

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

ORIGINAL DATE 2-13-07

SPONSOR Lopez LAST UPDATED _____ HB _____

SHORT TITLE Credit Service for Seasonal Employees SB 181

ANALYST Aubel

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	PERA

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Employees Retirement Association (PERA)

No Response

Legislative Council Services (LCS)

SUMMARY

Synopsis of Bill

Senate Bill 181 amends the Public Employees Retirement Act to allow a PERA member who was employed by the legislative branch during a regular session of the Legislature, who did not acquire service credit because he or she was designated as a seasonal employee, to purchase the service credit associated with legislative periods of employment.

FISCAL IMPLICATIONS

Because SB 181 requires the member to pay the purchase cost for the service credits, the enhanced benefit is properly funded as required by Article XX, Section 22 of the New Mexico Constitution, and the PERA fund will not incur any negative fiscal impact. It is not known at this time how many PERA members will request to purchase service credit under SB 181.

PERA's operating budget will be negatively impacted by SB 181. Changes to how service credit is posted to a member's account will require significant changes to PERA's recently implemented computerized pension administration system, with associated costs, under PERA's existing post-warranty contract with the system vendor. For example, by incorporating removal of the PERA's post-retirement earning limit into the pension system, PERA incurred

approximately \$50 thousand in change orders during FY05. If further revisions to the system are necessary in FY08, PERA will be required to seek a BAR to cover the costs of these system changes.

SIGNIFICANT ISSUES

SB 181 proposes to change the definition of “service credit” as that term is commonly used throughout the PERA Act. SB 181 will allow certain statutorily-excluded employees to purchase service credit in a different manner than other PERA members. Specifically, SB 181 proposes that service credit be posted based on legislative-session employment rather than by sufficient contributions being reported to PERA on behalf of a member. PERA service credit is earned in one-month increments in which an employee works 20 or more hours in a 40-hour week and is paid 50 percent or more of his or her salary.

SB 181 proposes to retroactively change a PERA member’s eligibility for PERA membership and accrual of service credit by allowing certain statutorily-excluded employees to purchase service credit.

It is a policy decision for the legislature whether a PERA member who was employed by the legislative branch should be eligible to purchase service credit if the employee was excluded from PERA membership because the employer designated him or her as a seasonal employee.

ADMINISTRATIVE IMPLICATIONS

The administrative impact on PERA will be in calculating the purchase cost and processing the added service credit. In addition, PERA will be required to amend its regulations to address the statutory changes to the PERA Act.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 181 conflicts with **NMSA 1978, Section 10-11-4(B)(3)**, which provides for mandatory PERA membership unless a statutory exemption exists. The PERA Act excludes employees designated by their public-affiliated employer as seasonal or student employees from membership.

SB 181 conflicts with **NMSA 1978, Section 10-11-4**, which provides that personal service rendered to an affiliated-public employer by a member shall be credited to the member’s account in accordance with board rules and regulations. **PERA Rule 2.80.600 NMAC** provides that members who are full-time employees shall acquire one month of service credit for every calendar month in which the member is paid 50 percent or more of his or her monthly salary as reported by the member’s affiliated public employer. PERA Rule 2.80.600 further provides that members who are part-time employees shall acquire one month of service credit for every calendar month in which the member works 20 or more hours per week, totaling 40 or more hours in an 80-hour pay period. 2.80.600.10.A.2, 4 NMAC.

TECHNICAL ISSUES

SB 181 provides that, subject to certain conditions, a “member” employed by the legislative branch may purchase statutorily-excluded service credit. The PERA Act [**NMSA 10-11-1(M)**]

defines member as a “currently employed, contributing employee of an affiliated public employer, or a person who has been but is not currently employed by an affiliated public employer and who has not retired and has not received a refund of member contributions.” Thus SB 181 will not address the targeted group of legislative-branch employees designated as seasonal workers who are not currently PERA members.

On the other hand, SB 181, as written, *would* allow a PERA member to accrue more than one month of service credit for service in a calendar month contrary to **NMSA 1978, Section 10-11-4 (A)**. Specifically, SB 181 would allow that member to purchase 3 months of service credit for a 60-day session and 2 months of service credit for a 30-day session. As stated above, this is contrary to how service credit is calculated pursuant to the PERA Act by providing for a “block” of service credit for a time period rather than calculating service credit on reported wages.

OTHER SUBSTANTIVE ISSUES

NMSA 10-11-3(B) specifically excludes “seasonal” employees from PERA membership. Once employment has been designated as “seasonal,” an employer does not remit contributions under any coverage plan for that employee. For example, in the case of retirees who return to work for the legislature, neither the employer or the reemployed retiree pay contributions because the worker is employed in a category of employment that is clearly excluded from PERA coverage under Section 10-11-8 (D)(2) of the PERA Act.

SB 181 proposes that legislative employees have the ability to purchase service credit if they did not receive service credit “solely because the affiliated public employer designated the employee as seasonal”. The PERA Act requires employees designated as seasonal employees to be notified in writing of this designation and the consequences thereof with respect to PERA membership, service credit and benefits. NMSA 1978, Section 10-11-3(C).

SB 181 does not require a PERA member to be vested with five or more years of service credit to purchase legislative worker service credit. All other service credit purchases under the PERA Act are conditioned on the member’s vested status (including military, airtime, etc). It should be noted that unless the legislative worker is already a PERA member he or she will continue to be ineligible to purchase their excluded service credit under SB 181. As a result, certain legislative workers will not be able to take advantage of the service credit purchase provisions provided by SB 181.

Further, SB 181 does not address the situation of certain legislative workers concurrently employed by public employers covered by a single state retirement system. Allowing these legislative workers to accrue overlapping service credit for the same period of employment under the PERA retirement system is precluded both by statute and regulation.

According to PERA, SB 181 provides for the purchase of service credit for a narrowly defined group of PERA members formally designated by their employer as excluded from membership. SB 181 conflicts with the general concept of a defined benefit plan that similarly situated members should earn and receive similar benefits. PERA members who were designated as “seasonal” employees in other capacities are not eligible to purchase service credit for such periods of excluded employment.

PERA funds can only be used for member-related expenses.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The PERA Act will continue to exclude seasonal employees from PERA membership. The PERA Act will continue to limit the purchase of optional service credit earned either through prior service to a public employer, military service, or time spent as a civilian prisoner of war.

MA/csd