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FISCAL IMPACT REPORT

ORIGINAL DATE 2-5-07

SPONSOR Vigil, R. LAST UPDATED _____ HB 411

SHORT TITLE Law Enforcement Academy Retirement Plan SB _____

ANALYST Aubel

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	See Fiscal Impact		General Fund

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
	\$4.0			\$4.0	Non-Rec	General Fund
		\$50.0		\$50.0	Non-Rec	PERA
		See Fiscal Impact			Recurring	General Fund
Total				See Fiscal Impact		

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 280, HB 595, HB 765, HB 800, SB 576
Conflicts with SJM 6

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Employees Retirement Association (PERA)

Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

House Bill 411 creates a new member coverage plan under the PERA Act allowing for Law Enforcement Academy Instructor members to be eligible to retire with 20 years of service credit with a 3.5 percent pension factor. For all or most of the affected members, this would represent a benefit enhancement from a 25-year retirement plan and a 2.5 or 3 percent pension factor.

HB 411 requires the Public Employees Retirement Board to conduct an actuarial study to determine the contribution rates necessary to fund the enhanced benefits of HB 411.

FISCAL IMPLICATIONS

HB 411 requires PERA to conduct an actuarial study to determine the contribution rates necessary to fund the enhanced benefits of HB 411. All other agencies or groups requesting benefit enhancements have paid for the cost of the required actuarial studies, which have averaged about \$4.0 thousand each. According to PERA, the cost of the actuarial report would most likely fall on DPS as a budget item.

PERA's operating budget will be negatively impacted by HB 595. Every new coverage plan added to the PERA Act requires system changes to PERA's computerized pension administration system. Similar changes in the past have cost up to \$50.0 thousand.

Without the actuarial report to determine the amount required in contributions or as an upfront appropriation to cover the increased unfunded liability, the fiscal impact is unknown. However, based on the actuarial studies for other plan enhancements, the fiscal impact, either as a non-recurring upfront appropriation from the general fund, or as a recurring employer contribution as part of the DPS operating budget, could be substantial.

SIGNIFICANT ISSUES

HB 411's newly created coverage plan would be applicable to a member who is employed full time as a certified instructor at the New Mexico Law Enforcement Academy. The member must be in the Law Enforcement Academy Instructor Plan 1 for 18 months prior to being eligible for the proposed benefit enhancements.

PERA noted that the primary policy issue is whether Law Enforcement Academy Instructors should receive the increased benefits of a 20-year retirement plan with a retirement benefit calculated using a 3.5 percent pension factor. Currently this benefit structure is only provided to Municipal Police Plan 5 and Municipal Fire Plan 5 members, who have the commonality of hazardous duty with the potential for loss of life.

Article XX Section 22 of the Constitution of the State of New Mexico requires that an increase in benefits under the retirement system be adequately funded to preserve the PERA fund's actuarial soundness. HB 411 provides no appropriation for the unfunded accrued actuarial liability ("increased liabilities") that the enhanced retirement benefits will cause. Nor does it specify the percent contributions of employee and employer to maintain solvency by amortizing

the increase liability over a period, usually 30 years. Rather, HB 411 requires PERA to provide an actuarial study no later than December 31, 2007 to determine “the total percent of law enforcement academy instructor member salaries that is actuarially necessary to fund” the new plan. HB 411 then sets the employee contribution rate as 30 9/10 percent of this total percent and the employer’s contribution rate at 69 1/10 of the total contribution rate.

Another policy issue is whether the employer and employee should bear the cost of the increased contribution rates as required by the proposed benefit plan structure.

ADMINISTRATIVE IMPLICATIONS

According to PERA, PERA would be required to coordinate each election for adoption of the new coverage plan by certified Law Enforcement Academy Instructors employed by affiliated-public employers statewide. In addition, PERA would be required to move affected membership, along with corresponding assets and liabilities, from their current coverage plans into the proposed Law Enforcement Academy Instructors Member Coverage Plan 1.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 411 is related to several other bills which seek to enhance retirement benefits for specific groups: House Bill 595 and Senate Bill 576 (E-911 operators and supervisors); House Bill 595 (District Attorneys and related employees); House Bill 765 (Probation Officers), and House Bill 800 (Motor Transportation and Investigative Officers).

HB 411 conflicts with House Joint Memorial 6, which proposes a two-year moratorium on benefit enhancement legislation affecting the Public Employees Retirement Association.

TECHNICAL ISSUES

PERA noted a possible drafting issue with HB 411, whereby the affected personnel are not clearly defined, as follows:

“There are some sections of the proposed bill that suggest that the members who would be made eligible for the new coverage plan created by this bill could be employed by multiple PERA-affiliated public employers. For example, the definition of “law enforcement academy instructor member” refers to members who are “employed full time by an affiliated public employer as a certified instructor at the New Mexico law enforcement academy.” This language also appears in Section 2 (Applicability) of the bill. The final sentence of Section 2 also suggests that the members of law enforcement academy member plan 1 could be employed by multiple affiliated public employers. Because PERA has not worked with the group proposing this new coverage plan in determining the actuarial costs, PERA does not know if the potential members of the proposed new coverage plans are employed by multiple affiliated employers or a single affiliated employer such as the State of New Mexico”.

The personnel would need to be clearly defined for the actuarial number of affected employees to be determined.

OTHER SUBSTANTIVE ISSUES

DPS noted that HB 411 would enable New Mexico Law Enforcement Academy Instructors to retire at 70 percent with 20 years of service. Currently, they have to serve 25 years to be eligible for retirement. DPS expressed its concern that this might create inequity between the instructors and other personnel within DPS. DPS also asserted that, New Mexico Law Enforcement Academy Instructors operate in a safe environment, where as commissioned personnel are out in the field and exposed to hazardous conditions daily. The agency stated that New Mexico State Police Officers are required to work a minimum of 20 years and 10 months to be eligible for retirement at 75 percent and are required to work 22 years and six months to be eligible for retirement at 80 percent. DPS concluded that HB 411 would provide New Mexico Law Enforcement Academy Instructors with better retirement benefits than some of the personnel of the Department of Public Safety.

PERA stated that the consensus of the PERA Board is that the unfunded accrued actuarial liability for benefit enhancements should be pre-funded through a special appropriation as a safeguard to the Fund’s solvency. Pre-funding would be consistent with the constitutional mandate.

Furthermore, PERA maintained that a 36-month mandatory waiting period before members are eligible to retire from the plan would be more appropriate than the 18-month requirement stated in HB 411 to allow for payment of contributions at higher levels toward the enhanced benefit prior to retirement. This longer waiting period will lessen the impact of increased liabilities on the new plan that may occur if a number of members immediately retired with enhanced benefits sooner than normally projected.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Statewide certified law enforcement academy instructors will continue to be covered by their present PERA member coverage plan or plans with the benefits available under the respective plan.

AMENDMENTS

In addition, PERA maintains that HB 411 should clarify that the provisions apply equally to normal and disability retirements. PERA explained that it received a judicial decision stating that a similar statutory provision requiring a minimum amount of service credit to qualify for enhanced benefits, as drafted, should not apply to disability retirees because the statute did not expressly state that it did. The mandatory waiting period is an actuarial funding mechanism for enhanced retirement benefits and should apply equally to normal and disability retirees by explicit statutory terms. Members who are required to retire due to disability before the completion of the waiting period will still be allowed to retire in accordance with their previous PERA member coverage plan. PERA included a suggested amendment to address this issue below.

**LAW ENFORCEMENT ACADEMY INSTRUCTOR MEMBER COVERAGE PLAN 1—
SERVICE CREDIT REQUIRED FOR LAW ENFORCEMENT ACADEMY INSTRUCTOR
MEMBERS.—**

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Notwithstanding other provisions of the Public Employees Retirement Act, to qualify for normal or disability retirement or payment of normal or disability retirement benefits under law enforcement academy instructor member coverage plan 1, a law enforcement academy instructor member shall have 36 months of service credit earned under law enforcement academy instructor member plan 1.

MA/nt