

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

## FISCAL IMPACT REPORT

**SPONSOR** Lane/Cadena
**LAST UPDATED** \_\_\_\_\_  
**ORIGINAL DATE** 2/22/2023  
**SHORT TITLE** Retired Public Employees in Corrections
**BILL NUMBER** House Bill 344  
**ANALYST** Simon

### REVENUE\* (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		
	\$78.3 - \$783.0	\$156.6 - \$783.0	Recurring	PERA Fund

Parentheses ( ) indicate revenue decreases.

\*Amounts reflect most recent analysis of this legislation.

Relates to House Bills 65, 66, 106, and 294 and Senate Bills 96 and 124  
 Conflicts with House Bills 64 and 65 and Senate Bill 124

### Sources of Information

LFC Files

#### Responses Received From

Public Employees Retirement Association (PERA)  
 Children, Youth and Families Department (CYFD)  
 New Mexico Counties

## SUMMARY

### Synopsis of House Bill 344

House Bill 344 (HB344) would amend the Public Employees Retirement Act to allow retired members of the Public Employees Retirement Association (PERA) to resume employment with a PERA-covered county detention center or juvenile detention center without the need to suspend their retirement benefits. The bill includes the following conditions:

- The retired prospective employee must be retired for at least 90 days before being eligible to seek employment with a PERA-covered employer.
- The retired employee may only hold the rank of detention officer.
- The retired employee and PERA-covered employer must make contributions to the PERA fund.
- The retired employee would not accrue services credit during their term of reemployment.
- The reemployment can occur for no more than 36 months.

- The reemployment must occur before July 1, 2026.

The effective date of this bill is July 1, 2023.

## FISCAL IMPLICATIONS

HB344 could lead to an increase in the number of correctional officer retirements by allowing retirees to return to work. With return-to-work programs, some employees could choose to retire earlier than they otherwise would, reducing contributions to the fund, increasing payouts from the fund, and reducing member's pension payments. However, HB344 limits the ability of employees to pre-plan a retirement while also planning to return to work by requiring a 90-day layout period, limiting the jobs.

Article XX, Section 22, of the New Mexico Constitution prohibits the Legislature from enacting any law that increases the benefits paid by PERA unless adequate funding is provided. That section assigns the PERA board the sole and exclusive power to adopt actuarial assumptions, based on recommendations from an independent actuary. While HB334 could be seen as increasing benefits payments, the bill also includes additional revenue to the PERA fund in the form of mandatory contributions from both the employee and employer.

However, HB344 does not specify that the contributions be nonrefundable, leaving a potential loophole that could have a negative impact on the fund. (See "Technical Issues," below). PERA notes if contributions are later refunded, it would offset the additional revenue, posing challenges to meeting requirement to provide "adequate" funding. In analysis on other bills with clearly nonrefundable contributions, PERA has stated the contributions are expected to have a small positive impact on the fund, presumably making the funding level "adequate" in PERA's estimation.

On average, PERA members' salaries are about \$54 thousand per year. PERA's valuation report an average contribution rate about 29 percent for both the employee and employer. As a result, the average contribution per employee is estimated at about \$15,660. Assuming between five and 50 individuals participate in return-to-work, this would have an impact of between \$78 thousand and \$783 thousand. Most of this additional revenue would be offset with additional payments, but PERA states the revenue would be slightly positive.

## SIGNIFICANT ISSUES

HB344 seeks to address large vacancy rates in the number of detention staff at county detention facilities or juvenile detention facilities by increasing the pool of potential employees. According to New Mexico Counties, the number of detention staff at county facilities fell from 2,267 in May 2021 to 1,372 in May 2022. Reported vacancy rates are 25 percent or more at 14 facilities, as of January 2023. Facilities in Bernalillo County, including the Bernalillo County Youth Services Center, Otero County, and Rio Arriba County all reported vacancy rates at more than 50 percent.

Analysis from CYFD notes the department regulates the ratio of detention officers to juveniles, with no more than eight juveniles for every officer during the day and 16 juveniles for every officer during sleeping hours. The department states increasing the employment pool may help

detention centers meet this requirement.

### **Length of Return to Work Program**

HB344 allows a retired member to return to work for 36 months prior to July 1, 2026. However, it may not be clear if the intent of the bill is to fully end the program after July 1, 2026, essentially requiring members in the program on that date to leave employment or suspend their retirement benefits, or if no new members may enroll in the program after July 1, 2026.

Analysis from PERA suggests an amendment to clarify the program will end for all participants on July 1, 2026; however, this may not be the intent of the sponsor.

### **Return to Work Programs**

Generally, a member of PERA must terminate employment to retire and receive a pension benefit from the plan. While retired members are permitted to seek employment in the private sector, with another state or the federal government or with an employer covered by the Educational Retirement Board (ERB), members are not allowed to return to employment with a PERA-covered employer without suspending their monthly benefit. HB334 would allow certain retired members to return to employment without suspending their retirement.

As designed, public pension funds are intended to replace the income an individual loses when leaving the workforce by providing a steady stream of payments in retirement. As a result, pension plans and regulations from the Internal Revenue Service (IRS) generally prohibit payment from the pension system to an active employee, except under certain circumstances, and require a “bona fide” separation of service. However, return-to-work programs have been designed to allow retired workers to return to employment to address shortages of qualified workers.

Theoretically, a return-to-work program would not increase the costs of the retirement system because the worker being employed has qualified for retirement and already decided to retire and begin receiving pension benefits. Under this paradigm, return-to-work merely allows a public employer continued access to the services of experienced employees, who might otherwise go on to work in the private sector or in the public sector for an employer not affiliated with PERA while continuing to receive their pension. However, in practice, the existence of return-to-work programs likely leads some employees to move up their retirement date with a reasonable assurance that they will be able to find continued employment and be able to receive both a paycheck and pension payments, sometimes called “double dipping.” Under this paradigm, return-to-work programs increase costs to the retirement system because pension payments must be made for a longer period than if no return-to-work system existed. In reality, neither paradigm is likely a true representation of a wide variety of actual employment decision made by different employees.

To cut back on possible abuses of return-to-work programs, most public pension funds place limits on how a retired employee can return to work. These restrictions can include limits on the amount of time that can be worked, how much a person can earn, how long a person must wait before returning to work, and the age of an employee allowed to return to work. Some states require formal certification of a “critical shortage” of workers before an employer is allowed to

consider hiring return-to-work applicants, and some restrict the overall number of workers who can be hired.

## CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Several bills have been introduced for consideration that would incentivize public employees to provide more years of service. These proposals include:

- House Bill 64, which would create a return-to-work program for public safety employees, but would not limit their employment to school resource officers or courthouse security;
- House Bill 65, which would create a return-to-work program for retirees from all PERA plans;
- House Bill 66, which would increase the maximum pension benefit from 90 percent to 100 percent of salary, allowing members who work longer to accrue additional service credit;
- House Bill 106, which would increase the maximum pension benefit from 90 percent to 100 percent of salary;
- House Bill 294, which would allow retired law enforcement officers to return-to-work as school security officers or courthouse security;
- Senate Bill 96, which would increase the maximum pension benefit the state police member, correctional officer member, and probation and parole officer member plan;
- Senate Bill 124, which would both enact a return-to-work program for all PERA retirees and increase the maximum pension benefits if employees serve for more years.

## TECHNICAL ISSUES

PERA notes the requirement to make contributions to the fund does not specify that the contributions be nonrefundable. Additionally, PERA suggests clarifying language on the rate at which contributions must be paid. The agency suggests replacing Paragraph 4 of Subsection I (Page 6, Lines 18 through 20) with the following language:

(4) the retired member and the retired member's subsequent affiliated public employer shall make the contributions that would be required for members and employers under the applicable coverage plan during the entire period of subsequent employment;

(5) the contributions paid by or on behalf of the retired member during the term of subsequent employment shall not be refundable at the termination of the subsequent employment.

## ALTERNATIVES

Analysis from PERA notes employers have the ability to offer retention bonuses and longevity pay, which could help address short-term vacancy issues.