

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

SPONSOR Brandt ORIGINAL DATE 02/02/17  
 LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE School Substitute Teacher Requirement SB 144

ANALYST Hanika-Ortiz

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Indeterminate				educational retirement

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Educational Retirement Board (NMERB)

Public Education Department (PED)

Higher Education Department (HED)

### SUMMARY

#### Synopsis of Bill

Senate Bill 144 (SB 144) amends the Educational Retirement Act to define the term "substitute" and to clarify membership status for persons employed as substitutes at educational institutions.

The bill defines “substitute” as a person paid as a substitute in accordance with the rules and procedures adopted for the uniform system of accounting and budgeting for all public schools.

Further, SB 144 updates the names of the Albuquerque Technical-Vocational Institute, Luna Vocational-Technical Institute, and Mesa Technical College to Central New Mexico Community College, Luna Community College, and Mesalands Community College, respectively.

This bill is endorsed by the Legislative Education Study Committee.

### FISCAL IMPLICATIONS

NMERB reports the bill negatively impacts the trust fund because all substitutes, including those working full-time and/or long-term, would not be required to make contributions to the fund. NMERB currently requires contributions when a substitute teacher fills in on a long-term basis.

However, some public schools are complying with that requirement, while others are not, in part because of the difficulty determining at hire how long a substitute employee may be needed.

PED reports that substitutes comprise a small number of the total staffing at school districts and charter schools therefore believes the fiscal impact on the solvency of the trust fund is minimal.

NMERB did not provide an estimate for the impact to the fund from these lost contributions because it does not know how many individuals work in educational institutions as substitutes and their compensation. In August 2016, NMERB implemented a new rule making it mandatory for employers to report all employees, including those excluded from coverage, which includes substitutes. Until NMERB has received reports for at least one fiscal year under this new rule, NMERB reports it will not have adequate data to determine how many substitutes are employed by educational institutions and the impact to the fund from excluding all from coverage.

NMERB notes that the fund may also be negatively impacted by SB 144 if employers begin to fill positions with substitutes long-term rather than with regular employees who would make contributions to the fund. SB144 may also encourage employers to categorize employees as substitutes rather than regular employees to avoid paying employer contributions to the fund.

## **SIGNIFICANT ISSUES**

Subsection C of 2.82.2.11 NMAC currently defines a substitute as “any employee engaged on a day-to-day basis to replace another employee who is temporarily absent.” As such, these part-time short-term substitutes are not required to participate in the NMERB retirement program.

PED reports during the interim, staff of NMERB proposed to include substitutes working more than quarter time to be required to become regular members and make contributions. Questions were raised with regards to whether these employees fell under the definition of a regular employee. A survey of districts found that there was no uniform practice regarding the status of substitutes. One distinction was whether long-term substitutes should be considered regular members. Because too many questions remained unanswered, the ERB board tabled the matter.

As part of the discussion, PED notes some substitutes were interested in the idea of participating in a retirement program but no substitutes approached the NMERB board expressing interest.

## **PERFORMANCE IMPLICATIONS**

ERB reports that if SB 144 is enacted, ERB’s rule 2.82.2.11(C) regarding substitutes would have to be amended or repealed. The rule differentiates between short-term and long-term substitutes.

## **TECHNICAL ISSUES**

It is unclear as to how the bill would affect current substitutes participating in the NMERB.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The Act would continue to exclude short-term employees working temporarily as substitutes.