

1 SENATE BILL 94

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

3 INTRODUCED BY

4 Clemente Sanchez

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10 AN ACT

11 RELATING TO PUBLIC EMPLOYEE RETIREMENT; ALLOWING RETIRED LAW
12 ENFORCEMENT OFFICERS TO RETURN TO EMPLOYMENT AS LAW ENFORCEMENT
13 PATROL OFFICERS UNDER CERTAIN CONDITIONS.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

20 "10-11-8. NORMAL RETIREMENT--RETURN TO EMPLOYMENT--
21 BENEFITS CONTINUED--CONTRIBUTIONS.--

22 A. A member may retire upon fulfilling the
23 following requirements prior to the selected date of
24 retirement:

25 (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~~] Subsections E
15 and K of this section, on or after July 1, 2010, a retired
16 member may be subsequently employed by an affiliated public
17 employer only 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 retired member's pension shall be

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1 suspended upon commencement of the subsequent employment;

2 (3) except as provided in Subsection G of this
3 section, the retired member shall not become a member and shall
4 not accrue service credit, and the retired member and that
5 person's subsequent 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 retired member's pension shall resume in
10 accordance with the provisions of Subsection A of this section.

11 D. Notwithstanding the provisions of Subsection B
12 of Section 10-11-118 NMSA 1978, on and after July 1, 2013, if a
13 retired member becomes employed with an employer pursuant to
14 the Educational Retirement Act, and effective July 1, 2014, if
15 a retired member who, subsequent to retirement, is employed and
16 covered pursuant to the Judicial Retirement Act, and, effective
17 July 1, 2014, if a retired member who, subsequent to
18 retirement, is employed and covered pursuant to the Magistrate
19 Retirement Act:

20 (1) the retired member's cost-of-living
21 pension adjustment shall be suspended upon commencement of the
22 employment; and

23 (2) upon termination of the employment, the
24 retired member's suspended cost-of-living pension adjustment
25 shall be reinstated as provided under Subsection B of Section

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1 10-11-118 NMSA 1978.

2 E. The provisions of Subsections C, H and I of this
3 section do not apply to:

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

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

9 (3) a retired member who is elected to serve a
10 term as an elected official in an office covered pursuant to
11 the Public Employees Retirement Act; provided that:

12 (a) the retired member files an
13 irrevocable exemption from membership with the association
14 within thirty days of taking office; and

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

17 F. A retired member who returns to employment
18 during retirement pursuant to Subsection E of this section is
19 entitled to receive retirement benefits but is not entitled to
20 accrue service credit or to acquire or purchase service credit
21 in the future for the period of the retired member's subsequent
22 employment with an affiliated public employer.

23 G. At any time during a retired member's subsequent
24 employment pursuant to Subsection C of this section, the
25 retired member may elect to become a member and the following

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1 conditions shall apply:

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

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

12 (a) payment of the pension shall resume
13 in accordance with the provisions of Subsection A of this
14 section;

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

22 (c) the recalculated pension shall not
23 be less than the amount of the suspended pension.

24 H. A retired member who returned to work with an
25 affiliated public employer prior to July 1, 2010 shall be

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1 subject to the provisions of this section in effect on the date
2 the retired member returned to work; provided that:

3 (1) on and after July 1, 2010, the retired
4 member shall pay the employee contribution in an amount
5 specified in the Public Employees Retirement Act for the
6 position in which the retired member is subsequently employed;

7 (2) notwithstanding the provisions of
8 Subsection B of Section 10-11-118 NMSA 1978, on and after July
9 1, 2013, the retired member's cost-of-living pension adjustment
10 shall be suspended; and

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

15 I. Effective July 1, 2014, if a retired member who,
16 subsequent to retirement, is employed and covered pursuant to
17 the provisions of the Magistrate Retirement Act or Judicial
18 Retirement Act, during the period of subsequent employment:

19 (1) the member shall be entitled to receive
20 retirement benefits;

21 (2) the retired member's cost-of-living
22 pension adjustment shall be suspended upon commencement of the
23 employment; and

24 (3) upon termination of the employment, the
25 retired member's suspended cost-of-living pension adjustment

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1 shall be reinstated as provided under Subsection B of Section
2 10-11-118 NMSA 1978.

3 J. The pension of a member who has earned service
4 credit under more than one coverage plan shall be determined as
5 follows:

6 (1) the pension of a member who has three or
7 more years of service credit earned on or before June 30, 2013
8 under each of two or more coverage plans shall be determined in
9 accordance with the coverage plan that produces the highest
10 pension;

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

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1 that the member has three or more years of continuous
2 employment with that affiliated public employer immediately
3 preceding or immediately preceding and immediately following
4 the date the coverage plan changed;

5 (3) the pension of a member who has service
6 credit earned on or before June 30, 2013 under each of two or
7 more coverage plans and who has service credit earned under any
8 coverage plan on or after July 1, 2013 shall be equal to the
9 sum of:

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

13 (b) the pension attributable to the
14 service credit earned under each coverage plan on or after July
15 1, 2013;

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

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

23 "Service credit", for the purposes of this subsection, shall be
24 only personal service rendered an affiliated public employer
25 and credited to the member under the provisions of Subsection A

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1 of Section 10-11-4 NMSA 1978. Service credited under any other
2 provision of the Public Employees Retirement Act shall not be
3 used to satisfy the three-year service credit requirement of
4 this subsection.

5 K. Notwithstanding the provisions of any other
6 subsection of this section, certified law enforcement officers
7 who have retired under any municipal police member coverage
8 plan or as a certified law enforcement officer covered under
9 state police member and adult correctional officer member
10 coverage plan 1 may be subsequently employed as certified law
11 enforcement patrol officers by an affiliated public employer if
12 the retired member has not been employed as an employee of an
13 affiliated public employer or retained as an independent
14 contractor by the affiliated public employer from which the
15 retired member retired for at least ninety consecutive days
16 from the date of retirement to the commencement of subsequent
17 employment or reemployment with an affiliated public employer;
18 provided that:

19 (1) the retired member may only return to
20 employment in the capacity of a patrol officer;

21 (2) the retired member's pension shall
22 continue to be paid during the period of subsequent employment;
23 however, the retired member's cost-of-living adjustments shall
24 be suspended during the period of subsequent employment;

25 (3) the retired member shall not become a

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1 member during the period of subsequent employment;

2 (4) the retired member shall not accrue
3 service credit for any portion of the period of subsequent
4 employment;

5 (5) the retired member and the retired
6 member's subsequent affiliated public employer shall make the
7 contributions that would be required for members and employers
8 under the applicable coverage plan during the entire period of
9 subsequent employment; and

10 (6) the contributions paid by or on behalf of
11 the retired member during the term of subsequent employment
12 shall not be refundable at the termination of the subsequent
13 employment."

14 SECTION 2. EFFECTIVE DATE.--The effective date of the
15 provisions of this act is July 1, 2020.

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