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FISCAL IMPACT REPORT

ORIGINAL DATE 03/08/13

SPONSOR Cisneros LAST UPDATED _____ HB _____

SHORT TITLE Retirement Irrevocable Exemption Time SB 530

ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Impact				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance and Administration (DFA)
The Public Employees Retirement Association (PERA)

SUMMARY

Synopsis of Bill

Senate Bill 530 (SB 530) amends Section 10-11-8 NMSA 1978 of the Public Employees Retirement Act to allow retired PERA members who are elected to office to file an irrevocable exemption from PERA membership any time during their tenure in office.

Under current law, retired PERA members who are elected to office may exempt themselves from PERA membership and continue to receive their pensions and their elected official salary if they file a written exemption from membership within 30 days of taking office. The exemption is irrevocable and for the elected official's term of office.

FISCAL IMPLICATIONS

The PERA provided the following comments:

If the legislature desires to expand the election period as contemplated in SB 530, PERA recommends that the change be made contingent on IRS approval in a determination letter. This approach would avoid the situation where SB 530 enacted this extended election period only to have the IRS require that it not be allowed. It is also important to note that a determination letter only protects the qualified tax status of the PERA plans. It does not provide protection on the

taxation of the picked up contributions to the affected members. That protection would only be provided by a private letter ruling request made by the affected members to the IRS.

In addition, SB 530 does not address mandatory membership during the PERA retiree's tenure in office before he or she decides to file an exemption from PERA membership. To meet IRS requirements, membership must be required until an exemption is filed. Any exemption filed during the PERA retiree's tenure in office will apply prospectively and member contributions paid before the exemption is filed must be nonrefundable. Furthermore, the pension of any retiree who is elected to office on or after July 1, 2010 would be suspended under Section 10-11-8 (C)(2010) until he or she filed an exemption.

SIGNIFICANT ISSUES

The PERA further commented:

Under current law, the filing of an exemption is for the **term** of office and bars the retired member from acquiring service credit for the period of the exemption from membership. The Internal Revenue Code and regulations restrict the ability of a tax-deferred governmental plan such as PERA to offer elective membership. A 401(a) governmental plan, like PERA, may allow one-time, irrevocable elections upon commencement of employment or upon initial eligibility to receive accruals under the plan. SB 530 will allow PERA retirees who are elected to office to exempt themselves from membership if they file a written exemption from membership any time during their **tenure in office**. Tenure is the time the appointee actually serves in office. Depending on the circumstances, tenure in office may be longer than a statutorily fixed term of office, creating an essentially unlimited period of time in which to file an exemption from PERA membership. Providing an unlimited indefinite exemption period for a retiree who is elected to office would not meet IRS timing requirements on the limited, one-time irrevocable election. See Rev. Rul. 2006-43.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

PERA retirees elected to office may exempt themselves from membership and receive their pension and elected official salary if they file an exemption from membership within 30 days.

AHO/blm