

1 HOUSE BILL 731

2 **49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

3 INTRODUCED BY

4 Ben Lujan

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10 AN ACT

11 RELATING TO PUBLIC EMPLOYEES RETIREMENT; PROVIDING THAT CERTAIN
12 MEMBERS MAY PURCHASE SERVICE CREDIT FOR PERIODS OF EMPLOYMENT
13 AS SEASONAL EMPLOYEES OF THE LEGISLATIVE BRANCH; PROVIDING A
14 MEMBERSHIP OPTION FOR SEASONAL EMPLOYEES OF THE LEGISLATIVE
15 BRANCH WHO HAVE BEEN EMPLOYED FOR TEN CONSECUTIVE REGULAR
16 SESSIONS.

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

21 "10-11-2. DEFINITIONS.--As used in the Public Employees
22 Retirement Act:

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

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1 any, credited to that account;

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

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

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

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

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

19 G. "employee" means any employee of an affiliated
20 public employer;

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

25 I. "final average salary" means the final average
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1 salary calculated in accordance with the provisions of the
2 applicable coverage plan;

3 J. "form of payment" means the applicable form of
4 payment of a pension provided for in Section 10-11-117 NMSA
5 1978;

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

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

12 M. "member" means a currently employed,
13 contributing employee of an affiliated public employer, or a
14 person who has been but is not currently employed by an
15 affiliated public employer, who has not retired and who has not
16 received a refund of member contributions. "Member" also means
17 a seasonal employee of the legislative branch who has exercised
18 an option to become a member pursuant to Section 10-11-7.1 NMSA
19 1978. "Member" also includes the following:

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

24 (2) "hazardous duty member" means a member who
25 is a juvenile correctional officer employed by the children,

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1 youth and families department or its successor agency;

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

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

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

15 (6) "state police member" means any member who
16 is an officer of the New Mexico state police and who has taken
17 the oath prescribed for such officers;

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

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

23 P. "public employer" means the state, any
24 municipality, city, county, metropolitan arroyo flood control
25 authority, economic development district, regional housing

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

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

18 R. "retire" means to:

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

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

24 S. "retired member" means a person who has met all
25 requirements for retirement and who is receiving a pension from

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1 the fund;

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

4 U. "salary" means the base salary or wages paid a
5 member, including longevity pay, for personal services rendered
6 an affiliated public employer. "Salary" shall not include
7 overtime pay, allowances for housing, clothing, equipment or
8 travel, payments for unused sick leave, unless the unused sick
9 leave payment is made through continuation of the member on the
10 regular payroll for the period represented by that payment, and
11 any other form of remuneration not specifically designated by
12 law as included in salary for Public Employees Retirement Act
13 purposes. Salary in excess of the limitations set forth in
14 Section 401(a) (17) of the Internal Revenue Code of 1986, as
15 amended, shall be disregarded. The limitation on compensation
16 for eligible employees shall not be less than the amount that
17 was allowed to be taken into account under the state retirement
18 system acts in effect on July 1, 1993. For purposes of this
19 subsection, "eligible employee" means an individual who was a
20 member of a state system before the first plan year beginning
21 after December 31, 1995;

22 V. "state system" means the retirement programs
23 provided for in the Public Employees Retirement Act, the
24 Magistrate Retirement Act and the Judicial Retirement Act;

25 W. "state retirement system acts" means

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1 collectively the Public Employees Retirement Act, the
2 Magistrate Retirement Act, the Judicial Retirement Act and the
3 Volunteer Firefighters Retirement Act; and

4 X. "survivor beneficiary" means a person who
5 receives a pension or who has been designated to be paid a
6 pension as a result of the death of a member or retired
7 member."

8 Section 2. Section 10-11-3 NMSA 1978 (being Laws 1987,
9 Chapter 253, Section 3, as amended) is amended to read:

10 "10-11-3. MEMBERSHIP--REQUIREMENTS--EXCLUSIONS--
11 TERMINATION.--

12 A. Except as may be provided for in the Volunteer
13 Firefighters Retirement Act, the Judicial Retirement Act, the
14 Magistrate Retirement Act, the Educational Retirement Act and
15 the provisions of Sections 29-4-1 through 29-4-11 NMSA 1978
16 governing the state police pension fund, each employee and
17 elected official of every affiliated public employer shall be a
18 member of the association, unless excluded from membership in
19 accordance with Subsection B of this section.

20 B. The following employees and elected officials
21 are excluded from membership in the association:

22 (1) elected officials who file with the
23 association a written application for exemption from membership
24 within twenty-four months of taking office;

25 (2) elected officials who file with the

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1 association a written application for exemption from membership
2 within twenty-four months of the date the elected official's
3 public employer becomes an affiliated public employer;

4 (3) employees designated by the affiliated
5 public employer as seasonal or student employees, provided that
6 seasonal employees of the legislative branch who exercise an
7 option to become a member pursuant to Section 10-11-7.1 NMSA
8 1978 are not excluded from membership;

9 (4) employees who file with the association a
10 written application for exemption from membership within thirty
11 days of the date the employee's public employer becomes an
12 affiliated public employer;

13 (5) employees of an affiliated public employer
14 that is making contributions to a private retirement program on
15 behalf of the employee as part of a compensation arrangement
16 who file with the association a written application for
17 exemption within thirty days of employment, unless the employee
18 has previously retired under the provisions of the Public
19 Employees Retirement Act;

20 (6) employees of an affiliated public employer
21 who have retired under and are receiving a pension pursuant to
22 the provisions of the Educational Retirement Act; and

23 (7) retired members who return to work
24 pursuant to Section 10-11-8 NMSA 1978 and are exempted from
25 membership by the provisions of that section.

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1 C. Employees designated as seasonal and student
2 employees shall be notified in writing by their affiliated
3 public employer of the designation and the consequences of the
4 designation with respect to membership, service credit and
5 benefits. A copy of the notification shall be filed with the
6 association within thirty days of the date of employment.

7 D. An exemption from membership by an elected
8 official shall expire at the end of the term of office for
9 which filed.

10 E. Employees and elected officials who have
11 exempted themselves from membership may subsequently withdraw
12 the exemption by filing a membership application. Membership
13 shall commence the first day of the first pay period following
14 the date the application is filed.

15 F. The membership of an employee or elected
16 official shall cease if the employee terminates employment with
17 an affiliated public employer or the elected official leaves
18 office and the employee or elected official requests and
19 receives a refund of member contributions."

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

22 "10-11-4. SERVICE CREDIT--REQUIREMENTS FOR--FORFEITURE--
23 REINSTATEMENT.--

24 A. Personal service rendered an affiliated public
25 employer by a member shall be credited to the member's service

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1 credit account in accordance with retirement board rules and
2 regulations. Service shall be credited to the nearest month.
3 Except as provided in Subsection E of Section 10-11-7 NMSA 1978
4 and in Section 10-11-7.1 NMSA 1978, in no case shall ~~any~~ a
5 member be credited with a year of service for less than twelve
6 months of service in any calendar year or more than a month of
7 service for all service in any calendar month or more than a
8 year of service for all service in any calendar year. In no
9 case shall any member be allowed to purchase service credit
10 unless the purchase is authorized in the Public Employees
11 Retirement Act.

12 B. Personal service rendered an affiliated public
13 employer prior to August 1, 1947 shall be credited to a member
14 if the member acquires one year of service credit for personal
15 service rendered an affiliated public employer.

16 C. Personal service rendered an affiliated public
17 employer after July 31, 1947 but prior to the date the public
18 employer became an affiliated public employer is prior service
19 and shall be credited to a member if:

20 (1) the member acquires five years of service
21 credit for personal service rendered an affiliated public
22 employer; and

23 (2) the member pays the association the amount
24 determined in accordance with Subsection D of this section.

25 D. The purchase cost for each month of service

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1 credit purchased under the provisions of this section is equal
2 to the member's final average salary multiplied by the sum of
3 the member contribution rate and employer contribution rate
4 determined in accordance with the coverage plan applicable to
5 the member at the time of the written election to purchase.
6 Full payment shall be made in a single lump-sum amount in
7 accordance with the procedures established by the retirement
8 board. The portion of the purchase cost derived from the
9 employer contribution rate shall be credited to the ~~[employer]~~
10 employer's accumulation fund and shall not be refunded to the
11 member in the event of cessation of membership. In no case
12 shall any member be credited with a month of service for less
13 than the purchase cost as defined in this section.

14 E. Service credit shall be forfeited if a member
15 terminates employment with an affiliated public employer and
16 withdraws the member's accumulated member contributions.

17 F. A member or former member who is a member of
18 another state system or the educational retirement system and
19 who has forfeited service credit by withdrawal of member
20 contributions may reinstate the forfeited service credit by
21 repaying the amount withdrawn plus compound interest from the
22 date of withdrawal to the date of repayment at the rate set by
23 the retirement board. Withdrawn member contributions may be
24 repaid in increments of one year in accordance with the
25 procedures established by the retirement board. Full payment

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1 of each one-year increment shall be made in a single lump-sum
2 amount in accordance with procedures established by the
3 retirement board."

4 Section 4. Section 10-11-7 NMSA 1978 (being Laws 1987,
5 Chapter 253, Section 7, as amended) is amended to read:

6 "10-11-7. CREDITED SERVICE--PURCHASE OF SERVICE.--

7 A. A member who entered a uniformed service of the
8 United States may purchase service credit for periods of active
9 duty in the uniformed services subject to the following
10 conditions:

11 (1) the member pays the association the
12 purchase cost determined according to Subsection [E] F of this
13 section;

14 (2) the member has five or more years of
15 service credit acquired as a result of personal service
16 rendered in the employ of an affiliated public employer;

17 (3) the aggregate amount of service credit
18 purchased pursuant to this subsection does not exceed five
19 years reduced by any period of service credit acquired for
20 military service pursuant to any other provision of the Public
21 Employees Retirement Act;

22 (4) service credit may not be purchased for
23 periods of service in the uniformed services that are used to
24 obtain or increase a benefit from another retirement program;
25 and

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1 (5) the member must not have received a
2 discharge or separation from uniformed service under other than
3 honorable conditions.

4 B. A member who was a civilian prisoner of war
5 captured while in service to the United States as an employee
6 of the federal government or as an employee of a contractor
7 with the federal government may purchase service credit for the
8 period of internment as a civilian prisoner of war, provided
9 that:

10 (1) the member provides proof of employment
11 with the federal government or as a contractor to the federal
12 government in a form acceptable to the association;

13 (2) the member provides proof of the period of
14 internment in a form acceptable to the association;

15 (3) the member has at least five years of
16 service credit acquired as a result of personal service
17 rendered in the employ of an affiliated public employer;

18 (4) the aggregate amount of service credit
19 purchased pursuant to this subsection does not exceed five
20 years reduced by any period of service credit acquired for
21 military service pursuant to any other provision of the Public
22 Employees Retirement Act;

23 (5) service credit may not be purchased for
24 periods of service in internment as a civilian prisoner of war
25 if such periods are used to obtain or increase a benefit from

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1 another retirement program; and

2 (6) the member pays the association the
3 purchase cost determined according to Subsection [~~E~~] F of this
4 section.

5 C. A member who was employed by a utility company,
6 library, museum, transit company or nonprofit organization
7 administering federally funded public service programs, which
8 utility company, library, museum, transit company or nonprofit
9 organization administering federally funded public service
10 programs or federally funded public service programs
11 administered by a nonprofit organization are subsequently taken
12 over by an affiliated public employer, or a member who was
13 employed by an entity created pursuant to a joint powers
14 agreement between two or more affiliated public employers for
15 the purpose of administering or providing drug or alcohol
16 addiction treatment services irrespective of whether the entity
17 is subsequently taken over by an affiliated public employer,
18 may purchase [~~credited~~] service credit for the period of
19 employment subject to the following conditions:

20 (1) the member pays the association the
21 purchase cost determined according to Subsection [~~E~~] F of this
22 section;

23 (2) the member has five or more years of
24 [~~credited~~] service credit acquired as a result of personal
25 service rendered in the employ of an affiliated public

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1 employer; and

2 (3) the aggregate amount of [~~credited~~] service
3 credit purchased pursuant to this subsection does not exceed
4 five years.

5 D. A member who was appointed to participate in a
6 cooperative work study training program established jointly by
7 a state agency and a state post-secondary educational
8 institution may purchase [~~credited~~] service credit for the
9 period of participation subject to the following conditions:

10 (1) the member pays the association the full
11 actuarial present value of the amount of the increase in the
12 employee's pension as a consequence of the purchase as
13 determined by the association;

14 (2) the member pays the full cost of the
15 purchase within sixty days of the date the member is informed
16 of the amount of the payment;

17 (3) the member has five or more years of
18 [~~credited~~] service credit acquired as a result of personal
19 service rendered in the employ of an affiliated public
20 employer; and

21 (4) the aggregate amount of [~~credited~~] service
22 credit purchased pursuant to this subsection does not exceed
23 five years.

24 E. A member who was employed by the legislative
25 branch during a regular session of the legislature and who did

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1 not acquire service credit solely because the affiliated public
2 employer designated the employee as seasonal pursuant to
3 Section 10-11-3 NMSA 1978 may purchase service credit subject
4 to the following conditions:

5 (1) the member pays the association the
6 purchase cost determined according to Subsection F of this
7 section;

8 (2) the member may purchase three months of
9 service credit for each full regular sixty-day session in which
10 the member was employed and may purchase two months of service
11 credit for each full regular thirty-day session in which the
12 member was employed;

13 (3) the member has at least five years of
14 service credit acquired as a result of personal service
15 rendered in the employ of an affiliated public employer; and

16 (4) the total amount of service credit
17 purchased pursuant to this subsection does not exceed five
18 years.

19 ~~[E.]~~ F. Except for service to be used under a state
20 legislator coverage plan, the purchase cost for each month of
21 ~~[credited]~~ service credit purchased pursuant to the provisions
22 of this section is equal to the member's final average salary
23 multiplied by the sum of the member contribution rate and
24 employer contribution rate, determined in accordance with the
25 coverage plan applicable to the member at the time of the

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1 written election to purchase. The purchase cost for each year
2 of [~~credited~~] service credit to be used under a state
3 legislator coverage plan is equal to three times the normal
4 member contribution per year of [~~credited~~] service credit under
5 the state legislator coverage plan applicable to the member.
6 Full payment shall be made in a single lump sum within sixty
7 days of the date the member is informed of the amount of the
8 payment. The portion of the purchase cost derived from the
9 employer contribution rate shall be credited to the employer's
10 accumulation fund and shall not be paid out of the association
11 in the event of cessation of membership. In no case shall a
12 member be credited with a month of service for less than the
13 purchase cost as defined in this section.

14 [~~F.~~] G. A member shall be refunded, upon written
15 request filed with the association, the portion of the purchase
16 cost of [~~credited~~] service credit purchased pursuant to this
17 section that the association determines to have been
18 unnecessary to provide the member with the maximum pension
19 applicable to the member. The association shall not pay
20 interest on the portion of the purchase cost refunded to the
21 member.

22 [~~G.~~] H. A member of the magistrate retirement
23 system who during the member's service as a magistrate was
24 eligible to become a member of the public employees retirement
25 system and elected not to become a member of that system may

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1 purchase service credit pursuant to the public employees
2 retirement system for the period for which the magistrate
3 elected not to become a public employees retirement system
4 member by paying the amount of the increase in the actuarial
5 present value of the magistrate pension as a consequence of the
6 purchase as determined by the association. Full payment shall
7 be made in a single lump-sum amount in accordance with
8 procedures established by the retirement board. Except as
9 provided in Subsection [F] G of this section, seventy-five
10 percent of the purchase cost shall be considered to be employer
11 contributions and shall not be refunded to the member in the
12 event of cessation of membership.

13 [H.] I. At any time prior to retirement, any member
14 may purchase service credit in monthly increments, subject to
15 the following conditions:

16 (1) the member has at least five years of
17 service credit acquired as a result of personal service
18 rendered in the employ of an affiliated public employer;

19 (2) the aggregate amount of service credit
20 purchased pursuant to this subsection does not exceed one
21 year;

22 (3) the member pays full actuarial present
23 value of the amount of the increase in the employee's pension
24 as a consequence of the purchase as determined by the
25 association;

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1 (4) the member pays the full cost of the
2 purchase within sixty days of the date the member is informed
3 of the amount of the payment; and

4 (5) the purchase of service credit under this
5 subsection cannot be used to determine the final average salary
6 or the pension factor or be used to exceed the pension
7 maximum."

8 Section 5. A new section of the Public Employees
9 Retirement Act, Section 10-11-7.1 NMSA 1978, is enacted to
10 read:

11 "10-11-7.1. [NEW MATERIAL] TEN-YEAR LEGISLATIVE
12 EMPLOYEES--MEMBERSHIP OPTION.--

13 A. A person who has been employed by the
14 legislative branch for ten consecutive full regular sessions of
15 the legislature, who is not a retired member and who is not a
16 member solely because the affiliated public employer designated
17 the employee as seasonal pursuant to Section 10-11-3 NMSA 1978
18 may exercise an irrevocable option to become a member and
19 receive service credit pursuant to the following provisions:

20 (1) except as provided in Subsection B of this
21 section, the option shall be exercised on or before the
22 December 31 immediately following the end of the person's tenth
23 consecutive session of employment;

24 (2) the person may exercise the option by
25 filing the option and any payment required by Paragraph (4) of
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1 this subsection with the association upon forms provided by the
2 retirement board;

3 (3) at the time of exercising the option, the
4 person may elect to purchase service credit for past employment
5 during legislative sessions. Upon payment by the person and
6 the affiliated public employer pursuant to this subsection, the
7 person may receive three months of service credit for each full
8 regular sixty-day session in which the person was employed and
9 two months of service credit for each full regular thirty-day
10 session in which the person was employed;

11 (4) the purchase cost for the person shall
12 equal the monthly salary received for session employment
13 multiplied by the employee contribution rate in effect at the
14 time of employment multiplied by the number of months of
15 service credit being purchased for that session employment,
16 plus interest at a rate determined by the retirement board;

17 (5) the affiliated public employer shall pay
18 the employer's share for service credit received by the person
19 pursuant to Paragraph (3) of this subsection. The purchase
20 cost for the employer shall equal the monthly salary received
21 for session employment multiplied by the employer contribution
22 rate in effect at the time of employment multiplied by the
23 number of months of service credit being purchased for that
24 session employment, plus interest at a rate determined by the
25 retirement board. Payment shall be made by the employer within

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1 twenty days after the end of the regular session of the
2 legislature that follows the receipt of notice from the
3 association that the person has made the payment required by
4 Paragraph (4) of this subsection; and

5 (6) upon filing the option and making any
6 payments required by this subsection, the person shall become a
7 member. For subsequent session employment, the member and the
8 affiliated public employer shall make the required employee and
9 employer contributions, and the member shall accrue service
10 credit pursuant to the rates specified in Paragraph (3) of this
11 subsection.

12 B. Notwithstanding the requirement of Paragraph (1)
13 of Subsection A of this section that a person exercise the
14 membership option on or before the December 31 immediately
15 following the end of the person's tenth consecutive session of
16 employment, an employee of the legislative branch who meets all
17 of the other requirements of that subsection may elect to
18 become a member and receive service credit for past and future
19 employment pursuant to that subsection if:

20 (1) the employee was employed by the
21 legislative branch during the full first session of the
22 forty-ninth legislature;

23 (2) the employee has been employed by the
24 legislative branch for more than ten consecutive full regular
25 legislative sessions; and

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(3) the employee files the option and any
payments required with the association on or before December
31, 2009."