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HOUSE BILL 146

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

James Roger Madalena

AN ACT

RELATING TO PUBLIC EMPLOYEE RETIREMENT; AMENDING THE PUBLIC
EMPLOYEES RETIREMENT ACT AND THE EDUCATIONAL RETIREMENT ACT TO
ALLOW A RETIRED MEMBER TO DESIGNATE A SPOUSE AS THE BENEFICIARY
UNDER CERTAIN CIRCUMSTANCES.

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

SECTION 1. Section 10-11-116 NMSA 1978 (being Laws 1987,
Chapter 253, Section 116, as amended) is amended to read:

"10-11-116. ELECTION OF FORM OF PAYMENT OF A PENSION.--

A. Except as otherwise provided in Section
10-11-136 NMSA 1978, a member may elect to have pension
payments made under any one of the forms of payment provided in
Section 10-11-117 NMSA 1978. The election of form of payment
and naming of survivor pension beneficiary shall be made on a
form furnished by and filed with the association prior to the

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1 date the first pension payment is made. An election of form of
2 payment may not be changed after the date the first pension
3 payment is made. If the member is married, the association
4 shall obtain the consent of the member's spouse to the election
5 of the form of payment and any designation of survivor pension
6 beneficiary before the election or designation is effective.

7 Except as provided in Subsection C, [~~or~~] D or E of this
8 section, a named survivor pension beneficiary may not be
9 changed after the date the first pension payment is made if
10 form of payment B or C is elected. Except as otherwise
11 provided in Section 10-11-136 NMSA 1978, payment shall be made:

12 (1) under form of payment A if the member is
13 not married at the time of retirement and if there is not a
14 timely election of another form of payment; or

15 (2) under form of payment C with the member's
16 spouse as survivor pension beneficiary if the member is married
17 at the time of retirement and there is not a timely election of
18 another form of payment.

19 B. The amount of pension under forms of payment B,
20 C and D shall have the same actuarial present value, computed
21 as of the effective date of the pension, as the amount of
22 pension under form of payment A.

23 C. A retired member who is being paid a pension
24 under form of payment B or C with the member's spouse as the
25 designated survivor pension beneficiary may, upon becoming

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1 divorced from the named spouse and subject to an order of a
2 court as provided for in Section 10-11-136 NMSA 1978, elect to
3 have future payments made under form of payment A.

4 D. A retired member who was previously being paid a
5 pension under form of payment B or C with the member's spouse
6 as the designated survivor pension beneficiary but, because of
7 the death of the spouse, is currently receiving a pension under
8 form of payment A may, upon remarriage, exercise a one-time
9 irrevocable option to designate the current spouse as the
10 survivor pension beneficiary and may select either form of
11 payment B or form of payment C; provided that:

12 (1) the designation shall be made within six
13 months of the retired member's remarriage, except that, if the
14 retired member has remarried prior to July 1, 2011, the
15 designation shall be made prior to January 1, 2012;

16 (2) the amount of the pension under the form
17 of payment selected shall be recalculated and have the same
18 actuarial present value, computed on the effective date of the
19 designation, as the amount of pension under form of payment A;

20 (3) the designation and the amount of the
21 pension shall be subject to a court order as provided for in
22 Section 10-11-136 NMSA 1978; and

23 (4) the retired member shall pay one hundred
24 dollars (\$100) to the retirement board to defray the cost of
25 determining the new pension amount.

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1 ~~[D-]~~ E. A retired member who is being paid a
2 pension under form of payment B or C with a living designated
3 survivor pension beneficiary other than the retired member's
4 spouse or former spouse may exercise a one-time irrevocable
5 option to deselect the designated beneficiary and elect to:

6 (1) designate another survivor pension
7 beneficiary, provided that:

8 (a) the retired member shall not have an
9 option to change from the current form of payment; and

10 (b) the amount of the pension under the
11 form of payment shall be recalculated and shall have the same
12 actuarial present value, computed as of the effective date of
13 the designation, as the amount of pension under form of payment
14 A; or

15 (2) have future payments made under form of
16 payment A."

17 **SECTION 2.** Section 22-11-29 NMSA 1978 (being Laws 1967,
18 Chapter 16, Section 152, as amended) is amended to read:

19 "22-11-29. RETIREMENT BENEFIT OPTIONS.--

20 A. Upon retirement pursuant to the Educational
21 Retirement Act, a member may elect, and, except as provided in
22 Subsection D of this section, such election shall be
23 irrevocable, to receive the actuarial equivalent of ~~[his]~~ the
24 member's retirement benefit, as provided in Section 22-11-30
25 NMSA 1978, to be effective on ~~[his]~~ the member's retirement in

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1 any one of the following optional forms:

2 (1) OPTION B. A reduced annuity payable
3 during the member's life with provision that upon the member's
4 death the same annuity shall be continued during the life of
5 and paid to the beneficiary designated by the member in writing
6 at the time of electing this option; or

7 (2) OPTION C. A reduced annuity payable
8 during the member's life with provision that upon the member's
9 death one-half of this same annuity shall be continued during
10 the life of and paid to the beneficiary designated by the
11 member in writing at the time of electing this option.

12 B. In the case of Options B and C of Subsection A
13 of this section, the actuarial equivalent of the member's
14 retirement benefit shall be computed on the basis of the lives
15 of both the member and the beneficiary.

16 C. In the event that the named beneficiary of a
17 retired member who elected Option B or C of Subsection A of
18 this section at the time of retirement predeceases the retired
19 member, the annuity of the retired member shall be adjusted by
20 adding an amount equal to the amount by which the annuity of
21 the retired member was reduced at retirement as a result of the
22 election of Option B or C. The adjustment authorized in this
23 subsection shall be made as follows:

24 (1) beginning on the first month following the
25 month in which the named beneficiary of a retiree dies

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1 applicable to an annuity received by a retiree who retires
2 after June 30, 1987; or

3 (2) beginning on July 1, 1987 applicable to an
4 annuity received by a retiree who retired prior to July 1, 1987
5 and otherwise qualifies for the adjustment; provided, however,
6 no adjustment shall be made retroactively.

7 D. A retired member who is being paid an adjusted
8 annuity pursuant to Subsection C of this section because of the
9 death of a spouse who was the named beneficiary may, upon
10 remarriage, exercise a one-time irrevocable option to designate
11 the current spouse as the beneficiary and may select either
12 Option B or Option C of Subsection A of this section; provided
13 that:

14 (1) the designation shall be made within six
15 months of the retired member's remarriage, except that, if the
16 retired member has remarried prior to July 1, 2011, the
17 designation shall be made prior to January 1, 2012;

18 (2) the amount of the annuity under the option
19 selected shall be recalculated and have the same actuarial
20 present value, computed on the effective date of the
21 designation, as the annuity being paid to the retired member
22 prior to the designation;

23 (3) the designation and the amount of the
24 annuity shall be subject to a court order as provided for in
25 Subsection B of Section 22-11-42 NMSA 1978; and

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1 (4) the retired member shall pay one hundred
2 dollars (\$100) to the board to defray the cost of determining
3 the new annuity amount.

4 ~~[D-]~~ E. In the event of the death of the member who
5 has not retired and who has completed at least five years'
6 earned service credit, the member shall be considered as
7 retiring on the first day of the month following the date of
8 death, and the benefits due the surviving beneficiary, computed
9 as of that date, shall, except as provided in Subsection ~~[G]~~ H
10 of this section, be commenced effective on the first day of
11 such month in accordance with the terms of Option B of
12 Subsection A of this section. In lieu of the provisions of
13 Option B, the surviving beneficiary may elect to receive
14 payment of all the contributions made by the member, plus
15 interest at the rate set by the board reduced by the sum of any
16 disability benefits previously received by the member, or the
17 surviving beneficiary may choose to defer receipt of the
18 survivor's benefit to whatever age the beneficiary chooses up
19 to the time the member would have attained age sixty. If the
20 benefit is thus deferred, it shall be calculated as though the
21 member had retired on the first day of the month in which the
22 beneficiary elects to receive the benefit. In the event of the
23 death of the beneficiary after the death of the member and
24 prior to the date on which the beneficiary has elected to
25 receive the beneficiary's benefit, the estate of the

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1 beneficiary shall be entitled to a refund of the member's
2 contributions plus interest at the rate earned by the fund
3 during the preceding fiscal year, reduced by the sum of any
4 disability benefits previously received by the member.

5 ~~[E.]~~ F. In the case of death of a retired member
6 who did not elect either Option B or C of Subsection A of this
7 section and before the benefits paid to ~~[him]~~ the member have
8 equaled the sum of ~~[his]~~ the member's accumulated contributions
9 to the fund plus accumulated interest at the rate set by the
10 board, the balance shall be paid to the beneficiary designated
11 in writing to the director by the member or, if no beneficiary
12 was designated, to the estate of the member.

13 ~~[F.]~~ G. No benefit shall be paid pursuant to this
14 section if the member's contributions have been refunded
15 pursuant to Section 22-11-15 NMSA 1978.

16 ~~[G.]~~ H. In the case of death of a member with less
17 than five years' earned service credit or death of a member who
18 has filed with the director a notice rejecting the provisions
19 of Subsection ~~[G]~~ E of this section, which notice shall be
20 revocable by the member at any time prior to retirement, the
21 member's contributions to the fund plus interest at the rate
22 set by the board shall be paid to the beneficiary designated in
23 writing to the director by the member or, if no beneficiary was
24 designated, to the estate of the member.

25 ~~[H.]~~ I. Any elections of either Option B or C of

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1 Subsection A of this section on file with the director on June
2 30, 1984 by members who have not retired prior to June 30, 1984
3 are void."

4 SECTION 3. EFFECTIVE DATE.--The effective date of the
5 provisions of this act is July 1, 2011.

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