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HOUSE BILL 142

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Ben Lujan

AN ACT

RELATING TO PUBLIC EMPLOYEE RETIREMENT; AMENDING THE PUBLIC
EMPLOYEES RETIREMENT ACT TO PROVIDE THAT RETIRED MEMBERS MAY BE
HIRED AS UNDER-SHERIFFS OR EXECUTIVE SECRETARIES TO SHERIFFS OR
MAY BE HIRED TEMPORARILY AS PRECINCT BOARD MEMBERS FOR
ELECTIONS OR AS PART-TIME SCHOOL CROSSING GUARDS WITHOUT
SUSPENDING THEIR PENSIONS.

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:

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

4 (2) employment is terminated with all
5 employers covered by any state system or the educational
6 retirement system;

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

9 (4) the member meets the age and service
10 credit requirement for normal retirement specified in the
11 coverage plan applicable to the member.

12 B. The amount of normal retirement pension is
13 determined in accordance with the coverage plan applicable to
14 the member.

15 C. Except as provided in Subsection D of this
16 section, on or after July 1, 2010, a retired member may be
17 subsequently employed by an affiliated public employer only
18 pursuant to the following provisions:

19 (1) the retired member has not been employed
20 as an employee of an affiliated public employer or retained as
21 an independent contractor by the affiliated public employer
22 from which the retired member retired for at least twelve
23 consecutive months from the date of retirement to the
24 commencement of employment or reemployment with an affiliated
25 public employer;

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1 (2) the retired member's pension shall be
2 suspended upon commencement of the employment;

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

10 (4) upon termination of the subsequent
11 employment, the previously retired member's pension shall
12 resume in accordance with the provisions of Subsection A of
13 this section.

14 D. The provisions of Subsection C of this section
15 do not apply to:

16 (1) a retired member employed by the
17 legislature for legislative session work; [~~or~~]

18 (2) a retired member employed by a sheriff in
19 an exempt position as an under-sheriff or an executive
20 secretary pursuant to Section 4-41-5 NMSA 1978;

21 (3) a retired member employed temporarily as a
22 precinct board member for a municipal election or an election
23 covered by the Election Code;

24 (4) a retired member employed on a part-time
25 basis as a crossing guard for crosswalks in a school zone; or

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1 [~~2~~] (5) a retired member who is elected to
2 serve a term as an elected official; provided that:

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

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

8 E. A retired member who returns to employment
9 during retirement pursuant to Subsection D of this section is
10 entitled to receive retirement benefits but is not entitled to
11 accrue service credit or to acquire or purchase service credit
12 in the future for the period of the previously retired member's
13 reemployment with an affiliated public employer.

14 F. At any time during a previously retired member's
15 subsequent employment pursuant to Subsection C of this section,
16 the previously retired member may elect to become a member and
17 the following conditions shall apply:

18 (1) the previously retired member and the
19 subsequent affiliated public employer shall make the required
20 employee and employer contributions, and the previously retired
21 member shall accrue service credit for the period of subsequent
22 employment; and

23 (2) when the previously retired member
24 terminates the subsequent employment with an affiliated public
25 employer, the previously retired member shall retire according

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1 to the provisions of the Public Employees Retirement Act,
2 subject to the following conditions:

3 (a) payment of the pension shall resume
4 in accordance with the provisions of Subsection A of this
5 section;

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

13 (c) the recalculated pension shall not
14 be less than the amount of the suspended pension.

15 G. A previously retired member who returned to work
16 with an affiliated public employer prior to July 1, 2010 shall
17 be subject to the provisions of this section in effect on the
18 date the previously retired member returned to work; provided
19 that, on and after July 1, 2010, the previously retired member
20 shall pay the employee contribution in an amount specified in
21 the Public Employees Retirement Act for the position in which
22 the previously retired member is employed.

23 H. The pension of a member who has three or more
24 years of service credit under each of two or more coverage
25 plans shall be determined in accordance with the coverage plan

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1 that produces the highest pension. The pension of a member who
2 has service credit under two or more coverage plans but who has
3 three or more years of service credit under only one of those
4 coverage plans shall be determined in accordance with the
5 coverage plan in which the member has three or more years of
6 service credit. If the service credit is acquired under two
7 different coverage plans applied to the same affiliated public
8 employer as a consequence of an election by the members,
9 adoption by the affiliated public employer or a change in the
10 law that results in the application of a coverage plan with a
11 greater pension, the greater pension shall be paid a member
12 retiring from the affiliated public employer under which the
13 change in coverage plan took place regardless of the amount of
14 service credit under the coverage plan producing the greater
15 pension; provided the member has three or more years of
16 continuous employment with that affiliated public employer
17 immediately preceding or immediately preceding and immediately
18 following the date the coverage plan changed. The provisions
19 of each coverage plan for the purpose of this subsection shall
20 be those in effect at the time the member ceased to be covered
21 by the coverage plan. "Service credit", for the purposes of
22 this subsection, shall be only personal service rendered an
23 affiliated public employer and credited to the member under the
24 provisions of Subsection A of Section 10-11-4 NMSA 1978.
25 Service credited under any other provision of the Public

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1 Employees Retirement Act shall not be used to satisfy the
2 three-year service credit requirement of this subsection."

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