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HOUSE BILL 207

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Luciano "Lucky" Varela

FOR THE LEGISLATIVE FINANCE COMMITTEE

AN ACT

RELATING TO PUBLIC EMPLOYEES RETIREMENT; PROVIDING ADDITIONAL  
CONDITIONS FOR THE RETURN TO EMPLOYMENT BY RETIRED MEMBERS.

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 2004, Chapter 2,  
Section 1 and by Laws 2004, Chapter 68, Section 4) is amended  
to read:

"10-11-8. ~~NORMAL RETIREMENT--RETURN TO EMPLOYMENT--~~  
~~BENEFITS CONTINUED FOR CERTAIN RETIRED MEMBERS--EMPLOYER~~  
~~CONTRIBUTIONS.--~~

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

- (1) a written application for normal

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1 retirement, in the form prescribed by the association, is filed  
2 with the association;

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

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

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

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

14 C. Except as provided in Subsection D, [~~or~~] E or F  
15 of this section, a retired member may be subsequently employed  
16 by an affiliated public employer if the following conditions  
17 apply:

18 (1) the member has not been employed as an  
19 employee of an affiliated public employer for at least ninety  
20 consecutive days from the date of retirement to the  
21 commencement of employment or re-employment with an affiliated  
22 public employer. If the retired member returns to employment  
23 without first completing ninety consecutive days of  
24 retirement:

25 (a) the retired member's pension shall

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1 be suspended immediately and the previously retired member  
2 shall become a member; and

3 (b) upon termination of the subsequent  
4 employment, the previously retired member's pension shall be  
5 calculated pursuant to Paragraph (2) of Subsection [E] G of  
6 this section;

7 (2) the retired member returns to employment  
8 prior to July 1, 2005;

9 [~~(2)~~] (3) effective the first day of the month  
10 following the month in which the retired member's earnings  
11 total twenty-five thousand dollars (\$25,000) during a calendar  
12 year, a retired member who returns to employment shall be  
13 required to make contributions to the fund as specified in the  
14 Public Employees Retirement Act; provided, however, that after  
15 December 31, 2006, no additional contributions shall be  
16 required pursuant to this paragraph;

17 [~~(3)~~] (4) until the subsequent employment is  
18 terminated, the affiliated public employer that employs the  
19 retired member shall make contributions to the fund in the  
20 amount specified in the Public Employees Retirement Act or in a  
21 higher amount adjusted for full actuarial cost as determined  
22 annually by the association; and

23 [~~(4)~~] (5) a retired member who returns to  
24 employment during retirement pursuant to this subsection is  
25 entitled to receive retirement benefits but is not entitled to

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1 acquire service credit or to acquire or purchase service credit  
2 in the future for the period of the retired member's re-  
3 employment with an affiliated public employer.

4 D. The provisions of Paragraphs [~~(2)~~] (3) and [~~(3)~~]  
5 (4) of Subsection C of this section that require employee or  
6 employer contributions and the provisions of Subsections F and  
7 G of this section do not apply to:

8 (1) a retired member who is appointed chief of  
9 police of an affiliated public employer, other than the  
10 affiliated public employer from which the retired member  
11 retired, or who is appointed undersheriff; provided that:

12 (a) the retired member files an  
13 irrevocable exemption from membership with the association  
14 within thirty days of appointment;

15 (b) each sheriff's office shall be  
16 limited to one undersheriff qualifying pursuant to this  
17 paragraph;

18 (c) the irrevocable exemption shall be  
19 for the chief of police's or the undersheriff's term of office;  
20 and

21 (d) filing an irrevocable exemption  
22 shall irrevocably bar the retired member from acquiring service  
23 credit for the period of exemption from membership; or

24 (2) a retired member employed by the  
25 legislature for legislative session work.

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1 E. At any time during a retired member's subsequent  
2 employment pursuant to Subsection C of this section, the  
3 retired member may elect to suspend the pension. [~~When the~~  
4 ~~pension is suspended, the following conditions shall apply]~~

5 F. On or after July 1, 2005, a retired member may  
6 be subsequently employed by an affiliated public employer  
7 provided that the retired member's pension shall be suspended  
8 the first day of the month in which the retired member's  
9 earnings for a calendar year exceed thirty thousand dollars  
10 (\$30,000).

11 G. When a pension is suspended pursuant to  
12 Subparagraph (a) of Paragraph (1) of Subsection C of this  
13 section, Subsection E of this section or Subsection F of this  
14 section, the following conditions apply:

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

22 (2) when a previously retired member  
23 terminates the subsequent employment with an affiliated public  
24 employer, [he] the previously retired member shall retire  
25 according to the provisions of the Public Employees Retirement

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1 Act, subject to the following conditions:

2 (a) payment of the pension shall resume  
3 in accordance with the provisions of Subsection A of this  
4 section;

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

12 (c) the recalculated pension shall not  
13 be less than the amount of the suspended pension.

14 [~~F.~~] H. The pension of a member who has three or  
15 more years of service credit under each of two or more coverage  
16 plans shall be determined in accordance with the coverage plan  
17 that produces the highest pension. The pension of a member who  
18 has service credit under two or more coverage plans but who has  
19 three or more years of service credit under only one of those  
20 coverage plans shall be determined in accordance with the  
21 coverage plan in which the member has three or more years of  
22 service credit. If the service credit is acquired under two  
23 different coverage plans applied to the same affiliated public  
24 employer as a consequence of an election by the members,  
25 adoption by the affiliated public employer or a change in the

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

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