

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

ORIGINAL DATE 1-31-07  
 LAST UPDATED 3/5/07      HB 595

SPONSOR King

SHORT TITLE District Attorney and Staff Retirement Plan      SB \_\_\_\_\_

ANALYST Aubel

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	See Fiscal Impact		General Fund
	\$625.5	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
		\$50.0		\$50.0	Non- Recurring	PERA
<b>Total</b>		\$625.5	\$625.5	\$1,251.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates SB 576  
 Conflicts with SJM 6

#### SOURCES OF INFORMATION

LFC Files

Response Received From  
 Public Employee Retirement Association (PERA)  
 Administrative Office of District Attorneys (AODA)

No Response Received  
 Administrative Office of the Courts (AOC)

#### SUMMARY

Synopsis of Bill

House Bill 595 creates a new member coverage plan under the PERA Act allowing for district attorney members to be first eligible to retire with 20 years of service credit with a 3.5 percent

pension factor. HB 595's newly created coverage plan would be applicable to "district attorney members", which are defined as "district attorneys, chief deputy district attorneys, deputy district

attorneys and senior trial prosecutors." The member must be in the District Attorney Plan 1 for 18 months prior to being eligible for the proposed benefit enhancements. The member's contributions under the proposed District Attorney Plan 1 will be 10.15 percent of salary; the employer contributions are 22.68 percent.

## **FISCAL IMPLICATIONS**

The estimated increase in unfunded liabilities to the PERA fund is calculated at approximately \$6.5 million. HB 595 does not provide for an appropriation to pre-fund the \$6.5 million unfunded liability that results from the new coverage plan. Providing an appropriation to reduce any portion of the \$6.5 million unfunded liability would reduce the required statutory contribution rates for the new coverage plan going forward.

The bill proposes amortizing the unfunded liability over 30 years rather than pre-funding. The additional 6.09 percent for employer contribution yields an additional \$625 thousand recurring operating budget impact from general fund.

The increase in the annual employee PERA deduction will increase by approximately \$1,798 based on the actuarial average salary of \$65.8 thousand.

PERA's operating budget will be negatively impacted by HB 595. Every new coverage plan added to the PERA Act requires system changes to PERA's computerized pension administration system. If further revisions to the system are necessary in FY08, PERA will be required to seek a Budget Adjustment Request to cover the costs of these system changes. Similar changes in the past have cost up to \$50.0 thousand.

## **SIGNIFICANT ISSUES**

Interim committee testimony cited job stress, retention and recruitment as justification for the proposed enhanced benefits.

PERA pointed out the primary policy issue is whether "district attorney members" should receive the increased benefits of a 20-year retirement plan with a retirement benefit calculated using a 3.5 percent pension factor. Currently this benefit structure is only provided to Municipal Police Plan 5 and Municipal Fire Plan 5 members. Another policy issue is whether the employer or employee should bear the cost of the increased contribution rates required by the proposed benefit plan structure to maintain the solvency of the fund.

To date, all employee groups that are eligible for the enhanced benefits of a 20-year retirement plan or that have each year of service credit enhanced by 20 percent (state police, adult correctional officers, municipal police/fire, and municipal detention officers) have a commonality of danger to life as an integral part of the job. PERA cautioned that expanding enhanced benefits to employee groups beyond these "hazardous duty" employee groups may set

precedent for all employer groups to seek enhanced benefits from the retirement system. PERA has expressed concern of the cumulative effect of enhanced plans on the solvency of the fund. Increasing liabilities increases the risk to the fund if actuarial assumptions do not hold, such as the 8 percent investment return.

The definition of those attorney employees covered by HB 595 includes: “district attorney,” “chief deputy district attorney,” “deputy district attorney,” and “senior trial prosecutor.” AODA noted that these are traditionally the most senior and experienced prosecutors, providing an incentive for district attorneys to stay in their positions to obtain the enhanced benefit. However, the New Mexico District Attorneys’ Personnel & Compensation Plan (NMAC, Title 10, Chapter 4, et seq.) contains more classifications of prosecuting attorneys than those listed in the bill. The DA Personnel & Compensation Plan lists the following positions: “Associate Trial Attorney,” “Assistant Trial Attorney,” “Senior Trial Attorney,” “Deputy District Attorney,” and “Chief Deputy District Attorney.” The Associate and Assistant Trial Attorney positions are ranked lower than the others because their level of experience is ordinarily less.

### **ADMINISTRATIVE IMPLICATIONS**

PERA will be required to coordinate an election for adoption of the new coverage plan by district attorney members statewide. PERA would be required to move affected membership, along with corresponding assets and liabilities, from State General Member Coverage Plan 3 into the proposed District Attorney Member Coverage Plan 1.

HB 595 will add another member coverage plan to the 31 that PERA already administers.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB 595 duplicates Senate Bill 576.

HB 595 conflicts with Senate Joint Memorial 6, which proposes a two-year moratorium on benefit enhancement legislation affecting the Public Employees Retirement Association

### **OTHER SUBSTANTIVE ISSUES**

Article XX Section 22 of the Constitution of the State of New Mexico requires that an increase in benefits under the retirement system be adequately funded to preserve the PERA fund’s actuarial soundness. HB 595 provides no appropriation for the unfunded accrued actuarial liability (“increased liabilities”) that the enhanced retirement benefits will cause. Rather, HB 595 provides for a combined employee and employer contribution rate that is sufficient to amortize the \$6.5 million unfunded accrued actuarial liability over 30 years, given actuarial assumptions hold.

The current combined average contribution rate paid for the affected 156 members is 24.01 percent of payroll (7.42% member and 16.59% employer). HB 595 provides for a combined contribution rate of 32.83 percent (10.15% member and 22.68% employer).

The consensus of the PERA Board is that the unfunded accrued actuarial liability for HB 595’s benefit enhancement should be pre-funded through a special appropriation as a safeguard to the

fund's solvency. Providing an appropriation to reduce any portion of the \$6.5 million unfunded liability would reduce the required statutory contribution rates for the new coverage plan going forward.

HB 595 provides for an 18-month eligibility period for a member to first become eligible to retire with enhanced benefits under the plan. PERA maintained that a 36-month mandatory waiting period is appropriate before members are eligible to retire from the plan to allow for payment of contributions at higher levels toward their enhanced benefit prior to retirement. This will lessen the impact of increased liabilities on the new plan that may occur if a number of members immediately retired with enhanced benefits sooner than normally projected.

### **ALTERNATIVES**

The elected district attorneys may consider joining the existing Judicial Retirement Plan.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

District attorney members (district attorneys, chief deputy district attorneys, deputy district attorneys and senior trial prosecutors) will continue to be PERA members covered by State General Plan 3 and would be eligible to retire at any age with 25 or more years of service credit. Their retirement benefit will continue to be calculated with a 3% pension factor and are capped at 80% of their final average salary. For State General Plan 3, members pay 7.42 % of their salary in contributions and their employer pays 16.59% of salary in contributions. AODA maintains that the difficulty in retaining experienced prosecutors may continue.

### **AMENDMENTS**

#### **DISTRICT ATTORNEY MEMBER COVERAGE PLAN 1—SERVICE CREDIT REQUIRED FOR DISTRICT ATTORNEY MEMBERS.—**

Notwithstanding other provisions of the Public Employees Retirement Act, to qualify for normal or disability retirement or payment of normal or disability retirement benefits under district attorney member coverage plan 1, a district attorney member shall have 36 months of service credit earned under district attorney member plan 1.

MA/mt