

LFC Requester:	Joseph Simon
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov
(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 01/23/2025 *Check all that apply:*
Bill Number: SB75 Original X Correction
 Amendment Substitute

Sponsor: Figueroa **Agency Name and Code** State Ethics Commission (410)
Short Title: Changes to the Education Retirement Act **Number:** _____
Person Writing Jessica Randall
Phone: _____ **Email** jessica.randall@sec.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected

Total	Indeterminate	Indeterminate	Indeterminate			Educational Ret. Fund
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(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: Senate Bill 75 makes several changes to the Educational Retirement Act NMSA 1978, §§ 22-11-1 to -55 (1991, as amended through 2023) (“ERA”). Changes include ERA’s restrictions on the receipt of gift’s by Education Retirement Board (“ERB”) members and employees; providing that unclaimed member contributions be added to the educational retirement fund; changing the rate and age requirement for retired members receiving an annuity based on disability status; and increasing the time required for members who wish to purchase “military time” as credit toward their years of service and eliminating the requirement of lump sum payment for the same.

Senate Bill 75 modifies § 2-11-5.1, which provides for the restrictions on receipts of gifts by ERB members and employees. Currently, § 22-11-5.1 (A)-(D) prohibits ERB members and employees from receiving anything of value whether directly or indirectly from any person who has a contract with the ERB, is a potential contractor with the ERB, who is authorized to invest public funds as provided by law, or is otherwise an agent, entity or employer of the above-described persons. With the exception of food or beverage given in a place of public accommodation that is consumed at the time of receipt, and does not exceed in value \$50.00, not to exceed the aggregate of \$150.00 in a calendar year.

Senate Bill 75 makes two changes to § 2-11-5.1. First, it eliminates the \$50.00 (\$150 annual) limit on food and beverage gifts received by ERB members from restricted donors, which still must be consumed both in a place of public accommodation and must be consumed at the time of receipt. Second SB 75 permits the receipt of other gifts by ERB members or employees so long as the gifts do not exceed \$50 per gift with a cap of \$150 in the aggregate in a calendar year, from persons described in (A) through (D) of subsection 22-11-5.1.

FISCAL IMPLICATIONS

The fiscal impact on State Ethics Commission (“SEC”) is unlikely. The SEC is tasked with enforcement of the Gift Act NMSA 1978, §§ 10-16B-1 to -5 (2007, as amended through 2019); *see also* NMSA 198 § 10-16G-9(A)(providing that the Commission has enforcement jurisdiction over the compliance provisions of certain statutes, including the Gift Act). To the extent that the changes contained within SB 75 are inconsistent with the requirements of the Gift Act and would require additional enforcement action by the SEC to seek compliance with the Gift Act, the burden on the agency would be minimal.

The majority of the changes within SB 75 will not impact the SEC. For example, The SEC is an employer under PERA NMSA 10-11-1 to -143 (1987, as amended through 2023) not an ERB employer, and the remainder of the proposed changes have no other direct or indirect implications on the agency.

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

Senate Bill 75 amends §2-11-5.1 to allow ERB members and employees to receive gifts in the form of consumable food and drink in an unlimited amount, which is inconsistent with the Gift Act. The Gift Act defines “gifts” to mean “any donation of . . . anything of value, including food, lodging, transportation and tickets for entertainment or sporting events[.]” And prohibits state officers, employees (and their family members), from accepting from restricted donors anything with a market value greater than \$250, with an aggregate limit of \$1,000 in a calendar year. §10-16B-3(A) & (B)

In turn “state officer or employee” means “any person who has been elected to, appointed to or hired for any state office and received compensation in the form of salary or is eligible for per diem or mileage.” §10-16B-2(E). And therefore includes ERB members and employees.

Similar to the ERA, restricted donors include state contractors and potential state contractors but also includes anyone (or their agents) who will be directly and substantially affected financially by the performance of the recipient’s official duties; or who is the subject of or a party to any matter that is pending before a regulatory agency and over which the donee has discretionary authority as part of the donee’s official duties; or a lobbyist or client of a lobbyist. § 10-16B-2(D)(2007).

That is to say that the lack of limit on food and drink gifts received by ERB members and employees proposed by SB 75, is inconsistent with the \$250 limitation within the Gift Act. Furthermore, the Gift Act has much broader categories as to who is considered a “restricted donor.” Therefore, while the ERA may only limit ERB members and employees from receiving gifts from those defined in (A)-(D) of subsection 2-11-5.1, the Gift Act proscribes receipt of anything of value (including consumables such as food and drink), from a larger list of “restricted donors.” That includes anyone affected financially by the performance of the ERB members official duties, and that may include pensioners, and ERB contributors.

SB 75 would permit ERB members or employees to receive gifts other than food and drink from persons described in (A) through (D) of §2-11-5.1 so long as the gifts do not exceed \$50 per gift with a cap of \$150 in the aggregate in a calendar year, which is not inconsistent with the Gift Act. The Gift Act prohibits state officers, employees (and their family members) from accepting from restricted donors anything with a market value greater than \$250, with an aggregate limit of \$1,000 in a calendar year. §10-16B-3(A) & (B). Again, the list of who state officer and employees are restricted from accepting gifts from is broader in the Gift Act than §2-11-5.1. And again does not make any distinction between gifts that are consumable and any other kind of gift.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS