

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 and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 02/06/14

SPONSOR Rehm **LAST UPDATED** _____ **HB** 194

SHORT TITLE Public Safety Employee Retirement **SB** _____

ANALYST Weber

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Significant but Indeterminate			Recurring	General Fund and Other

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Employees Retirement Association (PERA)
 Department of Public Safety (DPS)
 General Services Department (GSD)
 New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of Bill

House Bill 194 amends the PERA Act to allow “public safety” retirees to return-to-work, subject to certain restrictions, expands exemptions from PERA’s restrictions on back-to-work provisions, requires employers to pay PERA contributions for “public safety employees” who are injured in the line of duty and receiving worker’s compensation benefits.

Allows Return-to-Work (RTW) for Public Safety Employees:

- Defines “public safety employee” as a member who retired from, or is employed in a position that is covered under the PERA Act applicable to: 1) state police and adult correctional officer members, 2) juvenile correctional officer members, 3) municipal detention officer members, 4) municipal police, 5) fire members, or 6) peace officers.
- Allows public safety retirees to return to work in “public safety” employment and earn a salary without suspension of pension, subject to an earnings limitation of \$60,000 in any fiscal year.

- Requires the employer to make both the employer and employer contributions applicable to the position to the Fund, which are nonrefundable.

Expands Exclusions from PERA RTW Provisions:

- Exempts from RTW provisions retired public safety employees hired as instructors at a New Mexico law enforcement academy or a state, local or municipal police and fire academy who earn \$30,000 or less in any fiscal year
- Restores county undersheriff exemption from RTW provisions

Requires PERA Contributions while receiving Worker's Compensation Benefits

- Require affiliated public employers to pay an injured public safety employee's PERA employee and employer contributions during the period of workers' compensation leave.

FISCAL IMPLICATIONS

PERA anticipates HB 194 will have a negative fiscal impact on the PERA Fund. For the year ending June 30, 2013, the PERA Fund is 72.9% funded and has a \$63.7 million unfunded liability.

Additionally, the bill may trigger earlier retirements and encourage members to retire when first eligible. The ability to return to work may increase liabilities to the PERA Fund since there is no incentive for members to work beyond when they are first eligible to retire. As a result, members begin receiving a pension earlier and remain on retiree payroll for a longer period of time contributing to the unfunded liability mentioned above.

NMCD provides that if they chose to rehire one or more of its experienced correctional officers under the provisions of the bill, it would also have to pay the member and employer contributions due under that employee's applicable pension plan. The total contribution amount on the maximum salary shown in the bill is \$19.9 thousand per year.

GSD contributes that the bill would have a major fiscal impact on the State's budget. The requirement that an employer pay 100% of the employee's group insurance contributions. There would also be a fiscal impact when HB 194 requires the reconfiguration of the current SHARE benefits and payroll modules to accommodate a different benefits structure. Without a sufficiently specific determination as to the qualifying circumstances or employees to which HB 194 will apply, the fiscal implications are unknown while still remaining a major impact on the State's budget.

SIGNIFICANT ISSUES

DPS opines that a result of the bill will keep the institutional knowledge base of experienced law enforcement officers in. For the past 5 years officers have retired and left the state to pursue 2nd careers, and with their leaving, they take with them all the knowledge, skills, and abilities they have learned and gathered over a 20 to 25 year career. Other agencies in other states reap these rewards, while New Mexico is left with an ever growing knowledge and leadership gap and a general shortage of officers. Smaller, local law enforcement agencies in particular may benefit from the availability of a retired officer pool that would become available if this bill is enacted.

NMCD offers similar comments on the benefits of hiring experienced officers.

PERA notes that historically the Board has had serious concerns regarding the negative actuarial impact of PERA retirees returning to work after retirement and collecting both a pension and a salary.

Also, the PERA Board has had serious concerns when specific employee groups are granted the opportunity to retire and return to work over other employees in similar situations.

DPS adds that officers injured in the line of duty always receive 100% of their normal compensation, whether directly through duty injury pay or a combination of workers' compensation benefits, their own accrued leave and/or donated leave. Therefore the requirement to pay the employee's insurance premiums and PERA contributions can effectively increase the take home pay of an injured public safety member above that the level they would normally receive.

TECHNICAL ISSUES

GSD notes ambiguity and problems with the language:

The definitions found in HB 194 are available to numerous and limitless interpretations which prevent a definitive analysis as to the costs and administrative implications associated with HB 194.

HB 194 contains a definition of "public safety duty" that creates ambiguity and vagueness. Use of the terms "inherently dangerous location" and "inherently dangerous circumstances" can be reasonably interpreted to represent several different locations and circumstances perhaps not contemplated by the provisions of HB 194.

HB 194 requires disparate treatment among similarly situated employees; even within the same agency. For example, HB 194 would allow a New Mexico State Police Officer to be a qualifying employee while New Mexico Motor Transportation Police are excluded. HB 194 contains jurisdictional and qualifying issues. No mention is made of the authority to adjudicate employee's claims or rights to appeals on matters in controversy. HB 194 does not contain language identifying how an employee qualifies for the conditions found in the amended provisions. Additionally, HB 194 does not establish a limit of time a qualifying employee may continue to receive coverage of the group insurance contributions. Without a determination on these issues, applicability and implementation of HB 194 is unknown.

POSSIBLE QUESTIONS

Why should the pension changes apply only to the specified public safety retirees and not all state retirees?

MW/svb