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SENATE BILL 426

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Ben D. Altamirano

AN ACT

RELATING TO THE RETIREMENT OF PUBLIC EMPLOYEES; AMENDING THE PUBLIC EMPLOYEES RETIREMENT ACT TO DEFINE "STATE LEGISLATOR MEMBER", TO PROVIDE A ONE-TIME ELECTION FOR CERTAIN ELECTED OFFICIALS TO BE EXCLUDED FROM MEMBERSHIP, TO CHANGE THE CONDITIONS FOR CERTAIN MEMBERS TO PURCHASE SERVICE CREDIT, TO CHANGE THE CONTRIBUTION REQUIREMENTS FOR CERTAIN RETIREES WHO RETURN TO WORK AND FOR CERTAIN EMPLOYERS AND TO PROVIDE MEMBERSHIP FOR CERTAIN RETIREES TO RETURN TO WORK; DECLARING AN EMERGENCY.

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

Section 1. A new section of the Public Employees Retirement Act is enacted to read:

"[NEW MATERIAL] ADDITIONAL DEFINITION--STATE LEGISLATOR MEMBER.--As used in the Public Employees Retirement Act, "state .148274.2

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1 legislator member" means a person who is currently serving or
2 who has served as a state legislator or lieutenant governor and
3 who has elected to participate in a state legislator member
4 retirement plan. A former state legislator or former
5 lieutenant governor may be a state legislator member whether or
6 not currently receiving a pension under a state legislator
7 member coverage plan."

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

10 "10-11-3. MEMBERSHIP--REQUIREMENTS--EXCLUSIONS--
11 TERMINATION.--

12 A. Except as may be provided for in the Volunteer
13 Firefighters Retirement Act, the Judicial Retirement Act, the
14 Magistrate Retirement Act, the Educational Retirement Act and
15 the provisions of Sections 29-4-1 through 29-4-11 NMSA 1978
16 governing the state police pension fund, each employee and
17 elected official of every affiliated public employer shall be a
18 member of the association, unless excluded from membership in
19 accordance with Subsection B of this section.

20 B. The following employees and elected officials
21 are excluded from membership in the association:

22 (1) elected officials who file with the
23 association a written application for exemption from membership
24 within thirty days of taking office; provided, however, that an
25 elected official holding office on July 1, 2004 shall be

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1 exempted from membership if the official files with the
2 association a written application for exemption from membership
3 no later than September 30, 2004;

4 (2) elected officials who file with the
5 association a written application for exemption from membership
6 within thirty days of the date the elected official's public
7 employer becomes an affiliated public employer;

8 (3) employees designated by the affiliated
9 public employer as seasonal or student employees;

10 (4) employees who file with the association a
11 written application for exemption from membership within thirty
12 days of the date the employee's public employer becomes an
13 affiliated public employer;

14 (5) employees of an affiliated public employer
15 that is making contributions to a private retirement program on
16 behalf of the employee as part of a compensation arrangement
17 who file with the association a written application for
18 exemption within thirty days of employment, unless the employee
19 has previously retired under the provisions of the Public
20 Employees Retirement Act; ~~and~~

21 (6) employees of an affiliated public employer
22 who have retired under and are receiving a pension pursuant to
23 the provisions of the Educational Retirement Act; and

24 (7) retired members who return to work
25 pursuant to Section 10-11-8 NMSA 1978 and are exempted from

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1 membership by the provisions of that section.

2 C. Employees designated as seasonal and student
3 employees shall be notified in writing by their affiliated
4 public employer of the designation and the consequences of the
5 designation with respect to membership, service credit and
6 benefits. A copy of the notification shall be filed with the
7 association within thirty days of the date of employment.

8 D. An exemption from membership by an elected
9 official shall expire at the end of the term of office for
10 which filed.

11 E. Employees and elected officials who have
12 exempted themselves from membership may subsequently withdraw
13 the exemption by filing a membership application. Membership
14 shall commence the first day of the first pay period following
15 the date the application is filed.

16 F. The membership of an employee or elected
17 official shall cease if the employee terminates employment with
18 an affiliated public employer or the elected official leaves
19 office and the employee or elected official requests and
20 receives a refund of member contributions."

21 Section 3. Section 10-11-7 NMSA 1978 (being Laws 1987,
22 Chapter 253, Section 7, as amended) is amended to read:

23 "10-11-7. CREDITED SERVICE--PURCHASE OF SERVICE.--

24 A. A member who entered a uniformed service of the
25 United States may purchase service credit for periods of active

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1 duty in the uniformed services subject to the following
2 conditions:

3 (1) the member pays the association the
4 purchase cost determined according to Subsection E of this
5 section;

6 (2) the member has five or more years of
7 service credit acquired as a result of personal service
8 rendered in the employ of an affiliated public employer;

9 (3) the aggregate amount of service credit
10 purchased pursuant to this subsection does not exceed five
11 years reduced by any period of service credit acquired for
12 military service pursuant to any other provision of the Public
13 Employees Retirement Act;

14 (4) service credit may not be purchased for
15 periods of service in the uniformed services that are used to
16 obtain or increase a benefit from another retirement program;
17 and

18 (5) the member must not have received a
19 discharge or separation from uniformed service under other than
20 honorable conditions.

21 B. A member who was a civilian prisoner of war
22 captured while in service to the United States as an employee
23 of the federal government or as an employee of a contractor
24 with the federal government may purchase service credit for the
25 period of internment as a civilian prisoner of war, provided

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1 that:

2 (1) the member provides proof of employment
3 with the federal government or as a contractor to the federal
4 government in a form acceptable to the association;

5 (2) the member provides proof of the period of
6 internment in a form acceptable to the association;

7 (3) the member has at least five years of
8 service credit acquired as a result of personal service
9 rendered in the employ of an affiliated public employer;

10 (4) the aggregate amount of service credit
11 purchased pursuant to this subsection does not exceed five
12 years reduced by any period of service credit acquired for
13 military service pursuant to any other provision of the Public
14 Employees Retirement Act;

15 (5) service credit may not be purchased for
16 periods of service in internment as a civilian prisoner of war
17 if such periods are used to obtain or increase a benefit from
18 another retirement program; and

19 (6) the member pays the association the
20 purchase cost determined according to Subsection E of this
21 section.

22 C. A member who was employed by a utility company,
23 library, museum, transit company or ~~[by a]~~ nonprofit
24 organization administering federally funded public service
25 programs, which utility company, library, museum, transit

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1 company or nonprofit organization administering federally
2 funded public service programs or federally funded public
3 service programs administered by a nonprofit organization are
4 subsequently taken over by an affiliated public employer, or a
5 member who was employed by an entity created pursuant to a
6 joint powers agreement between two or more affiliated public
7 employers for the purpose of administering or providing drug or
8 alcohol addiction treatment services irrespective of whether
9 the entity is subsequently taken over by an affiliated public
10 employer, may purchase credited service for the period of
11 employment subject to the following conditions:

12 (1) the member pays the association the
13 purchase cost determined according to Subsection E of this
14 section;

15 (2) the member has five or more years of
16 credited service acquired as a result of personal service
17 rendered in the employ of an affiliated public employer; and

18 (3) the aggregate amount of credited service
19 purchased pursuant to this subsection does not exceed five
20 years.

21 D. A member who was appointed to participate in a
22 cooperative work study training program established jointly by
23 the state highway and transportation department and the
24 university of New Mexico or New Mexico state university may
25 purchase credited service for the period of participation

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1 subject to the following conditions:

2 (1) the member pays the association the
3 purchase cost determined according to Subsection E of this
4 section;

5 (2) the member has five or more years of
6 credited service acquired as a result of personal service
7 rendered in the employ of an affiliated public employer; and

8 (3) the aggregate amount of credited service
9 purchased pursuant to this subsection does not exceed five
10 years.

11 E. Except for service to be used under a state
12 legislator coverage plan, the purchase cost for each month of
13 credited service purchased pursuant to the provisions of this
14 section is equal to the member's final average salary
15 multiplied by the sum of the member contribution rate and
16 employer contribution rate, determined in accordance with the
17 coverage plan applicable to the member at the time of the
18 written election to purchase. The purchase cost for each year
19 of credited service to be used under a state legislator
20 coverage plan is equal to three times the normal member
21 contribution per year of credited service under the state
22 legislator coverage plan applicable to the member. Full
23 payment shall be made in a single lump sum within sixty days of
24 the date the member is informed of the amount of the payment.
25 The portion of the purchase cost derived from the employer

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1 contribution rate shall be credited to the [~~employers~~]
2 employer's accumulation fund and shall not be paid out of the
3 association in the event of cessation of membership. In no
4 case shall a member be credited with a month of service for
5 less than the purchase cost as defined in this section.

6 F. A member shall be refunded, upon written request
7 filed with the association, the portion of the purchase cost of
8 credited service purchased pursuant to this section that the
9 association determines to have been unnecessary to provide the
10 member with the maximum pension applicable to the member. The
11 association shall not pay interest on the portion of the
12 purchase cost refunded to the member.

13 G. A member of the magistrate retirement system
14 who during his service as a magistrate was eligible to become
15 a member of the public employees retirement system and
16 elected not to become a member of that system may purchase
17 service credit pursuant to the public employees retirement
18 system for the period for which the magistrate elected not to
19 become a public employees retirement system member, by paying
20 the amount of the increase in the actuarial present value of
21 the magistrate pension as a consequence of the purchase as
22 determined by the association. Full payment shall be made in
23 a single lump-sum amount in accordance with procedures
24 established by the retirement board. Except as provided in
25 Subsection F of this section, seventy-five percent of the

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1 purchase cost shall be considered to be employer
2 contributions and shall not be refunded to the member in the
3 event of cessation of membership.

4 H. At any time prior to retirement, any member
5 may purchase service credit in monthly increments, subject to
6 the following conditions:

7 (1) the member has at least five years of
8 service credit acquired as a result of personal service
9 rendered in the employ of an affiliated public employer;

10 (2) the aggregate amount of service credit
11 purchased pursuant to this subsection does not exceed one
12 year [~~reduced by any period of service credit acquired for~~
13 ~~service pursuant to any other provision of the Public~~
14 ~~Employees Retirement Act~~];

15 (3) the member pays full actuarial present
16 value of the amount of the increase in the employee's pension
17 as a consequence of the purchase as determined by the
18 association;

19 (4) the member pays the full cost of the
20 purchase within sixty days of the date the member is informed
21 of the amount of the payment; and

22 (5) the purchase of service under this
23 subsection cannot be used to determine the final average
24 salary or the pension factor or be used to exceed the pension
25 maximum."

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1 Section 4. Section 10-11-8 NMSA 1978 (being Laws 1987,
2 Chapter 253, Section 8, as amended) is amended to read:

3 "10-11-8. NORMAL RETIREMENT--RETURN TO EMPLOYMENT--
4 BENEFITS CONTINUED--EMPLOYER CONTRIBUTIONS.--

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

8 (1) a written application for normal
9 retirement, in the form prescribed by the association, is
10 filed with the association [~~prior to the selected date of~~
11 ~~retirement~~];

12 (2) employment is terminated with all
13 employers covered by any state system or the educational
14 retirement system [~~prior to the selected date of retirement~~];

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

17 (4) the member meets the age and service
18 credit requirement for normal retirement specified in the
19 coverage plan applicable to the member.

20 B. The amount of normal retirement pension is
21 determined in accordance with the coverage plan applicable to
22 the member.

23 C. Except as provided in Subsection D or E of
24 this section, a retired member may be subsequently employed
25 by an affiliated public employer if the following conditions

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1 apply:

2 (1) the member has not been employed as an
3 employee of an affiliated public employer for at least ninety
4 consecutive days from the date of retirement to the
5 commencement of employment or re-employment with an
6 affiliated public employer. If the retired member returns to
7 employment without first completing ninety consecutive days
8 of retirement [~~the retired member shall remove himself from~~
9 ~~retirement~~]:

10 (a) the retired member's pension shall
11 be suspended immediately and the previously retired member
12 shall become a member; and

13 (b) upon termination of the subsequent
14 employment, the previously retired member's pension shall be
15 calculated pursuant to Paragraph (2) of Subsection E of this
16 section;

17 (2) effective the first day of the month
18 following the month in which the retired member's earnings
19 total twenty-five thousand dollars (\$25,000) during a
20 calendar year, a retired member who returns to employment
21 shall be required to make refundable contributions to the
22 fund as specified in the Public Employees Retirement Act [The
23 affiliated public employer's contributions as specified in
24 that act or as];

25 (3) until the subsequent employment is

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1 terminated, the affiliated public employer that employs the
2 retired member shall make contributions to the fund in the
3 amount specified in the Public Employees Retirement Act or in
4 a higher amount adjusted for full actuarial cost at the
5 determination of the association; [~~shall be paid to the fund;~~
6 and

7 ~~(3)] (4) a retired member who returns to~~

8 employment during retirement pursuant to this subsection is

9 entitled to receive retirement benefits but is not entitled

10 to acquire service credit or to acquire or purchase service

11 credit in the future for the period of the retired member's

12 re-employment with an affiliated public employer; and

13 (5) when the period of subsequent employment

14 is terminated, any contributions paid by the retired member

15 pursuant to Paragraph (2) of this subsection shall be

16 refunded to the retired member.

17 D. The provisions of Paragraphs (2) and (3) of

18 Subsection C of this section that require employee or

19 employer contributions do not apply to:

20 (1) a retired member who is appointed chief

21 of police of an affiliated public employer, other than the

22 affiliated public employer from which the retired member

23 retired, or who is appointed undersheriff; provided that:

24 (a) the retired member files an

25 irrevocable exemption from membership with the association

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1 within thirty days of appointment;

2 (b) each sheriff's office shall be
3 limited to one undersheriff qualifying pursuant to this
4 paragraph;

5 (c) the irrevocable exemption shall be
6 for the chief of police's or the undersheriff's term of
7 office; and

8 (d) filing an irrevocable exemption
9 shall irrevocably bar the retired member from acquiring
10 service credit for the period of exemption from membership;
11 or

12 (2) a retired member employed by the
13 legislature for legislative session work.

14 E. At any time during a retired member's
15 subsequent employment pursuant to Subsection C of this
16 section, the retired member may elect to suspend the pension.
17 When the pension is suspended, the following conditions shall
18 apply:

19 (1) the retired member who is subsequently
20 employed by an affiliated public employer shall become a
21 member. The previously retired member and the subsequent
22 affiliated public employer shall make the required employee
23 and employer contributions, and the previously retired member
24 shall accrue service credit for the period of subsequent
25 employment; and

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1 (2) when a previously retired member
2 terminates the subsequent employment with an affiliated
3 public employer, he shall retire according to the provisions
4 of the Public Employees Retirement Act, subject to the
5 following conditions:

6 (a) payment of the pension shall
7 resume in accordance with the provisions of Subsection A of
8 this section;

9 (b) unless the previously retired
10 member accrued at least three years of service credit on
11 account of the subsequent employment, the recalculation of
12 pension shall: 1) employ the form of payment selected by the
13 previously retired member at the time of the first
14 retirement; and 2) use the provisions of the coverage plan
15 applicable to the member on the date of the first retirement;
16 and

17 (c) the recalculated pension shall not
18 be less than the amount of the suspended pension.

19 ~~[D-]~~ F. The pension of a member who has three or
20 more years of service credit under each of two or more
21 coverage plans shall be determined in accordance with the
22 coverage plan that produces the highest pension. The pension
23 of a member who has service credit under two or more coverage
24 plans but who has three or more years of service credit under
25 only one of those coverage plans shall be determined in

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1 accordance with the coverage plan in which the member has
2 three or more years of service credit. If the service credit
3 is acquired under two different coverage plans applied to the
4 same affiliated public employer as a consequence of an
5 election by the members, adoption by the affiliated public
6 employer or a change in the law that results in the
7 application of a coverage plan with a greater pension, the
8 greater pension shall be paid a member retiring from the
9 affiliated public employer under which the change in coverage
10 plan took place regardless of the amount of service credit
11 under the coverage plan producing the greater pension;
12 provided the member has three or more years of continuous
13 employment with that affiliated public employer immediately
14 preceding or immediately preceding and immediately following
15 the date the coverage plan changed. The provisions of each
16 coverage plan for the purpose of this subsection shall be
17 those in effect at the time the member ceased to be covered
18 by the coverage plan. "Service credit", for the purposes of
19 this subsection, shall be only personal service rendered an
20 affiliated public employer and credited to the member under
21 the provisions of Subsection A of Section 10-11-4 NMSA 1978.
22 Service credited under any other provision of the Public
23 Employees Retirement Act shall not be used to satisfy the
24 three-year service credit requirement of this subsection."

25 Section 5. TEMPORARY PROVISION--APPLICABILITY.--The

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1 provisions of this act that change any contribution or the
2 refundability of any contribution are applicable to salaries
3 received in the first full pay period beginning after the
4 effective date of this act.

5 Section 6. EMERGENCY.--It is necessary for the public
6 peace, health and safety that this act take effect
7 immediately.