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FISCAL IMPACT REPORT

ORIGINAL DATE 02/27/13

SPONSOR Roch/Campos LAST UPDATED 03/05/13 HB 388/aHLC

SHORT TITLE Hospital Employee Retirement Credit Purchase SB _____

ANALYST Trowbridge

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI*	NFI*	NFI*	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

*See Fiscal Implications

SOURCES OF INFORMATION

LFC Files

Responses Received From

UNM Health Sciences Center (UNMHSC)
 Public Employee Retirement Association (PERA)
 Attorney General's Office (AGO)
 Department of Finance and Administration (DFA)
 Public Regulation Commission (PRC)

SUMMARY

Synopsis of HLC Amendment

The House Labor and Human Resources Committee amended the bill to remove the language requiring the employer to pay for the employer's share of the purchase cost of the first year of service credit.

House Bill 388 proposes to amend the Public Employees Retirement Act to allow the purchase of up to 5 years of service credit for PERA members who are employed by a hospital or medical center that is subsequently taken over by an affiliated public employer.

The PERA act currently provides for purchase of service credit for members entering the armed services, members who were civilian prisoners of war, and members of the following list of employer types: utility company, library, museum, transit company, or non-profit. House Bill 388 adds members of certain hospitals and medical centers to that list.

Synopsis of Original Bill

House Bill 388 amends Section 10-11-7 of the Public Employees Retirement Act, NMSA 1978, Sections 10-11-1 to -142. The proposed amendment to Section 10-11-7(C) would allow a member who was employed by a hospital or medical center that was subsequently taken over by an affiliated public employer to purchase service credit for the period of his/her employment. The term “member” is defined under Section 10-11-2(M) as “a currently employed, contributing employee of an affiliated public employer, or a person who has been but is not currently employed by an affiliated public employer, who has not retired and who has not received a refund of member contributions.”

To be eligible for the service credit, a member employed by a hospital or medical center must: (1) pay the Public Employees Retirement Association (PERA) the purchase cost; (2) have five or more years of service credit; and (3) the aggregate amount of service credit purchased cannot exceed five years. Under the first condition, a member who was employed by a hospital or medical center, which was subsequently taken over by an affiliated public employer, does not have to purchase the first year of service credit; instead, the employer is responsible for paying for the first year of the member’s service credit. The PERA act currently provides for purchase of service credit for members entering the armed services, members who were civilian prisoners of war, and members of the following list of employer types: utility company, library, museum, transit company, or non-profit. House Bill 388 adds members of hospitals and medical centers to that list.

FISCAL IMPLICATIONS

The Department of Finance and Administration (DFA) reports the cost of one year of service credit is determined by taking the member's final average salary and multiplying it by the combined contribution percentage of the employer and employee. House Bill 388 changes this slightly, stipulating that for members of hospitals and medical centers which are subsequently taken over by affiliated public employers, the employer's share of the purchase cost of the first year of service credit purchased shall be paid for by the employer (not by the employee purchasing years of service credit). The PERA states that HB 388 will be cost neutral to the PERA Fund and will not affect the PERA’s operating budget.

SIGNIFICANT LEGAL ISSUES

The Attorney General’s Office (AGO) states that Section 10-11-7(C)(1) is not clear. It is AGO’s understanding that “employer’s” on page 4, line 14 should be replaced to read “the member’s share of the purchase cost...shall be paid by the employer.” If this interpretation is in fact the intent of this amendment, there may be a constitutional issue. In Attorney General Opinion No. 81-16, the Attorney General concluded that the Corrections Department could not make additional retirement contribution payments on behalf of its employees because doing so would violation Article IX, Section 14 of the New Mexico Constitution, commonly refereed to as the Antidonation Clause. Article IX, Section 14 of the New Mexico Constitution states, in pertinent part: “Neither the state nor any county, school district or municipality... shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person [.]” The Opinion stated: “The responsibility for an employee's share of his contribution to a retirement benefit plan must ultimately remain with the employee, whether he pays in one lump sum or reimburses the employer who advances the contribution on the employee's behalf. An employee

may not be relieved of the obligation to pay that which should have been paid for pension benefits he will receive.” Applying this same logic to the purchase of service credit, it appears that the Antidonation Clause may prohibit an employer from purchasing service credit for a member.

ADMINISTRATIVE IMPLICATIONS

The PERA states that HB 388 will increase the volume of prior service credit purchases pursuant to NMSA 1978, Section 10-11-7 by the PERA members processed by the PERA.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The PERA reports that members who were employed by a hospital or medical facility which was taken over by a PERA-affiliated public employer will not be eligible to purchase service credit for the period of employment under the PERA’s “prior service” provisions.

TT/blm