# F I S C A L I M P A C T R E P O R T

**ORIGINAL DATE** 2/12/09
**SPONSOR** Rehm **LAST UPDATED** 3/2/09 **HB** 538/aHAFC

**SHORT TITLE** No Large Public Employee Retirement Benefits **SB**

**ANALYST** Moser

## APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Non-Rec | Fund Affected |
|---|---|---|---|
| FY09 | FY10 | | |
| | NFI | | |

(Parenthesis ( ) Indicate Expenditure Decreases)

**SOURCES OF INFORMATION**
LFC Files

Responses Received From
Office of the Attorney General (AGO)
State Personnel Office (SPO)
Department of Finance and Administration (DFA)
Educational Retirement Board (ERB)
Department of Higher Education (HED)
Public Employee Retirement Association (PERA)

**SUMMARY**

Synopsis of HAFC Amendment

House Appropriations and Finance Committee Amendment to House Bill 538 clarifies the prohibition of receiving a “golden parachute” applies to employees who either resign or are terminated for cause.

Synopsis of Original Bill

House Bill 538 amends the Personnel Act (NMSA 1978, § 10-9-21) to include a new prohibited act that prevents a state employer from paying compensation of any sort to an employee who resigns or is terminated for cause.

The bill also adds new provisions to the Public School Code (Chapter 22, Article 1) and the statutes governing state higher education institutions (Chapter 21, Article 1) that prohibit these institutions from paying compensation of any sort to an employee who resigns.

## FISCAL IMPLICATIONS

No fiscal impact.

## SIGNIFICANT ISSUES

The AGO indicates that House Bill 538 prohibits the payment of a “golden parachute” or other extraordinary benefits to certain state employees who resign their positions.

PERA indicates that HB 538 will have no impact on how a PERA member’s pension benefit is calculated. Currently, an employee’s final average salary is based on the highest salary the employee received for any consecutive 36-month period. Salary spiking is not a problem under the PERA Act. In some states, employers increase pension benefits by giving employees lump sum payouts and/or bonuses in their final year of employment, which inflates the final average salary and so the pension. The PERA Act already has a very restrictive definition of salary, which precludes windfalls in the form of lump sum pay-outs prior to retirement. NMSA 1978, Section 10-11-2 (U), which specifically excludes “overtime pay, allowances for housing, clothing, equipment or travel, payments for unused sick leave and any other form of remuneration not specifically designated by law as salary.” Unlike other retirement systems, PERA calculates final average salaries over a 36-month period, which serves to reduce the impact of any salary “spikes” during the last year of employment.

Similarly, both the Judicial Retirement and Magistrate Retirement Acts calculate the amount of pension using the salary received during the last year of office prior to retirement. NMSA 1978, Sections 10-12B-9 and 10-12C-9. No other form of compensation is used for pension purposes.

## TECHNICAL ISSUES

The AGO indicates that section 3 enacts a new section of Chapter 22, Article 1 (Public School Code) but states that a “state agency” shall not pay compensation of any sort to an employee who resigns. If the intent is to include all state agencies within the prohibition on extraordinary benefits, and not just public schools, Section 3 does not accomplish that by amending the Public School Code.

GM/svb:mt