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FISCAL IMPACT REPORT

SPONSOR Rehm/Terrazas/Montoya/Brown/Ezzell
LAST UPDATED 1/26/2023
ORIGINAL DATE 1/25/2023
BILL
SHORT TITLE Return to Work for Public Safety Employees
NUMBER House Bill 64
ANALYST Simon

REVENUE* (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		
	Indeterminate, but increasing	Indeterminate, but increasing	Recurring	PERA Fund

Parentheses () indicate revenue decreases.

*Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
		Indeterminate, but likely increasing	Indeterminate, but likely increasing		Recurring	PERA Fund
Total						

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to House Bills 65, 66, and 106 and Senate Bills 96 and 124

Conflicts with House Bill 65 and Senate Bill 124

Sources of Information

LFC Files

Responses Received From

Public Employee Retirement Association (PERA)

Department of Public Safety (DPS)

Children, Youth and Families Department (CYFD)

Corrections Department (NMCD)

SUMMARY

Synopsis of House Bill

House Bill 64 would amend the Public Employees Retirement Act to allow retired certified law enforcement officers, municipal detention officers, and municipal fire members to resume employment with a PERA-covered employer without the need to suspend their retirement benefits. The bill includes the following conditions:

- The retired prospective employee must be retired for at least 90 days before being eligible to seek employment with a PERA-covered employer.
- The retired employee and PERA-covered employer must make nonrefundable contributions to the PERA fund.
- The retired employee would not accrue services credit during their term of reemployment.
- The reemployment must occur prior to July 1, 2026.

HB64 would require the Public Employees Retirement Association (PERA) to report to the Legislature on the number of retirees reemployed under this program, the amount of nonrefundable contributions made to the PERA fund, and, with the assistance of the State Personnel Office (SPO), the number of vacant employee positions.

The effective date of this bill is July 1, 2023.

FISCAL IMPLICATIONS

HB64 could lead to an increase in the number of public safety retirements by allowing retirees to return to work. With return-to-work programs, some public safety employees could choose to retire earlier than they otherwise would, reducing contributions to the fund, increasing payouts from the fund, and reducing member's pension payments. However, HB64 limits the ability of employees to pre-plan a retirement while also planning to return to work by limiting the return-to-work program to a three-year window.

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 HB64 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. Analysis from PERA states these contributions are expected to have a small positive impact on the fund, presumably making the funding level "adequate" in PERA's estimation.

SIGNIFICANT ISSUES

Agencies anticipate HB64 could decrease persistently high vacancy rates by allowing retired personnel to return to work. The Department of Public Safety (DPS) notes law enforcement officers may be particularly likely to return to work, given the lower age for law enforcement retirement. Data from SPO shows DPS had a 20 percent vacancy rate, as of January 1, in line with the statewide average. State police had 131 of 787 positions vacant (17 percent).

HB64 identifies those who could return to work as “certified law enforcement officers” who are a part of the state police member, correctional officer member, and probation and parole officer member coverage plan. HB64 does not define “certified law enforcement officer” and the term does not appear to be used elsewhere in the Public Employees Retirement Act. The term could be seen as applying to those with certification from the law enforcement certification board. Employees of the Department of Corrections, including probation and parole officers, may or may not hold a law enforcement certification. As a result, HB64 may not apply to some corrections retirees.

Return to Work Programs

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, with 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. HB64 would allow certain retired members to return to employment without suspending their retirement.

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 decision 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. A concise review of return-to-work policies is available in a joint publication from the Center for State and Local Government Excellence, a nonprofit that promotes public employment, and the National Association of State Retirement Administrators, which represents

pension plans from around the country: *Balancing Objective in Public Employee Post Retirement Employment Policies*.

ADMINISTRATIVE IMPLICATIONS

SPO notes the bill would require the office to determine the number of vacancies at agencies employing certified law enforcement officers, which the agency will be able to accomplish for state agencies. However, the agency states it would not be able provide similar information for local governments.

Analysis from DPS notes HB64 would require retirees be hired into an “entry-level” position, stating this could prevent some agencies from benefiting from the bill, particularly for small agencies who may wish to hire a retiree into senior or specialized position. DPS argues it is best left up to the individual agency to determine its own policies for return-to-work employees. Analysis from PERA states it is impossible for the agency to determine what qualifies as an entry-level position, and the agency would rely on certifications from individual employers.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Several bills have been introduced for consideration of the First Session of the Fifty-Sixth Legislature that would incentivize public employees to provide more years of service. These proposals include

- House Bill 65, which would create a return-to-work program for retirees from all PERA plans;
- House Bill 66, which would increase the maximum pension benefit from 90 percent to 100 percent of salary, allowing members who work longer to accrue additional service credit;
- House Bill 106, which would increase the maximum pension benefit from 90 percent to 100 percent of salary;
- Senate Bill 96, which would increase the maximum pension benefit the state police member, correctional officer member, and probation and parole officer member plan;
- Senate Bill 124, which would both enact a return-to-work program for all PERA retirees and increase the maximum pension benefits if employees serve for more years.

TECHNICAL ISSUES

Paragraphs (6) and (7) of Subsection K of Section 1 (Page 9, Lines 16 through 21) may contain a small grammatical error. Each of the preceding paragraphs contains a statement that something “shall” or “shall not” occur. However, Paragraphs 6 and 7 do not include the “shall” verb. The sponsor could consider amending the bill to replace the word “is” on Page 9, Line 16 with “shall be”, and the word “occurs” on Page 9, Line 20 with the phrase “shall occur.”

ALTERNATIVES

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