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SENATE BILL 259

**50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

INTRODUCED BY

Howie Morales

AN ACT

RELATING TO PUBLIC EMPLOYEES RETIREMENT; PROVIDING FOR MOTOR  
TRANSPORTATION OFFICERS TO ELECT TO CHANGE THEIR COVERAGE PLAN;  
RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN  
LAWS 2003; RECONCILING CONFLICTING AMENDMENTS TO THE SAME  
SECTION OF LAW IN LAWS 2009 BY REPEALING LAWS 2009, CHAPTER  
287, SECTION 2.

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

**SECTION 1.** Section 10-7C-15 NMSA 1978 (being Laws 1990,  
Chapter 6, Section 15, as amended by Laws 2009, Chapter 287,  
Section 2 and by Laws 2009, Chapter 288, Section 3) is amended  
to read:

"10-7C-15. RETIREE HEALTH CARE FUND CONTRIBUTIONS.--

A. Following completion of the preliminary  
contribution period, each participating employer shall make

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1 contributions to the fund pursuant to the following provisions:

2 (1) for participating employees who are not  
3 members of an enhanced retirement plan, the employer's  
4 contribution shall equal:

5 (a) one and three-tenths percent of each  
6 participating employee's salary for the period from July 1,  
7 2002 through June 30, 2010;

8 (b) one and six hundred sixty-six  
9 thousandths percent of each participating employee's salary for  
10 the period from July 1, 2010 through June 30, 2011;

11 (c) one and eight hundred thirty-four  
12 thousandths percent of each participating employee's salary for  
13 the period from July 1, 2011 through June 30, 2012; and

14 (d) two percent of each participating  
15 employee's salary beginning July 1, 2012;

16 (2) for participating employees who are  
17 members of an enhanced retirement plan, the employer's  
18 contribution shall equal:

19 (a) one and three-tenths percent of each  
20 participating employee's salary for the period from July 1,  
21 2002 through June 30, 2010;

22 (b) two and eighty-four thousandths  
23 percent of each participating employee's salary for the period  
24 from July 1, 2010 through June 30, 2011;

25 (c) two and two hundred ninety-two

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1 thousandths percent of each participating employee's salary for  
2 the period from July 1, 2011 through June 30, 2012; and

3 (d) two and one-half percent of each  
4 participating employee's salary beginning July 1, 2012; and

5 (3) each employer that chooses to become a  
6 participating employer after January 1, 1998 shall make  
7 contributions to the fund in the amount determined to be  
8 appropriate by the board.

9 B. Following completion of the preliminary  
10 contribution period, each participating employee, as a  
11 condition of employment, shall contribute to the fund pursuant  
12 to the following provisions:

13 (1) for a participating employee who is not a  
14 member of an enhanced retirement plan, the employee's  
15 contribution shall equal:

16 (a) sixty-five hundredths of one percent  
17 of the employee's salary for the period from July 1, 2002  
18 through June 30, 2010;

19 (b) eight hundred thirty-three  
20 thousandths of one percent of the employee's salary for the  
21 period from July 1, 2010 through June 30, 2011;

22 (c) nine hundred seventeen thousandths  
23 of one percent of the employee's salary for the period from  
24 July 1, 2011 through June 30, 2012; and

25 (d) one percent of the employee's salary

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1 beginning July 1, 2012;

2 (2) for a participating employee who is a  
3 member of an enhanced retirement plan, the employee's  
4 contribution shall equal:

5 (a) sixty-five hundredths of one percent  
6 of the employee's salary for the period from July 1, 2002  
7 through June 30, 2010;

8 (b) one and forty-two thousandths  
9 percent of the employee's salary for the period from July 1,  
10 2010 through June 30, 2011;

11 (c) one and one hundred forty-six  
12 thousandths percent of the employee's salary for the period  
13 from July 1, 2011 through June 30, 2012; and

14 (d) one and one-fourth percent of the  
15 employee's salary beginning July 1, 2012; and

16 (3) as a condition of employment, each  
17 participating employee of an employer that chooses to become a  
18 participating employer after January 1, 1998 shall contribute  
19 to the fund an amount that is determined to be appropriate by  
20 the board. Each month, participating employers shall deduct  
21 the contribution from the participating employee's salary and  
22 shall remit it to the board as provided by any procedures that  
23 the board may require.

24 C. On or after July 1, 2009, no person who has  
25 obtained service credit pursuant to Subsection B of Section

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1 10-11-6 NMSA 1978, Section 10-11-7 NMSA 1978 or Paragraph (3)  
2 or (4) of Subsection A of Section 22-11-34 NMSA 1978 may enroll  
3 with the authority unless the person makes a contribution to  
4 the fund equal to the full actuarial present value of the  
5 amount of the increase in the person's health care benefit, as  
6 determined by the authority.

7 D. Except for contributions made pursuant to  
8 Subsection C of this section, a participating employer that  
9 fails to remit before the tenth day after the last day of the  
10 month all employer and employee deposits required by the  
11 Retiree Health Care Act to be remitted by the employer for the  
12 month shall pay to the fund, in addition to the deposits,  
13 interest on the unpaid amounts at the rate of six percent per  
14 year compounded monthly.

15 E. Except for contributions made pursuant to  
16 Subsection C of this section, the employer and employee  
17 contributions shall be paid in monthly installments based on  
18 the percent of payroll certified by the employer.

19 F. Except in the case of erroneously made  
20 contributions or as may be otherwise provided in Subsection D  
21 of Section 10-7C-9 NMSA 1978, contributions from participating  
22 employers and participating employees shall become the property  
23 of the fund on receipt by the board and shall not be refunded  
24 under any circumstances, including termination of employment or  
25 termination of the participating employer's operation or

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1 participation in the Retiree Health Care Act.

2 G. Notwithstanding any other provision in the  
3 Retiree Health Care Act and at the first session of the  
4 legislature following July 1, 2013, the legislature shall  
5 review and adjust the distributions pursuant to Section 7-1-6.1  
6 NMSA 1978 and the employer and employee contributions to the  
7 authority in order to ensure the actuarial soundness of the  
8 benefits provided under the Retiree Health Care Act.

9 H. As used in this section, "member of an enhanced  
10 retirement plan" means:

11 (1) a member of the public employees  
12 retirement association who, pursuant to the Public Employees  
13 Retirement Act, is included in:

- 14 (a) state [~~police member and adult~~  
15 ~~correctional~~] officer member coverage plan 1;
- 16 (b) municipal police member coverage  
17 plan 3, 4 or 5;
- 18 (c) municipal fire member coverage plan  
19 3, 4 or 5; or
- 20 (d) municipal detention officer member  
21 coverage plan 1; or

22 (2) a member pursuant to the provisions of the  
23 Judicial Retirement Act."

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

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1           "10-11-2. DEFINITIONS.--As used in the Public Employees  
2 Retirement Act:

3           A. "accumulated member contributions" means the  
4 amounts deducted from the salary of a member and credited to  
5 the member's individual account, together with interest, if  
6 any, credited to that account;

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

12           C. "association" means the public employees  
13 retirement association established under the Public Employees  
14 Retirement Act;

15           D. "disability retired member" means a retired  
16 member who is receiving a pension pursuant to the disability  
17 retirement provisions of the Public Employees Retirement Act;

18           E. "disability retirement pension" means the  
19 pension paid pursuant to the disability retirement provisions  
20 of the Public Employees Retirement Act;

21           F. "educational retirement system" means that  
22 retirement system provided for in the Educational Retirement  
23 Act;

24           G. "employee" means any employee of an affiliated  
25 public employer;

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1           H. "federal social security program" means that  
2 program or those programs created and administered pursuant to  
3 the act of congress approved August 14, 1935, Chapter 531, 49  
4 Stat. 620, as that act may be amended;

5           I. "final average salary" means the final average  
6 salary calculated in accordance with the provisions of the  
7 applicable coverage plan;

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

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

15           L. "fund" means the funds included under the Public  
16 Employees Retirement Act;

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

23                   (1) "adult correctional officer member" means  
24 a member who is an adult correctional officer or an adult  
25 correctional officer specialist employed by a correctional

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1 facility of the corrections department or its successor agency;

2 (2) "hazardous duty member" means a member who  
3 is a juvenile correctional officer employed by the children,  
4 youth and families department or its successor agency;

5 (3) "motor transportation officer member"  
6 means a member who is an officer of the motor transportation  
7 division of the department of public safety and who has taken  
8 the oath prescribed for such officers;

9 [~~3~~] (4) "municipal detention officer member"  
10 means a member who is employed by an affiliated public employer  
11 other than the state and who has inmate custodial  
12 responsibilities at a facility used for the confinement of  
13 persons charged with or convicted of a violation of a law or  
14 ordinance;

15 [~~4~~] (5) "municipal fire member" means any  
16 member who is employed as a full-time nonvolunteer firefighter  
17 by an affiliated public employer and who has taken the oath  
18 prescribed for firefighters;

19 [~~5~~] (6) "municipal police member" means any  
20 member who is employed as a police officer by an affiliated  
21 public employer, other than the state, and who has taken the  
22 oath prescribed for police officers; and

23 [~~6~~] (7) "state police member" means any  
24 member who is an officer of the New Mexico state police and who  
25 has taken the oath prescribed for such officers;

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1           N. "membership" means membership in the  
2 association;

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

6           P. "public employer" means the state, any  
7 municipality, city, county, metropolitan arroyo flood control  
8 authority, economic development district, regional housing  
9 authority, soil and water conservation district, entity created  
10 pursuant to a joint powers agreement, council of government,  
11 conservancy district, irrigation district, water and sanitation  
12 district, water district and metropolitan water board,  
13 including the boards, departments, bureaus and agencies of a  
14 public employer, so long as these entities fall within the  
15 meaning of governmental plan as that term is used in Section  
16 414(d) of the Internal Revenue Code of 1986, as amended;

17           Q. "refund beneficiary" means a person designated  
18 by the member, in writing, in the form prescribed by the  
19 association, as the person who would be refunded the member's  
20 accumulated member contributions payable if the member dies and  
21 no survivor pension is payable or who would receive the  
22 difference between pension paid and accumulated member  
23 contributions if the retired member dies before receiving in  
24 pension payments the amount of the accumulated member  
25 contributions;

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1 R. "retire" means to:

2 (1) terminate employment with all employers  
3 covered by any state system or the educational retirement  
4 system; and

5 (2) receive a pension from a state system or  
6 the educational retirement system;

7 S. "retired member" means a person who has met all  
8 requirements for retirement and who is receiving a pension from  
9 the fund;

10 T. "retirement board" means the retirement board  
11 provided for in the Public Employees Retirement Act;

12 U. "salary" means the base salary or wages paid a  
13 member, including longevity pay, for personal services rendered  
14 an affiliated public employer. "Salary" shall not include  
15 overtime pay, allowances for housing, clothing, equipment or  
16 travel, payments for unused sick leave, unless the unused sick  
17 leave payment is made through continuation of the member on the  
18 regular payroll for the period represented by that payment, and  
19 any other form of remuneration not specifically designated by  
20 law as included in salary for Public Employees Retirement Act  
21 purposes. Salary in excess of the limitations set forth in  
22 Section 401(a) (17) of the Internal Revenue Code of 1986, as  
23 amended, shall be disregarded. The limitation on compensation  
24 for eligible employees shall not be less than the amount that  
25 was allowed to be taken into account under the state retirement

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1 system acts in effect on July 1, 1993. For purposes of this  
2 subsection, "eligible employee" means an individual who was a  
3 member of a state system before the first plan year beginning  
4 after December 31, 1995;

5 V. "state system" means the retirement programs  
6 provided for in the Public Employees Retirement Act, the  
7 Magistrate Retirement Act and the Judicial Retirement Act;

8 W. "state retirement system acts" means  
9 collectively the Public Employees Retirement Act, the  
10 Magistrate Retirement Act, the Judicial Retirement Act and the  
11 Volunteer Firefighters Retirement Act; and

12 X. "survivor beneficiary" means a person who  
13 receives a pension or who has been designated to be paid a  
14 pension as a result of the death of a member or retired  
15 member."

16 SECTION 3. Section 10-11-27 NMSA 1978 (being Laws 1987,  
17 Chapter 253, Section 27, as amended by Laws 2003, Chapter 268,  
18 Section 9 and by Laws 2003, Chapter 269, Section 1) is amended  
19 to read:

20 "10-11-27. STATE [~~POLICE MEMBER AND ADULT CORRECTIONAL~~]  
21 OFFICER MEMBER COVERAGE PLAN 1--APPLICABILITY.--

22 A. State [~~police member and adult correctional~~]  
23 officer member coverage plan 1 is applicable to state police  
24 members who are not specifically covered by another coverage  
25 plan, [~~and~~] to adult correctional officer members and to motor

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1 transportation officer members. The credited service of a  
2 state police member who has held the permanent rank of  
3 patrolman, sergeant, lieutenant or captain and does not hold an  
4 exempt rank or who is assigned to the aircraft division as a  
5 pilot, ~~[or]~~ and the credited service of an adult correctional  
6 officer member or a motor transportation officer member, shall  
7 have actual credited service increased by twenty percent for  
8 the purposes of state ~~[police member and adult correctional]~~  
9 officer member coverage plan 1.

10 B. State ~~[police member and adult correctional]~~  
11 officer member coverage plan 1 is applicable to:

12 (1) adult correctional officer members in the  
13 first full pay period after July 1, 2004 if the retirement  
14 board certifies to the secretary of state that, of those adult  
15 correctional officer members to be covered under state ~~[police~~  
16 ~~member and adult correctional]~~ officer member coverage plan 1,  
17 a majority of the members voting ~~[have]~~ has voted to approve  
18 adoption of that plan at an election conducted pursuant to  
19 ~~[Section 16 of this 2003 act]~~ Laws 2003, Chapter 268, Section  
20 16; and

21 (2) motor transportation officer members in  
22 the first full pay period after January 1, 2013 if the  
23 retirement board certifies to the secretary of state that, of  
24 those motor transportation officer members to be covered under  
25 state officer member coverage plan 1, a majority of the members

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1 voting has voted to approve adoption of that plan at an  
2 election conducted pursuant to Section 9 of this 2012 act."

3 SECTION 4. Section 10-11-27.1 NMSA 1978 (being Laws 2003,  
4 Chapter 268, Section 10) is amended to read:

5 "10-11-27.1. STATE [~~POLICE MEMBER AND ADULT CORRECTIONAL~~]  
6 OFFICER MEMBER COVERAGE PLAN 1--SERVICE CREDIT REQUIRED.--  
7 Notwithstanding the provisions of Section 10-11-27 NMSA 1978,  
8 to qualify for payment under state [~~police member and adult~~  
9 ~~correctional~~] officer member coverage plan 1:

10 A. an adult correctional officer member shall have  
11 eighteen months of service credit earned under the state  
12 [~~police member and adult correctional~~] officer member coverage  
13 plan 1 subsequent to July 1, 2004; and

14 B. a motor transportation officer member shall have  
15 thirty-six months of service credit earned under state officer  
16 member coverage plan 1 subsequent to January 1, 2013."

17 SECTION 5. Section 10-11-28 NMSA 1978 (being Laws 1987,  
18 Chapter 253, Section 28, as amended) is amended to read:

19 "10-11-28. STATE [~~POLICE MEMBER AND ADULT CORRECTIONAL~~]  
20 OFFICER MEMBER COVERAGE PLAN 1--AGE AND SERVICE REQUIREMENTS  
21 FOR NORMAL RETIREMENT.--Under state [~~police member and adult~~  
22 ~~correctional~~] officer member coverage plan 1, the age and  
23 service requirements for normal retirement are:

24 A. age sixty-five years or older and five or more  
25 years of credited service;

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1           B. age sixty-four years and eight or more years of  
2 credited service;

3           C. age sixty-three years and eleven or more years  
4 of credited service;

5           D. age sixty-two years and fourteen or more years  
6 of credited service;

7           E. age sixty-one years and seventeen or more years  
8 of credited service;

9           F. age sixty years and twenty or more years of  
10 credited service; or

11           G. any age and twenty-five or more years of  
12 credited service."

13           **SECTION 6.** Section 10-11-29 NMSA 1978 (being Laws 1987,  
14 Chapter 253, Section 29, as amended) is amended to read:

15           "10-11-29. STATE [~~POLICE MEMBER AND ADULT CORRECTIONAL~~]  
16 OFFICER MEMBER COVERAGE PLAN 1--AMOUNT OF PENSION--FORM OF  
17 PAYMENT A.--Under state [~~police member and adult correctional~~]  
18 officer member coverage plan 1, the amount of pension under  
19 form of payment A is equal to three percent of final average  
20 salary multiplied by credited service. The amount shall not  
21 exceed eighty percent of the final average salary."

22           **SECTION 7.** Section 10-11-31 NMSA 1978 (being Laws 1987,  
23 Chapter 253, Section 31, as amended) is amended to read:

24           "10-11-31. STATE [~~POLICE MEMBER AND ADULT CORRECTIONAL~~]  
25 OFFICER MEMBER COVERAGE PLAN 1--MEMBER CONTRIBUTION RATE.--A

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1 member under state [~~police member and adult correctional~~]  
2 officer member coverage plan 1 shall contribute seven and six-  
3 tenths percent of salary, except that for members whose annual  
4 salary is greater than twenty thousand dollars (\$20,000):

5 A. from July 1, 2009 through June 30, 2011, the  
6 member contribution rate shall be nine and one-tenth percent of  
7 salary;

8 B. from July 1, 2011 through June 30, 2012, the  
9 member contribution rate shall be ten and eighty-five  
10 hundredths percent of salary; and

11 C. from July 1, 2012 through June 30, 2013, the  
12 member contribution rate shall be nine and one-tenth percent of  
13 salary."

14 SECTION 8. Section 10-11-32 NMSA 1978 (being Laws 1987,  
15 Chapter 253, Section 32, as amended) is amended to read:

16 "10-11-32. STATE [~~POLICE MEMBER AND ADULT CORRECTIONAL~~]  
17 OFFICER MEMBER COVERAGE PLAN 1--STATE CONTRIBUTION RATE.--The  
18 state shall contribute twenty-five and one-tenth percent of the  
19 salary of each member under state [~~police member and adult~~  
20 ~~correctional~~] officer member coverage plan 1, except that for  
21 members whose annual salary is greater than twenty thousand  
22 dollars (\$20,000):

23 A. from July 1, 2009 through June 30, 2011, the  
24 state contribution rate shall be twenty-three and six-tenths  
25 percent of the salary of each member;

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1 B. from July 1, 2011 through June 30, 2012, the  
2 state contribution rate shall be twenty-one and eighty-five  
3 hundredths percent of the salary of each member; and

4 C. from July 1, 2012 through June 30, 2013, the  
5 state contribution rate shall be twenty-three and six-tenths  
6 percent of the salary of each member."

7 SECTION 9. TEMPORARY PROVISION--STATE OFFICER MEMBER  
8 COVERAGE PLAN 1--ELECTIONS.--On or before October 1, 2012, the  
9 public employees retirement board shall conduct an election to  
10 submit to motor transportation officer members currently  
11 contributing under state general member coverage plan 3 the  
12 question of adopting state officer member coverage plan 1. The  
13 election shall be conducted in accordance with procedures  
14 adopted by the public employees retirement board, and the  
15 retirement board shall certify the results of the election to  
16 the secretary of state on or before November 1, 2012.

17 SECTION 10. REPEAL.--Laws 2009, Chapter 287, Section 2 is  
18 repealed.