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

SPONSOR Berry **ORIGINAL DATE** 3-09-09
LAST UPDATED **HB** 765

SHORT TITLE Public Employees Return to Work **SB**

ANALYST Aubel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Employee Contribution >$25,000		($912.6)	($912.6)	($1,825.2)	Recurring	Various**
RIO		$50.0			Nonrecurring	PERA
		$0.1	$0.1	$0.1	Recurring	PERA

(Parenthesis ( ) Indicate Expenditure Decreases)

*Estimate
**General fund, federal funds and other state funds

Relates to Appropriation in the General Appropriation Act
Conflicts with HB 246, HB616/HAFCS/aHFl#1, 573/HECS
Relates HJM 45, HB 65, HB 79, HB 236, HB 271 and companion HB 355, HB 351 and duplicate SB 366, HB 525, HB 601, HB 631, HB 648, HB 683, HB 684, HB 721, HB 731, HB 765, HB 798, HB 854, SB 145, SB 231, SB 428, and SB 499

SOURCES OF INFORMATION
LFC Files

Responses Received From
Public Employees Retirement Association (PERA)
New Mexico Higher Education Department (HED)
Educational Retirement Board (ERB)
New Mexico Corrections Department (NMCD)

Other Responses
New Mexico Municipal League (NMML)

SUMMARY

Synopsis of Bill

House Bill 765 amends the Public Employee Retirement Act to restructure the return-to-work

(RTW) program, as follows:

- Closes the loophole that allows a retiree to work as an independent contractor performing the same duties as were performed before retirement during the 90 day separation of service or “wait out” period;
- Suspends the RTW employee pension immediately if the retired member returns to work prior to completing the 90 day “wait out” period;
- Limits the salary that can be earned to no more than the final average salary used to calculate the retire member’s pension, with the following exceptions:
  - In a position with an annual salary of less than $18,000; or
  - In a public safety or public health position; and
- Restores the provision that the employee picks up the employee contribution to PERA after earning $25, 000.

FISCAL IMPLICATIONS

PERA has previously noted that to the extent the current program encourages employees to retire earlier than they would have otherwise, waiting out the 90 days and then returning as a RTW employee in the same or similar position, the program has a negative fiscal impact to the fund because the employee is receiving pension payments for a longer period. Offsetting this fiscal impact is the fact that employee contributions for RTW employees are not subject to refunds, which helps fund solvency. PERA’s actuaries have determined that the current RTW program is cost neutral to the fund.

Requiring the employee to pick up the employee contribution after earnings reach $25 thousand would represent cost savings to public employers. Public employee rates range from 4.78 percent to 16.65 percent. The amount of cost savings would depend on several variables: the number of employees that earn more than $25 thousand, the number of employees in the RTW program, and in which agencies they are located. Based on the aggregate of 484 RTW salaries over $25 thousand as of October 2008, the estimated savings would total $912.6 thousand using the State General Plan 3 rate of 7.42 percent.

The amount of savings accruing to agencies due to limiting salaries to the final average salary is indeterminate.

PERA will incur operating costs related to printing, postage and dissemination of information associated with implementing the earnings limit threshold, changes to procedures and employer reporting. In addition, PERA will require increased staff utilization in order to review reporting records and to suspend pensions under the earnings limit, which will be specific to the reemployed retiree. The estimated costs were not provided by PERA. Changes in qualification requirements and reporting will require revisions to PERA’s computer pension administration system (“RIO”), and PERA will be required to seek a BAR to cover the costs of these system changes. Past estimates have ranged up to $50 thousand.

SIGNIFICANT ISSUES

Prior testimony on the PERA RTW program has indicated that state employees may feel low morale and perceive a ceiling for advancement because retirees return to top-level positions. By limiting the RTW salary and shifting responsibility for paying a portion of the applicable contribution rate back to the re-employed retiree after earning $25 thousand, it is possible that less retirees will retire and return to work.

Effective July 1, 2009, HB 765 would once again shift the responsibility for paying a portion of the applicable contribution rate back to the re-employed PERA retiree after earnings reach $25 thousand. PERA believes that any statutory provision requiring PERA retired members to make nonrefundable contributions without receiving any associated benefit may violate the Federal Age Discrimination in Employment Act ("ADEA").

It may not be clear who is included in the "public safety or public health" exemptions.

OTHER RESPONSES

The NMML expresses a concern that this legislation would limit the prospect of a retiree returning to work, which could hamper small municipalities from filling "critical need" positions. The organization suggests that as the population ages and older workers leave the workplace, employers will face growing shortages of qualified persons to fill critical positions.

ADMINISTRATIVE IMPLICATIONS

PERA reports the following administrative implications:

> HB 765 will have an administrative impact on PERA. In the short term, PERA will be required to implement new electronic employer reporting procedures to address the new earnings limits for retired members - who will be subject to the final average salary earnings limit after July 1, 2009. PERA anticipates employer reporting confusion regarding post-retirement employment in the short term. Since each retiree who returns to work will have an individualized earnings limit, a system-wide change will not be appropriate. PERA anticipates employer reporting confusion regarding post-retirement employment in the short term.
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> PERA's public relations staff will also have to provide specific training to Human Resource and Payroll department employees on reporting reemployed retirees.
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> HB 765 will require PERA to make system modifications to its RIO pension administration system to track retired member's earnings after July 1, 2009.

Responding agencies indicated confusion may arise over who is included in the "public safety or public health" exemptions. In particular, the Corrections Department states "there would be no fiscal implications to the Corrections Department assuming correctional officers are considered public safety positions. If correctional officers are not considered public safety, there will be an impact on turnover rates resulting in an increase in the amount of overtime and training costs. A large portion of employees that return to work for the Corrections Department are correctional officers." The agency also questioned whether probation and parole officers would be included.

PERA maintains that it would have to act as "gatekeeper" in determining who qualified under these exemptions.

CONFLICT, RELATIONSHIP

HB 765 conflicts with the following bills:

HB 246 – PERA RETURN TO WORK FOR CERTAIN EMPLOYEES
HB 616//HAFCS/aHFl#1– PUBLIC RETIREES RETURNING TO WORK
HB 573/HECS– ADJUSTMENT OF RETIREMENT PLANS

HB 765 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 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 601 – PERA EXCLUSION OF SENIOR EMPLOYMENT TRAINEES
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 offers the following comments:

> PERA proposes an amendment to HB 765, which would clarify how a retiree's final average salary earnings threshold will be tracked. As drafted, it appears the earnings limit is a one-time threshold, after which the pension is suspended, not that the earnings limit should be tracked on a calendar-year basis. If the intent is that a retiree may return to work in a position so long as his or her post-retirement's annual salary does not exceed their final average salary used to calculate their retirement benefit, HB 765 should be amended.
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> There is a question as to how broad the independent contractor restriction is for PERA retirees. HB 765 subjects independent contractors that will perform the same duties as were performed before retirement to the 90-day sit-out requirement. PERA assumes the intent of this provision is to restrict retired PERA members from circumventing the break in service requirement and return to work in their same job, <u>with the same employer</u>,

under the guise of an independent contractor. HB 765 should be clarified as to whether the 90-day sit-out period only applies to the same job with the same employer or all independent contracts.

HB 765 requires a PERA retirees returning to work to begin contributing to PERA after a $25,000 earnings threshold is reached. HB 765 should be clarified to specifically state that once this threshold is reached, contributions for the retiree shall continue until the retiree either terminates employment or his or her pension is suspended. As drafted, HB 765 will require the retired member's employer to pay contributions on his or her behalf for the first day of employment.

OTHER SUBSTANTIVE ISSUES

PERA provides the following background information:

Since January 1, 2007, PERA-affiliated employers that employ PERA retirees are required to make employer contributions in the amount specified in the PERA Act or in a higher amount adjusted for the full actuarial cost as determined annually by PERA. In 2006, PERA's actuaries conducted a supplemental actuarial cost determination study to measure the financial effect of allowing PERA retirees to be rehired after a 90-day sit-out period without suspending pension benefits and to determine a contribution rate to be charged to employers who rehire PERA retirees. PERA's actuaries recommended that PERA collect contributions on all retirees who return to work with PERA-affiliated employers in an amount equal to the sum of the statutory employer rate and the statutory employee rate for the plan applicable to the reemployed retiree's position. By doing so, PERA will collect between 96% and 111% of the costs generated by the PERA retirees who return to work under existing law and will be cost-neutral to the Fund.

Currently, PERA has approximately 25,000 retirees; the number of retirees who have returned to work represents approximately 10-12% of annuitant payroll. It is unknown whether current return-to-work provisions will require PERA's actuaries to modify the retirement trend assumptions used for valuation purposes.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Unless one of the other bills relating to the PERA RTW is enacted, the program will continue as currently structured.

MA/mc