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SENATE BILL 121

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

George K. Munoz

FOR THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC EMPLOYEES RETIREMENT; ADDING AN EXCEPTION
FOR CHIEFS OF POLICE AND UNDERSHERIFFS TO THE RETURN TO WORK
RESTRICTIONS IN THE PUBLIC EMPLOYEES RETIREMENT ACT.

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

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

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

25 (3) except as provided in Subsection F of this

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1 section, the previously retired member shall not become a
2 member and thus the previously retired member shall accrue no
3 service credit and the previously retired member and that
4 person's affiliated public employer shall make no contributions
5 under any coverage plan pursuant to the Public Employees
6 Retirement Act; and

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

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

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

15 (2) a retired member employed temporarily as a
16 precinct board member for a municipal election or an election
17 covered by the Election Code; ~~[or]~~

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

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

23 (b) the irrevocable exemption shall be
24 for the elected official's term of office; or

25 (4) on and after July 1, 2013, a retired

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1 member who is appointed chief of police of an affiliated public
2 employer, other than of the affiliated public employer from
3 which the member retired, or who is appointed as an
4 undersheriff, if the retired member files an irrevocable
5 exemption from membership with the association within thirty
6 days of appointment. For purposes of this subsection, each
7 sheriff's office shall be limited to one undersheriff. The
8 irrevocable exemption shall be for the chief of police's or the
9 undersheriff's term of office.

10 E. A retired member who returns to employment
11 during retirement pursuant to Paragraph (1), (2) or (3) of
12 Subsection D of this section is entitled to receive retirement
13 benefits but is not entitled to accrue service credit or to
14 acquire or purchase service credit in the future for the period
15 of the previously retired member's reemployment with an
16 affiliated public employer.

17 F. For a retired member who returns to employment
18 during retirement pursuant to Paragraph (4) of Subsection D of
19 this section:

20 (1) the retired member shall be entitled to
21 the continuation of retirement benefits;

22 (2) the retired member shall not accrue
23 service credit or acquire or purchase service credit in the
24 future for the period of the previously retired member's
25 reemployment with an affiliated public employee; and

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1 (3) the retired member and the subsequent
2 affiliated public employer shall make the employee and employer
3 contributions pursuant to the Public Employees Retirement Act
4 for the appropriate coverage plan associated with the retired
5 member's reemployment.

6 [F-] G. At any time during a previously retired
7 member's subsequent employment pursuant to Subsection C of this
8 section, the previously retired member may elect to become a
9 member and the following conditions shall apply:

10 (1) the previously retired member and the
11 subsequent affiliated public employer shall make the required
12 employee and employer contributions, and the previously retired
13 member shall accrue service credit for the period of subsequent
14 employment; and

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

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

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

20 **SECTION 2. EFFECTIVE DATE.**--The effective date of the
21 provisions of this act is July 1, 2013.

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