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FISCAL IMPACT REPORT

ORIGINAL DATE 3-05-07

SPONSOR Robinson LAST UPDATED _____ HB _____

SHORT TITLE Study First Responders For Retirement SJM 22

ANALYST Aubel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	\$15.0			\$15.0	Non- Recurring	PERA

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

<http://www.usccr.gov/pubs/na0703/na0204.pdf> (pp. 76-79)

Responses Received From

Department of Public Safety (DPS)

Department of Health (DOH)

Indian Affairs Department (IAD)

Public Employees Retirement Association (PERA)

SUMMARY

Synopsis of Bill

Senate Joint Memorial 22 requests that New Mexico tribes and the Public Employees Retirement Association conduct a study to determine the feasibility of including tribal first responders in the retirement plans administered by PERA. SJM22 also requests that PERA report the findings and recommendations for legislation to the second session of the 48th Legislature. Copies of this memorial are to be transmitted to the governors of the nineteen pueblos in New Mexico, the president of the Navajo Nation, the president of the Jicarilla Apache Nation, the president of the Mescalero Apache Tribe, the executive director of the Public Employees Retirement Association and the co-chairs of the New Mexico Legislative Council.

FISCAL IMPLICATIONS

The required feasibility study would require an actuarial analysis to determine the costs and benefits of including tribal law enforcement, tribal fire departments and other tribal first responder agencies as public employers in PERA. PERA estimates the cost of the study at \$15 thousand. To report by the second session of the 48th Legislature, the study would most likely need to be initiated in FY07. The study's cost is not included in PERA's FY07 or FY08 budgets.

Possible funding sources and formulas for the retirement plans would be key issues for the study to determine.

SIGNIFICANT ISSUES

DOH states that tribal first responders are vital to emergency response locally and during a statewide or national declared emergency, whether the responder is law enforcement, emergency medical services, emergency management, or a firefighter. Tribal first responders are both paid and volunteer; however, they are not currently eligible to participate in the state employee retirement program.

According to SJM 22, tribal governments have difficulty retaining first responders due to uncompetitive compensation packages. It proposes addressing this problem by studying the possibility of making tribal first responders eligible to participate in the PERA retirement system. The policy issue is whether this eligibility would address compensation disparities between tribal governments and other governmental units who hire first responders in New Mexico and, as a result, increase the retention rate for tribal entities.

According to IAD, tribal entities in New Mexico do currently face a shortage of first responders and points to U.S. Department of Justice (DOJ) study that estimates that roughly 4,300 police officers are needed to provide adequate coverage throughout Indian Country in the U.S., approximately two times the current level. The study also specifies that the level of police coverage on tribal lands is much lower than anywhere else in the U.S., identifying inadequate funding as the primary cause for this shortfall.

DOH also notes that many tribes lack adequate personnel to provide public health and safety services for their communities, stating that only approximately 6 out of 22 tribes have active emergency managers to prepare for and respond to emergencies. DOH suggests that the incentive of possible PERA membership may increase that number.

IAD notes two associated issues to consider in regard to SJM 22, as follows:

- How allowing tribal first responders to participate in PERA may impact tribal sovereignty;
- How economic conditions of tribal employers of first responders would be taken into account. Simply enabling tribal first responders to participate in PERA will not help address the issue of disparate compensation packages if tribes lack the resources to fund PERA benefits.

According to the DOJ study, most tribal police departments are funded through Bureau of Indian Affairs contracts, with some resources provided by the DOJ. The study concludes that appropriations for worthwhile programs have underestimated the extent of the challenges remaining for justice and law enforcement in tribal areas and that none has the funding or budget stability for maximum success.

PERFORMANCE IMPLICATIONS

DOH suggests that the approach proposed by SJM 22 meets part of 2006 New Mexico Comprehensive Strategic Health Plan, Chapter 10:

GOAL 1: Increase and Fortify Human and Material Resources to Respond to Health Emergencies; and

GOAL 2: New Mexico Communities are Prepared to Respond to a Public Health Emergency.

ADMINISTRATIVE IMPLICATIONS

PERA will need to coordinate each election for adoption of a new coverage plan by tribal law enforcement, tribal fire departments and other tribal first responder agencies statewide.

TECHNICAL ISSUES

PERA notes that state law would have to be changed to permit tribal law enforcement departments, fire departments and emergency medical services to join the public employees retirement plan. Currently tribal governments are not included as public employers qualified to join PERA.

OTHER SUBSTANTIVE ISSUES

The Pension Protection Act of 2006 amends the Section 414(d) of the Internal Revenue Code (IRC) to allow Indian tribal governments and their subdivisions, agencies and instrumentalities to establish and maintain a governmental plan, and it affords such plans the same treatment as other governmental plans under the Employee Retirement Income Security Act (ERISA) and the IRC. Such a plan may only cover employees substantially all of whose services are provided in the performance of essential governmental functions, but that are not commercial activities.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

A study to review the costs and benefits of allowing tribal first responder departments to join PERA will not be undertaken.

POSSIBLE QUESTIONS

1. Can PERA funds be used for the benefit of non-members for exploring possible membership?
2. What other factors contribute to first responder hiring and retention issues for tribal departments?
3. Would a pension plan, by itself, solve the turnover problem presented in SJM 22?
4. How would the retirement plan funding address both paid and volunteer members?
5. Under which plan or plans would the tribal first responders be eligible?

MA/mt