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**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
**BILL ANALYSIS**  
**53rd Legislature, 1st Session, 2017**

<b>Bill Number</b>	<u>SB29</u>	<b>Sponsor</b>	<u>Sen. Ingle</u>
<b>Tracking Number</b>	<u>.204826.4SA</u>	<b>Committee Referrals</b>	<u>SEC/SFC</u>
<b>Short Title</b>	<u>Educational Retirement Board Employee Salary</u>		
<b>Analyst</b>	<u>Simon</u>	<b>Original Date</b>	<u>1/26/2017</u>
		<b>Last Updated</b>	<u></u>

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**FOR THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE**

**BILL SUMMARY**

Synopsis of Bill

Senate Bill 29 (SB29) would exempt the New Mexico Educational Retirement Board's (ERB) chief investment officer, portfolio managers, investment analysts, and supervisors in the investment division from coverage under the Personnel Act and from the governor's exempt salary plan. SB29 would authorize the ERB's board to fix the salary of the executive director and the executive director of ERB would fix the salary of investment division staff.

**FISCAL IMPACT**

SB29 would allow ERB to increase salaries for investment division staff and ERB indicates costs for personal services and employee benefits could increase up to \$174 thousand in FY18, \$434 thousand in FY19, and \$481 thousand in FY20. Appropriations for ERB's personal services and employee benefits are made from the educational retirement fund. The primary purpose of the fund is to provide retirement benefits for ERB members and, as of June 30, 2016, had an estimated unfunded liability of \$6.6 billion. The educational retirement fund held assets that equaled 64 percent of liabilities.

ERB has attempted to increase compensation for management and investment division personnel through the existing governor exempt salary plan process. Currently, four ERB employees are exempt from coverage under the Personnel Act. In May 2016, the ERB board voted to recommend a three-year plan to raise the salary of the executive director to \$240 thousand and the salary of the deputy director to \$179 thousand. This would increase salaries for the executive director by 69 percent and for the deputy director by 67 percent over three years. In August, the board voted to reclassify the position of executive director as "senior investment officer" and the position of deputy director as "chief of staff" under the governor's exempt salary plan. The board has proposed eight new exempt job classifications; however, these new exempt positions have not been approved by the governor's office. SB29 does not limit the number of exempt positions within the investment division of ERB.

SB29 does not contain an appropriation; however, ERB requested an increase of \$239 thousand in personal services and employee benefits for FY18 when compared with FY17 appropriations. Minutes from ERB’s August board meeting indicate the increased request is partly due to “board support for exempt wage increases at the executive level.”

### **SUBSTANTIVE ISSUES**

ERB indicates it is difficult for the board to recruit and retain investment staff and that salaries paid by ERB are not competitive with those offered by other public pension funds. According to ERB, two recent applicants for vacant positions declined job offers due at least in part to the salary ERB was able to offer. The board notes a 2015 survey from McLagan, a national consulting firm, found the average median salary for public pension fund investment and management personnel to be \$247 thousand. The average salary for ERB investment and management personnel is \$119 thousand. The Legislative Finance Committee has noted that compensations surveys do not always connect increased compensation to fund performance.

SB29 applies only to ERB staff. The Personnel Act currently excludes several categories of employees, including the heads of executive branch agencies, employees of the judicial and legislative branches, and employees of educational institutions. Most of the executive branch employees that are excluded from coverage by the Personnel Act are covered by the governor’s exempt salary plan. The only current exception to executive branch employee coverage by the governor’s exempt salary plan is employees of the Higher Education Department and of state educational institutions. SB29 would add investment division employees of ERB as the only other exception.

### **OTHER SIGNIFICANT ISSUES**

ERB points out that Laws 2014, Chapter 78 exempted employees of the Public Defender Department from coverage under the Personnel Act. In 2012, voters adopted a constitutional amendment that established the Public Defender Department (PDD) as an independent state agency within the judicial branch of government. During the 2014 regular legislative session, PDD raised concerns about executive branch oversight of a judicial branch agency and suggested PDD be treated consistently with other judicial branch departments. The department further advised the executive oversight of operations of a judicial branch department could violate the separation of powers clause of the New Mexico Constitution. Oversight of ERB by the executive would not pose the same constitutional issue.

### **POSSIBLE QUESTIONS**

Would the provision allowing the board to fix the salary of a director allow the board to fix a salary in excess of the annual exempt salary plan approved by the governor?

Do the executive director and deputy director of ERB qualify as “investment division supervisors?”

### **SOURCES OF INFORMATION**

- LESC Files
- Educational Retirement Board