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FISCAL IMPACT REPORT

		LAST UPDATED	
SPONSOR	Sanchez	**ORIGINAL DATE**	2/24/2025
SHORT TITLE	Certain Retirees Returning to Work	**BILL NUMBER**	Senate Bill 251
		ANALYST	Simon

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
PERA	No fiscal impact	No fiscal impact	No fiscal impact			

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

Sources of Information
LFC Files

Agency Analysis Received From
Public Employees Retirement Association (PERA)
Livestock Board

SUMMARY

Synopsis of Senate Bill 251

Senate Bill 251 (SB251) would allow a retired public employee to return to work with the state in any position for which the person has a duty to maintain public order and to make arrests for crime, including those whose arrests are limited to specific crimes.

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.

FISCAL IMPLICATIONS

In general, some return-to-work programs can lead to employees choosing to retire earlier than they otherwise would, reducing contributions to pension funds, increasing payouts from those funds, and reducing member's pension payments. However, retirees eligible under the Public Employees Retirement Association's (PERA) return-to-work plan, which SB251 would amend, are limited to members who retired prior to December 31, 2023, making it impossible for a person to plan an early retirement with return-to-work. Additionally, PERA's current return-to-work program only allows members to return to work before July 1, 2027, and limits the amount of time a person may return-to-work while receiving a pension to 36 months.

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 SB251 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. PERA anticipates that because of these required payments, the bill would likely have a small positive impact on the fund. However, PERA states the bill is currently undergoing actuarial analysis.

Actuarial Analysis Pending. Analysis from PERA (submitted February 10) does not currently report a fiscal impact, but the agency states the bill is currently undergoing an actuarial analysis. This FIR may be updated with a reported fiscal impact if the actuarial analysis indicates an impact.

SIGNIFICANT ISSUES

In 2024, the Legislature passed, and the governor signed, a law allowing retirees from the Public Employees Retirement Association to return to work for a PERA-covered employer without the need to suspend their retirement benefit. Currently, the law allows retirees to return to a state agency to serve as a state police officer or an employee of district attorneys' offices or the attorney general without suspending their pension payments. But other agencies that employ law enforcement personnel, including the Livestock Board and Department of Game and Fish, are not currently eligible. Analysis from the Livestock Board notes two current retirees attempted to return to work for the Livestock Board, but PERA determined this is not allowed by the current law.

Return-to-Work Programs. 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. For example, PERA’s current return-to-work program limits the jobs to which a member may return and the length of time a person may return to work while receiving a pension payment. Additionally, participation in PERA’s current program is limited to those beginning the program before July 1, 2027.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Several bills have been introduced to amend the current return-to-work program at PERA, including:

- Senate Bill 165, which would expand the return-to-work program to include lifeguards;
- House Bill 336, which effectively duplicates SB251; and
- Senate Bill 292, which would expand eligible positions within the Children, Youth and Families Department Protective Services Division.

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