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FISCAL IMPACT REPORT

ORIGINAL DATE 1-31-08
 SPONSOR Varela LAST UPDATED 2-3-08 HB 616
 SHORT TITLE Educational Retirement Contributions SB _____
 ANALYST Aubel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY08	FY09	FY10	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		.01		See narrative	See narrative	See narrative

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Educational Retirement Board (ERB)

Higher Education Department (HED)

SUMMARY

Synopsis of Bill

House Bill 616 amends the Educational Retirement Act (Act) relating to contributions for members whose salaries exceed a certain federal limit.

The first change to the Act in Section 22-11-21 will now limit the contributions of members to match the Internal Revenue Service (IRS) 401(a) (17) limitations and provide a mechanism that will place the contributions in the ERB fund in four equal amounts in the four quarters of the year to ensure that these contribution will translate into service credit for the entire year for these members.

HB 616 also eliminates Section 22-11-47(D), which attempted to set up a pour-over provision for the amounts of contributions that would have exceeded the 401(a) (17) limits. This pour-over provision would have placed these contributions for a narrow group of employees of the New Mexico Health Sciences Center into the Alternative Retirement Plan as controlled by Sections 22-11-47 through 22-11- 52. ERB states this section has proven to be impossible to administer due its confusing language and unintentional loss of service credit to affected members.

The Department of Higher Education notes that HB 616 adds a new section to 22-11-21 NMSA 1978 that will bring New Mexico's Educational Retirement Act into compliance with the Internal Revenue Code.

Finally, the bill provides a temporary provision to determine the cost of bringing the affected members current on employer contributions to assure correct service credit.

FISCAL IMPLICATIONS

ERB maintains that the affected employer, which appears to involve only the University of New Mexico, will make the proper contributions into the ERB fund to cover the amount of contributions that should have been made between 1996 and July 2008 to cover the employees whose contributions were incorrectly limited.

The amount that is required will be determined by the employer and ERB based upon the proper contributions as required under the Act and is indeterminable at this time. The operating budget for UNM would need to include this additional contribution, either as a single non-recurring expenditure or recurring expenses, depending on the final agreement between UNM and ERB. UNM has several funding sources, so the fund affected is indeterminate.

SIGNIFICANT ISSUES

Both responding agencies state that HB 616 addresses fairness issues regarding the affected employees.

According to HED, approximately 40 current faculty at the University of New Mexico who have worked an entire year have only received three quarters of service credit for every four quarters worked due to the confusion in implementing 22-11-47.D. The department asserts that passage of HB 616 will ensure all employees through out the state who are members of ERB will receive four quarters of service credit when four quarters have been worked.

ERB emphasizes that this bill will no longer require a member to make contributions to the ERB fund over and above any benefit that they could receive for those contributions. In other words, this bill would make sure that every member's final average salary is based upon their actual contribution to the fund and will no longer require these affected members to pay a higher percentage into the fund than other employees do to receive their benefits.

In addition, ERB suggests that this unequal contribution levels for certain highly compensated individuals could prove to make it more difficult to recruit doctors and other highly skilled faculty, such as coaches, etc. to New Mexico institutions of higher education.

ADMINISTRATIVE IMPLICATIONS

ERB notes that this bill would eliminate part of a statute that is impossible to administer.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

ERB claims that without these statutory changes, some employees would not receive service credit for the full year that they worked. Some members would be making contributions into the fund for which they could not receive an equitable benefit. The Act would also continue to contain a section that is impossible to administer.

POSSIBLE QUESTIONS

1. If this bill does not pass, is ERB at risk to lawsuit from the affected employees?