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HOUSE BILL 683

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

William "Bill" R. Rehm

AN ACT

RELATING TO RETURN TO EMPLOYMENT; PROVIDING THAT A RETIRED MEMBER OF THE PUBLIC EMPLOYEES RETIREMENT ASSOCIATION MAY RETURN TO EMPLOYMENT AS AN ELECTED SHERIFF WITHOUT THE REQUIREMENT OF CONTRIBUTIONS BY THE MEMBER OR BY THE PUBLIC EMPLOYER; 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--EMPLOYER CONTRIBUTIONS.--

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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 of this
19 section, a retired member may be subsequently employed by an
20 affiliated public employer if the following conditions apply:

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

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1 without first completing ninety consecutive days of
2 retirement:

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

24 (4) a retired member who returns to employment
25 during retirement pursuant to this subsection is entitled to

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

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

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

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

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

19 (c) the irrevocable exemption shall be
20 for the chief of police's, the elected sheriff's or the
21 undersheriff's term of office; and

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

25 (2) a retired member employed by the

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1 legislature for legislative session work.

2 E. At any time during a retired member's subsequent
3 employment pursuant to Subsection C of this section, the
4 retired member may elect to suspend the pension. When the
5 pension is suspended, the following conditions shall 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 and
10 employer contributions, and the previously retired member shall
11 accrue service credit for the period of subsequent employment;
12 and

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

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

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

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

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

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

12 Section 3. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is July 1, 2009.