

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 02/01/10
 LAST UPDATED 02/05/10 **HB** 16/aHAFC

SPONSOR Trujillo & Sapien

SHORT TITLE Retirement Beneficiary Deselection Option **SB** _____

ANALYST Aubel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		NFI*		NFI*	Nonrecurring	PERA

(Parenthesis () Indicate Expenditure Decreases)

***Fiscal analysis was updated with additional testimony from PERA on 2/2/10**

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Employees Retirement Association (PERA)

SUMMARY

Synopsis of HAFC Amendment

The House Appropriations and Finance Committee amendment implements the suggested change offered by PERA under Technical Issues to clarify that a retired member may only deselect a living beneficiary.

Synopsis of Original Bill

House Bill 16 provides for a one-time irrevocable opportunity for a retiree to deselect the original beneficiary and choose another payment option. According to PERA, current law only allows for a retiree to have payments changed to form of payment A (retiree only) pursuant to a court order incident to a divorce, or if the beneficiary predeceases the retiree.

FISCAL IMPLICATIONS

PERA provides an analysis of the fiscal impact to that agency:

PERA will require increased staff utilization in order to recalculate pension benefits, verify survivor-beneficiary designations and verify supporting documents. In addition, PERA will incur operating costs related to printing, postage and dissemination of information associated with changes to procedures and survivor designation forms.

PERA did not assess a dollar amount for these impacts, although the agency has indicated they will be minimal and can be absorbed within the operating budget.

The original agency analysis stated that “changes in qualification requirements and reporting will require revisions to PERA’s pension administration system (“RIO”), and PERA will be required to seek a BAR (budget adjustment request) to cover the costs of these system changes.” However, subsequently the agency has reported that it has checked with its vendor and there will be no fiscal impact due to House Bill 16.

SIGNIFICANT ISSUES

PERA provides the following analysis regarding HB16:

Current Statute Regarding Beneficiary

The PERA Act provides for both normal and optional forms of payment to its retirees. *See* NMSA 1978, Section 10-11-116 (1991). The normal form of payment is for life, Option A, which provides a monthly benefit to the retiree for his or her lifetime. Upon death, all payments stop. Optional contingent survivor beneficiary forms of payment are available on an actuarial equivalent basis, meaning the normal pension monthly benefit is reduced depending on the survivor option chosen, the retiree’s age, and the age of the named beneficiary. Contingent survivor benefits, Options B and C, provide a 100% or 50% survivor benefit, respectively. The PERA Act requires that the amount of pension payable under forms of payment B and C shall have the same actuarial present value, computed on the effective date of the pension, as the amount of pension under form of payment A. *See* NMSA 1978, Section 10-11-116 (B) (1991). In other words, under Options B and C, a reduced benefit is paid to the retiree during his or her lifetime, which pays for the cost of the survivor benefit.

Under current law, a named survivor pension beneficiary may not be changed after the date the first pension payment is made if Option B or C is selected. The only exceptions are: (1) if the named survivor beneficiary dies before the member, NMSA 1978, Section 10-11-117(B) & (C) (1997); or (2) if the member named his spouse as survivor beneficiary and they later divorce. NMSA 1978, Section 10-11-116(C) (1991). In both situations, the payment option may be changed to Option A upon satisfaction of all PERA requirements. The reason that a pension benefit may be “popped-up” to Option A after a death or divorce is because there is no additional cost to the retirement system. Under no circumstances can a retired member change his or her survivor beneficiary designation to name another person.

In the case of a retired member who is being paid under option B or C with the member’s spouse as the designated survivor beneficiary, a court order is required directing PERA to change the form of payment. *See* NMSA 1978, Section 10-11-116(C).

Proposed Change Under House Bill 16

This bill would affect retirees who have chosen a pension payment under the B or C payment schedule and designated a beneficiary other than a spouse or former spouse. The bill would allow the retiree a one-time irrevocable option to deselect the original beneficiary and either

choose payments under option A (retiree only) or designate another beneficiary under the B or C option in place. The retiree could not change the payment schedule from plan C to plan B or vice versa.

The amount of the pension under the form of payment chosen would be recalculated to have the same actuarial present value as the current pension calculated by option A. Thus, in the case of electing a younger beneficiary, the amount of the pension payment would be reduced to compensate for the longer expected lifetime of the new beneficiary. In the case of moving from a B or C payment plan to the A option (retiree only), the pension payment would actually increase, which according to PERA, would not violate federal Internal Revenue Code.

TECHNICAL ISSUES

PERA notes the following technical issue:

NMSA 1978, Section 10-11-117(B) & (C) provide that a member being paid under forms of payment B or C shall have future pension payments made under form of payment A if the designated beneficiary predeceases the member. HB 16 provides a retired member a one-time option to deselect a designated beneficiary, without reference to whether the beneficiary is living or dead. Because permitting a member to deselect a beneficiary following the beneficiary's death would directly conflict with the "pop-up" provisions of Section 10-11-117, PERA recommends HB16 be amended to clarify that a retired member may only deselect a living beneficiary.

PERA recommends the following amendment to clarify this issue:

On page 3, line 4, after "a" insert "living".

OTHER SUBSTANTIVE ISSUES

PERA is a governmental defined benefit plan qualified under section 401(a) of the Internal Revenue Code. In general, pension payments, whether paid over a participant's life or over the lives of the retiree and his or her beneficiary, must be non-increasing. The "pop-up" features of the PERA Act resulting from a beneficiary's death or the participant's divorce does not violate this rule.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The payment options would remain as currently defined, as PERA explains as follows:

A named survivor pension beneficiary under the PERA Act cannot be changed after the date the first pension payment is made if form of payment B or C is elected. The only exceptions shall remain for a named survivor beneficiary that predeceases the retiree; or if the retiree named a spouse as survivor beneficiary and they later divorce. *See* NMSA 1978, Section 10-11-116 (1991). In both such cases, the only option available to the retiree is to have the pension "popped-up" to Option A.

POSSIBLE QUESTIONS

1. Does this bill help a retiree who had chosen payment option A (retiree only) and subsequently marries and would like to change the payment option to plan B or plan C to cover the new spouse?

2. What are the consequences of allowing a retiree to deselect a survivor beneficiary and designate a new survivor beneficiary?

MA/mew:svb