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FISCAL IMPACT REPORT

SPONSOR Vigil DATE TYPED 02/15/05 HB 759

SHORT TITLE Free Service Credit for Vietnam Veterans SB _____

ANALYST Geisler

APPROPRIATION

| Appropriation Contained | | Estimated Additional Impact | | Recurring or Non-Rec | Fund Affected |
|-------------------------|------|-----------------------------|---------------|----------------------|---------------|
| FY05 | FY06 | FY05 | FY06 | | |
| | | | See narrative | | |

(Parenthesis () Indicate Expenditure Decreases)

Duplicates: SB 609

Conflicts with: HJM 5, SJM 18

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Employees Retirement Association (PERA)

SUMMARY

Synopsis of Bill

House Bill 759 would enact a new section of the Public Employees Retirement Act requiring PERA to grant to PERA members one month of free service credit for each month of military service performed during the Vietnam Era (1961-1973) if: A) the member has at least five years of service credit; B) the member received an honorable discharge from the military; C) the free service credit is not granted for periods of service that are used to obtain or increase a benefit from another retirement program; and D) the free service credit is not granted for periods of service for which free service credit has been granted under section 10-11-6 or for which service credit has been purchased pursuant to 10-11-7.

Significant Issues

House Bill 759 seeks to provide an enhanced pension benefit for New Mexico's many employees who served honorably in the military during the Vietnam era.

However, PERA has identified three significant issues raised by HB 759:

1) Appropriateness of granting free service credit for military service prior to employment with a affiliated public employer. PERA members who served in the military prior to their PERA-affiliated employment are entitled to purchase PERA service credit for their prior military service. Also, PERA members are entitled to receive "intervening" service credit at no cost if they are called to active duty while a PERA member. However, there are strict requirements that eligible members must be employed immediately before and after service and the service must be mandatory as opposed to voluntary. HB 759 would appear to contradict legislative intent that no cost service credit only be awarded for involuntary service.

2) HB 759 does not appear to treat all former members of the military who are now PERA members equally. PERA notes that there are a great many PERA members who served in the military prior to their PERA-affiliated employment. These members served in the military in time frames encompassing World War II, and the conflicts in Korea, Vietnam, Grenada, Bosnia, Somalia, Afghanistan, Iraq and other places around the world. Many PERA members who served in Vietnam have already retired and many have already purchased service credit for their prior military service. HB 759 would give a disproportionate benefit, not only to Vietnam era veterans, but specifically to Vietnam era veterans who did not retire or purchase their prior military service before the enactment and effective date of HB 759. A deviation from this distinction that exclusively benefits only certain Vietnam era veterans will be subject to legal challenge by other veterans who served prior to their PERA-affiliated employment and by Vietnam era veterans who are no longer able to take advantage of the benefit.

3) HB 759 would provide an enhanced benefit without an appropriation.

The costs related to granting of the free service credit proposed by HB 759 are likely to be significant. Currently the "free" intervening service credit currently authorized by Section 10-11-6 is not actually free—it is borne by the PERA trust fund. The benefit proposed by HB 759, as it is presently drafted, would be an additional significant expense to the PERA Trust Fund.

It is questionable if the legislature has the authority to enact HB 759 without providing funding for the benefit proposed by the bill. In 1997, the New Mexico Constitution was amended and the relevant section Art. XX, Sec. 22 (C) reads "the legislature shall not enact any law that increases the benefits paid by the system in any manner or changes the funding for a retirement plan unless adequate funding is provided." In accordance with this constitutional requirement, PERA believes any legislation requiring PERA to recognize and grant a new kind of free service credit would have to provide funding for the benefit from a source other than the PERA Trust Fund.

FISCAL IMPLICATIONS

If this bill is passed it will have a negative fiscal impact on the Public Employees Retirement Trust Fund and per the New Mexico Constitution PERA believes appropriation would be required to support the enhanced benefit.

ADMINISTRATIVE IMPLICATIONS

PERA believes there could be legal challenges from both:

- 1) Veterans from other wars and conflicts who performed their military service prior to their PERA-affiliated employment and who must purchase service credit for their prior military service under 10-11-7; and
- 2) Vietnam era veterans who performed their military service prior to their PERA-affiliated employment and who have already retired or who have already purchased service credit for their prior military service under 10-11-7.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicates SB 609. HB 759 conflicts with Senate Joint Memorial 18 & House Joint Memorial 5 which propose a moratorium of pension benefit enhancements through 2006. Without an appropriation, HB 759 may conflict with the New Mexico Constitution, Article XX, Section. 22 (C).

OTHER SUBSTANTIVE ISSUES

Background on Military Service and PERA Service Credit

The PERA Act contains two different mechanisms to acquire PERA service credit for time spent in the military. The first is an award of free service credit for intervening military service. It is authorized by Section 10-11-6 (A). That section states that a PERA member who leaves the employ of an affiliated public employer to enter the armed services of the United States shall be given service credit for periods of active duty, subject to several conditions. Among these conditions are the requirements that the member must be reemployed by an affiliated public employer within ninety days and the requirement that: "credited service shall not be given for periods of active duty following voluntary reenlistment." This permits PERA members who are called to active duty, required to leave their PERA-affiliated jobs, and return promptly to those jobs at the conclusion of their military service to receive PERA service credit for their military service at no cost to them. The legislature first enacted this section in 1987. The strict requirements that eligible members must be employed immediately before and after service and the service must be mandatory as opposed to voluntary give insight into the legislature's intentions in passing this statute. The federal Uniformed Services Employment and Reemployments Rights Act ("USERRA") was enacted in 1994. Among many other things, it requires employers to make pension benefits available to employees who are called to military service and return to their employment at the conclusion of their military service. USERRA permits pension plans to require payment from the pension plan member in whatever amount the plan member would have paid if present at his or her job and working as normal

The second mechanism for acquiring PERA service credit for military time allows PERA members who served in the military prior to their PERA-affiliated employment to purchase PERA service credit for their prior military service. Like 10-11-6, this section was enacted in 1987. The opportunity to purchase prior service is made available notwithstanding the fact that these individuals were not PERA members when they entered the military and did not necessarily commence PERA employment immediately after their military service. Except for the opportu-

nities to acquire service credit found in Section 10-11-7, the PERA Act requires individuals to provide personal service to a PERA affiliated employer in order to acquire service credit. There is no federal law requiring pension plans to permit plan members to purchase service credit based on time spent in the military prior to employment.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

Vietnam era veterans would continue to be allowed to purchase PERA service credit for the time they spent in the military prior to their PERA employment, in the same way that all veterans with pre-employment military service can. Only individuals (including Vietnam era veterans) that are employed by a PERA-affiliated employer, called to active military service and return promptly to their PERA-affiliated employment will be eligible for free, intervening military service credit.

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