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HOUSE BILL 246

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Miguel P. Garcia

AN ACT

RELATING TO PUBLIC EMPLOYEE RETIREMENT; AMENDING THE PUBLIC
EMPLOYEES RETIREMENT ACT TO PROVIDE THAT RETIREES WHO RETURN TO
WORK ON OR AFTER JULY 1, 2009 MAY CONTINUE TO RECEIVE THEIR
PENSIONS ONLY IF THEY RETURN TO WORK FOR CERTAIN AFFILIATED
PUBLIC EMPLOYERS; RECONCILING CONFLICTING AMENDMENTS TO THE
SAME SECTION OF LAW IN LAWS 2004 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.--

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

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

7 (2) employment is terminated with all
8 employers covered by any state system or the educational
9 retirement system;

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

12 (4) the member meets the age and service
13 credit requirement for normal retirement specified in the
14 coverage plan applicable to the member.

15 B. The amount of normal retirement pension is
16 determined in accordance with the coverage plan applicable to
17 the member.

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

21 (1) the member has not been employed as an
22 employee of an affiliated public employer for at least ninety
23 consecutive days from the date of retirement to the
24 commencement of employment or reemployment with an affiliated
25 public employer. If the retired member returns to employment

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1 without first completing ninety consecutive days of
2 retirement:

3 (a) the retired member's pension shall
4 be suspended immediately and the previously retired member
5 shall become a member; and

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

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

18 ~~(3)]~~ (2) until the subsequent employment is
19 terminated, the affiliated public employer that employs the
20 retired member shall make contributions to the fund in the
21 amount specified in the Public Employees Retirement Act or in a
22 higher amount adjusted for full actuarial cost as determined
23 annually by the association; ~~[and]~~

24 (3) if the retired member is returning to work
25 on or after July 1, 2009, the affiliated public employer

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1 employing the retired member shall be:

2 (a) a municipality with a population, as
3 shown by the most recent federal decennial census, of less than
4 fifty-five thousand; or

5 (b) a county with a population, as shown
6 by the most recent federal decennial census, of less than fifty
7 thousand; and

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

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

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

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

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

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1 paragraph;

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

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

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

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

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

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

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

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

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

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

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

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

20 Section 3. EFFECTIVE DATE.--The effective date of the
21 provisions of this act is July 1, 2009.

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