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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/03/11

SPONSOR Lujan, B. LAST UPDATED \_\_\_\_\_ HB 142

SHORT TITLE Public Employees Returning to Work SB \_\_\_\_\_

ANALYST Aubel

### REVENUE (dollars in thousands)\*

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	(\$19.1)-(\$95.7)	(\$19.1)-(\$95.7)	Recurring	PERA

(Parenthesis ( ) Indicate Revenue Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		(\$10.2)- (\$84.5)	(\$10.2)- (\$84.5)	(\$20.4)- (\$169)	Recurring	Local Gov

(Parenthesis ( ) Indicate Expenditure Decreases)

\*See Fiscal impact

Conflicts with House Bill 57 and Senate Bill 242  
Relates to Senate Bill 87

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Employees Retirement Association (PERA)

Administrative Office of the Courts (AOC)

Department of Public Safety (DPS)

### SUMMARY

#### Synopsis of Bill

House Bill 142 amends the PERA Act to allow retirees return to work (RTW) to fill the following employment positions with PERA-affiliated employers without suspending their pensions:

- Undersheriffs and executive secretaries to sheriffs pursuant to Section 4-41-5 NMSA 1978;

- School crossing guards; and
- Precinct board members for elections.

## **FISCAL IMPLICATIONS**

The bill would reduce the operational expenses for employers hiring exempted RTW employees re-entering the work force for the two full-time positions, under-sheriffs and executive secretaries, because pension contributions would not be paid by the employer on their behalf. The number of such positions filled by RTW employees in New Mexico's 33 counties under the bill is unknown. Assuming 1-5 RTW undersheriffs produces a low of \$10.2 thousand to a high of \$84.5 thousand, based on the current Municipal Police Plan 5 contribution rates and assuming a 0% employer "pick up" rate for the single employee and the maximum "pick up" rate of 75% for the higher five RTW undersheriffs.

PERA acknowledges that the reduction in operating costs to local entities hiring the exempted RTW employees means reduced revenue for the fund:

Undersheriffs and executive secretaries to sheriffs are fulltime salaried positions. Both positions are appointed by a sheriff elected to fill a four-year term. If these positions are made exempt from the return-to-work provisions of the PERA Act, the PERA receives no contributions to the Fund for the position during that four-year term.

Using the same 1-5 RTW undersheriff scenario produces a range of \$19.1 thousand to \$95.7 thousand in lost contributions to PERA. A secondary fiscal impact to the fund would occur due to the opportunity cost of not earning an investment return on the lost contributions. This impact would appear minimal.

PERA is currently requesting contribution increases for the Municipal Police and Municipal Fire Retirement Plans of 8 percent scheduled over four years due to the impaired funding status of these plans (Senate Bill 87).

## **SIGNIFICANT ISSUES**

According to PERA, prior to RTW legislation implemented in 2004, PERA retirees had an option of returning to work for a PERA affiliate and earning up to \$15,000 each calendar year. Because of the low earning limit, retirees were allowed to supplement their retirement income and were not viewed as "double dippers."

The 2004 RTW legislation allowed retirees to return to work without regard to a salary cap. Seeing the unintended consequence of the growth in "double-dippers," the Legislature passed stricter provisions on the PERA RTW program, effective June 30, 2010. One of the unintended consequences of this legislation was that it did not reprise the \$15,000 cap, leaving no provisions for PERA retirees contemplating seasonal, temporary or part-time work.

PERA notes this affected many PERA retirees, including:

- Election workers;
- School crossing guards;
- Municipal summer program workers;
- Senior center transportation drivers and aides;
- Court bailiffs and security guards to cover vacancies until filled; and

- Other retirees who are employed for a limited time at usually low pay to help the areas described.

Of these part-time positions, the bill grants exemptions for crossing guards and precinct workers. PERA questions whether only certain part-time or temporary employee groups should receive exemptions.

The bill also restores the exemption for under-sheriffs, which had been deleted in the 2010 legislation. Local governments have testified that under-sheriffs can be difficult to fill with qualified non-retirees and the exemption would improve public safety. The bill adds a second exemption for a retired member employed by a sheriff in an exempt position as an executive secretary.

### **ADMINISTRATIVE IMPLICATIONS**

PERA provides the following assessment of the bill's administrative impact:

In the short term, PERA anticipates employer reporting confusion regarding post-retirement employment. PERA's public relations staff will also have to provide specific training to Municipal and County clerks, Human Resources and Payroll department employees on reporting reemployed retirees.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

House Bill 147 conflicts with HB 57, which reinstates a \$15,000 earnings limit for retired PERA members who return to work with PERA-affiliated public employers but does not specify by type of position. That bill also does not include exemptions for under-sheriffs or exempt secretaries.

House Bill 147 also conflicts with SB 242, which provides only one exemption to the PERA Act's return-to-work provisions for precinct board members for elections.

### **OTHER SUBSTANTIVE ISSUES**

On the issue of improving public safety, AOC offers the following suggestion:

The Judiciary has a longstanding need of improved courthouse security. Many courts do not have a magnetomer at the court entrance, much less security staff to oversee the device and provide security services throughout the rest of the courthouse. Retired law enforcement officers provide ideal candidates for such positions with the court. HB 142 could be modified to allow retired law enforcement officers to return to work as court security officers without their having to suspend their pensions.

PERA provides greater background detail on the RTW program:

From 1987 through 2003, a PERA retiree who returned to work with an affiliated public employer would have their pension suspended when they earned one hundred percent or more of the amount which causes a decrease or suspension of benefits under the federal social security program or \$15,000, whichever was less. *See* NMSA 1978, §10-11-8(C) (1987). In 2000, the earnings limit for federal social security recipients was repealed in federal law. In 2003, the Legislature repealed the earnings cap for retirees, allowing

retirees to receive both a pension and salary.

In 2010, the Legislature repealed the back-to-work provisions of the PERA Act; after July 1, 2010 a retiree who returns to work with an affiliated public employer will have his or her pension suspended. PERA has received many inquiries regarding the absence of an earnings cap for certain seasonal and part-time employee groups, including school crossing guards, recreational seasonal workers, poll workers, etc. Historically, the \$15,000 per year earnings cap addressed these hiring concerns without an actuarial impact to the PERA Fund and without providing exclusion to a specific employee group.

## **ALTERNATIVES**

PERA suggests that an alternative would be to “reinstate a \$15,000 earnings limit for all retired PERA members who return to work with PERA-affiliated public employers rather than a limited exception for a specific employee group.”

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Sheriffs would not be able to hire retired police officers to fill the critical position of under-sheriffs or hire a retired exempt administrative secretary unless the RTW employee suspended his or her pension. Retirees looking to supplement their income would not be able to take part-time or seasonal positions of crossing guards or precinct workers. All PERA retirees who return to work with affiliated public employers will have their pensions suspended. A retired PERA member may become a member and accrue additional service credit to recalculate his or her final average salary.

PERA retirees will be able to engage in independent contracts with affiliated public employers.

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