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FISCAL IMPACT REPORT

ORIGINAL DATE 1-24-07

SPONSOR Larrañaga LAST UPDATED _____ HB 179

SHORT TITLE RETURN TO WORK FOR CERTAIN RETIREES SB _____

ANALYST Aubel

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
	NFI			Educational Retirement Board

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non- Rec	Fund Affected
Total		(Indeterminate)*			Recurring	Educational Retirement Board

(Parenthesis () Indicate Expenditure Decreases) *See Fiscal Impact

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
	See Fiscal Impact		Recurring	Public Employees Retirement Association

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$50.0		\$50.0	Non- Recurring	Educational Retirement Board

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with SB 86, SB 184, SB 310, HB 313

SOURCES OF INFORMATION

LFC Files

Response Received From

- Educational Retirement Board (ERB)
- Public Employee Retirement Association (PERA)
- Public Education Department (PED)
- Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

House Bill 179 amends the return to work (RTW) provisions of both the Educational Retirement Act and the Public Employees Retirement Act by reinstating an earnings limitation of \$25.0 thousand for retirees who initially return to work after July 1, 2007. Under this bill, pension benefits are suspended and the employee is removed from retirement once this salary cap is exceeded. In addition, it limits ERB members who retired prior to 2001 from entering RTW after July 1, 2007. HB 179 retains the January 1, 2012 RTW sunset date for ERB.

Retirees who have returned to work prior on or before June 30, 2007 would continue in their current status.

FISCAL IMPLICATIONS

PERA indicated that HB 179 may have a positive fiscal impact on its fund. It is assumed that the ability for a retired member to return to work after retirement is a factor in a PERA member’s timing of his or her retirement. PERA actuaries make assumptions regarding retirement trends for actuarial valuation purposes. In general, actuarial experience indicates that members are retiring at significantly higher rates during the first several years of service-based eligibility than currently assumed. For instance, since removing the earning limitation for retirees who return to work with affiliated-public employers, PERA has experienced historically heavier end-of-year retirements. Reinstating the earnings limit may reverse or slow this trend, triggering later retirements that would yield a gain to the fund.

PERA stated HB 179 will negatively impact its operating budget. Reinstating an earnings limit will require PERA to make additional changes to its recently implemented computer administration system. Every revision to the PERA Act’s RTW provisions results in a change order with associated costs to PERA’s existing contract with the vendor. For example, by

incorporating removal of the PERA's post-retirement earning limit into the pension system, PERA incurred approximately \$50 thousand change orders during FY05. If further revisions to the system are necessary in FY08, PERA will be required to seek a Budget Adjustment Request to cover the costs of these system changes.

AOC noted that a positive impact may be realized by a PERA-affiliated employer who hires a RTW employee (after the 90-day wait period is fulfilled) because the bill does not specify that either employee or employer makes contributions to PERA up to the proposed \$25 thousand earnings limit. Such unfulfilled contributions would, therefore, be a loss to the PERA fund, because current statute requires PERA-affiliated employers to pay the total actuarial cost of RTW employees.

AOC also pointed out that a negative budgetary impact would be incurred by an PERA-affiliated employer hiring a PERA during the 90-day sit-out period because the employer would be required to pay the full actuarial costs to PERA, including both employer and employee portions, as is the case currently for all PERA-related RTW employees. In this situation, the employee would not accrue additional service time under this plan, which would be a positive fiscal impact to the fund.

ERB noted that the latest actuarial report indicated there were no actuarial ramifications from the current RTW program on the ERB fund to date and, therefore, does not anticipate any fiscal impact on its fund due to actuarial experience if HB 179 is enacted.

SIGNIFICANT ISSUES

Currently, PERA has approximately 23,000 retirees; the number of retirees who have returned to work represents approximately 10-12% of annuitant payroll. It remains unclear whether the removal of the \$15 thousand earnings limitation for post-retirement employment in 2003 will require PERA's actuaries to modify the retirement trend assumptions used for valuation purposes.

NMSA 1978, Section 10-11-8(C)(2) provides that after December 31, 2006, no additional member contributions shall be required from reemployed PERA retired members. Effective January 1, 2007, PERA-affiliated employers that employ PERA retirees are required to make employer contributions sufficient to pay the full actuarial cost as determined annually by PERA. PERA's actuaries determined the sum of the current employer and employee statutory rates as sufficient to meet this actuarial cost to make the current RTW provisions cost-neutral to the fund.

Effective July 1, 2007, HB 179 would reinstate a calendar year earnings limitation of \$25 thousand for post-retirement employment with affiliated-public employers. Upon reaching the \$25 thousand earnings limitation, pension benefits for those affected retirees would be suspended, the former retired members would become contributing PERA members and would accrue service credit until employment terminates.

The earnings limitation proposed will not affect retired members who are already employed by an affiliated-public employer on or before June 30, 2007. These already reemployed retired members will be grandfathered in under existing law and their post-retirement employers will be responsible for paying employer contributions in an amount equal to the sum of the statutory employer rate and the statutory employee rate for the respective plan.

ERB has approximately 62,000 active members, 29,500 retired members, and approximately 925 members in a RTW status. Many ERB employers have used the RTW program to fill “hard to replace” positions. This bill would limit a person from taking a full time job under RTW if the yearly salary would exceed \$25 thousand, severely limiting the use of RTW.

There is concern that the current system, which allows retirees to return to work without any income limitations after sitting out year, is encouraging earlier retirements, which may have a long term negative impact of the solvency of the ERB fund.

The original intent of the legislation was to help alleviate the teacher shortage by enticing retired teachers to return to the classroom. The program was developed with the aid of ERB’s actuaries who stated that the program would be actuarially neutral if retirees were required to wait one year from retirement before returning to ERB employment. It was thought this would prevent large numbers of members from retiring earlier than normally contemplated to take advantage of a double stream of income.

Any provision that entices a member to retire earlier than normal means the fund will have to pay out retirement benefits longer than was actuarially expected, thus having a negative effect on the fund. As noted above, ERB’s actuaries have indicated that the RTW program has had no negative actuarial effect on the ERB fund. That means that so far the program has not been a financial burden to ERB. This, of course, could change in the future.

There has been some concern expressed that RTW programs have negatively impacted current employee morale and upward mobility. There can also be a public perception problem of a system which allows a member to receive both a salary and a pension.

PERFORMANCE IMPLICATIONS

PED has noted in the past that the return to work program has contributed significantly to addressing New Mexico’s teacher shortage since 2001. Enacting any provisions that would curtail the ability of ERB retirees to return to work would impact the gains made in addressing this shortage. It is important to note that other strategies to increase and retain the teacher pool have recently been implemented, such as the 3-tier salary schedule and the teacher mentor program.

Neither PERA or ERB claimed any significant implications for their performance measures.

ADMINISTRATIVE IMPLICATIONS

PERA stated that HB 179 would have an administrative impact on PERA. Under current law it is the employer’s responsibility to make contributions from the rehired retiree’s first day of employment. HB 179 will require PERA to further reprogram its pension administration computer system to return to an earnings limit for retirees who return-to-work after July 1, 2007. HB 179 would again require PERA to track a retired member’s earnings threshold and distinguish between post-retirement employment start dates.

In the short term, PERA will need to implement new electronic employer reporting procedures to address the two different groups of retired members - those reemployed under the existing law and those who reemploy after July 1, 2007. PERA anticipates employer reporting confusion

regarding post-retirement employment in the short term.

ERB stated that the RTW program is difficult to administer. Adding another layer of complexity to track the \$25 thousand limit would be both hard to implement and enforce.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 179 conflicts with Senate Bill 184, which accelerates the sunset date of the RTW program for ERB from January 1, 2012 to June 30, 2008.

HB 179 conflicts with Senate Bill 310, which effectively ends the current RTW programs by June 30, 2007 for PERA and ERB, one year earlier than SB 184, and substitutes a two-year limited program commencing July 1, 2007. The provisions for PERA include a \$15 thousand earnings limit on any RTW PERA-affiliated employee not meeting specific requirements.

HB 179 conflicts with House Bill 313, which is the duplicate bill of SB 310.

HB 179 conflicts with Senate Bill 86, which proposes a \$30 thousand earnings limit for PERA retirees and also significantly lengthens PERA's "sit-out" period from 90 days to 12 months, and will make the 12-month "sit out" requirement applicable to independent contractors as well.

All bills have provisions to grandfather RTW retirees prior to the date of enactment contained in the respective bills.

TECHNICAL ISSUES

HB 179 would amend Section 10-11-8 NMSA 1978 regarding PERA.

HB 179 would amend Section 22-11-25.1 NMSA 1978 and repeal Laws 2004, Chapter 2, Section 1 regarding ERB.

ERB noted that it currently has statutes and rules that allow a retiree to work part-time and earn up to \$15,000 per year or .25 FTE, whichever is greater, without having to suspend retirement. This program is separate from any specific RTW program. According to ERB, there would be little reason to have this form of RTW program as set forth in HB 179 because the \$25 thousand earnings limit contained in HB 179 essentially duplicates this part-time employment allowance, which is at most only \$10,000 less than this RTW bill, and in some cases, where the .25 FTE was employed in a \$100,000 position, no different.

In addition, ERB noted that HB 179 does not contain language for ERB specifying what happens when the earnings cap is reached and the pension is suspended. The status of the employee, service credit accumulation and contributions would need to be defined.

OTHER SUBSTANTIVE ISSUES

HB 179 provides that those retired members who are "initially re-employed" before July 1, 2007 will be covered under existing law. It is PERA's experience that retired members change positions during their reemployment much like active members. PERA requires retired members to submit termination notices and applications for certain changes in employment, such as

movement across retirement coverage plans within the same employer or a change in state agencies. If a reemployed retiree under existing law is required to submit a new application to PERA because of his or her employment/position change after July 1, 2007, he or she will be subject to HB 179's proposed earnings limit.

PROPOSED AMENDMENTS

PERA proposed an amendment to HB 179, which would reinstate the elected-official exemption for PERA retirees who are elected to office after July 1, 2007.

ALTERNATIVES

Several alternatives have been proposed, including maintaining the RTW program as currently enacted, sunsetting the programs entirely, or replacing the current RTW programs with limited versions to allow hard-to-fill positions be filled with retirees. Another option in this case is to consider applying the provisions to PERA only.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The current return to work program for ERB will continue until its statutory sunset date of January 1, 2012. The current return to work program for PERA will continue indefinitely.

MA/mt