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FISCAL IMPACT REPORT

SPONSOR Heaton DATE TYPED 01/25/05 HB 40

SHORT TITLE “Public Employer” in Employee Retirement Act SB _____

ANALYST Geisler

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
		Minimal		

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

Public Employees Retirement Board (PERA)

SUMMARY

Synopsis of Bill

House Bill 40 expands the definition of “public employer” to include irrigation districts for purposes of PERA affiliation.

Significant Issues

Whether 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. Based on a review of case law, PERA believes an irrigation district meets the criteria to be considered governmental plan for purposes of the Internal Revenue Code

FISCAL IMPLICATIONS

PERA estimates minimal fiscal impact on the fund from HB 40.

ADMINISTRATIVE IMPLICATIONS

PERA is not aware of the number of irrigation districts that may seek affiliation with PERA as a result of HB 40. 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 40'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.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

Irrigation districts will continue to be ineligible for PERA affiliation.

GG/njw