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## FISCAL IMPACT REPORT

ORIGINAL DATE 2-08-07

SPONSOR Gutierrez LAST UPDATED \_\_\_\_\_ HB 893

SHORT TITLE Public Retirement for Military Service SB \_\_\_\_\_

ANALYST Aubel

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	.01	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
<b>Total</b>		\$50.0		\$50.0	Non-Recurring	PERA

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Employees Retirement Association (PERA)

Veteran's Services Department (VSD)

### SUMMARY

#### Synopsis of Bill

House Bill 893 amends the PERA Act to provide up to five years of free service credit to a PERA member who leaves the employ of a PERA-affiliated employer, enters the uniformed services of the United States and is subsequently employed by the United States or a uniformed service of the United States rather than a PERA-affiliated employer.

### FISCAL IMPLICATIONS

PERA states that HB 893 will negatively affect the PERA fund by increasing the unfunded liability of providing this enhanced benefit. Article XX, Section 22 of the Constitution of the State of New Mexico requires that an increase in benefits of a plan under PERA must be

adequately funded to preserve the actuarial soundness of the fund. The funding may be pre-funded by a total appropriation to cover the present value of the actuarial unfunded liability, or the statutory contribution rates need to be increased to amortize the new unfunded liability over 30 years. HB 893 does not contain an appropriation or an increase in contribution rates to fund the full actuarial cost of the service credit it proposes to provide certain PERA members who do not return to PERA-affiliated employment after active uniformed services active duty. The unfunded liability of this enhanced benefit is unknown because no actuarial study was performed.

PERA notes that any change to benefits requires a change in the computerized retirement system. Such changes have cost up to \$50 thousand.

### **SIGNIFICANT ISSUES**

VSD maintains that HB 893 would grant those PERA members to become vested in PERA by allowing them to apply for credit of up to five years if they leave the uniformed service and apply for this credit within 30 days, if they are subsequently employed by the federal government or other uniformed service.

Employees that are called into active duty are covered by the federal Uniform Services Employment and Reemployment Rights Act (USERRA). One of the key components of the Act is to establish reemployment rights for those persons whose absence from an employment position is necessitated by service in the uniformed services.

With respect to pension plan benefits, PERA notes that a person reemployed under USERRA shall be treated as not having incurred a break in service with the employer by reason of periods of service in the uniformed services. Federal law requires that periods served by a person in the uniformed services shall, upon reemployment, be deemed to constitute service with the employer for vesting and benefit accrual purposes under the pension plan. The employer is liable for funding employer contributions and the reemployed person is entitled to accrued benefits only to the extent that the reemployed person makes the required employee contributions.

Currently, the PERA Act already provides for more generous benefits following reemployment with a PERA-affiliated employer than is required by federal law outlined above. Section 10-11-6 of the PERA Act, authorizing free intervening service credit for PERA members who are called to military service and then return to their PERA-affiliated employment became effective in 1987. Since then, the cost of free intervening military service credit is substantially subsidized by the retirement system.

In 1998, the state constitution was amended to require funding in connection with benefit enhancements. Accordingly, Article 22, Section XX of the Constitution of New Mexico prohibits any expansion of eligibility for free service credit without accompanying funding. Any future expansion of the category of persons eligible to receive free intervening military service credit must provide a funding source for the full actuarial present value of the amount of the increase in the member's pension as a consequence of the intervening service credit.

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

HB 893 conflicts with Article XX, Section 22 of the Constitution of New Mexico, as noted.

**OTHER SUBSTANTIVE ISSUES**

According to PERA, because those members affected by HB 893 do not return to PERA-affiliated employment, the service credit granted does not meet the Internal Revenue Code definition of “intervening service.” Rather, the service credit HB 893 proposes falls within the Internal Revenue Code Section 415(n) definition of “permissive service credit.” Permissive service credit is subject to an aggregate total of 5 years. If the member has already purchased permissive credit under the PERA Act, any service granted under HB 893 must be reduced by that amount.

**ALTERNATIVES**

A vested employee with military time may purchase up to five years of that military time at a reduced rate than is normally charged for purchasing service credit.

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

PERA members who are called to active military duty while employed by a PERA-affiliated employer are eligible to receive free service credit for the period of their active duty/deployment if they return to their PERA-affiliated employment within 30 days of being discharged from uniformed service and if they comply with the administrative requirements of NMSA 10-11-6 and PERA’s rules. Any service of less than five years with a PERA affiliate would be lost if the member is called up for active duty and decides not to return to a PERA-affiliated employer. Employee contributions are returned upon request.

**POSSIBLE QUESTIONS**

1. What is the unfunded liability that would require funding under the New Mexico Constitution?

MA/csd