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HOUSE BILL 213

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

Ben Lujan

AN ACT

RELATING TO PUBLIC EMPLOYEES RETIREMENT; PROVIDING AN  
ALTERNATIVE RETIREMENT PLAN FOR SPECIAL INVESTIGATION OFFICERS  
AND AN ALTERNATIVE RETIREMENT PLAN FOR MOTOR TRANSPORTATION  
OFFICERS; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION  
OF LAW IN LAWS 2003.

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;

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1           B. "affiliated public employer" means the state and  
2 any public employer affiliated with the association as provided  
3 in the Public Employees Retirement Act, but does not include an  
4 employer pursuant to the Magistrate Retirement Act, the  
5 Judicial Retirement Act or the Educational Retirement Act;

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

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

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

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

18           G. "employee" means [~~any~~] an employee of an  
19 affiliated public employer;

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

24           I. "final average salary" means the final average  
25 salary calculated in accordance with the provisions of the

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1 applicable coverage plan;

2 J. "form of payment" means the applicable form of  
3 payment of a pension provided for in Section 10-11-117 NMSA  
4 1978;

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

9 L. "fund" means the funds included under the Public  
10 Employees Retirement Act;

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

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

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

24 (3) "motor transportation officer member"  
25 means a member who is an officer of the motor transportation

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1 division of the department of public safety and who has taken  
2 the oath prescribed for such officers;

3 [~~(3)~~] (4) "municipal detention officer member"  
4 means a member who is employed by an affiliated public employer  
5 other than the state and who has inmate custodial  
6 responsibilities at a facility used for the confinement of  
7 persons charged with or convicted of a violation of a law or  
8 ordinance;

9 [~~(4)~~] (5) "municipal fire member" means any  
10 member who is employed as a full-time nonvolunteer firefighter  
11 by an affiliated public employer and who has taken the oath  
12 prescribed for firefighters;

13 [~~(5)~~] (6) "municipal police member" means any  
14 member who is employed as a police officer by an affiliated  
15 public employer, other than the state, and who has taken the  
16 oath prescribed for police officers; [~~and~~]

17 (7) "special investigation officer member"  
18 means a member who is an officer of the special investigations  
19 division of the department of public safety and who has taken  
20 the oath prescribed for such officers; and

21 [~~(6)~~] (8) "state police member" means any  
22 member who is an officer of the New Mexico state police and who  
23 has taken the oath prescribed for such officers;

24 N. "membership" means membership in the  
25 association;

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

4           P. "public employer" means the state, any  
5 municipality, city, county, metropolitan arroyo flood control  
6 authority, economic development district, regional housing  
7 authority, soil and water conservation district, entity created  
8 pursuant to a joint powers agreement, council of government,  
9 conservancy district, irrigation district, water and sanitation  
10 district, water district and metropolitan water board,  
11 including the boards, departments, bureaus and agencies of a  
12 public employer, so long as these entities fall within the  
13 meaning of governmental plan as that term is used in Section  
14 414(d) of the Internal Revenue Code of 1986, as amended;

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

24           R. "retire" means to:

25                 (1) terminate employment with all employers

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1 covered by any state system or the educational retirement  
2 system; and

3 (2) receive a pension from a state system or  
4 the educational retirement system;

5 S. "retired member" means a person who has met all  
6 requirements for retirement and who is receiving a pension from  
7 the fund;

8 T. "retirement board" means the retirement board  
9 provided for in the Public Employees Retirement Act;

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

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1 member of a state system before the first plan year beginning  
2 after December 31, 1995;

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

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

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

14 Section 2. Section 10-11-27 NMSA 1978 (being Laws 1987,  
15 Chapter 253, Section 27, as amended by Laws 2003, Chapter 268,  
16 Section 9 and by Laws 2003, Chapter 269, Section 1) is amended  
17 to read:

18 "10-11-27. STATE [~~POLICE MEMBER AND ADULT CORRECTIONAL~~]  
19 OFFICER MEMBER COVERAGE PLAN 1--APPLICABILITY.--

20 A. State [~~police member and adult correctional~~]  
21 officer member coverage plan 1 is applicable to state police  
22 members who are not specifically covered by another coverage  
23 plan and to adult correctional officer members, motor  
24 transportation officer members and special investigation  
25 officer members. The credited service of a state police member

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1 who has held the permanent rank of patrolman, sergeant,  
2 lieutenant or captain and does not hold an exempt rank or who  
3 is assigned to the aircraft division as a pilot ~~[or]~~ and the  
4 credited service of an adult correctional officer member, a  
5 motor transportation officer member or a special investigation  
6 officer member shall have actual credited service increased by  
7 twenty percent for the purposes of state ~~[police]~~ officer  
8 member coverage plan 1.

9 B. State ~~[police member and adult correctional]~~  
10 officer member coverage plan 1 is applicable to:

11 (1) adult correctional officer members in the  
12 first full pay period after July 1, 2004 if the retirement  
13 board certifies to the secretary of state that, of those adult  
14 correctional officer members to be covered under state ~~[police~~  
15 ~~member and adult correctional]~~ officer member coverage plan 1,  
16 a majority of the members voting have voted to approve adoption  
17 of that plan at an election conducted pursuant to ~~[Section 16~~  
18 ~~of this 2003 act]~~ Laws 2003, Chapter 268, Section 16;

19 (2) motor transportation officer members in  
20 the first full pay period after July 1, 2009 if the retirement  
21 board certifies to the secretary of state that, of those motor  
22 transportation officer members to be covered under state  
23 officer member coverage plan 1, a majority of the members  
24 voting have voted to approve adoption of that plan at an  
25 election conducted pursuant to Section 9 of this 2008 act; and

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1                   (3) state investigation officer members in the  
2 first full pay period after July 1, 2009 if the retirement  
3 board certifies to the secretary of state that, of those state  
4 investigation officer members to be covered under state officer  
5 member coverage plan 1, a majority of the members voting have  
6 voted to approve adoption of that plan at an election conducted  
7 pursuant to Section 9 of this 2008 act."

8                   Section 3. Section 10-11-27.1 NMSA 1978 (being Laws 2003,  
9 Chapter 268, Section 10) is amended to read:

10                   "10-11-27.1. STATE [~~POLICE MEMBER AND ADULT CORRECTIONAL~~]  
11 OFFICER MEMBER COVERAGE PLAN 1--SERVICE CREDIT REQUIRED.--

12 Notwithstanding the provisions of Section 10-11-27 NMSA 1978,  
13 to qualify for payment under state [~~police member and adult~~  
14 ~~correctional~~] officer member coverage plan 1:

15                   A. an adult correctional officer member shall have  
16 eighteen months of service credit earned under the state  
17 [~~police member and adult correctional~~] officer member coverage  
18 plan 1 subsequent to July 1, 2004; and

19                   B. a motor transportation officer member or a  
20 special investigation officer member shall have thirty-six  
21 months of service credit earned under the state officer member  
22 coverage plan 1 subsequent to July 1, 2009."

23                   Section 4. Section 10-11-28 NMSA 1978 (being Laws 1987,  
24 Chapter 253, Section 28, as amended) is amended to read:

25                   "10-11-28. STATE [~~POLICE MEMBER AND ADULT CORRECTIONAL~~]

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1 OFFICER MEMBER COVERAGE PLAN 1--AGE AND SERVICE REQUIREMENTS  
2 FOR NORMAL RETIREMENT.--Under state [~~police member and adult~~  
3 ~~correctional~~] officer member coverage plan 1, the age and  
4 service requirements for normal retirement are:

5 A. age sixty-five years or older and five or more  
6 years of credited service;

7 B. age sixty-four years and eight or more years of  
8 credited service;

9 C. age sixty-three years and eleven or more years  
10 of credited service;

11 D. age sixty-two years and fourteen or more years  
12 of credited service;

13 E. age sixty-one years and seventeen or more years  
14 of credited service;

15 F. age sixty years and twenty or more years of  
16 credited service; or

17 G. any age and twenty-five or more years of  
18 credited service."

19 Section 5. Section 10-11-29 NMSA 1978 (being Laws 1987,  
20 Chapter 253, Section 29, as amended) is amended to read:

21 "10-11-29. STATE [~~POLICE MEMBER AND ADULT CORRECTIONAL~~]  
22 OFFICER MEMBER COVERAGE PLAN 1--AMOUNT OF PENSION--FORM OF  
23 PAYMENT A.--Under state [~~police member and adult correctional~~]  
24 officer member coverage plan 1, the amount of pension under  
25 form of payment A is equal to three percent of final average  
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1 salary multiplied by credited service. The amount shall not  
2 exceed eighty percent of the final average salary."

3 Section 6. Section 10-11-30 NMSA 1978 (being Laws 1987,  
4 Chapter 253, Section 30, as amended) is amended to read:

5 "10-11-30. STATE [~~POLICE MEMBER AND ADULT CORRECTIONAL~~]  
6 OFFICER MEMBER COVERAGE PLAN 1--FINAL AVERAGE SALARY.--Under  
7 state [~~police member and adult correctional~~] officer member  
8 coverage plan 1, the final average salary is one thirty-sixth  
9 of the greatest aggregate amount of salary paid a member for  
10 thirty-six consecutive months of credited service. Under state  
11 [~~police member and adult correctional~~] officer member coverage  
12 plan 1, if a [~~state police~~] member has less than thirty-six  
13 months of credited service, the final average salary is the  
14 aggregate amount of salary paid a member for the member's  
15 period of credited service divided by the member's credited  
16 service."

17 Section 7. Section 10-11-31 NMSA 1978 (being Laws 1987,  
18 Chapter 253, Section 31, as amended) is amended to read:

19 "10-11-31. STATE [~~POLICE MEMBER AND ADULT CORRECTIONAL~~]  
20 OFFICER MEMBER COVERAGE PLAN 1--MEMBER CONTRIBUTION RATE.--A  
21 member under state [~~police member and adult correctional~~]  
22 officer member coverage plan 1 shall contribute seven and  
23 six-tenths percent of salary."

24 Section 8. Section 10-11-32 NMSA 1978 (being Laws 1987,  
25 Chapter 253, Section 32, as amended) is amended to read:

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1           "10-11-32. STATE [~~POLICE MEMBER AND ADULT CORRECTIONAL~~  
2 OFFICER MEMBER COVERAGE PLAN 1--STATE CONTRIBUTION RATE.--The  
3 state shall contribute twenty-five and one-tenth percent of the  
4 salary of each member under state [~~police member and adult~~  
5 ~~correctional~~] officer member coverage plan 1."

6           Section 9. TEMPORARY PROVISION--STATE OFFICER MEMBER  
7 COVERAGE PLAN 1--ELECTIONS.--

8           A. On or before October 1, 2008, the public  
9 employees retirement board shall conduct an election to submit  
10 to motor transportation officer members currently contributing  
11 under state general member coverage plan 3 the question of  
12 adopting state officer member coverage plan 1. The election  
13 shall be conducted in accordance with procedures adopted by the  
14 public employees retirement board, and the retirement board  
15 shall certify the results of the election to the secretary of  
16 state on or before November 1, 2008.

17           B. On or before October 1, 2008, the public  
18 employees retirement board shall conduct an election to submit  
19 to special investigation officer members currently contributing  
20 under state general member coverage plan 3 the question of  
21 adopting state officer member coverage plan 1. The election  
22 shall be conducted in accordance with procedures adopted by the  
23 public employees retirement board, and the retirement board  
24 shall certify the results of the election to the secretary of  
25 state on or before November 1, 2008.

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