

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 235

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

AN ACT

RELATING TO PUBLIC EMPLOYEES; PROVIDING FOR AN INVESTMENT-
PERFORMANCE-BASED FRAMEWORK FOR THE COMPENSATION OF PUBLIC
EMPLOYEES RETIREMENT ASSOCIATION, EDUCATIONAL RETIREMENT BOARD
AND STATE INVESTMENT COUNCIL INVESTMENT STAFF; EXEMPTING THOSE
AGENCIES' INVESTMENT STAFF POSITIONS FROM THE PERSONNEL ACT.

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

SECTION 1. A new section of the Public Employees
Retirement Act is enacted to read:

"[NEW MATERIAL] INVESTMENT STAFF--INVESTMENT-PERFORMANCE-
BASED COMPENSATION--REPORTING.--

A. Each year, the retirement board, in consultation
with the executive director of the association, may establish a
framework for the compensation of the association's chief
investment officer and other investment staff that:

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1 (1) includes, for each of those positions:
2 (a) a base compensation component; and
3 (b) a variable, investment-performance-
4 based component aligned with investment industry norms and best
5 practices; and

6 (2) applies to the following fiscal year.

7 B. The association's chief investment officer and
8 other investment staff may receive compensation in accordance
9 with the framework developed by the retirement board.

10 C. Each year, the executive director of the
11 association shall report to the legislative finance committee
12 and, as appropriate, to one or more other legislative interim
13 committees, on the compensation framework established in
14 accordance with Subsection A of this section."

15 SECTION 2. A new section of the Educational Retirement
16 Act is enacted to read:

17 "[NEW MATERIAL] INVESTMENT STAFF--INVESTMENT-PERFORMANCE-
18 BASED COMPENSATION--REPORTING.--

19 A. Each year, the board, in consultation with the
20 director, may establish a framework for the compensation of the
21 board's chief investment officer and other investment staff
22 that:

23 (1) includes, for each of those positions:
24 (a) a base compensation component; and
25 (b) a variable, investment-performance-

1 based component aligned with investment industry norms and best
2 practices; and

3 (2) applies to the following fiscal year.

4 B. The board's chief investment officer and other
5 investment staff may receive compensation in accordance with
6 the framework developed by the board.

7 C. Each year, the director shall report to the
8 legislative finance committee and, as appropriate, to one or
9 more other legislative interim committees, on the compensation
10 framework established in accordance with Subsection A of this
11 section."

12 SECTION 3. [NEW MATERIAL] INVESTMENT STAFF--INVESTMENT-
13 PERFORMANCE-BASED COMPENSATION--REPORTING.--

14 A. Each year, the state investment council may
15 establish a framework for the compensation of the state
16 investment officer and other investment staff that:

17 (1) includes, for each of those positions:

18 (a) a base compensation component; and

19 (b) a variable, investment-performance-
20 based component aligned with investment industry norms and best
21 practices; and

22 (2) applies to the following fiscal year.

23 B. The state investment officer and other
24 investment staff may receive compensation in accordance with
25 the framework developed by the state investment council.

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1 C. Each year, the state investment council shall
2 report to the legislative finance committee and, as
3 appropriate, to one or more other legislative interim
4 committees on the compensation framework established in
5 accordance with Subsection A of this section.

6 SECTION 4. Section 10-9-4 NMSA 1978 (being Laws 1961,
7 Chapter 240, Section 4, as amended) is amended to read:

8 "10-9-4. COVERAGE OF SERVICE.--The Personnel Act and the
9 service cover all state positions except:

10 A. officials elected by popular vote or appointed
11 to fill vacancies to elective offices;

12 B. members of boards and commissions and heads of
13 agencies appointed by the governor;

14 C. heads of agencies appointed by boards or
15 commissions;

16 D. directors of department divisions;

17 E. those in educational institutions and in public
18 schools;

19 F. those who are employed by state institutions and
20 by state agencies providing educational programs and who are
21 required to hold valid certificates as certified school
22 instructors, as defined in Section 22-1-2 NMSA 1978, issued by
23 the public education department;

24 G. those in the governor's office;

25 H. those in the state militia or the commissioned

1 officers of the New Mexico state police division of the
2 department of public safety;

3 I. those in the judicial branch of government;

4 J. those in the public defender department, upon
5 implementation of personnel policies and rules by the public
6 defender commission;

7 K. those in the legislative branch of government;

8 L. ~~[not more than]~~ up to two assistants and one
9 secretary in the office of each official listed in Subsections
10 A [B] and C of this section ~~[excluding members of boards and~~
11 ~~commissions in Subsection B of this section]~~ and in the office
12 of each head of an agency appointed by the governor;

13 M. those of a professional or scientific nature and
14 that are temporary ~~[in nature];~~

15 N. those filled by patients or inmates in
16 charitable, penal or correctional institutions;

17 O. state employees if the board in its discretion
18 decides that the position is one of policymaking; ~~and]~~

19 P. disadvantaged youth under twenty-two years of
20 age who are regularly enrolled or to be enrolled in a secondary
21 educational institution approved by the public education
22 department or in an accredited state institution of advanced
23 learning or vocational training and who are to be employed for
24 not more than seven hundred twenty hours during any calendar
25 year:

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1 (1) the term "disadvantaged youth" shall be
2 defined for purposes of this exemption by regulation duly
3 promulgated by the board; and

4 (2) the board shall:

5 (a) require that all the criteria of
6 this subsection have been met;

7 (b) establish employment lists for the
8 certification of the highest-standing candidates to the
9 prospective employers; and

10 (c) establish the pay rates for such
11 employees;

12 Q. the chief investment officer of the public
13 employees retirement association and those subject to the
14 investment-performance-based compensation framework provided
15 for by Section 1 of this 2019 act; provided, however that the
16 framework has been adopted;

17 R. the chief investment officer of the educational
18 retirement board and those subject to the investment-
19 performance-based compensation framework provided for by
20 Section 2 of this 2019 act; provided, however, that the
21 framework has been adopted; and

22 S. the state investment officer and those subject
23 to the investment-performance-based compensation framework
24 provided for by Section 3 of this 2019 act; provided, however,
25 that the framework has been adopted."

1 SECTION 5. Section 10-9-5 NMSA 1978 (being Laws 1978,
2 Chapter 96, Section 1, as amended) is amended to read:

3 "10-9-5. PUBLIC OFFICERS AND PUBLIC EMPLOYEES--EXECUTIVE
4 BRANCH--ANNUAL EXEMPT SALARIES PLAN.--

5 A. The department of finance and administration
6 shall prepare, by December 1 of each year, an exempt salaries
7 plan for the governor's approval [~~The plan shall specify~~] that
8 specifies salary ranges for the following public officer and
9 public employee positions of the executive branch of
10 government:

- 11 (1) members of boards and commissions
12 appointed by the governor;
- 13 (2) heads of agencies or departments appointed
14 by the governor;
- 15 (3) heads of agencies or departments appointed
16 by the respective boards and commissions of the agencies;
- 17 (4) directors of department divisions;
- 18 (5) employees in the governor's office;
- 19 (6) positions in the state militia and the
20 commissioned officers of the New Mexico state police division
21 of the department of public safety;
- 22 (7) assistants and secretaries in the offices
23 of each official covered by Paragraphs (2) and (3) [~~and (10)~~]
24 of this subsection;
- 25 (8) temporary positions of a professional or

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1 scientific nature [~~which are temporary in nature~~]; and

2 (9) state employees whose positions the
3 [~~personnel~~] board has classified as [~~policy-making~~]
4 policymaking positions and exempt employees of elective public
5 officials [~~and~~

6 (~~10~~) ~~secretaries of departments appointed by~~
7 ~~the governor~~].

8 B. Excluded from the provisions of this section
9 are:

10 (1) employees of the [~~commission on~~] higher
11 education [~~and~~] department;

12 (2) employees of state educational
13 institutions named in Article 12, Section 11 of the
14 constitution of New Mexico;

15 (3) the chief investment officer of the public
16 employees retirement association and those subject to the
17 investment-performance-based compensation framework provided
18 for by Section 1 of this 2019 act; provided, however, that the
19 framework has been adopted;

20 (4) the chief investment officer of the
21 educational retirement board and those subject to the
22 investment-performance-based compensation framework provided
23 for by Section 2 of this 2019 act; provided, however, that the
24 framework has been adopted; and

25 (5) the state investment officer and those

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1 subject to the investment-performance-based compensation
2 framework provided for by Section 3 of this 2019 act; provided,
3 however, that the framework has been adopted.

4 C. The exempt salaries plan for the ensuing fiscal
5 year, as prepared by the department of finance and
6 administration and approved by the governor, shall be published
7 as a part of the executive budget document presented to the
8 legislature at its next regular session following the
9 preparation of the plan.

10 D. Upon the governor's approval, the plan shall
11 take effect at the beginning of the subsequent fiscal year."

12 SECTION 6. Section 10-11-2 NMSA 1978 (being Laws 1987,
13 Chapter 253, Section 2, as amended) is amended to read:

14 "10-11-2. DEFINITIONS.--As used in the Public Employees
15 Retirement Act:

16 A. "accumulated member contributions" means the
17 amounts deducted from the salary of a member and credited to
18 the member's individual account, together with interest, if
19 any, credited to that account;

20 B. "affiliated public employer" means the state and
21 any public employer affiliated with the association as provided
22 in the Public Employees Retirement Act, but does not include an
23 employer pursuant to the Magistrate Retirement Act, the
24 Judicial Retirement Act or the Educational Retirement Act;

25 C. "association" means the public employees

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1 retirement association established under the Public Employees
2 Retirement Act;

3 D. "disability retired member" means a retired
4 member who is receiving a pension pursuant to the disability
5 retirement provisions of the Public Employees Retirement Act;

6 E. "disability retirement pension" means the
7 pension paid pursuant to the disability retirement provisions
8 of the Public Employees Retirement Act;

9 F. "educational retirement system" means that
10 retirement system provided for in the Educational Retirement
11 Act;

12 G. "employee" means any employee of an affiliated
13 public employer;

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

18 I. "final average salary" means the final average
19 salary calculated in accordance with the provisions of the
20 applicable coverage plan;

21 J. "form of payment" means the applicable form of
22 payment of a pension provided for in Section 10-11-117 NMSA
23 1978;

24 K. "former member" means a person who was
25 previously employed by an affiliated public employer, who has

1 terminated that employment and who has received a refund of
2 member contributions;

3 L. "fund" means the funds included under the Public
4 Employees Retirement Act;

5 M. "member" means a currently employed,
6 contributing employee of an affiliated public employer, or a
7 person who has been but is not currently employed by an
8 affiliated public employer, who has not retired and who has not
9 received a refund of member contributions; "member" also
10 includes the following:

11 (1) "adult correctional officer member" means
12 a member who is employed as an adult correctional officer or an
13 adult correctional officer specialist by a state correctional
14 facility of the corrections department or its successor agency;

15 (2) "juvenile correctional officer member"
16 means a member who is employed as a juvenile correctional
17 officer by the children, youth and families department or its
18 successor agency;

19 (3) "municipal detention officer member" means
20 a member who is employed by an affiliated public employer other
21 than the state and who has inmate custodial responsibilities at
22 a facility used for the confinement of persons charged with or
23 convicted of a violation of a law or ordinance;

24 (4) "municipal fire member" means any member
25 who is employed as a full-time nonvolunteer firefighter by an

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1 affiliated public employer and who has taken the oath
2 prescribed for firefighters;

3 (5) "municipal police member" means any member
4 who is employed as a police officer by an affiliated public
5 employer, other than the state, and who has taken the oath
6 prescribed for police officers; and

7 (6) "state police member" means a member who
8 is an officer of the New Mexico state police and who has taken
9 the oath prescribed for such officers, except that a state
10 police member shall not include a member who is an officer of
11 the New Mexico state police division and who was certified and
12 commissioned as of June 30, 2015 in the former motor
13 transportation division or the former special investigations
14 division of the department of public safety;

15 N. "membership" means membership in the
16 association;

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

20 P. "public employer" means the state, any
21 municipality, city, county, metropolitan arroyo flood control
22 authority, economic development district, regional housing
23 authority, soil and water conservation district, entity created
24 pursuant to a joint powers agreement, council of government,
25 conservancy district, irrigation district, water and sanitation

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1 district, water district and metropolitan water board,
2 including the boards, departments, bureaus and agencies of a
3 public employer, so long as these entities fall within the
4 meaning of governmental plan as that term is used in Section
5 414(d) of the Internal Revenue Code of 1986, as amended;

6 Q. "refund beneficiary" means a person designated
7 by the member, in writing, in the form prescribed by the
8 association, as the person who would be refunded the member's
9 accumulated member contributions payable if the member dies and
10 no survivor pension is payable or who would receive the
11 difference between pension paid and accumulated member
12 contributions if the retired member dies before receiving in
13 pension payments the amount of the accumulated member
14 contributions;

15 R. "retire" means to:

16 (1) terminate employment with all employers
17 covered by any state system or the educational retirement
18 system; and

19 (2) receive a pension from a state system or
20 the educational retirement system;

21 S. "retired member" means a person who has met all
22 requirements for retirement and who is receiving a pension from
23 the fund;

24 T. "retirement board" means the retirement board
25 provided for in the Public Employees Retirement Act;

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1 U. "salary" means the base salary or wages paid a
2 member, including longevity pay, for personal services rendered
3 an affiliated public employer. "Salary" ~~[shall]~~ does not
4 include overtime pay, allowances for housing, clothing,
5 equipment or travel, payments for unused sick leave, unless the
6 unused sick leave payment is made through continuation of the
7 member on the regular payroll for the period represented by
8 that payment, ~~[and]~~ investment-performance-based compensation
9 received in accordance with Section 1, 2 or 3 of this 2019 act
10 or any other form of remuneration not specifically designated
11 by law as included in salary for Public Employees Retirement
12 Act purposes. Salary in excess of the limitations set forth in
13 Section 401(a)(17) of the Internal Revenue Code of 1986, as
14 amended, shall be disregarded. The limitation on compensation
15 for eligible employees shall not be less than the amount that
16 was allowed to be taken into account under the state retirement
17 system acts in effect on July 1, 1993. For purposes of this
18 subsection, "eligible employee" means an individual who was a
19 member of a state system before the first plan year beginning
20 after December 31, 1995;

21 V. "state system" means the retirement programs
22 provided for in the Public Employees Retirement Act, the
23 Magistrate Retirement Act and the Judicial Retirement Act;

24 W. "state retirement system acts" means
25 collectively the Public Employees Retirement Act, the

1 Magistrate Retirement Act, the Judicial Retirement Act and the
2 Volunteer Firefighters Retirement Act; and

3 X. "survivor beneficiary" means a person who
4 receives a pension or who has been designated to be paid a
5 pension as a result of the death of a member or retired
6 member."

7 SECTION 7. EFFECTIVE DATE.--The effective date of the
8 provisions of this act is July 1, 2020.

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