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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 02/23/11  
**LAST UPDATED** \_\_\_\_\_ **HB** \_\_\_\_\_

**SPONSOR** Ingle

**SHORT TITLE** Law Enforcement Officials Returning to Work **SB** 506

**ANALYST** Aubel

### REVENUE (dollars in thousands)\*

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	(\$249.0)-(\$440.0)	(\$249.0)-(\$440.0)	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>		(\$219.0)- (\$387.0)	(\$219.0)- (\$387.0)	(\$438.0)- (\$774.0)	Recurring	Local Gov

(Parenthesis ( ) Indicate Expenditure Decreases)

\*See Fiscal Implications

Conflicts with House Bills 57 and 142 and Senate Bill 324  
 Relates to Senate Bills 87 and 242

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Employees Retirement Association (PERA)  
 New Mexico Municipal league (NMML)

### SUMMARY

#### Synopsis of Bill

Senate Bill 506 amends the PERA Act to allow PERA retirees to return to work (RTW) with PERA-affiliated employers as chiefs of police or undersheriffs without suspending their pensions under certain conditions:

- The employer is other than the affiliated public employer from which the chief of police retired;
- The retiree has “maxed put” service credit under the retired member’s coverage plan;

- The retired member files an irrevocable exemption from membership with PERA within 30 days for the term of office; and
- The RTW employee shall not earn additional service credit.

SB 506 limits each sheriff's office to one undersheriff qualifying pursuant to the RTW provisions.

## **FISCAL IMPLICATIONS**

The bill would reduce the operational expenses for employers hiring exempted RTW employees re-entering the work force for chiefs of police and undersheriffs because pension contributions would not be paid by the employer on their behalf. The number of such positions that could be filled by RTW employees in New Mexico's 33 counties under the bill is unknown. Assuming 1-5 RTW undersheriffs and 20-30 deputy sheriffs produces a low of \$219.0 thousand to a high of \$387.0 thousand, based on the current Municipal Police Plan 5 contribution rates and assuming the maximum "pick up" rate of 75% for the five RTW undersheriffs and for the deputy sheriffs (employee rate of 16.30% and employer rate of 18.50%).

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

While SB 506 requires that a retired member "max-out" in order to be eligible to double-dip in the capacity of chiefs of police and undersheriff, these are full-time salaried positions. Undersheriffs are appointed by a sheriff elected to fill a four-year term. For SB 506 to be cost neutral to the retirement system contributions to the fund for the affected position are necessary. 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 while continuing to pay these individuals their pensions.

Using the same 1-5 RTW undersheriff and 20-30 deputy sheriffs scenario produces a range of \$249.0 thousand to \$440.0 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.

In addition to reduced contributions that might negatively impact fund solvency, PERA notes a second fiscal implication for the fund:

It is assumed that the ability for a retired member to return to work after retirement is a factor in a PERA member's timing of his or her retirement. PERA actuaries make assumptions regarding retirement trends for actuarial valuation purposes. Allowing double-dipping exemptions for law enforcement encourages members to retire when first eligible. Actuarial experience has demonstrated that the ability to return to work after retirement escalates retirement trends when members first become eligible to retire rather than "maxing out" under a retirement plan. PERA, in turn, receives employee and employer contributions for a shorter period of time and pays pensions for a longer period of time.

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.

None of these categories of RTW workers are included in this bill, although the bill does restore the exemption for chiefs of police and undersheriffs, which had been deleted in the 2010 legislation. Local governments have testified that top law enforcement positions can be difficult to fill with qualified non-retirees and the exemption would improve public safety. These are full-time positions, so would not be eligible to return to work under a \$15,000 per year cap.

PERA notes the underlying issue with this bill and similar bills introduced in this session:

The competing interest of the need for experienced law enforcement employees must be weighed against the retirement system’s fiduciary duty to remain solvent and provide retirement benefits for its members, retirees and their beneficiaries.

The NMML notes its support for the legislation.

## **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 County clerks, Human Resources and Payroll department employees on reporting reemployed retirees as deputy sheriffs or undersheriffs.

PERA would need to track each sheriff’s office to ensure compliance with the one RTW undersheriff limit.

## **TECHNICAL**

Section 10-18-8 (D) (3) specifies that a retired member can be appointed chief of police of an affiliated public member other than the affiliated public employer from which the retired member retired. However, no similar restriction appears to be placed on the undersheriff.

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

Senate Bill 506 conflicts with House Bill 142, which provides somewhat broader exemption that includes election workers, crossing guards and undersheriffs and executive secretaries to sheriffs.

Senate Bill 506 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 chiefs of police or undersheriffs.

Senate Bill 506 conflicts with Senate Bill 324, which would grant retired state police the ability to retire and return to work as undersheriffs and deputy sheriffs without suspending their pensions.

Senate Bill 506 relates to SB 242, which provides only one exemption to the PERA Act's return-to-work provisions for precinct board members for elections. Both bills could pass without conflict.

Senate Bill 506 relates to Senate Bill 87, which increases pension contributions.

## **OTHER SUBSTANTIVE ISSUES**

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 an 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**

Municipalities and counties would not be able to hire qualified retired PERA retirees to fill the critical positions of chiefs of police or undersheriffs unless the RTW employee suspended his or her pension.

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