

HOUSE BILL 147

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

Mimi Stewart

AN ACT

RELATING TO PENSIONS; AMENDING THE PUBLIC EMPLOYEES RETIREMENT  
ACT TO CHANGE THE REQUIREMENTS FOR RETURNING TO PUBLIC  
EMPLOYMENT AFTER RETIREMENT.

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) is amended to read:

"10-11-8. NORMAL RETIREMENT--RETURN TO EMPLOYMENT--  
BENEFITS CONTINUED--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;

.190546.1

underscored material = new  
[bracketed material] = delete

underscored material = new  
[bracketed material] = delete

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

4                   (3) the member selects an effective date of  
5 retirement that is the first day of a calendar month; and

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

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

12                   C. Except as provided in Subsection D of this  
13 section, on or after [July 1, 2010, a retired member may be  
14 subsequently employed by an affiliated public employer only  
15 pursuant to the following provisions:

16                   ~~(1) the retired member has not been employed~~  
17 ~~as an employee of an affiliated public employer or retained as~~  
18 ~~an independent contractor by the affiliated public employer~~  
19 ~~from which the retired member retired for at least twelve~~  
20 ~~consecutive months from the date of retirement to the~~  
21 ~~commencement of employment or reemployment with an affiliated~~  
22 ~~public employer;~~

23                   ~~(2) the retired member's pension shall be~~  
24 ~~suspended upon commencement of the employment;~~

25                   ~~(3) except as provided in Subsection F of this~~

.190546.1

underscored material = new  
[bracketed material] = delete

1 ~~section, the previously retired member shall not become a~~  
2 ~~member and thus the previously retired member shall accrue no~~  
3 ~~service credit and the previously retired member and that~~  
4 ~~person's affiliated public employer shall make no contributions~~  
5 ~~under any coverage plan pursuant to the Public Employees~~  
6 ~~Retirement Act; and~~

7 ~~(4) upon termination of the subsequent~~  
8 ~~employment, the previously retired member's pension shall~~  
9 ~~resume in accordance with the provisions of Subsection A of~~  
10 ~~this section] July 1, 2013, if a member retires and is~~  
11 ~~subsequently employed by any affiliated public employer, the~~  
12 ~~retired member's pension shall be suspended effective the first~~  
13 ~~day of the month following the month in which the previously~~  
14 ~~retired member has earned fifteen thousand dollars (\$15,000) or~~  
15 ~~more during a calendar year. When the pension is suspended,~~  
16 ~~the following conditions shall apply:~~

17 ~~(1) the retired member who is subsequently~~  
18 ~~employed by an affiliated public employer shall become a~~  
19 ~~member. The previously retired member and the subsequent~~  
20 ~~affiliated public employer shall make the required employee and~~  
21 ~~employer contributions, and the previously retired member shall~~  
22 ~~accrue service credit for the period of subsequent employment;~~  
23 ~~and~~

24 ~~(2) when a previously retired member~~  
25 ~~terminates the subsequent employment with an affiliated public~~

.190546.1

underscoring material = new  
~~[bracketed material] = delete~~

1 employer, the member shall retire according to the provisions  
2 of the Public Employees Retirement Act, subject to the  
3 following conditions:

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

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

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

16 D. The provisions of Subsection C of this section  
17 do not apply to:

18 (1) a retired member employed by the  
19 legislature for legislative session work;

20 (2) a retired member employed temporarily as a  
21 precinct board member for a municipal election or an election  
22 covered by the Election Code; or

23 (3) a retired member who is elected to serve a  
24 term as an elected official; provided that:

25 (a) the retired member files an

.190546.1

underscored material = new  
[bracketed material] = delete

1 irrevocable exemption from membership with the association  
2 within thirty days of taking office; and

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

5 E. A retired member who returns to employment  
6 during retirement pursuant to Subsection D of this section is  
7 entitled to receive retirement benefits but is not entitled to  
8 accrue service credit or to acquire or purchase service credit  
9 in the future for the period of the previously retired member's  
10 reemployment with an affiliated public employer.

11 ~~[F. At any time during a previously retired~~  
12 ~~member's subsequent employment pursuant to Subsection C of this~~  
13 ~~section, the previously retired member may elect to become a~~  
14 ~~member and the following conditions shall apply:~~

15 ~~(1) the previously retired member and the~~  
16 ~~subsequent affiliated public employer shall make the required~~  
17 ~~employee and employer contributions, and the previously retired~~  
18 ~~member shall accrue service credit for the period of subsequent~~  
19 ~~employment; and~~

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

25 ~~(a) payment of the pension shall resume~~

.190546.1

underscored material = new  
[bracketed material] = delete

1 ~~in accordance with the provisions of Subsection A of this~~  
2 ~~section;~~

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

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

12 ~~G.] F.~~ A previously retired member who returned to  
13 work with an affiliated public employer prior to July 1, 2010  
14 shall be subject to the provisions of this section in effect on  
15 the date the previously retired member returned to work;  
16 provided that, on and after July 1, 2010, the previously  
17 retired member shall pay the employee contribution in an amount  
18 specified in the Public Employees Retirement Act for the  
19 position in which the previously retired member is employed;  
20 and provided further that the affiliated public employer's  
21 contributions as specified in that act or as adjusted for full  
22 actuarial cost at the determination of the association shall be  
23 paid to the fund.

24 ~~[H.] G.~~ The pension of a member who has three or  
25 more years of service credit under each of two or more coverage

.190546.1

underscoring material = new  
~~[bracketed material] = delete~~

1 plans shall be determined in accordance with the coverage plan  
2 that produces the highest pension. The pension of a member who  
3 has service credit under two or more coverage plans but who has  
4 three or more years of service credit under only one of those  
5 coverage plans shall be determined in accordance with the  
6 coverage plan in which the member has three or more years of  
7 service credit. If the service credit is acquired under two  
8 different coverage plans applied to the same affiliated public  
9 employer as a consequence of an election by the members,  
10 adoption by the affiliated public employer or a change in the  
11 law that results in the application of a coverage plan with a  
12 greater pension, the greater pension shall be paid a member  
13 retiring from the affiliated public employer under which the  
14 change in coverage plan took place regardless of the amount of  
15 service credit under the coverage plan producing the greater  
16 pension; provided that the member has three or more years of  
17 continuous employment with that affiliated public employer  
18 immediately preceding or immediately preceding and immediately  
19 following the date the coverage plan changed. The provisions  
20 of each coverage plan for the purpose of this subsection shall  
21 be those in effect at the time the member ceased to be covered  
22 by the coverage plan. "Service credit", for the purposes of  
23 this subsection, shall be only personal service rendered an  
24 affiliated public employer and credited to the member under the  
25 provisions of Subsection A of Section 10-11-4 NMSA 1978.

.190546.1

underscoring material = new  
~~[bracketed material]~~ = delete

1 Service credited under any other provision of the Public  
2 Employees Retirement Act shall not be used to satisfy the  
3 three-year service credit requirement of this subsection."

4 SECTION 2. EFFECTIVE DATE.--The effective date of the  
5 provisions of this act is July 1, 2013.

6 - 8 -

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25