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HOUSE BILL 867

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

INTRODUCED BY

Edward C. Sandoval

AN ACT

RELATING TO PUBLIC EMPLOYEES RETIREMENT; AMENDING THE PUBLIC  
EMPLOYEES RETIREMENT ACT TO REQUIRE CERTAIN RETIRED MEMBERS WHO  
RETURN TO WORK AFTER JULY 1, 2009 TO SUSPEND THEIR PENSIONS;  
RECONCILING CONFLICTING AMENDMENTS TO A 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.--

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

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1 retirement:

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

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

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

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

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

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

19 (1) the retired member returns to work prior  
20 to July 1, 2009 and on that date has not terminated the  
21 subsequent employment;

22 [~~(1)~~] (2) the member has not been employed as  
23 an employee of an affiliated public employer for at least  
24 ninety consecutive days from the date of retirement to the  
25 commencement of employment or reemployment with an affiliated

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1 public employer. If the retired member returns to employment  
2 without first completing ninety consecutive days of  
3 retirement:

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

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

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

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

25 [~~(4)~~] (5) a retired member who returns to

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1 employment during retirement pursuant to this subsection is  
2 entitled to receive retirement benefits but is not entitled to  
3 acquire service credit or to acquire or purchase service credit  
4 in the future for the period of the retired member's  
5 reemployment with an affiliated public employer.

6 D. The provisions of Paragraphs [~~(2) and (3)~~] (1),  
7 (3) and (4) of Subsection C of this section [~~that require~~  
8 ~~employee or employer contributions~~] do not apply to:

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

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

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

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

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

25 (2) a retired member employed by the

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1 legislature for legislative session work.

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

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

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

18 (a) payment of the pension shall resume  
19 in accordance with the provisions of Subsection A of this  
20 section;

21 (b) unless the previously retired member  
22 accrued at least three years of service credit on account of  
23 the subsequent employment, the recalculation of pension shall:  
24 1) employ the form of payment selected by the previously  
25 retired member at the time of the first retirement; and 2) use

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1 the provisions of the coverage plan applicable to the member on  
2 the date of the first retirement; and

3 (c) the recalculated pension shall not  
4 be less than the amount of the suspended pension.

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

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1 of each coverage plan for the purpose of this subsection shall  
2 be those in effect at the time the member ceased to be covered  
3 by the coverage plan. "Service credit", for the purposes of  
4 this subsection, shall be only personal service rendered an  
5 affiliated public employer and credited to the member under the  
6 provisions of Subsection A of Section 10-11-4 NMSA 1978.  
7 Service credited under any other provision of the Public  
8 Employees Retirement Act shall not be used to satisfy the  
9 three-year service credit requirement of this subsection."

10 Section 2. REPEAL.--Laws 2004, Chapter 2, Section 1 is  
11 repealed.

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

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