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FISCAL IMPACT REPORT

SPONSOR Campos DATE TYPED 02/22/05 HB _____

SHORT TITLE Retired Police Return to Work SB 788

ANALYST Geisler

APPROPRIATION

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

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with: HB 16, HB 207, SB 875

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Employees Retirement Association (PERA)

SUMMARY

Synopsis of Bill

Senate Bill 788 would exempt retired state police members and retired municipal police members from the PERA Act's statutory 90-day separation from service requirement to temporarily fill certain vacant public safety positions, which result from an active employee's activation or deployment to a federal call to active duty.

Significant Issues

Senate Bill 788 seeks to help the state and affiliated public employers fill law enforcement vacancies resulting from current members being called to active duty. However, PERA notes the bill raises a number of policy issues: 1) whether the Internal Revenue Code requires a separation in service when a retired member, who qualifies for normal retirement, returns to work with a PERA-affiliated employer; and 2) does treating retired members differently result in prohibited discrimination?

Nationally, public pension retirement systems uniformly require a separation from service when a retired member returns to work with a PERA-affiliated employer. PERA State Police members qualify for an unreduced, normal retirement benefit at any age when the member has reached 25 or more years of service. Certain Municipal Police members qualify for an unreduced, normal retirement benefit at any age when the member has reached 20 or more years of service. Currently, there is a statutory 90-day separation from service requirement under the PERA Act's return-to-work provisions. Therefore, a PERA retiree must "sit out" of PERA-covered employment for at least 90-days before returning to post-retirement employment, otherwise his or her pension is suspended. See NMSA 1978, Section 10-11-8.

The Internal Revenue Service ("IRS") has opined on certain arrangements that may be made with respect to treatment of pension benefits in the case of continuous employment beyond the normal retirement age. These include phased retirement programs, deferred retirement payments and lump-sum payments. None are specific or binding on the ability of a public pension system allowing for retired member, who qualifies for normal retirement, to immediately commence post-retirement employment without a bona fide break-in-service. Without a definitive Internal Revenue Service determination specific to this legislation, the public policy issue SB 788 attempts to address does not outweigh the severity of the consequence relating to PERA's loss of its tax status as a governmental plan.

The exemption from the PERA Act's 90-day separation from service requirement contemplated would be available for retired state police members and retired municipal police members. Such provisions must be uniformly applicable to all employees under similar circumstances so as not to result in prohibited discrimination.

FISCAL IMPLICATIONS

Elimination of a break-in-service for retirees who return to work, under any circumstances, may jeopardize PERA's tax status as a governmental retirement plan under 401(a) of the Internal Revenue Code. If PERA fails to meet the tax qualification requirements for a governmental plan, its tax advantages are lost, the tax exempt status of plan earnings will be revoked, employer deductions for contributions will be deferred or eliminated, PERA members will have to include the value of vested plan contributions in gross income on their annual tax returns, and tax-free rollover treatment will not be available. Obviously, a loss of any of these tax advantages would have a substantial, negative impact on PERA and its members.

ADMINISTRATIVE IMPLICATIONS

PERA will be required to track the post-retirement contemplated by SB 788.

SB 788 will require certain affiliated employers and certain retired members to comply with needed administrative procedures put in place to identify employment that is exempt from the statutory 90-day "sit-out" period.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 16, applicable to all retired members who return to work with affiliated public employers, amends the PERA Act to reinstate an earnings limitation of \$15,000 before suspension of pension benefits.

House Bill 207, introduced on behalf of the Legislative Finance Committee, proposes to impose a \$30,000 earnings limit for PERA retirees who return to work for public-affiliated employers for those retired members who return-to-work on or after July 1, 2005.

Senate Bill 875 would significantly lengthen the mandatory “sit-out” period before returning to work by proposing a mandatory 12-month separation from service requirement for post-retirement employment, including independent contractors. In addition, SB 875 raises the earnings threshold earnings for retired member contributions to \$30,000 and repeals the retired member contributions sunset provisions.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

The PERA Act will continue to require that all PERA retirees must “sit out” of PERA-covered employment for at least 90-days before returning to work, otherwise their retirement will be suspended.

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