F I S C A L   I M P A C T   R E P O R T

SPONSOR Vigil **DATE TYPED** 1/26/04 **HB** 170

SHORT TITLE Allow Educational Retirees to Return to Work **SB**

ANALYST Garcia

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
		Unknown, but Significant	Unknown, but Significant	Recurring	ERB Investment Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Public Education Department (PED)
Educational Retirement Board (ERB)

SUMMARY

Synopsis of Bill

The bill amends the Educational Retirement Act and eliminates the requirement of 22-11-25.1(A) that a retired member remain unemployed as an employee or independent contractor of a local administrative unit for at least 12 consecutive months from the date of retirement to the commencement of employment or reemployment in a local administrative unit. The bill would allow immediate return to employment, including as a substitute, without affecting the retired member's retirement benefits. The bill also includes clean-up language related to the name of the state education agency. A definition of "substitute" is also included.

Significant Issues

1) The bill eliminates the 12 month period a retiree has to wait to return-to-work and allows the retiree immediate opportunity of reemployment. This may conflict with IRS rules that require at least a 90 day period.

2) The easing of the 12 month waiting period can create an abnormal incentive for many members to retire early or when eligible and return-to-work. A potential adverse effect is that more senior employees can remain in administrative positions in the educational sys-

tem longer and create a strain on the personnel system where junior employees have a smaller opportunity to move up in the personnel system and may exit the education profession prematurely.

3) The 12 month waiting period elimination creates an incentive for early retirement. According to the ERB actuaries, this likely translates into a greater cost for the ERB Fund, where members are receiving benefits longer than actuarial valuations account for. The bill does not included any funding to cover this added cost.

FISCAL IMPLICATIONS

While this bill has no fiscal impact on PED or public schools, there could be a significant impact on the Educational Retirement Fund. Loosening the provision to return-to-work can encourage early retirement among members. As mentioned above, ERB actuaries believe this will create a significant cost to the ERB Fund.

ADMINISTRATIVE IMPLICATIONS

The loosening of the return-to-work provision will likely create an incentive for members to retire early or when eligible. As a note, many members do not retire when they are eligible and wait months to years to retire after eligibility. Consequently, the bill's provision may create an unusually high influx of retirees and thus strain the administrative process of filing for retirement. As a result, ERB may need additional operating resources and personnel to handle the potential increased workload.

According to ERB, the elimination of the 12 month waiting period could lead to IRS disqualification of the ERB retirement plan which could have massive tax consequences to members.

CONFLICT

The ERB indicates this bill conflicts with 1978 NMSA 25.1 which has limitations and requirements regarding members returning to work after retiring under the ERA.

TECHNICAL ISSUES

The definition of "substitute" is not the same as the definition of a substitute teacher as provided in 22-1-2 (Z). For the purposes of the Educational Retirement Act, a substitute may include substitutes in other capacities than that of a teacher.

According to the Public Education Department, it might be advisable to amend the language on page 1, line 20 of the bill to read "including as a substitute <u>or substitute teacher</u>, without affecting his retirement . . ." In this way, there would be no doubt that the new definition of "substitute" in the bill includes the existing definition of substitute teacher, which is a licensed position.

OTHER SUBSTANTIVE ISSUES

The June 30, 2003 actuarial valuation of the Fund has indicated ERB has an unfunded actuarial accrued liability (UAAL) of $1.7 billion. The amortization period, or the amount of years it takes to fully fund the liabilities, has jumped to 78 years. The Governmental Accounting Standards Board (GASB) has set a standard of 30 years for pension funds. In addition, due to a smoothing process involved in the actuarial valuation, ERB's actuaries have indicated the Fund is also due to recognize an additional $500 million in investment losses in the near future, which roughly amounts to a $2.4 billion UAAL estimate in the next year. The ERB actuaries expect the amortization period for the fund next to reach "never", which means at current funding and benefit levels, the Fund will never be fully funded.

Furthermore, the actuaries have calculated that roughly an additional $110 million in recurring money is required into the Fund to bring the amortization period back down to the GASB standard of 30 years. Consequently, any benefit enhancements into the ERA system will further erode the solvency of the Fund and detract from the ability of the ERB to get a handle on its enormous unfunded liability.

DG/yr