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FISCAL IMPACT REPORT

ORIGINAL DATE 2-6-09
 SPONSOR Kernan LAST UPDATED 3-01-09 HB _____
 SHORT TITLE Educational Retirees Returning To Work SB 476/aSEC
 ANALYST Aubel

REVENUE* (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	\$4,146.2	\$4,146.2	Recurring	ERB

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Public Schools		\$3,684.3	\$3,684.3	\$7,368.6	Recurring	General Fund**
Special Schools		\$2.8	\$2.8	\$5.5	Recurring	General Fund**
State Agency		\$38.2	\$38.2	\$76.4	Recurring	General Fund
Higher Institutions		\$420.9	\$420.9	\$841.9	Recurring	General Fund**
Total		\$4,146.2	\$4,146.2	\$8,292.4	Recurring	General Fund**

(Parenthesis () Indicate Expenditure Decreases)

*Estimate based on FY08 data provided by ERB that was not available for the original analysis. Although providing more detail, the annual fiscal impact to employers is not significantly different from the original \$4.2 million estimate as described under the original bill analysis.

**May included federal funds and other state funds.

Duplicates SB 145

Conflicts with HB 721

Relates to HJM 45, HB 65, HB 525, HB 573, HB 616, HB 631, HB 765, HB 854

SOURCES OF INFORMATION

LFC Files

Responses Received From

Educational Retirement Board (ERB)

Public Education Department (PED)

Higher Education Department (HED)

SUMMARY

Synopsis of SEC Amendment

The Senate Education Committee Amendment for Senate Bill 476 strikes reference to the new sunset date of 2022, effectively extending the REB return-to-work program indefinitely.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 475 as amended now duplicates SB 145, which also extends the RTW program indefinitely.

SB 576/aSEC conflicts with HB 721, which contains the sunset date of 2022.

SB 475 relates to the following bills:

HJM 45 – PUBLIC EMPLOYEE & EDUCATION SOLVENCY PLANS STUDY

HB 65 – LEGISLATIVE RETIREMENT CONTRIBUTIONS

HB 525 – ALTERNATIVE EDUCATIONAL RETIREMENT PLANS

HB 573 – ADJUSTMENT OF RETIREMENT PLANS

HB 616 – PUBLIC RETIREES RETURNING TO WORK

HB 631 – EDUCATIONAL RETIREMENT ELIGIBILITY

HB 765 – PUBLIC EMPLOYEES RETURNING TO WORK

HB 854 – PERA MEMBER & STATE CONTRIBUTION CHANGES

Synopsis of Original Bill

Senate Bill 476 extends the current sunset date for ending the Educational Retirement Board return-to-work (RTW) program from 2012 to 2022; clarifies statutory language to aid in the program's administration; and adds the requirement that employers pay both the employee and employer contributions to ERB. The bill is effective July 1, 2009.

FISCAL IMPLICATIONS

Section 22-11-25.1 (D) specifies that a retired member who returns to employment pursuant to the RTW program does not make the employee contribution to ERB. The current employee contribution rate is 7.9 percent, which represents lost revenue to the fund versus a regular employee filling that position under the current program structure. PED reports 1,343 RTW teachers in the 2008-2009 school year. Based on an average salary of \$40,000, the amount estimated not paid into the ERB fund by these teachers is approximately \$4.2 million. SB 476 amends and renumbers this section to require the employer to pay both employee and employer contributions as if the retired member was a non-retired employee. This incremental contribution

represents revenue to the fund and equal operating costs to the employers, effective July 1, 2009. Operating budgets for FY10 will most likely need to absorb this incremental cost.

The Public Employees Retirement Association (PERA) also has a RTW program. The agency's actuary determined that its RTW program would be "cost neutral" to the fund by requiring the employer to make both employee and employer contributions, covering between 90 percent to 110 percent of the normal cost depending on the plan.

SIGNIFICANT ISSUES

Program Continuation

This statute was enacted in 2001 to attract and retain quality teachers in New Mexico, allowing retired or eligible-to-retain educators to receive retirement benefits and salary following a 12 month break in service beginning January 1, 2002, and continuing until January 1, 2012. SB 476 would extend the 2012 end date to 2022, thereby continuing the program for 10 years.

According to PED, the ERB RTW program provided approximately 1,200 teachers statewide in 2007-2008 -- approximately 5 percent of the New Mexico teacher pool in public schools. The department claims that if the program is allowed to expire on January 1, 2012, removing this number of teachers could cause serious teacher shortages and would adversely impact New Mexico's ability to meet the "highly qualified" teacher requirements under No Child Left Behind (NCLB) program. HED indicates that SB 476 would allow K-12 schools fill math and science positions, where there seems to be shortages, as well as allow higher education institutions to address shortages in many fields of medicine.

Extending the sunset date for 10 years would allow the program to continue with a future scheduled legislative review.

ERB Contributions

The current program does not require anyone to pay the employee portion of contributions, which represents almost a \$4 million "loss" to the fund during a period when the fund has suffered significant losses due to market conditions. SB 476 would rectify this funding issue and will benefit the fund. However, the employers will incur higher employee benefit costs at a time when budgets are being reduced. In general, employee contributions are not required from RTW employees due to concerns over possible lawsuits because they do not accrue service credit and are not eligible for refunds. Because the RTE employee will not draw benefits and cannot request refunds, the contributions remain in the fund to help pay down other pension liabilities.

Program Administration

According to ERB, the current RTW statute is confusing and is difficult to administer. SB 476 would clarify how the 12-month break in service would function; specify the services that a retiree cannot perform for an employer during the "layout" period; require a retiree to submit an application form for the RTW program, which must be approved by ERB; and defines an employer ("local administrative unit") for purposes of RTW.

PERFORMANCE IMPLICATIONS

Both HED and PED express concern on well public schools would be able to fill teacher shortages if the RTW program is allowed to sunset. According to PED, the RTW program

provides opportunities for districts to hire high-need area educators with specific technical skills. Based on FY 08 information, the following teacher shortages exist: bilingual/TESOL, 279 teachers; elementary, 179; math, 663; science, 391; and special education, 145. The shortages total 1,657.

PED notes that districts may not have the resources to pay the members' portion to the retirement fund, which would result in a decline in the number of retirees hired to return to work.

ADMINISTRATIVE IMPLICATIONS

The proposed changes may simplify administration.

CONFLICT, RELATIONSHIP

SB 476 conflicts with SB 145, which deletes the sunset date to extend the RTW program indefinitely.

SB 476 relates to HB 573, which proposes several adjustments to the pension plans.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

ERB's RTW program will expire in 2012. ERB interprets the statutory language to suggest that "those ERB retirees who wish to work for an ERB employer after retiring, including those in the RTW program at that time, would have to either (a) limit the income they earn from an ERB employer to the greater of 0.25 FTE or \$15,000, or (b) suspend their retirement and return to work for an ERB employer as regular, contributing member of the retirement fund. Retirees who chose to suspend retirement to work for an ERB employer would earn additional service credit, increasing their retirement benefit upon re-retirement."

POSSIBLE QUESTIONS

1. Has an actuarial study been done of for the ERB RTW program, and has it determined that paying both employer and employee contributions to ERB will make the program cost neutral to the fund?
2. If the bill is not enacted, does that mean that all teachers currently working as RTW employees would be subject to the .25 work limitation or \$15,000 limitation?
3. How would the public education system replace these 1,343 teachers, assuming they are all fulltime employees?
4. How will this impact student achievement and New Mexico scores on NCLB tests?

MA/mt