LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
54th Legislature, 1st Session, 2019

Bill Number SB14 **Sponsor** Ingle/Salazar

Tracking Number .211437.3SA **Committee Referrals** SEC/SFC

Short Title Educational Retirement Changes

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Analyst Simon **Last Updated**

FOR THE INVESTMENT AND PENSION OVERSIGHT COMMITTEE

BILL SUMMARY

Synopsis of Bill

Senate Bill 14 (SB14) would amend the Educational Retirement Act (ERA) to increase employer contributions to the educational retirement fund; increase the age or years of service requirements for new members to be eligible for retirement and reduce retirement benefits for new employees who work for less than 30 years; make changes to the return-to-work program; require retirees from the Public Employees Retirement Association (PERA) to make contributions to the educational retirement fund if they become employed by an ERA-covered employer; change the salary calculation for determining retirement benefits for employees that receive a salary increase of more than 30 percent, also known as “pension spiking;” require substitute teachers to become members of the Educational Retirement Board (ERB) if they are employed at least one quarter time (0.25 FTE); and transfer $248.3 million from the general fund to the educational retirement fund.

FISCAL IMPACT

SB14 makes several changes to improve the long-term sustainability of the educational retirement fund. As a result, the bill would increase costs for public school employers covered by the ERB, for public school employees hired on or after July 1, 2019, and for some current school employees.

Employer Contribution Increase. SB14 would increase employer contributions to the educational retirement fund by 1 percentage point per year for the next three years. For FY20, employer contributions would total 14.9 percent of salary; for FY21 contributions would be 15.9 percent of salary, and for FY22 and subsequent years contributions would be 16.9 percent of salary. Legislative staff estimate the general fund impact of these increases at $25 million per year, including contributions for higher education institutions. Staff estimate the general fund impact on public schools to be $16.9 million in FY20, $16.9 million in FY21, and $16.9 million in FY22. SB14 would have an impact on federal and other funds received by public schools of $2 million, based on FY18 expenditure data from PED. ERB indicates each percentage point increase is expected to result in an additional $27 million to the educational retirement fund.

The Legislative Finance Committee recommendation for FY20 public school support includes $16.9 million to increase employer contributions to ERB by 1 percentage point. The executive recommendation for FY20 public school support includes $8.5 million to increase employer contribution by 0.5 percentage points.

ERB notes SB14 would also increase employer contributions for members participating in the alternative retirement program, a defined contribution plan available to some higher education employees. Current law requires employers to make a contribution to the educational retirement fund equal to 3 percent of salary for members in an alternative retirement plan. SB14 would increase that contribution to 4 percent in FY20, 5 percent in FY21, and 6 percent in FY22 and subsequent fiscal years.

Contributions for PERA Retirees and Substitutes. SB14 would also increase costs for some employees currently working for public schools but not currently required to make contributions to the fund. Under current law, retired PERA members are allowed to work for an ERB-covered employer, not make contributions to the educational retirement fund, and continue to receive their PERA retirement. Current law requires employers to make employer contributions for an employee who is a PERA retiree, but the employee receives no benefits from ERB.

SB14 would require a PERA retiree employed by an ERB-covered employer make contributions to the educational retirement fund without receiving service credit from ERB, similar to an ERB-member who retires and is re-employed under the return-to-work program. SB14 would require some PERA retirees to make contributions to the educational retirement fund without receiving any benefits from the fund. Alternatively, a PERA retiree could suspend his or her PERA benefits and earn service credit through the reciprocity program currently in law.

SB14 would also require substitute teachers who work at least one quarter time (0.25 FTE) become members of ERB and make contributions to the fund. Current ERB rules require any substitute teacher “engaged to fill a vacant position” join ERB and make contributions to the fund, but substitute teachers engaged on a “day-to-day basis” are not eligible to join ERB. Typically, public schools pay substitutes a daily rate, ranging from $60 per day to $115 per day in FY17. Assuming a 180 day school year, a substitute teacher could reach 0.25 FTE by serving 45 days per year.

ERB indicates requiring PERA retirees to contribute to ERB could bring an additional $2.2 million to the educational retirement fund, and including substitute teachers, could bring an additional $3 million, $1.7 million from public school employers and $1.3 million from substitute teachers. Public school employers might need to increase compensation to retain employees impacted by the change. SB14 could also make it more difficult for school districts and charter schools to hire retired law enforcement officers, who are typically retired PERA members, for school security positions.

SB14 would transfer $248.3 million from the general fund to the educational retirement fund. As part of a legal settlement with the American Federation of Teachers, the National Education Association, and other public employee unions in New Mexico, ERB and PERA agreed to request an appropriation equal to the estimated loss to the pension funds from legislation in 2009 and 2011 that delayed a planned increase in contributions to the educational retirement fund and shifted contributions from employers to employees in FY10 to FY13. As part of the settlement agreement, ERB and PERA agreed to request the appropriation, give testimony in support of the appropriation request, and develop a joint communication plan with the plaintiffs in support of the request. The settlement agreement is not contingent on the Legislature approving the appropriation.

SUBSTANTIVE ISSUES

Changes to Retirement Benefits. SB14 would change the retirement benefits calculation for future ERB members. ERB calculates a member's pension as follows:

average salary in five highest years * pension multiplier * years of service

Those hired on or after July 1, 2019 would be subject to a tiered retirement multiplier, rather than the flat 2.35 percent multiplier currently used to calculate a retiree's pension benefit. The pension multiplier would vary based on how long the person was employed and paying into the system. The first 10 years of services would be calculated at 1.35 percent, service between 10 and 20 years would be calculated at 2.35 percent, service between 20 and 30 years would be calculated at 3.35 percent and service over 40 years would be calculated at 2.4 percent. This would result in a retirement multiplier of 2.35 percent for any member with exactly 30 years of service credit. Members with less service would have a lower multiplier, while those with more than 30 years would have a higher multiplier. SB14 could have the effect of incentivizing more years of service from ERB employees and provide additional payouts for those who pay into the system for longer than 30 years. These provisions of SB14 would not apply to current ERB members.

SB14 would also change the minimum age for "normal" retirement from ERB. Under current law, employees who started on or after July 1, 2013 are eligible to retire after 30 years of service, but members under age 55 have their pension benefit reduced. SB14 would require that members with 30 years of service who are under age 58 would have their pension benefit reduced. According to ERB, members are living longer in retirement. In 1962, men lived an average of 13.2 years in retirement and women lived an average of 17.4 years. By 2013, men lived an average of 20.2 years in retirement and women lived an average of 23.1 years. The change in retirement age included in SB14 would only impact those first employed on or after July 1, 2019, many of whom will not retire until 2050 or later.

Return-to-Work Program. Since 2003, ERB has allowed retired members to return to work and continue to receive retirement benefits under certain conditions. Under current law, an employee may return to work under one of two programs: the return-to-work program in state law or the return-to-work exception, in ERB's administrative rules. SB14 would reduce the length of time an employee must wait before qualifying for the return-to-work program to six months from the current 12 months. ERB's retirees must wait before returning to work due to regulations from the Internal Revenue Service. Under the return-to-work exception, an employer may return to work immediately but may not work more than 0.25 FTE or earn more than $15 thousand. SB14 would eliminate the return-to-work exception and require all employees wishing to return to work to qualify for the return-to-work program by waiting six months. Under ERB rules, those employed less than 0.25 FTE are not eligible to join ERB, so retirees working less than 0.25 FTE would not need to qualify for the return-to-work program.

Under the return-to-work program, both employers and employees are required to make contributions to the educational retirement fund, but the employee does not accrue additional service credit for their continued employment. Alternatively, a member can suspend his or her retirement benefit and return to work to receive additional service credit.

SB14 would not extend the return-to-work program beyond its current sunset date of January 1, 2022. Should the return-to-work program expire in FY21, retired employees working for school districts and charter schools may be required to suspend their pension benefits to remain employed.

Anti-Spiking Provisions. SB14 would limit the extent to which salary increases count towards pension calculations for employees making more than $60 thousand. These provisions of the bill aim to prevent “pension spiking” – the deliberate manipulation of salary for the purpose of increasing a member’s retirement benefit. Under SB14, salary increases of greater than 30 percent would not be used in the calculation of average salary.

OTHER SIGNIFICANT ISSUES

According to ERB financial reports, as of June 30, 2018, the educational retirement fund held $12.996 billion in assets, equal to 63.5 percent of estimated liabilities of $20.458 billion and ERB’s actuaries estimate it will take 70 years to pay off the unfunded liability, based on current actuarial assumptions. Combined employer and employee contributions total 24.6 percent of salary for members earning more than $20 thousand per year, but ERB’s actuaries estimate the total cost of providing benefits earned in the current year is 13.68 percent. The remainder is directed to paying down the plan’s unfunded liability. ERB’s current board policy calls for the unfunded liability to be paid down in 24 years, but ERB’s actuaries estimate this would require a 20.78 percent employer contribution, based on current policies.

RELATED BILLS

The requirement that PERA retirees contribute to the educational retirement fund may conflict with the intent of Senate Bill 148, which attempts to reduce barriers to employing retired law enforcement officers in school security positions by allowing law enforcement retired from PERA to receive annual cost of living adjustments.

SOURCES OF INFORMATION

- LESC Files
- Educational Retirement Board (ERB)

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