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FISCAL IMPACT REPORT

ORIGINAL DATE 01/19/11
LAST UPDATED 02/03/11 **HB** _____

SPONSOR Griego, P.

SHORT TITLE PERA Eligibility For Mutual Domestic **SB** 43

ANALYST Aubel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Administrative		Minimal*	Minimal*	Minimal*	Non-recurring	PERA
Employer Contributions		\$3.1-\$41.2*	\$3.1-41.2*	\$6.2-\$82.4	Recurring	Mutual Domestic Water Asso.

(Parenthesis () Indicate Expenditure Decreases)

*See narrative.

PENSION SOLVENCY

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	Minimal*		Recurring	PERA

(Parenthesis () Indicate Revenue Decreases)

*PERA total contributions, which would increase revenue, would depend on the number of employees entering the plan. The number of potential employers and the number of employees electing PERA membership are unknown. Pension liabilities for those employees would accrue. As long as contributions covered the normal cost of the pension liabilities, assuming all assumptions hold, PERA assumes the overall impact would be minimal.

Relates to SB87

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Employees Retirement Association (PERA)
 New Mexico Municipal League (NMML)

No Response From

New Mexico Environment Department (NMED)

SUMMARY

Synopsis of Bill

Senate Bill 43 amends the Public Employee Retirement Act to allow members of mutual domestic water consumers associations (MDWCAs) to be eligible for membership in PERA. Staff members of MDWCAs, including water system operators, would be able to participate in a defined benefit plan.

FISCAL IMPLICATIONS

PERA indicates SB43 will have a minimal fiscal impact on PERA operations relating to administrative costs to hold elections and process applications.

The analysis assumes that the MDWCAs would join one of the two open municipal plans and not start a new plan. The incremental cost to employers to pay the PERA pension contributions would depend on the plan chosen, the number of employees covered, and the statutory rates for the employer contributions. The current statutory rates for FY12 for the two open municipal plans are as follows:

FY12 Statutory Rates		
	Municipal Plan 1	Municipal Plan 2
Employee	7%	9.15%
Employer	7%	9.15%
TTL	14%	18.30%

Assuming an average salary of \$45,000, the employer would have an incremental cost beginning in FY12 that would range from \$3,150 thousand for one employee in Plan 1 and \$4,117.50 for one employee in Plan 2. Multiplying the single employee cost by 10 creates an estimated range from one employee in the lower cost plan to 10 employees in the higher cost plan.

Estimated Range		
	1 Employee	10 Employees
Municipal Plan 1	\$ 3,150.00	\$ 31,500.00
Municipal Plan 2	\$ 4,117.50	\$ 41,175.00

This cost would be recurring. In a prior analysis for a similar bill in the 2009 session, NMED noted that it is possible that the MDWCA may not have the resources to hire an operator at a competitive salary if PERA is mandatory. Given the likely scenario that the MDWCAs would be relatively small and have more limited resources, this analysis assumes that the employers would not “pick up” up to 75 percent of the employee’s contribution, as is allowed under Section 10-11-5 NMSA 1978.

Normally, prior to accepting new class members in PERA or creating a new retirement plan within PERA, PERA requires an actuarial study be performed to assure that the inclusion of the new class or plan will not negatively impact PERA as a whole. In this case, an actuarial study was not provided and PERA’s analysis does not directly address this issue but states the fiscal impact would be “minimal.”

SIGNIFICANT ISSUES

In 2009, NMED provided the following background information for Senate Bill 231, which is a very similar bill to Senate Bill 43. Although NMED did not respond to the request for an analysis for SB43, it is reasonable to assume that the analysis would remain applicable:

Currently, there is little incentive for water system operators and other water system staff to maintain long-term careers with smaller MDWCAs because those organizations can not compete with the salaries or benefits provided by municipalities and water and sanitation districts. Typically, water system operators begin their careers with MDWCAs but quickly move on to municipalities or water and sanitation districts because of the better benefits and/or salaries. That inability for MDWCAs to compensate water operators can have an adverse impact on public health because water system operators provide the first line of defense against water borne disease outbreaks. In addition, the inability to attract and retain competent, well trained water system operators can cause water systems to be out of compliance with New Mexico drinking water regulations that require every public water system to retain a certified water system operator. Approximately 40 percent of public water systems do not retain a certified operator and are out of compliance with this important regulation. SB 231 would give MDWCAs an additional tool to attract and retain staff, meet the requirements of retaining a certified operator, and potentially attract more people to the water industry.

PERA provides the following discussion that concludes MDWCAs would qualify as a governmental plan:

The PERA Act specifically provides that only "public employers" can affiliate with PERA so long as they fall within the meaning of "governmental plan" as used in Section 414(d) of the Internal Revenue Code. The Internal Revenue Code requires that to qualify as a "governmental plan," a plan must be "established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of the foregoing." Currently, the statutory definition of "public employer" includes "the state, any municipality, city, county, metropolitan arroyo flood control authority, economic development district, regional housing authority, soil and water conservation district, entity created pursuant to a joint powers agreement, council of government, conservancy district, irrigation district, water and sanitation district, water district and metropolitan water board, including the boards, departments, bureaus and agencies of a public employer."

Since 2006, a mutual domestic water consumers association has been defined by law as a political subdivision of the state. NMSA 1978, Section 3-29-3 (2006). In Moongate Water Company, Inc. v. Dona Ana Mutual Domestic Water Consumers Association, 2008-NMCA-143, the New Mexico Court of Appeals concluded that a mutual domestic water consumers association is a "special function governmental unit" immune from suit under the New Mexico Antitrust Act. Nevertheless, although the PERA Act's definition of "public employer" already includes the "state" and its "boards, departments, bureaus and agencies," the Act does not specifically encompass "political subdivisions" or "special function governmental units."

The Internal Revenue Code broadly includes plans established and maintained for employees by a “political subdivision” of the state within the ambit of governmental plans. Therefore, SB43’s proposed expansion of the statutory definition of “public employer” to include mutual domestic water consumers associations as one of the enumerated entities eligible for PERA affiliation will comply with the requirements of the Internal Revenue Code and is consistent with the tax-deferred status of PERA as a 401(a) governmental plan.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 87 proposes to increase the PERA contributions for State General Plan 3 and Municipal Fire and Police plans by 2 percent for four years (total of 8 percent.) PERA has indicated it might have to request an increase for the other Municipal plans in 2012.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

MDWCA’s will remain unable to offer a defined benefit pension plan through PERA that municipalities and water and sanitation districts can provide.

MA/svb:mew