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HOUSE BILL 297

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

Yvette Herrell

AN ACT

RELATING TO PUBLIC EMPLOYEES RETIREMENT; ADDING AN EXCEPTION FOR CHIEFS OF POLICE AND UNDERSHERIFFS TO THE RETURN-TO-WORK RESTRICTIONS IN THE PUBLIC EMPLOYEES RETIREMENT ACT.

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--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;

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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 E 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 [~~previously~~] retired member's pension
24 shall be suspended upon commencement of the subsequent
25 employment;

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1 (3) except as provided in Subsection G of this
2 section, the [previously] retired member shall not become a
3 member and [~~thus the previously retired member~~] shall not
4 accrue service credit, and the [previously] retired member and
5 that person's affiliated public employer shall not make
6 contributions under any coverage plan pursuant to the Public
7 Employees 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. Notwithstanding the provisions of Subsection B
13 of Section 10-11-118 NMSA 1978, on and after July 1, 2013, if a
14 retired member becomes employed with an employer pursuant to
15 the Educational Retirement Act:

16 (1) the retired member's cost-of-living
17 pension adjustment shall be suspended upon commencement of the
18 employment; and

19 (2) upon termination of the employment, the
20 retired member's suspended cost-of-living pension adjustment
21 shall be reinstated as provided under Subsection B of
22 Section 10-11-118 NMSA 1978.

23 E. The provisions of Subsections C and H of this
24 section do not apply to:

25 (1) a retired member employed by the

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1 legislature for legislative session work;

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

5 (3) a retired member who is elected to serve a
6 term as an elected official or who is appointed chief of police
7 or undersheriff of an affiliated public employer; provided
8 that:

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

12 (b) the irrevocable exemption shall be
13 for the [~~elected official's~~] duration of the term of office.

14 F. A retired member who returns to employment
15 during retirement pursuant to Subsection E of this section:

16 (1) is entitled to receive retirement benefits
17 but is not entitled to accrue service credit or to acquire or
18 purchase service credit in the future for the period of the
19 [~~previously~~] retired member's [~~reemployment~~] subsequent
20 employment with an affiliated public employer; and

21 (2) shall not pay the member contributions,
22 and the retired member's affiliated public employer shall not
23 pay the employer contributions, under the applicable member
24 coverage plan pursuant to the Public Employees Retirement Act
25 during the period of subsequent employment.

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1 G. At any time during a [previously] retired
2 member's subsequent employment pursuant to Subsection C of this
3 section, the [previously] retired member may elect to become a
4 member and the following conditions shall apply:

5 (1) the previously retired member and the
6 subsequent affiliated public employer shall make the required
7 employee and employer contributions, and the previously retired
8 member shall accrue service credit for the period of subsequent
9 employment; and

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

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

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

25 (c) the recalculated pension shall not

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1 be less than the amount of the suspended pension.

2 H. A [~~previously~~] retired member who returned to
3 work with an affiliated public employer prior to July 1, 2010
4 shall be subject to the provisions of this section in effect on
5 the date the [~~previously~~] retired member returned to work;
6 provided that:

7 (1) on and after July 1, 2010, the
8 [~~previously~~] retired member shall pay the employee contribution
9 in an amount specified in the Public Employees Retirement Act
10 for the position in which the [~~previously~~] retired member is
11 subsequently employed;

12 (2) notwithstanding the provisions of
13 Subsection B of Section 10-11-118 NMSA 1978, on and after July
14 1, 2013, the previously retired member's cost-of-living pension
15 adjustment shall be suspended; and

16 (3) upon termination of the employment with an
17 affiliated public employer, the previously retired member's
18 cost-of-living pension adjustment shall be reinstated as
19 provided in Subsection B of Section 10-11-118 NMSA 1978.

20 I. The pension of a member who has earned service
21 credit under more than one coverage plan shall be determined as
22 follows:

23 (1) the pension of a member who has three or
24 more years of service credit earned on or before June 30, 2013
25 under each of two or more coverage plans shall be determined in

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1 accordance with the coverage plan that produces the highest
2 pension;

3 (2) the pension of a member who has service
4 credit earned on or before June 30, 2013 under two or more
5 coverage plans but who has three or more years of service
6 credit under only one of those coverage plans shall be
7 determined in accordance with the coverage plan in which the
8 member has three or more years of service credit. If the
9 service credit is acquired under two different coverage plans
10 applied to the same affiliated public employer as a consequence
11 of an election by the members, adoption by the affiliated
12 public employer or a change in the law that results in the
13 application of a coverage plan with a greater pension, the
14 greater pension shall be paid a member retiring from the
15 affiliated public employer under which the change in coverage
16 plan took place regardless of the amount of service credit
17 under the coverage plan producing the greater pension; provided
18 that the member has three or more years of continuous
19 employment with that affiliated public employer immediately
20 preceding or immediately preceding and immediately following
21 the date the coverage plan changed;

22 (3) the pension of a member who has service
23 credit earned on or before June 30, 2013 under each of two or
24 more coverage plans and who has service credit earned under any
25 coverage plan on or after July 1, 2013 shall be equal to the

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1 sum of:

2 (a) the pension attributable to the
3 service credit earned on or before June 30, 2013 determined
4 pursuant to Paragraph (1) or (2) of this subsection; and

5 (b) the pension attributable to the
6 service credit earned under each coverage plan on or after July
7 1, 2013;

8 (4) the pension of a member who has service
9 credit earned only on and after July 1, 2013 shall be equal to
10 the sum of the pension attributable to the service credit the
11 member has accrued under each coverage plan; and

12 (5) the provisions of each coverage plan for
13 the purpose of this subsection shall be those in effect at the
14 time the member ceased to be covered by the coverage plan.

15 "Service credit", for the purposes of this subsection, shall be
16 only personal service rendered an affiliated public employer
17 and credited to the member under the provisions of Subsection A
18 of Section 10-11-4 NMSA 1978. Service credited under any other
19 provision of the Public Employees Retirement Act shall not be
20 used to satisfy the three-year service credit requirement of
21 this subsection."

22 SECTION 2. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is July 1, 2014.

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