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FISCAL IMPACT REPORT

ORIGINAL DATE 02/05/16
SPONSOR Rehm **LAST UPDATED** _____ **HB** 43

SHORT TITLE Public Safety Employee Contribution Payments **SB** _____

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
		>\$76.5	>\$76.5	\$143.0	Recurring	General Fund
		>\$24.7	>\$24.7	\$49.4	Recurring	Other Funds

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Children, Youth and Families Department (CYFD)
 Department of Game and Fish (DGF)
 Department of Public Safety (DPS)
 General Services Department (GSD)
 New Mexico Corrections Department (NMCD)
 State Personnel Office (SPO)
 Municipal League (ML)
 Public Employees Retirement Association (PERA)
 Workers Compensation Administration (WCA)

SUMMARY

Synopsis of Bill

House Bill 43 amends the Public Employees Retirement Act (PERA) and group insurance provisions to require PERA employers to pay 100 percent of an employee's group insurance contributions when the employee is placed on approved worker's compensation leave due to injury while performing a public safety function or duty which resulted in that leave.

In addition, a member employee whose PERA employer has certified that the employee was injured while performing a work-related function or duty in an inherently dangerous location or under inherently dangerous circumstances and the employee is absent from work and has been placed on approved workers' compensation leave as a result of that injury shall accrue service credit while on that leave if:

- the employee is a peace officer covered pursuant to the state general member coverage plan 3; a state police member; an adult correctional officer member; a municipal fire member; a municipal police member; or a municipal detention officer member;
- the employee retains membership in the association during while on leave; and
- the employer pays both the employer and employee's member contributions and remits the amount that would be paid if the employee was not on leave, calculated upon the salary based upon a salary equal to the member's salary at the time of injury.

The employer must provide an appeal process for an injured employee on approved workers' compensation leave whom the employer determines does not meet the criteria set out above to accrue service credit.

The effective date of this bill is July 1, 2016.

FISCAL IMPLICATIONS

DPS reports that its officers injured on duty do not lose any pay due to the New Mexico State Police duty injury benefit (covering almost 1080 hours of leave time via administrative pay that is used in lieu of sick leave/annual leave). While receiving this benefit, the officer does not receive the pay replacement portion of worker's compensation, but the officer does receive the medical benefits portion. Further, it advises that a duty injury benefit may be offered by any local government agency. Because the bill requires employer payment of all group insurance premiums and the employees' member contributions while an officer is on "workers compensation leave, DPS expresses concern that it may be subject to these requirements even when an officer is receiving full pay under the duty injury benefit, which would impose additional costs on the department.

Additionally, DPS advises that current State Personnel Board rules prohibit this application of administrative leave in excess of five days, so a duty injury benefit is not available to agencies whose employees are under the classified service, such as NMCD and DGF. For purposes of illustration, DPS reports that in FY 15, 16 officers injured in the line of duty were on full-time workers' compensation, while DGF advises that two to three of its public safety employees are on workers' compensation each year. Using these numbers, the table above reflects the fiscal impact to the General Fund and other funds for 19 public safety employee for every year those employees are on worker's compensation due to an injury that requires the employee's employer to cover the employee's share of both group insurance premiums and pension contributions (assuming an average salary of \$23/hour and a 8.92 percent rate for employee pension contributions). These numbers represent only a sampling of public safety agencies, and actual costs are expected to be greater.

All responding agencies express concern that the fiscal impact on a public safety employer may become burdensome over time, particularly if that employer has multiple employees on workers' compensation leave simultaneously.

In addition to these recurring costs, Risk Management Division of GSD reports there would also be costs associated with the reconfiguration of the current SHARE benefits and payroll modules to accommodate a different benefits structure.

PERA reports no fiscal impact on its fund.

SIGNIFICANT ISSUES

The intent of the bill is to care for injured public safety officers who may suffer financial or benefit loss due to an on-the-job injury. DPS fully supports this intent, as reflected in its current policies, including its duty injury benefit. It reports that it experiences a large number of injured officers each year. In FY15, 70 officers were injured in the line of duty and 16 of those officers were on full time workers compensation leave for a period of longer than 14 days. However, DPS expresses concern that an unintended outcome of this bill may result in providing *a higher* compensation for officers on duty injury leave than those officers who are currently serving in 100% duty capacity, which appears to be an unintended consequence of this bill.

Further, DPS points out that the circumstances required in the bill for employers covering employee group insurance contributions differs from the requirements for covering pension contributions under PERA:

The employer paid insurance benefits provision require only that the employee be injured while performing a public safety function or duty and, as a result of the injury, placed on approved workers' compensation leave. Coverage of the PERA contribution, however, requires that the employee sustain a work-related injury resulting from the performance of function or duty *in an inherently dangerous location or under inherently dangerous circumstances*. Officers are routinely injured on duty due to actions such as slipping on the ice, throwing out their backs lifting heavy objects and hitting their heads on the car frame. These may or may not occur under "inherently dangerous circumstances." Limiting the benefit to certain specific circumstances under which the injury occurred would lead to inconsistent and debatable decisions.

DPS uses a different standard to determine whether or not an officer receives the duty injury paid leave benefit when injured on the job: if the officer routinely places the officer's life on the line to serve the public, the officer is entitled to the benefit regardless of whether or not the officer was in danger at the time of the injury. The only exception is when an officer is performing administrative duties in an office environment. DPS suggests a similar, consistent standard may better serve the intent of this legislation.

On the other hand, WCA comments that while the Workers' Compensation Act is the exclusive remedy for benefits resulting from work injuries, this bill grants a benefit to public safety employees that other workers do not receive and was not originally contemplated by that act.

Further, GSD/RMD believes that HB 43 has the potential to offer two similarly situated individuals different treatment depending on the type of work an employee does. The pension contribution benefit is not available to an employee injured at an inherently dangerous location or under an inherently dangerous circumstance unless the employee is a "public safety employee." In addition, CYFD questions the meaning of the phrase "public safety function". The differing availability of these benefits, and confusion over the terms used, may result in

challenges on equal protection grounds. Similarly, WCA warns that requiring each employer to set up its own appeal process may result in inconsistent application of the law.

As to the service credit provisions, PERA points out that HB 43 does not address whether member contributions paid by the employer under “injured public safety leave” will be posted to the member’s PERA account and will be refunded to the member if the member terminates employment and requests a refund of contributions.

Finally, this bill does not address employee contributions to Retiree Health Care Authority, which is currently 1 percent of an employee’s salary.

ADMINISTRATIVE IMPLICATIONS

GSD/RMD advises that for state employees, benefits are maintained and tracked in the state’s SHARE PeopleSoft system. Changing the manner by which benefits are currently administered in SHARE would require complex reconfigurations, time, and significant IT and programming costs

TECHNICAL ISSUES

PERA points out that while HB 43 provides that an injured public safety member accrues service credit for the period of absence from work while on workers’ compensation leave, PERA service credit is granted only to the nearest month. See Section 10-11-4, NMSA 1978, and 2.80.600 NMAC (2014).

OTHER SUBSTANTIVE ISSUES

DPS reports that when its duty pay benefit is exhausted, which rarely happens, the officer begins to use accrued sick and annual leave to cover the workers’ compensatory benefit time (typically 33 percent) to make the officer’s paycheck whole. If the employee exhausts all paid leave, a request for annual leave donations is sent to all employees, who give generously. In the last 10 years, no officer has gone without fully paid leave for an on-the-job injury with these policies in place. Throughout this period, the employee never pays higher insurance premiums than they would while on full duty and receiving full duty pay.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Public safety employees on workers’ compensation leave still will be required to pay their group insurance contribution along with their pension contributions to continue to earn service credit.

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