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SENATE BILL 124

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

INTRODUCED BY

Michael Padilla

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,
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

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

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

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

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

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

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

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

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

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

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

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

24 (b) unless the previously retired member
25 accrued at least three years of service credit on account of

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

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

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

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

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

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

25 (3) upon termination of the employment, the

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1 retired member's suspended cost-of-living pension adjustment
2 shall be reinstated as provided under Section 10-11-118 NMSA
3 1978.

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

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

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

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

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

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

14 (b) the pension attributable to the
15 service credit earned under each coverage plan on or after July
16 1, 2013;

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

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

24 "Service credit", for the purposes of this subsection, shall be
25 only personal service rendered an affiliated public employer

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

6 J. Notwithstanding the provisions of any other
7 subsection of this section, a retired member may be
8 subsequently employed by an affiliated public employer;
9 provided that the retired member has not been employed as an
10 employee of an affiliated public employer or retained as an
11 independent contractor by the affiliated public employer from
12 which the retired member retired for at least twelve
13 consecutive months from the date of retirement to the
14 commencement of subsequent employment or reemployment with an
15 affiliated public employer; and further provided that the:

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

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

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

23 (4) retired member and the retired member's
24 subsequent affiliated public employer shall make the
25 contributions that would be required for members and employers

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1 under the applicable coverage plan during the entire period of
2 subsequent employment;

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

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

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

12 "10-11-26.3. STATE GENERAL MEMBER COVERAGE PLAN 3--AMOUNT
13 OF PENSION--FORM OF PAYMENT A.--Under state general member
14 coverage plan 3:

15 A. for a member with age and service requirements
16 provided under Paragraph (1) or (3) of Subsection A of Section
17 10-11-26.2 NMSA 1978, the amount of pension under form of
18 payment A is equal to three percent of final average salary
19 multiplied by service credit. The amount shall not exceed
20 [~~ninety~~] one hundred percent of the final average salary; and

21 B. for a member with age and service requirements
22 provided under Paragraph (2) of Subsection A of Section
23 10-11-26.2 NMSA 1978, the amount of pension under form of
24 payment A is equal to two and one-half percent of the final
25 average salary multiplied by service credit. The amount shall

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

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

5 "10-11-29. STATE POLICE MEMBER, CORRECTIONAL OFFICER
6 MEMBER AND PROBATION AND PAROLE OFFICER MEMBER COVERAGE PLAN
7 1--AMOUNT OF PENSION--FORM OF PAYMENT A.--Under state police
8 member, correctional officer member and probation and parole
9 officer member coverage plan 1, the amount of pension under
10 form of payment A is equal to three percent of final average
11 salary multiplied by credited service. The amount shall not
12 exceed [~~ninety~~] one hundred percent of the final average
13 salary."

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

16 "10-11-38.3. JUVENILE CORRECTIONAL OFFICER MEMBER
17 COVERAGE PLAN 2--AMOUNT OF PENSION--FORM OF PAYMENT A.--Under
18 juvenile correctional officer member coverage plan 2, the
19 amount of pension under form of payment A is equal to three
20 percent of final average salary multiplied by service credit.
21 The amount shall not exceed [~~ninety~~] one hundred percent of the
22 final average salary."

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

25 "10-11-46. MUNICIPAL GENERAL MEMBER COVERAGE PLAN 1--

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1 AMOUNT OF PENSION--FORM OF PAYMENT A.--Under municipal general
2 member coverage plan 1, the amount of pension under form of
3 payment A is equal to two percent of the final average salary
4 multiplied by credited service. The amount shall not exceed
5 [~~ninety~~] one hundred percent of the final average salary."

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

8 "10-11-52. MUNICIPAL GENERAL MEMBER COVERAGE PLAN 2--
9 AMOUNT OF PENSION--FORM OF PAYMENT A.--Under municipal general
10 member coverage plan 2:

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

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

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

25 "10-11-55.3. MUNICIPAL GENERAL MEMBER COVERAGE PLAN 3--

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1 AMOUNT OF PENSION--FORM OF PAYMENT A.--Under municipal general
2 member coverage plan 3:

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

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

15 SECTION 8. Section 10-11-55.9 NMSA 1978 (being Laws 1998,
16 Chapter 106, Section 3, as amended) is amended to read:

17 "10-11-55.9. MUNICIPAL GENERAL MEMBER COVERAGE PLAN 4--
18 AMOUNT OF PENSION--FORM OF PAYMENT A.--Under municipal general
19 member coverage plan 4:

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

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

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

9 "10-11-58. MUNICIPAL POLICE MEMBER COVERAGE PLAN 1--
10 AMOUNT OF PENSION--FORM OF PAYMENT A.--Under municipal police
11 member coverage plan 1, the amount of pension under form of
12 payment A is equal to two percent of the final average salary
13 multiplied by credited service. The amount shall not exceed
14 [~~ninety~~] one hundred percent of the final average salary."

15 **SECTION 10.** Section 10-11-64 NMSA 1978 (being Laws 1987,
16 Chapter 253, Section 64, as amended) is amended to read:

17 "10-11-64. MUNICIPAL POLICE MEMBER COVERAGE PLAN 2--
18 AMOUNT OF PENSION--FORM OF PAYMENT A.--Under municipal police
19 member coverage plan 2:

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

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

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

9 "10-11-70. MUNICIPAL POLICE MEMBER COVERAGE PLAN 3--
10 AMOUNT OF PENSION--FORM OF PAYMENT A.--Under municipal police
11 member coverage plan 3:

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

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

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

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1 "10-11-76. MUNICIPAL POLICE MEMBER COVERAGE PLAN 4--
2 AMOUNT OF PENSION--FORM OF [~~PENSION~~] PAYMENT A.--Under
3 municipal police member coverage plan 4:

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

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

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

18 "10-11-82. MUNICIPAL POLICE MEMBER COVERAGE PLAN 5--
19 AMOUNT OF PENSION--FORM OF PAYMENT A.--Under municipal police
20 member coverage plan 5:

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

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1 hundred percent of the final average salary; and

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

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

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

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

18 "10-11-94. MUNICIPAL FIRE MEMBER COVERAGE PLAN 2--AMOUNT
19 OF PENSION--FORM OF PAYMENT A.--Under municipal fire member
20 [~~contribution~~] coverage plan 2:

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

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1 hundred percent of the final average salary; and

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

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

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

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

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

25 SECTION 17. Section 10-11-106 NMSA 1978 (being Laws 1987,

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1 Chapter 253, Section 106, as amended) is amended to read:

2 "10-11-106. MUNICIPAL FIRE MEMBER COVERAGE PLAN 4--AMOUNT
3 OF PENSION--FORM OF PAYMENT A.--Under municipal fire member
4 coverage plan 4:

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

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

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

19 "10-11-112. MUNICIPAL FIRE MEMBER COVERAGE PLAN 5--AMOUNT
20 OF PENSION--FORM OF PAYMENT A.--Under municipal fire member
21 coverage plan 5:

22 A. for a member with age and service requirements
23 provided under Subsection A of Section 10-11-111 NMSA 1978,
24 the amount of pension under form of payment A is equal to three
25 and one-half percent of the final average salary multiplied by

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

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

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

11 "10-11-115.3. MUNICIPAL DETENTION OFFICER MEMBER COVERAGE
12 PLAN 1--AMOUNT OF PENSION--FORM OF PAYMENT A.--Under municipal
13 detention officer member coverage plan 1, the amount of pension
14 under form of payment A is equal to three percent of the final
15 average salary multiplied by credited service. The amount
16 shall not exceed [~~ninety~~] one hundred percent of the final
17 average salary."

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

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

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