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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
53rd Legislature, 2nd Session, 2018

Bill Number	<u>HB85</u>	Sponsor	<u>Roch</u>
Tracking Number	<u>.208916.1</u>	Committee Referrals	<u>HEC/HAFC</u>
Short Title	<u>Sick Leave for Educational Retirement Credit</u>		
Analyst	<u>Simon</u>	Original Date	<u>1/25/2018</u>
		Last Updated	<u></u>

BILL SUMMARY

House Bill 85 (HB85) allows educational employees covered under the Educational Retirement Act to convert unused sick leave to New Mexico Educational Retirement Board (ERB) service credit. Eligible employees are required to pay ERB the present actuarial value of the additional service credit. The bill carries an effective date of July 1, 2018.

FISCAL IMPACT

Although HB85 would increase educational employees' access to ERB service credit, the bill allows ERB to recoup the actuarial costs of the additional service credit under current assumptions. While ERB makes an effort to ensure its actuarial assumptions are a realistic reflection of the fund's history and industry best practice, allowing members to purchase additional service credit for sick leave would increase the risk to the fund if actual experience falls short of expectations. Such risks are inherent to defined benefit pension plans, where member and employer contributions pre-fund a guaranteed retirement benefit and the fund is subject to the risk of insufficient investment returns or changes in life expectancy. HB85 could increase such risks.

In 2017, ERB's actuarial consultants released its most recent experience study – a review of the pension fund's actuarial assumptions – and recommended reducing the rate of inflation assumed by the fund based on the difference between assumed and actual inflation rates over the study period. As a result, ERB reduced the assumed rate of inflation, which impacted the fund's assumed rate of investment returns and increased the fund's unfunded liability – the amount ERB actuarial assumptions project the pension system to owe that is not covered by current assets. At the end of FY17, ERB projected the unfunded liability at \$7.4 billion, using the updated assumptions. ERB's \$12.5 billion pension fund represents only 62.9 percent of total pension liabilities. ERB projects it will take 61 years to pay off the unfunded liability, based on current actuarial assumptions.

ERB notes the bill could have a fiscal impact on its operating budget. ERB estimates the cost of reprogramming its pension management software to account for changes from HB85 at \$19 thousand. Administrative costs for ERB are paid from the educational retirement fund.

SUBSTANTIVE ISSUES

HB85 allows members of the ERB who vested in the pension system to convert unused sick leave into ERB service credit. HB85 defines eight hours of sick leave as equal to one day and allows members to convert up to six days of unused sick leave per year of employment at an ERB-covered employer plus one additional year of ERB service credit. If the member is allowed to exchange sick leave for payment, the member may not convert any sick leave for which he or she received payment. ERB members may convert sick leave to service credit as follows:

AMOUNT OF UNUSED SICK LEAVE	AMOUNT OF SERVICE CREDIT THAT CAN BE CONVERTED
38-82 days of sick leave	one quarter of earned service credit
83-127 days of sick leave	two quarters of earned service credit
128 to 172 days of sick leave	three quarters of earned service credit
173 days or more of sick leave	four quarters of service credit

Although HB85 allows anyone with the minimum amount of service credit to receive retirement benefits, currently five years, to purchase additional service credit, the bill effectively limits the purchase of service credit to those with at least seven years of service credit. Because members can only convert six days of sick leave per year of employment and the minimum purchase requires at least 38 days, a member would not be able to purchase service credit for at least seven years.

ERB notes that under current ERB rules, regular employees with a minimum of 16 days per quarter are required to become ERB members and earn regular service credit. ERB notes that because the minimum number of days required for earned service credit is lower than the amount HB85 would require for additional service credit, this could cause member confusion.

ADMINISTRATIVE ISSUES

ERB notes the HB85 would be effective July 1, 2018 and states this may not provide sufficient time to implement the requirements of the bill. Specifically, ERB notes the need to consult with the fund’s actuaries to determine the actuarial cost for service credit. ERB suggests an effective date of July 1, 2019.

ERB notes that school districts and charter schools may have different policies around sick leave accrual and this benefit may not be uniform across every ERB member.

OTHER SIGNIFICANT ISSUES

HB85 is similar to legislation offered during the 2013 legislative session. That bill passed the House 64-2. The Senate Education Committee reported the bill with “Do Pass” recommendation, but the bill was not heard by the Senate Finance Committee.

HB85 could have an impact on the ongoing debate over the use of teacher attendance as part of the teacher evaluation system. Since the 2016-2017 school year, the teacher evaluation system has penalized teachers who are absent for more than a set number of school days. Prior to FY17, school districts and charter schools had the option to include teacher attendance as part of the teacher evaluation. For the 2016-2017 school year, the Public Education Department (PED) said it would allow three teacher absences without penalty; however, in April 2017, PED announced

it was increasing allowed absences to six days. During the 2017 legislative session, the Legislature passed HB241, which would have allowed teachers to use up to 10 days of sick leave without an impact on the teacher's evaluation. That bill was vetoed by the governor on the grounds that the inclusion of attendance in the teacher evaluation system increased teacher attendance and saved school districts and charter schools an estimated \$3.6 million in substitute teacher costs. It is possible that providing an additional benefit in the form of ERB service credit could incentivize teacher attendance in a positive, rather than punitive, manner. Such a benefit would also reward teachers who use little sick leave.

Following the release of the experience study, ERB began to reach out to ERB members across the state with a goal of recommending changes to the Educational Retirement Act during the 2019 legislative session that address the pension fund's unfunded liability and the 61 year repayment schedule. In 2013, the Legislature amended the Educational Retirement Act to address the long-term solvency of the educational retirement fund. At the time that bill was passed, actuarial assumptions projected a 30-year repayment period for the unfunded liability.

SOURCES OF INFORMATION

- LESC Files
- LFC
- Educational Retirement Board

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