

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill No:** SB 145

**49th Legislature, 1st Session, 2009**

**Short Title:** Eliminate End Date for Return to Work

**Sponsor(s):** Senators Cynthia Nava and Mary Jane M. García

**Analyst:** Kathleen Forrer

**Date:** February 3, 2009

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**FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE**

**Bill Summary:**

SB 145 amends the *Educational Retirement Act* (ERA) to remove the January 1, 2012 “sunset” date from the return to work (RTW) provision. This provision enables retired members of the Educational Retirement Fund (ERF) to resume working for an Educational Retirement Board (ERB) employer without having to suspend their retirement so long as they have not worked for an ERB employer for a period of 12 consecutive months.

**Fiscal Impact:**

SB 145 makes no appropriation.

**Fiscal Issues:**

According to both the ERB and the Department of Finance and Administration (DFA), SB 145 “should have little or no fiscal effect” on the ERF because the bill makes no changes to the requirements for participation in the RTW program.

**Issues:**

In its analysis of SB 145, the Public Education Department (PED) states that, during school year 2007-2008, approximately 1,200 teachers, or 5.0 percent of the public school teachers statewide, were employed under the RTW program. PED indicates that allowing the RTW program to sunset could lead to “serious teacher shortages” and an adverse effect on “New Mexico’s ability to meet the ‘highly qualified’ teacher requirements under [the *No Child Left Behind Act of 2001*].”

The New Mexico Higher Education Department (HED) cites similar concerns: “The RTW program is also beneficial to higher education institutions as there are many professions confronting shortages of trained employees. For example, the RTW program helps the UNM School of Medicine address shortages in many fields....”

The ERB, HED, and DFA all suggest that delaying rather than eliminating the sunset date might be preferable. In its analysis, ERB notes that such an extension “facilitates future review and possible modification of the RTW program that might be necessary to address changed conditions that affect the [fund], retirees, and ERB employers.”

## **Background:**

- In 1957, the Legislature enacted the ERA to provide the education community with a vehicle for retirement through establishment of the ERF.
- According to the ERB, as of February 2, 2009, there are 183 contributing employers, including public school districts and charter schools, higher education institutions, special schools such as the New Mexico School for the Blind and Visually Impaired, and other state agencies such as PED. (See Attachment.)
- Management of the ERF is under the ERB, which consists of a board of seven members, the categories of which are statutorily determined and include the secretary of public education, the state treasurer, one member elected by the members of the New Mexico Association of Educational Retirees, one member elected by National Education Association-NM, one member elected by the American Association of University Professors, and two members appointed by the Governor.
- In order to attract and retain quality teachers in the profession, the 2001 Legislature enacted an LESC-endorsed amendment to the ERA to allow retired or eligible-to-retain educators to receive retirement benefits and salary following a one-year break in service beginning January 1, 2002, and continuing until January 1, 2012.
- The 2003 Legislature enacted legislation to include those ERA retirees who retired before the return-to-work provisions of ERA were enacted and either laid out a year and went back to work and suspended retirement benefits or worked part time after they retired and did not suspend retirement benefits.
- The 2003 Legislature enacted a measure to amend the *Public Employees Retirement Act* (PERA) to allow PERA retirees who wait 90 days prior to returning to work to accept employment with a PERA-affiliated employer without suspension of their pension benefits but also without accruing service credit. In addition, both the employee and the employer were required to make contributions to the fund. Subsequently, the 2004 Legislature amended the act to specify that, beginning January 1, 2007, the employer would make both the employer's and the employee's contributions to the fund.
- The 2003 Legislature also enacted a measure that (1) exempts PERA retirees from the ERA requirement to make contributions to the ERA fund if they accept employment with a local ERA unit; (2) prohibits them from purchasing service credit for this time; and (3) requires the local administrative unit to make contributions to the ERA fund on behalf of the employee.

## **Related Bills:**

SB 399 *Local Educational Retirement Unit Audits*  
HB 246 *PERA Return to Work for Certain Employees*  
HB 453 *Educational Retirement Service Credits*

**EDUCATIONAL RETIREMENT BOARD  
CONTRIBUTING EMPLOYERS  
(February 2, 2009)**

**SCHOOL DISTRICTS**

Alamogordo	Las Cruces
Albuquerque	Las Vegas
Animas	Las Vegas West
Artesia	Logan
Aztec	Lordsburg
Belen Consolidated	Los Alamos
Bernalillo	Los Lunas
Bloomfield	Loving
Capitan	Lovington
Carlsbad	Magdalena
Carrizozo	Maxwell
Central Consolidated	Melrose
Chama Valley	Mesa Vista
Cimarron	Mora
Clayton	Moriarty
Cloudcroft	Mosquero
Clovis	Mountainair
Cobre Consolidated	Pecos
Corona	Peñasco
Cuba Independent	Pojoaque Valley
Deming	Portales
Des Moines	Quemado
Dexter Consolidated	Questa
Dora Consolidated	Raton
Dulce	Reserve
Elida	Rio Rancho
Espanola	Roswell
Estancia	Roy
Eunice	Ruidoso
Farmington	San Jon
Floyd	Santa Fe
Fort Sumner	Santa Rosa
Gadsden	Silver Consolidated
Gallup-Mckinley Co.	Socorro
Grady	Springer
Grants-Cibola	Taos
Hagerman	Tatum
Hatch Valley	Texico
Hobbs	Truth or Consequences
Hondo Valley	Tucumcari
House	Tularosa
Jal	Vaughn
Jemez Mountain	Wagon Mound
Jemez Valley	Zuni
Lake Arthur	

## **CHARTER SCHOOLS**

La Academia de Lengua y Cultura	La Resolana Leadership Academy
Academy for Technology and the Classics	Las Montanas Charter School
AIMS@UNM (Albuquerque Institute of Math and Science)	Learning Community Charter School
Albuquerque Talent Dev. Sec. Charter School	Lindrith Area heritage School
Aldo Leopold High School	Los Puentas Charter School
Alma D'Arte Charter High School	Monte del Sol
Amy Biehl High School	Montessori Elementary
Anansi Charter School	Montessori of the Rio Grande
Bataan Military Academy	Moreno Valley High School
Bridge Academy Charter School (CLOSED 06/30/08)	Mosaic Academy Charter
Career Academic Technical Academy	Mountain Mahogany Community School
Carinos de los Ninos	Native American Community Charter
Cesar Chavez Community School	North Albuquerque Cooperative Community Charter
Charter School 37	North Valley Academy (formerly Horizon Academy Northwest)
Christine Duncan Community School	Nuestros Valores
Corrales International School	Public Academy for Performing Arts
Cottonwood Classical Prep School	Ralph J. Bunche Academy
Cottonwood Valley	Red River Valley
Creative Education Preparatory Institute #1	Robert F. Kennedy
Creative Education Preparatory Institute #2	Roots and Wings
Deming Cesar Chavez	San Diego Riverside
Digital Arts and Technology Academy	School for Integrated Academics and Technologies
East Mountain High School	Sidney Gutierrez
El Camino Rael Academy (Horizon Academy South)	South Valley Academy
Gordon Bernell Charter School	Southwest Primary Learning Center
Horizon Academy West	Southwest Secondary Learning Center
Jefferson Montessori Academy	Taos Municipal
La Academia de Esperanza	Turquoise Trail
La Academia Dolores Huerta (La Academia de Idiomas Y Cultura)	Twenty-First Century
La Luz del Monte Learning Center	Village Academy
La Promesa Early Learning Center	Vista Grande High School
	Walatowa
	Youth Build Community School

## **OTHER PUBLIC SCHOOLS**

Valmora High School

## **COLLEGES AND UNIVERSITIES**

Central New Mexico Community College	NM State University
Clovis Community College	NM Institute of Mining & Technology
Eastern NM University (Portales)	Northern NM Community College
Eastern NM University (Roswell)	San Juan College
Luna Community College	Santa Fe Community College
Mesalands Community College	University of New Mexico
NM Highlands University	Western NM University
NM Junior College	

## **SPECIAL SCHOOLS**

NM Military Institute	NM School for the Visually Handicapped
NM School for the Deaf	University Hospital

## STATE AGENCIES

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Central Regional Education Coop  
Department of Finance and Administration <sup>1</sup>  
High Plains Regional Education Coop  
Lea Regional Education Coop #7  
NM Activities Association

Northeast Regional Education Coop  
Pecos Valley Regional Education Coop #8  
Regional Educational Center #6  
Region IX Educational Coop  
Southwest Regional Education Coop #10

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<sup>1</sup> DFA sends the ERF contributions to the ERB for state agencies that have employees covered by the *Educational Retirement Act*. The agencies listed in the Educational Retirement Board's 2007 *Annual Report* are the Department of Corrections, the Public Education Department, the Department of Health, the Department of Vocational Rehabilitation, the Educational Retirement Board, and the Youth Diagnostic Center.