

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill No:** SB 476a

**49th Legislature, 1st Session, 2009**

**Short Title:** Educational Retirees Returning to Work

**Sponsor(s):** Senator Gay Kernan

**Analyst:** Kathleen Forrer

**Date:** February 26, 2009

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**AS AMENDED**

**The Senate Education Committee amendment eliminates the extended sunset date for the Return to Work program for retired ERB members.**

**Bill Summary:**

SB 476 amends the *Educational Retirement Act* (ERA) to:

- extend the “sunset” date for the return to work (RTW) provision from January 1, 2012 to January 1, 2022;
- require the retiree to complete an application and receive approval from the Educational Retirement Board (ERB) prior to returning to work for a local administrative unit (ERB employer);
- require the ERB employer to pay to the Educational Retirement Fund the total contributions that a regular employee and an employer would pay if the employer were hiring a non-retiree to fill the position;
- clarify what types of services “rendered” to an ERB employer during the 12-month layout period would disqualify the individual from participating in the RTW program;<sup>1</sup> and
- define the term “local administrative unit.”<sup>2</sup>

**Fiscal Impact:**

SB 476 makes no appropriation.

**Fiscal Issues:**

The RTW provision enables retired members of the Educational Retirement Fund to resume working for an ERB employer without having to suspend their retirement so long as they have not worked for an ERB employer for a period of 12 consecutive months. Current statute requires that the employer pay only the employer’s share of what the total contribution to the fund would be if the returning worker were not retired.

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<sup>1</sup> Rendered services include “employment by a local administrative unit, whether full or part time; substitute teaching; voluntarily performing duties for a local administrative unit that would otherwise be, or in the past have been, performed by a paid employee or independent contractor; or performing duties for a local administrative unit as an independent contractor or an employee of an independent contractor.”

<sup>2</sup> The term includes “any entity incorporated, formed or otherwise organized by, or subject to the control of a local administrative unit, whether or not the entity is created for profit or nonprofit purposes.”

According to its website, one of ERB's 2009 legislative proposals is to continue the RTW program with the changes included in SB 476:

... By continuing the program, we offer retirees the opportunity to contribute their knowledge and strengthen their financial standing in retirement. The proposal will fortify the fund by having the employer make both the employer and employee statutory contributions.

The Legislative Finance Committee's Fiscal Impact Report (FIR) indicates that the increased contributions to the Educational Retirement Fund could result in additional revenue to the fund of approximately \$4.2 million per fiscal year.

Both the Public Education Department (PED) and the Higher Education Department (HED) suggest that requiring the employer to pay both portions of the total contribution could result in fewer retirees being hired.

### **Issues:**

Data provided by the ERB shows that currently there are 1,328 individuals in the RTW program currently employed by 127 educational institutions and state agencies. The number of participants per employer is listed in Attachment 1.

In its analysis of SB 476, PED states that, during school year 2007-2008, approximately 1,200 teachers, or 5.0 percent of the public school teachers statewide, were employed under the RTW program. PED indicates that allowing the RTW program to sunset could lead to "serious teacher shortages" and an adverse effect on "New Mexico's ability to meet the 'highly qualified' teacher requirements under [the *No Child Left Behind Act of 2001*]."

PED indicates that, based on information from school year 2007-2008, there is a total shortage statewide of 1,675 teachers in the following areas: 279 bilingual/Teaching English to Speakers of Other Languages (TESOL) teachers; 179 elementary teachers; 663 math teachers; 391 science teachers; and 145 special education teachers.

### **Background:**

- In 1957, the Legislature enacted the ERA to provide the education community with a vehicle for retirement through establishment of the Educational Retirement Fund.
- According to the ERB, as of February 2, 2009, there are 183 contributing employers, including public school districts and charter schools, higher education institutions, special schools such as the New Mexico School for the Blind and Visually Impaired, and other state agencies such as PED (see Attachment 2).
- Management of the Educational Retirement Fund is under the ERB, which consists of a board of seven members, the categories of which are statutorily determined and include the secretary of public education, the state treasurer, one member elected by the members of the New Mexico Association of Educational Retirees, one member elected by National Education Association-NM, one member elected by the American Association of University Professors, and two members appointed by the Governor.

- In order to attract and retain quality teachers in the profession, the 2001 Legislature enacted an LESC-endorsed amendment to the ERA to allow retired or eligible-to-retire educators to receive retirement benefits and salary following a one-year break in service beginning January 1, 2002, and continuing until January 1, 2012.
- The 2003 Legislature enacted legislation to include those ERA retirees who retired before the return-to-work provisions of ERA were enacted and either laid out a year and went back to work and suspended retirement benefits or worked part time after they retired and did not suspend retirement benefits.
- The 2003 Legislature enacted a measure to amend the *Public Employees Retirement Act* (PERA) to allow PERA retirees who wait 90 days prior to returning to work to accept employment with a PERA-affiliated employer without suspension of their pension benefits but also without accruing service credit. In addition, both the employee and the employer were required to make contributions to the fund. Subsequently, the 2004 Legislature amended the act to specify that, beginning January 1, 2007, the employer would make both the employer's and the employee's contributions to the fund.
- The 2003 Legislature also enacted a measure that (1) exempts PERA retirees from the ERA requirement to make contributions to the ERA fund if they accept employment with a local ERA unit; (2) prohibits them from purchasing service credit for this time; and (3) requires the local administrative unit to make contributions to the ERA fund on behalf of the employee.

**Related Bills:**

HB 246 *PERA Return to Work for Certain Employees*

HB 453 *Educational Retirement Service Credits* (As introduced, HB 453 and SB 623 are duplicates.)

HB 525a *Alternative Educational Retirement Plans*

HB 573 *Adjustment of Retirement Plans*

HB 616a *Public Retirees Returning to Work*

HB 631 *Educational Retirement Eligibility*

HB 721 *Educational Retirees Returning to Work*

HJM 45 *Public Employee & Education Solvency Plans*

SB 145 *Eliminate End Date for Return to Work*

SB 490 *Educational Retirement Info Disclosure*

SB 572 *Alternative Educational Retirement Plans*

SB 623 *Educational Retirement Service Credits*

**EDUCATIONAL RETIREMENT BOARD  
NUMBER OF RETURN TO WORK PROGRAM PARTICIPANTS  
(February 6, 2009)**

<b>TYPE</b>	<b>EMPLOYER</b>	<b>NUMBER IN RTW</b>
Charter School	ACADEMY FOR TECHNOLOGY AND THE CLASSICS	1
Charter School	ALBUQUERQUE TALENT DEVELOPMENT SECONDARY CHARTER	2
Charter School	ALDO LEOPOLD HIGH SCHOOL	1
Charter School	ALMA D'ARTE CHARTER HIGH SCHOOL	4
Charter School	AMY BIEHL CHARTER HIGH SCHOOL	1
Charter School	BATAAN MILITARY ACADEMY	4
Charter School	CARINOS DE LOS NINOS	2
Charter School	CESAR CHAVEZ COMMUNITY SCHOOL	1
Charter School	CHRISTINE DUNCAN COMMUNITY SCHOOL	3
Charter School	CORRALES INTERNATIONAL SCHOOL	2
Charter School	CREATIVE EDUCATION PREPARATORY INSTITUTE #1	1
Charter School	CREATIVE EDUCATION PREPARATORY INSTITUTE #2	1
Charter School	DIGITAL ARTS AND TECHNOLOGY ACADEMY	2
Charter School	EL CAMINO REAL ACADEMY	2
Charter School	GORDON BERNELL CHARTER SCHOOL	1
Charter School	LA ACADEMIA DE ESPERANZA	1
Charter School	LA ACADEMIA DOLORES HUERTA	2
Charter School	LA PROMESA EARLY LEARNING	5
Charter School	LAS MONTANAS CHARTER HIGH SCHOOL	1
Charter School	LEARNING COMMUNITY CHARTER	5
Charter School	LINDRITH AREA HERITAGE SCHOOL	1
Charter School	LOS PUENTES	2
Charter School	MONTE DEL SOL CHARTER SCHOOL	1
Charter School	NORTH ALBUQUERQUE COOPERATIVE COMMUNITY CHARTER	1
Charter School	NORTH VALLEY ACADEMY	1
Charter School	NUESTROS VALORES CHARTER SCHOOL	1
Charter School	PUBLIC ACADEMY FOR PERFORMING ARTS	2
Charter School	ROBERT F KENNEDY CHARTER SCHOOL	1
Charter School	SAN DIEGO RIVERSIDE CHARTER SCHOOL	3
Charter School	SOUTHWEST SECONDARY LEARNING CENTER	3
Charter School	SW PRIMARY LEARNING CENTER	2
Charter School	WALATOWA CHARTER HIGH SCHOOL	2
<i>Subtotal</i>	<i>32</i>	<i>62</i>
School District	ALAMOGORDO PUBLIC SCHOOLS	15
School District	ALBUQUERQUE PUBLIC SCHOOLS	342
School District	ARTESIA PUBLIC SCHOOLS	7
School District	AZTEC MUNICIPAL SCHOOLS	3
School District	BELEN CONSOLIDATED SCHOOLS	30
School District	BERNALILLO PUBLIC SCHOOLS	13
School District	BLOOMFIELD SCHOOLS	7
School District	CAPITAN MUNICIPAL SCHOOLS	2
School District	CARLSBAD MUNICIPAL SCHOOLS	2
School District	CENTRAL CONSOLIDATED SCHOOLS	18
School District	CHAMA VALLEY SCHOOLS	5
School District	CIMARRON MUNICIPAL SCHOOLS	1
School District	CLAYTON MUNICIPAL SCHOOLS	2
School District	CLOVIS MUNICIPAL SCHOOLS	11
School District	COBRE CONSOLIDATED SCHOOLS	6
School District	CUBA INDEPENDENT SCHOOLS	7

<b>TYPE</b>	<b>EMPLOYER</b>	<b>NUMBER IN RTW</b>
School District	DEMING PUBLIC SCHOOLS	10
School District	DEXTER CONSOLIDATED SCHOOLS	2
School District	DULCE INDEPENDENT SCHOOLS	5
School District	ELIDA MUNICIPAL SCHOOLS	1
School District	ESPANOLA PUBLIC SCHOOLS	46
School District	ESTANCIA MUNICIPAL SCHOOLS	5
School District	FARMINGTON MUNICIPAL SCHOOLS	17
School District	FLOYD MUNICIPAL SCHOOLS	2
School District	FORT SUMNER MUNICIPAL SCHOOLS	2
School District	GADSDEN INDEPENDENT SCHOOLS	24
School District	GALLUP MCKINLEY COUNTY SCHOOLS	34
School District	GRANTS-CIBOLA COUNTY SCHOOLS	21
School District	HAGERMAN MUNICIPAL SCHOOLS	2
School District	HATCH VALLEY MUNICIPAL SCHOOLS	13
School District	HOBBS MUNICIPAL SCHOOLS	7
School District	HONDO VALLEY PUBLIC SCHOOLS	1
School District	HOUSE MUNICIPAL SCHOOLS	1
School District	JAL PUBLIC SCHOOLS	1
School District	JEMEZ MOUNTAIN SCHOOL DISTRICT	6
School District	JEMEZ VALLEY PUBLIC SCHOOLS	1
School District	LAKE ARTHUR MUNICIPAL SCHOOLS	1
School District	LAS CRUCES SCHOOL DISTRICT	81
School District	LAS VEGAS CITY SCHOOLS	8
School District	LOGAN MUNICIPAL SCHOOLS	1
School District	LORDSBURG MUNICIPAL SCHOOLS	2
School District	LOS ALAMOS SCHOOLS	8
School District	LOS LUNAS SCHOOLS	19
School District	LOVING MUNICIPAL SCHOOLS	2
School District	LOVINGTON MUNICIPAL SCHOOLS	1
School District	MAGDELENA MUNICIPAL SCHOOLS	2
School District	MELROSE SCHOOLS	2
School District	MESA VISTA CONSOLIDATED SCHOOLS	5
School District	MORA INDEPENDENT SCHOOLS	2
School District	MORIARTY-EDGEWOOD SCHOOL DISTRICT	5
School District	MOUNTAINAIR PUBLIC SCHOOLS	1
School District	PECOS INDEPENDENT SCHOOLS	2
School District	POJOAQUE VALLEY SCHOOLS	12
School District	PORTALES MUNICIPAL SCHOOLS	9
School District	QUESTA INDEPENDENT SCHOOLS	1
School District	RATON PUBLIC SCHOOLS	4
School District	RESERVE INDEPENDENT SCHOOLS	2
School District	RIO RANCHO PUBLIC SCHOOLS	21
School District	ROSWELL INDEPENDENT SCHOOLS	31
School District	RUIDOSO MUNICIPAL SCHOOLS	4
School District	SANTA FE PUBLIC SCHOOLS	63
School District	SANTA ROSA CONSOLIDATED SCHOOLS	7
School District	SILVER CONSOLIDATED SCHOOLS	10
School District	SOCORRO CONSOLIDATED SCHOOLS	7
School District	SPRINGER MUNICIPAL SCHOOLS	1
School District	TAOS MUNICIPAL SCHOOLS	7
School District	TATUM MUNICIPAL SCHOOLS	2
School District	TEXICO MUNICIPAL SCHOOLS	2
School District	TUCUMCARI MUNICIPAL SCHOOLS	2
School District	TULAROSA MUNICIPAL SCHOOLS	2
School District	VAUGHN SCHOOLS	2

<b>TYPE</b>	<b>EMPLOYER</b>	<b>NUMBER IN RTW</b>
School District	WEST LAS VEGAS SCHOOLS	6
School District	ZUNI PUBLIC SCHOOL DISTRICT	3
<i>Subtotal</i>	<i>73</i>	<i>1,012</i>
Public School	VALMORA HIGH SCHOOL	1
Special School	NEW MEXICO MILITARY INSTITUTE	2
State Agency	NORTHEAST REC	1
State Agency	REGION IX EDUCATIONAL CO-OP	1
State Agency	REGIONAL EDUCATIONAL CENTER # 6	1
State Agency	SOUTHWEST REGIONAL ED COOP	1
State Agency	STATE OF NEW MEXICO	8
<i>Subtotal</i>	<i>5</i>	<i>12</i>
University/College	CENTRAL NEW MEXICO COMMUNITY COLLEGE	21
University/College	CLOVIS COMMUNITY COLLEGE	3
University/College	EASTERN NEW MEXICO UNIVERSITY - PORTALES	12
University/College	EASTERN UNIVERSITY - ROSWELL	9
University/College	LUNA COMMUNITY COLLEGE	5
University/College	MESALANDS COMMUNITY COLLEGE	3
University/College	NEW MEXICO HIGHLANDS UNIVERSITY	24
University/College	NEW MEXICO INSTITUTE OF MINING AND TECHNOLOGY	8
University/College	NEW MEXICO JUNIOR COLLEGE	4
University/College	NEW MEXICO STATE UNIVERSITY	76
University/College	NORTHERN NEW MEXICO COMMUNITY COLLEGE	3
University/College	SAN JUAN COLLEGE	8
University/College	SANTA FE COMMUNITY COLLEGE	7
University/College	UNIVERSITY OF NEW MEXICO	50
University/College	WESTERN NEW MEXICO UNIVERSITY	6
<i>Subtotal</i>	<i>15</i>	<i>239</i>
<b>GRAND TOTAL</b>	<b>127</b>	<b>1,328</b>

**EDUCATIONAL RETIREMENT BOARD  
CONTRIBUTING EMPLOYERS  
(February 2, 2009)**

**SCHOOL DISTRICTS**

Alamogordo	Las Cruces
Albuquerque	Las Vegas
Animas	Las Vegas West
Artesia	Logan
Aztec	Lordsburg
Belen Consolidated	Los Alamos
Bernalillo	Los Lunas
Bloomfield	Loving
Capitan	Lovington
Carlsbad	Magdalena
Carrizozo	Maxwell
Central Consolidated	Melrose
Chama Valley	Mesa Vista
Cimarron	Mora
Clayton	Moriarty
Cloudcroft	Mosquero
Clovis	Mountainair
Cobre Consolidated	Pecos
Corona	Peñasco
Cuba Independent	Pojoaque Valley
Deming	Portales
Des Moines	Quemado
Dexter Consolidated	Questa
Dora Consolidated	Raton
Dulce	Reserve
Elida	Rio Rancho
Espanola	Roswell
Estancia	Roy
Eunice	Ruidoso
Farmington	San Jon
Floyd	Santa Fe
Fort Sumner	Santa Rosa
Gadsden	Silver Consolidated
Gallup-Mckinley Co.	Socorro
Grady	Springer
Grants-Cibola	Taos
Hagerman	Tatum
Hatch Valley	Texico
Hobbs	Truth or Consequences
Hondo Valley	Tucumcari
House	Tularosa
Jal	Vaughn
Jemez Mountain	Wagon Mound
Jemez Valley	Zuni
Lake Arthur	

## **CHARTER SCHOOLS**

La Academia de Lengua y Cultura	La Resolana Leadership Academy
Academy for Technology and the Classics	Las Montanas Charter School
AIMS@UNM (Albuquerque Institute of Math and Science)	Learning Community Charter School
Albuquerque Talent Dev. Sec. Charter School	Lindrith Area heritage School
Aldo Leopold High School	Los Puentas Charter School
Alma D'Arte Charter High School	Monte del Sol
Amy Biehl High School	Montessori Elementary
Anansi Charter School	Montessori of the Rio Grande
Bataan Military Academy	Moreno Valley High School
Bridge Academy Charter School (CLOSED 06/30/08)	Mosaic Academy Charter
Career Academic Technical Academy	Mountain Mahogany Community School
Carinos de los Ninos	Native American Community Charter
Cesar Chavez Community School	North Albuquerque Cooperative Community Charter
Charter School 37	North Valley Academy (formerly Horizon Academy Northwest)
Christine Duncan Community School	Nuestros Valores
Corrales International School	Public Academy for Performing Arts
Cottonwood Classical Prep School	Ralph J. Bunche Academy
Cottonwood Valley	Red River Valley
Creative Education Preparatory Institute #1	Robert F. Kennedy
Creative Education Preparatory Institute #2	Roots and Wings
Deming Cesar Chavez	San Diego Riverside
Digital Arts and Technology Academy	School for Integrated Academics and Technologies
East Mountain High School	Sidney Gutierrez
El Camino Rael Academy (Horizon Academy South)	South Valley Academy
Gordon Bernell Charter School	Southwest Primary Learning Center
Horizon Academy West	Southwest Secondary Learning Center
Jefferson Montessori Academy	Taos Municipal
La Academia de Esperanza	Turquoise Trail
La Academia Dolores Huerta (La Academia de Idiomas Y Cultura)	Twenty-First Century
La Luz del Monte Learning Center	Village Academy
La Promesa Early Learning Center	Vista Grande High School
	Walatowa
	Youth Build Community School

## **OTHER PUBLIC SCHOOLS**

Valmora High School

## **COLLEGES AND UNIVERSITIES**

Central New Mexico Community College	NM State University
Clovis Community College	NM Institute of Mining & Technology
Eastern NM University (Portales)	Northern NM Community College
Eastern NM University (Roswell)	San Juan College
Luna Community College	Santa Fe Community College
Mesalands Community College	University of New Mexico
NM Highlands University	Western NM University
NM Junior College	

## **SPECIAL SCHOOLS**

NM Military Institute	NM School for the Visually Handicapped
NM School for the Deaf	University Hospital



## STATE AGENCIES

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Central Regional Education Coop  
Department of Finance and Administration <sup>1</sup>  
High Plains Regional Education Coop  
Lea Regional Education Coop #7  
NM Activities Association

Northeast Regional Education Coop  
Pecos Valley Regional Education Coop #8  
Regional Educational Center #6  
Region IX Educational Coop  
Southwest Regional Education Coop #10

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<sup>1</sup> DFA sends the ERF contributions to the ERB for state agencies that have employees covered by the *Educational Retirement Act*. The agencies listed in the Educational Retirement Board's 2007 *Annual Report* are the Department of Corrections, the Public Education Department, the Department of Health, the Department of Vocational Rehabilitation, the Educational Retirement Board, and the Youth Diagnostic Center.