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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
54th Legislature, 1st Session, 2019

Bill Number	<u>SB235/SPACS</u>	Sponsor	<u>SPAC</u>
Tracking Number	<u>.213797.1</u>	Committee Referrals	<u>SPAC/SFC</u>
Short Title	<u>Investment Performance Based Compensation</u>		
Analyst	<u>Simon</u>	Original Date	<u>3/4/19</u>
		Last Updated	<u></u>

BILL SUMMARY

Synopsis of Bill

Senate Public Affairs Committee Substitute for SB235 (SB235/SPACS) would amend the Educational Retirement Act to require the Educational Retirement Board (ERB) establish a framework for investment-performance-based compensation for the chief investment officer and other investment staff. Investment-performance-based compensation would not be included in investment staff salaries for the purpose of calculating their pension benefits. The bill would exempt the chief investment officer and other investment staff from coverage under the State Personnel Act and from the exempt employee salary plan. SB235/SPACS would become effective in FY21.

This analysis is limited to the impact of SB235/SPACS on the ERB.

FISCAL IMPACT

SB235/SPACS would likely increase compensation for investment staff at the ERB. Analysis from ERB indicates an unknown fiscal impact in FY21 and subsequent fiscal years. ERB staff salaries and benefits are paid from the educational retirement fund. ERB notes the average salary of investment staff in 2015 was \$119 thousand, roughly half of the \$247 thousand median average salary at other public pension plans. ERB notes there are currently 14 investment positions, including 12 professional investment staff positions that are already exempt from the State Personnel Act.

ERB indicates SB235/SPACS could assist the agency with recruitment and retention of investment staff, which could provide cost savings through reduced management fees and reduced profit sharing with external investment managers.

SUBSTANTIVE ISSUES

Although most investment staff positions at ERB are currently exempt from the State Personnel Act, SB235/SPACS would also exclude the pension fund's investment staff from the governor's

exempt salary plan. Under SB235/SPACS, ERB's board of trustees would be solely responsible for determining investment staff compensation. SB235/SPACS would require ERB's executive director to report to the Legislative Finance Committee and other appropriate interim committees on the investment-based-performance compensation framework.

SB235/SPACS does not define the term "investment staff," which ERB notes could be interpreted to mean that the board is allowed to determine which staff are excluded from the State Personnel Act and the exempt employee salary plan. The New Mexico Attorney General (AG) notes that, depending on the level of performance-based compensation, performance-based pay could increase the risk of fraudulent financial reporting and could increase audit fees and other costs to mitigate these risks.

ADMINISTRATIVE IMPLICATIONS

If enacted, SB235/SPACS would require ERB to adopt an investment-performance based framework, which ERB states would not provide the board with discretion to determine whether it is appropriate for investment staff salaries to include a performance component. The AG notes SB235/SPACS would not require that the compensation framework be set forth in rule, which would allow the ERB board to change the compensation framework without the notice and public hearing requirements set forth in the State Rules Act.

SOURCES OF INFORMATION

- LESC Files
- Educational Retirement Board (ERB)
- New Mexico Attorney General (AG)

JWS/mc/mhg