



## **Synopsis of SFI#1 Amendment to Senate Bill 87**

The Senate Floor amendment #1 to Senate Health and Public Affairs Committee substitute for Senate Bill 87 (SB87/SHPACS/aSFI#1) expands the number of positions for which a retired member would be eligible for reemployment under the return-to-work program. These positions include employees of the Attorney General or of a district attorney's office who is a certified law enforcement officer and paramedics.

## **Synopsis of SHPAC Substitute for Senate Bill 87**

The Senate Health and Public Affairs Committee substitute for Senate Bill 87 (SB87/SHPACS) would allow retired members of the Public Employees Retirement Association (PERA) to return to work with a PERA-covered employer in select public safety positions without suspending their pension benefit. To be eligible, the retiree must be hired as an adult or juvenile correctional officer, adult or juvenile detention officer, municipal or state police officer, courthouse security officer, emergency medical dispatcher or technician, firefighter, public safety telecommunicator, or a sheriff's deputy and the retiree must return to work before July 1, 2027. The retiree and their employer must make non-refundable contributions to PERA and would not earn service credit for their term of reemployment. A retiree would be limited to 36 months of reemployment while receiving a pension payment.

The effective date of this bill is July 1, 2024.

## **FISCAL IMPLICATIONS**

In general, some return-to-work programs can lead to employees choosing to retire earlier than they otherwise would, reducing contributions to pension funds, increasing payouts from those funds, and reducing member's pension payments. However, the program proposed by this bill would be limited to members who retired prior to December 31, 2023, making it impossible for a person to plan an early retirement with return-to-work. Additionally, the bill only allows members to return to work before July 1, 2027, and limits the amount of time a person may return-to-work while receiving a pension to 36 months.

Article XX, Section 22 of the New Mexico Constitution prohibits the Legislature from enacting any law that increases the benefits paid by PERA unless adequate funding is provided. That section assigns the PERA board the sole and exclusive power to adopt actuarial assumptions, based on recommendations from an independent actuary. While the bill could be seen as increasing benefits payments, the bill also includes additional revenue to the PERA fund in the form of mandatory, nonrefundable contributions from both the employee and employer. PERA reports an actuarial analysis of SB87/SHPACS shows the bill would not have a negative impact on the actuarial condition of PERA's trust fund because of these required payments. Although the Senate floor amendment expand potential positions a retiree could hold, it is unlikely the amendments would change the actuarial analysis of the bill.

## **SIGNIFICANT ISSUES**

Generally, a member of PERA must terminate employment to retire and receive a pension benefit from the plan. While retired members are permitted to seek employment in the private

sector, for another state or the federal government, or for an employer covered by the Educational Retirement Board (ERB), members are not allowed to return to employment with a PERA-covered employer without suspending their monthly benefit. The bill would allow retired members to return in certain positions to employment without suspending their retirement.

The bill would limit the positions a retired member is eligible to fill to the following: adult correctional officer, adult detention officer, courthouse security officer, emergency medical dispatcher, emergency medical technician, paramedic, firefighter, juvenile correctional officer, juvenile detention officer, municipal police officer, peace officer, protective services investigator, public safety telecommunicator, sheriff's deputy, or state police officer. Additionally, a retired member cannot be hired into a position with a vacancy rate lower than 10 percent.

### **Vacancy Rates**

The bill could lead to an increase in the number of state and local government employees by increasing the pool of prospective employees by allowing retirees to return to work. Analysis of a similar bill from DPS and CYFD notes the bill could help those agencies fill current vacancies. However, DPS notes the pool of interested applicants may be limited by the rules that help make the program financially viable: the requirement that retired members make non-refundable contributions without building additional service credit.

Current vacancy rates for the state agency positions covered by the bill vary significantly. Based on information on state employment as of January 1, 2024, received from the State Personnel Office, DPS had 92 vacancies out of 762 total eligible positions, an average vacancy rate of 12.1 percent; NMCD had 428 vacancies out of 1,353 total eligible positions, an average vacancy rate of 31.6 percent; the Attorney General had seven of 34 vacant positions, an average vacancy rate of 20.6 percent; the district attorneys had one vacancy of 53 eligible positions, an average vacancy rate of 2 percent; and CYFD had 169 vacancies out of 373 total eligible positions, an average vacancy rate of 31.2 percent. EMNRD reported the highest vacancy rates among firefighters, with 16 of 33 positions filled, an average vacancy rate of 51.5 percent. This high vacancy rate is possibly due to the recent addition of these positions, which first appeared in the state personnel data in October 2023. Attachment 1 includes vacancy rates by position.

Notably, CYFD maintains high vacancy rates among correctional officers. A 2023 LFC report on juvenile justice facilities noted the high rates of staffing vacancies have corresponded with significant population declines in secure facilities as CYFD has undertaken evidence-based rehabilitative practices to reduce recidivism rather than placing youth in secure facilities. The report noted juvenile justice reintegration centers are underutilized, and both CYFD reintegration centers and secure facilities are overstaffed, contributing to per-client cost increases. The report recommended CYFD evaluate the program budget and identify opportunities to achieve staffing efficiencies.

The bill defines a “courthouse security officer” as an employee of the Administrative Office of the Courts. A review of that agency’s personnel listing shows a single position for state facility security manager but does not list any vacant security positions. Listings for the district courts, the Supreme Court, the Court of Appeals, and Bernalillo County Metropolitan Court include 28 positions with security in the title, with five of those positions vacant. However, it is unclear if the bill would apply to those positions as they may not be considered employees of the

Administrative Office of the Courts.

Senate Floor Amendment 1 defines “peace officer” as a certified law enforcement officer appointed by the attorney general or the district attorney who investigates and enforces state laws, rules, and regulations, including the execution of warrants. For executive agencies, like the attorney general, it is assumed any position on the Personnel Board’s peace officer salary schedule would apply. However, district attorneys maintain a separate classification and pay system. A review of personnel listing shows four positions that may apply, but it is not clear if only these positions apply. Analysis from the Administrative Office of the District Attorneys is not available.

### **Return to Work Programs**

As designed, public pension funds are intended to replace the income an individual loses when leaving the workforce by providing a steady stream of payments in retirement. As a result, pension plans and regulations from the Internal Revenue Service (IRS) generally prohibit payment from the pension system to an active employee, except under certain circumstances, and require a “bona fide” separation of service. However, return-to-work programs have been designed to allow retired workers to return to employment to address shortages of qualified workers.

Theoretically, a return-to-work program would not increase the costs of the retirement system because the worker being employed has qualified for retirement and already decided to retire and begin receiving pension benefits. Under this paradigm, return-to-work merely allows a public employer continued access to the services of experienced employees, who might otherwise go on to work in the private sector or in the public sector for an employer not affiliated with PERA, while continuing to receive their pension. However, in practice, the existence of return-to-work programs likely leads some employees to move up their retirement date with a reasonable assurance that they will be able to find continued employment and be able to receive both a paycheck and pension payments, sometimes called “double dipping.” Under this paradigm, return-to-work programs increase costs to the retirement system because pension payments must be made for a longer period than if no return-to-work system existed. In reality, neither paradigm is likely a true representation of a wide variety of actual employment decisions made by different employees.

To cut back on possible abuses of return-to-work programs, most public pension funds place limits on how a retired employee can return to work. These restrictions can include limits on the amount of time that can be worked, how much a person can earn, how long a person must wait before returning to work, and the age of an employee allowed to return to work. Some states require formal certification of a “critical shortage” of workers before an employer is allowed to consider hiring return-to-work applicants, and some restrict the overall number of workers who can be hired. For example, this bill limits the jobs to which a member may return and the length of time a person may return-to-work while receiving a pension payment. Additionally, the bill limits participation to those beginning the program before July 1, 2027.

### **ADMINISTRATIVE IMPLICATIONS**

The bill requires employers with return-to-work employees track and document information on employees, including hire and separation dates, employment history, salaries, and the vacancy

rate for each employment position. Additionally, the bill would require that retirees employed under a return-to-work program be laid off before any other employees if the agency faces budget constraints.

The bill requires that a retired member not be hired into “an employment position with a vacancy rate that is lower than 10 percent,” however, PERA may need to establish rules on how a vacancy rate must be calculated to ensure uniform application of this requirement. For the purposes of this FIR, it is assumed the term “employment position” applies to the specific job classification, but agency analysis of this language indicates they may interpret this term more broadly. Analysis from PERA states “public employers shall not hire addition return-to-work retirees if that public employer has vacancy rates of 10 percent or less.” Precise procedures for calculating vacancy rates may be developed by PERA when it establishes methods for tracking and documenting the program, as required by the bill.

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

Several bills have been introduced to create return to work programs for PERA retirees. These bills include:

- House Labor, Veterans’ and Military Affairs Committee Substitute for House Bill 236, as amended by the House Judiciary Committee, duplicates SB87/SHPACS/aSFI#1/aSFI#2;
- Senate Bill 123, which would create a return-to-work program for retired members of a municipal police plan, a municipal detention officer plan, a municipal fire plan, or the state police, correctional officer and probation and parole officer plan;
- House Bill 154, which would create a return-to-work program for certain positions, including certified law enforcement officers, water resources professionals, operators of public water supply or wastewater facilities, or for any position if the retired members is a certified law enforcement officer.

## **ALTERNATIVES**

Analysis from PERA notes employers have the ability to offer retention bonuses and longevity pay, which could help address short-term vacancy issues.

Attachment

1. State Police, Dispatcher, Firefighter, Protective Service and Correctional Officer Vacancy Rates

JWS/ss/al/ne/ss/rl/ne/al/ss/ne/ss

**State Police, Dispatcher, Firefighter, Protective Service and Correctional Officer Vacancy Rates**  
as of January 1, 2024

Agency	Position	Filled	Vacant	Total	% Vacant	Hires to get to 10% Vacancy
Public Safety	Patrolman	455	70	525	13.3%	18
Public Safety	Sergeant	107	9	116	7.8%	0
Public Safety	Lieutenant	50	2	52	3.8%	0
Public Safety	Dispatcher I	1	0	1	0.0%	0
Public Safety	Dispatcher II	57	11	68	16.2%	5
Public Safety	Dispatcher Supervisor	12	1	13	7.7%	0
Public Safety	<b>Total</b>	<b>682</b>	<b>93</b>	<b>775</b>	<b>12.0%</b>	<b>23</b>
Corrections	Correctional Officer-Cadet	16	7	23	30.4%	5
Corrections	Correctional Officer	587	322	909	35.4%	232
Corrections	CO Spec. - Fire, Safety & Sanitation	9	4	13	30.8%	3
Corrections	CO Spec. - K9 Security Threat Intel.	3	1	4	25.0%	1
Corrections	CO Spec. - Electronics	4	0	4	0.0%	0
Corrections	CO Spec. - Special Programs	8	3	11	27.3%	2
Corrections	CO Spec. - Recreation	9	4	13	30.8%	3
Corrections	CO Spec. - Warehouse/Canteen	14	3	17	17.6%	2
Corrections	Correctional Officer-Sergeant	132	54	186	29.0%	36
Corrections	CO Spec. - Maintenance	25	7	32	21.9%	3
Corrections	CO Spec. - Corrections Industries	9	2	11	18.2%	0
Corrections	Correctional Officer-Lieutenant	76	15	91	16.5%	6
Corrections	CO Spec. - Boiler Operations	1	0	1	0.0%	0
Corrections	CO Spec. - Electrician	1	0	1	0.0%	0
Corrections	CO Spec. - HVAC	2	0	2	0.0%	0
Corrections	CO Spec. - Locksmith	3	1	4	25.0%	0
Corrections	CO Spec. - Mechanic	5	0	5	0.0%	1
Corrections	CO Spec. - Plumber	2	0	2	0.0%	0
Corrections	Correctional Officer-Captain	13	5	18	27.8%	4
Corrections	Correctional Officer-Major	6	0	6	0.0%	0
<b>Corrections</b>	<b>Total</b>	<b>925</b>	<b>428</b>	<b>1353</b>	<b>31.6%</b>	<b>298</b>
EMNRD	Wildland Firefighter Tier I	1	4	5	80.0%	4
EMNRD	Wildland Firefighter Tier II	6	9	15	60.0%	8
EMNRD	Wildland Firefighter Tier III	4	2	6	33.3%	2
EMNRD	Wildland Firefighter Tier IV	3	1	4	25.0%	1
EMNRD	Wildland Firefighter Tier V	2	1	3	33.3%	1
EMNRD	<b>Total</b>	<b>16</b>	<b>17</b>	<b>33</b>	<b>51.5%</b>	<b>16</b>
CYFD	Juvenile Correctional Officer I	73	95	168	56.5%	79
CYFD	Juvenile Correctional Officer II	69	28	97	28.9%	19
CYFD	Juvenile Correctional Officer Supervisor	36	8	44	18.2%	4
CYFD	CPS Investigation Case Worker	109	21	130	16.2%	9
CYFD	CPS Investigation Senior Case Worker	39	13	52	25.0%	8
CYFD	CPS Investigation Supervisor	47	4	51	7.8%	0
<b>CYFD</b>	<b>Total</b>	<b>373</b>	<b>169</b>	<b>542</b>	<b>31.2%</b>	<b>119</b>
Attorney Gen.	AGO Special Agent	22	5	27	18.5%	3
Attorney Gen.	AGO Special Agent in Charge	5	2	7	28.6%	2
<b>Attorney Gen.</b>	<b>Total</b>	<b>27</b>	<b>7</b>	<b>34</b>	<b>20.6%</b>	<b>5</b>
D.A.s	Lead Investigator	4	0	4	0.0%	2
D.A.s	Lead Investigator - PO	14	0	14	0.0%	2
D.A.s	Senior Investigator	7	1	8	12.5%	1
D.A.s	Senior Investigator - PO	27	0	27	0.0%	1
<b>D.A.s</b>	<b>Total</b>	<b>52</b>	<b>1</b>	<b>53</b>	<b>1.9%</b>	<b>1</b>

Source: LFC Files