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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 01/31/07  
**LAST UPDATED** 3/10/07     **HB** 313/aHHGAC/aHJC/aSFC

**SPONSOR** Heaton

**SHORT TITLE** Certain Retirees Returning to Work     **SB** \_\_\_\_\_

**ANALYST** Aubel

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
	See Fiscal Impact		Recurring	Public Employee 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
	\$50.0		\$50.0	Non-Recurring	PERA
NFI	\$50.0		\$50.0	Non-Recurring	ERA

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with HB 179, SB 86, and SB 184  
 Duplicates SB 310/aSEC/aSFC

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Educational Retirement Board (ERB) (ERA)  
 Public Employee Retirement Association (PERA)  
 New Mexico Corrections Department (NMCD)  
 Administrative Office of the Courts (AOC)  
 Public Education Department (PED)  
 Attorney General Office (AGO)

### SUMMARY

Synopsis of SFC Amendments

The Senate Finance Committee “cleanup” amendments delete the reference to the Educational Retirement Act in the bill’s title and make minor editorial changes. It also simplifies the provision of allowing political subdivisions with a “critical need” to rehire return-to-work employees into perpetuity by eliminating the two-year window period starting July 1, 2007 and adding the stipulation that the governing body must adopt a resolution every two years for a continuing need.

The SFC Amendment also retains the “grandfathering” of RTW employees in the system prior to June 30, 2007 by striking the HGAC Amendment 1.

#### Synopsis of the HJC Amendment

The House Judiciary Amendment strikes Section 2 in its entirety, which effectively eliminates any changes to the Education Retirement Act’s current return-to-work provisions.

#### Synopsis of the HHGAC Amendment

In regards to PERA, the House Health and Government Affairs Committee amendments restructure the “critical need” exception to benefit suspension by eliminating the two-year (2007-2009) “window period” during which PERA retirees may return to work at a political subdivision under the “resolution” provision, thus allowing that exception to continue indefinitely. Furthermore, the amendments limit the term of such “critical need” employment to two years, but allow subsequent “continuing need” resolutions for the same position. An amendment also clarifies that no employee contributions are required for retiree members who are re-employed under the return-to-work provisions of the PERA Act. The employer will be responsible for making both employer and employee contributions. Finally, HB 313, as amended, extends the mandatory 90-day sit out period for retirees who return to work with PERA affiliated employers to independent contractors as well.

In regards to ERA, the amendments are silent. Thus the original HB 313 language applies to ERA.

#### Synopsis of Original Bill

House Bill 313 addresses the issue of retirees returning to work (RTW) at an affiliated employer (PERA) or administrative unit (ERB). The bill effectively ends the current programs for both PERA and ERB on June 30, 2007 and substitutes a more restrictive version that would run from July 1, 2007 to June 30, 2009. This two-year RTW program would provide a means of placing qualified RTW employees in hard-to-fill positions that have been designated by resolution of respective governing bodies as “critical need” positions.

As it pertains to the PERA, HB 313 amends the PERA Act to reinstate an earnings limitation of \$15.0 thousand for retirees who initially return to work with a PERA-affiliated employer after July 1, 2007 before benefits are suspended. The earnings limitation would not be applicable to the certain “critical need” positions.

HB 313 would “grandfather” retired members who are already employed by an affiliated employer on or before June 30, 2007 under existing law for both pension plans.

## FISCAL IMPLICATIONS

A primary concern for RTW programs is the potential fiscal impact on fund solvency and whether the RTW programs encourage people to retire sooner than they would have otherwise. Any such program means that the pension is being paid out longer than actuarially anticipated. Sufficient numbers of retirees retiring earlier than anticipated could seriously impact fund solvency. PERA noted that HB 313 may discourage such early retirements and therefore, have a positive impact on its fund.

ERB related that its actuary has indicated that the RTW program has no fiscal impact on the funding of the retirement plan and concluded that HB 313 would probably not have a fiscal impact its fund solvency. However, past experience is not a guarantee of future results.

Both PERA and ERB indicated that RTW changes to their respective computer pension administrative systems would require up to \$50.0 thousand non-recurring operating budget to implement.

## SIGNIFICANT ISSUES

According to the AGO, because similar amendments were not made to the ERA portion of the bill, the amendments inject some disharmony between PERA and ERA retirees. Specifically, ERA retirees are still subject to the two-year (2007-2009) “window period” in order for the exception provision to apply for a “critical need.” In addition, the “critical need” exception during this limited period of time is without the clarification provided with respect to PERA retirees. In both cases, the current RTW provisions sunset on July 1, 2007 when the new salary cap trigger for the new benefit suspension takes effect. By statute under PERA and by rule under ERA, benefit suspension is subject to the ability to earn \$15 thousand without benefit suspension. In the case for ERB an employee may currently do so without any “sit-out” period.

PED stated that the return to work program was largely adopted by the Legislature in 2001 to address the critical teacher shortage that existed at that time. The teacher shortage, while no longer as serious as it was at that time, is still an issue in some areas of the state and in specific content areas, such as English Language Learner and Special Education. The RTW program provided approximately 900 teachers statewide in 2005-2006, 4 percent of the New Mexico’s teacher pool in public schools. PED predicted that HB 313 might result in taking some or many of those RTW teachers out of the pool, prompting another teacher shortage similar to the late 1990s.

PED also indicated that ending ERB’s current RTW program would most likely adversely impact New Mexico’s ability to meet the “highly qualified” teacher requirements under the federal No Child Left Behind program because the 900 teachers currently in the RTW program are the most experienced and highly qualified teachers they currently employ.

Effective July 1, 2007, HB 313 would reinstate a calendar year earnings limitation of \$15.0 thousand for post-retirement employment with affiliated-public employers. Upon reaching the \$15.0 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.

PERA noted a key policy decision is whether to reinstate an earnings limitation of \$15.0 thousand for PERA retirees who initially return-to-work after July 1, 2007 with a PERA-affiliated public employer before suspension of pension benefits. All retirees employed by the state on or after July 1, 2007 will be subject to HB 313's earnings limit.

The earnings limitation would not apply to: 1) retired members who are already employed by an affiliated-public employer on or before June 30, 2007 (who will be grandfathered under existing law); or 2) certain retired members who are reemployed between July 1, 2007 and June 30, 2009 by a "political subdivision of the state" whose governing body has adopted a resolution declaring the employment to be fulfilling a "critical need." PERA noted a second policy decision of whether to allow a two-year grace period for political subdivisions of the state (municipalities and counties, etc.) to employ certain retired members if their governing bodies have adopted a resolution declaring the employment to be fulfilling a "critical need."

PERA related that since removing the earning limitation for retirees who return to work with affiliated-public employers, PERA has experienced historically heavier end-of-year retirements. Currently, PERA has approximately 23 thousand retirees; the number of retirees who have returned to work represents approximately 10 percent to 12 percent of annuitant payroll.

ERB has approximately 925 retirees in the RTW program out of a total 29.5 thousand retirees. ERB stated that HB 313 would most likely reduce the number of those returning to work, which may cause some problems for certain employers who are having trouble filling certain positions after a member retires.

There has been concern expressed that RTW programs have negatively impacted current employee morale and upward mobility, particularly for the state employee system. 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**

NMCD expressed concern that HB 313 might hinder its ability to entice retired employees to return to work because their additional earning potential would only be \$15.0 thousand, unless they were willing to have their retirement benefits suspended. Small communities, in particular, have voiced the same concern over the ability to fill certain-hard-to-fill positions and see the current RTW program as a means of retaining or recruiting the qualified personnel that is required.

HB 313 would allow such limited instances to be treated under the "critical need" provision but would require a governing body to adopt a resolution declaring the position as "critical need."

## **ADMINISTRATIVE IMPLICATIONS**

HB 313 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 313 would again require PERA to track a retired member's earnings threshold and distinguish between post-retirement employment start dates, which is seen as an administrative burden.

PERA will also need to implement new electronic employer reporting procedures to address

three different groups of retired members - those reemployed under the existing law, those who reemploy after July 1, 2007 and do not meet the “critical need” requirement, and those who reemploy under the “critical need” provision during the two-year grace period. 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 RTW employees entering the system prior to July 1, 2007, the part-time employees entering under Section 2.82.2.11, as well as those entering under the two-year grace period, would be both hard to implement and enforce.

PED noted their RTW employees are filling a broad spectrum of job classifications. Each employer would need to adopt a resolution regarding each position, which will add another layer of bureaucracy that might hamper providing services to school districts and students.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB 313, as amended, no longer duplicates Senate Bill 310. Both bills include a “critical need” provision, which the other bills listed below do not. However, SB 310 retains the two year window for this back-to-work provision without the renewal of “continuing need.” In addition, the HB 313 amendments add the “independent contractor” clause to the bill and clarify that the employee shall not pay a contribution.

HB 313, as amended, conflicts with Senate Bill 184, which has an alternate sunset date of the RTW program for ERB of June 30, 2008.

HB 313, as amended, conflicts with House Bill 179, which places a \$25 thousand earnings limit on both PERA and ERB and maintains the current ERB RTW sunset date of June 30, 2012.

HB 313, as amended, 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.

### **TECHNICAL ISSUES**

OAG notes that because of the structure of the bill includes the 90-day wait period as paragraph 2 under Section C, it is unclear whether PERA-affiliated employees earning under \$15.0 thousand may also return immediately without any wait period, or if they are subject to a 90-day wait period.

In addition, AGO points out that the “continuing need” provision allows for additional resolutions to be adopted for the same position, but does not specify for the period of time for which the subsequent resolution applies. One could assume the same two-year period for each resolution for an indefinite period of time.

HB 313 would amend the Section 10-11-8 NMSA 1978 for PERA and Section 22-11-25.1 for ERB. HB 313 would repeal Laws 2004, chapter, Section 1.

AOC noted that HB 313 as drafted provides for an affiliated employer's governing body to determine its own "critical need" positions. This could lead to a variety of "critical needs" among the different affiliates. All responding agencies expressed concern that governing bodies will interpret "critical need" in disparate and conflicting manners.

Section 2.82.2.11 NMAC allows ERB members to return to work for a greater of \$15.0 thousand or 0.25 FTE salary without pension suspension, irrespective of the RTW provisions. No 12 month "wait-out" period is required.

The two-year grace period in HB 313 does not specify whether that position must be vacated by the retiree on the June 30, 2009 sunset date of the RTW program, which is clarified by the amendments for PERA.

### **OTHER SUBSTANTIVE ISSUES**

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 change in state agencies. Under HB 313, 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 313's proposed earnings limit (unless such employment meets HB 313's "critical need" exception).

Effective January 1, 2007, PERA-affiliated employers that employ PERA retirees are required to make employer contributions in the amount specified in the PERA Act or in a higher amount adjusted for the full actuarial cost as determined annually by PERA. PERA's actuaries have conducted a supplemental actuarial cost determination study to measure the financial effect of allowing PERA retirees to be rehired after a 90-day "sit out" period without suspending pension benefits and recommended that PERA collect contributions on all such retirees in an amount equal to the sum of the statutory employer rate and the statutory employee rate for the plan applicable to the reemployed retiree's position. By doing so, PERA will collect between 96 percent and 111 percent of the costs generated by the PERA retirees who return to work under existing law and RTW will be cost-neutral to the fund.

### **ALTERNATIVES**

HB 313, as amended, highlights the concerns regarding the substantial administrative impact on PERA to track three categories of retirees and the salary cap. One possible solution is to eliminate the \$15.0 thousand salary cap and replace the 3-month wait-out period with the 12-month wait out period that has, so far, worked as a deterrent for people to "double-dip" or hold positions open for retirees in ERA. This would also address the intent of improving active state employee morale and upward mobility.

Because the amendments do not extend to ERA, one option is to delete the section pertaining to ERA and allow its return-to-work program to continue as is until its sunset date of June 30, 2012. This option would promote the state's ability to meet its "No Child Left Behind" federal mandates with a larger pool of highly qualified teachers, while giving PED direction to make sure those current programs to develop the younger teacher pool succeed. There is no indication that abuse of RTW exists with the ERA program; rather, it appears to be working just as the

Legislature intended when enacting the original ERA RTW provisions.

Several bills have been introduced to address the concerns stated above. The core elements that could be combined for a substitute bill would be as follows:

1. Sunset the current RTW plans by a certain date (HB 179, HB 313, SB 310, SB 184). If the date is June 30, 2008 (from SB 184), current ERB retirees sitting out their 12 months would be able to complete their waiting period. It will also address the concern for employee morale and upward mobility by setting a definitive end date for plans.
2. Include an exception provision, but specifying “critical need” may prevent conflicting or widely-diverse “critical needs” from developing. (From HB 313, SB 310). SB 86 identifies “peace officer or “wastewater facility operator”, for example. This will address the small communities’ need to find qualified people for hard-to-fill positions. If a 12-month “wait-out” period is adopted for PERA (See #5 below), a shorter 90-day “wait-out” period could apply to these “critical need” positions.
3. If a grace period for these “critical need” positions is specified, clarify whether those hired within that grace period can continue on beyond its ending date, or if once hired in that position (“commencing”) they can continue indefinitely.
4. Include the elected-official exclusion that PERA recommends.
5. Adding a salary ceiling seems to be an administrative burden on PERA and ERB, as well as other affected plans, to track all the different classes of retirees at their respective retiree dates and salary restrictions. If the intent is to use a salary ceiling to discourage RTW, then an option would be to apply a 12 month wait-out period for PERA (with the noted exceptions above in #3.) While the future experience could change, it appears that the 12 month wait-out period might serve as a sufficient deterrent to those who would otherwise retire earlier to “double-dip.” SB 86 applies this 12-month wait period to independent contractors as well.
6. Grandfather the existing RTW employees as specified in HB 179 with whatever sunset date is chosen.
7. One option is to allow the ERB RTW plan to sunset on its original date of June 30, 2012 to provide PED sufficient time to develop and implement strategies tailored to meeting their current “special need” position shortages and to develop “highly qualified” teachers from the non-RTW teacher pool. The 12 month “sit-out” period appears to provide sufficient deterrent to premature retirements to protect plan solvency for the short term.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

For PERA, return-to-work provisions will continue as currently provided by statute, including employer paying the sum of employer and employee contributions to the fund. In addition, the potential incentive to retire will remain with a minimal 90-day “wait-out” period.

The ERB RTW program, with its 12 month “sit-out” period, will continue until its sunset date of June 30, 2012.

## **AMENDMENTS**

OAC interpreted the bill to exclude state agencies to participate in the two-year grace period by determining “critical need” among state government positions and recommended the following amendment:

1. On page 3, line 6, after “subdivision” add a new section:

*“or for an agency of state government in which the state personnel board or respective governing board of that personnel plan, has approved a position to fill a critical need of state government operations:”*

PERA provided the following suggested amendments:

1. On page 5, line 20, after “work;” insert the word “or”.
2. On page 5, line 21, add a new section:

(3) a retired member who is elected to serve a term as an elected official; provided that:

- (a) the retired member files an irrevocable exemption from membership with the association within thirty days of taking office;
- (b) the irrevocable exemption shall for the elected official’s term of office.

### **POSSIBLE QUESTIONS**

1. How would retirees be handled that are currently in their “wait-out” period but would not be completed by any new sunset date?

MA/mt