

1 SENATE BILL 446

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Ron Griggs

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10 AN ACT

11 RELATING TO PUBLIC EMPLOYEES RETIREMENT; SEPARATING THE PUBLIC
12 EMPLOYEES RETIREMENT ACT PROVISIONS RELATING TO NORMAL
13 RETIREMENT AND RETURN-TO-WORK REQUIREMENTS; BEGINNING JULY 1,
14 2019, CHANGING THE RETURN-TO-WORK REQUIREMENTS FOR NEW RETURN-
15 TO-WORK RETIRED MEMBERS; CONTINUING PENSIONS, SUSPENDING COST-
16 OF-LIVING ADJUSTMENTS AND REQUIRING NON-REFUNDABLE
17 CONTRIBUTIONS IN CERTAIN RETURN-TO-WORK CASES; ALLOWING
18 AFFILIATED PUBLIC EMPLOYERS TO MAKE BOTH EMPLOYER AND MEMBER
19 CONTRIBUTIONS FOR RETURN-TO-WORK RETIRED MEMBERS; LIMITING THE
20 NUMBER OF RETURN-TO-WORK RETIRED MEMBERS EMPLOYED BY CERTAIN
21 COUNTIES AND MUNICIPALITIES; CONTINUING CERTAIN EXCEPTIONS FROM
22 RETURN-TO-WORK CRITERIA; CHANGING THE EFFECT ON PENSIONS OF
23 RETIRED MEMBERS WHO BECOME ELECTED OFFICIALS.

24
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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1 SECTION 1. Section 10-11-8 NMSA 1978 (being Laws 1987,
2 Chapter 253, Section 8, as amended by Laws 2014, Chapter 35,
3 Section 1 and by Laws 2014, Chapter 39, Section 1 and also by
4 Laws 2014, Chapter 43, Section 1) is amended to read:

5 "10-11-8. NORMAL RETIREMENT [~~RETURN TO EMPLOYMENT--~~
6 ~~BENEFITS CONTINUED--CONTRIBUTIONS~~].--

7 A. A member may retire upon fulfilling the
8 following requirements prior to the selected date of
9 retirement:

10 (1) a written application for normal
11 retirement, in the form prescribed by the association, is filed
12 with the association;

13 (2) employment is terminated with all
14 employers covered by any state system or the educational
15 retirement system;

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

18 (4) the member meets the age and service
19 credit requirement for normal retirement specified in the
20 coverage plan applicable to the member.

21 B. The amount of normal retirement pension is
22 determined in accordance with the coverage plan applicable to
23 the member.

24 ~~[C. Except as provided in Subsection E of this~~
25 ~~section, on or after July 1, 2010, a retired member may be~~

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1 ~~subsequently employed by an affiliated public employer only~~
2 ~~pursuant to the following provisions:~~

3 ~~(1) the retired member has not been employed~~
4 ~~as an employee of an affiliated public employer or retained as~~
5 ~~an independent contractor by the affiliated public employer~~
6 ~~from which the retired member retired for at least twelve~~
7 ~~consecutive months from the date of retirement to the~~
8 ~~commencement of subsequent employment or reemployment with an~~
9 ~~affiliated public employer;~~

10 ~~(2) the retired member's pension shall be~~
11 ~~suspended upon commencement of the subsequent employment;~~

12 ~~(3) except as provided in Subsection G of this~~
13 ~~section, the retired member shall not become a member and shall~~
14 ~~not accrue service credit, and the retired member and that~~
15 ~~person's subsequent affiliated public employer shall not make~~
16 ~~contributions under any coverage plan pursuant to the Public~~
17 ~~Employees Retirement Act; and~~

18 ~~(4) upon termination of the subsequent~~
19 ~~employment, the retired member's pension shall resume in~~
20 ~~accordance with the provisions of Subsection A of this section.~~

21 ~~D. Notwithstanding the provisions of Subsection B~~
22 ~~of Section 10-11-118 NMSA 1978, on and after July 1, 2013, if a~~
23 ~~retired member becomes employed with an employer pursuant to~~
24 ~~the Educational Retirement Act, and effective July 1, 2014, if~~
25 ~~a retired member who, subsequent to retirement, is employed and~~

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1 ~~covered pursuant to the Judicial Retirement Act, and, effective~~
2 ~~July 1, 2014, if a retired member who, subsequent to~~
3 ~~retirement, is employed and covered pursuant to the Magistrate~~
4 ~~Retirement Act:~~

5 ~~(1) the retired member's cost-of-living~~
6 ~~pension adjustment shall be suspended upon commencement of the~~
7 ~~employment; and~~

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

12 ~~E. The provisions of Subsections C, H and I of this~~
13 ~~section 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 in an office covered pursuant to~~
21 ~~the Public Employees Retirement Act; provided that:~~

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

25 ~~(b) the irrevocable exemption shall be~~

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1 ~~for the elected official's term of office.~~

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

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

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

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

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

25 ~~(b) unless the previously retired member~~

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

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

9 ~~H. A retired member who returned to work with an~~
10 ~~affiliated public employer prior to July 1, 2010 shall be~~
11 ~~subject to the provisions of this section in effect on the date~~
12 ~~the retired member returned to work; provided that:~~

13 ~~(1) on and after July 1, 2010, the retired~~
14 ~~member shall pay the employee contribution in an amount~~
15 ~~specified in the Public Employees Retirement Act for the~~
16 ~~position in which the retired member is subsequently employed;~~

17 ~~(2) notwithstanding the provisions of~~
18 ~~Subsection B of Section 10-11-118 NMSA 1978, on and after July~~
19 ~~1, 2013, the retired member's cost-of-living pension adjustment~~
20 ~~shall be suspended; and~~

21 ~~(3) upon termination of the subsequent~~
22 ~~employment with the affiliated public employer, the retired~~
23 ~~member's cost-of-living pension adjustment shall be reinstated~~
24 ~~as provided in Subsection B of Section 10-11-118 NMSA 1978.~~

25 ~~I. Effective July 1, 2014, if a retired member who,~~

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1 ~~subsequent to retirement, is employed and covered pursuant to~~
2 ~~the provisions of the Magistrate Retirement Act or Judicial~~
3 ~~Retirement Act, during the period of subsequent employment:~~

4 ~~(1) the member shall be entitled to receive~~
5 ~~retirement benefits;~~

6 ~~(2) the retired member's cost-of-living~~
7 ~~pension adjustment shall be suspended upon commencement of the~~
8 ~~employment; and~~

9 ~~(3) upon termination of the employment, the~~
10 ~~retired member's suspended cost-of-living pension adjustment~~
11 ~~shall be reinstated as provided under Subsection B of Section~~
12 ~~10-11-118 NMSA 1978.~~

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

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

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

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

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

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

23 (b) the pension attributable to the
24 service credit earned under each coverage plan on or after July
25 1, 2013;

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

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

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

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

17 "[NEW MATERIAL] RETURN TO WORK WITH AN AFFILIATED PUBLIC
18 EMPLOYER OR AN EMPLOYER PURSUANT TO THE JUDICIAL RETIREMENT
19 ACT, THE MAGISTRATE RETIREMENT ACT OR THE EDUCATIONAL
20 RETIREMENT ACT.--

21 A. A retired member who returned to work with an
22 affiliated public employer prior to July 1, 2010 is subject to
23 the provisions of Section 10-11-8 NMSA 1978 in effect on the
24 date the retired member returned to work; provided that:

25 (1) on and after July 1, 2010, the retired

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1 member shall pay the employee contribution in an amount
2 specified in the Public Employees Retirement Act for the
3 position in which the retired member is subsequently employed;
4 and

5 (2) on and after July 1, 2013, the retired
6 member's eligibility for a cost-of-living pension adjustment
7 pursuant to Section 10-11-118 NMSA 1978 shall be suspended
8 until the termination of the subsequent employment and shall
9 resume at that time.

10 B. A retired member who returned to work with an
11 affiliated public employer between July 1, 2010 and June 30,
12 2019 is subject to the provisions of Section 10-11-8 NMSA 1978
13 in effect on the date the retired member returned to work.

14 C. Beginning July 1, 2019, a retired member may be
15 subsequently employed by an affiliated public employer if the
16 retired member has not been employed by an affiliated public
17 employer or been retained as an independent contractor by the
18 affiliated public employer from which the retired member
19 retired for at least one hundred eighty consecutive days from
20 the date of retirement; provided that:

21 (1) the retired member's pension shall
22 continue to be paid but the member's eligibility for cost-of-
23 living adjustments pursuant to Section 10-11-118 NMSA 1978
24 shall be suspended during the subsequent employment and shall
25 resume upon termination of that employment;

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1 (2) the retired member shall not become a
2 member due to the subsequent employment but the retired member
3 and the subsequent employer shall make non-refundable
4 contributions at the higher of the rates required by either the
5 coverage plan from which the retired member retired or the
6 coverage plan of the subsequent employment. The subsequent
7 employer may choose to make both the employer and member
8 contributions; and

9 (3) an affiliated public employer that is a
10 class A county with a population over six hundred thousand or
11 that is a municipality with a population over fifty thousand
12 located within that county:

13 (a) shall not employ the retired member
14 if the employment would cause the number of retired members in
15 that jurisdiction to exceed ten percent of the affiliated
16 public employer's authorized workforce but not counting retired
17 members who were employed prior to July 1, 2019; and

18 (b) may, when employing retired members
19 as certified law enforcement officers, only employ them at
20 ranks below sergeant and shall not promote these retired
21 members above the rank of sergeant, except that an affiliated
22 public employer may recruit a retired member who is a certified
23 law enforcement officer for the position of chief of police.

24 D. Effective July 1, 2014, if a retired member who,
25 subsequent to retirement, is employed and covered pursuant to

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1 the provisions of the Magistrate Retirement Act or Judicial
2 Retirement Act, during the period of subsequent employment:

3 (1) the retired member shall be entitled to
4 receive retirement benefits;

5 (2) the retired member's cost-of-living
6 pension adjustment shall be suspended upon commencement of the
7 employment; and

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

12 E. 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 pension shall
17 continue but the member's eligibility for cost-of-living
18 pension adjustments shall be suspended upon commencement of the
19 employment; and

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

24 F. A retired member may be employed temporarily by
25 the legislature for legislative session work or as a precinct

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1 board member for a municipal election or an election pursuant
2 to the Election Code without being subject to the provisions of
3 this section. The member shall not accrue service credit or
4 acquire or purchase service credit in the future for the period
5 of temporary employment.

6 G. A retired member who becomes an elected official
7 in an office covered pursuant to the Public Employees
8 Retirement Act is subject to Paragraphs (1) and (2) of
9 Subsection C of this section as if the official had been
10 subsequently employed by an affiliated public employer."