

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 179

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

Larry A. Larrañaga

AN ACT

RELATING TO THE RETURN TO WORK OF RETIRED PUBLIC EMPLOYEES;  
RESTRICTING REEMPLOYMENT UNDER THE PUBLIC EMPLOYEES RETIREMENT  
ACT AND THE EDUCATIONAL RETIREMENT ACT; RECONCILING MULTIPLE  
AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2003; RECONCILING  
MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2004 BY  
REPEALING LAWS 2004, CHAPTER 2, SECTION 1.

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 FOR CERTAIN RETIRED MEMBERS--EMPLOYER  
CONTRIBUTIONS.--

.163962.1

underscoring material = new  
[bracketed material] = delete

underscored material = new  
[bracketed material] = delete

1           A. A member may retire upon fulfilling the  
2 following requirements prior to the selected date of  
3 retirement:

4                   (1) a written application for normal  
5 retirement, in the form prescribed by the association, is filed  
6 with the association;

7                   (2) employment is terminated with all  
8 employers covered by any state system or the educational  
9 retirement system;

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

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

15           B. The amount of normal retirement pension is  
16 determined in accordance with the coverage plan applicable to  
17 the member.

18           C. Except as provided in Subsection D, ~~[or]~~ E or F  
19 of this section, a retired member may be subsequently employed  
20 by an affiliated public employer if the following conditions  
21 apply:

22                   (1) the member has not been employed as an  
23 employee of an affiliated public employer for at least ninety  
24 consecutive days from the date of retirement to the  
25 commencement of employment or reemployment with an affiliated

.163962.1

underscoring material = new  
[bracketed material] = delete

1 public employer. If the retired member returns to employment  
2 without first completing ninety consecutive days of  
3 retirement, [~~(a)~~] the retired member's pension shall be  
4 suspended immediately; ~~{and the previously retired member shall~~  
5 ~~become a member; and~~

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

10 ~~(2) effective the first day of the month~~  
11 ~~following the month in which the retired member's earnings~~  
12 ~~total twenty-five thousand dollars (\$25,000) during a calendar~~  
13 ~~year, a retired member who returns to employment shall be~~  
14 ~~required to make contributions to the fund as specified in the~~  
15 ~~Public Employees Retirement Act; provided, however, that after~~  
16 ~~December 31, 2006, no additional contributions shall be~~  
17 ~~required pursuant to this paragraph;~~

18 ~~(3)]~~ (2) until the subsequent employment is  
19 terminated, the retired member is not required to make  
20 contributions to the fund but the affiliated public employer  
21 that employs the retired member shall make contributions to the  
22 fund in the amount specified in the Public Employees Retirement  
23 Act or in a higher amount adjusted for full actuarial cost as  
24 determined annually by the association; and

25 [~~(4)~~] (3) a retired member who returns to

.163962.1

underscored material = new  
[bracketed material] = delete

1 employment during retirement pursuant to this subsection is  
2 entitled to receive retirement benefits but is not entitled to  
3 acquire service credit or to acquire or purchase service credit  
4 in the future for the period of the retired member's  
5 reemployment with an affiliated public employer.

6 D. If a retired member initially returns to  
7 employment for an affiliated public employer on or after July  
8 1, 2007, the retired member's pension shall be suspended the  
9 first day of the month following the month in which the retired  
10 member's earnings for a calendar year from that subsequent  
11 employment exceed twenty-five thousand dollars (\$25,000).

12 [~~D.~~] E. The provisions of [Paragraphs (2) and]  
13 Paragraph (3) of Subsection C of this section [that require  
14 employee or employer contributions] and the provisions of  
15 Subsection D of this section do not apply to:

16 (1) a retired member who is appointed chief of  
17 police of an affiliated public employer, other than the  
18 affiliated public employer from which the retired member  
19 retired, or who is appointed undersheriff; provided that:

20 (a) the retired member files an  
21 irrevocable exemption from membership with the association  
22 within thirty days of appointment;

23 (b) each sheriff's office shall be  
24 limited to one undersheriff qualifying pursuant to this  
25 paragraph;

.163962.1

underscored material = new  
[bracketed material] = delete

1 (c) the irrevocable exemption shall be  
2 for the chief of police's or the undersheriff's term of office;  
3 and

4 (d) filing an irrevocable exemption  
5 shall irrevocably bar the retired member from acquiring service  
6 credit for the period of exemption from membership; or

7 (2) a retired member employed by the  
8 legislature for legislative session work.

9 ~~[E-]~~ F. At any time during a retired member's  
10 subsequent employment pursuant to Subsection C of this section,  
11 the retired member may elect to suspend the pension. ~~[When the~~  
12 ~~pension is suspended, the following conditions shall apply]~~

13 G. When a pension is suspended pursuant to  
14 Paragraph (1) of Subsection C of this section or Subsection D  
15 or F of this section, the following conditions apply:

16 (1) the retired member who is subsequently  
17 employed by an affiliated public employer shall become a  
18 member. The previously retired member and the subsequent  
19 affiliated public employer shall make the required employee and  
20 employer contributions, and the previously retired member shall  
21 accrue service credit for the period of subsequent employment;  
22 and

23 (2) when a previously retired member  
24 terminates the subsequent employment with an affiliated public  
25 employer, ~~[he]~~ the previously retired member shall retire

.163962.1

underscoring material = new  
[bracketed material] = delete

1 according to the provisions of the Public Employees Retirement  
2 Act, subject to the following conditions:

3 (a) payment of the pension shall resume  
4 in accordance with the provisions of Subsection A of this  
5 section;

6 (b) unless the previously retired member  
7 accrued at least three years of service credit on account of  
8 the subsequent employment, the recalculation of pension shall:  
9 1) employ the form of payment selected by the previously  
10 retired member at the time of the first retirement; and 2) use  
11 the provisions of the coverage plan applicable to the member on  
12 the date of the first retirement; and

13 (c) the recalculated pension shall not  
14 be less than the amount of the suspended pension.

15 [~~F.~~] H. The pension of a member who has three or  
16 more years of service credit under each of two or more coverage  
17 plans shall be determined in accordance with the coverage plan  
18 that produces the highest pension. The pension of a member who  
19 has service credit under two or more coverage plans but who has  
20 three or more years of service credit under only one of those  
21 coverage plans shall be determined in accordance with the  
22 coverage plan in which the member has three or more years of  
23 service credit. If the service credit is acquired under two  
24 different coverage plans applied to the same affiliated public  
25 employer as a consequence of an election by the members,

.163962.1

underscoring material = new  
[bracketed material] = delete

1 adoption by the affiliated public employer or a change in the  
2 law that results in the application of a coverage plan with a  
3 greater pension, the greater pension shall be paid a member  
4 retiring from the affiliated public employer under which the  
5 change in coverage plan took place regardless of the amount of  
6 service credit under the coverage plan producing the greater  
7 pension; provided the member has three or more years of  
8 continuous employment with that affiliated public employer  
9 immediately preceding or immediately preceding and immediately  
10 following the date the coverage plan changed. The provisions  
11 of each coverage plan for the purpose of this subsection shall  
12 be those in effect at the time the member ceased to be covered  
13 by the coverage plan. "Service credit", for the purposes of  
14 this subsection, shall be only personal service rendered an  
15 affiliated public employer and credited to the member under the  
16 provisions of Subsection A of Section 10-11-4 NMSA 1978.  
17 Service credited under any other provision of the Public  
18 Employees Retirement Act shall not be used to satisfy the  
19 three-year service credit requirement of this subsection."

20 Section 2. Section 22-11-25.1 NMSA 1978 (being Laws 2001,  
21 Chapter 283, Section 2, as amended by Laws 2003, Chapter 80,  
22 Section 1 and by Laws 2003, Chapter 145, Section 1) is amended  
23 to read:

24 "22-11-25.1. RETURN TO EMPLOYMENT--BENEFITS CONTINUED FOR  
25 CERTAIN RETIRED MEMBERS--ADMINISTRATIVE UNIT CONTRIBUTIONS.--

.163962.1

underscoring material = new  
[bracketed material] = delete

1           A. Except as provided in Subsections B, [~~and~~] E and  
2 F of this section, beginning January 1, 2002 and continuing  
3 until January 1, 2012, a retired member may begin employment at  
4 a local administrative unit and shall not be required to  
5 suspend retirement benefits if the member has not been employed  
6 as an employee or independent contractor by a local  
7 administrative unit for at least twelve consecutive months from  
8 the date of retirement to the commencement of employment or  
9 reemployment with a local administrative unit. If the retired  
10 member returns to employment without first completing twelve  
11 consecutive months of retirement, the retired member shall  
12 [~~remove himself~~] be removed from retirement.

13           B. A retired member who was retired on or before  
14 January 1, 2001, has not since suspended or been required to  
15 suspend retirement benefits pursuant to the Educational  
16 Retirement Act and is reemployed by a local administrative unit  
17 prior to July 1, 2007 may continue employment at the local  
18 administrative unit and shall not be required to suspend  
19 retirement benefits.

20           C. Except as provided in Subsection F of this  
21 section, a retired member who returns to employment during  
22 retirement pursuant to Subsection A, [~~or~~] B or E of this  
23 section is entitled to continue to receive retirement benefits  
24 but is not entitled to acquire service credit or to acquire or  
25 purchase service credit in the future for the period of the

.163962.1

underscored material = new  
[bracketed material] = delete

1 retired member's reemployment with a local administrative unit.

2 D. Except as provided in Subsection F of this  
3 section, a retired member who returns to employment pursuant to  
4 [~~Subsections~~] Subsection A, [~~or~~] B or E of this section shall  
5 not make contributions to the fund as specified in the  
6 Educational Retirement Act; however, the local administrative  
7 unit's contributions as specified in that act shall be paid to  
8 the fund as if the retired member was a non-retired employee.

9 E. Except as provided in Subsection F of this  
10 section, beginning July 1, 2003 and continuing until January 1,  
11 2012, a retired member who retired on or before January 1, 2001  
12 and who has not been employed as an employee or independent  
13 contractor by a local administrative unit for at least ninety  
14 days may begin employment at a local administrative unit  
15 without suspending retirement benefits if the retired member  
16 was not employed by a local administrative unit for an  
17 additional twelve or more consecutive months after the initial  
18 date of the retirement; provided that the ninety-day period  
19 shall not include any part of a summer or other scheduled break  
20 or vacation period.

21 F. If a retired member initially returns to  
22 employment for a local administrative unit on or after July 1,  
23 2007, the retired member's pension shall be suspended and the  
24 retired member shall be removed from retirement on the first  
25 day of the month following the month in which the retired

.163962.1

underscored material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

member's earnings for a calendar year from that subsequent  
employment exceed twenty-five thousand dollars (\$25,000)."

Section 3. REPEAL.--Laws 2004, Chapter 2, Section 1 is  
repealed.