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## FISCAL IMPACT REPORT

ORIGINAL DATE 2-24-07

SPONSOR Altamirano LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Elected Official Exemption From PERA SB 947

ANALYST Aubel

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
	Indeterminate		Recurring	Legislative Retirement Fund
	(.01)	See narrative	Recurring	PERA

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to HB 280, HB 595, HB 765, HB 411, SB 576, HB 800, HB 1109, HB 1100, and SJM 6

### SOURCES OF INFORMATION

LFC Files

#### Response From

Public Employees Retirement Fund (PERA)

### SUMMARY

#### Synopsis of Bill

Senate Bill 947 amends the PERA exclusion provisions by adding former elected officials and former legislators to the list of those who may apply for exemption from participating in the PERA retirement plan when employed by an affiliated employer.

### FISCAL IMPLICATIONS

It is unknown whether this provision would encourage legislators or elected officials to retire earlier than actuarially anticipated. Therefore, the impact on the Legislative Retirement Fund is indeterminable.

PERA does note that SB 947 will have a negative impact on the PERA fund because PERA will not receive either employer or employee contributions for a position subject to SB 947's exemption. Under current statute, the employer must pay both portions for employees returning to work.

## SIGNIFICANT ISSUES

Under current law, a few categories of personnel may exempt themselves from PERA: elected officials in their elected capacity, seasonal or student employees, an employee who files within 30 days from when his or her employer becomes affiliated with PERA, and employees under certain other conditions and restrictions. SB 947 would expand this list to allow former elected officials and former legislators the exemption provision.

The Internal Revenue Code (IRC) and regulations restrict the ability of a tax-deferred governmental plan such as PERA to offer elective membership. SB 947 will allow certain former elected officials and certain former legislators, who are already employed on July 1, 2007, to exempt themselves from PERA membership if they file a written exemption from membership on or before September 30, 2007. A 401(a) governmental plan, like PERA, may allow one-time, irrevocable elections upon commencement of employment or upon initial eligibility to receive accruals under the plan. Lengthening the exemption period for a period up to 24 months is acceptable to the IRS so long as the legislation provides for membership during the “decision” period. PERA notes that SB 947 may allow certain former elected officials and former legislators to exempt themselves from membership years after commencement of employment.

Due to these IRC regulations, PERA notes the following concerns regarding HB 947:

- Whether allowing certain former elected officials and former legislators who are employed by a PERA-affiliated employer to exempt themselves from membership within 90 days of taking office complies with Internal Revenue Code regulations concerning elective membership.
- Whether allowing certain former elected officials and former legislators who are employed by a PERA-affiliated employer on July 1, 2007 to exempt themselves from membership on or before September 30, 2007, regardless of the hire date, complies with Internal Revenue Code regulations concerning elective membership.

PERA also expresses the concern that SB 947 is designed to benefit only a very limited category of public PERA-affiliated employees and will treat other PERA members in very similar situations differently. This is likely to lead to a succession of further requests by other special interests for a similar benefit enhancement. No other fulltime employees are eligible to exempt themselves out of PERA unless they fall within a statutory exemption from membership. For example, the elected official exemption for members serves the limited purpose of encouraging people who had accumulated experience and wisdom in their years of public service to run for elected office.

## ADMINISTRATIVE IMPLICATIONS

SB 947 will have a minimal administrative impact on PERA. PERA will be required to target employer education regarding changes to the elected official exemption and to process the applications.

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

Relates to HB 280, which creates a 20-year retirement plan for statewide E-911 telecommunicator workers.

Relates to HB 595, which creates a 20-year retirement plan for statewide district attorney members.

Relates to HB 765, which proposes to add probation and parole officer members to State Police Member and Adult Correctional Officer Member Coverage Plan 1.

Relates to HB 411, which creates a new member coverage plan under the PERA Act allowing a 20-year retirement plan for Law Enforcement Academy Instructor members.

Relates to SB 576, which creates a 20-year retirement plan for statewide district attorney members.

Relates to HB 800, which proposes to add motor transportation officers and special investigator members to State Police Member and Adult Correctional Officer Member Coverage Plan 1.

Relates to HB 1109, which creates a retirement act for public safety volunteers modeled after the volunteer firefighters retirement act.

Relates to HB 1100, which proposes to add juvenile correctional officers to State Police Member and Adult Correctional Officer Member Coverage Plan 1.

Relates to SJM 6, which proposes a 2-year moratorium on benefit enhancement legislation affecting the Public Employees Retirement Association

## **OTHER SUBSTANTIVE ISSUES**

It is important to note that the elected official exemption serves the limited purpose of encouraging people who have accumulated experience and wisdom in their years of public service to run for elected office after retiring from their former positions. The Legislature did not intend to encourage those who are already serving to simultaneously collect a salary and retirement benefits earned in the same position. Rainaldi v. Public Employees Retirement Bd., 115 N.M. 650, 857 P.2d 761 (1993).

Because SB 947 specifies “former” elected official or legislator, this bill does not propose simultaneous employment. Rather, it would effectively allow those retiring from those positions to resume positions in some public service capacity without participating in PERA. While the notion of the accumulated experience and wisdom being utilized remains valid, the potential consequences for active employees of reduced upward mobility cannot be underestimated.

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

Former elected officials and former legislators would be required to become active members of PERA upon employment with an affiliated employer unless statutorily excluded. NMSA 1978, Section 10-11-3 (2006).

**POSSIBLE QUESTIONS**

1. Would this bill exempt such employees from any return-to work provisions, such as the 90 day “wait-out” period?

MA/mt