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FISCAL IMPACT REPORT

ORIGINAL DATE 02/09/11

SPONSOR Jennings LAST UPDATED _____ HB _____

SHORT TITLE Retired State Police to be Undersheriffs SB 324

ANALYST Graeser

REVENUE (dollars in thousands)*

| Estimated Revenue | | | Recurring or Non-Rec | Fund Affected |
|-------------------|---------------------|---------------------|----------------------|---------------|
| FY11 | FY12 | FY13 | | |
| | (\$249.0)-(\$440.0) | (\$249.0)-(\$440.0) | Recurring | PERA |

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY11 | FY12 | FY13 | 3 Year Total Cost | Recurring or Non-Rec | Fund Affected |
|--------------|------|-------------------------|-------------------------|-------------------------|----------------------|---------------|
| Total | | (\$219.0)- (\$387.0) | (\$219.0)- (\$387.0) | (\$438.0)- (\$774.0) | Recurring | Local Gov |

(Parenthesis () Indicate Expenditure Decreases)

*See Fiscal Implications

Conflicts with House Bills 57 and 142 and Senate Bill 242
Relates to Senate Bill 87

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Employees Retirement Association (PERA)
Administrative Office of the Courts (AOC)
Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

Senate Bill 324 amends the PERA Act to allow retired state police officers to return to work (RTW) with PERA-affiliated employers as undersheriffs or deputy sheriffs without suspending their pensions.

FISCAL IMPLICATIONS

The bill would reduce the operational expenses for employers hiring exempted RTW employees re-entering the work force for undersheriffs and deputy sheriffs because pension contributions would not be paid by the employer on their behalf. The number of such positions that could be filled by RTW employees in New Mexico's 33 counties under the bill is unknown. Assuming 1-5 RTW undersheriffs and 20-30 deputy sheriffs produces a low of \$219.0 thousand to a high of \$387.0 thousand, based on the current Municipal Police Plan 5 contribution rates and assuming the maximum "pick up" rate of 75% for the five RTW undersheriffs and for the deputy sheriffs (employee rate of 16.30% and employer rate of 18.50%).

PERA acknowledges that the reduction in operating costs to local entities hiring the exempted RTW employees means reduced revenue for the fund:

Undersheriffs and deputy sheriffs are fulltime salaried positions. Both positions are appointed by a sheriff elected to fill a four-year term. If these positions are made exempt from the return-to-work provisions of the PERA Act, the PERA receives no contributions to the fund for the position during that four-year term.

Using the same 1-5 RTW undersheriff and 20-30 deputy sheriffs scenario produces a range of \$249.0 thousand to \$440.0 thousand in lost contributions to PERA. A secondary fiscal impact to the fund would occur due to the opportunity cost of not earning an investment return on the lost contributions. This impact would appear minimal.

PERA is currently requesting contribution increases for the Municipal Police and Municipal Fire Retirement Plans of 8 percent scheduled over four years due to the impaired funding status of these plans (Senate Bill 87).

SIGNIFICANT ISSUES

According to PERA, prior to RTW legislation implemented in 2004, PERA retirees had an option of returning to work for a PERA affiliate and earning up to \$15,000 each calendar year. Because of the low earning limit, retirees were allowed to supplement their retirement income and were not viewed as "double dippers."

The 2004 RTW legislation allowed retirees to return to work without regard to a salary cap. Seeing the unintended consequence of the growth in "double-dippers," the Legislature passed stricter provisions on the PERA RTW program, effective June 30, 2010. One of the unintended consequences of this legislation was that it did not reprise the \$15,000 cap, leaving no provisions for PERA retirees contemplating seasonal, temporary or part-time work.

PERA notes this affected many PERA retirees, including:

- Election workers;
- School crossing guards;
- Municipal summer program workers;
- Senior center transportation drivers and aides;
- Court bailiffs and security guards to cover vacancies until filled; and
- Other retirees who are employed for a limited time at usually low pay to help the areas described.

None of these categories of RTW workers are included in this bill, although the bill does restore the exemption for undersheriffs, which had been deleted in the 2010 legislation and adds deputy sheriffs as a new exemption. Local governments have testified that undersheriffs and deputy sheriff positions can be difficult to fill with qualified non-retirees and the exemption would improve public safety. These are full-time positions, so would not be eligible to return to work under a \$15,000 per year cap.

PERA notes the underlying problem with this bill and similar bills introduced in this session:

The competing interest of the need for experienced law enforcement employees must be weighed against the retirement system's fiduciary duty to remain solvent and provide retirement benefits for its members, retirees and their beneficiaries.

ADMINISTRATIVE IMPLICATIONS

PERA provides the following assessment of the bill's administrative impact:

In the short term, PERA anticipates employer reporting confusion regarding post-retirement employment. PERA's public relations staff will also have to provide specific training to County clerks, Human Resources and Payroll department employees on reporting reemployed retirees as deputy sheriffs or undersheriffs.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 324 conflicts with House Bill 142, which provides somewhat broader exemption that includes election workers, crossing guards and undersheriffs and executive secretaries to sheriffs.

Senate Bill 324 conflicts with HB 57, which reinstates a \$15,000 earnings limit for retired PERA members who return to work with PERA-affiliated public employers but does not specify by type of position. That bill also does not include exemptions for undersheriffs or deputy sheriffs.

Senate Bill 324 also conflicts with SB 242, which provides only one exemption to the PERA Act's return-to-work provisions for precinct board members for elections.

OTHER SUBSTANTIVE ISSUES

On the issue of improving public safety, AOC offers the following suggestion:

The Judiciary has a longstanding need of improved courthouse security. Many courts do not have a magnetometer at the court entrance, much less security staff to oversee the device and provide security services throughout the rest of the courthouse. Retired law enforcement officers provide ideal candidates for such positions with the court. SB 324 could be modified to allow retired law enforcement officers to return to work as court security officers without their having to suspend their pensions.

PERA provides greater background detail on the RTW program:

From 1987 through 2003, a PERA retiree who returned to work with an affiliated public employer would have their pension suspended when they earned one hundred percent or more of the amount which causes a decrease or suspension of benefits under the federal social security program or \$15,000, whichever was less. *See* NMSA 1978, §10-11-8(C)

(1987). In 2000, the earnings limit for federal social security recipients was repealed in federal law. In 2003, the Legislature repealed the earnings cap for retirees, allowing retirees to receive both a pension and salary.

In 2010, the Legislature repealed the back-to-work provisions of the PERA Act; after July 1, 2010 a retiree who returns to work with an affiliated public employer will have his or her pension suspended. PERA has received many inquiries regarding the absence of an earnings cap for certain seasonal and part-time employee groups, including school crossing guards, recreational seasonal workers, poll workers, etc. Historically, the \$15,000 per year earnings cap addressed these hiring concerns without an actuarial impact to the PERA Fund and without providing exclusion to a specific employee group.

ALTERNATIVES

PERA suggests that an alternative would be to “reinstate a \$15,000 earnings limit for all retired PERA members who return to work with PERA-affiliated public employers rather than a limited exception for a specific employee group.”

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Sheriffs would not be able to hire retired state police officers to fill the critical position of undersheriff or deputy sheriff unless the RTW employee suspended his or her pension.

LG/svb