LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS

Bill Number: SB 303 **50th Legislature, 1st Session, 2011**

Tracking Number: .183687.1

Short Title: Identical Benefits for Some Public Employees

Sponsor(s): Senator Cynthia Nava

Analyst: Craig J. Johnson **Date: February 17, 2011**

Bill Summary:

SB 303 amends the *Public Employees Retirement Act* (PERA) and the *Educational Retirement Act* (ERA) to:

- provide that members of certain PERA plans and members of the ERA have identical retirement eligibility requirements, contribution rates, cost-of-living adjustments (COLA), and methods of calculating final average salaries; and
- require each retirement board to conduct actuarial studies to determine benefits for new employees who begin employment after December 31, 2013.

SB 303 would go into effect January 1, 2014, except for the provisions requiring the actuarial studies, which would go into effect on July 1, 2011.

Fiscal Impact:

SB 303 does not contain an appropriation.

Fiscal Issues:

SB 303 would affect new PERA and ERA members beginning employment after December 31, 2013.

According to the Educational Retirement Board (ERB):

- the fiscal impact of SB 303 on the retirement funds is yet to be determined by ERB's actuaries;
- ERB anticipates that the changes to employer and employee contribution rates, Final Average Salary (FAS) calculation, and adding a fixed 3.0 percent COLA as provided for in SB 303 will have an effect on the Educational Retirement Fund (see "Substantive Issues," below);
- the effect may be compounded by changes in ERB membership; and
- the ERB currently has approximately 63,000 active members and anticipates an increase in new members as individuals in the baby boomer generation retire and are replaced with new employees.

<u>**Substantive Issues**</u>**:**

Final Average Salary (FAS):

- SB 303 provides that for individuals who are not members or retired members on or before December 31, 2013, ERB shall compute the FAS on the greatest aggregate salary amount for a four year contribution period (excluding lump sum payments for accrued sick and annual leave).

- PERA would also be required to calculate the FAS on the greatest aggregate salary amount for a four year consecutive but not continuous contribution period.

- The ERB bill analysis indicates that "with an addition of twelve months to the calculation of the FAS, it would be expected that future retirees might have lower pension amounts, especially in those instances where age and years of service are retirement factors."

Contribution Rates (see Table 1 for ERB and Table 2 for PERA)**:**

- PERA and ERB employee and employer contribution rates for individuals who are not members or retired members on or before December 31, 2013 would be 7.66 percent (Table 1, column D, row 10 and Table 2, column I, row 10) and 15.245 percent (Table 1, column D, row 4 and Table 2, column I, row 4) of the individual's salary, respectively.

- ERB contribution rates for those who are members on or before December 31, 2013 would be 7.9 percent (Table 1, column B, row 10) for employees and 13.9 percent (Table 1, column B, row 5) for employers.

- PERA contributions rates for those who are members on or before December 31, 2013 would be 7.42 percent (Table 2, column G, row 10) for employees and 16.59 percent (Table 2, column G, row 4) for employers.

TABLE 1: SB 303 and ERB Contributions

	A	B	C	D	E
1	**ERA Employer Contribution**				
2		**Current Law**	**Change**	**SB 303**	**Change**
3	FY11	10.9%	0.0%	10.9%	0.0%
4	FY12	13.15%	2.25%	15.245%	4.35%
5	FY13	13.9%	0.75%	15.245%	0.00%
6					
7	**ERA Employee Contribution**				
8		**Current Law**	**Change**	**SB 303**	**Change**
9	FY11	9.4%	0.0%	9.4%	0.0%
10	FY12	7.9%	-1.5%	7.66%	-1.74%
11	FY13	7.9%	0.0%	7.66%	0.00%
12					
13	**ERA Total Contribution**				
14		**Current Law**	**Change**	**SB 303**	**Change**
15	FY11	20.3%	0.0%	20.3%	0.0%
16	FY12	21.05%	0.75%	22.905%	2.6%
17	FY13	21.8%	0.75%	22.905%	0.0%

Table 2: SB 303 and PERA contributions

F	G	H	I	J	
PERA Employer Contribution					1
	Current Law	**Change**	**SB 303**	**Change**	2
FY11	15.09%	0.0%	15.09%	0.0%	3
FY12	16.59%	1.50%	15.245%	0.16%	4
FY13	16.59%	0.00%	15.245%	0.00%	5
					6
PERA Employee Contribution					7
	Current Law	**Change**	**SB 303**	**Change**	8
FY11	8.92%	0.0%	8.92%	0.0%	9
FY12	7.42%	-1.50%	7.66%	-1.26%	10
FY13	7.42%	0.00%	7.66%	0.00%	11
					12
PERA Total Contribution					13
	Current Law	**Change**	**SB 303**	**Change**	14
FY11	24.01%	0.00%	24.01%	0.00%	15
FY12	24.01%	0.00%	22.905%	-1.11%	16
FY13	24.01%	0.00%	22.905%	0.00%	17

Cost of Living Adjustments (COLAs):

- ERB's COLA for qualified annuity recipients who are not members or retired members on or before December 31, 2013 would be increased every July 1 by multiplying the annuity amount, inclusive of all prior adjustments, by 3.0 percent.

- Qualified annuity recipients include:

  - members retired for at least 2 calendar years before the July 1 period in which the annuity adjustment occurs;
  - persons who are 65 and are retired for at least 1 calendar year before the July 1 period in which the annuity adjustment occurs;
  - disability retirees who have been retired for a minimum of 1 calendar year before the July 1 period in which the annuity adjustment occurs;
  - survivor beneficiaries who have received a survivor annuity for at least 2 calendar years; and,
  - a survivor beneficiary of a deceased member who otherwise been retired at least 2 full calendar years prior to the date of the July 1 COLA adjustment.

Actuarial Studies:

- Both PERA and the ERB would be required to conduct an actuarial study to determine the pension amount for individuals who are not members or retired members on December 31, 2013.

- The study would take into account the appropriate retirement eligibility requirements, employee and employer contribution rates, and methods for computing FAS and COLAs. ERB and PERA must submit the actuarial studies to the appropriate legislative interim committee and to the Legislature on August 1, 2012 and December 1, 2012 respectively.

Related Bills:

HB 133 *Delay Educational Retirement Contributions*
HB 251 *Amend Certain Retirement Acts*
HB 468 *Public Employee Retirement Contributions*
SB 204 *Reduce PERA Cost-of-Living Adjustments*
SB 248 *Change Public Retiree Contributions*
SB 265 *Educational Retirement Contributions*
SB 268 *Public Employee Retirement Plan Changes*

Attached to this analysis are:

- a matrix of retirement related legislation introduced as of February 16, 2011; and

- a comparison of current ERA and PERA retirement plans.

ATTACHMENT

SB 502, *School Teacher & Principal Evaluation
Summary

SB 502 sets out requirements for school district and charter school teacher and principal evaluation programs:

- By school year 2012-2013, each school district[1] shall adopt and have in operation its own Public Education Department (PED)-approved evaluation program for teachers and principals, based on a statewide framework to be developed by a PED work group, to measure teacher effectiveness and improve student achievement.

- Each teacher evaluation program shall:
  - use multiple rigorous, fair, and transparent methods, with results communicated in a timely way to the teacher;
  - include four levels of effectiveness;
  - identify teachers who are most effective at helping students succeed;
  - provide incentives for effective teachers; and
  - be documented and used to tailor professional development for individual teachers.

- The majority of teacher evaluations shall be based on student academic growth, measured as follows:
  - for teachers in grades and courses with required statewide standards-based assessments, by academic growth in reading and mathematics; and
  - for other teachers, either:
    - ✓ by designated school district assessments showing they are improving at a rate that will allow them to perform at or above grade level within two years; or
    - ✓ by teacher-developed assessments approved by the local superintendent.

- Teacher evaluations shall also include:
  - classroom observations at least once annually using a research-based protocol; and
  - other district-developed measures of effectiveness, including student and parent surveys; peer observations and reviews; teacher performance portfolios; video classroom observations with teacher reflection; and other evidence-based measures.

- Principal evaluation shall be based on the school's achievement based on the state accountability system. The bill also provides for incentives for effective school principals.

- By April 2011, PED shall convene a work group to develop and make recommendations by August 2011 for the statewide teacher and principal evaluation framework and performance-based compensation system. The membership comprises:
  - the Secretary of Public Education or designee, chair;
  - the Director of the Legislative Education Study Committee (LESC);
  - the Director of the Legislative Finance Committee (LFC); and
  - other representatives appointed by the Secretary as follows:
    - ✓ an organization of school administrators;

[1] SB 502 defines "school district" to include charter school; and "school principal" or "local superintendent" to include the head administrator of a charter school.

  - ✓ a public school teacher organization;
  - ✓ a public school parent association;
  - ✓ charter schools;
  - ✓ the business community;
  - ✓ a public school teacher;
  - ✓ a public school principal;
  - ✓ a public school student;
  - ✓ an expert on teacher evaluation models; and
  - ✓ an expert on value-added models.

- PED and school districts shall adhere to the following timeline:
  - ➢ by August 2011, the Secretary of Public Education shall report to the Governor on the statewide framework;
  - ➢ by August 2011, districts shall identify and approve assessments, inform staff of evaluation models, and approve training for principals and evaluators;
  - ➢ by December 2011, the Secretary shall present a final report with recommendations for necessary legislation to the LESC and LFC;
  - ➢ during school year 2011-2012, districts shall adopt evaluation programs and use them to determine teacher and principal effectiveness to create a performance baseline; and
  - ➢ as of school year 2012-2013, district teacher and principal evaluation systems shall be operational.

- As of school year 2012-2013:
  - ➢ a teacher who:
    - ✓ earns a low rating must be provided additional professional development by the district;
    - ✓ earns the lowest rating for two consecutive years must be placed on probation;
    - ✓ earns the lowest rating for a third year must be terminated unless the teacher is able to show that the data relied upon were inaccurate or misrepresented;
  - ➢ a principal whose school earns the lowest ranking on the state's accountability system for three consecutive years must be terminated;
  - ➢ a teacher or principal who earns the lowest rating is not eligible for a compensation increase; and
  - ➢ a school district that must make a reduction in force shall consider individual teacher effectiveness as shown on evaluations when determining whom to terminate or discharge.

- PED shall develop a recognition program to reward effective teachers and principals, subject to availability of funds and the number of employees who earn top ratings each year.

SB 502 amends other provisions of the *School Personnel Act* applicable to school districts, charter schools, and state agencies, effective July 1, 2012, as follows:

- The three-tiered licensure system is amended to require that:
  - ➢ all teacher and school administrator salary systems must be aligned with a performance-based compensation system, as well as the professional licensure system;
  - ➢ at levels 1, 2, and 3A, references to "competencies" are replaced by "effectiveness" or "teacher effectiveness";

- as of school year 2012-2013, teachers at each licensure level shall be evaluated and retained pursuant to the district teacher evaluation system and compensated pursuant to the performance-based compensation system;
- movement from level 1 to 2 and level 2 to 3A shall depend on demonstrated effectiveness on the district's teacher evaluation system, rather than the PED highly objective statewide standard of evaluation, which shall apply only to licensed school employees who are not teachers;
- Level 3A teachers must demonstrate effectiveness in teaching, not instructional leader competencies; and
- as of school year 2012-13, school principals shall be evaluated solely on the school's achievement based on the state accountability system.

- Employment conditions for licensed school employees, starting in the 2012-2013 contract year, are amended as follows:
  - Employment contracts are limited to one year (or less under certain circumstances).
  - School principals shall recommend to the superintendent the reemployment or termination of the licensed employees they supervise, and the superintendent shall serve a written notice on each employee.
    - ✓ Failure to serve a written notice shall no longer be construed to mean that the employee shall be reemployed according to the terms of the existing employment contract.
    - ✓ If no written notice of reemployment is served, the employee may no longer deliver a written acceptance or rejection by the last day of the school year.
  - For an employee who has worked for the district for less than three consecutive years, a principal may recommend termination for any reason the principal deems sufficient, and based on that recommendation the superintendent may terminate the employee by serving written notice.
  - An employee who has been employed by the district for three consecutive years shall not be terminated without just cause, which for teachers includes earning low effectiveness ratings.
  - The bill provides for hearings on termination and discharge decisions before the superintendent, with the right to appeal to an independent arbitrator for a binding final determination.

*SB 502 contains an emergency clause.

COMPARISON OF ERA AND PERA BENEFITS

Category	ERA	PERA – State General Member Plan 3
Membership Eligibility	• **Regular/Defined Benefit Plan**[1] – All public school and university employees working more than 0.25 of Full Time Equivalent (FTE) are eligible for membership in ERB; • Alternative Retirement Plan (ARP) – Certain two- and four-year community college, university faculty, professional employees, persons who perform research, and other services pursuant to a contract between a local administrative unit (LAU) and the federal government may choose within the first 90 days of employment to join the ARP, a **defined contribution plan**[2]; after seven years (84 months) of contributing to the ARP, participants may elect to switch to the defined benefit plan as new members; service credit may be purchased for ARP service; and educationally certified employees in certain state agencies with an educational component may choose either ERB or PERA plan, unless they possess a current teaching certificate.	All employees of PERA affiliates must be members of PERA excluding the following: • seasonal and temporary employees; • part-time employees working less than 20 hours in a 40-hour pay period or less than 40 hours in an 80-hour pay period; • student employees; • elected officials; • retired legislative workers; and • retired members from ERB.
Retirement Eligibility	Initial membership prior to July 1, 2010: • 25 years of service, regardless of age; • Rule of 75: age + service = 75; or • age 65 with 5 years of service. Initial membership after July 1, 2010: • 30 years of service, regardless of age; • Rule of 80: age + service= 80; or • age 67 with 5 years of service.	• 25 years of service, regardless of age; • age 65, with 5 years of service; • age 64 with 8 years of service; • age 63 with 11 years of service; • age 62 with 14 years of service; • age 61 with 17 years of service; or • age 60 with 14 years of service.
Contributions *Contribution percentages through June 30, 2011.*	Over $20k • Member: 9.4% of salary • Employer: 10.9% of salary • Total: 20.3% Under $20k • Member: 7.9% of salary • Employer: 12.4% of salary • Total: 20.3%	Over $20k • Member: 8.92% of salary • Employer: 15.09% of salary • Total: 24.01% Under $20k • Member: 7.42% of salary • Employer: 16.59% of salary • Total: 24.01%

[1] A defined benefit plan provides retired employees with a fixed monthly annuity based primarily on the employee's salary history and years of service. Under this plan, the employer bears the investment risk.

[2] A defined contribution plan guarantees that an employer makes a predetermined fixed contribution into an account established by the employer for the employee. An employee may then elect or be required to also contribute some of his compensation. In a defined contribution plan, the employee bears the investment risk of meeting the employee's retirement income goals.

SOURCE: ERB and PERA

Category	ERA	PERA – State General Member Plan 3
Cost-of-Living Adjustment (COLA)	• ½ the Consumer Price Index (CPI) beginning at age 65 capped @ 4%; • if CPI is less than 2%, then equals CPI; and • minimum @ 0%.	• 3%; implementation depends on retirement date with a minimum of approximately 2.5 calendar years after retirement.
Withdrawn Service Credit and Forfeited Service Credit	Withdrawn Service Credit • Upon terminating employment, a member may withdraw his or her contribution plus interest (the interest rate is determined annually by the Board). • The cost to purchase withdrawn service is 8% from the date of withdrawal to the date of purchase.	Forfeited Service Credit • Service credit for which a member withdrew – or forfeited – employee contributions and interest in the past can be purchased by paying the total of the amount withdrawn plus interest from the date the contributions were withdrawn to the date of purchase. 5.25% - Interest prior to 12/31/83 10.0% - Interest: 1/1/84 - 12/31/01 8.0% - Interest: 1/1/02 to present
Allowed Time and Air Time	Allowed Time *(no provision for air time)* • Members can purchase up to five years of service from private educational service or public educational service in another state. • Cost is actuarial. For example, a 50-year old with 20 years of earned service making $40,000 would pay $26,459 for one year of allowed service.	**Air Time**[3] • Members must be vested with five years of earned service credit to be eligible to purchase up to 12 months of "air time" permissive service credit. • Cost is full actuarial value. A 50-year old with 20 years of earned service making $40,000 would pay an estimated $18,222 for one year of air time.
Military Service Credit	• Members vested with five years of earned service credit can purchase up to five years of non-intervening military service credit at any time. • Cost is a total of the employee and employer contribution rate (20.3% in FY 10), multiplied by the average of the highest 60 consecutive months of salary for each month of military service credit purchased.	• Members vested with five years of earned service credit can purchase up to five years of non-intervening military service credit at any time. • Cost is a total of the employee and employer contribution rate (24.01% for State General Member Plan 3), multiplied by the average of the highest 36 consecutive months of salary for each month of military service credit purchased.
Miscellaneous Service Credit	• ERB does not allow the purchase of any service credit other than the allowed time, military service, and withdrawn service discussed above.	PERA provides for purchasing the following additional service credit: • service prior to affiliating with PERA; • civilian prisoner of war; • cooperative work study programs; and • employment with a utility company, library, museum, transit company, or by a nonprofit organization taken over by a PERA-affiliated public employer.

[3] Air time is service credit that is not tied to employment with a PERA affiliate.

Category	ERA	PERA – State General Member Plan 3
Retirees Returning to Work	• 12-month layout period prior to applying for the return-to-work program. Retirees may <u>not</u> work for, contract with, or volunteer in a typically paid position for an ERB employer during the 12 month layout period; • employers make employer and employee contributions (FY 10 only); • members who retired before 1/1/2001 may return to work without a layout; • members who retired before 1/1/2001 but suspend their pensions must layout for 90 days; • a retiree may earn the greater of $15,000 or 0.25 FTE with an ERB employer and maintain his or her pension; and • retirees may work as independent contractors but must follow IRS code.	Effective July 1, 2010, a retiree is eligible to return to work for a PERA affiliate as long as the following conditions have been met: • the retiree must complete a 12-month break in service from the date of retirement; • the retiree cannot be retained as an independent contractor with the employer from which he or she retired during the 12-month break in service; and • no contributions are made by the employee or employer when a retiree suspends his or her pension and returns to work. <u>Retirees re-employed before July 1, 2010</u> • retirees who were re-employed by a PERA affiliate before July 1, 2010 were grandfathered in under the laws in place when they were re-employed; • re-employed retirees who were grandfathered in must begin paying the employee contribution portion on their salary; • the employer will continue to pay the employer contribution amount on behalf of the employee; and • employee contributions made during reemployment are nonrefundable and stay in the PERA fund.
Benefit Calculation	Final average salary of highest five consecutive years of service X Years of service X .0235 No maximum benefit. 80% benefit is reached after 34 years of service.	Final average salary of highest three consecutive years of service X Years of service X .03 Benefit maximizes at 80% with 26 years and eight months of service.