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_____ BILL

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO RETIREMENT; ALLOWING RETIRED MEMBERS OF THE PUBLIC
EMPLOYEES RETIREMENT ASSOCIATION TO BE EMPLOYED AS BAILIFFS.

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

SECTION 1. Section 10-11-8 NMSA 1978 (being Laws 1987,
Chapter 253, Section 8, as amended by Laws 2014, Chapter 35,
Section 1 and by Laws 2014, Chapter 39, Section 1 and also by
Laws 2014, Chapter 43, Section 1) is amended to read:

"10-11-8. NORMAL RETIREMENT--RETURN TO EMPLOYMENT--
BENEFITS CONTINUED--CONTRIBUTIONS.--

A. A member may retire upon fulfilling the
following requirements prior to the selected date of
retirement:

(1) a written application for normal
retirement, in the form prescribed by the association, is filed

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1 with the association;

2 (2) employment is terminated with all
3 employers covered by any state system or the educational
4 retirement system;

5 (3) the member selects an effective date of
6 retirement that is the first day of a calendar month; and

7 (4) the member meets the age and service
8 credit requirement for normal retirement specified in the
9 coverage plan applicable to the member.

10 B. The amount of normal retirement pension is
11 determined in accordance with the coverage plan applicable to
12 the member.

13 C. Except as provided in Subsection E of this
14 section, on or after July 1, 2010, a retired member may be
15 subsequently employed by an affiliated public employer only
16 pursuant to the following provisions:

17 (1) the retired member has not been employed
18 as an employee of an affiliated public employer or retained as
19 an independent contractor by the affiliated public employer
20 from which the retired member retired for at least twelve
21 consecutive months from the date of retirement to the
22 commencement of subsequent employment or reemployment with an
23 affiliated public employer;

24 (2) the retired member's pension shall be
25 suspended upon commencement of the subsequent employment;

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1 (3) except as provided in Subsection G of this
2 section, the retired member shall not become a member and shall
3 not accrue service credit, and the retired member and that
4 person's subsequent affiliated public employer shall not make
5 contributions under any coverage plan pursuant to the Public
6 Employees Retirement Act; and

7 (4) upon termination of the subsequent
8 employment, the retired member's pension shall resume in
9 accordance with the provisions of Subsection A of this section.

10 D. Notwithstanding the provisions of Subsection B
11 of Section 10-11-118 NMSA 1978, on and after July 1, 2013, if a
12 retired member becomes employed with an employer pursuant to
13 the Educational Retirement Act, and effective July 1, 2014, if
14 a retired member who, subsequent to retirement, is employed and
15 covered pursuant to the Judicial Retirement Act, and, effective
16 July 1, 2014, if a retired member who, subsequent to
17 retirement, is employed and covered pursuant to the Magistrate
18 Retirement Act:

19 (1) the retired member's cost-of-living
20 pension adjustment shall be suspended upon commencement of the
21 employment; and

22 (2) upon termination of the employment, the
23 retired member's suspended cost-of-living pension adjustment
24 shall be reinstated as provided under Subsection B of Section
25 10-11-118 NMSA 1978.

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1 E. The provisions of Subsections C, H and I of this
2 section do not apply to:

3 (1) a retired member employed by the
4 legislature for legislative session work;

5 (2) a retired member employed by a court to
6 serve as a bailiff;

7 [~~2~~] (3) a retired member employed
8 temporarily as a precinct board member for a municipal election
9 or an election covered by the Election Code; or

10 [~~3~~] (4) a retired member who is elected to
11 serve a term as an elected official in an office covered
12 pursuant to the Public Employees Retirement Act; provided that:

13 (a) the retired member files an
14 irrevocable exemption from membership with the association
15 within thirty days of taking office; and

16 (b) the irrevocable exemption shall be
17 for the elected official's term of office.

18 F. A retired member who returns to employment
19 during retirement pursuant to Subsection E of this section is
20 entitled to receive retirement benefits but is not entitled to
21 accrue service credit or to acquire or purchase service credit
22 in the future for the period of the retired member's subsequent
23 employment with an affiliated public employer.

24 G. At any time during a retired member's subsequent
25 employment pursuant to Subsection C of this section, the

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1 retired member may elect to become a member and the following
2 conditions shall apply:

3 (1) the previously retired member and the
4 subsequent affiliated public employer shall make the required
5 employee and employer contributions, and the previously retired
6 member shall accrue service credit for the period of subsequent
7 employment; and

8 (2) when the previously retired member
9 terminates the subsequent employment with an affiliated public
10 employer, the previously retired member shall retire according
11 to the provisions of the Public Employees Retirement Act,
12 subject to the following conditions:

13 (a) payment of the pension shall resume
14 in accordance with the provisions of Subsection A of this
15 section;

16 (b) unless the previously retired member
17 accrued at least three years of service credit on account of
18 the subsequent employment, the recalculation of pension shall:
19 1) employ the form of payment selected by the previously
20 retired member at the time of the first retirement; and 2) use
21 the provisions of the coverage plan applicable to the member on
22 the date of the first retirement; and

23 (c) the recalculated pension shall not
24 be less than the amount of the suspended pension.

25 H. A retired member who returned to work with an

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1 affiliated public employer prior to July 1, 2010 shall be
2 subject to the provisions of this section in effect on the date
3 the retired member returned to work; provided that:

4 (1) on and after July 1, 2010, the retired
5 member shall pay the employee contribution in an amount
6 specified in the Public Employees Retirement Act for the
7 position in which the retired member is subsequently employed;

8 (2) notwithstanding the provisions of
9 Subsection B of Section 10-11-118 NMSA 1978, on and after July
10 1, 2013, the retired member's cost-of-living pension adjustment
11 shall be suspended; and

12 (3) upon termination of the subsequent
13 employment with the affiliated public employer, the retired
14 member's cost-of-living pension adjustment shall be reinstated
15 as provided in Subsection B of Section 10-11-118 NMSA 1978.

16 I. Effective July 1, 2014, if a retired member who,
17 subsequent to retirement, is employed and covered pursuant to
18 the provisions of the Magistrate Retirement Act or Judicial
19 Retirement Act, during the period of subsequent employment:

20 (1) the member shall be entitled to receive
21 retirement benefits;

22 (2) the retired member's cost-of-living
23 pension adjustment shall be suspended upon commencement of the
24 employment; and

25 (3) upon termination of the employment, the

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1 retired member's suspended cost-of-living pension adjustment
2 shall be reinstated as provided under Subsection B of Section
3 10-11-118 NMSA 1978.

4 J. The pension of a member who has earned service
5 credit under more than one coverage plan shall be determined as
6 follows:

7 (1) the pension of a member who has three or
8 more years of service credit earned on or before June 30, 2013
9 under each of two or more coverage plans shall be determined in
10 accordance with the coverage plan that produces the highest
11 pension;

12 (2) the pension of a member who has service
13 credit earned on or before June 30, 2013 under two or more
14 coverage plans but who has three or more years of service
15 credit under only one of those coverage plans shall be
16 determined in accordance with the coverage plan in which the
17 member has three or more years of service credit. If the
18 service credit is acquired under two different coverage plans
19 applied to the same affiliated public employer as a consequence
20 of an election by the members, adoption by the affiliated
21 public employer or a change in the law that results in the
22 application of a coverage plan with a greater pension, the
23 greater pension shall be paid a member retiring from the
24 affiliated public employer under which the change in coverage
25 plan took place regardless of the amount of service credit

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1 under the coverage plan producing the greater pension; provided
2 that the member has three or more years of continuous
3 employment with that affiliated public employer immediately
4 preceding or immediately preceding and immediately following
5 the date the coverage plan changed;

6 (3) the pension of a member who has service
7 credit earned on or before June 30, 2013 under each of two or
8 more coverage plans and who has service credit earned under any
9 coverage plan on or after July 1, 2013 shall be equal to the
10 sum of:

11 (a) the pension attributable to the
12 service credit earned on or before June 30, 2013 determined
13 pursuant to Paragraph (1) or (2) of this subsection; and

14 (b) the pension attributable to the
15 service credit earned under each coverage plan on or after July
16 1, 2013;

17 (4) the pension of a member who has service
18 credit earned only on and after July 1, 2013 shall be equal to
19 the sum of the pension attributable to the service credit the
20 member has accrued under each coverage plan; and

21 (5) the provisions of each coverage plan for
22 the purpose of this subsection shall be those in effect at the
23 time the member ceased to be covered by the coverage plan.

24 "Service credit", for the purposes of this subsection, shall be
25 only personal service rendered an affiliated public employer

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1 and credited to the member under the provisions of Subsection A
2 of Section 10-11-4 NMSA 1978. Service credited under any other
3 provision of the Public Employees Retirement Act shall not be
4 used to satisfy the three-year service credit requirement of
5 this subsection."

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