FISCAL IMPACT REPORT

		LAST UPDATED	
SPONSOR	Martinez, A./Garratt	**ORIGINAL DATE**	2/8/2025
SHORT TITLE	Increase Retiree COLA	**BILL NUMBER**	House Bill 164
		ANALYST	Simon

APPROPRIATION*
(dollars in thousands)

FY25	FY26	Recurring or Nonrecurring	Fund Affected
	$10,000.0	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Cost-of-Living Adjustments for State Members		$33,000.0	$33,000.0	$66,000.0	Recurring	PERA Trust Fund
Optional Cost-of-Living Adjustments for Local Governments		Up to $38,000.0	Up to $38,000.0	Up to $76,000.0	Recurring	PERA Trust Fund
Total		Up to $71 million	Up to $71 million		Recurring	PERA Trust Fund

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Duplicates Senate Bill 30; Relates to House Bill 96 and Senate Bill 117

Sources of Information

LFC Files

Agency Analysis Received From
Public Employees Retirement Association (PERA)
Educational Retirement Board (ERB)
New Mexico Municipal League (NMML)

SUMMARY

Synopsis of House Bill 164

House Bill 164 (HB164) would increase annual cost-of-living adjustments for retirees from state government receiving benefits from the Public Employees Retirement Association (PERA) who are 65 or older. Additionally, the bill would allow local governments to opt into a program to have cost-of-living adjustments (COLA) increased for retirees from their governments by making contributions to cover the actuarial impact of the increased contribution.

HB164 appropriates $10 million from the general fund to PERA to fund cost-of-living adjustment increases for state government retirees.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025. However, the bill's provisions are specific to increase in FY26 and future years.

FISCAL IMPLICATIONS

HB164 would increase benefits paid by PERA for state government employees and could increase benefits paid by PERA for local government employees. 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.

The bill includes a $10 million appropriation to PERA to provide cost-of-living adjustments to retirees from state government. Analysis from PERA on an identical bill (Senate Bill 30) estimates the bill would increase costs to the PERA fund by $33 million for state government employees. Given PERA's actuarial estimates, it is unclear if HB164 provides adequate funding to meet the constitutional threshold established in Article XX, Section 22.

Additionally, the bill would allow local governments to participate in the increased benefit, provided the government makes a contribution to PERA to cover the costs. This requirement could allow for adequate funding for these COLAs, assuming the calculations property reflect PERA's actuarial assumptions (see "Technical Issues"). The bill determines eligibility for an increased COLA based on the division from which a PERA member retires. While increased COLAs for municipal members are contingent on receipt of funding from the local government, increased COLAs for state members are automatic. Analysis from PERA notes a member could seek a higher benefit by leaving local government employment and seeking employment with the state, even for a brief period. If a large number of local government employees near retirement chose to exploit this loophole, PERA analysis of the fiscal impact for state employees could be understated.

Analysis of an identical bill from the New Mexico Municipal League (NMML) states the differential treatment between different PERA members is unfair to local government employees and is a departure from the agreed on framework for solvency adopted in 2020 (see "Significant Issues"). Overall, the three municipal plans are better funded than two state government plans, with total assets of $9.9 billion and total liabilities of $14.1 billion, for a funded ratio of 70.3 percent, while the state plans have total assets of $7.9 billion and liabilities of $12.4 billion, for a funded ratio of 63.7 percent. NMML notes, because the state is not covering the full actuarial costs of the increased COLA for state employees, HB164 could result in local government contributions subsidizing increased COLAs for state government employees.

The appropriation of $10 million contained in this bill is a recurring expense to the general fund.

Any unexpended or unencumbered balance remaining at the end of FY27 will not revert to the general fund. Although the bill does not specify funds will revert, presumably unused funds from the appropriation would remain with PERA. HB164 would require future recurring appropriations directly from the general fund to provide adequate funding, which is dependent on the will of future Legislatures. Notably, a direct general fund appropriation diverts from typical practice in funding New Mexico's pension plans. Currently, PERA receives employer and employee contributions automatically as a percent of payroll, based on rates set in statute. This negates the need for regular general fund appropriations and benefits payments are not subject to legislative appropriation. (The Legislature does make appropriations for agency operations). It is unclear what would happen if a future Legislature chose not to make a future appropriation to the fund, thus rendering the funding inadequate to cover the cost of the benefit increase.

SIGNIFICANT ISSUES

In 2020, the Legislature passed Senate Bill 72 (SB72), which amended the Public Employees Retirement Act to replace an annual 2 percent COLA for most members with new "risk-sharing" COLA, following a temporary suspension of the annual COLA in FY21 through FY23. In those years, the annual COLA was temporarily replaced by an additional, non-compounding payment of 2 percent of the member's benefit. Those additional payments, sometimes called the "13th check," were made for three years and the Legislature appropriated $55 million from the general fund to cover the costs of these payment. Following the three-year period, the new "risk-sharing" COLA was implemented. Unlike the 13th check, this payment would compound. The COLA would be based on the plan's investment performance and the plan's funded status—or the percentage of total liabilities for which the plan has invested assets. Under this COLA, rates would vary from 0.5 percent to 3 percent, until the plan is fully funded, at which point COLAs could go as high as 5 percent.

SB72 was passed to address chronic underfunding issues at PERA. At the time, PERA's actuaries estimated the fund held about 70 percent of the assets needed to pay all accrued benefits, but over time that gap was expected to grow because contributions into the fund were not sufficient to pay all protected benefits, make additional annual cost-of-living adjustments, and pay off the plan's unfunded liability. Actuaries were projecting an infinite funding period, meaning PERA was never expected to hold the assets needed to pay the liabilities. PERA's most recent actuarial valuation report shows the fund holds about 67.2 percent of assets needed, but the funding period has improved to 52 years, although still above the board's target of 25 years. The plans actuaries recommend increasing contributions to the fund, noting contributions needed to meet the funding target would need to rise by an additional 5.37 percent.

SB72 passed at a time when an annual 2 percent COLA was outpacing inflation. Annual COLAs for social security, which are tied to inflation, averaged 1.4 percent between 2010 and 2020. But more recent increases in the cost of living have led these amounts to spike. Social security COLAs in 2022 were nearly 9 percent and were almost 3.2 percent in 2023, which illustrates the challenges faced by retirees in meeting basic needs on fixed incomes.

Exceptions. While most PERA members are subject to the variable COLA, some members continue to receive a fixed 2.5 percent COLA: disability retirees with an annual benefit of less than $25 thousand, normal retirees with 25 years of service credit and a benefit of less than $25 thousand, and retirees who were 75 years old as of July 1, 2020.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Several bills have been introduced to change annual cost-of-living adjustments for PERA members, including:

- House Bill 96 would provide a temporary COLA increase for PERA retirees and appropriates $66 million to fund the increase.
- HB164 is a duplicate of Senate Bill 30.
- Senate Bill 117 would repeal the current COLA structure and set the annual COLA amount at the amount given for social security.

TECHNICAL ISSUES

Page 6, Lines 7 through 15, allows local governments to opt into the increased COLA, provided the government contribute "in an amount adequate to fund the increase, as determined by the department of finance and administration." This provision may violate Article XX, Section 22, of the New Mexico Constitution, depending on how it is implemented. That section provides:

> A retirement board shall have the sole and exclusive power and authority to adopt actuarial assumptions for its system based upon the recommendations made by an independent actuary with whom it contracts.

Any calculation of an "amount adequate to fund the increase," would necessarily require an actuarial analysis. Were the Department of Finance and Administration (DFA) to attempt to determine the amount independent from PERA's contracted actuary, it could be seen to encroach on the retirement system's sole and exclusive power and authority. However, if DFA were to rely on PERA's actuarial calculations and merely communicate those amounts to local governments, this issue could be avoided. However, the sponsor may wish to consider replacing the reference to DFA with "the retirement board," which would avoid a step in the process.

OTHER SUBSTANTIVE ISSUES

HB164 would only apply to public employees who are retired from PERA. Public employees of school districts and higher education institutions receive benefits from the Educational Retirement Board (ERB). Since 2013, annual cost-of-living adjustments paid by ERB have been limited to improve the fund's solvency. This reform has been partially responsible for improvements to the solvency of that fund. According to ERB's actuary, the plan's funding status is improving, from 60.4 percent in 2020 to 64.8 percent in 2024. The actuaries currently expect the plan to be fully funded in 22 years, significantly less than the amount of time expected for the PERA fund.

Funding additional cost-of-living adjustments for PERA recipients could lead to requests from ERB retirees to receive additional COLAs. In 2020, ERB commissioned a study to examine the differences in benefits between members of ERB and PERA, finding PERA members receive more in pension benefits than ERB-covered employees. This report has resulted in calls for the Legislature to consider "equalizing" pension benefits structures. Funding additional COLAs for PERA members could lead to additional requests from ERB members to supplement that program with general fund appropriations.

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