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FISCAL IMPACT REPORT

ORIGINAL DATE 02/24/09
LAST UPDATED 03/16/09 **HB** 731/aHAFC

SPONSOR Lujan, B.

SHORT TITLE Session Employee PERA Credit Purchases **SB** _____

ANALYST Aubel

REVENUE* (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	Indeterminate Negative*	Indeterminate Negative*	Recurring	PERA

(Parenthesis () Indicate Revenue Decreases)

* Actuarial impact to the fund.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
RIO		\$7.0-\$50.0		\$7.0-\$50.0	Nonrecurring	PERA
Legislative Council		Indeterminate Material	Indeterminate Material	Indeterminate Material	Recurring	General Fund
Affiliated Employer		Indeterminate Material	Indeterminate Material	Indeterminate Material	Recurring	Various*

(Parenthesis () Indicate Expenditure Decreases)

*General fund, federal funds, other state funds.

Relates to HJM 45, HB 79, HB 236, HB 246, HB 271 and Companion HB 355, HB 351 and Duplicate SB 366, HB 353, HB 453, HB 573, HB 616, HB 631, HB 648, HB 683, HB 684, HB 721, HB 731, HB 765, HB 798, HB 854, SB 145, SB 231, SB 261, SB 428, SB 476, and SB 499

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Employees Retirement Association (PERA)

Responses Received From (Original Bill)

Public Employees Retirement Association (PERA)

State Personnel Office (SPO)

SUMMARY

Synopsis of HAFC Amendment

The House Appropriation and Finance Amendment to House Bill 631 provides that the total cost of the purchased service credit shall equal the full actuarial present value of the increase in the employee's pension as a result of the purchase. HB731/aHAFC requires the employee pay 30.9 percent of the total cost and the New Mexico Legislative Council or affiliated employer pay 69.1 percent of the cost.

The bill allows vested members of PERA to purchase up to five years of service credit for the time employed during the regular sessions of the Legislature. It also allows those employees that have worked 10 consecutive legislative sessions to become members and to purchase past service credit for past employment with the Legislature. The amendment calculates service credit according to current statute and policy for regular PERA members (Section 10-11-4 NMSA 1978).

FISCAL IMPLICATIONS

Because the purchase cost is now based on the actuarial present value of any pension increase, the bill is cost neutral to the fund. Any changes to pension plans require PERA to change its pension computer system. PERA has indicated that such changes orders have cost from \$7 thousand to \$50 thousand.

However, the bill now requires the New Mexico Legislative Council to pick up 69.1 percent of the purchase price, which could be substantial for any one employee, depending on various factors including age, years of service and salary. Thus, any one purchase could have a material impact to the operating budget of the entity paying the 69.1 percent. As an example, PERA's actuary gave a rough estimate of between \$40 thousand and \$60 thousand for someone 80 years old at an hourly salary of \$17.35, which would cost Legislative Council between \$28 thousand and \$42 thousand. Someone younger would be less, depending on how close the person is to being eligible for retirement. The chart below provides a sample of actual employee profiles:

Sample Eligible Employees
LCS
• 17 years/\$17.35/age 69
• 23 years/\$19.32/age 79
House
• 48 years/\$38/age 78
• 51 years/\$29/age 82
Senate
• 17 years/\$38.60/63 years

Legislative Council Service reports 10 individuals that would qualify under the 10-year eligibility. The Senate and House of Representatives hire approximately 200 seasonal employees each for the legislative session. The House reports about 25 people would be eligible and the Senate reports about 15 would be eligible. It is unknown how of these approximately 50 people would qualify under this eligibility qualification. The total impact to the operating budget for all seasonal employee purchases under this bill is indeterminate, depending on the number of

legislative employees that would be purchasing service credit and the number of years being purchased. It would also vary from year to year, making projections for budgeting difficult.

The bill also allows employees working for a PERA-affiliated employer to purchase up to five years for time spent working during the legislative session, during which they did not accrue service time due to the “seasonal employee” exclusion. The employer is responsible for paying 69.1 percent of the purchase cost. The number of employees meeting this qualification is unknown.

Finally, expenditures for Legislative Council Service included in the General Appropriation Act only include legislative building services. All other costs, including those for the session, are included in the Feed Bill. It is unclear what entity is responsible for paying the Legislative Council contribution, what operating budget would accommodate the expenditure, and how it would be budgeted. It is assumed that the general fund expense would be recurring in the feed bill as new session employees become eligible.

According to the February 2009 revenue estimate, FY10 recurring revenue will only support a base expenditure level that is \$575 million less than the FY09 appropriations before the 2009 solvency reductions. All appropriations outside of the general appropriation act will be viewed in this declining revenue context.

SIGNIFICANT ISSUES

The primary policy issue is whether a seasonal employee employed by the legislative branch should be able to exercise an option to become a PERA member, purchase service credit and be eligible for all PERA membership benefits and obligations. Other issues include the following:

- Whether the purchase cost of seasonal legislative service credit should be shared by the member and the New Mexico Legislative Council or affiliated employer;
- Whether this exemption from the seasonal employee exclusion for PERA membership will lead to other seasonal employees requesting membership; and
- Whether this segment of employees should have the ability to purchase service credit when other seasonal employees cannot.

ADMINISTRATIVE IMPLICATIONS

The administrative impact on PERA will be in modifying its RIO pension administration system, calculating the purchase cost and processing the added service credit. In addition, PERA will be required to amend its regulations to address the statutory changes to the PERA Act.

TECHNCIAL ISSUES

The Legislative Council is an interim legislative committee for the governing body of the Legislative Council Services and does not receive direct appropriations. It is unclear if the bill intended Legislative Council Services, which does have an operating budget.

OTHER SUBSTANTIVE ISSUES

PERA provides additional background information, as follows:

HB 731/aHAFC provides for PERA membership and the purchase of service credit by seasonal workers who are employed by the legislature and are excluded from membership “solely because the affiliated public employer designated the employee as seasonal”. **NMSA 1978, Section 10-11-3(B)** specifically excludes “seasonal” employees from PERA membership. Once employment has been designated as “seasonal,” an employer does not remit contributions under any coverage plan for that employee. The PERA Act requires employees designated as seasonal employees to be notified in writing of this designation and the consequences thereof with respect to PERA membership, service credit and benefits. **NMSA 1978, Section 10-11-3(C)**.

HB 731/aHAFC provides for membership and the purchase of service credit for a narrowly defined group of workers formally designated by their employer as excluded from membership in accordance with the PERA Act. PERA members who are designated as “seasonal” employees in other capacities are not eligible to purchase service credit for such periods of excluded employment. Legislative employees who exercise the option to become PERA members would be allowed to purchase service credit unlike other seasonal workers.

Synopsis of Original Bill

House Bill 731 amends the Public Employees Retirement Act to allow certain long-time seasonal legislative employees to exercise a previously unavailable option to become PERA members and to purchase the service credit associated with legislative periods of employment. HB 731 amends the PERA Act’s definition of “member” to include a seasonal employee of the legislative branch who exercises an option to become a member. HB 731 would also allow a PERA member who was employed during regular legislative sessions and did not acquire service credit for that employment solely because of their designation as seasonal employees to purchase up to five years of service credit for that seasonal legislative employment as long as the PERA member has at least 5 years of service credit.

FISCAL IMPLICATIONS

PERA provides the following fiscal analysis:

HB 731 creates a cost to the PERA Fund by allowing for the purchase of service credit by those seasonal legislative employees exercising the option to become a member at a cost that is partially subsidized by the retirement system. As drafted, the purchase cost for seasonal legislative workers is the monthly salary paid to the employee multiplied by the employer contribution rate in effect at the time of employment, multiplied by the number of months of service credit being purchased. Employer payments must be made within 20 days following a session, with interest. This calculation does not reflect the full actuarial present value of the cost of the service credit. It is not known at this time how many individuals will exercise the option to become PERA members and request to purchase service credit under HB 731, but the impact to the Fund is negative associated with any purchases.

PERA’s operating budget will be negatively impacted by HB 731. Changes to how service credit is posted to a member’s account will require significant changes to PERA’s

recently implemented computer pension administration system, with associated costs. If further revisions to the system are necessary in FY09, PERA will be required to seek a BAR to cover the costs of these system changes. PERA has noted such changes cost up to \$25 thousand in prior testimony.

SIGNIFICANT ISSUES

Presently, legislative seasonal employees are not eligible to become members of PERA regardless of the number of years they have worked. HB 731 would provide these employees who have worked five years the following opportunities to participate in the state public pension system:

- Could receive service credit of three months for working during 60-day sessions, and
- Could receive service credit of two months for the 30-day session.

SPO details additional provisions, as follows:

A maximum of five years service credit exists and the cost of purchasing service credit would be determined by existing law. Those seasonal legislative employees that worked for ten (10) consecutive full regular sessions and are not retired PERA members may exercise an irrevocable option to become a member. These employees will receive service credit subject to exercising the option on or before the December 31 immediately following the end of the employee's 10th consecutive year of legislative seasonal employment.

At that time, the employee may elect to purchase service credit and the cost would be based on the employee's monthly salary multiplied by the PERA contribution rate in effect at the time of employment, multiplied by either the two or three months being purchased. This cost will be paid by the Legislature.

The primary policy issue is whether a seasonal employee employed by the legislative branch should be able to purchase service credit at less than the full actuarial cost to the retirement system. According to PERA, "Article XX, Section 22 of the Constitution prohibits any legislative expansion of eligibility to purchase service credit without calculation of the actuarial cost of this service credit. Any future expansion of the category of persons eligible to purchase service credit must provide a purchase cost that reflects the full actuarial present value of the amount of the increase in the member's pension as a consequence of the purchased service credit. For example, in 2007, NMSA 1978, Section 10-11-7 was amended to allow for the purchase of service credit related to participation in a cooperative work study program, subject to certain conditions. Because the purchase cost calculation reflected the full actuarial present value of the amount of the increase in a member's pension as a consequence of the purchase, the legislation was adequately funded and did not violate Article XX, Section 22 of the Constitution. By contrast, House Bill 731 proposes a calculation of the cost of the purchased service credit would not adequately fund the associated benefits."

RELATIONSHIP

HB 731 relates to the following bills:

HJM 45 – Public Employee & Education Solvency Plans Study

HB 65 – Legislative Retirement Contributions
HB 79 – Public Employee Retirement Info Disclosure
HB 236 – Pera Service Credit Purchase (Expands service credit purchase)
HB 246 – Pera Return To Work For Certain Employees
HB 271/HB 355 – Reopen Municipal Employee Retirement Plan 4
HB 351/SB 366 – Retiree Health Care Fund Contributions
HB 525 – Alternative Educational Retirement Plans
HB 616 – Public Retirees Returning To Work
HB 631 – Educational Retirement Eligibility
HB 648 – Judicial Retirement From General Fund
HB 683 – Retired Public Employee Returning As Sheriff
HB 684 – Congressional Employee Nm Service Credit
HB 721 – Educational Retirees Returning To Work
HB 731 – Session Employee Pera Credit Purchases
HB 765 – Public Employees Returning To Work
HB 798 – New Pera Member Eligibility
HB 854 – Pera Member & State Contribution Changes
SB 145 – Eliminate End Date For Return To Work
SB 231 – Pera Eligibility For Mutual Domestics
SB 428 – Retiree Health Definitions & Contributions
SB 499 – Motor Transportation Officer Retirement

TECHNICAL ISSUES

PERA notes the following technical issues:

Conflicts with Article XX, Section 22 of the New Mexico Constitution.

Conflicts with **NMSA 1978, Section 10-11-4**, which provides that personal service rendered to an affiliated public employer by a member shall be credited to the member's account in accordance with board rules and regulations. **PERA Rule 2.80.600 NMAC** provides that members who are full-time employees shall acquire one month of service credit for every calendar month in which the member is paid 50% or more of his or her monthly salary as reported by the member's affiliated public employer. PERA Rule 2.80.600 further provides that members who are part-time employees shall acquire one month of service credit for every calendar month in which the member works 20 or more hours per week, totaling 40 or more hours in an 80-hour pay period. 2.80.600.10.A.2, 4 NMAC.

HB 731 as written would allow a PERA member to accrue more than one month of service credit for service in a calendar month contrary to **NMSA 1978, Section 10-11-4 (A)**. Specifically, HB 731 would allow a member to purchase 3 months of service credit for a 60-day session and 2 months of service credit for a 30-day session. As stated above, this is contrary to how service credit is calculated pursuant to the PERA Act by providing for a "block" of service credit for a time period rather than calculating service credit on reported wages.

OTHER SUBSTANTIVE ISSUES

PERA raises two additional questions:

1. Whether a seasonal employee employed by the legislative branch should be able to accrue overlapping service credit. HB 731 could potentially permit overlapping accruals of service credit. Where a PERA member is employed as a seasonal employee for a legislative session, HB 731 would allow that member to purchase service credit for that employment as long as the PERA member has 5 years of PERA service credit. If that PERA member is employed by another PERA-affiliated employer and working the legislative session while on leave from that other employer, the potential exists for that individual to accrue overlapping service credit. Currently, the PERA Act prohibits this by stating, in **NMSA 1978, Section 10-11-4** that “in no case shall any member be credited with ...more than a month of service for all service in any calendar month...” However, HB 731 would amend Section 10-11-4 to effectively state that except for the purchases authorized for seasonal legislative employment, a member shall not be credited with more than a month of service credit for all service in one month. This creates the risk that certain individuals will be credited with 3 months of service credit for a 2 month session and in addition earn 2 months of service credit from their usual full-time PERA-affiliated employment at the very same time.

2. Whether a seasonal employee permitted to become a member and purchase service credit will be eligible for all PERA membership benefits and obligations. PERA members who become disabled are eligible for retirement earlier than they would otherwise become eligible. In addition, PERA retirement benefits accrued during a marriage are considered community property and are commonly divided as part of a divorce. HB 731 creates a retroactive membership process that may cause confusion and debate about the benefits and obligations of membership for those individuals who avail themselves of its provisions.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The PERA Act will continue to exclude seasonal employees from PERA membership.

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