

LFC Requester:	Connor Jorgensen
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**AGENCY BILL ANALYSIS
2019 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

Check all that apply:
Original **Amendment** _____
Correction _____ **Substitute** _____

Date 2/20/19
Bill No: HB 360

Sponsor: Rep. Tomas Salazar
EDUCATIONAL
RETIREMENT CHANGES

Agency Code: 924

Short Title: _____

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY19	FY20		
0	(248,300.0)	Non-recurring	General Fund
	248,300.0	Recurring	Educational Retirement Fund
	\$15, 395.5	Recurring for three years	General Fund (SEG)
	See "Fiscal Implications"	Recurring	Other ERB Employees/ Employers

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
	\$15, 395.5	\$15, 395.5	Recurring for three years	General Fund (SEG)

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB 360 amends the Educational retirement Act to make changes to: begin a three-year phase in of increased percentage share of employer contributions, creates a minimum age of retirement and/or number of service credit years; clarifies provisions related to retirees returning to work to ensure all retirees pay contributions by 2022; ensures PERA retirees that are current ERB employees and their employers are paying contributions to the Educational Retirement Fund (fund, or ERB fund balance); incentivizes higher distributions for employees with more service credit and reduces benefits for individuals retiring prior to age 58; inserts anti-spiking provisions that reduces consideration of any raise applied prior to average annual salary calculations for benefits to thirty percent and indexes the cap to inflation; increases employer contributions associated with alternative retirement plan participants; inserts provisions that clarify a substitute teacher over 0.25 FTE is a regular member; and requests transfer of \$248.3 million from the General Fund to the Educational Retirement Fund as required to be requested under a recent lawsuit settlement.

FISCAL IMPLICATIONS

As a result of a recent legal settlement, ERB is requesting transfer of \$248.3 million that litigants believe was lost in ERB fund balance as a result of the employer-employee swap that occurred at the end of the last decade. The employer – employee “swap” was the result of solvency legislation enacted in both 2009 and 2010 that amended the Educational Retirement Act to temporarily change the contribution rates. Legislation introduced in 2009 reduced the employer contribution by 1.5 percent and increased the employee contribution rate by 1.5 percent for FY10 and FY11. A previous phase-in of employer contributions that began in 2005 requiring a 0.75 percent increase was implemented in FY10; however, in 2010, legislation delayed a 0.75 percent increase for FY 11 for one year (to FY 12). Litigants (AFSCME and AFL-CIO contend that the fund experienced losses in investment returns as a result of the reduced employer contribution and delay of implementation of increased employer contributions in FY11. As a result of ERB’s settlement agreement with AFSCME and AFL-CIO, this provision is included in the bill for consideration by the Legislature. HB 360 also requires a three year phase in of new employer

contributions at the rate of one percent for each of the next three fiscal years. PED estimates the one percent increase to cost K-2 school districts and charter school approximately \$15.4 million, based upon reported financial information from school districts and charter schools.

ERB Increase in Employer Contributions Cost Analysis

Employer's Share Retirement Contributions	\$213,997,440.00
Current Employer Contribution Rate	13.90%
Estimated ERB Employee Salaries	\$1,539,549,928.06
Proposed Contribution Rate FY20	14.90%
Proposed Employer Share Contributions	\$229,392,939.28
Difference in Employer Contributions (to SEG)	\$15,395,499.28

Source: PED Analysis of FY18 Actual Expenditures
(StatBooks)

HB 360 has other costs that are difficult to model because they either impact plan participants unassociated with K-12 education, or they impact fund balance which may be offset by other revenues. For example, many of the alternative retirement plan participating Employers are in higher education and PED is unable to develop cost estimates of the increased share of employer contributions for these entities. Similarly, proposals to limit spiking and remove clauses that grandfathered in return to work employees will have impacts related to ERB fund balance that requires data to which PED does not have data. However, these proposals will positively impact and improve fund sustainability.

Other proposals, like that associated with requiring substitutes greater than 0.25 FTE are more difficult to analyze. Statewide, in FY18, school districts and charter schools spent nearly \$24.9 million on substitute teachers but it is difficult to get the granularity of how many substitutes are over the 0.25 threshold due to combined reporting for these salary line items and limitations on FTE reporting. Current ERB rule allows substitutes to participate and this would only clarify and bring into statute similar provisions, so increases in Employer contributions associated with these employees may be limited.

SIGNIFICANT ISSUES

During FY19 the ERB trustees entered into conversations about how to improve plan sustainability. The interest on the unfunded actuarial accrued liability (UAAL) required to be reported under GASB 68 has been growing, which in turn has negatively impacted school district and charter school balance sheets and the overall bond rating of those entities and the state as a whole. The UAAL is the difference between ERB plan assets and the actuaries' estimate of current and future benefits that the plan will have to pay, as presented as a funded ratio. The UAAL does not examine future contributions. As such, the ERB fund is not insolvent, nor is it on pace to become insolvent; as long as future contributions continue into the fund, the pension plan will

However, there are opportunities to improve the long term sustainability of the fund by increasing revenues and therefore increasing the funded ratio. HB 360 represents the deliberations of the ERB Board of Trustees, of which the Secretary of Education or their designee, is a member. There were numerous conversations, policy proposals, and presentations from actuaries. ERB staff engaged ERB plan members via survey and reached out to Legislators and the Legislative staff for input.

The proposals are designed to accelerate to full funding of the retirement plan 30 years, a stated goal of the ERB Board (at least 90% by June 30, 2040). Implementing provisions of HB 360 will result in a better ability to have the ERB fund withstand future market downturns. Currently, though the fund has traditionally taken the more risk averse and conservative investment approach common to mature defined benefit plans, the growing UAAL could place the actual solvency of the fund at risk if we have a downturn. Additionally, implementing the provisions of HB 360 may help improve the bond ratings of the state and school districts, resulting in cheaper and easier access to General Obligation Bond financing.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 360 duplicates SB 14

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS