retiree age and years of service. Because the funded ratio as of June 30, 2025, was less than 90 percent, under those reforms, non-disability retirements with 25 or more years of service and whose monthly benefit was equal to or less than the median monthly benefit of $1,834.85 as of June 30, 2025, received a reduced COLA of 1.80 percent; regular retirements received 1.6 percent; and disability retirements 2 percent, if retired at least three years. If an employee joined ERB before July 1, 2013, the COLA begins at age 65. If an employee joined ERB after July 1, 2013, the COLA begins at age 67. Once granted, the COLA becomes part of the protected base benefit.

The ERB fund is on track to be fully funded in 19 years, based on current assumptions. If returns, inflation, or longevity turn out worse than assumed, however, liabilities could increase.

ERB will need to make system modifications to its pension administration system but does not report the modifications will have a significant fiscal impact.

SIGNIFICANT ISSUES

At the time of SB115 in 2013, payroll contributions were not sufficient to pay benefits, provide fixed, compounded COLAs, and pay off a growing unfunded liability. Also impacting the fund, in recent years, are salaries that have risen more rapidly than they had over the prior decade, which increases contributions to the fund but also mean a higher final average salary when calculating benefits.

After the passage of reforms in 2013, in *Bartlett v. Cameron* (2014-NMSC-002), ERB retirees challenged the change to the COLA formula. In the end, the state Supreme Court rejected the retirees' argument that the COLA in effect at retirement was protected property under due process and takings theories. That case was the legal foundation for ERB's, and later PERA's, shared risk COLA adoption. The court ruled the Legislature had amended COLAs over the years, and history suggested they were never intended to be promises. Nationwide, 45 states authorize COLAs to be modified, while a few states still treat COLAs as protected benefits.

SB115 also passed at a time when annual 2 and 3 percent fixed COLAs outpaced inflation. Annual COLAs for social security, tied to inflation, averaged 1.4 percent between 2010 and 2020. But more recent increases in the cost of living have led these amounts to spike. Social security COLAs in 2022 were nearly 9 percent and in 2023 almost 3.2 percent, which illustrates the challenges faced by retirees in meeting basic needs such as housing and health increases on fixed incomes.

According to ERB, there are 57 thousand retirees and beneficiaries with an average age of 72 and average annual benefit of $24,948. According to the Social Security Administration, the average annual benefit is $24,852 and COLAs in 2027 and 2028 are expected to average about 2.4 percent.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 40 only applies to educational retirees with the ERB; however, House Bill 41 would apply to retirees from the Public Employees Retirement Association (PERA). House Bill 41 also includes an appropriation, of $70 million, to cover costs for PERA. House Bill 40 carries a $65.5 million appropriation, for a combined fiscal impact of $135.5 million.

TECHNICAL ISSUES

The appropriation covers additional payments for FY27 and FY28; yet another section of the bill says the appropriation is for FY27 and subsequent fiscal years.

OTHER SUBSTANTIVE ISSUES

Roughly 1-in-8 New Mexicans are members of either PERA or ERB or both and may become eligible to receive a publicly funded benefit for the rest of their lives. A large portion of New Mexico workers and retirees have limited savings and must rely heavily on social security benefits.

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