FISCAL IMPACT REPORT

		LAST UPDATED	
SPONSOR	Rehm/Terrazas/Montoya	**ORIGINAL DATE**	1/25/2023
SHORT TITLE	Return to Work for Public Safety Employees	**BILL NUMBER**	House Bill 65
		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 64, 66, and 106 and Senate Bill 124
Conflicts with House Bill 64 and Senate Bill 124

Sources of Information

LFC Files

Responses Received From
Public Employee Retirement Association (PERA)
State Personnel Office (SPO)

SUMMARY

Synopsis of House Bill

House Bill 65 would amend the Public Employees Retirement Act to allow retired public employees to return to 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.

HB65 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

HB65 could lead to an increase in the number of retirements by allowing retirees to return to work. With return-to-work programs, some 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, HB65 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 HB65 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

SPO notes HB65 could decrease persistently high vacancy rates faced by state agencies by allowing retired personnel to return to work. According to data from SPO, state agencies had more than 5,000 vacant positions as of January 1, a vacancy rate of 20 percent. While in some cases, state agencies do not receive funding to fill all of those positions, analysis from LFC indicates state agencies were funded for about 2,800 of those vacancies. When agencies have a large number of funded vacancies, it increase the likelihood appropriations from the Legislature will be used in a manner that was not intended by the Legislature (generally, agencies have the authority to transfer fund between funds, for example from personnel costs to contractual services). Additionally, funding vacant positions means the Legislature is unable to use those funds for other priorities. For these reasons, the state's classified service vacancy rate is a key performance indicator for SPO.

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 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. 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 state agencies, which the agency will be able to accomplish. However, the agency states it would not be able provide similar information for local governments.

Analysis from PERA notes the bill would require employees to return in an "entry-level" position. 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 64, which would create a return-to-work program for public safety retirees;
- 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; and
- 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.

ALTERNATIVES

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

JWS/rl/hg/mg