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## FISCAL IMPACT REPORT

<b>SPONSOR</b>	Sen. Gonzales/Reps. Borrego and Gonzales	<b>LAST UPDATED</b>	<hr/>
		<b>ORIGINAL DATE</b>	2/11/2025
<b>SHORT TITLE</b>	Public Employees Retiree Health Care Funds	<b>BILL</b>	Senate Joint
		<b>NUMBER</b>	Resolution 2
		<b>ANALYST</b>	Simon

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Election Costs			\$35.0 to \$50.0	\$35.0 to \$50.0	Nonrecurring	General Fund
Retiree Health Liabilities to the State			Up to \$1,360,017.6		Nonrecurring	General Fund

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

### Sources of Information

LFC Files

Agency Analysis Received From  
Retiree Health Care Authority (RHCA)  
State Investment Council (SIC)

## SUMMARY

### Synopsis of Senate Joint Resolution 2

Senate Joint Resolution 2 (SJR2) proposes an amendment to the New Mexico Constitution creating a vested property right for public employees who meet minimum service requirements of the state’s Retiree Health Care Authority (RHCA). The proposed amendment would provide the retiree healthcare fund could only be used to benefit members and retirees and provides RHCA’s board with the “sole and exclusive fiduciary duty and responsibility” for administration and investment of the fund and for adopting actuarial assumptions. The amendment makes clear future modifications to enhance the soundness of the healthcare plans are permitted.

The joint resolution provides the amendment be put before the voters at the next general election (November 2026) or a special election called for the purpose of considering the amendment. The amendment would only be effective if approved by voters.

## FISCAL IMPLICATIONS

Under Section 1-16-4 NMSA 1978 and the New Mexico Constitution, the Secretary of State (SOS) is required to print samples of the text of each constitutional amendment in both Spanish

and English in an amount equal to 10 percent of the registered voters in the state. SOS is required to publish the samples once a week for four weeks preceding the election in newspapers in every county in the state. Further, the number of constitutional amendments on the ballot may impact the ballot page size or cause the ballot to be more than one page, also increasing costs. The estimated cost per constitutional amendment is \$35 thousand to \$50 thousand, depending on the size and number of ballots and if additional ballot stations are needed.

SJR2 would supersede current statutory provision related to retiree healthcare benefits. When setting up the authority in the 1990s, the Legislature included provisions attempting to limit state liabilities for the retiree healthcare program. Section 10-7C-3 NMSA 1978 states:

The legislature does not intend for the Retiree Health Care Act to create a trust relationship among participating employees, retirees, employers and the authority administering the Retiree Health Care Act nor does the legislature intend to create contract rights which may not be modified or extinguished in the future; rather the legislature intends to create, through the Retiree Health Care Act, a means for maximizing health care services returned to the participants for their participation under the Retiree Health Care Act.

Further, the law currently states:

The legislature further finds and declares that nothing in the Retiree Health Care Act shall prohibit the legislature from increasing or decreasing participating employer and employee contributions, eligible retiree premiums or group health insurance coverages or plans, and that participation in the Retiree Health Care Act by retired and active public employees shall not be construed to establish rights between the retired and active public employees and the state for health care benefits which cannot be modified or extinguished in the future to meet changes in economic or social conditions.

SJR2 would overturn these provisions and create a vested property right with due process protections under the federal and state constitutions. As a result, SJR2 could commit taxpayers to continuing to fund these benefits. When the authority was created, retired public servants began receiving benefits without any material pre-funding of plan costs. While both active employees and their employers make contributions to the retiree healthcare fund, the fund has never held all of the assets it needs to pay future benefits. As of June 30, 2024, RHCA reported \$1.784 billion in unfunded liabilities, for which the state's share is currently 23.8 percent, or about \$405 million. The remainder, about \$1.360 billion, is allocated to local government and school districts that participate in the plans. RHCA has been successful at building the fund's value over time. Growing from \$579 million in FY17 to \$1.6 billion in FY24. The plan's funded ratio increased from 11 percent to 47 percent.

Notably, the proposed constitutional amendment does not include protections against underfunding the plans, which are present in the current constitutional provisions for the pension plans. That provision states:

The legislature shall not enact any law that increases the benefits paid by the system in any manner or changes the funding formula for a retirement plan unless adequate funding is provided.

While this provision provides the Legislature flexibility to change how the plan is funded, it could present problems depending on how the courts interpret the member's vested property right. Should the constitutional protections created by SJR2 lead to findings public employees

are entitled to receive a certain level of benefit in retirement, the lack of a provision to prevent underfunding may present challenges to the board to address the underfunding. However, the exclusion of this provision is likely critical due to a current distribution to the retiree healthcare fund from the tax suspense fund. For FY26 the fund will receive \$58 million, but that amount increases by 12 percent per year. By FY31, that amount will grow to \$102 million, making it one of the state's largest tax expenditures, comparable to the medical and healthcare services GRT deduction or the film and television production tax credit.

Analysis from RHCA notes the plan's current liability and suggest, if the fund is used for a purpose other than intended, it could lead to rising costs for the state. Should the fund be used for other purposes:

Both retirees and active employees would likely pursue lengthy legal action against the state to protect their benefits. Safeguarding these funds is also essential for maintaining the financial stability of the participating governmental entities. Misusing the fund could deplete resources, increase liabilities, and negatively impact the bond ratings of these entities, which include state, county, and city governments.

## **SIGNIFICANT ISSUES**

Created in 1990, RHCA was designed to enable public sector retirees to access the health insurance market. Legislative findings included in the act noted "public employees face a severe problem in securing continuing medical insurance" and the purpose of the act was to provide benefits to retirees and their dependents using both the retiree healthcare fund and copayments from members. While the Legislature acknowledged the expectation of future benefits, it provided those expectations could be modified from year-to-year, provided the modifications were "reasonably calculated to result in the least possible detriment to the expectation."

Currently, state law requires the state investment officer to invest the authority's long-term reserves and requires the state treasurer to invest other reserves. This differs from how New Mexico's pension funds manage investments, which involves hiring in-house investment staff. The resolution provides both that the trust fund be invested and administered as provided by law, to the extent consistent with the resolution. However, the resolution also provides the board the "sole and exclusive fiduciary duty and responsibility for the administration and investment of the trust fund." While the board does not appear to contemplate shifting from an investment portfolio managed by SIC, it is unclear if the current statutory requirement that SIC manage investment would be consistent with this section if a future board were to wish to hire independent investment managers. Analysis from SIC notes RHCA is currently the largest client for the system's government client pooled investment, and the board takes an active role in managing its investment portfolio.

While SJR2, if approved by the voters, would institute protections for retiree healthcare benefits similar to those provided for pension recipients, the current method for setting benefits levels varies. Retirement benefits are based on statutory formulas, set by the Legislature and signed by the governor. Current law allows the board to "promulgate and adopt rules and regulations governing eligibility, participation, enrollment, length of service and any other conditions or requirements for providing substantially equal treatment to participating employers." (See 10-7C-7 NMSA 1978). This provides the board with the necessary tools to manage the plan's liabilities, something the board has carefully managed. Additionally, the board is given the power to set premium rates for the plan. (See 10-7C-13 NMSA 1978). However, should the

benefits provided by the plan be elevated to a constitutionally protected right, the Legislature may wish to consider whether benefits could be changed without an act of the Legislature.

## **ALTERNATIVES**

While analysis from RHCA briefly notes the resolution, if approved by the voters would “affirm certain property rights,” much of the RHCA analysis focuses on the prohibition on diverting funds in the retiree healthcare fund for another purpose. If the intent of the resolution is to prohibit diversions, this could presumably be accomplished without creating a new property right.

JWS/hg/sgs