

SENATE BILL 124

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Michael Padilla

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO PUBLIC EMPLOYEE PENSIONS; ALLOWING RETIRED PUBLIC EMPLOYEES TO RETURN TO WORK FOR AFFILIATED PUBLIC EMPLOYERS UNDER CERTAIN CONDITIONS; INCREASING THE MAXIMUM AMOUNT OF PENSION THAT A MEMBER IS PERMITTED TO EARN PURSUANT TO 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,

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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;

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

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

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

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

C. Except as provided in [~~Subsection~~] Subsections D and J of this section, on or after July 1, 2010, a retired member may be subsequently employed by an affiliated public employer only pursuant to the following provisions:

(1) the retired member has not been employed

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as an employee of an affiliated public employer or retained as an independent contractor by the affiliated public employer from which the retired member retired for at least twelve consecutive months from the date of retirement to the commencement of subsequent employment or reemployment with an affiliated public employer;

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

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

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

D. The provisions of Subsections C, G, ~~and~~ H and J of this section do not apply to:

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

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

(3) a retired member who is elected to serve a

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term as an elected official in an office covered pursuant to the Public Employees Retirement Act; provided that:

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

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

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

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

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

(2) when the previously retired member terminates the subsequent employment with an affiliated public employer, the previously retired member shall retire according

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to the provisions of the Public Employees Retirement Act,
subject to the following conditions:

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

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

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

G. A retired member who returned to work with an
affiliated public employer prior to July 1, 2010 shall be
subject to the provisions of this section in effect on the date
the retired member returned to work; provided that on and after
July 1, 2010, the retired member shall pay the employee
contribution in an amount specified in the Public Employees
Retirement Act for the position in which the retired member is
subsequently employed.

H. Effective July 1, 2014, if a retired member who,
subsequent to retirement, is employed and covered pursuant to
the provisions of the Magistrate Retirement Act or Judicial

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Retirement Act, during the period of subsequent employment:

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

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

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

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

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

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

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applied to the same affiliated public employer as a consequence of an election by the members, adoption by the affiliated public employer or a change in the law that results in the application of a coverage plan with a greater pension, the greater pension shall be paid a member retiring from the affiliated public employer under which the change in coverage plan took place regardless of the amount of service credit under the coverage plan producing the greater pension; provided that the member has three or more years of continuous employment with that affiliated public employer immediately preceding or immediately preceding and immediately following the date the coverage plan changed;

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

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

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

(4) the pension of a member who has service credit earned only on and after July 1, 2013 shall be equal to

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the sum of the pension attributable to the service credit the member has accrued under each coverage plan; and

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

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

J. Sfl1→SHPAC→Notwithstanding←SHPAC

~~SHPAC→Beginning July 1, 2023 and continuing through July 1, 2029, notwithstanding←SHPAC←Sfl1 Sfl1→Beginning July 1, 2023 and continuing through July 1, 2027, notwithstanding←Sfl1~~ the provisions of any other subsection of this section, a retired member may be subsequently employed by an affiliated public employer; provided that the retired member has not been employed as an employee of an affiliated public employer or retained as an independent contractor by the affiliated public employer from which the retired member retired for at least twelve consecutive months from the date of retirement to the commencement of subsequent employment or reemployment with an affiliated public employer; and further provided that the:

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(1) retired member's pension, including any cost-of-living adjustment, shall continue to be paid during the period of subsequent employment;

(2) retired member shall not become a member during the period of subsequent employment;

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

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

(5) contributions paid by or on behalf of the retired member during the term of subsequent employment shall not be refundable at the termination of the subsequent employment; and

(6) retired member returns to employment for a period of no more than thirty-six consecutive or nonconsecutive months pursuant to this subsection."

SECTION 2. Section 10-11-26.3 NMSA 1978 (being Laws 1994, Chapter 128, Section 4, as amended) is amended to read:

"10-11-26.3. STATE GENERAL MEMBER COVERAGE PLAN 3--AMOUNT OF PENSION--FORM OF PAYMENT A.--Under state general member coverage plan 3:

A. for a member with age and service requirements

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provided under Paragraph (1) or (3) of Subsection A of Section 10-11-26.2 NMSA 1978, the amount of pension under form of payment A is equal to three percent of final average salary multiplied by service credit. The amount shall not exceed [~~ninety~~] one hundred percent of the final average salary; and

B. for a member with age and service requirements provided under Paragraph (2) of Subsection A of Section 10-11-26.2 NMSA 1978, the amount of pension under form of payment A is equal to two and one-half percent of the final average salary multiplied by service credit. The amount shall not exceed [~~ninety~~] one hundred percent of the final average salary."

SECTION 3. Section 10-11-29 NMSA 1978 (being Laws 1987, Chapter 253, Section 29, as amended) is amended to read:

"10-11-29. STATE POLICE MEMBER, CORRECTIONAL OFFICER MEMBER AND PROBATION AND PAROLE OFFICER MEMBER COVERAGE PLAN 1--AMOUNT OF PENSION--FORM OF PAYMENT A.--Under state police member, correctional officer member and probation and parole officer member coverage plan 1, the amount of pension under form of payment A is equal to three percent of final average salary multiplied by credited service. The amount shall not exceed [~~ninety~~] one hundred percent of the final average salary."

SECTION 4. Section 10-11-38.3 NMSA 1978 (being Laws 1994, Chapter 128, Section 11, as amended) is amended to read:

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"10-11-38.3. JUVENILE CORRECTIONAL OFFICER MEMBER

COVERAGE PLAN 2--AMOUNT OF PENSION--FORM OF PAYMENT A.--Under juvenile correctional officer member coverage plan 2, the amount of pension under form of payment A is equal to three percent of final average salary multiplied by service credit. The amount shall not exceed [~~ninety~~] one hundred percent of the final average salary."

SECTION 5. Section 10-11-46 NMSA 1978 (being Laws 1987, Chapter 253, Section 46, as amended) is amended to read:

"10-11-46. MUNICIPAL GENERAL MEMBER COVERAGE PLAN 1--AMOUNT OF PENSION--FORM OF PAYMENT A.--Under municipal general member coverage plan 1, the amount of pension under form of payment A is equal to two percent of the final average salary multiplied by credited service. The amount shall not exceed [~~ninety~~] one hundred percent of the final average salary."

SECTION 6. Section 10-11-52 NMSA 1978 (being Laws 1987, Chapter 253, Section 52, as amended) is amended to read:

"10-11-52. MUNICIPAL GENERAL MEMBER COVERAGE PLAN 2--AMOUNT OF PENSION--FORM OF PAYMENT A.--Under municipal general member coverage plan 2:

A. for a member with age and service requirements provided in Subsection A of Section 10-11-51 NMSA 1978, the amount of pension under form of payment A is equal to two and one-half percent of the final average salary multiplied by credited service. The amount shall not exceed [~~ninety~~] one

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hundred percent of the final average salary; and

B. for a member with age and service requirements provided in Subsection B of Section 10-11-51 NMSA 1978, the amount of pension under form of payment A is equal to two percent of the final average salary multiplied by service credit. The amount shall not exceed [~~ninety~~] one hundred percent of the final average salary."

SECTION 7. Section 10-11-55.3 NMSA 1978 (being Laws 1993, Chapter 58, Section 3, as amended) is amended to read:

"10-11-55.3. MUNICIPAL GENERAL MEMBER COVERAGE PLAN 3--AMOUNT OF PENSION--FORM OF PAYMENT A.--Under municipal general member coverage plan 3:

A. for a member with age and service requirements provided under Subsection A of Section 10-11-55.2 NMSA 1978, the amount of pension under form of payment A is equal to three percent of the final average salary multiplied by credited service. The amount shall not exceed [~~ninety~~] one hundred percent of the final average salary; and

B. for a member with age and service requirements provided under Subsection B of Section 10-11-55.2 NMSA 1978, the amount of pension under form of payment A is equal to two and one-half percent of the final average salary multiplied by credited service. The amount shall not exceed [~~ninety~~] one hundred percent of the final average salary."

SECTION 8. Section 10-11-55.9 NMSA 1978 (being Laws 1998,

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Chapter 106, Section 3, as amended) is amended to read:

"10-11-55.9. MUNICIPAL GENERAL MEMBER COVERAGE PLAN 4--
AMOUNT OF PENSION--FORM OF PAYMENT A.--Under municipal general
member coverage plan 4:

A. for a member with age and service requirements
provided under Subsection A of Section 10-11-55.8 NMSA 1978,
the amount of pension under form of payment A is equal to three
percent of the final average salary multiplied by credited
service. The amount shall not exceed [~~ninety~~] one hundred
percent of the final average salary; and

B. for a member with age and service requirements
provided under Subsection B of Section 10-11-55.8 NMSA 1978,
the amount of pension under form of payment A is equal to two
and one-half percent of the final average salary multiplied by
credited service. The amount shall not exceed [~~ninety~~] one
hundred percent of the final average salary."

SECTION 9. Section 10-11-58 NMSA 1978 (being Laws 1987,
Chapter 253, Section 58, as amended) is amended to read:

"10-11-58. MUNICIPAL POLICE MEMBER COVERAGE PLAN 1--
AMOUNT OF PENSION--FORM OF PAYMENT A.--Under municipal police
member coverage plan 1, the amount of pension under form of
payment A is equal to two percent of the final average salary
multiplied by credited service. The amount shall not exceed
[~~ninety~~] one hundred percent of the final average salary."

SECTION 10. Section 10-11-64 NMSA 1978 (being Laws 1987,

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Chapter 253, Section 64, as amended) is amended to read:

"10-11-64. MUNICIPAL POLICE MEMBER COVERAGE PLAN 2--
AMOUNT OF PENSION--FORM OF PAYMENT A.--Under municipal police
member coverage plan 2:

A. for a member with age and service requirements
provided under Subsection A of Section 10-11-63 NMSA 1978, the
amount of pension under form of payment A is equal to two and
one-half percent of the final average salary multiplied by
credited service. The amount shall not exceed [~~ninety~~] one
hundred percent of the final average salary; and

B. for a member with age and service requirements
provided under Subsection B of Section 10-11-63 NMSA 1978, the
amount of pension under form of payment A is equal to two
percent of the final average salary multiplied by credited
service. The amount shall not exceed [~~ninety~~] one hundred
percent of the final average salary."

SECTION 11. Section 10-11-70 NMSA 1978 (being Laws 1987,
Chapter 253, Section 70, as amended) is amended to read:

"10-11-70. MUNICIPAL POLICE MEMBER COVERAGE PLAN 3--
AMOUNT OF PENSION--FORM OF PAYMENT A.--Under municipal police
member coverage plan 3:

A. for a member with age and service requirements
provided under Subsection A of Section 10-11-69 NMSA 1978, the
amount of pension under form of payment A is equal to two and
one-half percent of the final average salary multiplied by

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credited service. The amount shall not exceed [~~ninety~~] one hundred percent of the final average salary; and

B. for a member with age and service requirements provided under Subsection B of Section 10-11-69 NMSA 1978, the amount of pension under form of payment A is equal to two percent of the final average salary multiplied by credited service. The amount shall not exceed [~~ninety~~] one hundred percent of the final average salary."

SECTION 12. Section 10-11-76 NMSA 1978 (being Laws 1987, Chapter 253, Section 76, as amended) is amended to read:

"10-11-76. MUNICIPAL POLICE MEMBER COVERAGE PLAN 4--
AMOUNT OF PENSION--FORM OF [~~PENSION~~] PAYMENT A.--Under
municipal police member coverage plan 4:

A. for a member with age and service requirements provided under Subsection A of Section 10-11-75 NMSA 1978, the amount of pension under form of payment A is equal to three percent of the final average salary multiplied by credited service. The amount shall not exceed [~~ninety~~] one hundred percent of the final average salary; and

B. for a member with age and service requirements provided under Subsection B of Section 10-11-75 NMSA 1978, the amount of pension under form of payment A is equal to two and one-half percent of the final average salary multiplied by credited service. The amount shall not exceed [~~ninety~~] one hundred percent of the final average salary."

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SECTION 13. Section 10-11-82 NMSA 1978 (being Laws 1987, Chapter 253, Section 82, as amended) is amended to read:

"10-11-82. MUNICIPAL POLICE MEMBER COVERAGE PLAN 5--AMOUNT OF PENSION--FORM OF PAYMENT A.--Under municipal police member coverage plan 5:

A. for a member with age and service requirements provided under Subsection A of Section 10-11-81 NMSA 1978, the amount of pension under form of payment A is equal to three and one-half percent of the final average salary multiplied by credited service. The amount shall not exceed [~~ninety~~] one hundred percent of the final average salary; and

B. for a member with age and service requirements provided under Subsection B of Section 10-11-81 NMSA 1978, the amount of pension under form of payment A is equal to three percent of the final average salary multiplied by credited service. The amount shall not exceed [~~ninety~~] one hundred percent of the final average salary."

SECTION 14. Section 10-11-88 NMSA 1978 (being Laws 1987, Chapter 253, Section 88, as amended) is amended to read:

"10-11-88. MUNICIPAL FIRE MEMBER COVERAGE PLAN 1--AMOUNT OF PENSION--FORM OF PAYMENT A.--Under municipal fire member coverage plan 1, the amount of pension under form of payment A is equal to two percent of the final average salary multiplied by credited service. The amount shall not exceed [~~ninety~~] one hundred percent of the final average salary."

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SECTION 15. Section 10-11-94 NMSA 1978 (being Laws 1987, Chapter 253, Section 94, as amended) is amended to read:

"10-11-94. MUNICIPAL FIRE MEMBER COVERAGE PLAN 2--AMOUNT OF PENSION--FORM OF PAYMENT A.--Under municipal fire member [contribution] coverage plan 2:

A. for a member with age and service requirements provided under Subsection A of Section 10-11-93 NMSA 1978, the amount of pension under form of payment A is equal to two and one-half percent of the final average salary multiplied by credited service. The amount shall not exceed [~~ninety~~] one hundred percent of the final average salary; and

B. for a member with age and service requirements provided under Subsection B of Section 10-11-93 NMSA 1978, the amount of pension under form of payment A is equal to two percent of the final average salary multiplied by credited service. The amount shall not exceed [~~ninety~~] one hundred percent of the final average salary."

SECTION 16. Section 10-11-100 NMSA 1978 (being Laws 1987, Chapter 253, Section 100, as amended) is amended to read:

"10-11-100. MUNICIPAL FIRE MEMBER COVERAGE PLAN 3--AMOUNT OF PENSION--FORM OF PAYMENT A.--Under municipal fire member coverage plan 3:

A. for a member with age and service requirements provided under Subsection A of Section 10-11-99 NMSA 1978, the amount of pension under form of payment A is equal to two and

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one-half percent of the final average salary multiplied by credited service. The amount shall not exceed [~~ninety~~] one hundred percent of the final average salary; and

B. for a member with age and service requirements provided under Subsection B of Section 10-11-99 NMSA 1978, the amount of pension under form of payment A is equal to two percent of the final average salary multiplied by credited service. The amount shall not exceed [~~ninety~~] one hundred percent of the final average salary."

SECTION 17. Section 10-11-106 NMSA 1978 (being Laws 1987, Chapter 253, Section 106, as amended) is amended to read:

"10-11-106. MUNICIPAL FIRE MEMBER COVERAGE PLAN 4--AMOUNT OF PENSION--FORM OF PAYMENT A.--Under municipal fire member coverage plan 4:

A. for a member with age and service requirements provided under Subsection A of Section 10-11-105 NMSA 1978, the amount of pension under form of payment A is equal to three percent of the final average salary multiplied by credited service. The amount shall not exceed [~~ninety~~] one hundred percent of the final average salary; and

B. for a member with age and service requirements provided under Subsection B of Section 10-11-105 NMSA 1978, the amount of pension under form of payment A is equal to two and one-half percent of the final average salary multiplied by credited service. The amount shall not exceed [~~ninety~~] one

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hundred percent of the final average salary."

SECTION 18. Section 10-11-112 NMSA 1978 (being Laws 1987, Chapter 253, Section 112, as amended) is amended to read:

"10-11-112. MUNICIPAL FIRE MEMBER COVERAGE PLAN 5--AMOUNT OF PENSION--FORM OF PAYMENT A.--Under municipal fire member coverage plan 5:

A. for a member with age and service requirements provided under Subsection A of Section 10-11-111 NMSA 1978, the amount of pension under form of payment A is equal to three and one-half percent of the final average salary multiplied by credited service. The amount shall not exceed [~~ninety~~] one hundred percent of the final average salary; and

B. for a member with age and service requirements provided under Subsection B of Section 10-11-111 NMSA 1978, the amount of pension under form of payment A is equal to three percent of the final average salary multiplied by credited service. The amount shall not exceed [~~ninety~~] one hundred percent of the final average salary."

SECTION 19. Section 10-11-115.3 NMSA 1978 (being Laws 2003, Chapter 268, Section 4, as amended) is amended to read:

"10-11-115.3. MUNICIPAL DETENTION OFFICER MEMBER COVERAGE PLAN 1--AMOUNT OF PENSION--FORM OF PAYMENT A.--Under municipal detention officer member coverage plan 1, the amount of pension under form of payment A is equal to three percent of the final average salary multiplied by credited service. The amount

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shall not exceed [~~ninety~~] one hundred percent of the final average salary."

SECTION 20. APPLICABILITY.--The provisions of Sections 2 through 19 of this act apply to credited service performed on or after the effective date of this act. Any credited service performed or amount of pension earned prior to the effective date of this act shall not be calculated or adjusted to conform to the provisions of this act.

SECTION 21. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2023.