F I S C A L   I M P A C T   R E P O R T

SPONSOR Altamirano **DATE TYPED** 03/16/05 **HB**

SHORT TITLE Public Retirees Returning to Work **SB** 875/aSPAC/aSFC/aHAFC/aHFL#1

ANALYST Geisler

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
		Minimal, see fiscal impact	Recurring	Educational Retirement Fund and Public Employees Retirement Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to: HB 16, HB 207, SB 788

SOURCES OF INFORMATION
LFC Files
Responses Received From
Public Employees Retirement Association (PERA)
Educational Retirement Board (ERB)

SUMMARY

Synopsis of HFL Amendment

House Floor Amendment #1 to Senate Bill 875 as amended clarify the House Appropriations and Finance Committee amendments 2 and 3. As amended, the bill requires only a 90 day waiting period for certain retirees returning to work: peace officers or water or wastewater facility operators who are receiving the maximum pension under the member's applicable coverage plan. (All other employees still have a waiting period of twelve consecutive months where they could not be employed as an employee or independent contractor of an affiliated public employer).

Synopsis of HAFC Amendments

The House Appropriations and Finance Committee amendments to Senate Bill 875 strike Senate Finance Committee amendments 3 and 4 but restore similar language requiring only a 90 day waiting period for peace officers or water or wastewater facility operators but require that the member must have reached his or her pension maximum under the member's applicable member coverage plan.

Synopsis of SFC Amendments

The Senate Finance Committee amendments to Senate Bill 875:

1) Strike all Senate Public Affairs Committee amendments but restore similar language requiring only a 90 day waiting period for certain retirees returning to work: peace officers or water or wastewater facility operators.

2) Amend 10-11-43.3 to specify that for legislators retiring on or after July 1, 2005 that the pension under member plan 2 shall be calculated based on the average of the three highest per diem rates in effect as determined on July 1 of each year of service of the legislator or lieutenant governor. (The current method uses the per diem rate in effect on December 31 of the calendar year of service).

Synopsis of SPAC Amendments

The Senate Public Affairs Committee amendments to Senate Bill 875 provide for a 90 waiting period for retirees returning to work as peace officers or public utility employees. (All other employees still have a waiting period of twelve consecutive months where they could not be employed as an employee or independent contractor of an affiliated public employer).

Synopsis of Original Bill

Senate Bill 875 addresses the return to work (RTW) requirements for retirees from the Public Employee Retirement System (PERA) and the Educational Retirement System (ERB) who return to work and do not have to suspend their retirement. For PERA, the bill increases the waiting period before re-employment from 90 days to one year and makes it applicable to independent contractors. SB 875 also changes the cut off amount of earnings that a RTW retiree is allowed to earn without having to make an employee contribution to PERA from $25,000 to $30,000. The bill also eliminates the 2006 sunset provision on these employee contributions.

For ERB, SB 875 will require educational RTW retirees to make employee contributions to ERB once they earn $30,000 during a calendar year. The bill also restricts the RTW eligibility to retirees who would be employed as a teacher in a public school or an instructor in a post-secondary educational institution.

Significant Issues

SB 875 establishes parity between ERB and PERA retirees in terms of a 12 month break in-service requirement before they are eligible for RTW without pension suspension and a $30,000 earnings limit before the RTW retiree would be required to make employee contributions. PERA believes that lengthening the break in-service requirement, as well as elimination of the sunset provision for PERA RTW retirees may have a positive fiscal impact on the fund. ERB notes that institution of employee contributions from ERB RTW retirees may help the actuarial position of the fund, but expresses concern about dissention among ERB members (non-teachers/instructors) who would not be eligible to participate after FY 05 in the RTW program.

FISCAL IMPLICATIONS

ERB notes that their actuaries initial review of the first 3 years of their RTW program showed no negative actuarial effect to the ERB fund from the RTW program. They believe requiring an RTW retiree to make a employee contribution is likely to have a positive impact on the fund. PERA provides that SB 875 may have a positive impact on the fund, in particular if lengthening the break in-service requirement triggers later retirements.

ADMINISTRATIVE IMPLICATIONS

SB 875 will have a minimal additional administrative impact on PERA. Under current law, retirees remit non-refundable retired member contributions when post-retirement earnings reach $25,000 and PERA must track and account for retiree contributions on an individual basis. SB 875 would change the earnings threshold to $30,000 and require tracking of a longer break-in-service requirement (from 90 days to 12 months). ERB, which currently does not have to track and account for RTW retiree contributions, will have an increased workload.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 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. HB 16 does not "grandfather" already employed retirees under the existing law regarding post-retirement employment with affiliated public employers.

HB 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.

SB 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.

OTHER SUBSTANTIVE ISSUES

SB 875 would make a 12-month break-in-service requirement applicable to independent contractors. Under current law, PERA retired members can return to work immediately under an independent contract. An active member contemplating retirement can often secure post-retirement employment prior to terminating public employment, often with the same employer. PERA is aware of attempts by its members to retire, begin receiving pension benefits, and continue rendering service under a "bridge" independent contract until they return to their previous employment. PERA notes that such hiring practices may violates the conflict of interest provisions of the Governmental Conduct Act, Sections 10-16-1 to 10-16-18 NMSA 1978. Lengthening the break-in-service requirements under the PERA Act would alleviate such abuses.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

Retirees who return to work with public-affiliated employers are required to remit nonrefundable retired member contributions when their post-retirement earnings reach $25,000. Retired member contributions will continue to be required through December 31, 2006, allowing for two full years of actuarial experience to determine the full actuarial cost of PERA's expanded return-to-work provisions. Beginning January 1, 2007, the employer contribution rate will be adjusted annually at the determination of PERA to cover the full actuarial cost of PERA retirees for post-retirement employment with PERA affiliates. PERA retirees will be required to complete a 90-day break-in-service before they are eligible to be re-employed by a PERA-affiliated employer. Independent contractors will continue to be exempt from this break-in-service requirement.

The ERB RTW program will continue as is—retirees will have to sit out for a year before they are eligible, and only the employer will make a contribution for the RTW retiree.

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