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FISCAL IMPACT REPORT

ORIGINAL DATE 01/18/08

SPONSOR King LAST UPDATED _____ HB 165

SHORT TITLE District Attorney Retirement plan SB _____

ANALYST Aubel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

FY08	FY09	FY10	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
	\$50.0		\$50.0	Non-Recurring	PERA
	\$625.5	\$625.5	\$1,251.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Employees Retirement Association (PERA)
 Administrative Office of District Attorneys (AODA)

SUMMARY

Synopsis of Bill

House Bill 165 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 applied to the highest average three-year constructive salary. HB 165'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

No current actuarial study was performed for the benefit enhancements proposed in HB 165. A 2006 actuarial study commissioned by PERA to assess the same proposed plan estimated the increase in unfunded liabilities to the PERA fund at approximately \$6.5 million. However, the study was heavily dependant upon several factors including the number of covered employees,

average salaries, and assumptions regarding future events. PERA notes it cannot determine whether this membership group has changed since 2006; however, PERA states a reasonable assumption would be that the liabilities created under HB 165 has increased since the 2006 study. Thus, the fiscal impacts would most likely be greater than those specified below, although the amount is interminable.

Using the \$6.5 million as a basis, the bill proposes amortizing the unfunded liability over 30 years rather than pre-funding. The additional 6.09 percent for employer contribution yields an approximate \$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 165. 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 FY09, 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

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

PERA points 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 165 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 165 will add another member coverage plan to the 31 that PERA already administers.

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 165 provides no appropriation for the unfunded accrued actuarial liability (“increased liabilities”) that the enhanced retirement benefits will cause. Rather, HB 165 provides for a combined employee and employer contribution rate that is sufficient to amortize the approximate \$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 165 provides for a combined contribution rate of 32.83 percent (10.15% member and 22.68% employer).

PERA Board Resolution No. 08-04 opposes any benefit enhancement legislation that is not prospective and that may create an unfunded liability to the retirement systems it administers unless such unfunded accrued liability is pre-funded from sources other than the retirement trust fund. Thus, the consensus of the PERA Board is that the unfunded accrued actuarial liability for HB 165’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.

PERA notes that this legislation was not presented to the Interim Pension and Investment Oversight Committee for endorsement. Past legislative committee testimony cites job stress, retention and recruitment as justification for the proposed enhanced benefits. The PERA Board has gone on record stipulating it believes it is a misuse of the fund for agencies to pursue benefit enhancements for retention and recruitment purposes when, in reality, these are personnel issues.

HB 165 provides for an 18-month eligibility period for a member to first become eligible to retire with enhanced benefits under the plan. PERA maintains 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.

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.

AMENDMENT

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