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AN ACT

RELATING TO PUBLIC EMPLOYEE RETIREMENT; AMENDING CERTAIN SECTIONS OF THE PUBLIC EMPLOYEE RETIREMENT ACT AND THE EDUCATIONAL RETIREMENT ACT CONCERNING RETIREES WHO RETURN TO WORK; IMPLEMENTING THE HIGHEST THREE-YEAR AVERAGE METHOD FOR CALCULATING THE PENSION PAYABLE PURSUANT TO STATE LEGISLATOR COVERAGE PLAN 2; RECONCILING CONFLICTING AMENDMENTS TO CERTAIN SECTIONS OF THE NMSA 1978.

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 by Laws 2004, Chapter 2, Section 1 and by Laws 2004, Chapter 68, Section 4) is amended to read:

"10-11-8. NORMAL RETIREMENT--RETURN TO EMPLOYMENT-- BENEFITS CONTINUED--EMPLOYER 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;

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

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

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

9 C. Except as provided in Subsection D or E of this
10 section, a retired member may be subsequently employed by an
11 affiliated public employer if the following conditions apply:

12 (1) the member has not been employed as an
13 employee or independent contractor of an affiliated public
14 employer for at least twelve consecutive months from the date
15 of retirement to the commencement of employment or
16 reemployment with an affiliated public employer; except that
17 a member who has not been employed as an employee or
18 independent contractor of an affiliated public employer for
19 only ninety consecutive days may return to employment if the
20 member is receiving the maximum pension under the member's
21 applicable coverage plan and returns to employment as a peace
22 officer or water or wastewater facility operator. If the
23 retired member returns to employment without first completing
24 twelve consecutive months of retirement, or ninety days of
25 retirement for a retired member who is receiving the maximum

1 pension under the member's applicable coverage plan and
2 returns to employment as a peace officer or water or
3 wastewater facility operator:

4 (a) the retired member's pension shall
5 be suspended immediately and the previously retired member
6 shall become a member; and

7 (b) upon termination of the subsequent
8 employment, the previously retired member's pension shall be
9 calculated pursuant to Paragraph (2) of Subsection E of this
10 section;

11 (2) effective the first day of the month
12 following the month in which the retired member's earnings
13 total thirty thousand dollars (\$30,000) during a calendar
14 year, a retired member who returns to employment shall be
15 required to make contributions to the fund as specified in
16 the Public Employees Retirement Act;

17 (3) until the subsequent employment is
18 terminated, the affiliated public employer that employs the
19 retired member shall make contributions to the fund in the
20 amount specified in the Public Employees Retirement Act or in
21 a higher amount adjusted for full actuarial cost as
22 determined annually by the association; and

23 (4) a retired member who returns to
24 employment during retirement pursuant to this subsection is
25 entitled to receive retirement benefits but is not entitled

1 to acquire service credit or to acquire or purchase service
2 credit in the future for the period of the retired member's
3 reemployment with an affiliated public employer.

4 D. The provisions of Paragraphs (2) and (3) of
5 Subsection C of this section that require employee or
6 employer contributions do not apply to:

7 (1) a retired member who is appointed chief
8 of police of an affiliated public employer, other than the
9 affiliated public employer from which the retired member
10 retired, or who is appointed undersheriff; provided that:

11 (a) the retired member files an
12 irrevocable exemption from membership with the association
13 within thirty days of appointment;

14 (b) each sheriff's office shall be
15 limited to one undersheriff qualifying pursuant to this
16 paragraph;

17 (c) the irrevocable exemption shall be
18 for the chief of police's or the undersheriff's term of
19 office; and

20 (d) filing an irrevocable exemption
21 shall irrevocably bar the retired member from acquiring
22 service credit for the period of exemption from membership;
23 or

24 (2) a retired member employed by the
25 legislature for legislative session work.

1 E. At any time during a retired member's
2 subsequent employment pursuant to Subsection C of this
3 section, the retired member may elect to suspend the pension.
4 When the pension is suspended, the following conditions shall
5 apply:

6 (1) the retired member who is subsequently
7 employed by an affiliated public employer shall become a
8 member. The previously retired member and the subsequent
9 affiliated public employer shall make the required employee
10 and employer contributions, and the previously retired member
11 shall accrue service credit for the period of subsequent
12 employment; and

13 (2) when a previously retired member
14 terminates the subsequent employment with an affiliated
15 public employer, the previously retired member shall retire
16 according to the provisions of the Public Employees
17 Retirement Act, 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
22 member accrued at least three years of service credit on
23 account of the subsequent employment, the recalculation of
24 pension shall: 1) employ the form of payment selected by the
25 previously retired member at the time of the first

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

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

6 F. The pension of a member who has three or more
7 years of service credit under each of two or more coverage
8 plans shall be determined in accordance with the coverage
9 plan that produces the highest pension. The pension of a
10 member who has service credit under two or more coverage
11 plans but who has three or more years of service credit under
12 only one of those coverage plans shall be determined in
13 accordance with the coverage plan in which the member has
14 three or more years of service credit. If the service credit
15 is acquired under two different coverage plans applied to the
16 same affiliated public employer as a consequence of an
17 election by the members, adoption by the affiliated public
18 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;
24 provided the member has three or more years of continuous
25 employment with that affiliated public employer immediately

1 preceding or immediately preceding and immediately following
2 the date the coverage plan changed. The provisions of each
3 coverage plan for the purpose of this subsection shall be
4 those in effect at the time the member ceased to be covered
5 by the coverage plan. "Service credit", for the purposes of
6 this subsection, shall be only personal service rendered an
7 affiliated public employer and credited to the member under
8 the provisions of Subsection A of Section 10-11-4 NMSA 1978.
9 Service credited under any other provision of the Public
10 Employees Retirement Act shall not be used to satisfy the
11 three-year service credit requirement of this subsection."

12 Section 2. Section 10-11-43.3 NMSA 1978 (being Laws
13 2003, Chapter 85, Section 9) is amended to read:

14 "10-11-43.3. STATE LEGISLATOR MEMBER COVERAGE PLAN 2--
15 AMOUNT OF PENSION--FORM OF PAYMENT A.--Under state legislator
16 member coverage plan 2, the annual amount of pension under
17 form of payment A is equal in any calendar year to eleven
18 percent of the average of the three highest per diem rates in
19 effect, pursuant to Section 2-1-8 NMSA 1978, as determined on
20 July 1 of each year of service of the legislator or
21 lieutenant governor, multiplied by sixty and further
22 multiplied by credited service as a legislator or lieutenant
23 governor. A pension paid under state legislator member
24 coverage plan 2 shall be adjusted pursuant to Section 10-11-
25 118 NMSA 1978 for a legislator or lieutenant governor who has

1 been retired for at least two full calendar years from the
2 effective date of the latest retirement prior to July 1 of
3 the year in which the pension is being adjusted."

4 Section 3. Section 22-11-25.1 NMSA 1978 (being Laws
5 2001, Chapter 283, Section 2, as amended by Laws 2003,
6 Chapter 80, Section 1 and by Laws 2003, Chapter 145, Section
7 1) is amended to read:

8 "22-11-25.1. RETURN TO EMPLOYMENT--BENEFITS CONTINUED--
9 ADMINISTRATIVE UNIT CONTRIBUTIONS.--

10 A. Except as provided in Subsections B, E and F of
11 this section, beginning January 1, 2002 and continuing until
12 January 1, 2012, a retired member may begin employment at a
13 local administrative unit and shall not be required to
14 suspend retirement benefits if the member has not been
15 employed as an employee or independent contractor by a local
16 administrative unit for at least twelve consecutive months
17 from the date of retirement to the commencement of employment
18 or reemployment with a local administrative unit. If the
19 retired member returns to employment without first completing
20 twelve consecutive months of retirement, the retired member
21 shall remove himself from retirement.

22 B. A retired member who was retired on or before
23 January 1, 2001, has not since suspended or been required to
24 suspend retirement benefits pursuant to the Educational
25 Retirement Act and is reemployed by a local administrative

1 unit prior to July 1, 2005 may continue employment at the
2 local administrative unit and shall not be required to
3 suspend retirement benefits.

4 C. A retired member who returns to employment
5 during retirement pursuant to Subsection A, B or E of this
6 section is entitled to continue to receive retirement
7 benefits but is not entitled to acquire service credit or to
8 acquire or purchase service credit in the future for the
9 period of the retired member's reemployment with a local
10 administrative unit.

11 D. For a retired member who returns to employment
12 pursuant to Subsection A, B or E of this section, effective
13 the first day of the month following the month in which the
14 retired member's earnings total thirty thousand dollars
15 (\$30,000) during a calendar year, the retired member shall
16 make contributions to the fund as specified in the
17 Educational Retirement Act; however, the local administrative
18 unit's contributions as specified in that act shall be paid
19 at all times to the fund as if the retired member was a non-
20 retired employee.

21 E. Except as provided in Subsection F of this
22 section, beginning July 1, 2003 and continuing until January
23 1, 2012, a retired member who retired on or before January 1,
24 2001 and who has not been employed as an employee or
25 independent contractor by a local administrative unit for at

1 least ninety days may begin employment at a local
2 administrative unit without suspending retirement benefits if
3 the retired member was not employed by a local administrative
4 unit for an additional twelve or more consecutive months
5 after the initial date of the retirement; provided that the
6 ninety-day period shall not include any part of a summer or
7 other scheduled break or vacation period.

8 F. On and after July 1, 2005, no retired member
9 shall begin employment pursuant to this section without
10 suspending retirement benefits unless the retired member is
11 employed as a teacher in a public school or an instructor in
12 a public post-secondary educational institution."

13 Section 4. TEMPORARY PROVISION--APPLICABILITY.--The
14 adjustment in the pension for state legislator member
15 coverage plan 2 provided in Section 2 of this act is
16 applicable to state legislator members who retire on or after
17 July 1, 2005.

18 Section 5. APPLICABILITY.--The provisions of Section 1
19 of this act that require twelve consecutive months of
20 retirement before returning to work apply to retired members
21 who return to work on or after July 1, 2005.

22 Section 6. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is July 1, 2005. _____