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AN ACT

RELATING TO PUBLIC EMPLOYEES; EXPANDING THE DEFINITION OF
"PEACE OFFICER" TO ALLOW RETIRED MEMBERS THAT ARE EMPLOYED BY
THE STATE AND WHO HAVE PEACE OFFICER POWERS 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
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.

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

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

8 (1) the retired member has not been employed
9 as an employee of an affiliated public employer or retained
10 as an independent contractor by the affiliated public
11 employer from which the retired member retired for at least
12 twelve consecutive months from the date of retirement to the
13 commencement of subsequent employment or reemployment with an
14 affiliated public employer;

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

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

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

1 section.

2 D. The provisions of Subsections C, G, H, J and K
3 of this 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
7 a precinct board member for a municipal election or an
8 election covered by the Election Code; or

9 (3) a retired member who is elected to serve
10 a term as an elected official in an office covered pursuant
11 to 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 E. A retired member who returns to employment
18 during retirement pursuant to Subsection D of this section is
19 entitled to receive retirement benefits but is not entitled
20 to accrue service credit or to acquire or purchase service
21 credit in the future for the period of the retired member's
22 subsequent employment with an affiliated public employer.

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

1 the following 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
5 retired member shall accrue service credit for the period of
6 subsequent employment; and

7 (2) when the previously retired member
8 terminates the subsequent employment with an affiliated
9 public employer, the previously retired member shall retire
10 according to the provisions of the Public Employees
11 Retirement Act, 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
16 member accrued at least three years of service credit on
17 account of the subsequent employment, the recalculation of
18 pension shall: 1) employ the form of payment selected by
19 the previously retired member at the time of the first
20 retirement; and 2) use the provisions of the coverage plan
21 applicable to the member on the date of the first retirement;
22 and

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

25 G. A retired member who returned to work with an

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

8 H. Effective July 1, 2014, if a retired member
9 who, subsequent to retirement, is employed and covered
10 pursuant to the provisions of the Magistrate Retirement Act
11 or Judicial Retirement Act, during the period of subsequent
12 employment:

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

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

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

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

25 (1) the pension of a member who has three or

1 more years of service credit earned on or before June 30,
2 2013 under each of two or more coverage plans shall be
3 determined in accordance with the coverage plan that produces
4 the highest pension;

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

24 (3) the pension of a member who has service
25 credit earned on or before June 30, 2013 under each of two or

1 more coverage plans and who has service credit earned under
2 any coverage plan on or after July 1, 2013 shall be equal to
3 the sum of:

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

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

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

14 (5) the provisions of each coverage plan for
15 the purpose of this subsection shall be those in effect at
16 the time the member ceased to be covered by the coverage
17 plan. "Service credit", for the purposes of this subsection,
18 shall be only personal service rendered an affiliated public
19 employer and credited to the member under the provisions of
20 Subsection A of Section 10-11-4 NMSA 1978. Service credited
21 under any other provision of the Public Employees Retirement
22 Act shall not be used to satisfy the three-year service
23 credit requirement of this subsection.

24 J. A retired member may be subsequently employed
25 by an affiliated public employer; provided that the retired

1 member has not been employed as an employee of an affiliated
2 public employer or retained as an independent contractor by
3 the affiliated public employer from which the retired member
4 retired for at least ninety consecutive days from the date of
5 retirement to the commencement of subsequent employment or
6 reemployment with an affiliated public employer; and further
7 provided that the:

8 (1) retired member shall only be employed in
9 one of the following positions:

- 10 (a) adult correctional officer;
- 11 (b) adult detention officer;
- 12 (c) courthouse security officer;
- 13 (d) emergency medical dispatcher;
- 14 (e) emergency medical technician or
15 paramedic;
- 16 (f) firefighter;
- 17 (g) juvenile correctional officer;
- 18 (h) juvenile detention officer;
- 19 (i) municipal police officer;
- 20 (j) peace officer;
- 21 (k) protective services investigator;
- 22 (l) public safety telecommunicator;
- 23 (m) sheriff's deputy; or
- 24 (n) state police officer;

25 (2) retired member shall have retired prior

1 to December 31, 2023;

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

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

7 (5) retired member shall not accrue service
8 credit for any portion of the period of subsequent
9 employment;

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

15 (7) contributions paid by or on behalf of
16 the retired member during the term of subsequent employment
17 shall not be refundable at the termination of the subsequent
18 employment;

19 (8) retired member shall have no seniority
20 based on pre-retirement employment for purposes of selecting
21 shifts;

22 (9) retired member shall have no limitation
23 on the length of time that the retired member can be
24 subsequently employed or reemployed by an affiliated public
25 employer; provided that the retired member shall only receive

1 up to thirty-six consecutive months of pension payments while
2 reemployed;

3 (10) retired member shall not be hired for
4 reemployment into an employment position with a vacancy rate
5 that is lower than ten percent at the time of the retired
6 member's hiring; and

7 (11) subsequent employment begins prior to
8 July 1, 2027.

9 K. An affiliated public employer that employs a
10 retired member provided in Subsection J of this section
11 shall:

12 (1) track and document:

13 (a) the date of hire and date of
14 separation for each reemployed retired member;

15 (b) the retired member's employment
16 position prior to retirement;

17 (c) the salary of each reemployed
18 retired member; and

19 (d) the monthly vacancy rate for each
20 employment position at the affiliated public employer; and

21 (2) if the affiliated public employer has to
22 lay off employees due to budgetary restrictions, lay off
23 reemployed retired members before laying off any members.

24 L. For the purposes of this section:

25 (1) "adult correctional officer" means a

1 person who is employed as an adult correctional officer or an
2 adult correctional officer specialist by a state correctional
3 facility of the corrections department or its successor
4 agency;

5 (2) "adult detention officer" means a person
6 who is employed by an affiliated public employer other than
7 the state and who has inmate custodial responsibilities at a
8 facility used for the confinement of adults charged with or
9 convicted of a violation of a law or ordinance;

10 (3) "courthouse security officer" means a
11 person who is employed by the administrative office of the
12 courts who provides security or protective services for a
13 courthouse;

14 (4) "emergency medical dispatcher" means a
15 person who is trained and licensed pursuant to the Emergency
16 Medical Services Act and who receives calls for emergency
17 medical assistance, provides pre-arrival medical
18 instructions, dispatches emergency medical assistance and
19 coordinates its response;

20 (5) "emergency medical technician" means a
21 person who is licensed as an emergency medical technician or
22 paramedic and who provides patient care pursuant to the
23 Emergency Medical Services Act;

24 (6) "firefighter" means a person who is
25 employed as a full-time non-volunteer firefighter by an

1 affiliated public employer who has taken the oath for
2 firefighters and who serves in a non-management position
3 serving or supporting the delivery of emergency services in a
4 front line capacity;

5 (7) "juvenile correctional officer" means a
6 person who is employed as a juvenile correctional officer by
7 the children, youth and families department or its successor
8 agency;

9 (8) "juvenile detention officer" means a
10 person who is employed as a juvenile detention officer or
11 youth program officer by an affiliated public employer other
12 than the state;

13 (9) "municipal police officer" means a
14 person who is employed by an affiliated public employer other
15 than the state or a county and who is a law enforcement
16 officer who serves in a uniformed patrol capacity responding
17 to dispatched calls for service;

18 (10) "peace officer" means:

19 (a) a person who is appointed by the
20 attorney general or district attorney and who is a certified
21 law enforcement officer who investigates and enforces state
22 laws, rules and regulations, including the execution of
23 warrants; or

24 (b) an employee of the state with a
25 duty to maintain public order or to make arrests for crime,

1 whether that duty extends to all crimes or is limited to
2 specific crimes;

3 (11) "protective services investigator"
4 means a person who is an employee of the protective services
5 division of the children, youth and families department who
6 investigates child abuse referrals, assesses the risk and
7 safety of the child and takes appropriate action or prepares
8 cases for transfer to child protective services permanency
9 planning;

10 (12) "public safety telecommunicator" means
11 a person who is an employee of a safety agency who receives
12 calls or dispatches the appropriate personnel or equipment in
13 response to calls for police, fire or medical services and
14 makes decisions affecting the life, health or welfare of the
15 public or safety employees and who has qualified for the
16 certification set forth in the Public Safety Telecommunicator
17 Training Act;

18 (13) "sheriff's deputy" means a person who
19 is employed by a county and who is a law enforcement officer
20 who serves in a uniformed patrol capacity responding to
21 dispatched calls for service or serves as a courthouse
22 security officer employed by a county; and

23 (14) "state police officer" means a person
24 who is an officer of the New Mexico state police division of
25 the department of public safety, who has taken the oath

1 prescribed for such officers and who serves in a uniformed

2 patrol capacity responding to dispatched calls for service." HB 336
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