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HOUSE BILL 64

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

INTRODUCED BY

William "Bill" R. Rehm and Luis M. Terrazas and Rod Montoya and
Cathrynn N. Brown and Candy Spence Ezzell

AN ACT

RELATING TO PUBLIC EMPLOYEES; ALLOWING CERTAIN PUBLIC SAFETY
EMPLOYEES TO RETURN TO WORK UNDER CERTAIN CONDITIONS.

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--
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

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1 employers covered by any state system or the educational
2 retirement system;

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

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

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

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

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

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

24 (3) except as provided in Subsection F of this
25 section, the retired member shall not become a member and shall

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1 not accrue service credit, and the retired member and that
2 person's subsequent affiliated public employer shall not make
3 contributions under any coverage plan pursuant to the Public
4 Employees Retirement Act; and

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

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

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

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

15 (3) a retired member who is elected to serve a
16 term as an elected official in an office covered pursuant to
17 the Public Employees Retirement Act; 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 E. A retired member who returns to employment
24 during retirement pursuant to Subsection D 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 retired member's subsequent
3 employment with an affiliated public employer.

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

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

13 (2) when the previously retired member
14 terminates the subsequent employment with an affiliated public
15 employer, the previously retired member shall retire according
16 to the provisions of the Public Employees Retirement Act,
17 subject to the following conditions:

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

21 (b) unless the previously retired member
22 accrued at least three years of service credit on account of
23 the subsequent employment, the recalculation of pension shall:
24 1) employ the form of payment selected by the previously
25 retired member at the time of the first retirement; and 2) use

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1 the provisions of the coverage plan applicable to the member on
2 the date of the first retirement; and

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

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

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

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

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

22 (3) upon termination of the employment, the
23 retired member's suspended cost-of-living pension adjustment
24 shall be reinstated as provided under Section 10-11-118 NMSA
25 1978.

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

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

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

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1 preceding or immediately preceding and immediately following
2 the date the coverage plan changed;

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

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

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

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

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

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

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1 used to satisfy the three-year service credit requirement of
2 this subsection.

3 J. The following retired members may be
4 subsequently employed pursuant to the provisions of Subsection
5 K of this section; provided that the retired member has not
6 been employed as an employee of an affiliated public employer
7 or retained as an independent contractor by the affiliated
8 public employer from which the retired member retired for at
9 least ninety consecutive days from the date of retirement to
10 the commencement of subsequent employment or reemployment with
11 an affiliated public employer:

12 (1) a retired member who was a certified law
13 enforcement officer under any municipal police member coverage
14 plan;

15 (2) a retired member who was a certified law
16 enforcement officer under the state police member, correctional
17 officer member and probation and parole officer member coverage
18 plan 1;

19 (3) a retired member who was a municipal
20 detention officer member; or

21 (4) a retired member who was a municipal fire
22 member.

23 K. For a retired member provided in Subsection J of
24 this section, the:

25 (1) retired member's pension, including any

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1 cost-of-living adjustment, shall continue to be paid during the
2 period of subsequent employment;

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

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

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

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

16 (6) retired member is subsequently employed by
17 the affiliated public employer in an entry-level or civilian
18 position as certified by the affiliated public employer to the
19 association; and

20 (7) subsequent employment occurs prior to July
21 1, 2026.

22 L. Prior to November 1, 2024 and each succeeding
23 November 1 thereafter, the association shall submit to the
24 appropriate legislative interim committees the:

25 (1) total number of retired members who are

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1 employed pursuant to Subsection J of this section;
2 (2) amount of contributions made pursuant to
3 Paragraph (4) of Subsection K of this section; and
4 (3) total number of vacant employee positions
5 that would be otherwise subject to membership in the
6 association; provided that the state personnel office shall
7 assist the association in determining vacant employee
8 positions."

9 SECTION 2. EFFECTIVE DATE.--The effective date of the
10 provisions of this act is July 1, 2023.

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