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FISCAL IMPACT REPORT

SPONSOR Lane LAST UPDATED 2/22/2023
ORIGINAL DATE 2/16/2023
BILL
SHORT TITLE Public Employees Returning to Work NUMBER House Bill 294
ANALYST Simon

REVENUE* (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		
	\$78.3 - \$783.0	\$78.3 - \$783.0	Recurring	PERA Fund

Parentheses () indicate revenue decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to House Bills 65, 66, and 106 and Senate Bills 96 and 124
Conflicts with House Bills 64 and 65 and Senate Bill 124

Sources of Information

LFC Files

Responses Received From

Public Employees Retirement Association (PERA)
New Mexico Attorney General (NMAG)
General Services Department (GSD)
State Personnel Office (SPO)
Department of Public Safety (DPS)

No Response Received

Public Education Department (PED)

SUMMARY

Synopsis of House Bill 294

House Bill 294 (HB294) would amend the Public Employees Retirement Act to allow retired certified law enforcement officers to resume employment with a PERA-covered employer without the need to suspend their retirement benefits, if the retired employee returns to work as a school resource officer or to provide security for a courthouse. The bill includes the following conditions:

- The employer cannot be a class A county with a population of more than 600 thousand (currently, only Bernalillo County meets this description).
- The retired prospective employee must be retired for at least 90 days before being eligible

to seek employment with a PERA-covered employer.

- The retired employee and PERA-covered employer must make nonrefundable contributions to the PERA fund.
- The retired employee would not accrue services credit during their term of reemployment.
- The reemployment must occur prior to July 1, 2026.

The effective date of this bill is July 1, 2023.

FISCAL IMPLICATIONS

HB294 could lead to an increase in the number of public safety retirements by allowing retirees to return to work. With return-to-work programs, some public safety employees could choose to retire earlier than they otherwise would, reducing contributions to the fund, increasing payouts from the fund, and reducing member's pension payments. However, HB294 limits the ability of employees to pre-plan a retirement while also planning to return to work by limiting the program to a three year window and limiting jobs available to school resource officers or courthouse security.

Article XX, Section 22, of the New Mexico Constitution prohibits the Legislature from enacting any law that increases the benefits paid by PERA unless adequate funding is provided. That section assigns the PERA board the sole and exclusive power to adopt actuarial assumptions, based on recommendations from an independent actuary. While HB294 could be seen as increasing benefits payments, the bill also includes additional revenue to the PERA fund in the form of mandatory, nonrefundable contributions from both the employee and employer. Analysis from PERA states these contributions are expected to have a small positive impact on the fund, presumably making the funding level “adequate” in PERA’s estimation.

On average, PERA member salaries are about \$54 thousand per year. PERA’s valuation report an average contribution rate about 29 percent for both the employee and employer. As a result the average contribution per employee is estimated at about \$15,660. Assuming between five and 50 individuals participate in return-to-work, this would have an impact of between \$78 thousand and \$783 thousand. Most of this additional revenue would be offset with additional payments, but PERA states the revenue would be slightly positive.

SIGNIFICANT ISSUES

HB294 would attempt to address shortages in the number of personnel available to serve as school resource officers or courthouse security by allowing retired law enforcement officers to return to work. While public schools in New Mexico are covered by retirement plans from the Education Retirement Board and not PERA, most current school resources officers are employed by local law enforcement agencies, who then enter into memoranda of understanding with public schools for school resource officers. Analysis from LESC on other school security legislation notes most public schools nationwide do not have resource officers on campus at all times. The National Center for Education Statistics reports 67 percent of schools nationwide have a resource officer on campus one time per week, but only 30 percent of schools have full time resource officers. Schools in rural or urban areas are less likely to have a school resource officer.

HB294 identifies those who could return to work as “certified law enforcement officers” who are

a part of any municipal police plan or the state police member, correctional officer member, and probation and parole officer member coverage plan. HB64 does not define “certified law enforcement officer” and the term does not appear to be used elsewhere in the Public Employees Retirement Act. The term could be seen as applying to those with certification from the law enforcement certification board. Employees of the Department of Corrections, including probation and parole officers, may or may not hold a law enforcement certification. As a result, HB294 may not apply to some corrections retirees.

Return to Work Programs

Generally, a member of PERA must terminate employment to retire and receive a pension benefit from the plan. While retired members are permitted to seek employment in the private sector, with another state or the federal government, or for an employer covered by the Educational Retirement Board (ERB), members are not allowed to return to employment with a PERA-covered employer without suspending their monthly benefit. HB294 would allow certain retired members to return to employment without suspending their retirement.

As designed, public pension funds are intended to replace the income an individual loses when leaving the workforce by providing a steady stream of payments in retirement. As a result, pension plans and regulations from the Internal Revenue Service (IRS) generally prohibit payment from the pension system to an active employee, except under certain circumstances, and require a “bona fide” separation of service. However, return-to-work programs have been designed to allow retired workers to return to employment to address shortages of qualified workers.

Theoretically, a return-to-work program would not increase the costs of the retirement system because the worker being employed has qualified for retirement and already decided to retire and begin receiving pension benefits. Under this paradigm, return-to-work merely allows a public employer continued access to the services of experienced employees, who might otherwise go on to work in the private sector or in the public sector for an employer not affiliated with PERA while continuing to receive their pension. However, in practice, the existence of return-to-work programs likely leads some employees to move up their retirement date with a reasonable assurance that they will be able to find continued employment and be able to receive both a paycheck and pension payments, sometimes called “double dipping.” Under this paradigm, return-to-work programs increase costs to the retirement system because pension payments must be made for a longer period than if no return-to-work system existed. In reality, neither paradigm is likely a true representation of a wide variety of actual employment decision made by different employees.

To cut back on possible abuses of return-to-work programs, most public pension funds place limits on how a retired employee can return to work. These restrictions can include limits on the amount of time that can be worked, how much a person can earn, how long a person must wait before returning to work, and the age of an employee allowed to return to work. Some states require formal certification of a “critical shortage” of workers before an employer is allowed to consider hiring return-to-work applicants, and some restrict the overall number of workers who can be hired.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Several bills have been introduced for consideration of the First Session of the Fifty-Sixth Legislature that would incentivize public employees to provide more years of service. These proposals include:

- House Bill 64, which would create a return-to-work program for public safety employees, but would not limit their employment to school resource officers or courthouse security;
- House Bill 65, which would create a return-to-work program for retirees from all PERA plans;
- House Bill 66, which would increase the maximum pension benefit from 90 percent to 100 percent of salary, allowing members who work longer to accrue additional service credit;
- House Bill 106, which would increase the maximum pension benefit from 90 percent to 100 percent of salary;
- Senate Bill 96, which would increase the maximum pension benefit the state police member, correctional officer member, and probation and parole officer member plan;
- Senate Bill 124, which would both enact a return-to-work program for all PERA retirees and increase the maximum pension benefits if employees serve for more years.

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