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_____ BILL

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

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PUBLIC EMPLOYEE RETIREMENT; INCLUDING OVERTIME PAY
REQUIRED FOR A REGULAR SCHEDULED TOUR OF DUTY IN THE DEFINITION
OF "SALARY" IN THE PUBLIC EMPLOYEES RETIREMENT ACT.

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

SECTION 1. Section 10-11-2 NMSA 1978 (being Laws 1987,
Chapter 253, Section 2, as amended) is amended to read:

"10-11-2. DEFINITIONS.--As used in the Public Employees
Retirement Act:

A. "accumulated member contributions" means the
amounts deducted from the salary of a member and credited to
the member's individual account, together with interest, if
any, credited to that account;

B. "affiliated public employer" means the state and
any public employer affiliated with the association as provided

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1 in the Public Employees Retirement Act, but does not include an
2 employer pursuant to the Magistrate Retirement Act, the
3 Judicial Retirement Act or the Educational Retirement Act;

4 C. "association" means the public employees
5 retirement association established under the Public Employees
6 Retirement Act;

7 D. "disability retired member" means a retired
8 member who is receiving a pension pursuant to the disability
9 retirement provisions of the Public Employees Retirement Act;

10 E. "disability retirement pension" means the
11 pension paid pursuant to the disability retirement provisions
12 of the Public Employees Retirement Act;

13 F. "educational retirement system" means that
14 retirement system provided for in the Educational Retirement
15 Act;

16 G. "employee" means any employee of an affiliated
17 public employer;

18 H. "federal social security program" means that
19 program or those programs created and administered pursuant to
20 the act of congress approved August 14, 1935, Chapter 531, 49
21 Stat. 620, as that act may be amended;

22 I. "final average salary" means the final average
23 salary calculated in accordance with the provisions of the
24 applicable coverage plan;

25 J. "form of payment" means the applicable form of

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1 payment of a pension provided for in Section 10-11-117 NMSA
2 1978;

3 K. "former member" means a person who was
4 previously employed by an affiliated public employer, who has
5 terminated that employment and who has received a refund of
6 member contributions;

7 L. "fund" means the funds included under the Public
8 Employees Retirement Act;

9 M. "member" means a currently employed,
10 contributing employee of an affiliated public employer, or a
11 person who has been but is not currently employed by an
12 affiliated public employer, who has not retired and who has not
13 received a refund of member contributions; "member" also
14 includes the following:

15 (1) "adult correctional officer member" means
16 a member who is employed as an adult correctional officer or an
17 adult correctional officer specialist by a state correctional
18 facility of the corrections department or its successor agency;

19 (2) "juvenile correctional officer member"
20 means a member who is employed as a juvenile correctional
21 officer by the children, youth and families department or its
22 successor agency;

23 (3) "municipal detention officer member" means
24 a member who is employed by an affiliated public employer other
25 than the state and who has inmate custodial responsibilities at

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1 a facility used for the confinement of persons charged with or
2 convicted of a violation of a law or ordinance;

3 (4) "municipal fire member" means any member
4 who is employed as a full-time nonvolunteer firefighter by an
5 affiliated public employer and who has taken the oath
6 prescribed for firefighters;

7 (5) "municipal police member" means any member
8 who is employed as a police officer by an affiliated public
9 employer, other than the state, and who has taken the oath
10 prescribed for police officers; and

11 (6) "state police member" means a member who
12 is an officer of the New Mexico state police and who has taken
13 the oath prescribed for such officers, except that a state
14 police member shall not include a member who is an officer of
15 the New Mexico state police division and who was certified and
16 commissioned as of June 30, 2015 in the former motor
17 transportation division or the former special investigations
18 division of the department of public safety;

19 N. "membership" means membership in the
20 association;

21 O. "pension" means a series of monthly payments to
22 a retired member or survivor beneficiary as provided in the
23 Public Employees Retirement Act;

24 P. "public employer" means the state, any
25 municipality, city, county, metropolitan arroyo flood control

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1 authority, economic development district, regional housing
2 authority, soil and water conservation district, entity created
3 pursuant to a joint powers agreement, council of government,
4 conservancy district, irrigation district, water and sanitation
5 district, water district and metropolitan water board,
6 including the boards, departments, bureaus and agencies of a
7 public employer, so long as these entities fall within the
8 meaning of governmental plan as that term is used in Section
9 414(d) of the Internal Revenue Code of 1986, as amended;

10 Q. "refund beneficiary" means a person designated
11 by the member, in writing, in the form prescribed by the
12 association, as the person who would be refunded the member's
13 accumulated member contributions payable if the member dies and
14 no survivor pension is payable or who would receive the
15 difference between pension paid and accumulated member
16 contributions if the retired member dies before receiving in
17 pension payments the amount of the accumulated member
18 contributions;

19 R. "retire" means to:

20 (1) terminate employment with all employers
21 covered by any state system or the educational retirement
22 system; and

23 (2) receive a pension from a state system or
24 the educational retirement system;

25 S. "retired member" means a person who has met all

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1 requirements for retirement and who is receiving a pension from
2 the fund;

3 T. "retirement board" means the retirement board
4 provided for in the Public Employees Retirement Act;

5 U. "salary" means the base salary or wages paid a
6 member, including longevity pay, for personal services rendered
7 an affiliated public employer. "Salary" shall not include
8 overtime pay, unless the overtime payment is required for a
9 regular scheduled tour of duty as set forth in Section 207(k)
10 of Title 29 of the United States Code and is made on the
11 regular payroll for the period represented by that payment,
12 allowances for housing, clothing, equipment or travel, payments
13 for unused sick leave, unless the unused sick leave payment is
14 made through continuation of the member on the regular payroll
15 for the period represented by that payment, and any other form
16 of remuneration not specifically designated by law as included
17 in salary for Public Employees Retirement Act purposes. Salary
18 in excess of the limitations set forth in Section 401(a)(17) of
19 the Internal Revenue Code of 1986, as amended, shall be
20 disregarded. The limitation on compensation for eligible
21 employees shall not be less than the amount that was allowed to
22 be taken into account under the state retirement system acts in
23 effect on July 1, 1993. For purposes of this subsection,
24 "eligible employee" means an individual who was a member of a
25 state system before the first plan year beginning after

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1 December 31, 1995;

2 V. "state system" means the retirement programs
3 provided for in the Public Employees Retirement Act, the
4 Magistrate Retirement Act and the Judicial Retirement Act;

5 W. "state retirement system acts" means
6 collectively the Public Employees Retirement Act, the
7 Magistrate Retirement Act, the Judicial Retirement Act and the
8 Volunteer Firefighters Retirement Act; and

9 X. "survivor beneficiary" means a person who
10 receives a pension or who has been designated to be paid a
11 pension as a result of the death of a member or retired
12 member."

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