FISCAL IMPACT REPORT

		LAST UPDATED	3/12/2023
SPONSOR	Padilla	**ORIGINAL DATE**	2/01/2023
SHORT TITLE	Public Employees Returning to Work	**BILL NUMBER**	Senate Bill 124/aSHPAC/aSFl
		ANALYST	Simon

REVENUE*
(dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	**FY24**	**FY25**		
	$156.6 - $1,566.0	$156.6 - $1,566.0	Recurring	PERA Fund

Parentheses ( ) indicate revenue decreases.
*Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	See Fiscal Implications				Recurring	PERA Fund

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Relates to House Bills 64, 65, 66, 106, 227, 294, 344 and Senate Bill 96
Conflicts with House Bills 64 and 65
Duplicates certain provisions of House Bill 106 and Senate Bill 96

Sources of Information

LFC Files

Responses Received From
Public Employee Retirement Association (PERA)
State Personnel Office (SPO)

SUMMARY

Synopsis of Senate Floor Amendment to Senate Bill 124

The Senate floor amendment to Senate Bill 124 (SB124) provides that the return-to-work program included in the bill would run from July 1, 2023, through July 1, 2027.

Synopsis of SHPAC Amendment to Senate Bill 124

The Senate Health and Public Affairs Committee Amendment to Senate Bill 124 (SB124/aSHPAC) provides the return-to-work program included in the bill would run from July 1, 2023 through July 1, 2029.

Synopsis of the Original Bill

Senate Bill 124 (SB124) would amend the Public Employees Retirement Act to allow retired public employees to return to employment with a PERA-covered employer without the need to suspend their retirement benefits. The bill includes the following conditions:

- The retired prospective employee must be retired for at least one year before being eligible to seek employment with a PERA-covered employer.
- The retired employee and PERA-covered employer must make nonrefundable contributions to the PERA fund.
- The retired employee would not accrue services credit during their term of reemployment.
- The retired employee would be limited to 36 months (three years) of additional service.

The effective date of this bill is July 1, 2023.

FISCAL IMPLICATIONS

SB124 as amended by the Senate Heath and Public Affairs Committee and on Senate floor (SB124/aSHPAC/aSFl) could lead to an increase in the number of retirements by allowing retirees to return to work. With return-to-work programs, some employees could choose to retire earlier than they otherwise would, reducing contributions to the fund, increasing payouts from the fund, and reducing member’s pension payments. However, the bill includes limits to the program that make it difficult to retire while planning on re-employment. These limits include a one-year layout period, the ability to return to work for no more than three years, and the sunset of the program on July 1, 2027.

The amended SB124 would also increase the cap for pension payments for members of the Public Employees Retirement Association (PERA), which is currently at 90 percent of a member’s final average salary. (For Tier 1 members, the final average salary is the average from the member’s highest 36 consecutive months of pay; for Tier 2 members it is the highest 60 consecutive months). Many pension plans, including the New Mexico Educational Retirement Board, do not cap pension benefits, which encourages longer service. The bill would apply only to service credit earned after the law goes into effect. Members who are currently employed but have accrued the 90 percent maximum currently in effect would earn additional credit beginning July 2023 but would not be retroactively granted service credit for prior service.

Article XX, Section 22, of the New Mexico Constitution prohibits the Legislature from enacting any law that increases the benefits paid by PERA unless adequate funding is provided. That section assigns the PERA board the sole and exclusive power to adopt actuarial assumptions, based on recommendations from an independent actuary.

The bill would increase benefits payments for members who work a longer career by increasing the maximum pension benefit from 90 percent to 100 percent. But PERA notes these members work for longer periods, would make financial contributions to the fund for more years, and would collect their pension for fewer years. These additional contributions and later payments could offset the cost of paying a larger pension benefit. PERA provides the following actuarial analysis:

> PERA's actuaries indicated that SB 124 would cause an initial increase to the unfunded liability by $25 million and the amortization period by 1 year and increase the shortfall by 0.07 percent. However, they also noted members who retire later would lower the cost to the retirement system which could offset the costs noted above.

Other provisions of the bill could also be seen as increasing benefits payments by allowing retirees to work while collecting a benefit, but the bill also includes additional revenue to the PERA fund in the form of mandatory, nonrefundable contributions from both the employee and employer. PERA's actuaries note the proposed return-to-work provisions would not negatively impact the fund.

On average, PERA members' salaries are about $54 thousand per year. PERA's valuation reports an average contribution rate of about 29 percent for both the employee and employer. As a result, the average contribution per employee is estimated at about $15,660. Assuming between 10 and 100 individuals participate in return-to-work, this would have an impact of between $156 thousand and $1.6 million. Most of this additional revenue would be offset with additional payments, but PERA states the revenue would be slightly positive.

SIGNIFICANT ISSUES

The State Personnel Office (SPO) notes the bill could decrease persistently high vacancy rates faced by state agencies by allowing retired personnel to return to work and incentivizing current employees to serve for longer careers. According to data from SPO, state agencies had more than 5,000 vacant positions as of January 1, a vacancy rate of 20 percent. While in some cases, state agencies do not receive funding to fill all of those positions, analysis from LFC indicates state agencies were funded for about 2,800 of those vacancies. When agencies have a large number of funded vacancies, it increase the likelihood appropriations from the Legislature will be used in a manner that was not intended by the Legislature (generally, agencies have the authority to transfer money between funds, for example from personnel costs to contractual services). Additionally, funding vacant positions means the Legislature is unable to use those funds for other priorities. For these reasons, the state's classified service vacancy rate is a key performance indicator for SPO.

Return to Work Programs

Generally, a member of PERA must terminate employment to retire and receive a pension benefit from the plan. While retired members are permitted to seek employment in the private sector, with another state or the federal government, or for an employer covered by the Educational Retirement Board (ERB), members are not allowed to return to employment with a PERA-covered employer without suspending their monthly benefit. SB124 would allow retired members to return to employment without suspending their retirement.

As designed, public pension funds are intended to replace the income an individual loses when leaving the workforce by providing a steady stream of payments in retirement. As a result, pension plans and regulations from the Internal Revenue Service (IRS) generally prohibit payment from the pension system to an active employee, except under certain circumstances, and require a "bona fide" separation of service. However, return-to-work programs have been designed to allow retired workers to return to employment to address shortages of qualified workers.

Theoretically, a return-to-work program would not increase the costs of the retirement system because the worker being employed has qualified for retirement and already decided to retire and begin receiving pension benefits. Under this paradigm, return-to-work merely allows a public employer continued access to the services of experienced employees, who might otherwise go on to work in the private sector or in the public sector for an employer not affiliated with PERA while continuing to receive their pension. However, in practice, the existence of return-to-work programs likely leads some employees to move up their retirement date with a reasonable assurance that they will be able to find continued employment and be able to receive both a paycheck and pension payments, sometimes called "double dipping." Under this paradigm, return-to-work programs increase costs to the retirement system because pension payments must be made for a longer period than if no return-to-work system existed. In reality, neither paradigm is likely a true representation of a wide variety of actual employment decisions made by different employees.

To cut back on possible abuses of return-to-work programs, most public pension funds place limits on how a retired employee can return to work. These restrictions can include limits on the amount of time that can be worked, how much a person can earn, how long a person must wait before returning to work, and the age of an employee allowed to return to work. Like these other policies, this bill includes restrictions, limiting an individual's return to 36 months and requiring the employee to be retired for one year before returning to work.

Maximum Pension Benefit

SB124 as amended would allow members to earn up to 100 percent of final average salary based on the same rate of service credit accrual as is currently in law. The table below shows differences in how long it takes members of various plans to reach the maximum benefit. PERA members accrue service credit at different rates based on plan and hire dates. Generally, members that accrue benefits at a higher rate have higher contributions. For example, a member of municipal police plan 1 accrue benefits at 2 percent per year, while members of municipal police plan 5 accrue benefits at 3.5 percent per year. Total contributions (employee and employer) for police plan 1 are 20.15 percent, while total contributions for police plan 5 are 37.95 percent. On a hypothetical salary of $75 thousand, police plan 1 contributions amount to $13,350 less per year than police plan 5.

Year of Service Required for Maximum Pension Benefit

	Tier 1		Tier 2	
	90% (Current)	100% (SB124)	90% (Current)	100% (SB124)
State General Coverage Plan 3	30	33.3	36	40
State Police Member, Correctional Officer Member and Probation and Parole Officer Member	30	33.3	30	33.3
Juvenile Correctional Officer Member Plan 2	30	33.3	30	33.3
Municipal General Member, Plan 1	45	50	45	50
Municipal General Member, Plan 2	36	40	45	50
Municipal General Member, Plans 3 and 4	30	33.3	36	40
Municipal Police Member, Plan 1	45	50	45	50
Municipal Police Member, Plans 2 and 3	36	40	45	50
Municipal Police Member, Plan 4	30	33.3	30	33.3
Municipal Police Member, Plan 5	25.7	28.6	30	33.3
Municipal Fire Member, Plan 1	45	50	45	50
Municipal Fire Member, Plans 2 and 3	36	40	45	50
Municipal Fire Member, Plan 4	30	33.3	36	40
Municipal Fire Member, Plan 5	25.7	28.6	30	33.3

Source: LFC Analysis

Data from PERA suggests only a limited number of employees serve long enough to reach the current maximum pension benefit. The table below shows the percentage of retired members by the level of service credit accrued before retirement. Less than 4 percent of members reach the 30 years of service credit required to max out on state and municipal general plans and less than half reach 25 years of service. For the state police and adult corrections plan, a larger share of employees work a longer career, but only 5 percent of retirees work for at least 30 years. Municipal police and fire members typically work less than 25 years, while most of these members would hit the current cap at 25.7 years of service.

SB124/aSHPAC/aSFl may successfully encourage a small number of members to continue working to boost pension benefits and provide compensation to that small percentage of employees who already continue to work after achieving the maximum benefit, but may not encourage a large number of employees to continue to work for more years.

Years of Service Credit at Retirement

Percent of Retired Memebers

Plan	Less than 15	15 to 19	20 to 24	25 to 29	30+
State General	31.6%	11.2%	13.4%	40.5%	3.3%
State Police/Corrections	15.5%	5.6%	25.1%	48.9%	5.0%
Municipal General	31.6%	12.1%	13.7%	38.6%	4.0%
Municipal Police	10.3%	11.8%	71.1%	5.6%	1.2%
Municipal Fire	9.3%	9.4%	74.1%	4.7%	2.5%
Total	**27.9%**	**11.2%**	**22.3%**	**35.1%**	**3.4%**
Total (Excluding Police and Fire)	**31.6%**	**11.6%**	**13.5%**	**39.7%**	**3.6%**

Source: PERA 2022 Valuation Report

ADMINISTRATIVE IMPLICATIONS

SB124/aSHPAC/aSFl would limit a person to 36 months of re-employment. These provisions could require PERA to make systems modifications to its pension administration system to flag when a person has reached the 36 month cap.

Additionally, the bill would sunset the return-to-work program on July 1, 2027. Analysis from PERA indicates the agency interprets the provisions of the amended bill to mean that a return-to-work employee must cease service on by July 1, 2027, or suspend their pension benefit. This could lead to a large number of vacant positions in July 2027 because retired workers would no longer be able to continue employment.

Properly suspending pension payments when an employee is no longer eligible to participate in a return-to-work program is critical to ensure that retired employees returning to work is not forced to repay pension benefits received while the retiree was working for a covered employer but was not eligible to participate in return-to-work.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Several bills have been introduced for consideration of the First Session of the Fifty-Sixth Legislature that would incentivize public employees to provide more years of service. These proposals include:

- House Bill 64, which would create a return-to-work program for public safety retirees;
- House Bill 65, which would enact a return-to-work program for all PERA retirees;
- House Bill 66, which would increase the maximum pension benefit from 90 percent to 100 percent of salary, but in a different way than SB124;
- House Bill 106, which would increase the maximum pension benefit from 90 percent to 100 percent of salary similarly to SB124;
- House Bill 227, which, among other proposals to boost law enforcement retention, allows law enforcement officers to return to work;
- House Bill 294, which would allow retired law enforcement officers to return-to-work as school resource officers or courthouse security;
- House Bill 344, which would allow retired PERA members to return to work as a county detention officer or a juvenile detention officer; and
- Senate Bill 96, which would increase the maximum pension benefit the state police member, correctional officer member, and probation and parole officer member plan.

ALTERNATIVES

Analysis from PERA notes employers have the ability to offer retention bonuses and longevity pay, which could help address short-term vacancy issues.

JWS/al/ne/mg/hg/al