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HOUSE BILL 1040

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

INTRODUCED BY

Keith J. Gardner

AN ACT

RELATING TO PUBLIC EMPLOYEES; REQUIRING THE PUBLIC EMPLOYER TO
PAY THE EMPLOYEE'S SHARE OF A RETIRED MEMBER WHO RETURNS TO
EMPLOYMENT.

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--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 of this
15 section, a retired member may be subsequently employed by an
16 affiliated public employer if the following conditions apply:

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

24 (a) the retired member's pension shall
25 be suspended immediately and the previously retired member

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1 shall become a member; and

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

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

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

21 (4) a retired member who returns to employment
22 during retirement pursuant to this subsection is entitled to
23 receive retirement benefits but is not entitled to acquire
24 service credit or to acquire or purchase service credit in the
25 future for the period of the retired member's re-employment

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1 with an affiliated public employer.

2 D. The provisions of Paragraphs (2) and (3) of
3 Subsection C of this section that require employee or employer
4 contributions do not apply to:

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

9 (a) the retired member files an
10 irrevocable exemption from membership with the association
11 within thirty days of appointment;

12 (b) each sheriff's office shall be
13 limited to one undersheriff qualifying pursuant to this
14 paragraph;

15 (c) the irrevocable exemption shall be
16 for the chief of police's or the undersheriff's term of office;
17 and

18 (d) filing an irrevocable exemption
19 shall irrevocably bar the retired member from acquiring service
20 credit for the period of exemption from membership; or

21 (2) a retired member employed by the
22 legislature for legislative session work.

23 E. At any time during a retired member's subsequent
24 employment pursuant to Subsection C of this section, the
25 retired member may elect to suspend the pension. When the

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1 pension is suspended, the following conditions shall apply:

2 (1) the retired member who is subsequently
3 employed by an affiliated public employer shall become a
4 member. The previously retired member and the subsequent
5 affiliated public employer shall make the required employee and
6 employer contributions, and the previously retired member shall
7 accrue service credit for the period of subsequent employment;
8 and

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

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

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

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

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1 F. The pension of a member who has three or more
2 years of service credit under each of two or more coverage
3 plans shall be determined in accordance with the coverage plan
4 that produces the highest pension. The pension of a member who
5 has service credit under two or more coverage plans but who has
6 three or more years of service credit under only one of those
7 coverage plans shall be determined in accordance with the
8 coverage plan in which the member has three or more years of
9 service credit. If the service credit is acquired under two
10 different coverage plans applied to the same affiliated public
11 employer as a consequence of an election by the members,
12 adoption by the affiliated public employer or a change in the
13 law that results in the application of a coverage plan with a
14 greater pension, the greater pension shall be paid a member
15 retiring from the affiliated public employer under which the
16 change in coverage plan took place regardless of the amount of
17 service credit under the coverage plan producing the greater
18 pension; provided the member has three or more years of
19 continuous employment with that affiliated public employer
20 immediately preceding or immediately preceding and immediately
21 following the date the coverage plan changed. The provisions
22 of each coverage plan for the purpose of this subsection shall
23 be those in effect at the time the member ceased to be covered
24 by the coverage plan. "Service credit", for the purposes of
25 this subsection, shall be only personal service rendered an

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

6 Section 2. EFFECTIVE DATE.--The effective date of the
7 provisions of this act is July 1, 2005.

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