

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."