

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Campos DATE TYPED 02/08/05 HB _____

SHORT TITLE Return to Work for Educational Retirees SB 28

ANALYST Geisler

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			See Narrative		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Educational Retirement Board (ERB)

SUMMARY

Synopsis of Bill

Senate Bill 28 provides that certain higher education employees employed by the universities and colleges listed in Article XII Section 11 of the Constitution of New Mexico be granted a special exception from the Educational Retirements Act's ("ERA") return to work ("RTW") provisions and be permitted to return to work immediately after retirement from ERA without having to suspend retirement benefits.

All other members of the ERA system who retired after 2001 are required to wait one year from retirement before they can return to employment and not be required to suspend retirement benefits. Under Senate Bill 28 an employee would be eligible for this no-wait provision if they do not violate federal law to do so, their compensation does not come from the general fund and the employee is "responsible for grants or awards to the institution in a total of \$100,000 or more annually."

Significant Issues

According to ERB, the most significant issue is the cost to the ERA fund for providing the enhanced benefits as outlined in Senate Bill 28. ERA's actuaries have indicated that any provision that allows for an immediate return to work provision will entice members to retire earlier than planned and such earlier retirement will mean that ERB will pay a larger benefit over the lifetime

of the member. This could mean a significant cost to the plan. While the bill calls for such cost to be borne by the institution, the calculation of such costs would have to be made in each case, a costly and time consuming project that would fall squarely on the agency.

A second significant issue is that ERB would be required to conduct an actuarial study for each applicant, confirm where an administrative unit employee's funding actually comes from and verify that the member is not in violation of federal laws, particularly IRS regulations. This would create a severe administrative burden on ERB. There is no appropriation for additional ERA personnel to handle the increased duties this bill would create for the agency.

Also, problematic is the allowance of a select few ERB members to receive a special immediate RTW while all other members have to wait one full year. This will most likely create rancor among ERA members, or worse, initiate requests to grant similar benefits to all ERB members, (even those in the public schools who receive some federal funding), or open the door for abuse of the provisions by funneling compensation through third party payors.

ERB's actuaries have determined that the fund has a \$2.4 billion shortfall in its actuarial liabilities and therefore the Educational Retirement Board had voted to oppose benefit enhancements.

FISCAL IMPLICATIONS

There would be costs due to the early retirements and increase in administrative duties required. While the bill says that the actuarial costs could be recovered by the agency, the burden is on ERB to pay for an actuarial study each time a member applies for the provision under Senate Bill 28. ERB would have to pay for such costly studies regardless of whether the member eventually entered this RTW provision

ADMINISTRATIVE IMPLICATIONS

The Agency will require additional rules and procedures for this select group of members. This would entail how actuarial studies are to be solicited and the creation of complicated checks and balances to monitor the information submitted to the agency from the employers to make certain that all aspects of the law are complied with. This could increase significantly if there is the expected effort on the part of the rest of the ERA membership to lobby to receive the same enhanced no waiting period benefit for RTW to apply to them.

TECHNICAL ISSUES

The IRS has allowed a number of liberal retirement changes over the past few years. Some of these changes, similar to the one proposed, have not really been tested in the courts. In other words, there is no assurance that the bill could not run into difficulties with IRS interpretations of their rules and regulations. ERB could ask the IRS for a private letter ruling, however that process usually takes from one to three years to get a response

ALTERNATIVES

Higher Education employers could use other methods of retaining this select group of employers that does not cause the problems to the retirement fund as stated above.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

UNM officials claim that they will lose some faculty to out of state institutions when these faculty reach the requirements for a full retirement under the ERA system. For ERB, not passing this bill will relieve the problems it could cause as stated above.

GG/sb