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FISCAL IMPACT REPORT

SPONSOR Alcon LAST UPDATED _____
ORIGINAL DATE 2/20/2023
BILL _____
SHORT TITLE Magistrate Retirement Exemption NUMBER House Bill 332
ANALYST Simon

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
		No fiscal impact	No fiscal impact			

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Public Employees Retirement Association (PERA)

SUMMARY

Synopsis of House Bill 332

House Bill 332 (HB332) would align provisions of the Magistrate Retirement Act with current administrative practice of the Public Employees Retirement Authority to allow an exemption for elected magistrates from participating in the Magistrate Retirement Act.

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

FISCAL IMPLICATIONS

Agency analysis is divided on the possible fiscal impact of HB332 due to differing interpretations of Section 1 of the bill. Analysis from the Administrative Office of the Courts (AOC) states the bill would allow a magistrate judge “to be exempt from the [Magistrates Retirement Act] contributions, including the magistrate judge as well as their employer’s contributions.” However, the bill appears to address membership in the Magistrate Retirement Act and not those required to pay contributions. HB332 would allow an elected magistrate to file an exemption to not become a member of the plan. But the contribution requirement appears to apply to all magistrates, regardless of whether they are a member of the plan. Section 10-12C-2

NMSA 1978 defines a “magistrate” as a “magistrate judge” while a member is a “magistrate who is in office and covered” under the act. Because it is possible to be a magistrate who is not a member of the plan, presumably the contribution requirement would continue for magistrates who are not members of the plan.

If it is the intent of the bill to exempt retired magistrates from contributions to the fund, additional language may be needed to clarify that magistrates who are not members of the fund are not required to make contributions. However, any such amendment would likely have a negative fiscal impact on the fund, which could lead to constitutional challenges under Article XX, Section 22 of the New Mexico Constitution. That section prohibits the Legislature from enacting any law to change the funding formula for a retirement plan unless adequate funding is provided. Legislation to exempt retired magistrates from existing contribution requirements may not meet this standard unless an alternative funding source is provided.

However, analysis from PERA indicates no fiscal impact because that agency’s interpretation of the bill would continue to require retired magistrates and the employer to make contributions.

SIGNIFICANT ISSUES

Current practice of PERA is to allow elected magistrates who are retired to apply for an exemption from membership in the Magistrate Retirement Act. This is because current law is inconsistent with how it allows for exemptions. Section 10-12C-4 NMSA 1978 requires a magistrate must become a member unless the magistrate applied for and received an exemption prior to July 1, 2014. But Section 10-12C-16 NMSA 1978 allows a retired member “who is elected to serve a term as an elected official” may receive an irrevocable exemption from membership. Section 10-12C-16 NMSA 1978 does not include the date restriction included in Section 10-12C-4NMSA 1978. Because magistrates are elected officials, PERA has been allowing retired magistrates to file an exemption pursuant to Section 10-12C-16 NMSA 1978. HB332 would align statute with this practice.

Section 2 of the bill clarifies when a member may receive a retirement benefit. Currently, a member may not receive a pension while still in office. HB332 would say a member could not receive a pension while serving a term for which service credit is accrued. As a result, a sitting member could not retire and begin receiving their pension while still in office. However, if that member leaves office, retires, and is subsequently elected as a magistrate, the person could file an exemption. A retired magistrate could then continue to receive retirement benefits while in office, but not for a term of office when they are accruing service credit.

TECHNICAL ISSUES

AOC notes existing law currently states employer contributions for a retired member be paid through AOC. However, this is not in keeping with current practice. Employer contributions are instead paid by the judicial district in which the member resides. Updating the statute to reflect current budget practices would eliminate any conflict.