

SENATE FLOOR SUBSTITUTE FOR SENATE PUBLIC  
AFFAIRS COMMITTEE SUBSTITUTE FOR  
SENATE BILL 207

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

AN ACT

RELATING TO PUBLIC EMPLOYEES RETIREMENT; AMENDING THE PUBLIC  
EMPLOYEES RETIREMENT ACT TO CHANGE THE REQUIREMENTS FOR  
RETURNING TO PUBLIC EMPLOYMENT AFTER RETIREMENT; REQUIRING A  
WAIT PERIOD BEFORE RETURNING TO WORK; ADDRESSING INDEPENDENT  
CONTRACTORS; SUSPENDING A RETIRED MEMBER'S PENSION IF THE  
RETIRED MEMBER RETURNS TO WORK WITH AN AFFILIATED PUBLIC  
EMPLOYER; ADDRESSING CONTRIBUTIONS AND SERVICE CREDITS;  
ELIMINATING CERTAIN EXCEPTIONS FROM THE PENSION SUSPENSION  
REQUIREMENT; ADDRESSING THE STATUS OF CURRENTLY RETIRED MEMBERS  
WHO ARE RECEIVING A PENSION AND HAVE RETURNED TO WORK WITH AN  
AFFILIATED PUBLIC EMPLOYER.

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:

.182069.3

underscoring material = new  
[bracketed material] = delete

1 "10-11-8. NORMAL RETIREMENT--RETURN TO EMPLOYMENT--  
2 BENEFITS CONTINUED--EMPLOYER CONTRIBUTIONS.--

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

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

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

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

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

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

20 C. Except as provided in Subsection D [~~or E~~] of  
21 this section, on or after July 1, 2010, a retired member may be  
22 subsequently employed by an affiliated public employer [~~if the~~  
23 ~~following conditions apply~~] only pursuant to the following  
24 provisions:

25 (1) the retired member has not been employed

1 as an employee of an affiliated public employer or retained as  
 2 an independent contractor by the affiliated public employer  
 3 from which the retired member retired for at least [~~ninety~~]  
 4 twelve consecutive [days] months from the date of retirement to  
 5 the commencement of employment or reemployment with an  
 6 affiliated public employer; [~~If the retired member returns to~~  
 7 ~~employment without first completing ninety consecutive days of~~  
 8 ~~retirement:~~

9 (a) ~~(2)~~ the retired member's pension shall be  
 10 suspended [~~immediately and~~] upon commencement of the  
 11 employment;

12 (3) except as provided in Subsection F of this  
 13 section, the previously retired member shall not become a  
 14 member and thus the previously retired member shall accrue no  
 15 service credit and the previously retired member and that  
 16 person's affiliated public employer shall make no contributions  
 17 under any coverage plan pursuant to the Public Employees  
 18 Retirement Act; and

19 [~~(b)~~] (4) upon termination of the subsequent  
 20 employment, the previously retired member's pension shall [~~be~~  
 21 ~~calculated pursuant to Paragraph (2) of Subsection E]~~ resume in  
 22 accordance with the provisions of Subsection A of this section.

23 [~~(2)~~ ~~effective the first day of the month~~  
 24 ~~following the month in which the retired member's earnings~~  
 25 ~~total twenty-five thousand dollars (\$25,000) during a calendar~~

.182069.3

1 ~~year, a retired member who returns to employment shall be~~  
2 ~~required to make contributions to the fund as specified in the~~  
3 ~~Public Employees Retirement Act; provided, however, that after~~  
4 ~~December 31, 2006, no additional contributions shall be~~  
5 ~~required pursuant to this paragraph;~~

6 ~~(3) until the subsequent employment is~~  
7 ~~terminated, the affiliated public employer that employs the~~  
8 ~~retired member shall make contributions to the fund in the~~  
9 ~~amount specified in the Public Employees Retirement Act or in a~~  
10 ~~higher amount adjusted for full actuarial cost as determined~~  
11 ~~annually by the association; and~~

12 ~~(4) a retired member who returns to employment~~  
13 ~~during retirement pursuant to this subsection is entitled to~~  
14 ~~receive retirement benefits but is not entitled to acquire~~  
15 ~~service credit or to acquire or purchase service credit in the~~  
16 ~~future for the period of the retired member's reemployment with~~  
17 ~~an affiliated public employer.~~

18 ~~D. Except for Paragraph (4) of Subsection C of this~~  
19 ~~section, the other provisions of that subsection do not apply~~  
20 ~~to:~~

21 ~~(1) a retired member who is appointed chief of~~  
22 ~~police of an affiliated public employer, other than the~~  
23 ~~affiliated public employer from which the retired member~~  
24 ~~retired or who is appointed undersheriff; provided that:~~

25 ~~(a) the retired member files an~~

1 ~~irrevocable exemption from membership with the association~~  
2 ~~within thirty days of appointment;~~

3 ~~(b) each sheriff's office shall be~~  
4 ~~limited to one undersheriff qualifying pursuant to this~~  
5 ~~paragraph;~~

6 ~~(c) the irrevocable exemption shall be~~  
7 ~~for the chief of police's or the undersheriff's term of office;~~  
8 ~~and;~~

9 ~~(d) filing an irrevocable exemption~~  
10 ~~shall irrevocably bar the retired member from acquiring service~~  
11 ~~credit for the period of exemption from membership;]~~

12 D. The provisions of Subsection C of this section  
13 do not apply to:

14 ~~[(2)]~~ (1) a retired member employed by the  
15 legislature for legislative session work; or

16 ~~[(3)]~~ (2) a retired member who is elected to  
17 serve a term as an elected official; provided that:

18 (a) the retired member files an  
19 irrevocable exemption from membership with the association  
20 within thirty days of taking office; and

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

23 E. A retired member who returns to employment  
24 during retirement pursuant to Subsection D of this section is  
25 entitled to receive retirement benefits but is not entitled to

.182069.3

1 accrue service credit or to acquire or purchase service credit  
2 in the future for the period of the previously retired member's  
3 reemployment with an affiliated public employer.

4 [E.] F. At any time during a previously retired  
5 member's subsequent employment pursuant to Subsection C of this  
6 section, the previously retired member may elect to [~~suspend~~  
7 ~~the pension. When the pension is suspended]~~ become a member  
8 and the following conditions shall apply:

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

16 (2) when [~~a~~] the previously retired member  
17 terminates the subsequent employment with an affiliated public  
18 employer, the previously retired member shall retire according  
19 to the provisions of the Public Employees Retirement Act,  
20 subject to the following conditions:

21 (a) payment of the pension shall resume  
22 in accordance with the provisions of Subsection A of this  
23 section;

24 (b) unless the previously retired member  
25 accrued at least three years of service credit on account of

1 the subsequent employment, the recalculation of pension shall:  
2 1) employ the form of payment selected by the previously  
3 retired member at the time of the first retirement; and 2) use  
4 the provisions of the coverage plan applicable to the member on  
5 the date of the first retirement; and

6 (c) the recalculated pension shall not  
7 be less than the amount of the suspended pension.

8 G. A previously retired member who returned to work  
9 with an affiliated public employer prior to July 1, 2010 shall  
10 be subject to the provisions of this section in effect on the  
11 date the previously retired member returned to work; provided  
12 that, on and after July 1, 2010, the previously retired member  
13 shall pay the employee contribution in an amount specified in  
14 the Public Employees Retirement Act for the position in which  
15 the previously retired member is employed.

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

.182069.3

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

21 Section 2. EFFECTIVE DATE.--The effective date of the  
22 provisions of this act is July 1, 2010.