LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS

Bill Number: **SB 248aa** **50th Legislature, 1st Session, 2011**

Tracking Number: **.183590.1**

Short Title: **Change Public Retiree Contributions**

Sponsor(s): **Senators Stuart Ingle and John Arthur Smith and Others**

Analyst: **Craig J. Johnson** **Date:** **March 11, 2011**

AS AMENDED

The Senate Finance Committee amendment strikes all of the Senate Public Affairs Committee amendments except for the amendments relating to actuarial studies.

The Senate Public Affairs Committee (SPAC) amendments:

- **change the employer and employee contribution rates for the retirement plans addressed in the original bill;**
- **establish different contribution rates for three annual salary tiers;**
  - **less than $20,000;**
  - **between $20,000 and $50,000; and**
  - **greater than $50,000;**
- **add a temporary provision to require the Public Employees Retirement Association (PERA) and the Educational Retirement Association (ERA) to conduct actuarial studies no later than September 30, 2013 to determine if the higher employee contribution rates and the lower employer contribution rates will have an adverse actuarial effect on the respective retirement system; and**
- **if the studies conclude that the changes will have an adverse actuarial effect, then the Educational Retirement Board (ERB) and PERA are directed to submit a request for a supplemental appropriation during the 2014 legislative session.[1]**

Compared to the original bill, for FY 12 the SPAC amendments require public employees who earn over $50,000 to make greater contributions to the retirement plans. Specifically, compared to the original bill, the amendments:

- **lower employee contributions rates by 0.5 percent (from 11.15 percent to 10.65 percent for ERB; and from 10.67 percent to 10.17 percent for PERA State Coverage Plan 3) for employees making between $20,000 and $50,000 annually;**

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[1] Second Session of the Fifty-first Legislature

- **increase employer contribution rates by 0.5 percent (from 9.15 percent to 9.65 percent for ERB; from 13.34 percent to 13.84 percent for PERA State Coverage Plan 3) for employees making between $20,000 and $50,000 annually;**

- **increase employee contribution rates by 0.5 percent (from 11.15 percent to 11.65 percent for ERB; from 10.67 percent to 11.17 percent for PERA State Coverage Plan 3) for employees making over $50,000 annually; and**

- **decrease employer contribution rates by 0.5 percent (from 9.15 percent to 8.65 percent for ERB; from 13.34 percent to 12.84 percent for PERA State Coverage Plan 3) for employees making over $50,000 annually.**

Table A shows the FY 12 ERB contribution rates in SB 248 as amended compared to the original bill and the FY 12 ERB contribution rates in current law. ERB contribution rates outlined in the original SB 248 are shown in Table A below.

Table A: ERB Retirement Contribution Percentages (FY 12)						
Salary	Current Law (State)	SB 248 Original (State)	SB 248a (State)	Current Law (Member)	SB 248 Original (Member)	SB 248a (Member)
< $20k	13.15	12.4	12.4	7.9	7.9	7.9
20k-50k	13.15	9.15	9.65	7.9	11.15	10.65
> 50k	13.15	9.15	8.65	7.9	11.15	11.65

Table B shows the FY 12 PERA contribution rates in SB 248 as amended compared to the original bill and the FY 12 PERA contribution rates in current law. PERA contribution rates outlined in the original SB 248 are shown in Table B below.

Table B: PERA retirement Contribution Percentages (FY 12)						
Salary	Current Law (State)	SB 248 Original (State)	SB 248a (State)	Current Law (Member)	SB 248 Original (Member)	SB 248a (Member)
< $20k	16.59	16.59	16.59	7.42	7.42	7.42
20k-50k	16.59	13.34	13.84	7.42	10.67	10.17
> 50k	16.59	13.34	12.84	7.42	10.67	11.17

<u>Original Bill Summary</u>:

Endorsed by the Legislative Finance Committee (LFC), SB 248 increases the employee contribution rate for both ERB retirement plans and some state member PERA plans for FY 12, effective July 1, 2011.

Among its provisions, SB 248:

- adds an additional 1.75 percent to the employee contribution rate for FY 12 and reduces or ‘swaps’ the corresponding employer contribution rate for FY 12 by 1.75 percent;
- makes the existing 1.5 percent employer/employee contribution swap permanent;

- delays the two remaining 0.75 percent employer contribution rate increases for ERB, currently scheduled for FY 12 and FY 13, to FY 14 and FY 15; and
- exempts employees whose annual salary is less than $20,000 per year from the contribution swap.

Finally, SB 248 affects the following plans under the PERA:

- State General Member Plan 3 (applicable to most state employees);
- State Police and Adult Correctional Member Plan 1;
- State Hazardous Duty Member Plan 2;
- Judicial Retirement Act (JRA); and
- Magistrate Retirement Act (MRA).

Fiscal Impact:

- SB 248 has a positive impact to the General Fund and a negative impact on the solvency of ERB funds.

- Without SB 248 or similar legislation, agency operating budgets would have to absorb the increased contributions or additional General Fund appropriations would be needed to cover the increase in employer contributions.

- SB 248 does not require adjustment of employee contributions for ERB employees earning $20,000 or less annually; however, it does reduce the employee contributions until FY 15.

Fiscal Issues:

Agency analyses of SB 248 generally identify two fiscal issues: (1) those related to the budgetary impacts of the employer/employee contribution shift; and (2) those related to the impact that contribution changes have on retirement funds.

FY 12 Budget

- SB 248 helps address the budget shortfall for FY 12 by reducing the amounts employers contribute to the pension funds.

- LFC estimates that if SB 248 or similar legislation does not pass, other options to reduce costs or increase revenues will be needed to offset a combined fiscal impact of almost $112 million, which consists of:

    - about $42.6 million for the sunset of the 1.5 percent swap in FY 12;
    - about $19.3 million to fund the 0.75 percent ERB contribution increase; and
    - almost $49.7 million in new General Fund savings due to not using the added 1.75 percent shift as part of the state solvency package for FY 12.

Table 1 below shows the changes SB 248 makes to contribution rates compared to contribution rates currently set in statute.

TABLE 1: SB 248 and ERB Contributions

	A	B	C	D	E	
1	**ERA Employer Contribution**					1
2		**Current Law**	**% Change**	**SB 248**	**% Change**	2
3	FY 11	10.9%	0.0%	10.9%	0.0%	3
4	FY 12	13.15%	2.25%	9.15%	-1.75%	4
5	FY 13	13.9%	0.75%	10.9%	1.75%	5
6	FY 14	13.9%	0.0%	11.65%	0.75%	6
7	FY 15	13.9%	0.0%	12.4%	0.75%	7
8						8
9	**ERA Employee Contribution**					9
10		**Current Law**	**% Change**	**SB 248**	**% Change**	10
11	FY 11	9.4%	0.0%	9.4%	0.0%	11
12	FY 12	7.9%	-1.5%	11.15%	1.75%	12
13	FY 13	7.9%	0.0%	9.4%	-1.75%	13
14	FY 14	7.9%	0.0%	9.4%	0.0%	14
15	FY 15	7.9%	0.0%	9.4%	0.0%	15
16						16
17	**ERA Total Contribution**					17
18		**Current Law**	**% Change**	**SB 248**	**% Change**	18
19	FY 11	20.3%	0.0%	20.3%	0.0%	19
20	FY 12	21.05%	0.75%	20.3%	0.0%	20
21	FY 13	21.8%	0.75%	20.3%	0.0%	21
22	FY 14	21.8%	0.0%	21.05%	0.75%	22
23	FY 15	21.8%	0.0%	21.8%	0.75%	23

ERB believes that SB 248 will have a negative effect on the Educational Retirement Fund by decreasing combined employee and employer contributions in FY 12 to FY 14. In FY 15, the total combined contributions are the same under SB 248 and current law.

The ERB bill analysis also notes that:

- there could be a smaller negative actuarial impact as a result of shifting contributions from employers to employees because employer contributions are not refundable, but employee contributions are refundable;
- that an actuarial study would have to be performed to determine the effect of the cumulative shift on the Educational Retirement Fund; and
- negative actuarial impacts would be measured by the increase in the unfunded actuarial accrued liability, decrease in the funded ratio or an increase in the funding period.

The PERA analysis also maintains that additional employee-employer contribution swaps would have a negative impact on its funds. Any further reduction in employer contributions will negatively impact the PERA, MRA, and JRA funds.

	A	B	C	D	E	
1	**Table 2: SB 248 and PERA contributions**					1
2	**PERA Employer Contribution**					2
3		**Current Law**	**% Change**	**SB 248**	**% Change**	3
4	FY 11	15.09%	0.0%	15.09%	0.0%	4
5	FY 12	16.59%	1.50%	13.34%	-1.75%	5
6	FY13	16.59%	0.00%	15.09%	1.75%	6
7	1) Employees earning more than $20,000					7
8	**PERA Employee Contribution**					8
9		**Current Law**	**% Change**	**SB 248**	**% Change**	9
10	FY 11	8.92%	0.0%	8.92%	0.0%	10
11	FY 12	7.42%	-1.50%	10.67%	1.75%	11
12	FY13	7.42%	0.00%	8.92%	-1.75%	12
13	1) Employees earning more than $20,000					13
14	**PERA Total Contribution**					14
15		**Current Law**	**% Change**	**SB 248**	**% Change**	15
16	FY 11	24.01%	0.00%	24.01%	0.00%	16
17	FY 12	24.01%	0.00%	24.01%	0.00%	17
18	FY 13	24.01%	0.00%	24.01%	0.00%	18

PERA's bill analysis also notes that:

- If the total contributions are kept the same, but some of the contributions are shifted from employer to employee, the amortization period for that plan will increase because employer contributions are nonrefundable and remain with the respective retirement funds.

- PERA actuaries state that every $100 increase in employee contributions will decrease employer contributions by approximately $95.00. The reason there is not a one-to-one relationship is that employee contributions are refundable upon termination, where as the employer contributions are not.

- Under the PERA, JRA, and MRA acts, the actual relationship will vary from group to group depending on the rates of terminations. The higher the rates of termination, the farther from a one-to-one relationship the group will be. For example, the Hazardous Duty group would most likely be less than a 95-to-100 relationship because of their high turnover rates. As a result, PERA will experience a net loss to its retirement funds to the benefit of the General Fund.

- There will be some minimal cost associated with modifying its computer pension administration system.

<u>Substantive Issues</u>:

AFSCME Council 18 et. al. vs. State of New Mexico, et. al. Case No. CV-2009-7148

- The PERA analysis noted that without an actuarial determination that a change to the existing statutory contribution rates is required to enhance or benefit the actuarial soundness of the retirement fund, reallocating contribution rates between the employee and employer may violate the Constitution of New Mexico.

- The ERB analysis advises that the additional contribution shift contemplated by SB 248 could be challenged under the New Mexico constitution as a "taking." Article XX, Section 22 of the constitution states that the Legislature "shall not enact any law that increase the benefits paid by the system in any manner or change the funding formula for a retirement plan unless adequate funding is provided." The section also states that nothing in it "shall be construed to prohibit modification to retirement plans that enhance or preserve the actuarial soundness" of an effected trust fund or plan.

- The Attorney General analysis provides more insight into the issue by adding, "There is a pending lawsuit stemming from the passage in 2009 of HB 854, which introduced the first 1.5% contribution shift. The State district court presiding over the case has dismissed nearly all of the claims raised by the plaintiffs, but the plaintiff's takings claim has survived. Importantly, if the plaintiffs are successful on that claim, they would be entitled to the payment of damages as compensation for the taking."

<u>Background</u>:

Laws 2005, Chapter 273, increased the ERB employer contribution rate 0.75 percent annually from FY 06 through FY 12 to a final 13.9 percent Laws 2009, Chapter 126, initiated a two-year 1.5 percent contributions shift from both the ERB and PERA employer to the employee as a solvency measure to produce a balanced state budget. Then, Laws 2010, Chapter 67 (SB 91), delayed the 0.75 percent ERB employer increase scheduled for FY 11 to FY 12 and the final 0.75 percent employer increase to FY 13. Thus, the culmination of this legislation, if left intact, produces a 2.25 percent increase in the employer ERB contribution and a 1.5 percent increase in the employer PERA contribution effective July 1, 2011.

A 25-member task force implemented by Laws 2009, Chapter 288, studied solvency issues relating to PERA, ERB, and the Retiree Health Care Authority. This task force recommended three bills to the Investment Oversight Committee:

- delaying the two 0.75 percent ERB employer contribution increases due in FY 12 and FY 13 to spread over six years to FY 17;
- reinstating the $15,000 salary exemption for the PERA return-to-work program; and

- moving the contribution formula for PERA's judicial and magistrate plans from docket fees to the General Fund.

Related Bill(s):

SB 87 *Public Employee Retirement Contribution*
SB 88 *Judicial Employee Retirement Contribution*
SB 268 *Public Employee Retirement Plan Changes*
CS/HB 2aa et al. *General Appropriation Act of 2011*
*HB 3a *Education Appropriation Act*
HB 57 *Public Employees Returning to Work*
HB 58a *Judicial Retirement Contributions*
HB 129a *Returning Educational Retiree Payments*
HB 133 *Delay Educational Retirement Contributions*
HB 142 *Public Retirees Returning to Work*
HB 251 *Amend Certain Retirement Acts*
HB 272 *Public Employee & Education Retirement Acts*
CS/HB 628 *Contribution Rate Changes in Retirement Plans*