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HOUSE BILL 340

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

INTRODUCED BY

Candy Spence Ezzell

AN ACT

RELATING TO PENSIONS; PROVIDING EXCEPTIONS AND ESTABLISHING
CONDITIONS FOR RETIRED STATE POLICE OFFICERS, ADULT
CORRECTIONAL OFFICERS, MUNICIPAL POLICE OFFICERS AND CERTAIN
LICENSED SOCIAL WORKERS TO RETURN TO WORK WITH AN AFFILIATED
PUBLIC EMPLOYER WITHOUT SUSPENDING THEIR PENSION BENEFITS.

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--
EXCEPTIONS AND CONDITIONS--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

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1 retirement, in the form prescribed by the association, is filed
2 with the association;

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

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

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

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

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

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

25 (2) the [~~previously~~] retired member's pension

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1 shall be suspended upon commencement of the employment;

2 (3) except as provided in Subsection [G] H of
3 this section, the [~~previously~~] retired member shall not become
4 a member and thus the [~~previously~~] retired member shall not
5 accrue service credit, and the [~~previously~~] retired member and
6 that person's subsequent affiliated public employer shall not
7 make contributions under any coverage plan pursuant to the
8 Public Employees Retirement Act; and

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

13 D. Notwithstanding the provisions of Subsection B
14 of Section 10-11-118 NMSA 1978, on and after July 1, 2013, if a
15 retired member becomes employed with an employer pursuant to
16 the Educational Retirement Act:

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

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

24 E. The provisions of Subsections C and [H] I of
25 this section do not apply to:

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

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

6 (3) a retired licensed social worker employed
7 by an affiliated public employer;

8 (4) a retired state police member, a retired
9 adult correctional officer member, a retired municipal police
10 member, a retired municipal fire member or a retired county
11 sheriff, each of whom has not been employed with an affiliated
12 public employer or retained as an independent contractor by the
13 affiliated public employer from which the member retired for at
14 least ninety consecutive days from the date of retirement until
15 the date of the commencement of the subsequent employment; or

16 [~~(3)~~] (5) a retired member who is elected to
17 serve a term as an elected official; provided that:

18 (a) the retired member files an
19 irrevocable exemption from membership with the association
20 within thirty days of taking office; and

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

23 F. A retired member who returns to employment
24 during retirement pursuant to Subsection E of this section is
25 entitled to receive retirement benefits but is not entitled to

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1 accrue service credit or to acquire or purchase service credit
2 in the future for the period of the [~~previously~~] retired
3 member's [~~reemployment~~] subsequent employment with an
4 affiliated public employer and, except as provided in
5 Subsection G of this section, the retired member shall not pay
6 the member contributions and the retired member's subsequent
7 affiliated public employer shall not pay the employer
8 contributions applicable to the member coverage plan associated
9 with the retired member's subsequent employment.

10 G. A member who returns to employment pursuant to
11 Paragraph (3) or (4) of Subsection E of this section shall pay
12 the member contributions, and the retired member's subsequent
13 affiliated public employer shall pay the employer
14 contributions, applicable to the member coverage plan
15 associated with the retired member's subsequent employment.

16 [~~G.~~] H. At any time during a [~~previously~~] retired
17 member's subsequent employment pursuant to Subsection C of this
18 section, the [~~previously~~] retired member may elect to become a
19 member and the following conditions shall apply:

20 (1) the [~~previously~~] retired member and the
21 subsequent affiliated public employer shall make the required
22 employee and employer contributions, and the [~~previously~~]
23 retired member shall accrue service credit for the period of
24 subsequent employment; and

25 (2) when the [~~previously~~] retired member

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1 terminates the subsequent employment with an affiliated public
2 employer, the [~~previously~~] retired member shall retire
3 according to the provisions of the Public Employees Retirement
4 Act, subject to the following conditions:

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

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

16 (c) the recalculated pension shall not
17 be less than the amount of the suspended pension.

18 [~~H.~~] I. A [~~previously~~] retired member who returned
19 to work with an affiliated public employer prior to July 1,
20 2010 shall be subject to the provisions of this section in
21 effect on the date the [~~previously~~] retired member returned to
22 work; provided that:

23 (1) on and after July 1, 2010, the previously
24 retired member shall pay the employee contribution in an amount
25 specified in the Public Employees Retirement Act for the

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1 position in which the previously retired member is subsequently
2 employed;

3 (2) notwithstanding the provisions of
4 Subsection B of Section 10-11-118 NMSA 1978, on and after July
5 1, 2013, the previously retired member's cost-of-living pension
6 adjustment shall be suspended; and

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

12 [~~F.~~] J. The pension of a member who has earned
13 service credit under more than one coverage plan shall be
14 determined as follows:

15 (1) the pension of a member who has three or
16 more years of service credit earned on or before June 30, 2013
17 under each of two or more coverage plans shall be determined in
18 accordance with the coverage plan that produces the highest
19 pension;

20 (2) the pension of a member who has service
21 credit earned on or before June 30, 2013 under two or more
22 coverage plans but who has three or more years of service
23 credit under only one of those coverage plans shall be
24 determined in accordance with the coverage plan in which the
25 member has three or more years of service credit. If the

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1 service credit is acquired under two different coverage plans
2 applied to the same affiliated public employer as a consequence
3 of an election by the members, adoption by the affiliated
4 public employer or a change in the law that results in the
5 application of a coverage plan with a greater pension, the
6 greater pension shall be paid a member retiring from the
7 affiliated public employer under which the change in coverage
8 plan took place regardless of the amount of service credit
9 under the coverage plan producing the greater pension; provided
10 that the member has three or more years of continuous
11 employment with that affiliated public employer immediately
12 preceding or immediately preceding and immediately following
13 the date the coverage plan changed;

14 (3) the pension of a member who has service
15 credit earned on or before June 30, 2013 under each of two or
16 more coverage plans and who has service credit earned under any
17 coverage plan on or after July 1, 2013 shall be equal to the
18 sum of:

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

22 (b) the pension attributable to the
23 service credit earned under each coverage plan on or after July
24 1, 2013;

25 (4) the pension of a member who has service

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1 credit earned only on and after July 1, 2013 shall be equal to
2 the sum of the pension attributable to the service credit the
3 member has accrued under each coverage plan; and

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

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

14 **SECTION 2. EFFECTIVE DATE.**--The effective date of the
15 provisions of this act is July 1, 2014.