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HOUSE BILL

**55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022**

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PUBLIC EMPLOYEE RETIREMENT; ALLOWING PUBLIC  
EMPLOYEES TO RETURN TO WORK FOR AFFILIATED PUBLIC EMPLOYERS  
UNDER CERTAIN CONDITIONS.

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) 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  
with the association;

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

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

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

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

12 C. Except as provided in [~~Subsection~~] Subsections D  
13 and J of this section, on or after July 1, 2010, a retired  
14 member may be subsequently employed by an affiliated public  
15 employer only pursuant to the following provisions:

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

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

25 (3) except as provided in Subsection F of this

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1 section, the retired member shall not become a member and shall  
2 not accrue service credit, and the retired member and that  
3 person's subsequent affiliated public employer shall not make  
4 contributions under any coverage plan pursuant to the Public  
5 Employees Retirement Act; and

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

9 D. The provisions of Subsections C, G and H of this  
10 section do not apply to:

11 (1) a retired member employed by the  
12 legislature for legislative session work;

13 (2) a retired member employed temporarily as a  
14 precinct board member for a municipal election or an election  
15 covered by the Election Code; or

16 (3) a retired member who is elected to serve a  
17 term as an elected official in an office covered pursuant to  
18 the Public Employees Retirement Act; provided that:

19 (a) the retired member files an  
20 irrevocable exemption from membership with the association  
21 within thirty days of taking office; and

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

24 E. A retired member who returns to employment  
25 during retirement pursuant to Subsection D of this section is

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1 entitled to receive retirement benefits but is not entitled to  
2 accrue service credit or to acquire or purchase service credit  
3 in the future for the period of the retired member's subsequent  
4 employment with an affiliated public employer.

5 F. At any time during a retired member's subsequent  
6 employment pursuant to Subsection C of this section, the  
7 retired member may elect to become a member and the following  
8 conditions shall apply:

9 (1) the previously retired member and the  
10 subsequent affiliated public employer shall make the required  
11 employee and employer contributions, and the previously retired  
12 member shall accrue service credit for the period of subsequent  
13 employment; and

14 (2) when the previously retired member  
15 terminates the subsequent employment with an affiliated public  
16 employer, the previously retired member shall retire according  
17 to the provisions of the Public Employees Retirement Act,  
18 subject to the following conditions:

19 (a) payment of the pension shall resume  
20 in accordance with the provisions of Subsection A of this  
21 section;

22 (b) unless the previously retired member  
23 accrued at least three years of service credit on account of  
24 the subsequent employment, the recalculation of pension shall:

25 1) employ the form of payment selected by the previously

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1 retired member at the time of the first retirement; and 2) use  
2 the provisions of the coverage plan applicable to the member on  
3 the date of the first retirement; and

4 (c) the recalculated pension shall not  
5 be less than the amount of the suspended pension.

6 G. A retired member who returned to work with an  
7 affiliated public employer prior to July 1, 2010 shall be  
8 subject to the provisions of this section in effect on the date  
9 the retired member returned to work; provided that on and after  
10 July 1, 2010, the retired member shall pay the employee  
11 contribution in an amount specified in the Public Employees  
12 Retirement Act for the position in which the retired member is  
13 subsequently employed.

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

18 (1) the member shall be entitled to receive  
19 retirement benefits;

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

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

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1 1978.

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

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

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

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1 employment with that affiliated public employer immediately  
2 preceding or immediately preceding and immediately following  
3 the date the coverage plan changed;

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

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

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

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

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

22 "Service credit", for the purposes of this subsection, shall be  
23 only personal service rendered an affiliated public employer  
24 and credited to the member under the provisions of Subsection A  
25 of Section 10-11-4 NMSA 1978. Service credited under any other

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1 provision of the Public Employees Retirement Act shall not be  
2 used to satisfy the three-year service credit requirement of  
3 this subsection.

4 J. Notwithstanding the provisions of any other  
5 subsection of this section, a retired member who has retired on  
6 or before December 31, 2021 under any coverage plan may be  
7 subsequently employed by an affiliated public employer if the  
8 retired member has not been employed as an employee of an  
9 affiliated public employer or retained as an independent  
10 contractor by the affiliated public employer from which the  
11 retired member retired for at least ninety consecutive days  
12 from the date of retirement to the commencement of subsequent  
13 employment or reemployment with an affiliated public employer;  
14 provided that the:

15 (1) retired member's pension, including any  
16 cost-of-living adjustment, shall continue to be paid during the  
17 period of subsequent employment;

18 (2) retired member shall not become a member  
19 during the period of subsequent employment;

20 (3) retired member shall not accrue service  
21 credit for any portion of the period of subsequent employment;

22 (4) retired member and the retired member's  
23 subsequent affiliated public employer shall make the  
24 contributions that would be required for members and employers  
25 under the applicable coverage plan during the entire period of

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1 subsequent employment;

2 (5) contributions paid by or on behalf of the  
3 retired member during the term of subsequent employment shall  
4 not be refundable at the termination of the subsequent  
5 employment; and

6 (6) retired member is subsequently employed by  
7 the affiliated public employer in an entry-level position."

8 SECTION 2. EFFECTIVE DATE.--The effective date of the  
9 provisions of this act is July 1, 2022.

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