F I S C A L I M P A C T R E P O R T

SPONSOR Harden **ORIGINAL DATE** 02/05/10 **LAST UPDATED** **HB**

SHORT TITLE State Employee Furlough Salary Calculation **SB** 157

ANALYST Aubel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		$35.0		$35.0	Nonrecurring*	PERA

(Parenthesis ( ) Indicate Expenditure Decreases)
*Would become recurring if additional plans requested the change.

SOURCES OF INFORMATION
LFC Files

Responses Received From
Public Employees Retirement Association (PERA)
Department of Finance and Administration (DFA)
State Personnel Office (SPO)

SUMMARY

Synopsis of Bill

Senate Bill 157 would amend the Public Employees Retirement Act to allow members to exclude the months where furloughs were assessed in FY10 pursuant to executive order from the pension calculation. The calculation, called the final average salary (FAS), currently uses a member's highest consecutive thirty-six months. The bill specifies that the month excluded from the pension calculation shall not affect the service credit earned for that month.

FISCAL IMPLICATIONS

Members subject to Executive Order 2009-044 (EO-09-044) will have five furlough days assessed in FY10 as part of the solvency measures taken to meet the budget gap, resulting in reduced salaries for those months. This bill aims to mitigate the impact of the reduced salary recorded for those months on the pension calculation. Such an impact was not quantified.

PERA maintains there are various fiscal impacts associated with this proposal:

> PERA members requesting retirement benefit estimates affected by fiscal year 2010 furloughs will require two calculations of final average salary: one including furlough days and one excluding those months with furlough days, in order to make an informed decision on whether to exercise their option under SB 157.
>
> Calculating benefit estimates under the second scenario will require a significant change to the RIO pension administration system, estimated at $35.0 thousand to add the functionality to the RIO system. PERA will require a budget increase for these funds.

It should be noted that this fiscal impact of altering RIO would only occur if the automated methodology reported under Performance Implications is adopted. However, it could be argued that the manual methodology would require additional FTE to perform in a reasonable time period, also resulting in additional operating budget expenditures.

> Individual furlough-related exceptions may not have a cost to the system; however, if SB 207 becomes a precedent for such exceptions (for other plans) they may cumulatively create a negative fiscal impact (to the fund).
>
> If further revisions to the RIO pension administration system are necessary in FY11, PERA will be required to seek a BAR to cover the additional costs of these system changes.

SPO also notes that PERA may need to order an actuarial study to assess the actuarial impact of the bill on the fund. The cost of such a study was not provided.

SIGNIFICANT ISSUES

The primary policy issue is whether PERA members should have the option to exclude a month in which they were furloughed pursuant to EO-09-044 for purposes of calculating their final average salary (FAS) under the PERA Act.

Both DFA and PERA state a concern as to whether allowing furloughed state PERA members to have their FAS calculated differently than other PERA members is constitutional.

SPO presents the following issue relating to part time workers:

> The PERA handbook specifies that part-time employees who regularly work less than 20 hours in a 40 hour scheduled workweek are excluded from membership. Furlough hours are a form of leave without pay hours and if a (part-time) employee does not work the required number hours, they will not have that service time counted towards retirement. Under the provisions of this bill, a member who elects to exclude a month of service credit from the calculation of the member's final average salary will not have a month excluded for the purpose of calculating the member's years of credited service. This bill would have an effect on part-time employees whose normal hours worked during a furlough week drop below twenty.

PERFORMANCE IMPLICATIONS

PERA maintains that the bill will require two calculations of FAS for affected state employees, one including furlough days and one excluding furlough days, in order for the member to make an informed decision on whether to exercise the option proposed under SB157. Thus, turnaround times for benefit estimates may exceed the target of 30-45 days.

PERA provides additional detail on this performance implication:

> This (performing two calculations) can be done in one of two ways: manually or automated. The manual override of the FAS will have to be done both at the benefit estimate stage and also at the actual retirement date. Alternatively, the RIO system can be reprogrammed to allow for less than 36 months to be used in the FAS calculation. Currently if you exclude a month the system will then go back and pick up the first unused month, so that it still has the full 36 months for the calculation.

ADMINISTRATIVE IMPLICATIONS

PERA notes that it will need to amend regulations to address the statutory changes and notify employers and members of the change.

TECHNICAL ISSUES

The bill appears to allow a member to exclude a furloughed month for the FAS calculation but not exclude it toward service credit.

PERA notes the following technical issue in the application of this provision:

> The new material conflicts with NMSA 1978, Section 10-11-14.6 (2009), which states that the FAS is one thirty-sixth of the greatest aggregate amount of salary paid a member for thirty-six consecutive but not necessarily continuous months of service credit. It is unclear how months of service credit will be excluded from FAS calculation under the PERA Act. As drafted, the proposal can be read to allow affected PERA members to exclude up to 5 months of service credit during fiscal year 2010 for purposes of calculating their FAS, using only 31 months for calculation of FAS. Alternatively, SB 157 can be read to allow affected PERA members to elect to exclude up to 5 months of service credit during fiscal year 2010 and pick up 5 additional consecutive months of service credit for purposes of calculating their FAS.

Whether some employees can use 31 months in the calculation of their FAS, or alternatively, use an additional five months outside the 36-consecutive-months requirement in the PERA Act for the calculation of the FAS, is a concern according to PERA:

> Currently, an employee’s final average salary (FAS) is based on the highest salary the employee received for any consecutive 36-month period. If SB 157 is intended to potentially reduce the FAS calculation to 31 months, SB 157 is a significant departure from current law. Treating similarly situated PERA members differently in the calculation of FAS under the PERA Act may lead to litigation.

OTHER SUBSTANTIVE ISSUES

PERA provides more detail on how the proposal could potentially lead to a negative actuarial impact on the fund:

> SB 157 only pertains to state employees who were furloughed pursuant to executive order issued for fiscal year 2010. If other entities initiate furloughs, such as municipalities, counties or the administrative office of the courts, SB 157 will be inapplicable to affected PERA members. Individually, such a measure will not negatively impact the Fund, however, if SB 157 becomes a precedent for other furlough related remedial exceptions, there may be a cost.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

A PERA member's final average salary will continue to be calculated using the member's highest salary the employee received for any consecutive 36-month period.

POSSIBLE QUESTIONS

1. How many potential retirees will the furlough impact?

2. What is the potential impact of the five furlough days on pensions?

MA/mew