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

SPONSOR Nava **ORIGINAL DATE** 02/03/09 **LAST UPDATED** 02/06/09 **HB**

SHORT TITLE Eliminate End Date For Return To Work **SB** 145

ANALYST Aubel

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	**FY10**	**FY11**		
			Recurring* Beyond 2012	ERB

(Parenthesis ( ) Indicate Revenue Decreases)
*See Fiscal Impact

Relates to SB399, HB246 and HB 453

SOURCES OF INFORMATION
LFC Files

Responses Received From
Educational Retirement Board (ERB)
Department of Finance and Administration (DFA)
Higher Education Department (HED)
Public Education Department (PED)

SUMMARY

Synopsis of Bill

Senate Bill 145 extends the current return-to-work program for the Educational Retirement Board indefinitely by amending Section 22-11-25.1 NMSA 1978 to strike the “sunset” date of January 1, 2012, that would end the program.

FISCAL IMPLICATIONS

ERB notes that it does not anticipate any fiscal impact to the fund from continuing the program. However, Section 22-11-25.1 (D) specifies that a retired member who returns to employment pursuant to the RTW program does not make the employee contribution to ERB. The current employee contribution rate is 7.9 percent, which would represent lost revenue to the fund versus a regular employee filling that position. PED reports approximately 1,200 RTW teachers in 2007-2008. Based on an average salary of $40,000, the amount estimated not paid into the ERB fund by these teachers is $3.8 million. Continuing the ERB RTW program indefinitely as currently structured would prolong this decreased revenue stream to the fund.

The PERA RTW program is determined to be “cost neutral” to the fund by requiring the employer to make both employee and employer contributions, covering between 90 percent to 110 percent of the normal cost depending on the plan. The ERB RTW statute requires the ERB employer to make contributions to the retirement fund for each ERB retiree who is hired in the RTW program.

SIGNIFICANT ISSUES

This statute was enacted in 2001 to attract and retain quality teachers in New Mexico, allowing retired or eligible-to-retire educators to receive retirement benefits and salary following a 12 month break in service beginning January 1, 2002, and continuing until January 1, 2012. SB 145 would delete the 2012 end date, thereby extending the program indefinitely.

According to PED, the ERB RTW program provided approximately 1,200 teachers statewide in 2007-2008 -- approximately 5 percent of the New Mexico teacher pool in public schools. The department claims that if the program is allowed to expire on January 1, 2012, removing this number of teachers could cause serious teacher shortages and would adversely impact New Mexico’s ability to meet the “highly qualified” teacher requirements under No Child Left Behind program. HED indicates that SB 145 would allow K-12 schools fill math and science positions, where there seems to be shortages, as well as allow higher education institutions to address shortages in many fields of medicine.

Removing the sunset date rather than extending it would allow the program to continue without any future scheduled legislative review.

RELATIONSHIP

Senate Bill 145 relates to the following bills:

SB 399, Local Educational Retirement Unit Audits, which allow ERB to audit its employer members to ensure compliance;
HB 453, Educational Retirement Service Credits, relating to purchasing service credits; and
HB 246, PERA Return To Work for Certain Employees, which would eliminate the PERA RTW program except for small municipalities or counties.

ALTERNATIVES

Rather than deleting the sunset date, several responding agencies indicate that replacing the 2012 date with a subsequent date would enable the program to continue but provide the opportunity for legislative review. Such a review would incorporate any possible modifications needed to address changed conditions relating to the ERB fund, retirees, and employers. ERB provides the suggested amendment below:

“Except as provided in Subsections B and E of this section, beginning January 1, 2002 and continuing until January 1, [2012]<u>2022</u>, a retired member may begin employment at a local administrative unit and shall not be required to suspend retirement benefits if the member has not been employed as an employee or independent contractor by a local administrative unit for at least twelve consecutive months from the date of retirement to the commencement of employment or reemployment with a local administrative unit. If the retired member returns to employment without first completing twelve consecutive months of retirement, the retired member shall remove [himself] <u>the member's self</u> from retirement."

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

ERB's RTW program will expire in 2012. ERB interprets the statutory language to suggest that "those ERB retirees who wish to work for an ERB employer after retiring, including those in the RTW program at that time, would have to either (a) limit the income they earn from an ERB employer to the greater of 0.25 FTE or $15,000, or (b) suspend their retirement and return to work for an ERB employer as regular, contributing member of the retirement fund. Retirees who chose to suspend retirement to work for an ERB employer would earn additional service credit, increasing their retirement benefit upon re-retirement."

POSSIBLE QUESTIONS

1. Has an actuarial study been done of for the ERB RTW program, and has it determined the contribution payments to ERB needed to make the program cost neutral?

2. If the bill is not enacted, does that mean that all teachers currently working as RTW employees would be subject to the .25 work limitation or $15,000 limitation?

3. How would the public education system replace these 1,200 teachers, assuming they are all fulltime employees?

4. How will this impact student achievement?

MA/mt:svb