

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 451

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

AN ACT

RELATING TO PUBLIC EMPLOYEES; RESTRICTING GIFTS TO CANDIDATES
FOR THE PUBLIC EMPLOYEES RETIREMENT BOARD; MAKING CERTAIN
CONTRIBUTIONS TO CANDIDATES FOR THE PUBLIC EMPLOYEES RETIREMENT
BOARD UNLAWFUL; MAKING CERTAIN EXPENDITURES OF CONTRIBUTIONS BY
CANDIDATES FOR THE PUBLIC EMPLOYEES RETIREMENT BOARD UNLAWFUL;
PROVIDING FOR PENALTIES AND CRIMINAL ENFORCEMENT; AMENDING A
SECTION OF THE PUBLIC EMPLOYEES RETIREMENT ACT CONCERNING THE
DISCLOSURE OF INFORMATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 10-11-2 NMSA 1978 (being Laws 1987,
Chapter 253, Section 2, as amended) is amended to read:

"10-11-2. DEFINITIONS.--As used in the Public Employees
Retirement Act:

A. "accumulated member contributions" means the

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underscoring material = new
[bracketed material] = delete

1 amounts deducted from the salary of a member and credited to
2 the member's individual account, together with interest, if
3 any, credited to that account;

4 B. "affiliated public employer" means the state and
5 any public employer affiliated with the association as provided
6 in the Public Employees Retirement Act, but does not include an
7 employer pursuant to the Magistrate Retirement Act, the
8 Judicial Retirement Act or the Educational Retirement Act;

9 C. "association" means the public employees
10 retirement association established under the Public Employees
11 Retirement Act;

12 D. "disability retired member" means a retired
13 member who is receiving a pension pursuant to the disability
14 retirement provisions of the Public Employees Retirement Act;

15 E. "disability retirement pension" means the
16 pension paid pursuant to the disability retirement provisions
17 of the Public Employees Retirement Act;

18 F. "educational retirement system" means that
19 retirement system provided for in the Educational Retirement
20 Act;

21 G. "employee" means any employee of an affiliated
22 public employer;

23 H. "federal social security program" means that
24 program or those programs created and administered pursuant to
25 the act of congress approved August 14, 1935, Chapter 531, 49

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1 Stat. 620, as that act may be amended;

2 I. "final average salary" means the final average
3 salary calculated in accordance with the provisions of the
4 applicable coverage plan;

5 J. "form of payment" means the applicable form of
6 payment of a pension provided for in Section 10-11-117 NMSA
7 1978;

8 K. "former member" means a person who was
9 previously employed by an affiliated public employer, who has
10 terminated that employment and who has received a refund of
11 member contributions;

12 L. "fund" means the funds included under the Public
13 Employees Retirement Act;

14 M. "member" means a currently employed,
15 contributing employee of an affiliated public employer, or a
16 person who has been but is not currently employed by an
17 affiliated public employer, who has not retired and who has not
18 received a refund of member contributions; "member" also
19 includes the following:

20 (1) "adult correctional officer member" means
21 a member who is an adult correctional officer or an adult
22 correctional officer specialist employed by a correctional
23 facility of the corrections department or its successor agency;

24 (2) "hazardous duty member" means a member who
25 is a juvenile correctional officer employed by the children,

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1 youth and families department or its successor agency;

2 (3) "municipal detention officer member" means
3 a member who is employed by an affiliated public employer other
4 than the state and who has inmate custodial responsibilities at
5 a facility used for the confinement of persons charged with or
6 convicted of a violation of a law or ordinance;

7 (4) "municipal fire member" means any member
8 who is employed as a full-time nonvolunteer firefighter by an
9 affiliated public employer and who has taken the oath
10 prescribed for firefighters;

11 (5) "municipal police member" means any member
12 who is employed as a police officer by an affiliated public
13 employer, other than the state, and who has taken the oath
14 prescribed for police officers; and

15 (6) "state police member" means any member who
16 is an officer of the New Mexico state police and who has taken
17 the oath prescribed for such officers;

18 N. "membership" means membership in the
19 association;

20 O. "pension" means a series of monthly payments to
21 a retired member or survivor beneficiary as provided in the
22 Public Employees Retirement Act;

23 P. "political committee" means two or more persons,
24 other than members of a candidate's immediate family or
25 campaign committee or a husband and wife who make a

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1 contribution out of a joint account, who are selected,
2 appointed, chosen, associated, organized or operated primarily
3 for a political purpose. For the purposes of this subsection,
4 "political purpose" means influencing or attempting to
5 influence an election or preprimary convention, including a
6 constitutional amendment or other question submitted to the
7 voters. "Political committee" includes:

8 (1) political action committees or similar
9 organizations composed of employees or members of a
10 corporation, labor organization, trade or professional
11 association or another similar group that raises, collects,
12 expends or contributes money or any other thing of value for a
13 political purpose;

14 (2) a single individual who by the
15 individual's actions represents that the individual is a
16 political committee; and

17 (3) a person or an organization of two or more
18 persons that within one calendar year expends funds in excess
19 of five hundred dollars (\$500) to conduct an advertising
20 campaign for a political purpose;

21 ~~[P.]~~ Q. "public employer" means the state, any
22 municipality, city, county, metropolitan arroyo flood control
23 authority, economic development district, regional housing
24 authority, soil and water conservation district, entity created
25 pursuant to a joint powers agreement, council of government,

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1 conservancy district, irrigation district, water and sanitation
2 district, water district and metropolitan water board,
3 including the boards, departments, bureaus and agencies of a
4 public employer, so long as these entities fall within the
5 meaning of governmental plan as that term is used in Section
6 414(d) of the Internal Revenue Code of 1986, as amended;

7 ~~[Q.]~~ R. "refund beneficiary" means a person
8 designated by the member, in writing, in the form prescribed by
9 the association, as the person who would be refunded the
10 member's accumulated member contributions payable if the member
11 dies and no survivor pension is payable or who would receive
12 the difference between pension paid and accumulated member
13 contributions if the retired member dies before receiving in
14 pension payments the amount of the accumulated member
15 contributions;

16 ~~[R.]~~ S. "retire" means to:

17 (1) terminate employment with all employers
18 covered by any state system or the educational retirement
19 system; and

20 (2) receive a pension from a state system or
21 the educational retirement system;

22 ~~[S.]~~ T. "retired member" means a person who has met
23 all requirements for retirement and who is receiving a pension
24 from the fund;

25 ~~[T.]~~ U. "retirement board" means the retirement

1 board provided for in the Public Employees Retirement Act;

2 ~~[U.]~~ V. "salary" means the base salary or wages
3 paid a member, including longevity pay, for personal services
4 rendered an affiliated public employer. "Salary" shall not
5 include overtime pay, allowances for housing, clothing,
6 equipment or travel, payments for unused sick leave, unless the
7 unused sick leave payment is made through continuation of the
8 member on the regular payroll for the period represented by
9 that payment, and any other form of remuneration not
10 specifically designated by law as included in salary for Public
11 Employees Retirement Act purposes. Salary in excess of the
12 limitations set forth in Section 401(a) (17) of the Internal
13 Revenue Code of 1986, as amended, shall be disregarded. The
14 limitation on compensation for eligible employees shall not be
15 less than the amount that was allowed to be taken into account
16 under the state retirement system acts in effect on July 1,
17 1993. For purposes of this subsection, "eligible employee"
18 means an individual who was a member of a state system before
19 the first plan year beginning after December 31, 1995;

20 ~~[V.]~~ W. "state system" means the retirement
21 programs provided for in the Public Employees Retirement Act,
22 the Magistrate Retirement Act and the Judicial Retirement Act;

23 ~~[W.]~~ X. "state retirement system acts" means
24 collectively the Public Employees Retirement Act, the
25 Magistrate Retirement Act, the Judicial Retirement Act and the

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1 Volunteer Firefighters Retirement Act; and

2 [X-] Y. "survivor beneficiary" means a person who
3 receives a pension or who has been designated to be paid a
4 pension as a result of the death of a member or retired
5 member."

6 Section 2. Section 10-11-130 NMSA 1978 (being Laws 1987,
7 Chapter 253, Section 130, as amended) is amended to read:

8 "10-11-130. RETIREMENT BOARD--AUTHORITY--MEMBERSHIP.--

9 A. The "retirement board" is created and is the
10 trustee of the association and the funds created by the state
11 retirement system acts and has all the powers necessary or
12 convenient to carry out and effectuate the purposes and
13 provisions of the state retirement system acts, including, in
14 addition to any specific powers provided for in the Public
15 Employees Retirement Act but without limiting the generality of
16 the foregoing, the power to:

17 (1) administer the state retirement system
18 acts, including the management of the association and making
19 effective the provisions of those acts, as well as to
20 administer and manage any other employee benefit acts as
21 provided by law;

22 (2) in addition to utilizing services of the
23 attorney general and notwithstanding any other provision of
24 law, employ or contract with and compensate competent legal
25 counsel to handle the legal matters and litigation of the

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1 retirement board and the association and to give advice and
2 counsel in regard to any matter connected with the duties of
3 the retirement board;

4 (3) administer oaths;

5 (4) adopt and use a seal for authentication of
6 records, processes and proceedings;

7 (5) create and maintain records relating to
8 all members, affiliated public employers and all activities and
9 duties required of the retirement board;

10 (6) issue subpoenas and compel the production
11 of evidence and attendance of witnesses in connection with any
12 hearings or proceedings of the retirement board;

13 (7) make and execute contracts;

14 (8) purchase, acquire or hold land adjacent to
15 the state capitol grounds or other suitable location and build
16 thereon a building to house the association and its employees
17 and, in the event additional office space is available in the
18 building after the retirement board and its employees have been
19 housed, to rent or lease the additional space to any public
20 agency or private person; provided that first priority for the
21 rental or leasing shall be to public agencies; and further
22 provided that, for the purpose of purchasing, acquiring or
23 holding the land and the building thereon, the retirement board
24 may use funds from the income fund and any other funds
25 controlled by the retirement board the use of which for such

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1 purposes is not prohibited by law;

2 (9) after the sale of the land and building
3 acquired pursuant to Paragraph (8) of this subsection, acquire
4 land and build thereon a new building to house the association
5 and its employees and hold the building and land in fee simple
6 in the name of the association. In order to acquire the land
7 and plan, design and construct the building, the retirement
8 board may expend the proceeds of the sale of the land and
9 building acquired pursuant to Paragraph (8) of this subsection
10 or any funds controlled by the board, the use of which for such
11 purposes is not otherwise prohibited by law;

12 (10) make and adopt such reasonable rules as
13 may be necessary or convenient to carry out the duties of the
14 retirement board and activities of the association, including
15 any rules necessary to preserve the status of the association
16 as a qualified pension plan under the provisions of the
17 Internal Revenue Code of 1986, as amended, or under successor
18 or related provisions of law; and

19 (11) designate committees and designate
20 committee members, including individuals who may not be members
21 of the association.

22 B. The retirement board consists of:

- 23 (1) the secretary of state;
24 (2) the state treasurer;
25 (3) four members under a state coverage plan

1 to be elected by the members under state coverage plans;

2 (4) four members under a municipal coverage
3 plan to be elected by the members under municipal coverage
4 plans, provided one member shall be a municipal member employed
5 by a county; and

6 (5) two retired members to be elected by the
7 retired members of the association.

8 C. The results of elections of elected members of
9 the retirement board shall be certified at the annual meeting
10 of the association. Elections shall be conducted according to
11 rules the retirement board adopts from time to time.

12 D. The regular term of office of the elected
13 members of the retirement board is four years. The term of one
14 retirement board member under a state coverage plan expires
15 annually on December 31. The terms of retirement board members
16 under a municipal coverage plan expire on December 31 of
17 noncoinciding years in the pattern set by the retirement board.
18 Members of the retirement board serve until their successors
19 have qualified.

20 E. A member elected to the retirement board who
21 fails to attend four consecutively scheduled meetings of the
22 retirement board, unless in each case excused for cause by the
23 retirement board members in attendance, is considered to have
24 resigned from the retirement board, and the retirement board
25 shall by resolution declare the office vacated as of the date

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1 of adoption of the resolution. A vacancy occurring on the
2 retirement board, except in the case of an elected official,
3 shall be filled by the remaining retirement board members,
4 without requirement that a quorum be present. The member
5 appointed to fill the vacancy serves for the remainder of the
6 vacated term.

7 F. Members of the retirement board serve without
8 salary for their services as retirement board members, but they
9 shall receive those amounts authorized under the Per Diem and
10 Mileage Act.

11 G. The retirement board shall hold four regular
12 meetings each year and shall designate in advance the time and
13 place of the meetings. Special meetings and emergency meetings
14 of the retirement board may be held upon call of the [~~chairman~~]
15 chair or any three members of the retirement board. Written
16 notice of special meetings shall be sent to each member of the
17 retirement board at least seventy-two hours in advance of the
18 special meeting. Verbal notice of emergency meetings shall be
19 given to as many members as is feasible at least eight hours
20 before the emergency meeting, and the meeting shall commence
21 with a statement of the nature of the emergency. The
22 retirement board shall adopt its own rules of procedure and
23 shall keep a record of its proceedings. All meetings of the
24 retirement board shall comply with the Open Meetings Act. A
25 majority of retirement board members shall constitute a quorum.

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1 Each attending member of the retirement board is entitled to
2 one vote on each question before the retirement board, and at
3 least a majority of a quorum shall be necessary for a decision
4 by the retirement board.

5 H. Annual meetings of the members of the
6 association shall be held in Santa Fe at such time and place as
7 the retirement board [~~shall~~] determines from time to time
8 [~~determine~~]. Special meetings of the members of the
9 association shall be held in Santa Fe upon call of any seven
10 retirement board members. The retirement board shall send a
11 written notice to the last known residence address of each
12 member currently employed by an affiliated public employer at
13 least ten days prior to any meeting of the members of the
14 association. The notice shall contain the call of the meeting
15 and the principal purpose of the meeting. All meetings of the
16 association shall be public and shall be conducted according to
17 procedures the retirement board [~~shall~~] adopts from time to
18 time [~~adopt~~]. The retirement board shall keep a record of the
19 proceedings of each meeting of the association.

20 I. Neither the retirement board nor the association
21 shall allow public inspection of, or disclosure of, information
22 from [~~any~~] a member or [~~retiree~~] a retired member file unless a
23 prior release and consent, in the form prescribed by the
24 association, has been executed by the member or [~~retiree~~]
25 retired member; except that applicable coverage plans, amounts

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1 of retirement plan contributions made by members and affiliated
2 public employers and pension amounts paid [~~and the~~] may be
3 produced or disclosed without release or consent. The names
4 and addresses of [~~public employees retirement association~~]
5 members or [~~retirees requested for election purposes by~~
6 ~~candidates for election to the retirement board~~] retired
7 members may be produced or disclosed in electronic format
8 without release or consent of the member or retired member to
9 candidates for election to the retirement board for election
10 purposes. Information disclosed without release or consent of
11 the member or retired member pursuant to this subsection shall
12 not be distributed or used for commercial purposes."

13 Section 3. Section 10-11-130.1 NMSA 1978 (being Laws
14 1999, Chapter 153, Section 1) is amended to read:

15 "10-11-130.1. RESTRICTIONS ON RECEIPT OF GIFTS--
16 [~~RESTRICTION~~] RESTRICTIONS ON CAMPAIGN CONTRIBUTIONS--REQUIRED
17 REPORTING--PENALTIES--CRIMINAL ENFORCEMENT.--

18 A. Except for gifts of food or beverage given in a
19 place of public accommodation, consumed at the time of receipt,
20 not exceeding fifty dollars (\$50.00) for a single gift and the
21 aggregate value of which gifts may not exceed one hundred fifty
22 dollars (\$150) in a calendar year, neither a retirement board
23 member nor an employee of the retirement board or association
24 shall receive or accept anything of value directly or
25 indirectly from a person who:

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1 (1) has a current contract with the retirement
2 board or association;

3 (2) is a potential bidder, offeror or
4 contractor for the provision of services or personal property
5 to the retirement board or association;

6 (3) is authorized to invest public funds
7 pursuant to state or federal law or is an employee or agent of
8 such a person; or

9 (4) is an organization, association or other
10 entity having a membership that includes persons described in
11 Paragraphs (1) through (3) of this subsection.

12 B. No person who is a candidate in a primary or
13 general election for a position that qualifies the person for
14 ex-officio membership on the retirement board, no member
15 serving ex officio on the retirement board and no person who is
16 a nominee for retirement board membership by election by some
17 or all of the members of the association pursuant to the Public
18 Employees Retirement Act shall accept anything of [~~a~~] value [~~of~~
19 ~~more than twenty-five dollars (\$25.00)~~] as a contribution to an
20 ex-officio member's statewide campaign in a primary or general
21 election or as a contribution to the campaign of a nominee for
22 membership on the board as a member elected by all or some of
23 the members of the association from a person who:

24 (1) has a current contract with the retirement
25 board or association;

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1 (2) is a potential bidder, offeror or
2 contractor for the provision of services or personal property
3 to the retirement board or association;

4 (3) is authorized to invest public funds
5 pursuant to state or federal law [~~or is an employee or agent of~~
6 ~~such a person~~]; or

7 (4) is an organization, association or other
8 entity having a membership that includes persons described in
9 Paragraphs (1) through (3) of this subsection.

10 C. A candidate for retirement board membership by
11 election by some or all of the members of the association
12 pursuant to the Public Employees Retirement Act shall not
13 accept monetary contributions, in-kind services or anything
14 else of value exceeding six thousand dollars (\$6,000) in the
15 aggregate from one or more persons to the candidate's campaign,
16 whether made directly to the candidate, to a political
17 committee or to some other entity supporting the candidate's
18 election, during the combined period of:

19 (1) the candidate's campaign; and

20 (2) should that candidate win the election,
21 the term of office following that election until the next
22 campaign for board membership.

23 [~~G.~~] D. Within ten days after an election in which
24 one or more board members are elected by some or all of the
25 members of the association pursuant to the Public Employees

1 Retirement Act, all persons who were candidates for board
 2 membership in that election shall file with the association a
 3 report disclosing all contributions to their respective
 4 campaigns whether made directly to the candidate, a political
 5 action committee or to some other entity supporting the
 6 candidate's election and an accounting of the purposes and
 7 dates of all expenditures of the campaign. The contributions
 8 shall be reported by amount and specific source. Within sixty
 9 days after the election, the association shall publish the
 10 reports required by this subsection.

11 E. It is unlawful for a person, political committee
 12 or some other entity supporting a person who is a candidate for
 13 retirement board membership by election by some or all of the
 14 members of the association pursuant to the Public Employees
 15 Retirement Act to make, or a candidate or the candidate's agent
 16 to accept, a contribution that is reported as coming from one
 17 person or entity when the candidate or the candidate's agent
 18 knows that the contribution is actually from another person or
 19 entity that directed that the contribution not be publicly
 20 reported.

21 F. It is unlawful for a candidate for retirement
 22 board membership by election by some or all of the members of
 23 the association or for the candidate's agent to make an
 24 expenditure of contributions received, except for the following
 25 purposes:

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1 (1) expenditures of the campaign;

2 (2) donations to the retirement board credited
3 to the income fund pursuant to the Public Employees Retirement
4 Act;

5 (3) donations to the general fund; and

6 (4) donations to an organization to which a
7 federal income tax deduction would be permitted under
8 Subparagraph (A) of Paragraph (1) of Subsection (b) of Section
9 170 of the Internal Revenue Code of 1986, as amended.

10 G. A person who knowingly and willfully violates
11 any provision of this section is guilty of a misdemeanor and
12 shall be punished by a fine of not more than one thousand
13 dollars (\$1,000) or by imprisonment for not more than one year
14 or both.

15 H. This section may be enforced by the attorney
16 general or the district attorney in the county where an alleged
17 violation resides, where an involved political committee has its
18 principal place of business or where the violation occurred."