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## FISCAL IMPACT REPORT

SPONSOR Stewart DATE TYPED 2/12/04 HB 556

SHORT TITLE Educational Retirees Returning to Work SB \_\_\_\_\_

ANALYST Gilbert

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY04	FY05			
		NFI		PERA Fund
	Indeterminable	Indeterminable	Recurring	ERB Investment Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates: HB 531

Relates to: SB 406, HB 170, SJM 65

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Education Department (PED)  
 Public Employees Retirement Association (PERA)  
 Attorney General's Office (AGO)  
 NM Commission for Higher Education (CHE)  
 NM Public School Insurance Authority (PSIA)

#### No Response Received From

Educational Retirement Board (ERB)

### SUMMARY

#### Synopsis of Bill

House Bill 556 amends the Educational Retirement Act to allow licensed school employees of the Public Education Department (PED), the Educational Retirement Board (ERB), the Department of Health (DOH), the Corrections Department (NMCD) or the Children, Youth and Families Department (CYFD), *who are currently Educational Retirement Association (ERA) members*, to make a one-time irrevocable election to become members of the Public Employees Retirement Association (PERA). Any such election for membership applies prospectively and must be made on or before September 30, 2004.

This bill also amends the Educational Retirement Act to allow ERA retirees, who have retired from a local administrative unit other than the PED, to begin employment at the Public Education Department without suspension of retirement benefits and without a break in service.

Additionally, HB 556 clarifies that the 90-day waiting period for ERA retirees who return to work or contract with local administrative body cannot include any part of a summer or other scheduled break or vacation period.

### Significant Issues

ERA contributions of members who elect to become PERA members shall remain in the ERB fund and any future benefits shall be paid subject to the provisions of the Educational Retirement Act and Reciprocity Act.

After becoming a PERA member, affected ERA members will accrue future service credit under PERA. At the time of retirement, all service credit under both the ERA and PERA retirement systems will be subject to the provisions of the Public Employees Reciprocity Retirement Act.

### **FISCAL IMPLICATIONS**

According to PERA, this bill will have a positive actuarial impact on PERA. The affected employees will be eligible for PERA membership and both the member and their employer will be required to make associated employee and employer contributions to the PERA Fund. Since PERA membership will be prospective, no unfunded liability related to past ERA service credit will be assumed by the PERA fund.

Since the Educational Retirement Board failed to provide a bill analysis for this bill, or for its duplicate HB 531, it is unclear if this bill will have a negative actuarial impact on the ERA fund.

### **ADMINISTRATIVE IMPLICATIONS**

The LFC is unsure of the potential administrative impact of this bill since the Educational Retirement Board did not respond to a bill analysis request.

### **RELATIONSHIP, CONFLICT**

SB 406 allows faculty members at the state's 8 universities and colleges listed in Article 10 Section 11 of the New Mexico Constitution to have a specialized return-to-work program. The bill allows faculty members who are compensated from non-general fund dollars to retire and return-to-work immediately. Furthermore, the bill does not allow faculty members who are compensated by general fund appropriations to take advantage of the new provision.

## TECHNICAL ISSUES

### The Attorney General's Office listed the following technical problems:

Section 22-11-17(E) will now say "department" instead of "department of education". Similarly, the new Section 22-11-25.1(C) refers to "department" without specifying which department. These references to "department" could be ambiguous. It should be noted that "department" is not defined elsewhere in House Bill 556, and that Section 22-11-17(F) mentions at least three distinct departments. Elsewhere the bill specifies "public education department".

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Opinion letter. This is a staff analysis in response to the agency's, committee's, or legislator's request.

It should be noted that pursuant to a recent Court of Appeals decision, if any statutory sections amended by this bill are also amended by another bill or bills, the bill last signed by the Governor may be the only one that will be considered a valid law. See State v. Smith, Ct.App. No.s 24,253, 24,254 and 24,258 (filed 1/12/04), pet. for cert. pending.

### The Commission for Higher Education (CHE) listed the following technical problem:

This bill appears to be flawed in construction. Page 3, lines 2 – 5, indicate that licensed school employees of the Public Education Department, the ERA Board, the Department of Health, the Corrections Department and the Children, Youth and Families Department will not participate in ERA after July 1, 2004. Page 11, lines 12 – 21, provide for a one-time election by these same licensed employees to join the Public Employees Retirement Association (PERA) as long as that decision is made before September 30, 2004.

Those licensed employees who join PERA between July 1, 2004 and September 30, 2004 will apparently be covered by PERA. Any licensed employee that does not choose to join PERA within that time period will not be covered by either ERA or PERA. Any licensed employee hired after September 30, 2004 will not have a choice and also will not be covered by either retirement program since no provisions are included to shift them to PERA.

The bill should be amended to clearly spell out (in this legislation and the PERA statutes) what happens to individuals excluded from ERA participation after July 1, 2004 without the requirement or opportunity to join PERA.

### The Public Education Department (PED) outlined the following technical problem:

Paragraph 4 from lines 18 on page 2 to line 5 on page 3 seems contradictory. PED and board members are included in the definition of member and then excepted from the definition in the same sentence.

**OTHER SUBSTANTIVE ISSUES**

This bill contains a sunset clause that will only cover current affected employees. Future teachers coming to work for the above mentioned state agencies will continue to become members of ERA and will retire from that system.

HB 556 clarifies that the 90-day waiting period for ERA retirees who return to work or contract with local administrative body cannot include any part of a summer or other scheduled break or vacation period.

Qualified governmental plans, such as ERA, that must comply with Internal Revenue Code Section 415, which lists prohibitions against in-service distributions. This bill may conflict with 1978 NMSA 25.1, which has limitations and requirements regarding members returning to work after retiring under the ERA.

**LG/dm**