

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.

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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underscored material = new
[bracketed material] = delete

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]~~ F of
13 this section, on or after July 1, 2010, a retired member may be
14 subsequently employed by an affiliated public employer ~~[if the~~
15 ~~following conditions apply]~~ only pursuant to the following
16 provisions:

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

24 ~~(a)]~~ (2) the retired member's pension shall be
25 suspended ~~[immediately and]~~ upon commencement of the

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1 employment;

2 (3) except as provided in Subsection F of this
 3 section, the previously retired member shall not become a
 4 member and thus the previously retired member shall accrue no
 5 service credit and the previously retired member and that
 6 person's affiliated public employer shall make no contributions
 7 under any coverage plan pursuant to the Public Employees
 8 Retirement Act; and

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

13 ~~[(2) effective the first day of the month~~
 14 ~~following the month in which the retired member's earnings~~
 15 ~~total twenty-five thousand dollars (\$25,000) during a calendar~~
 16 ~~year, a retired member who returns to employment shall be~~
 17 ~~required to make contributions to the fund as specified in the~~
 18 ~~Public Employees Retirement Act; provided, however, that after~~
 19 ~~December 31, 2006, no additional contributions shall be~~
 20 ~~required pursuant to this paragraph;~~

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

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1 annually by the association; and

2 ~~(4) a retired member who returns to employment~~
3 ~~during retirement pursuant to this subsection is entitled to~~
4 ~~receive retirement benefits but is not entitled to acquire~~
5 ~~service credit or to acquire or purchase service credit in the~~
6 ~~future for the period of the retired member's reemployment with~~
7 ~~an affiliated public employer.~~

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

11 (1) a retired member who is [~~appointed chief~~
12 ~~of police]~~ hired as a public safety officer of an affiliated
13 public employer, other than the affiliated public employer from
14 which the retired member retired [~~or who is appointed~~
15 ~~undersheriff]~~; provided that:

16 (a) the retired member shall have earned
17 sufficient service credit for the maximum pension available
18 under the retired member's coverage plan;

19 [~~(a)]~~ (b) the retired member files an
20 irrevocable exemption from membership with the association
21 within thirty days of appointment;

22 [~~(b) each sheriff's office shall be~~
23 ~~limited to one undersheriff qualifying pursuant to this~~
24 ~~paragraph;]~~

25 (c) the irrevocable exemption shall be

1 for the [~~chief of police's or the undersheriff's term of~~
 2 ~~office; and~~] public safety officer's term of employment;

3 (d) filing an irrevocable exemption
 4 shall irrevocably bar the retired member from acquiring service
 5 credit for the period of exemption from membership; and

6 (e) "public safety officer" means an
 7 employee: 1) who is employed as a full-time non-volunteer
 8 firefighter in a non-managerial position by an affiliated
 9 public employer and who has taken the oath prescribed for
 10 firefighters; or 2) who is employed as a police officer in a
 11 non-managerial position by an affiliated public employer and
 12 who has taken the oath prescribed for police officers;

13 (2) a retired member employed by the
 14 legislature for legislative session work; or

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

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

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

22 E. A retired member who returns to employment
 23 during retirement pursuant to Subsection D of this section is
 24 entitled to receive retirement benefits but is not entitled to
 25 accrue service credit or to acquire or purchase service credit

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1 in the future for the period of the previously retired member's
2 reemployment with an affiliated public employer.

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

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

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

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

23 (b) unless the previously retired member
24 accrued at least three years of service credit on account of
25 the subsequent employment, the recalculation of pension shall:

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1 1) employ the form of payment selected by the previously
2 retired member at the time of the first retirement; and 2) use
3 the provisions of the coverage plan applicable to the member on
4 the date of the first retirement; and

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

7 G. A previously retired member who returned to work
8 with an affiliated public employer prior to July 1, 2010 shall
9 be subject to the provisions of Section 10-11-8 NMSA 1978 in
10 effect on the date the previously retired member returned to
11 work.

12 [~~F.~~] H. The pension of a member who has three or
13 more years of service credit under each of two or more coverage
14 plans shall be determined in accordance with the coverage plan
15 that produces the highest pension. The pension of a member who
16 has service credit under two or more coverage plans but who has
17 three or more years of service credit under only one of those
18 coverage plans shall be determined in accordance with the
19 coverage plan in which the member has three or more years of
20 service credit. If the service credit is acquired under two
21 different coverage plans applied to the same affiliated public
22 employer as a consequence of an election by the members,
23 adoption by the affiliated public employer or a change in the
24 law that results in the application of a coverage plan with a
25 greater pension, the greater pension shall be paid a member

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

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