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## FISCAL IMPACT REPORT

ORIGINAL DATE 01/22/08  
 SPONSOR Lujan, B. LAST UPDATED 02/05/08 HB 213/aHAFC  
 SHORT TITLE Alternative Retirement for Certain Officers SB \_\_\_\_\_  
 ANALYST Aubel

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY08	FY09	FY10	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		\$625.2 \$312.6	\$625.2	\$1,250.4 \$937.8	Recurring	General Fund
	\$50.0			\$50.0	Non- Recurring	PERA Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates SB 231

### SOURCES OF INFORMATION

LFC Files

Original Bill

Responses Received From

Department of Public Safety (DPS)

Public Employees Retirement Association (PERA)

HAFC Amendment

Responses Received From

Public Employees Retirement Association (PERA)

No Response From

Department of Public Safety (DPS)

### SUMMARY

#### Synopsis of HAFC Amendment

The House Appropriations Finance Committee Amendment to House Bill 213 makes the 20 percent enhancement of credit service for the Department of Public Safety Motor Transportation and Special Investigation officers apply to service credit earned after January 1, 2009 -- which makes the enhanced retirement benefit prospective. This change will eliminate the approximate \$4.0 million unfunded actuarial accrued liability to the State Police Member and Adult Correctional Officer Plan (renamed the "State Officer Member Coverage Plan 1" in the amendment.)

The amendment also incorporates the technical changes suggested by PERA to clarify that only eligible members will vote in an election to adopt the plan. Assuming the eligible members vote to adopt the plan, the additional annual employer contribution for DPS will be \$625.2 thousand, with \$312.6 thousand occurring in FY09 for 6 months.

Synopsis of Original Bill

House Bill 213 proposes to provide motor transportation officers and special investigations members employed by the Department of Public Safety (DPS) the same benefits as provided under State Police Member and Adult Correctional Officer Coverage Plan 1. Specifically, motor transportation officers and special investigations members, if approved by an election of the affected membership, would be eligible for a 20 percent service credit increase in all past and future credited service, a 3 percent pension factor, and an 80 percent pension maximum now only available to state police and adult correctional officers.

HB 213 renames “State Police and Adult Correctional Officer Plan” [NMSA 1978, Sections 10-11-27 through 10-11-32] “State Officer Coverage Plan 1.”

**FISCAL IMPLICATIONS**

The membership affected by the proposed legislation has received an actuarial cost determination for the requested increase in retirement benefits. The estimated increase in actuarial unfunded liabilities to the PERA Fund is calculated at approximately \$4 million. No appropriation is made to fund this increase in unfunded actuarial accrued liabilities.

The current combined average contribution rate paid for the affected 145 members is 24.01 percent of payroll (7.42 percent member and 16.59 percent employer). The contribution levels under the existing State Police Member and Adult Correctional Officer Member Coverage Plan 1 (member 7.6 percent; employer 25.1 percent) represent an increase of .18 percent in member contributions and an 8.51 percent increase in employer contributions over current contribution levels paid for the membership affected by HB 213.

The Department of Public Safety would incur a combined increase in its operating budget of approximately \$625.2 thousand per year for paying the higher employer contribution rate if the members covered under State General Plan 3 were moved to the State Police and Adult Correctional Officer Member Coverage Plan 1, as noted in the chart below:

<b>State Police and Adult Correctional Officer Member Plan 1</b>	<b>Employee: 7.6%</b>	<b>Employer: 25.1%</b>
State General Member Plan 3: Motor Transportation Ave. salary - \$49,407	<b>Employee Increase</b>	<b>Employer Increase</b>
Current: 7.42% Employee 16.59% Employer	\$89	\$4,204
<b>TOTAL PAYROLL</b>		<b>\$504.5 thousand</b>
State General Member Plan 3: Special Investigator Ave. salary - \$56,713		
Current: 7.42% Employee 16.59% Employer	\$102	\$4,826
<b>TOTAL PAYROLL</b>		<b>\$120.7 thousand</b>

DPS notes that the vestment period is increased from 18 months to 36 months in an effort to reduce the fiscal impact on the State Police and Adult Correctional Officer Member Coverage Plan 1 by allowing a positive cash flow into the fund. However, PERA maintains that the impact to the fiscal fund would be less with the enhanced benefits being prospective rather than based on past service credit.

PERA's notes that it's operating budget will be negatively impacted by HB 213. If further revisions to the PERA's computer pension administration system are necessary in FY08, PERA will be required to seek a budget authority request to cover the costs of these system changes.

### **SIGNIFICANT ISSUES**

The key policy is whether motor transportation division (MTD) officers and special investigations division (SID) officers employed the Department of Public Safety (DPS) should receive a 20 percent service credit enhancement, including enhancement of all past accrued service credit earned prior to passage of this legislation. DPS maintains that HB 213 is intended to bring parity and equality to all commissioned police officers within the Department of Public Safety, who by the nature of their work, are exposed to hazardous, life-threatening conditions on a daily basis while protecting the life and property of the public.

Sixty-two law enforcement agencies offer a 20-year retirement for commissioned officers in New Mexico. Of 31 commissioned officers leaving MTD between February 8, 2005 and July 20, 2007, 14 cited finding better benefits with other law enforcement agencies as a reason for their leaving. However, difficulty in recruiting and retaining public safety officers has been noted across the United States as agencies find themselves competing for a smaller pool of qualified candidates.

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 213 provides no appropriation for the \$4 million unfunded accrued actuarial liability ("increased liabilities") that the enhanced retirement benefits will cause. Rather, HB 213 provides for a combined employee and employer contribution rate of 32.70 percent to amortize the \$4 million unfunded accrued actuarial liability over 30 years. PERA Board Resolution No. 08-04 opposes any benefit enhancement legislation that is not prospective and that may create an unfunded liability to the retirement systems it administers unless such unfunded accrued liability is pre-funded from sources other than the retirement trust fund.

### **PERFORMANCE IMPLICATIONS**

DPS reports that the MTD currently has 123 commissioned officers with 25 vacancies. Two of these officers are currently retired and are classified as "return to work" and would not be included into future retirement projections. The SID currently has 22 commissioned officers with 9 vacancies. DPS also notes that MTD and SID are very concerned at their high employee turnover rates coupled with the increasing difficulty in recruiting and retaining employees as evidenced by nearly a 27 percent turnover in trained commissioned personnel within a 36 month period within the Motor Transportation Police. The estimated cost to train these officers to a basic level is \$1.5 million or an estimated \$50.0 thousand per recruit.

DPS maintains that high officer turnover and high vacancy factors have had a negative effect on attaining departmental performance measures. High officer turnover has also resulted in increased advertising, recruiting and training expenditures. The high cost required to hire an officer (advertising/recruiting, interviews, background investigation, polygraph, drug testing, medical and psychological exams) coupled with basic law enforcement academy training will be greatly reduced with reduced officer turnover.

### **ADMINISTRATIVE IMPLICATIONS**

PERA will be required to coordinate separate elections for adoption of the new coverage plan by 1) the motor transportation officers, and 2) special investigations members of the Department of Public Safety on or before October 1, 2008. PERA will also be required to move affected membership, along with corresponding assets and liabilities, from State General Plan 3 into the proposed State Officer Member Coverage Plan 1.

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

Duplicates Senate Bill 231.

Relates to House Bill 165, which proposes to create District Attorney Plan 1 under the PERA Act allowing district attorney members to be first eligible to retire with 20 years of service credit with a 3.5 percent pension factor.

### **TECHNICAL ISSUES**

Page 8, line 23 states that the retirement board shall certify that “a majority of the members voting have voted to approve adoption of the plan.” PERA maintains that line 23 should be corrected to state, “a majority of eligible members have voted to approve adoption of that plan.”

Page 9, line 5 states that the retirement board shall certify that “a majority of the members voting have voted to approve adoption of the plan.” PERA maintains that line 5 should be corrected to state, “a majority of eligible members have voted to approve adoption of that plan.”

### **OTHER SUBSTANTIVE ISSUES**

The mean years of service for commissioned officers within MTD are approximately 8.3 years. DPS maintains this number has slowly been declining due to tenured officers transferring to other law enforcement agencies. With the transfer of MTD into the State Police and Adult Correctional Officer Coverage Plan 1 with a three year vestment period, 13 officers will be eligible to retire in FY12. During the transition period, eligible commissioned officers must retire under the State General Member Plan 3 and not the State Police and Adult Correctional Officer Member Coverage Plan 1.

PERA proposes that HB 213 should be amended to apply prospectively to future service credit earned by motor transportation officers and special investigations after the effective date of the legislation.

PERA notes that numerous member groups have proposed to be combined with the State Police/Hazardous Duty Division with State Police Plan 1 benefits in recent years. The

cumulative effect of multiple groups moving into the division is unknown. As benefit levels increase, the incentive to retire earlier may further increase costs. This is especially true when retirees can return to work without suspension of pension benefits. However, PERA points out that the surplus-funded status of the State Police Member Plan 1 declined from 133 percent to 125 percent since the addition of the adult correctional officer members in 2004 while during the same timeframe the funded status of the overall PERA fund stayed level. PERA maintains that this decline may be indicative of what happens when member groups are added to well-funded plans and past service credit is enhanced.

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

Motor transportation officers and special investigations members will continue to be covered by State General Plan 3 and are eligible to retire at any age with 25 or more years of service credit. Their retirement benefit will continue to be calculated with a 3 percent pension factor and are capped at 80 percent of their final average salary. For State General Plan 3, members pay 7.42 percent of their salary in contributions and their employer pays 16.59 percent of salary in contributions.

DPS maintains that this action will result in continued difficulties in attracting and retaining qualified police officers to the department in an already highly competitive job market. Secondly, DPS foresees a continuation of tenured officers leaving the agency to work for law enforcement agencies that offer a competitive retirement program. Thirdly, DPS points to further delays in the 10 years of efforts by the department to bring parity to divisions within the law enforcement program.

#### **AMENDMENTS**

"10-11-27. STATE [~~STATE MEMBER AND ADULT CORRECTIONAL~~] OFFICER MEMBER COVERAGE PLAN 1--APPLICABILITY.--

A. State [~~police and adult correctional~~] officer member coverage plan 1 is applicable to state police members who are not specifically covered by another coverage plan and to adult correctional officer members, motor transportation officer members and special investigation officer members. The credited service of a state police who had held the permanent rank of patrolman, sergeant, lieutenant or captain and does not hold an exempt rank or who is assigned to the aircraft division as a pilot [ø] and the credited service of an adult correctional officer member, shall have actual credited service increased by twenty percent for the purposes of state [~~police~~] officer member coverage plan 1. The actual credited service earned after July 1, 2009 of a motor transportation officer member or special investigation officer member shall be increased by twenty percent for the purposes of state officer member coverage plan 1.