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**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS  
53rd Legislature, 1st Session, 2017**

<b>Bill Number</b>	<u>SB144</u>	<b>Sponsor</b>	<u>Brandt</u>
<b>Tracking Number</b>	<u>.205013.4</u>	<b>Committee Referrals</b>	<u>SEC/SFC</u>
<b>Short Title</b>	<u>School Substitute Teacher Retirement</u>		
<b>Analyst</b>	<u>Simon</u>	<b>Original Date</b>	<u>2/6/2017</u>
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**FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE**

**BILL SUMMARY**

Synopsis of Bill

Senate Bill 144 (SB144) would amend the Educational Retirement Act to define the term “substitute” and to exclude substitutes employed by school districts and certain state agencies with kindergarten through 12th grade educational programs from mandatory membership in the New Mexico Educational Retirement Board (ERB).

**FISCAL IMPACT**

SB144 could reduce employer and employee contributions to the educational retirement fund, but the fund would not accrue additional liabilities to cover the substitutes who are no longer contributing to the fund. Although ERB does not project any fiscal impact from SB144, its analysis indicates SB144 may negatively impact the educational retirement fund. Current ERB rules require that contributions must be received for those who substitute on a “long-term” basis. In practice, some school districts require “long-term” substitutes to join ERB and make contributions to the fund and others do not.

ERB does not currently have accurate data on how many substitutes are eligible for ERB membership. According to the Public Education Department (PED), substitutes represent a very small number of school districts’ and charter schools’ total staff. PED indicates SB144 “will not have a long-term fiscal effect” on the educational retirement fund. Albuquerque Public Schools (APS) estimated costs of employer contributions for all substitute teachers would have been \$742 thousand in FY16 if all substitute teachers were considered ERB members; however, APS has not been able to estimate how many of those substitutes worked more than 0.25 FTE, the minimum to receive ERB service credit, and the district estimate may be high.

## **SUBSTANTIVE ISSUES**

The bill excludes substitutes employed by school districts as well as the New Mexico Boys' School, the Girls' Welfare Home, the Los Lunas Medical Center, and state agencies offering an educational program, such as the Children, Youth and Families Department from ERB membership. The bill does not exclude substitutes at other institutions that are employers covered by ERB, such as higher education institutions.

The bill defines a substitute as a person paid as a substitute according to the rules and procedures of the uniform system of accounting a budgeting for public schools. PED is required to "establish rules and procedures for a uniform system of accounting and budgeting of funds for all public schools" and created a Uniform Chart of Accounts (UCOA) to standardize account codes for New Mexico school districts and charter schools. The current version of the UCOA (revised in March 2016) contains three job classifications for substitute employees, based on the reason the substitute is needed: professional development leave, sick leave, or other school board approved leave. These codes are used for substitutes assuming the duties of an absent employee regardless of the length of absence.

ERB notes that SB144 excludes all substitutes rather than only those currently excluded under ERB rules. Current ERB rules do not exclude substitutes "engaged to fill a vacant position (including a position vacated by an extended leave of absence)." During the interim, LESC heard testimony that some school districts do not require long-term substitutes to join ERB. Although many school districts do not withhold retirement contributions from any substitute, some school districts do withhold ERB contributions from substitute pay. While the bill would not revoke any ERB service credit the substitute has earned under statutes and rule currently in effect, these ERB members would not be able to continue receiving service credit for work as a substitute. ERB has testified to LESC that it does not know how many people are earning ERB credit for service as a substitute.

## **ADMINISTRATIVE IMPLICATIONS**

SB144 would require ERB's current exemption for substitutes to be amended or repealed but ERB does not anticipate SB144 will impact personnel or operations. Current rules state:

"Any employee engaged on a day-to-day basis to replace another employee who is temporarily absent shall be considered a "substitute" and shall not be covered under the Educational Retirement Act. An employee engaged to fill a vacant position (including a position vacated by an extended leave of absence) is not considered a "substitute" and must be covered under the Educational Retirement Act."

Providing for the exclusion of all substitutes would eliminate the need to calculate full-time equivalence status of substitutes not currently excluded under ERB rules. This may lower the administrative burden placed on school districts. School districts that currently require substitutes to contribute to ERB would need to amend their policies and change payroll procedures to ensure that employee contributions are not withheld for substitute pay.

ERB has raised the concern that school districts may begin to fill open positions with substitutes rather than regular employees as a way to avoid making mandatory ERB contributions; however, if school districts were looking to make savings by employing substitutes rather than regular

employees it is not clear why this practice would not already be common. Substitute teachers are paid much less than regular teachers — in some school districts as little as \$65 per day — so the cost saving from salary reduction would be far less than any cost saving from not paying ERB contributions. Further, LESC heard during the 2016 interim that most school districts in New Mexico have difficulty maintaining an adequate pool of substitute teachers. It is unlikely that most school districts would be able to fill open positions with substitutes. Still, to avoid any potential abuse, it may be prudent for PED and the Legislature to monitor school district spending on substitutes and to address any abuses through further legislation or administrative rule. The Public School Finance Act requires school districts to submit budget information to PED, and Section 22-8-11 NMSA 1978 empowers PED to “make corrections, revisions and amendments to the operating budgets,” if the budget fails to meet requirements of law or PED’s rules and procedures.

## **OTHER SIGNIFICANT ISSUES**

In 2016, ERB proposed a rule change that would have removed the existing exemption for substitutes from ERB membership. ERB testified to LESC that current rules, which exempt substitutes that are not filling a position for an extended leave of absence, have led to confusion and inconsistent implementation across school districts. This led ERB staff to propose eliminating the exemption for substitute teachers.

Current ERB rules require that all employees of eligible employers join the fund if they work more than the equivalent of one-quarter the time a full-time employee works (0.25 FTE), with certain exceptions, including the exemption for substitutes. Eliminating the exemption for substitutes would have required school districts to calculate the FTE status of all substitutes and potentially withhold contributions from more substitutes, including those who would not serve long enough to vest in the system. While employee contributions would be refunded with interest, school district contributions are retained by ERB. Some school leaders voiced concern that it is already difficult to find substitutes and that requiring substitutes to pay a 7.9 percent ERB contribution would reduce already low pay. Opposition from school districts led the board to table the proposed rule; however, similar proposals may be put forward in the future in the absence of this legislation.

## **CONSEQUENCE OF NOT ENACTING THE BILL**

ERB could consider an amendment to administrative rules similar to the proposed rule that was tabled in 2016, which would require all substitute teachers serving more than 0.25 FTE to join ERB and pay contributions to the fund. Even if ERB keeps the current exemption in place, an August 2016 ERB rule required ERB-covered employers to report information on all employees, including those the employer has identified as exempt, such as substitutes. Ambiguous language in the current rule may lead to disagreements between ERB and covered employers about what “day-to-day basis,” “temporarily absent,” or “extended leave of absence,” mean. School districts may try to avoid unexpected requirements to contribute for certain substitutes by withholding contributions for all substitute teachers and providing refunds to those who are ultimately determined not to be eligible.

**RELATED BILLS**

SB144 may conflict with a provision of SB28, Educational Retirement Changes. SB28 amends the educational retirement act to remove most references to “provisional” members while SB144 amends the definition of “provisional member” to exclude substitutes (page 3, line 16).

**SOURCES OF INFORMATION**

- LESC Files
- Educational Retirement Board
- Public Education Department
- New Mexico Manual of Procedures for Public School Accounting and Budgeting

**JWS/rab**