LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS

Bill Number: SB 51 **50th Legislature, 2nd Session, 2012**

Tracking Number: .187908.1SA

Short Title: Educational Retirees Returning to Work

Sponsor(s): Senator George K. Munoz

Analyst: Kathleen Forrer **Date: January 29, 2012**

ENDORSED BY THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

Bill Summary:

SB 51 amends the *Educational Retirement Act* to remove the requirement that a retired Educational Retirement Board (ERB) member who participates in the Return to Work (RTW) program make nonrefundable contributions to the Educational Retirement Fund in an amount equal to the contributions that would be required of an active ERB member.

Fiscal Impact:

SB 51 does not contain an appropriation.

In it analysis, the ERB states that SB 51 would reduce annual employee contributions to the Educational Retirement Fund by an estimated $6.0 million in FY 13 and an estimated $6.125 million in FY 14. ERB bases this estimate on the FY 12 contributions received through November, adjusted by 2.0 percent per year to account for the combined effect of increases in participation in the RTW program and any possible salary increases.

Fiscal Issues:

According to the ERB, the RTW program was intended to allow ERB employers to address possible employment needs but was not intended to have a negative effect on contribution cash flows to the Fund or have a negative actuarial impact on the Fund. ERB believes that "the amendment proposed in SB 51 would negatively affect contribution cash flows, while at the same time creating an additional liability for the Fund."

Substantive Issues:

In 2011, legislation was enacted to require a retired ERB member who returns to employment at a local administrative unit prior to January 1, 2022 to pay to the Educational Retirement Fund an amount equal to the contributions that would be required if the employee were still an active member. These contributions are nonrefundable. Prior to the 2011 legislation, the local administrative unit was required to pay both the employee's and the employer's share of the required contributions.

Although SB 51 exempts the RTW employee from making contributions to the Educational Retirement Fund, it does not restore the former statutory requirement that the local administrative unit pay the employee's share as well as the employer's share.

The *Investments and Pensions Oversight Committee 2011 Interim Final Report* (January 2012) includes the following excerpt from the minutes of July 27, 2011 regarding litigation surrounding the issue of nonrefundable employee pension contributions:

> Committee members had also requested information regarding pending lawsuits that have arisen from legislation affecting the PERA that has already passed. According to the information provided in the PERA handout, two cases have been dismissed and were not appealed by the plaintiffs. Those cases are *David Archunde v. PERA and the City of Albuquerqu*e, filed in federal court in September 2008, and *Jack Clough v. PERA* filed in federal court in January 2001. In the *Archunde* lawsuit, the plaintiff alleged that requiring double dippers to make nonrefundable contributions during the period of July 1, 2003 through December 31, 2006 violated the takings clause of the U.S. Constitution. In the *Clough* case, the plaintiff, a "grandfathered" double dipper, was required to make nonrefundable contributions on July 1, 2010. He alleged that the contributions violated numerous laws and constitutional provisions involving age discrimination, takings, equal protection, contract, due process and bill of attainder.
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> The last case noted in the handout is *Rod Coffman, et. al v. PERA and Governor Richardson*. Like *Clough*, the plaintiff in the *Coffma*n lawsuit is a grandfathered double dipper required to make nonrefundable contributions as of July 1, 2010. The plaintiff is raising constitutional claims pursuant to the contract, equal protection and the takings clause of the US Constitution. The difference between the *Clough* and the *Coffman* cases is that the plaintiffs in the *Coffman* case are law enforcement officers, and they are asking for certification of the case as a class action. The PERA filed a motion to dismiss the case in June 2011. No ruling has been issued in the case.

Background:

- In 2005, the Legislature addressed the insolvency of the Educational Retirement Fund through legislation that increased both the employer's and the employee's contribution rates. The employer's contribution rate, which was 8.65 percent in FY 05, was increased by 0.75 percent each year for seven years, and was scheduled reach 13.9 percent in FY 12. The employee's contribution rate, which was 7.6 percent in FY 05, was increased by 0.075 percent per year for a period of four years, and reached 7.9 percent in FY 09.

- The 2009 Legislature increased the employee's contribution for individuals with an annual salary greater than $20,000 to 9.4 percent for FY 10 and FY 11; however, the contribution for all employees was scheduled to revert to 7.9 percent in FY 12.

- In 2010, the enactment of legislation again revised the schedule of employer contribution rates, maintaining the employer contribution rate at 10.9 percent for FY 11 and pushing back the implementation date for the 13.9 percent employer contribution to FY 13.

- In 2011, legislation was enacted that extended the 1.5 percent contribution shift from the employer to the employee for two more years (FY 12 and FY 13); implemented an additional 1.75 percent contribution shift for employees making over $20,000 for FY 12; and delayed the two remaining 0.75 percent employer increases set for FY 12 and FY 13 to FY 14 and FY 15. A temporary clause in the legislation would allow the additional 1.75 percent shift to be imposed in FY 13 if, based on the last consensus revenue forecast before the beginning of the 2012 legislative session:

  - ➢ General Fund revenues in FY 12 will be less than $100 million more than the General Fund revenue forecast reflected in the FY 12 budget; and

  - ➢ at the end of FY 12, the total amount in the state reserve funds will be less than 5.0 percent.

Related Bills:

HB 41 *Minimum Age for Legislative Retirement*
*HB 42 *Legislative Retirement Contribution Changes*
HB 72 *Judicial Retirement Changes*
HB 209 *Motor Transportation Officer Retirement*
HB 226 *Public Employee Retirement Contributions* (Identical to SB 228)
HJM 19 *Study Changes to Public Employees Retirement*
HM 5 *Public Employee Retirement Change Options*
SB 115 *Public Employee Salary Tiers & Retirement*
SB 150 *Education Retirement Changes*
SB 228 *Public Employee Retirement Contributions* (Identical to HB 226)
SB 259 *Motor Vehicle Officer Retirement*
SM 18 *Evaluate Public Safety Members Retirement*