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FISCAL IMPACT REPORT

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|-------------|---|---------------|-----------------------|
| SPONSOR | <u>Kernan</u> | LAST UPDATED | <u>2/23/2023</u> |
| | | ORIGINAL DATE | <u>1/23/2023</u> |
| SHORT TITLE | <u>Educational Retirement Board Changes</u> | BILL NUMBER | <u>Senate Bill 20</u> |
| | | ANALYST | <u>Simon</u> |

REVENUE* (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|--------------|--------------|------------------------------|--------------------------------|
| FY23 | FY24 | FY25 | | |
| | Up to (\$10) | Up to (\$10) | | Educational Retirement Fund |

Parentheses () indicate revenue decreases.

*Amounts reflect most recent version of this legislation.

Duplicates House Bill 189, as introduced
Relates to Senate Bill 76

Sources of Information

LFC Files

Responses Received From
Educational Retirement Board (ERB)
Department of Information Technology (DoIT)
Public Employees Retirement Association (PERA)
General Services Department (GSD)
Southeast New Mexico College

SUMMARY

Synopsis of Senate Bill 20

Senate Bill 20 (SB20) makes three changes to state law, as follows:

Section 1 of the bill amends the Procurement Code to allow the Educational Retirement Board (ERB) to enter into a professional services contract to operate the agency's pension administration system for more than the four years currently allowed by law.

Sections 2 and 4 of the bill amend the Educational Retirement Act to allow employees of Southeast New Mexico College to participate in alternative retirement plans offered by ERB.

Section 3 of the bill amends the Educational Retirement Act to align the age at which an ERB member is required to take a minimum distribution with the age specified in federal law.

SB20 does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

Procurement Code Exemption

ERB is currently in the process of replacing its pension administration system, which is nearing its end-of-support and maintenance life. Section 1 of SB20 would allow ERB to contract with a provider for more than the four-year limit currently allowed by the procurement code.

The LFC recommendation includes \$30.5 million from the educational retirement fund for ERB to modernize its pension administration system. Annual operating costs of the system would be paid from the educational retirement fund.

Southeast New Mexico College

Under current law, employees of Southeast New Mexico College are not allowed to join ERB's alternative retirement plan (ARP), a defined contribution alternative to ERB's traditional, defined benefit pension plan. As a result, all employees must join the defined benefit plan, which currently requires employer contributions of 17.15 percent of salary. (This amount is scheduled to increase to 18.15 percent of salary, effective July 1, 2023). However, the college must only contribute 6.25 percent of salary to the educational retirement fund (scheduled to increase to 7.25, effective July 1, 2023), and the remainder of 10.9 percent must be directed to the employee's individual accounts.

If Southeast New Mexico College employees choose the alternative retirement plan, contributions to the educational retirement fund could decrease, however, any amount would be de minimus and is not expected to significantly impact the fund. The fund would also not be liable to provide future benefits to the employee opting for the alternative plan.

SIGNIFICANT ISSUES

Procurement Code

Currently, the Procurement Code limits the length of time a contract between public entities and private contractor is allowed to cover. For items contracts other than professional services, contracts are limited to 10 years if the contract is for \$25 thousand or more (LFC has endorsed legislation to reduce this period to five years, see Conflicts section, below). Professional services contracts are limited to four years, except in certain circumstances. SB20 would add an additional exemption, solely for ERB's pension administration system. Analysis from ERB notes the agency recently selected a vendor, following a competitive bidding process, to develop a customized pension administration system for the agency. The agency anticipates it will take the entire four-year life of the contract to fully implement the system, at which point, the agency would be required to repeat the procurement process.

The Department of Information Technology is required to approve agency information technology contracts and provides oversight of the performance of these contracts. Analysis from

DoIT raises concerns about long-term contracting and offers the opinion that long-term operations and maintenance contracts should only be made pursuant to the department's project certification committee process.

Southeast New Mexico College

Sections 2 and 4 of the bill address an oversight of Laws 20121, Chapter 104, which transitioned the Carlsbad branch campus of New Mexico State University into an independent community college, now known as Southeast New Mexico College. Provisions of the Educational Retirement Act list each college or university whose employees are eligible to participate. Currently, employees of all public colleges and universities, except for Southeast New Mexico College, are eligible to join the alternative retirement plan. The bill would allow employees hired after July 1, 2023 to participate in the alternative retirement plan.

Required Minimum Distributions

SB20 would amend the Educational Retirement Act to remove the specific age an ERB member would be required to take a minimum distribution from the fund. The statute states that distributions are required for members beginning at age 70.5. However, federal law has been amended twice, increasing that age to between ages 73 and 75, depending on an individual's circumstances. The proposed amendment would reference the federal law, eliminating the need for future amendments to this section if the minimum age for a required distribution is changed in the future.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Procurement Code

Senate Bill 76 (SB76), LFC-endorsed legislation, would amend the Procurement Code to tighten or remove several existing exemptions from the Procurement Code. The legislation was the result of two evaluations of the state's purchasing practices, which recommended removing widely used exemptions that circumvent competitive bidding practices and placing guardrails around the use of sole source contracts and statewide price agreements. As a result, SB20, though not directly in conflict with SB76, could be seen as in conflict by adding a new, specific exemption to the procurement code. However, it should be noted SB20 seeks a straight-forward exemption to the procurement code, rather than relying on other, more commonly used exceptions other agencies use to maintain IT systems, such as statewide price agreements. The current statewide price agreement for IT professional services is one of the most frequently used contracts, with 69 different vendors and millions in annual purchases.

ALTERNATIVES

Procurement Code

Like ERB, many different state agencies are responsible for developing and maintaining complicated IT system. Over the last three years, the Legislature has appropriated \$318 million to 74 large IT projects and LFC recommendation includes an additional \$184 million for 17 departments to undertake IT projects. Analysis from the State Purchasing Division of the General

Services Department (GSD) did not consider the potential implications of exemptions to the procurement code for IT projects, noting merely that because the change was specific to ERB the change would not raise issues to GSD. However, the request for an exemption by a single agency may indicate the state needs to consider general provisions covering all agency IT projects, rather than address the issue on a case-by-case basis.

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