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FISCAL IMPACT REPORT

ORIGINAL DATE 01/28/11

SPONSOR Campos LAST UPDATED _____ HB _____

SHORT TITLE Acequias & Ditch Associations In PERA SB 241

ANALYST Haug

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Administrative		Minimal*	Minimal*	Minimal*	Nonrecurring	PERA
Employer Contributions		\$3.1-\$41.2*	\$3.1-41.2*	\$6.2-\$82.4	Recurring	Acequias & Community Ditch Associations

(Parenthesis () Indicate Expenditure Decreases)

*See narrative.

PENSION SOLVENCY

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	Minimal*		Recurring	PERA

(Parenthesis () Indicate Revenue Decreases)

*PERA total contributions, which would increase revenue, would depend on the number of employees entering the plan. The number of potential employers and the number of employees electing PERA membership are unknown. Pension liabilities for those employees would accrue. As long as contributions covered the normal cost of the pension liabilities, assuming all assumptions hold, PERA assumes the overall impact would be minimal.

Relates to SB87, SB43

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Employees Retirement Association (PERA)

SUMMARY

Synopsis of Bill

Senate Bill 241 amends the Public Employee Retirement Act to expand the definition of “public employer” to include acequia and community ditch associations for purposes of PERA affiliation.

FISCAL IMPLICATIONS

PERA indicates SB241 will have a minimal fiscal impact on PERA operations relating to administrative costs to hold elections and process applications.

The analysis assumes that the acequia and community ditch associations would join one of the two open municipal plans and not start a new plan. The incremental cost to employers to pay the PERA pension contributions would depend on the plan chosen, the number of employees covered, and the statutory rates for the employer contributions. The current statutory rates for FY12 for the two open municipal plans are as follows:

FY12 Statutory Rates		
	Municipal Plan 1	Municipal Plan 2
Employee	7%	9.15%
Employer	7%	9.15%
TTL	14%	18.30%

Assuming an average salary of \$45,000, the employer would have an incremental cost beginning in FY12 that would range from \$3,150 thousand for one employee in Plan 1 and \$4,117.50 for one employee in Plan 2. Multiplying the single employee cost by 10 creates an estimated range from one employee in the lower cost plan to 10 employees in the higher cost plan.

Estimated Range		
	1 Employee	10 Employees
Municipal Plan 1	\$ 3,150.00	\$ 31,500.00
Municipal Plan 2	\$ 4,117.50	\$ 41,175.00

This cost would recurring. Should acequia and community ditch associations not have the resources to hire an employees at a competitive salaries if PERA is mandatory and given the likely scenario that the acequia and community ditch associations would be relatively small and have more limited resources, this analysis assumes that the employers would not “pick up” up to 75 percent of the employee’s contribution, as is allowed under Section10-11-5 NMSA 1978.

Normally, prior to accepting new class members in PERA or creating a new retirement plan within PERA, PERA requires an actuarial study be performed to assure that the inclusion of the new class or plan will not negatively impact PERA as a whole. In this case, an actuarial study was not provided and PERA’s analysis does not directly address this issue but states the fiscal impact would be “minimal.”

SIGNIFICANT ISSUES

PERA provides the following discussion that concludes acequia and community ditch associations would qualify as a governmental plan:

The PERA Act specifically provides that only "public employers" can affiliate with PERA so long as they fall within the meaning of "governmental plan" as used in Section 414(d) of the Internal Revenue Code. The Internal Revenue Code requires that to qualify as a "governmental plan," a plan must be "established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of the foregoing."

Currently, the statutory definition of "public employer" includes "the state, any municipality, city, county, metropolitan arroyo flood control authority, economic development district, regional housing authority, soil and water conservation district, entity created pursuant to a joint powers agreement, council of government, conservancy district, irrigation district, water and sanitation district, water district and metropolitan water board, including the boards, departments, bureaus and agencies of a public employer."

Acequia and community ditch associations are defined as political subdivisions of the state. NMSA 1978, Section 73-2-28 (2001). The Internal Revenue Code broadly includes plans established and maintained for employees by a "political subdivision" of the state within the ambit of governmental plans. Therefore, SB 241's proposed expansion of the statutory definition of "public employer" to include acequias and community ditch associations as one of the enumerated entities eligible for PERA affiliation will comply with the requirements of the Internal Revenue Code and is consistent with the tax-deferred status of PERA as a Section 401(a) governmental plan.

RELATIONSHIP

Senate Bill 42 proposes the inclusion of Mutual Domestic Water Associations in PERA.

Senate Bill 87 proposes to increase the PERA contributions for State General Plan 3 and Municipal Fire and Police plans by 2 percent for four years (total of 8 percent.) PERA has indicated it might have to request an increase for the other Municipal plans in 2012.

GH/mew