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SENATE BILL 86

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Ben D. Altamirano

AN ACT

RELATING TO PUBLIC EMPLOYEE RETIREMENT; AMENDING A SECTION OF
THE PUBLIC EMPLOYEES RETIREMENT ACT CONCERNING RETIREES WHO
RETURN TO WORK; RECONCILING CONFLICTING AMENDMENTS TO THE SAME
SECTION OF LAW BY REPEALING LAWS 2004, CHAPTER 2, SECTION 1.

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:

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

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

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

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

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

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

18 (1) the member has not been employed as an
19 employee or retained as an independent contractor of an
20 affiliated public employer for at least [~~ninety consecutive~~
21 ~~days~~] twelve consecutive months from the date of retirement to
22 the commencement of employment or reemployment with an
23 affiliated public employer; provided that a member who has not
24 been employed as an employee or independent contractor of an
25 affiliated public employer for only ninety consecutive days may

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1 return to employment if the member is receiving the maximum
2 pension under the member's applicable coverage plan and returns
3 to employment as a peace officer or water or wastewater
4 facility operator. If the retired member returns to employment
5 without first completing [~~ninety consecutive days~~] twelve
6 consecutive months of retirement, or ninety days of retirement
7 for a retired member who is receiving the maximum pension under
8 the member's applicable coverage plan and returns to employment
9 as a peace officer or water or wastewater facility operator:

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)~~] thirty thousand
20 dollars (\$30,000) during a calendar year, a retired member who
21 returns to employment shall be required to make contributions
22 to the fund as specified in the Public Employees Retirement
23 Act; [~~provided, however, that after December 31, 2006, no~~
24 ~~additional contributions shall be required pursuant to this~~
25 ~~paragraph]~~

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

7 (4) a retired member who returns to employment
8 during retirement pursuant to this subsection is entitled to
9 receive retirement benefits but is not entitled to acquire
10 service credit or to acquire or purchase service credit in the
11 future for the period of the retired member's reemployment with
12 an affiliated public employer.

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

16 (1) a retired member who is appointed chief of
17 police of an affiliated public employer, other than the
18 affiliated public employer from which the retired member
19 retired, or who is appointed undersheriff; provided that:

20 (a) the retired member files an
21 irrevocable exemption from membership with the association
22 within thirty days of appointment;

23 (b) each sheriff's office shall be
24 limited to one undersheriff qualifying pursuant to this
25 paragraph;

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1 (c) the irrevocable exemption shall be
2 for the chief of police's or the undersheriff's term of office;
3 and

4 (d) filing an irrevocable exemption
5 shall irrevocably bar the retired member from acquiring service
6 credit for the period of exemption from membership; or

7 (2) a retired member employed by the
8 legislature for legislative session work.

9 E. At any time during a retired member's subsequent
10 employment pursuant to Subsection C of this section, the
11 retired member may elect to suspend the pension. When the
12 pension is suspended, the following conditions shall apply:

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

20 (2) when a previously retired member
21 terminates the subsequent employment with an affiliated public
22 employer, ~~[he]~~ the previously retired member shall retire
23 according to the provisions of the Public Employees Retirement
24 Act, subject to the following conditions:

25 (a) payment of the pension shall resume

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1 in accordance with the provisions of Subsection A of this
2 section;

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

6 1) employ the form of payment selected by the previously
7 retired member at the time of the first retirement; and 2) use
8 the provisions of the coverage plan applicable to the member on
9 the date of the first retirement; and

10 (c) the recalculated pension shall not
11 be less than the amount of the suspended pension.

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

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

17 Section 2. REPEAL.--Laws 2004, Chapter 2, Section 1 is
18 repealed.

19 Section 3. APPLICABILITY.--The provisions of Section 1 of
20 this act that require twelve consecutive months of retirement
21 before returning to work apply to retired members who return to
22 work on or after July 1, 2007.

23 Section 4. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 2007.