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

		ORIGINAL DATE	1/31/2020		
SPONSOR	Stewart	**LAST UPDATED**	2/7/2020	**HB**	
SHORT TITLE	Changes to Educational Retirement			**SB**	111/aSEC
				ANALYST	Jorgensen

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY20	**FY21**	**FY22**		
	($8,100.0)	($8,100.0)	Recurring	Educational Retirement

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to HB226 and HB260

SOURCES OF INFORMATION
LFC Files

Responses Received From
Educational Retirement Board (ERB)

SUMMARY

Synopsis of SEC Amendment

The Senate Education Committee Amendment to Senate Bill 111 removes provisions in the Educational Retirement Act requiring employee contributions be made by Public Employees Retirement Association (PERA) retirees who return to work for an ERB-covered employer.

Synopsis of Original Bill

Senate Bill 111 (SB111) amends the Educational Retirement Act (ERA) to remove provisions requiring nonrefundable employee and employer contributions for retirees who return to work at 0.25 FTE or less. SB111 also allows retired members to return to work without suspending pension payments so long as the retiree has not worked for or contracted with a school for at least 90 days prior to returning to work and the retiree will earn an annual salary less than $15 thousand.

Lastly, SB111 includes a new section of law which exempts day-to-day substitute teachers from coverage under the ERA but states that an employee engaged to fill a vacant position, including a vacancy resulting from a leave of absence of at least 90 days, is not considered a substitute and is covered under the ERA.

FISCAL IMPLICATIONS

ERB reports the total cost of implementation of the provisions of SB111 is likely to be $8.1 million. ERB estimates exempting PERA return to work employees from employee contributions will reduce revenue to the fund by approximately $2.6 million per year. The exemption of day-to-day substitute teachers is likely to cost $1.4 million while the exemption of return to work retirees working less than 0.25 FTE (full-time employee) will cost approximately $4.1 million. The revenue table shows a $8.1 million decrease in receipts of the educational retirement fund.

SIGNIFICANT ISSUES

ERB notes passage of SB111 would imperil its tax exempt status with the Internal Revenue Service (IRS). IRS rules require a *bona fide* termination of employment in order for pension recipients to receive benefits from a tax exempt retirement plan. *Bona fide* termination means that the employer and employee reasonably anticipate that no further services would be performed after a certain date. To comply with the *bona fide* termination requirement and establish employee intent, ERB implemented a mandatory one year layout period prior to a retiree returning to work greater than .25 FTE. Shortening the layout period to 90 days and allowing a retiree to work up to full time removes any type of objective way to measure the true intent of employees and employers upon retirement. This is especially problematic in the case of teachers, because the 90 day layout period would likely coincide with summer or quarterly break that may occur anyway. Additionally, the IRS determines *bona fide* termination based on hours worked rather than income earned.

ERB notes that, because the IRS determines bona fide termination based on hours worked rather than income earned, changing the salary cap in Section 1H(3) to a percentage of FTE would better align with IRS regulations affecting ERB.

CJ/al/rl