FISCAL   IMPACT   REPORT

SPONSOR	Heaton	DATE TYPED	01/28/04	HB	195

SHORT TITLE	Public Employees Retirement Act Definitions	SB	

ANALYST   Garcia

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
			See Narrative.		PERA Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
PERA

SUMMARY

   Synopsis of Bill

The bill expands the definition of "public employer" to include irrigation districts for purposes of PERA affiliation.

   Significant Issues

It must be determined if an irrigation district is an entity that falls within the meaning of "governmental plan" as used in Section 414(d) of the Internal Revenue Code.

FISCAL IMPLICATIONS

The bill will have minimal fiscal impact on PERA, because the number of potential irrigation districts to be a PERA affiliate is small.

ADMINISTRATIVE IMPLICATIONS

PERA is unaware of the number of irrigation districts that may seek affiliation with PERA as a result of HB 195. PERA will be required to process applications for affiliation by irrigation districts as it does for all entities seeking PERA-affiliation.

OTHER SUBSTANTIVE ISSUES

The PERA Act specifically provides that only "public employers" can affiliate with PERA so long as they fall within the meaning of "governmental plan" as used in Section 414(d) of the Internal Revenue Code. The Internal Revenue Code requires that to qualify as a "governmental plan," a plan must be "established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of the foregoing."

Currently, the statutory definition of a public employer includes "the state, any municipality, city, county, metropolitan arroyo flood control authority, economic development district, regional housing authority, soil and water conservation district, entity created pursuant to a joint powers agreement, council of government, conservancy district, water and sanitation district, water district and metropolitan water board, including the boards, departments, bureaus and agencies of a public employer." The legislature did not include irrigation districts in the special districts enumerated in NMSA 1978, § 10-11-2(P).

Irrigation districts do, however, qualify as a governmental plan for Internal Revenue Code purposes, as they have been found to be political subdivisions of the state for limited purposes. In Tomkins v. Carlsbad Irr. Dist., 96 N.M. 368, 370 (Ct. App. 1981), the New Mexico Court of Appeals concluded that an irrigation district is a political subdivision of the state, for the purposes of Tort Claims Act coverage. The Internal Revenue Code broadly includes plans established and maintained for employees by a "political subdivision" of the state within the ambit of governmental plans. New Mexico state law suggests that irrigation districts can be political subdivisions. However, the PERA Act definition of "public employer" does not reference or include the term "political subdivisions" generally or the term "irrigation district" specifically.

House Bill 195's proposed expansion of the statutory definition of "public employer" to include irrigation districts as one of the enumerated special districts eligible for PERA affiliation will comply with the requirements of the Internal Revenue Code and is consistent with the tax-deferred status of PERA as a 401(a) governmental plan.

DG/dm