

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov).

FISCAL IMPACT REPORT

ORIGINAL DATE 1/28/2020
 SPONSOR Munoz LAST UPDATED 2/15/2020 HB _____
 SHORT TITLE Public Employee Retirement Pay Changes SB 62
 ANALYST Jorgensen

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total			Indeterminate		Recurring	Local Governments

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Attorney General’s Office (AGO)
 Public Employees Retirement Association (PERA)

SUMMARY

Synopsis of Bill

Senate Bill 62 includes overtime pay required for a regular scheduled tour of duty for fire protection or law enforcement activities in the definition of “salary” for purposes of calculating pensions under the Public Employees Retirement Act.

SB62 will affect employees who are subject to overtime exemption set forth in Section 207(k) of the United States Code, Fair Labor Standards Act, specifically municipal fire members and municipal police members.

FISCAL IMPLICATIONS

The impact on local government employers depends on how regularly scheduled overtime is allocated to employees. While county and municipal fire and police departments will face increased costs as a result of increasing pensionable wages, the exact amount is not known. Neither the Municipal League nor the Association of Counties provided cost impacts for SB62 resulting in an unknown impact reported in the operating budget impact table.

PERA reports the following:

SB 62 will potentially increase liabilities for the affected membership Divisions. The increase will be offset to some degree by the payment of employer and employee contributions that are currently not being collected. PERA estimates for the average

firefighter, six hours of regularly scheduled overtime is excluded for each payroll period of 14 days. Based on an actuarial analysis that includes an additional six hours per pay period for affected municipal fire members, SB62 will increase payroll for the Municipal Fire Division by 5.41 percent, resulting in a small reduction in the funded ratio of 1.01 percent. The increase to the unfunded liabilities are difficult to calculate until the provisions of SB62 take effect, but preliminary estimates are an increase in unfunded liabilities of \$29.8 million for the Municipal Fire Division. Those increases may be lower once PERA has additional data on usage.

While members of the Municipal Police Division and certain correctional officers are also eligible under the provisions of SB62, because of shift structure differences, the accumulation of qualified FLSA hours will likely be minimal and not add measurably to the liabilities of the Municipal Police Division. For example, most municipal police officers work four ten-hour shifts per week and only work overtime on an ad hoc or voluntary basis.

SIGNIFICANT ISSUES

PERA states:

Under the PERA Act, the term “salary” is limited to base wages for personal services rendered. Overtime pay does not constitute salary for PERA purposes. The federal Fair Labor Standards Act (“FLSA”) requires that all covered, nonexempt employees be paid *overtime pay* for all hours worked in excess of 40 in a work week. Section 207(k) of the FLSA provides that employees engaged in fire protection or law enforcement may be paid overtime on a “work period” basis. A “work period” may be from 7 consecutive days to 28 consecutive days in length. Fire protection personnel are working overtime under such a schedule after 212 hours are worked during a 28 day period.

Pursuant to PERA’s definition of salary as set forth above, hours worked over the FLSA maximum hours standard for the applicable work period are not “salary” for PERA purposes because they constitute overtime hours. Since they fall outside the definition of salary, which means employee and employer contributions are not paid and they are not included in calculation of pension amounts.

CJ/sb