



INVESTED IN TOMORROW.

Legislative Committee Meeting

meeting via Zoom

Tuesday, March 9, 2021

9:00 a.m.

Committee Members

Roberto Ramirez, Chair
David Roybal, Vice Chair
Paula Fisher

Maggie Toulouse Oliver
Tim Eichenberg

AGENDA

- 1. Roll Call**
 - 2. Approval of Agenda**
 - 3. Approval of Consent Agenda**
 - 4. Unfinished Business**
 - A. PERA related Legislation for Board Action**

| | | |
|---|--------|---|
| a. SB 90 Certain Overtime Pay as Salary in PERA | Action | Greg Trujillo, Acting Executive Director |
|---|--------|---|
 - B. Legislative Update**

| | | |
|--|---------------|---------------|
| | Informational | Greg Trujillo |
|--|---------------|---------------|
 - 5. Adjournment**
-

Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Trish Winter at 476-9305 at least one week prior to the meeting, or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact Ms. Winter if a summary or other type of accessible format is needed.

Consent Agenda

Approval of Minutes of January 8, 2019 Legislative Committee Meeting



PERA

Public Employees
Retirement Association
of New Mexico

P: (505) 476-9300

F: (505) 476-9401

Toll Free:

1(800) 342-3422

INVESTED IN TOMORROW.

Memorandum

To: Francis Page, Acting Board Chairman
Roberto Ramirez, Legislative Committee Chairman

From: Greg Trujillo, Interim Executive Director

Date: March 5, 2020

Re: SB90 Cost Impact

As you are aware SB90 concerning Certain Overtime Pay as Salary in PERA was endorsed by the Board with the stipulation that a \$30 million dollar appropriation was included to fund the cost of the legislation. On March 4, 2021, the sponsor introduced a committee substitute in Senate Finance Committee that increases the employee contribution for all municipal fire plans by 1.50% in lieu of the appropriation.

The increase in pensionable earnings is expected to increase the Unfunded Actuarial Accrued Liability (UAAL) of the Municipal Fire division of PERA by approximately \$32.5 million and reduce the division's funded ratio from 60.00% to 58.88%. ***To fully offset the UAAL increase with additional contributions, it would require an increase in the employee contribution rate of 1.50% of salary.***

| | Current Valuation | With FLSA OT | Change |
|-------------------|-------------------|--------------|------------|
| UAAL | 683,872,834 | 716,372,689 | 32,499,855 |
| Amortization UAAL | 44,148,434 | 46,246,511 | 2,098,077 |
| Valuation Payroll | 143,726,325 | 143,726,325 | 0 |
| % Payroll | 30.72% | 32.18% | 1.46% |

PERA's actuaries calculated the increase in amortization on the original valuation payroll so the employer contribution dollars would not increase. This requires the employee rate to go up by 1.46% of pay to cover the increase in UAAL due to the legislation. This increase is calculated by taking the amortization UAAL and dividing it by the valuation payroll. The committee substitute calls for an increase of 1.50%, an estimated increase of \$2.1 million per year. As drafted, the committee substitute will be actuarially neutral even though the appropriation has been removed.

Legislation changes quickly and a special board meeting cannot always be called in a timely fashion. Pursuant to the Board's Open Meetings Resolution 21-01, a special board meeting requires 10-days' notice, which means the earliest a meeting can be held is March 15th. The Legislative Session ends on March 20th at noon and we anticipate this legislation moving prior to the 15th. A Legislative Committee will occur on March 9th to discuss the legislation. Jonathan Craven with Cavanaugh McDonald will be in attendance to answer any questions regarding the actuarial impact of the proposed legislation.



SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 90

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

AN ACT

RELATING TO PUBLIC EMPLOYEE RETIREMENT; INCLUDING OVERTIME PAY
REQUIRED FOR A REGULAR SCHEDULED TOUR OF DUTY IN THE DEFINITION
OF "SALARY" IN THE PUBLIC EMPLOYEES RETIREMENT ACT; INCREASING
EMPLOYEE CONTRIBUTION RATES FOR ALL MUNICIPAL FIRE MEMBER
COVERAGE PLANS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 10-11-2 NMSA 1978 (being Laws 1987,
Chapter 253, Section 2, as amended) is amended to read:

"10-11-2. DEFINITIONS.--As used in the Public Employees
Retirement Act:

A. "accumulated member contributions" means the
amounts deducted from the salary of a member and credited to
the member's individual account, together with interest, if
any, credited to that account;

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underscored material = new
[bracketed material] = delete

1 B. "affiliated public employer" means the state and
2 any public employer affiliated with the association as provided
3 in the Public Employees Retirement Act, but does not include an
4 employer pursuant to the Magistrate Retirement Act, the
5 Judicial Retirement Act or the Educational Retirement Act;

6 C. "association" means the public employees
7 retirement association established under the Public Employees
8 Retirement Act;

9 D. "coverage plan funded ratio" means the ratio of
10 the actuarial value of the assets of a coverage plan to the
11 actuarial accrued liability of the association for payments
12 from the coverage plan, as determined by the association's
13 actuaries;

14 E. "disability retired member" means a retired
15 member who is receiving a pension pursuant to the disability
16 retirement provisions of the Public Employees Retirement Act;

17 F. "disability retirement pension" means the
18 pension paid pursuant to the disability retirement provisions
19 of the Public Employees Retirement Act;

20 G. "educational retirement system" means that
21 retirement system provided for in the Educational Retirement
22 Act;

23 H. "employee" means any employee of an affiliated
24 public employer;

25 I. "federal social security program" means that

1 program or those programs created and administered pursuant to
2 the act of congress approved August 14, 1935, Chapter 531, 49
3 Stat. 620, as that act may be amended;

4 J. "final average salary" means the final average
5 salary calculated in accordance with the provisions of the
6 applicable coverage plan;

7 K. "form of payment" means the applicable form of
8 payment of a pension provided for in Section 10-11-117 NMSA
9 1978;

10 L. "former member" means a person who was
11 previously employed by an affiliated public employer, who has
12 terminated that employment and who has received a refund of
13 member contributions;

14 M. "fund" means the funds included under the Public
15 Employees Retirement Act;

16 N. "member" means a currently employed,
17 contributing employee of an affiliated public employer, or a
18 person who has been but is not currently employed by an
19 affiliated public employer, who has not retired and who has not
20 received a refund of member contributions; "member" also
21 includes the following:

22 (1) "adult correctional officer member" means
23 a member who is employed as an adult correctional officer or an
24 adult correctional officer specialist by a state correctional
25 facility of the corrections department or its successor agency;

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1 (2) "adult probation and parole officer
2 member" means a member who is employed as a probation and
3 parole officer by the corrections department or its successor
4 agency;

5 (3) "juvenile correctional officer member"
6 means a member who is employed as a juvenile correctional
7 officer by the children, youth and families department or its
8 successor agency;

9 (4) "juvenile probation and parole officer
10 member" means a member who is employed as a probation and
11 parole officer by the children, youth and families department
12 or its successor agency;

13 (5) "municipal detention officer member" means
14 a member who is employed by an affiliated public employer other
15 than the state and who has inmate custodial responsibilities at
16 a facility used for the confinement of persons charged with or
17 convicted of a violation of a law or ordinance;

18 (6) "municipal fire member" means any member
19 who is employed as a full-time nonvolunteer firefighter by an
20 affiliated public employer and who has taken the oath
21 prescribed for firefighters;

22 (7) "municipal police member" means any member
23 who is employed as a police officer by an affiliated public
24 employer, other than the state, and who has taken the oath
25 prescribed for police officers; and

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1 (8) "state police member" means a member who
2 is an officer of the New Mexico state police and who has taken
3 the oath prescribed for such officers, except that a state
4 police member shall not include a member who is an officer of
5 the New Mexico state police division and who was certified and
6 commissioned as of June 30, 2015 in the former motor
7 transportation division or the former special investigations
8 division of the department of public safety;

9 O. "membership" means membership in the
10 association;

11 P. "pension" means a series of monthly payments to
12 a retired member or survivor beneficiary as provided in the
13 Public Employees Retirement Act;

14 Q. "public employer" means the state, any
15 municipality, city, county, metropolitan arroyo flood control
16 authority, economic development district, regional housing
17 authority, soil and water conservation district, entity created
18 pursuant to a joint powers agreement, council of government,
19 conservancy district, irrigation district, water and sanitation
20 district, water district and metropolitan water board,
21 including the boards, departments, bureaus and agencies of a
22 public employer, so long as these entities fall within the
23 meaning of governmental plan as that term is used in Section
24 414(d) of the Internal Revenue Code of 1986, as amended;

25 R. "refund beneficiary" means a person designated

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1 by the member, in writing, in the form prescribed by the
2 association, as the person who would be refunded the member's
3 accumulated member contributions payable if the member dies and
4 no survivor pension is payable or who would receive the
5 difference between pension paid and accumulated member
6 contributions if the retired member dies before receiving in
7 pension payments the amount of the accumulated member
8 contributions;

9 S. "retire" means to:

10 (1) terminate employment with all employers
11 covered by any state system or the educational retirement
12 system; and

13 (2) receive a pension from a state system or
14 the educational retirement system;

15 T. "retired member" means a person who has met all
16 requirements for retirement and who is receiving a pension from
17 the fund;

18 U. "retirement board" means the retirement board
19 provided for in the Public Employees Retirement Act;

20 V. "salary" means the base salary or wages paid a
21 member, including longevity pay, for personal services rendered
22 an affiliated public employer. "Salary" shall not include
23 overtime pay, unless the overtime payment is required for a
24 regular scheduled tour of duty as set forth in Section 207(k)
25 of Title 29 of the United States Code and is made on the

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1 regular payroll for the period represented by that payment,
2 allowances for housing, clothing, equipment or travel, payments
3 for unused sick leave, unless the unused sick leave payment is
4 made through continuation of the member on the regular payroll
5 for the period represented by that payment, and any other form
6 of remuneration not specifically designated by law as included
7 in salary for Public Employees Retirement Act purposes. Salary
8 in excess of the limitations set forth in Section 401(a)(17) of
9 the Internal Revenue Code of 1986, as amended, shall be
10 disregarded. The limitation on compensation for eligible
11 employees shall not be less than the amount that was allowed to
12 be taken into account under the state retirement system acts in
13 effect on July 1, 1993. For purposes of this subsection,
14 "eligible employee" means an individual who was a member of a
15 state system before the first plan year beginning after
16 December 31, 1995;

17 W. "state system" means the retirement programs
18 provided for in the Public Employees Retirement Act, the
19 Magistrate Retirement Act and the Judicial Retirement Act;

20 X. "state retirement system acts" means
21 collectively the Public Employees Retirement Act, the
22 Magistrate Retirement Act, the Judicial Retirement Act and the
23 Volunteer Firefighters Retirement Act; and

24 Y. "survivor beneficiary" means a person who
25 receives a pension or who has been designated to be paid a

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1 pension as a result of the death of a member or retired
2 member."

3 SECTION 2. Section 10-11-90 NMSA 1978 (being Laws 1987,
4 Chapter 253, Section 90, as amended) is amended to read:

5 "10-11-90. MUNICIPAL FIRE MEMBER COVERAGE PLAN 1--MEMBER
6 CONTRIBUTION RATE.--A member under municipal fire member
7 coverage plan 1 shall contribute eight percent of salary with
8 the first full pay period in the calendar month in which
9 municipal fire member coverage plan 1 becomes applicable to the
10 member, except that a member whose annual salary is greater
11 than twenty-five thousand dollars (\$25,000) shall contribute:

12 A. ~~[prior to July 1, 2022, nine and one-half]~~
13 beginning July 1, 2021 and continuing through June 30, 2022,
14 eleven percent of salary;

15 B. beginning July 1, 2022 and continuing through
16 June 30, 2023, ~~[ten]~~ eleven and one-half percent of salary;

17 C. beginning July 1, 2023 and continuing through
18 June 30, 2024, ~~[ten and one-half]~~ twelve percent of salary;

19 D. beginning July 1, 2024 and continuing through
20 June 30, 2025, ~~[eleven]~~ twelve and one-half percent of salary;
21 and

22 E. beginning July 1, 2025 and thereafter, ~~[eleven~~
23 ~~and one-half]~~ thirteen percent of salary."

24 SECTION 3. Section 10-11-96 NMSA 1978 (being Laws 1987,
25 Chapter 253, Section 96, as amended) is amended to read:

1 "10-11-96. MUNICIPAL FIRE MEMBER COVERAGE PLAN 2--MEMBER
 2 CONTRIBUTION RATE.--A member under municipal fire member
 3 coverage plan 2 shall contribute eight percent of salary with
 4 the first full pay period in the calendar month in which
 5 municipal fire member coverage plan 2 becomes applicable to the
 6 member, except that a member whose annual salary is greater
 7 than twenty-five thousand dollars (\$25,000) shall contribute:

8 A. ~~[prior to July 1, 2022, nine and one-half]~~
 9 beginning July 1, 2021 and continuing through June 30, 2022,
 10 eleven percent of salary;

11 B. beginning July 1, 2022 and continuing through
 12 June 30, 2023, ~~[ten]~~ eleven and one-half percent of salary;

13 C. beginning July 1, 2023 and continuing through
 14 June 30, 2024, ~~[ten and one-half]~~ twelve percent of salary;

15 D. beginning July 1, 2024 and continuing through
 16 June 30, 2025, ~~[eleven]~~ twelve and one-half percent of salary;
 17 and

18 E. beginning July 1, 2025 and thereafter, ~~[eleven~~
 19 ~~and one-half]~~ thirteen percent of salary."

20 SECTION 4. Section 10-11-102 NMSA 1978 (being Laws 1987,
 21 Chapter 253, Section 102, as amended) is amended to read:

22 "10-11-102. MUNICIPAL FIRE MEMBER COVERAGE PLAN 3--MEMBER
 23 CONTRIBUTION RATE.--A member under municipal fire member
 24 coverage plan 3 shall contribute eight percent of salary with
 25 the first full pay period in the calendar month in which

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1 municipal fire member coverage plan 3 becomes applicable to the
2 member, except that a member whose annual salary is greater
3 than twenty-five thousand dollars (\$25,000) shall contribute:

4 A. ~~[prior to July 1, 2022, nine and one-half]~~
5 beginning July 1, 2021 and continuing through June 30, 2022,
6 eleven percent of salary;

7 B. beginning July 1, 2022 and continuing through
8 June 30, 2023, ~~[ten]~~ eleven and one-half percent of salary;

9 C. beginning July 1, 2023 and continuing through
10 June 30, 2024, ~~[ten and one-half]~~ twelve percent of salary;

11 D. beginning July 1, 2024 and continuing through
12 June 30, 2025, ~~[eleven]~~ twelve and one-half percent of salary;
13 and

14 E. beginning July 1, 2025 and thereafter, ~~[eleven~~
15 ~~and one-half]~~ thirteen percent of salary."

16 SECTION 5. Section 10-11-108 NMSA 1978 (being Laws 1987,
17 Chapter 253, Section 108, as amended) is amended to read:

18 "10-11-108. MUNICIPAL FIRE MEMBER COVERAGE PLAN 4--MEMBER
19 CONTRIBUTION RATE.--A member under municipal fire member
20 coverage plan 4 shall contribute twelve and eight-tenths
21 percent of salary with the first full pay period in the
22 calendar month in which municipal fire member coverage plan 4
23 becomes applicable to the member, except that a member whose
24 annual salary is greater than twenty-five thousand dollars
25 (\$25,000) shall contribute:

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1 A. ~~[prior to July 1, 2022, fourteen and three-~~
2 ~~tenths]~~ beginning July 1, 2021 and continuing through June 30,
3 2022, fifteen and eight-tenths percent of salary;

4 B. beginning July 1, 2022 and continuing through
5 June 30, 2023, ~~[fourteen and eight-tenths]~~ sixteen and
6 three-tenths percent of salary;

7 C. beginning July 1, 2023 and continuing through
8 June 30, 2024, ~~[fifteen and three-tenths]~~ sixteen and
9 eight-tenths percent of salary;

10 D. beginning July 1, 2024 and continuing through
11 June 30, 2025, ~~[fifteen and eight-tenths]~~ seventeen and
12 three-tenths percent of salary; and

13 E. beginning July 1, 2025 and thereafter, ~~[sixteen~~
14 ~~and three-tenths]~~ seventeen and eight-tenths percent of
15 salary."

16 SECTION 6. Section 10-11-114 NMSA 1978 (being Laws 1987,
17 Chapter 253, Section 114, as amended) is amended to read:

18 "10-11-114. MUNICIPAL FIRE MEMBER COVERAGE PLAN 5--MEMBER
19 CONTRIBUTION RATE.--A member under municipal fire member
20 coverage plan 5 shall contribute sixteen and two-tenths percent
21 of salary with the first full pay period in the calendar month
22 in which municipal fire member coverage plan 5 becomes
23 applicable to the member, except that a member whose annual
24 salary is greater than twenty-five thousand dollars (\$25,000)
25 shall contribute:

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1 A. ~~[prior to July 1, 2022, seventeen and seven-~~
2 ~~tenths]~~ beginning July 1, 2021 and continuing through June 30,
3 2022, nineteen and two-tenths percent of salary;

4 B. beginning July 1, 2022 and continuing through
5 June 30, 2023, ~~[eighteen and two-tenths]~~ nineteen and
6 seven-tenths percent of salary;

7 C. beginning July 1, 2023 and continuing through
8 June 30, 2024, ~~[eighteen and seven-tenths]~~ twenty and
9 two-tenths percent of salary;

10 D. beginning July 1, 2024 and continuing through
11 June 30, 2025, ~~[nineteen and two-tenths]~~ twenty and
12 seven-tenths percent of salary; and

13 E. beginning July 1, 2025 and thereafter, ~~[nineteen~~
14 ~~and seven-tenths]~~ twenty-one and two-tenths percent of salary."

15 SECTION 7. APPLICABILITY.--The provisions of Section 1 of
16 this act apply to a member's salary or wages earned on or after
17 the effective date of this act.

18 SECTION 8. EFFECTIVE DATE.--The effective date of the
19 provisions of this act is July 1, 2021.

LFC Requester:**Connor Jorgensen****AGENCY BILL ANALYSIS
2021 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}***SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}**Check all that apply:*

Original ☐ Amendment ☐
 Correction ☐ Substitute ☒

Date 3/05/2021**Bill No:** SB90

Sponsor: Senator George Munoz
Short Certain Overtime Pay As Salary
Title: In PERA

**Agency Name
and Code** 366**Number:** _____**Person Writing** Susan Pittard**Phone:** 505-366-9491 **Email** Susan.pittard@state.nm.**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---------------|------|------------------------------|------------------|
| FY21 | FY22 | | |
| 0. | | | |
| | | | |

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|--------|--------|---------------------------------|------------------|
| FY21 | FY22 | FY23 | | |
| 2,100. | 2,100. | 2,100. | Recurring | PERA Fund |
| | | | | |

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY21 | FY22 | FY23 | 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:

SB 90 includes overtime pay required for a regular scheduled tour of duty for fire protection or law enforcement activities in the definition of “salary” for purposes of calculating pensions under the Public Employees Retirement Act.

SB 90 will affect employees who are subject to overtime exemption set forth in Section 207(k) of the United States Code, Fair Labor Standards Act, specifically municipal fire, municipal police members and certain correctional officer members.

The PERA Board conditioned its support of SB 90 on inclusion of a \$30 million appropriation to address the estimated actuarial impact to the PERA Fund so that the legislation would be cost neutral.

SHPAC amendments: 1) clarified the provisions of the SB90 only affect salary earned on or after July 1, 2021; and 2) included a \$30 million appropriation to the PERA Fund to make the bill cost neutral to the Fund.

The SFC Substitute/SB90:

The Substitute increases the employee contributions for all Municipal Fire Member Coverage Plans by 1.5%, in lieu of the \$30 million appropriation, an estimated increase of \$2.1 million per year. The definition of salary and the applicability provisions remains the same.

FISCAL IMPLICATIONS

The increase in pensionable earnings is expected to increase the Unfunded Actuarial Accrued Liability (UAAL) of the Municipal Fire division of PERA by approximately \$32.5 million and reduce the division’s funded ratio from 60.00% to 58.88%. ***To fully offset the UAAL increase with additional contributions, it would require an increase in the employee contribution rate of 1.50% of salary.***

| | Current Valuation | With FLSA OT | Change |
|-------------------|--------------------------|---------------------|---------------|
| UAAL | 683,872,834 | 716,372,689 | 32,499,855 |
| Amortization UAAL | 44,148,434 | 46,246,511 | 2,098,077 |
| Valuation Payroll | 143,726,325 | 143,726,325 | 0 |
| % Payroll | 30.72% | 32.18% | 1.46% |

PERA’s actuaries calculated the increase in amortization on the original valuation payroll so the employer contribution dollars would not increase. This requires the employee rate to go up by 1.46% of pay to cover the increase in UAAL due to the legislation. This increase is calculated by taking the amortization UAAL and dividing it by the valuation payroll.

SB 90 will affect two PERA Divisions: Municipal Police and Municipal Fire. For the year ending June 30, 2020 the Municipal Police Plan had an unfunded actuarial accrued liability (UAAL) of \$724.8 million and was funded at 74.9%. For the year ending June 30, 2020 the Municipal Fire Plan had an unfunded actuarial accrued liability (UAAL) of \$683.8 and was funded at 60%.

SB 90 will potentially increase liabilities for the affected membership Divisions. The increase will be offset to some degree by the payment of employer and employee contributions that are currently not being collected. PERA estimates for the average firefighter, six hours of regularly scheduled overtime is excluded for each payroll period of 14 days. Based on a 2021 actuarial analysis that projects an additional six hours per pay period for affected municipal fire members, SB 90 will increase payroll for the Municipal Fire Division by 5.41%, resulting in a reduction in the funded ratio of 1.01%. The increase to the unfunded liabilities are difficult to calculate until the provisions of SB 90 take effect, but preliminary estimates showed an increase in unfunded liabilities of \$32.4 million for the Municipal Fire Division. Those increases may be lower once PERA has additional data on usage.

While members of the Municipal Police Division and certain correctional officers are also eligible under the provisions of SB 90, because of shift structure differences, the accumulation of qualified FLSA hours will likely be minimal and not add measurably to the liabilities of the Municipal Police Division. For example, most municipal police officers work four ten-hour shifts per week and only work overtime on an ad hoc or voluntary basis.

SIGNIFICANT ISSUES

PERFORMANCE IMPLICATIONS

None

ADMINISTRATIVE IMPLICATIONS

Changes may be required to PERA's pension administration system, RIO.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 65, increasing member contributions under the PERA Act and making changes to cost-of-living adjustments and eligibility requirements.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

Changes for Active PERA Members

Under the PERA Act, the term "salary" is limited to base wages for personal services rendered. Overtime pay does not constitute salary for PERA purposes. The federal Fair Labor Standards Act ("FLSA") requires that all covered, nonexempt employees be paid *overtime pay* for all hours worked in excess of 40 in a work week. Section 207(k) of the FLSA provides that employees engaged in fire protection or law enforcement may be paid overtime on a "work period" basis. A "work period" may be from 7 consecutive days to 28 consecutive days in length. Fire protection personnel are working overtime under such a schedule after 212 hours are worked during a 28 day period.

Pursuant to PERA's definition of salary as set forth above, hours worked over the FLSA maximum hours standard for the applicable work period are not "salary" for PERA purposes because they constitute overtime hours. Since they fall outside the definition of salary, which means employee and employer contributions are not paid and they are not included in calculation of pension amounts.

PERA estimates for the average firefighter, six hours of regularly scheduled overtime is excluded for each payroll period of 14 days.

ALTERNATIVES

None proposed.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Law enforcement and fire protection personnel required to work overtime as their regular scheduled tour of duty will have certain wages excluded from salary for pension calculation purposes.

AMENDMENTS

None.

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

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov).

FISCAL IMPACT REPORT

SPONSOR SFC ORIGINAL DATE 03/05/21
LAST UPDATED _____ HB _____
SHORT TITLE Certain Overtime Pay as Salary in PERA SB 90/SFCS
ANALYST Jorgensen

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|--------------|-----------|---------------------------------|------------------|
| FY21 | FY22 | FY23 | | |
| | \$2,093.1 | \$2,093.1 | Recurring | PERA |
| | (\$32,400.0) | | Nonrecurring | PERA |

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

SUMMARY

Synopsis of Bill

The Senate Finance Committee substitute for Senate Bill 90 (SB90/SFCS) includes overtime pay required for a regular scheduled tour of duty for fire protection or law enforcement activities in the definition of “salary” for purposes of calculating pensions under the Public Employees Retirement Act. SB90/SFCS would affect employees subject to overtime exemption set forth in Section 207(k) of the U.S. Fair Labor Standards Act, specifically municipal fire members and municipal police members.

Additionally, SB90/SFCS will increase the member contribution to the retirement fund by 1.5 percent in fiscal year 2022.

The effective date of the bill is July 1, 2021.

FISCAL IMPLICATIONS

SB90/SFCS will increase employee contributions by 1.5 percent in FY22. Based on the FY20 payroll of \$139.5 million reported in FY20 comprehensive annual financial report (CAFR), the 1.5 percent increase will raise an additional \$2.1 annually. Additionally, PERA actuaries estimated the provisions of SB90/SFCS would increase municipal fire plan liabilities by \$32.4 million.

PERA actuaries estimate the 1.5 percent increase will be sufficient to pay for any additional liabilities but will not improve the funded ratio of the plan. The PERA analysis is based on an investment return assumption of 7.25 percent.

SIGNIFICANT ISSUES

The PERA retirement plan is composed of five individual pension plans: state general, state police and corrections, municipal general, municipal police, and municipal fire. According to data contained in PERA’s comprehensive annual financial report (CAFR), the municipal fire plan pays the highest monthly benefit and has the second lowest retirement age of the five plans included under PERA. Additionally, the municipal fire plan has the second lowest funded ratio of all PERA plans:

Comparison of PERA Retirement Plans

(based on 2020 CAFR)

| Plan | Total Retirees | Average Monthly Benefit | Avg. Age at Retirement | Plan Funded Ratio |
|--------------------------|----------------|-------------------------|------------------------|-------------------|
| State General | 16,518 | \$2,118 | 57.7 | 59.9% |
| State Police/Corrections | 1,234 | \$2,467 | 51.2 | 127.2% |
| Municipal General | 11,463 | \$2,013 | 58.2 | 76.7% |
| Municipal Police | 3,045 | \$2,994 | 47.8 | 74.9% |
| Municipal Fire | 1,644 | \$3,089 | 47.9 | 60.0% |

On average, municipal fire members retire just under 10 years before state employees and receive a benefit 46 percent richer. Municipal fire members retire three years earlier than state police members and receive a benefit 25 percent greater, with a funded ratio of less than half of the state police plan.

Most municipal firefighters are in coverage plans 4 and 5, the contributions for which are shown in the table below:

Current Municipal Fire Contribution Rates

(from FY20 CAFR)

| | Employee | Employer | Total |
|--------|----------|----------|--------|
| Plan 4 | 14.30% | 21.65% | 35.95% |
| Plan 5 | 17.70% | 21.65% | 39.35% |

OTHER SUBSTANTIVE ISSUES

Affected members and their employers would pay higher contributions to the pension plan. However, the amount of the increased contributions is not known. PERA estimates, for the average firefighter, six hours of regularly scheduled overtime is excluded for each payroll period of 14 days.

While members of the Municipal Police Division and certain correctional officers are also eligible under the provisions of SB90, because of shift structure differences, the accumulation of qualified

Fair Labor Standards Act hours will likely be minimal and not add measurably to the liabilities of the Municipal Police Division. For example, most municipal police officers work four 10-hour shifts per week and only work overtime on an ad hoc or voluntary basis.

CJ/rl

| FYE | UAAL BOY | 7.25% Interest | Fire Pay | 1.46% Pay | UAAL EOY | Accumulation of additional fire | |
|------|------------|----------------|-------------|-----------|------------|---------------------------------------|------------------------------|
| | | | | | | Years | contribution With Interest |
| 2021 | 32,500,000 | 2,356,250 | 143,726,325 | 2,098,404 | 32,683,109 | 1 | 2,098,404 2,173,141 |
| 2022 | 32,683,109 | 2,369,525 | 148,038,115 | 2,161,356 | 32,814,300 | 2 | 4,259,761 4,569,028 |
| 2023 | 32,814,300 | 2,379,037 | 152,479,258 | 2,226,197 | 32,887,852 | 3 | 6,485,958 7,205,768 |
| 2024 | 32,887,852 | 2,384,369 | 157,053,636 | 2,292,983 | 32,897,572 | 4 | 8,778,941 10,102,835 |
| 2025 | 32,897,572 | 2,385,074 | 161,765,245 | 2,361,773 | 32,836,757 | 5 | 11,140,714 13,281,180 |
| 2026 | 32,836,757 | 2,380,665 | 166,618,202 | 2,432,626 | 32,698,156 | 6 | 13,573,339 16,763,331 |
| 2027 | 32,698,156 | 2,370,616 | 171,616,748 | 2,505,605 | 32,473,929 | 7 | 16,078,944 20,573,516 |
| 2028 | 32,473,929 | 2,354,360 | 176,765,251 | 2,580,773 | 32,155,600 | 8 | 18,659,717 24,737,784 |
| 2029 | 32,155,600 | 2,331,281 | 182,068,208 | 2,658,196 | 31,734,011 | 9 | 21,317,912 29,284,143 |
| 2030 | 31,734,011 | 2,300,716 | 187,530,255 | 2,737,942 | 31,199,272 | 10 | 24,055,854 34,242,699 |
| 2031 | 31,199,272 | 2,261,947 | 193,156,162 | 2,820,080 | 30,540,699 | 11 | 26,875,934 39,645,814 |
| 2032 | 30,540,699 | 2,214,201 | 198,950,847 | 2,904,682 | 29,746,765 | 12 | 29,780,616 45,528,271 |
| 2033 | 29,746,765 | 2,156,640 | 204,919,373 | 2,991,823 | 28,805,027 | 13 | 32,772,439 51,927,449 |
| 2034 | 28,805,027 | 2,088,364 | 211,066,954 | 3,081,578 | 27,702,061 | 14 | 35,854,017 58,883,519 |
| 2035 | 27,702,061 | 2,008,399 | 217,398,962 | 3,174,025 | 26,423,390 | 15 | 39,028,042 66,439,645 |
| 2036 | 26,423,390 | 1,915,696 | 223,920,931 | 3,269,246 | 24,953,404 | 16 | 42,297,287 74,642,201 |
| 2037 | 24,953,404 | 1,809,122 | 230,638,559 | 3,367,323 | 23,275,273 | 17 | 45,664,610 83,541,013 |
| 2038 | 23,275,273 | 1,687,457 | 237,557,716 | 3,468,343 | 21,370,860 | 18 | 49,132,953 93,189,607 |
| 2039 | 21,370,860 | 1,549,387 | 244,684,447 | 3,572,393 | 19,220,621 | 19 | 52,705,346 103,645,480 |
| 2040 | 19,220,621 | 1,393,495 | 252,024,981 | 3,679,565 | 16,803,501 | 20 | 56,384,911 114,970,393 |
| 2041 | 16,803,501 | 1,218,254 | 259,585,730 | 3,789,952 | 14,096,821 | 21 | 60,174,862 127,230,680 |
| 2042 | 14,096,821 | 1,022,020 | 267,373,302 | 3,903,650 | 11,076,159 | 22 | 64,078,512 140,497,586 |
| 2043 | 11,076,159 | 803,022 | 275,394,501 | 4,020,760 | 7,715,218 | 23 | 68,099,272 154,847,623 |
| 2044 | 7,715,218 | 559,353 | 283,656,336 | 4,141,383 | 3,985,691 | 24 | 72,240,655 170,362,956 |
| 2045 | 3,985,691 | 288,963 | 292,166,026 | 4,265,624 | - | 25 | |



PERA

Public Employees
Retirement Association
of New Mexico

INVESTED IN TOMORROW.

RESOLUTION NO. 21-05

RESOLUTION CONCERNING BOARD POLICY ON LEGISLATION

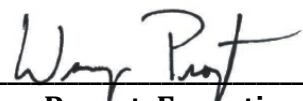
RESOLVED, given the nature of the legislative process, legislation may be introduced or amended that requires immediate analysis and response from PERA. In such an event, the PERA Board Chair and the Executive Director, in consultation with the Legislative Committee Chair, are delegated the authority to determine Board positions on legislative proposals affecting PERA. The Board Chair and the Executive Director will work closely with the Legislative Committee Chair and Committee to make determinations regarding legislation that are in the best interest of the Fund. The Executive Director will report regularly to the full Board throughout the 2021 legislative session, any special session that might occur and the following interim.

RESOLVED, that the PERA Board Chair, the Legislative Chair and Executive Director, or his designees, are authorized to testify on legislation affecting PERA and to make determinations on the positions PERA will take regarding legislative proposals when circumstances do not permit action by the full Board. The Board Chair and the Executive Director will provide regular reports to the full Board throughout the legislative session. The PERA Board Chair may delegate other Board members to testify on legislation affecting PERA as appropriate.

ADOPTED AND APPROVED THIS 12TH DAY OF JANUARY, 2021.

**RETIREMENT BOARD OF THE
PUBLIC EMPLOYEES RETIREMENT
ASSOCIATION OF NEW MEXICO**

BY:  _____
PERA Board Chair

ATTEST:  _____
Wayne Propst, Executive Director

