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SENATE BILL 207

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

David Ulibarri

AN ACT

RELATING TO PUBLIC EMPLOYEES RETIREMENT; AMENDING THE PUBLIC
EMPLOYEES RETIREMENT ACT TO CHANGE THE REQUIREMENTS FOR
RETURNING TO PUBLIC EMPLOYMENT AFTER RETIREMENT.

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) 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;

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1 (2) employment is terminated with all
2 employers covered by any state system or the educational
3 retirement system;

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

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

9 B. The amount of normal retirement pension is
10 determined in accordance with the coverage plan applicable to
11 the member.

12 C. Except as provided in Subsection D [~~or E~~] of
13 this section, a retired member may be subsequently employed by
14 an affiliated public employer [~~if the following conditions~~
15 ~~apply~~] only pursuant to the following provisions:

16 (1) the retired member has not been employed
17 as an employee of an affiliated public employer for at least
18 [~~ninety~~] twelve consecutive [~~days~~] months from the date of
19 retirement to the commencement of employment or reemployment
20 with an affiliated public employer; [~~if the retired member~~
21 ~~returns to employment without first completing ninety~~
22 ~~consecutive days of retirement:~~

23 ~~(a)]~~ (2) the previously retired member's
24 pension shall be suspended [~~immediately and~~] upon commencement
25 of the employment or reemployment;

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1 (3) the previously retired member shall not
2 become a member and thus no contributions shall be made by the
3 previously retired member or that person's affiliated public
4 employer under any coverage plan pursuant to the Public
5 Employees Retirement Act; and

6 ~~[(b)]~~ (4) 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]~~ resume in accordance with the provisions of Subsection
10 A of this section

11 ~~[(2) effective the first day of the month~~
12 ~~following the month in which the retired member's earnings~~
13 ~~total twenty-five thousand dollars (\$25,000) 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 the~~
16 ~~Public Employees Retirement Act; provided, however, that after~~
17 ~~December 31, 2006, no additional contributions shall be~~
18 ~~required pursuant to this paragraph;~~

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

25 ~~(4) a retired member who returns to employment~~

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

6 D. ~~[Except for Paragraph (4)]~~ The provisions of
7 Subsection C of this section ~~[the other provisions of that~~
8 ~~subsection]~~ do not apply to:

9 (1) a retired member who is appointed chief of
10 police of an affiliated public employer, other than the
11 affiliated public employer from which the retired member
12 retired, or who is appointed 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 or the undersheriff's term of office;
21 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;

25 (2) a retired member employed by the

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1 legislature for legislative session work; or

2 (3) a retired member who is elected to serve a
3 term as an elected official; provided that:

4 (a) the retired member files an
5 irrevocable exemption from membership with the association
6 within thirty days of taking office; and

7 (b) the irrevocable exemption shall be
8 for the elected official's term of office.

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

20 (2) ~~when a previously retired member~~
21 ~~terminates the subsequent employment with an affiliated public~~
22 ~~employer, the previously retired member shall retire according~~
23 ~~to the provisions of the Public Employees Retirement Act,~~
24 ~~subject to the following conditions:~~

25 (a) ~~payment of the pension shall resume~~

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1 ~~in accordance with the provisions of Subsection A of this~~
2 ~~section;~~

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

10 ~~(c) the recalculated pension shall not~~
11 ~~be less than the amount of the suspended pension.] A retired~~
12 ~~member who returns to employment during retirement pursuant to~~
13 ~~Subsection D of this section is entitled to receive retirement~~
14 ~~benefits but is not entitled to acquire service credit or to~~
15 ~~acquire or purchase service credit in the future for the period~~
16 ~~of the retired member's reemployment with an affiliated public~~
17 ~~employer.~~

18 F. The pension of a member who has three or more
19 years of service credit under each of two or more coverage
20 plans shall be determined in accordance with the coverage plan
21 that produces the highest pension. The pension of a member who
22 has service credit under two or more coverage plans but who has
23 three or more years of service credit under only one of those
24 coverage plans shall be determined in accordance with the
25 coverage plan in which the member has three or more years of

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

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