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SENATE BILL 530

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

INTRODUCED BY

Carlos R. Cisneros

AN ACT

RELATING TO PUBLIC RETIREMENT; AMENDING A SECTION OF THE PUBLIC EMPLOYEES RETIREMENT ACT TO REMOVE THE DEADLINE FOR FILING AN IRREVOCABLE EXEMPTION FROM MEMBERSHIP BY A RETIRED MEMBER WHO IS AN ELECTED OFFICIAL.

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

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1 with the association;

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

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

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

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

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

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

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

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1 (3) except as provided in Subsection F of this  
2 section, the previously retired member shall not become a  
3 member and thus the previously retired member shall accrue no  
4 service credit and the previously retired member and that  
5 person's affiliated public employer shall make no contributions  
6 under any coverage plan pursuant to the Public Employees  
7 Retirement Act; and

8 (4) upon termination of the subsequent  
9 employment, the previously retired member's pension shall  
10 resume in accordance with the provisions of Subsection A of  
11 this section.

12 D. The provisions of Subsection C of this section  
13 do not apply to:

14 (1) a retired member employed by the  
15 legislature for legislative session work;

16 (2) a retired member employed temporarily as a  
17 precinct board member for a municipal election or an election  
18 covered by the Election Code; or

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

21 (a) the retired member files an  
22 irrevocable exemption from membership with the association  
23 [~~within thirty days of taking office~~]; and

24 (b) the irrevocable exemption shall be  
25 for the elected official's [~~term of~~] tenure in office.

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

7           F. At any time during a previously retired member's  
8 subsequent employment pursuant to Subsection C of this section,  
9 the previously retired member may elect to become a member and  
10 the following conditions shall apply:

11                   (1) the previously retired member and the  
12 subsequent affiliated public employer shall make the required  
13 employee and employer contributions, and the previously retired  
14 member shall accrue service credit for the period of subsequent  
15 employment; and

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

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

24                           (b) unless the previously retired member  
25 accrued at least three years of service credit on account of

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1 the subsequent employment, the recalculation of pension shall:  
2 1) employ the form of payment selected by the previously  
3 retired member at the time of the first retirement; and 2) use  
4 the provisions of the coverage plan applicable to the member on  
5 the date of the first retirement; and

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

8 G. A previously retired member who returned to work  
9 with an affiliated public employer prior to July 1, 2010 shall  
10 be subject to the provisions of this section in effect on the  
11 date the previously retired member returned to work; provided  
12 that, on and after July 1, 2010, the previously retired member  
13 shall pay the employee contribution in an amount specified in  
14 the Public Employees Retirement Act for the position in which  
15 the previously retired member is employed.

16 H. The pension of a member who has three or more  
17 years of service credit under each of two or more coverage  
18 plans shall be determined in accordance with the coverage plan  
19 that produces the highest pension. The pension of a member who  
20 has service credit under two or more coverage plans but who has  
21 three or more years of service credit under only one of those  
22 coverage plans shall be determined in accordance with the  
23 coverage plan in which the member has three or more years of  
24 service credit. If the service credit is acquired under two  
25 different coverage plans applied to the same affiliated public

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1 employer as a consequence of an election by the members,  
2 adoption by the affiliated public employer or a change in the  
3 law that results in the application of a coverage plan with a  
4 greater pension, the greater pension shall be paid a member  
5 retiring from the affiliated public employer under which the  
6 change in coverage plan took place regardless of the amount of  
7 service credit under the coverage plan producing the greater  
8 pension; provided that the member has three or more years of  
9 continuous employment with that affiliated public employer  
10 immediately preceding or immediately preceding and immediately  
11 following the date the coverage plan changed. The provisions  
12 of each coverage plan for the purpose of this subsection shall  
13 be those in effect at the time the member ceased to be covered  
14 by the coverage plan. "Service credit", for the purposes of  
15 this subsection, shall be only personal service rendered an  
16 affiliated public employer and credited to the member under the  
17 provisions of Subsection A of Section 10-11-4 NMSA 1978.  
18 Service credited under any other provision of the Public  
19 Employees Retirement Act shall not be used to satisfy the  
20 three-year service credit requirement of this subsection."

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