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FISCAL IMPACT REPORT

SPONSOR	SPONSOR HJC		ORIGINAL DATE 02/03/1 LAST UPDATED 02/17/1		НВ	CS/CS/278/HSCACS/ HJCS	
SHORT TITLE		Public Pension For		SB			
				AN	ALYST	Hanika-Ortiz	

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI				PERA and ERB Funds

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From:

Educational Retirement Board (ERB)

Public Employees Retirement Association (PERA)

SUMMARY

Synopsis of Substitute Bill

The House Judiciary Committee Substitute for the House Safety and Civil Affairs Committee Substitute for House Bill 278 proposes the public pension forfeiture act. The act applies to felony campaign and public corruption offenses committed by public officers and public employees. Whoever is convicted of a campaign or public corruption offense for which the state or a political subdivision is a victim and for which the defendant could not have committed the offense but for the defendant's public employment is subject to forfeiture of all service credit earned under the retirement system, except in the case of previously retired employees who had returned to work and whose conviction is not related to the person's pre-retirement employment.

Following conviction and appeal, if any, the retirement system is required to refund to the member any accumulated member contributions, with interest, subject to relevant court orders.

The bill applies to crimes committed on or after July 1, 2016.

FISCAL IMPLICATIONS

Any pension forfeiture is an actuarial gain on the retirement funds although the impact is expected to be small because the number of persons affected is not expected to be significant.

CS/CS/House Bill 278/HSCACS/HJCS - Page 2

Typically, court-orders around corruption include restitution. An unintended consequence may be the inability to pay that restitution if pension benefit income is forfeited to the respective fund.

SIGNIFICANT ISSUES

The bill affects retirement benefits earned under the Public Employees Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act and the Educational Retirement Act.

The bill affects persons that serve in a "public trust position" defined as an elected position or appointed position that requires Senate confirmation and to public employees who are convicted of serious violent offenses, which also include sex offenses and first or second degree felonies.

The bill provides for a stay of pension forfeiture pending an appeal of a conviction or disposition of community property proceedings or child support obligations filed prior to the conviction.

If the convicted member is subsequently pardoned, the forfeiture is then treated as a voluntary withdrawal by the member or retiree of that person's own accumulated member contributions.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts/relates to HB 96, HB 155 and SB 260 that also contain pension forfeiture provisions.

OTHER SUBSTANTIVE ISSUES

Currently, only members of the Judicial and Magistrate retirement systems are subject to a forfeiture of pension benefits provision with refund of that member's own contributions.

PERA had the following comments:

Many PERA retirees retire with reciprocal service credit under more than one state retirement system. Under current law retired members may, subject to certain conditions, return to public employment or take office as an elected official. The bill will not affect a retired member's pension benefits earned through previous public employment if the felony in question did not arise from a campaign offense or a public corruption offense committed on or after July 1, 2016.

Upon meeting the minimum service requirements of a state retirement plan, a member acquires a vested property right with due process protections under both the New Mexico and the United States Constitutions. The bill provides the defendant member of the retirement system with due process protections pending a direct appeal or disposition of a dissolution of marriage or child support matter filed prior to conviction and upon subsequent pardon.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Pension benefits of certain corrupt public officials and public employees will remain not subject to forfeiture.

AHO/jo/jle/al/jo