

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 1-19-2007

SPONSOR Altamirano LAST UPDATED _____ HB _____

SHORT TITLE CERTAIN RETIREES RETURNING TO WORK SB 86

ANALYST Aubel

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
	(0.1)*		Recurring	PERA

(Parenthesis () Indicate Expenditure Decreases)

* See Fiscal Impact Discussion

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$50.0			Non-Recurring	PERA

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with HB 179

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Employees Retirement Association (PERA)

SUMMARY

Synopsis of Bill

Senate Bill 86 amends the PERA Act's return-to-work provisions by reinstating and raising the threshold for remitting nonrefundable retired member contributions for post-retirement earnings to \$30 thousand. Senate Bill 86 also significantly lengthens the separation from service requirement for post-retirement employment from 90 days to 12 months, and will make the 12-month "sit out" requirement applicable to independent contractors as well. The 12-month "sit out" requirement will apply prospectively to retired members who return to work on or after July 1, 2007.

Senate Bill 86 provides an exception to the proposed 12-month separation from service requirement for post-retirement employment. Retired members who are receiving the maximum pension available under their applicable member coverage plan (have “maxed-out”) and return to work as a peace officer or water or wastewater facility operator may return to work after a 90-day separation from service.

FISCAL IMPLICATIONS

PERA notes that in one respect, Senate Bill 86 may have a positive fiscal impact on the Fund. It is assumed that the ability of a retired member to return to work after retirement is a factor in a PERA member’s timing of his or her retirement. Currently, an active member contemplating retirement can often secure post-retirement employment opportunities prior to terminating their public employment. Lengthening the break-in-service requirement to 12 months precludes an employer’s ability to “hold” a job position for a retiree. If lengthening the break-in-service requirement for retirees who return to work triggers later retirements, there may be a gain to the fund, although such savings to the fund under this scenario are indeterminable

However, PERA also claims that Senate Bill 86 will have a negative fiscal impact on the fund because PERA will not receive a portion of statutory contributions on the first \$30,000.00 of a re-employed retiree’s earnings. Currently, PERA receives employer contributions in an amount equal to the sum of the statutory employer rate and the statutory employee rate applicable to the reemployed retiree’s position when employment starts. The amount “lost” to PERA would depend on the number of retirees coming back to work under this legislation and is currently indeterminable.

PERA finally assesses Senate Bill 86 will negatively impact its operating budget. Changes to PERA’s back-to-work provisions will require PERA to make additional changes to its recently implemented pension administration computer system. Every revision to the PERA Act’s post-retirement back-to-work provisions results in a change order, with associated costs, to PERA’s existing contract with the vendor. For example, by incorporating removal of the PERA’s post-retirement earning limit into the pension system, PERA incurred approximately \$50,000 in change orders during FY05. If further revisions to the system are necessary in FY08, PERA will be required to seek a BAR to cover the costs of these system changes. While not specifically stated by PERA, it is reasonable to assume a comparable rate to incorporate similar changes.

SIGNIFICANT ISSUES

NMSA 1978, Section 10-11-8(C)(2) provides that after December 31, 2006, no additional retired member contributions shall be required from reemployed PERA retired members. Effective January 1, 2007, PERA-affiliated employers that employ PERA retirees are required to make employer contributions in the amount specified in the PERA Act or in a higher amount adjusted for the full actuarial cost as determined annually by PERA. PERA’s actuaries recommended that PERA collect contributions on all retirees who return to work with PERA-affiliated employers in an amount equal to the sum of the statutory employer rate and the statutory employee rate for the plan applicable to the reemployed retiree’s position. By doing so, PERA will collect between 96% and 111% of the costs generated by the PERA retirees who return to work and as a result the return-to-work provisions will be cost-neutral to the fund.

Effective July 1, 2007, Senate Bill 86 would once again shift the responsibility for paying a portion of the applicable contribution rate back to the re-employed PERA retiree when his or her post-retirement earnings reach \$30,000.00. PERA believes that any statutory provision requiring PERA retired members to make nonrefundable contributions without receiving any associated benefit may violate the federal Age Discrimination in Employment Act (“ADEA”). As previously noted, the fund would “lose” the portion of employee contributions up to the \$30 thousand threshold.

Lengthening the break-in-service requirement for retired members who return to work may eliminate abuse of post-retirement employment practices and alleviate active personnel concerns regarding lack of upward mobility within public employment.

ADMINISTRATIVE IMPLICATIONS

Senate Bill 86 will have an administrative impact on PERA. Under current law, retirees are no longer required to pay retired member contributions to PERA when post-retirement earnings reach \$25 thousand. Under current law it is the employer’s responsibility to make contributions from the member’s first day of employment. Senate Bill 86 will require PERA to further reprogram its RIO pension administration computer system to address this change. Senate Bill 86 would again require PERA to track a retired member’s earnings threshold over \$30 thousand and require tracking of a longer break-in-service requirement (from 90 days to 12 months).

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

As it pertains to PERA, House Bill 179 amends the PERA Act to reinstate an earnings limitation of \$25 thousand for PERA retirees who initially return-to-work after July 1, 2007 with a PERA-affiliated public employer before suspension of pension benefits. It also retains the 90-day “wait-out” period.

TECHNICAL ISSUES

PERA provides the following suggested amendments which expand the exception to include elected officials and clarifies applicability to retirees, as follows:

1. On page 7, line 21, after “who”, insert the word “retire”.
2. On Page 7, line 21 and 22, strike “return to work”.
3. On page 5, line 8, after “work;” insert the word “or”.
4. On page 5, line 9, add a new section:
 - (3) a retired member who is elected to serve a term as an elected official; provided that:
 - (a) the retired member files an irrevocable exemption from membership with the association within thirty days of taking office;
 - (b) the irrevocable exemption shall for the elected official’s term of office.

OTHER SUBSTANTIVE ISSUES

PERA actuaries make assumptions regarding retirement trends for actuarial valuation purposes. In general, actuarial experience indicates that members are retiring at significantly higher rates than currently assumed during the first several years of service-based eligibility. It is important to note that since removal of its earning limitation for retirees who return to work with affiliated-public employers, PERA has experienced historically heavier end-of-year retirements. PERA has approximately 23,000 retirees; the number of retirees who have returned to work represents approximately 10-12% of annuitant payroll.

ALTERNATIVES

Increasing the “wait-out” period without changing the current statutory contribution rates or eliminating the ability to return-to work altogether are two alternatives.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Return-to-work provisions will continue as currently provided by statute, including employer paying the sum of employer and employee contributions to the fund. In addition, the potential incentive to retire will remain with a minimal 90-day “wait-out” period.

POSSIBLE QUESTIONS

1. How has prior return-to work legislation impacted employee moral and upward mobility?
2. Does the current 90-day “wait-out” period actually encourage people to retire sooner than they otherwise would have?

MA/csd