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

Bill Number	<u>SB157</u>	Sponsor	<u>Soules</u>
Tracking Number	<u>.211996.1</u>	Committee Referrals	<u>SEC</u>
Short Title	<u>Sick Leave for Educational Retirement Credit</u>		
Analyst	<u>Simon</u>	Original Date	<u>1/17/2019</u>
		Last Updated	<u></u>

BILL SUMMARY

Synopsis of Bill

Senate Bill 157 (SB157) 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, 2020.

FISCAL IMPACT

Although SB157 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. SB157 could increase such risks.

As of June 30, 2018, the educational retirement fund held \$12.996 billion in assets, equal to 63.5 percent of estimated liabilities of \$20.458 billion and ERB's actuaries estimate it will take 70 years to pay off the unfunded liability, based on current actuarial assumptions. ERB assumes average annual investment returns of 7.25 percent, but ERB's actuaries estimate that if ERB consistently misses that rate of return, the fund could become insolvent. In their annual actuarial valuation report, ERB's actuaries noted investment returns averaged 6.25 percent – one percentage point less than assumed – the trust fund could be exhausted by 2066, given current contribution rates and assumptions.

In a 2018 analysis of an identical bill, ERB estimated the cost of reprogramming its pension management software to account for changes from SB157 at \$19 thousand. Administrative costs for ERB are paid from the educational retirement fund. An updated ERB analysis is not available at this time and it is unclear if this amount will change.

SUBSTANTIVE ISSUES

SB157 allows members of the ERB who vested in the pension system to convert unused sick leave into ERB service credit. SB157 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 SB157 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.

ADMINISTRATIVE IMPLICATIONS

SB157 would require ERB to promulgate rules governing the purchase of service credit. The bill carries an effective date of July 1, 2020, providing time for ERB to promulgate such rules and put in place the policies and procedures that would be required by the bill.

School districts and charter schools may have different policies around sick leave accrual and this benefit may not be uniform across every ERB member. Some school districts and charter schools may not allocate “sick leave” but provide staff “personal leave” which may not allow the employee to purchase additional service credit. The term “sick leave” is not defined in the bill but could be clarified in rules promulgated by ERB. In addition, at least one school district – Santa Fe Public Schools – provides cash payments to school employees for unused sick leave. The bill would not allow anyone receiving cash payment for sick leave to purchase additional service credit.

OTHER SIGNIFICANT ISSUES

SB157 is identical House Bill 85 from the 2018 legislative session. The bill passed the House 66-0 and passed the Senate 40-0, but the bill was vetoed by the governor. The governor’s veto message cited concerns that the bill could negatively impact the educational retirement fund, even with teachers purchasing service credit at the actuarial value, and some school employees might not be able to benefit from the program if they only receive “personal leave” and not specifically sick leave.

For several years, the Public Education Department (PED) attempted to dissuade teachers from using all available sick leave by including teacher attendance in the statewide teacher evaluation system. For the 2016-2017 and 2017-2018 school year, teachers were allowed up to six absences without penalty, but teachers with more than six absences in a school year would have a lower teacher evaluation score. At the time, PED estimated including teacher absences in the evaluation

system saved school districts and charter schools \$3.6 million in substitute teacher costs. Executive Order 2019-002 ordered PED to develop a new teacher evaluation system. While the order focused on the inclusion of student achievement results in teacher evaluations, it is unclear if the new system will include teacher attendance.

RELATED BILLS

ERB has proposed Senate Bill 14, which would, among other things, increase employer contributions to the educational retirement fund to improve the sustainability of the fund.

Senate Bill 123 would allow public school employees to use accrued sick leave to care for family members, which could provide some public school employees with another way to use accrued sick leave.

House Bill 227 would restrict the use of teacher attendance in teacher evaluations by allowing teachers to use up to ten days of sick leave without it affecting the teacher's annual evaluation.

SOURCES OF INFORMATION

- LESC Files

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