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FISCAL IMPACT REPORT

ORIGINAL DATE 05/24/17
LAST UPDATED _____

SPONSOR Dines and Bandy **HB** 3

SHORT TITLE Transfer Legislative Retirement Funds **SB** _____

ANALYST Hanika-Ortiz/Lucero

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
\$12,500.0	\$0	\$0	Nonrecurring	General Fund (GF)
(\$12,500.0)	\$0	\$0	Nonrecurring	PERA's LRF

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

SUMMARY

Synopsis of Bill

House Bill 3 (HB 3) transfers \$12,500,000 from the pension trust fund the Public Employees Retirement Association (PERA) administers to the operating reserve account of the general fund.

The bill declares an emergency.

FISCAL IMPLICATIONS

HB 3 increases general fund reserves by \$12,500,000 with a transfer from the legislative retirement fund administered by PERA.

According to a legal analysis provided by PERA for a prior transfer attempt, legislation to “sweep” funds regardless of the amount from the legislative retirement fund (LRF) to the general fund is an unconstitutional taking and contrary to the New Mexico Constitution, Article 20, Section 22; jeopardizes PERA’s status as a qualified governmental plan under the Internal Revenue Code; and violates the fiduciary duties of the PERA Board and principles of trust law that apply to PERA because trust fund monies must be used only for the exclusive benefit of members (PERA letters attached).

Historically, the Legislature transferred \$2.4 million annually from the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act (known colloquially as OGAS Withholding) to cover the costs associated with the legislative retirement plans. However, during the 2016 special session, the Legislature reduced the annual distribution to the LRF from \$200,000 per month to \$75,000 per month, resulting in a \$900,000 distribution in FY17 and subsequent fiscal years.

SIGNIFICANT ISSUES

PERA administers a cost-sharing, multiple employer defined benefit pension plan. The PERA fund holds assets for six divisions of members, including state general, state police/adult correction officers, municipal general, municipal police/detention officers, municipal fire, and state legislative divisions, and offers 24 different types of coverage within the PERA pension system. All assets accumulated may be used to pay benefits, including refunds of member contributions, to any of the plan members or beneficiaries, as defined by the terms of the plan.

PERA's 2016 actuarial valuation reported that the legislative retirement division was 145 percent funded; the volunteer firefighter division was 143.4 percent funded; and the state police/corrections division was 129.8 percent funded. In all 3 cases, revenues from statutory contributions and/or distributions continue to be in excess of which is needed under current assumptions for inflation, investment earnings, payroll growth, mortality, etc. These assumptions are updated every two years by looking back using experience studies. Conversely, the state general division, the largest within PERA, is only 67.1 percent funded with, more importantly, an infinite funding period. Other divisions within PERA include the municipal plans which range between 63.8 to 79.8 percent funded depending upon if employee or public safety plans. The division with the lowest funded ratios is for judicial and magistrate plans at 61 percent funded.

OTHER SUBSTANTIVE ISSUES

Membership in PERA's retirement plan for legislators is voluntary. Legislators earn service credit by fulfilling obligations of the position for more than six months each year, by participating in the legislative session, and by making contributions of \$600. Legislators may retire if age 65 and older with five or more years of service credit or at any age with 10 or more years of service credit. Legislators receive an annual pension equal to 11 percent of the per diem rate (for 2017 it is \$164) on the first day of the calendar year that the legislator retires multiplied by 60 and further multiplied by credited service as a state legislator. In FY16, there were 122 active members and 152 retirees with an average annual benefit of \$9,757 and average age of 75.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Assuming assumptions are fair, PERA's total funded ratio will remain at 75.3 percent and its unfunded actuarial accrued liability of \$4.8 billion should be fully amortized in about 56 years.

Supplemental GAA -- HB 3					
	General Fund	OSF	ISF/IAT	FF	Total
1 Section 1 Short Title					
2 Section 2 Definitions					
3 Section 3 General Provisions					
4 Section 4 Appropriations					
5 Legislative Council Service	\$ 5,660.0				\$ 5,660.0
6 Legislature	\$ 1,386.0				\$ 1,386.0
7 Legislative Finance Committee	\$ 4,100.3				\$ 4,100.3
8 Senate Chief Clerk	\$ 1,130.3				\$ 1,130.3
9 House Chief Clerk	\$ 1,097.7				\$ 1,097.7
10 Legis Education Study Comm	\$ 1,233.4				\$ 1,233.4
11 Legislative Council Services					\$ -
12 Building Svcs & Energy Dues	\$ 4,054.9				\$ 4,054.9
13 Council of State Governments	\$ 95.5				\$ 95.5
14 National Conf of State Legislatures	\$ 127.1				\$ 127.1
15 National Conference of Insurance					
16 Legislators	\$ 8.9				\$ 8.9
17 National Conference of Legislators					
18 from Gaming States	\$ 2.7				\$ 2.7
19 Higher Education Institutions	\$ 744,848.9	\$ 1,515,060.5	\$ 10,977.5	\$ 612,006.1	\$ 2,882,893.0
20 Cancer Center	\$ 1,000.0				\$ 1,000.0
21					
22 Section 5 Special Appropriations					\$ -
23 AOC - National Center for State Courts	\$ 99.6				\$ 99.6
24 HED - Student Financial Aid	\$ 2,000.0				\$ 2,000.0
25					
26 Section 6 Supp/Deficiency Approps					\$ -
27 AOC - Magistrate Court Leases	\$ 1,233.0				\$ 1,233.0
28					\$ -
29 Section 7 (Exec) Fund Transfer					\$ -
30 DFA/BOF - Emergency fund	*				\$ -
31					\$ -
32 Section 8 Severability					\$ -
33					
34					
35					
36					
37					
38	\$ 768,078.3	\$ 1,515,060.5	\$ 10,977.5	\$ 612,006.1	\$ 2,906,122.4



PERA

Public Employees
Retirement Association
of New Mexico

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INVESTED IN TOMORROW.

MEMORANDUM

To: Wayne Propst, Executive Director
From: PERA Office of General Counsel
Date: May 19, 2017
Subject: IRS Tax Disqualification Issues

If NM PERA fails to comply with the Internal Revenue Code section 401(a) requirement that all plan assets be used only for the exclusive benefit of public employees and their beneficiaries to pay benefits according to the plan's provisions because some of the plan's assets are transferred to the state general fund and used for other purposes, it would lose its tax-exempt status and become a non-exempt trust.

If NM PERA, as an Internal Revenue Code section 401(a) qualified retirement plan is disqualified, the consequences would include:

- More than 50,000 public employees would immediately have mandatory PERA contributions included in their gross income (for State employees an additional 8.92% of income and Municipal general employees an additional 8.5% to 17.15% of income) and subject to taxation.
- More than 50,000 public employees would immediately have mandatory PERA contributions subject to Social Security, Medicare and unemployment taxes.
- Public employees who separate from service would be unable to roll-over retirement funds to other qualified retirement plans (IRA, 401(a) or 457(b) plans) and have a tax consequence. In 2016, 480 PERA members rolled-over refunds.
- Military veterans who are PERA members would no longer be able to purchase military service credit towards retirement by rolling-over their IRAs or 457(b) deferred compensation accounts tax free. In 2016, 87 veterans purchased service credit.
- Municipal plan employers would no longer be able to "pick-up" employee contributions to PERA. Currently 57 municipalities and counties offer pick-ups to their employees.
- Collective bargaining agreements that include municipal plan employer pick-ups would need to be renegotiated.
- PERA's unfunded liabilities would increase. Earnings on PERA's \$15 billion trust fund investments would immediately become taxable. PERA would be required to file a United States tax return, as well as file tax returns in over 50 different international jurisdictions.





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MEMORANDUM

To: Wayne Propst, Executive Director
From: Anna Williams, Chief Financial Officer
Date: May 21, 2017
Subject: State Legislative Retirement Fund

The PERA Act obligates the state to contribute amounts sufficient to finance the membership of members under state legislator plan 2 on an actuarial reserve basis. NMSA 1978, §10-11-43.5.

Historically, the state has appropriated \$2.4 million annually to finance state legislator plan 2. In 2016, the Legislature reduced the annual appropriation to \$900,000 annually. Once appropriated to finance state legislator plan 2, these monies become non-reverting trust funds under the PERA Act, and are maintained in PERA's employer accumulation fund.¹

The basic accounting stream for the appropriated funds is as follows:

- PERA receives a monthly operating transfer of \$75,000 from the Taxation and Revenue Department (based on the legislature set amount);
- The distribution is recorded in the PERA employer accumulation fund account (with all PERA contributions);
- At fiscal year end, the annual appropriation is allocated to determine the unallocated change in net assets of the State Legislative Fund, a Division of the PERA Fund;
- Monthly pension benefit payments for retired legislators are allocated to the State Legislative Fund, a Division of the PERA Fund, at the fiscal year end to determine the unallocated change in net assets for the fund;
- Allocation of change in Net Assets for the State Legislative Fund, a Division of the PERA Fund, is completed at the fiscal year end to determine the pension liability or asset changes for the Fund;

¹ The PERA Act establishes an employers accumulation fund, a member contribution fund, a retirement reserve fund and an income fund. NMSA 1978, § 10-11-123. The PERA Act further states that "maintenance of separate accounting funds shall not require the actual segregation of assets of the association among the various funds." While separate accounting controls are required, nothing in the PERA Act requires that the various assets of the funds be physically segregated. See also, AG Opinion 1957-58, No. 58-172.



- State Legislative Fund, a Division of the PERA, is combined with the other five divisions of the PERA Fund for investments and benefit payment purposes;
- The State Legislative Fund is a division accounted for under PERA Fund²; and
- All assets accumulated by the divisions may be used to pay benefits, including refunds of member contributions to any of the plan members or beneficiaries.

Prior to 2003, funding for the state legislator plan 1 was appropriated on an actuarial reserve basis.³ Since 2003, the State has annually appropriated amounts in excess of the amounts necessary to finance the membership of members under state legislator plans 1 and 2 on an actuarial reserve basis. The level of appropriation to the State Legislative Fund has not been actuarially calculated but rather has been a flat amount akin to the PERA Act's statutory percentage of salary for its other member coverage plans.

This historical "excess" appropriation has created an overfunding of the SLF for valuation purposes. The proposed "sweeping" of the SLF in practicality is a "sweep" of the PERA Fund. While "sweeping" appropriated funds from the State Legislative Fund to the General Fund is contrary to law, the amount appropriated in the future to finance state legislator 2 may be adjusted as actuarially determined. *See* Legal Opinion dated January 23, 2017 provided to the Legislative Finance Committee regarding "Proposed \$12.5 million "Sweep" from the State Legislative Retirement Fund."

² Consist of six division of members, State General, State Police/Adult Correction Officers, Municipal General, Municipal Police/Detention Officers, Municipal Fire & State Legislative.

³ For FY 2003, the State contributed \$235,000 as the amount sufficient to finance the membership of Legislators under State Legislator Member Coverage Plan 1 on an actuarial reserve basis.