

AN ACT

RELATING TO PUBLIC EMPLOYEES RETIREMENT; AMENDING PROVISIONS OF THE PUBLIC EMPLOYEES RETIREMENT ACT CONCERNING RETIREES WHO RETURN TO EMPLOYMENT; 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 FOR CERTAIN RETIRED MEMBERS--EMPLOYER CONTRIBUTIONS.--

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

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

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

(3) the member selects an effective date of

retirement that is the first day of a calendar month; and

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

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

C. Except as provided in Subsection D or F of this section, a retired member may be subsequently employed by an affiliated public employer pursuant to the following provisions:

(1) for a retired member who has returned to work prior to July 1, 2009:

(a) the retired member shall not have been employed as an employee of an affiliated public employer for at least ninety consecutive days from the date of retirement to the commencement of reemployment;

(b) except as provided in Subparagraphs (c), (d) and (e) of this paragraph, the retired member shall be subject to the provisions of Subparagraph (f) of this paragraph on the earlier of: 1) the date that the employment is terminated; or 2) July 1, 2010;

(c) if the governing body of the affiliated public employer adopts a resolution declaring that the employment of the retired member will fill a critical need

of the affiliated public employer and the governing body files a copy of the resolution with the retirement board, a retired member shall not be subject to the provisions of Subparagraph (f) of this paragraph until the date specified in Subparagraph (d) or (e) of this paragraph;

(d) except as provided in Subparagraph (e) of this paragraph, a retired member for whom a resolution has been adopted by a governing body pursuant to Subparagraph (c) of this paragraph shall be subject to the provisions of Subparagraph (f) of this paragraph on the earlier of: 1) the day that the employment is terminated; or 2) July 1, 2012;

(e) if, on and after July 1, 2012, the retired member is employed only by a small public employer whose governing body has adopted a resolution pursuant to Subparagraph (c) of this paragraph or is employed as a public safety officer by an affiliated public employer, other than the state, whose governing body has adopted a resolution pursuant to Subparagraph (c) of this paragraph, the retired member shall not be subject to the provisions of Subparagraph (f) of this paragraph until the earlier of: 1) the date that the employment is terminated; or 2) July 1, 2015; and

(f) once subjected to the provisions of this subparagraph by Subparagraph (b), (d) or (e) of this paragraph: 1) the retired member's pension shall be suspended on the first day of the month following the month in which the

retired member's earnings from the subsequent employment exceed thirty thousand dollars (\$30,000) in a calendar year; and 2) the retired member shall not be eligible to return to work under any other provision of this subsection;

(2) for a retired member who returns to work on or after July 1, 2009:

(a) unless the retired member qualifies pursuant to Subparagraph (d) or (e) of this paragraph, the retired member shall not have been employed as an employee of an affiliated public employer for at least twelve consecutive months from the date of retirement to the commencement of reemployment, or, if the retired member qualifies pursuant to Subparagraph (d) or (e) of this paragraph, the retired member shall not have been employed as an employee of an affiliated public employer for at least ninety consecutive days from the date of retirement to the commencement of reemployment;

(b) the retired member shall be, at the time of retirement, sixty-five years of age or older or shall have earned sufficient service credit for the maximum pension available under the retired member's coverage plan. A retired member shall not return to work without meeting the criteria specified in this subparagraph unless the pension of the retired member is suspended;

(c) the retired member shall be subject to the provisions of Subparagraph (f) of this paragraph unless

the governing body of the affiliated public employer adopts a resolution declaring that the subsequent employment of the retired member will fill a critical need of the affiliated public employer and the governing body files a copy of the resolution with the retirement board;

(d) except as provided in Subparagraph (e) of this paragraph, a retired member for whom a resolution has been adopted by a governing body pursuant to Subparagraph (c) of this paragraph shall be subject to the provisions of Subparagraph (f) of this paragraph on the earlier of: 1) the day that the employment is terminated; or 2) the day immediately following the two-year anniversary of the commencement of reemployment;

(e) if, on and after the day immediately following the two-year anniversary of the commencement of reemployment, the retired member is employed only by a small public employer whose governing body has adopted a resolution pursuant to Subparagraph (c) of this paragraph or is employed as a public safety officer by an affiliated public employer, other than the state, whose governing body has adopted a resolution pursuant to Subparagraph (c) of this paragraph, the retired member shall not be subject to the provisions of Subparagraph (f) of this paragraph until the earlier of the day: 1) that the employment is terminated; or 2) immediately following the

five-year anniversary of the commencement of reemployment; and

(f) once subjected to the provisions of this subparagraph by Subparagraph (c), (d) or (e) of this paragraph: 1) the retired member's pension shall be suspended on the first day of the month following the month in which the retired member's earnings from the subsequent employment exceed thirty thousand dollars (\$30,000) in a calendar year; and 2) the retired member shall not be eligible to return to work under any other provision of this subsection;

(3) as used in Paragraphs (1) and (2) of this subsection:

(a) "governing body" means: 1) the governing body of the political subdivision if the affiliated public employer is a political subdivision of the state; 2) the supreme court if the affiliated public employer is in the judicial branch of state government; 3) the district attorney personnel review board if the affiliated public employer is a district attorney; 4) the New Mexico legislative council if the affiliated public employer is in the legislative branch of state government; or 5) the personnel board if the affiliated public employer is not included in Item 1), 2), 3) or 4) of this subparagraph;

(b) "public safety officer" means an employee: 1) who is employed as a full-time nonvolunteer firefighter in a non-managerial position by an affiliated

public employer and who has taken the oath prescribed for firefighters; or 2) who is employed as a police officer in a non-managerial position by an affiliated public employer and who has taken the oath prescribed for police officers; and

(c) "small public employer" means an affiliated public employer that is a political subdivision with a population, as shown in the most recent federal decennial census, of less than fifty thousand;

(4) if the retired member returns to employment pursuant to Paragraph (1) or (2) of this subsection without first completing the required ninety consecutive days or twelve consecutive months of break-in service, the retired member's pension shall be suspended immediately;

(5) a retired member who returns to employment shall be required to make contributions to the fund as specified in the Public Employees Retirement Act or in a higher amount adjusted for full actuarial cost as determined annually by the association;

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

(7) a retired member who returns to

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

(8) until the subsequent employment is terminated, both the retired member and the affiliated public employer that employs the retired member shall make contributions to the retiree health care fund in the amount specified in Subsections A and B of Section 10-7C-15 NMSA 1978.

D. Except for the provisions of Paragraphs (7) and (8) of Subsection C of this section, the provisions of the other paragraphs of that subsection do not apply to:

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

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

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

(c) the irrevocable exemption shall be

for the chief of police's or the undersheriff's term of office; and

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

(2) a retired member employed by the legislature for legislative session work; or

(3) a retired member who is elected on or after July 1, 2009 to serve a term as an elected official; provided that:

(a) the retired member files an irrevocable exemption from membership with the association within thirty days of taking office; and

(b) the irrevocable exemption shall be for the elected official's term of office.

E. At any time during a retired member's subsequent employment pursuant to Subsection C of this section, the retired member may elect to suspend the pension.

F. When a pension is suspended pursuant to the provisions of this section, the following conditions shall apply:

(1) the retired member who is subsequently employed by an affiliated public employer shall become a member. The previously retired member and the subsequent affiliated public employer shall make the required employee

and employer contributions, and the previously retired member shall accrue service credit for the period of subsequent employment; and

(2) when a previously retired member terminates the subsequent employment with an affiliated public employer, the previously retired member shall retire according to the provisions of the Public Employees Retirement Act, subject to the following conditions:

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

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

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

G. The pension of a member who has three or more years of service credit under each of two or more coverage plans shall be determined in accordance with the coverage plan that produces the highest pension. The pension of a member who has service credit under two or more coverage plans but

who has three or more years of service credit under only one of those coverage plans shall be determined in accordance with the coverage plan in which the member has three or more years of service credit. If the service credit is acquired under two different coverage plans applied to the same affiliated public employer as a consequence of an election by the members, adoption by the affiliated public employer or a change in the law that results in the application of a coverage plan with a greater pension, the greater pension shall be paid a member retiring from the affiliated public employer under which the change in coverage plan took place regardless of the amount of service credit under the coverage plan producing the greater pension; provided the member has three or more years of continuous employment with that affiliated public employer immediately preceding or immediately preceding and immediately following the date the coverage plan changed. The provisions of each coverage plan for the purpose of this subsection shall be those in effect at the time the member ceased to be covered by the coverage plan. "Service credit", for the purposes of this subsection, shall be only personal service rendered an affiliated public employer and credited to the member under the provisions of Subsection A of Section 10-11-4 NMSA 1978. Service credited under any other provision of the Public Employees Retirement Act shall not be used to satisfy the three-year service credit

requirement of this subsection."

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

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