

HOUSE BILL 227

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Pamelya Herndon

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO LAW ENFORCEMENT; ADDING TO THE LAW ENFORCEMENT RETENTION FUND AN ANNUAL RETENTION DISBURSEMENT FOR EVERY YEAR OF SERVICE AFTER TWENTY YEARS; ALLOWING LAW ENFORCEMENT OFFICERS TO EARN ONE YEAR OF CREDIT FOR HEALTH CARE PREMIUMS FOR EVERY YEAR OF SERVICE AFTER RETIREMENT ELIGIBILITY;

HLVMC → ~~ALLOWING LAW ENFORCEMENT OFFICERS TO RETURN TO WORK FOR AFFILIATED PUBLIC EMPLOYERS UNDER CERTAIN CONDITIONS;~~ ← HLVMC

ALLOWING LAW ENFORCEMENT OFFICERS TO EARN UP TO ONE HUNDRED

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PERCENT OF THE RETIREMENT BENEFIT PURSUANT TO THE PUBLIC
EMPLOYEES RETIREMENT ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 9-19-14 NMSA 1978 (being Laws 2022,
Chapter 56, Section 36) is amended to read:

"9-19-14. LAW ENFORCEMENT RETENTION FUND--CREATED--
RETENTION DIFFERENTIAL DISBURSEMENT--REPORTING.--

A. The "law enforcement retention fund" is created
in the state treasury. The fund consists of money appropriated
by the legislature, federal money granted to the state for the
purposes of the fund, income from investment of the fund and
money otherwise accruing to the fund. Money in the fund shall
not revert to any other fund at the end of a fiscal year. The
department shall administer the fund to provide:

- (1) retention differential disbursements for
law enforcement officers meeting certain levels of tenure; and
- (2) support for disbursement administration
processes and reporting compliance.

B. Money in the fund shall be disbursed on warrants
signed by the secretary of finance and administration pursuant
to vouchers signed by the secretary of public safety.

C. Contingent on the completion of reporting
requirements provided in Subsection G of this section, the
department shall determine and distribute annually the amount
necessary to provide to a law enforcement agency for the

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purpose of providing a retention differential disbursement to law enforcement officers employed by that law enforcement agency. A law enforcement agency shall expend funding received for no other purpose than that permitted by this section, and any unexpended balance received by a law enforcement agency pursuant to this section at the end of a fiscal year shall revert to the law enforcement retention fund. The department shall monitor the use of funding and ensure the proper reversions to the law enforcement retention fund.

D. A law enforcement officer shall receive a retention differential disbursement in the amount of five percent of the law enforcement officer's salary upon reaching four, nine, fourteen and nineteen years of service from the anniversary of the law enforcement officer's date of hire with that law enforcement agency and annually for every year of service after twenty years; provided that:

(1) the law enforcement officer remains employed as a law enforcement officer with that same law enforcement agency for one additional year; and

(2) the retention differential disbursement shall be calculated based on the salary of the law enforcement officer on those dates.

E. After the calculations for retention differential disbursements are made in accordance with Subsection D of this section, if the balance in the fund is insufficient to permit the total disbursements provided by

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Subsection D of this section, the department shall reduce that allocation to the maximum amount permitted by available money in the fund.

F. The amount provided for a retention differential disbursement shall include the amount of employer tax liabilities, which shall be paid by the employer at the time the retention differential disbursement is provided to the law enforcement officer.

G. To receive funding pursuant to Subsection C of this section, a law enforcement agency shall make that request to the department prior to June 1 of each fiscal year, and in that request, the agency shall report the following:

(1) the number of officers that are projected to become eligible for a retention differential disbursement in the upcoming fiscal year and the projected amount of the retention differential disbursement, including any employer tax liabilities;

(2) the number of law enforcement officers employed by the law enforcement agency for the last five years;

(3) the number of years of service of each law enforcement officer employed by the law enforcement agency;

(4) the number of law enforcement officers that left the employ of the law enforcement agency in the last year and the stated reasons why each law enforcement officer left the employ of the law enforcement agency;

(5) the number of years of service of each law

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enforcement officer that left the employ of the law enforcement agency in the last year;

(6) the number of applicants to the law enforcement agency in the last year;

(7) the number of applicants to the law enforcement agency in the last year that attended a law enforcement academy;

(8) the number of law enforcement officers that received one or more certifications in the last year;

(9) the number of law enforcement officers added to the law enforcement agency via lateral transfer and the years of service of each law enforcement officer at each previous law enforcement agency;

(10) any changes to compensation, recruiting, retention or benefits implemented by the law enforcement agency in the last year; and

(11) any other information that is used for determining retention rates unless disclosure of such information is otherwise prohibited by law.

H. The department shall:

(1) provide forms, standards and procedures and related training to law enforcement agencies as necessary for the agencies to report retention information;

(2) maintain the privacy and security of information in accordance with applicable state and federal laws; and

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(3) adopt and promulgate rules as necessary to implement the provisions of this section.

I. The annual report and other statistical data reports generated by the department shall include an evaluation of a program's efficacy in law enforcement retention and shall be made available to law enforcement agencies and the public.

J. The department shall provide monthly reports to the department of finance and administration and the legislative finance committee about expenditures from the law enforcement retention fund, including an itemized list of expenditures and the balance remaining in the fund.

K. The department may waive reporting information required by a law enforcement agency pursuant to Subsection G of this section; provided that the department shall provide an explanation of its decision in writing.

L. The department shall submit an annual report providing information collected pursuant to Subsection G of this section to the governor and the legislature no later than December 15 of each year.

M. As used in this section:

(1) "law enforcement agency" means an agency of the state or local political subdivision of the state that employs certified law enforcement officers or the police department of a tribe that has entered into an agreement with the department pursuant to Section 29-1-11 NMSA 1978;

(2) "law enforcement officer" means a full-

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time salaried public employee of a law enforcement agency, or a certified part-time salaried police officer employed by a law enforcement agency, whose principal duties under law are to hold in custody any person accused of a criminal offense, to maintain public order or to make arrests for crimes; and

(3) "retention differential disbursement" means the amount disbursed from the law enforcement retention fund based on a law enforcement officer's service at a law enforcement agency but is not considered salary for the purpose of calculating retirement benefits."

SECTION 2. Section 10-7C-13 NMSA 1978 (being Laws 1990, Chapter 6, Section 13, as amended) is amended to read:

"10-7C-13. PAYMENT OF PREMIUMS ON HEALTH CARE PLANS.--

A. Except as otherwise provided in this section, each eligible retiree shall pay a monthly premium for the basic plan in an amount set by the board not to exceed fifty dollars (\$50.00) plus the amount, if any, of the compounded annual increases authorized by the board, which increases shall not exceed nine percent until fiscal year 2008 after which the increases shall not exceed the authority's group health care trend. In addition to the monthly premium for the basic plan, each current retiree and nonsalaried eligible participating entity governing authority member who becomes an eligible retiree shall also pay monthly an additional participation fee set by the board. That fee shall be five dollars (\$5.00) plus the amount, if any, of the compounded annual increases

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authorized by the board, which increases shall not exceed nine percent until fiscal year 2008 after which the increases shall not exceed the authority's group health care trend. The additional monthly participation fee paid by the current retirees and nonsalaried eligible participating entity governing authority members who become eligible retirees shall be a consideration and a condition for being permitted to participate in the Retiree Health Care Act. A legislative member or a former participating employer governing authority member shall pay a monthly premium for any selected plan equal to one-twelfth of the annual cost of the claims and administrative costs of that plan allocated to the member by the board. In addition, a legislative member or a former participating employer governing authority member shall pay the additional monthly participation fee set by the board pursuant to this subsection as a consideration and condition for participation in the Retiree Health Care Act. Eligible dependents shall pay monthly premiums in amounts that with other money appropriated to the fund shall cover the cost of the basic plan for the eligible dependents.

B. Eligible retirees and eligible dependents shall pay monthly premiums to cover the cost of the optional plans that they elect to receive, and the board shall adopt rules for the collection of additional premiums from eligible retirees and eligible dependents participating in the optional plans. An eligible retiree or eligible dependent may authorize the

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authority in writing to deduct the amount of these premiums from the monthly annuity payments, if applicable.

C. The participating employers, active employees and retirees are responsible for the financial viability of the program. The overall financial viability is not an additional financial obligation of the state.

D. For eligible retirees who become eligible for participation on or after July 1, 2001, the board may determine monthly premiums based on the retirees' years of credited service with participating employers.

E. For every year a law enforcement officer serves beyond full retirement eligibility, the law enforcement officer shall earn one year of credit for health care premiums in an amount equal to the cost of premiums for the basic plan to be paid by the law enforcement agency that employed the officer. The credit may be earned up to but not beyond the law enforcement officer's medicare eligibility age.

F. As used in this section, "law enforcement officer" means a full-time salaried public employee of a law enforcement agency or a certified part-time salaried police officer employed by a law enforcement agency whose principal duties under law are to hold in custody any person accused of a criminal offense, to maintain public order or to make arrests for crimes."

HLVMC → ~~SECTION 3. 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--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;~~

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

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

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

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

~~C. Except as provided in [Subsection] Subsections D and J of this section, on or after July 1, 2010, a retired member may be subsequently employed by an affiliated public employer only pursuant to the following provisions:~~

~~(1) the retired member has not been employed as an employee of an affiliated public employer or retained as~~

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~~an independent contractor by the affiliated public employer from which the retired member retired for at least twelve consecutive months from the date of retirement to the commencement of subsequent employment or reemployment with an affiliated public employer;~~

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

~~(3) except as provided in Subsection F of this section, the retired member shall not become a member and shall not accrue service credit, and the retired member and that person's subsequent affiliated public employer shall not make contributions under any coverage plan pursuant to the Public Employees Retirement Act; and~~

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

~~D. The provisions of Subsections C, G, [and] H and J of this section do not apply to:~~

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

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

~~(3) a retired member who is elected to serve a term as an elected official in an office covered pursuant to~~

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~~the Public Employees Retirement Act; provided that:~~

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

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

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

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

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

~~(2) when the previously retired member terminates the subsequent employment with an affiliated public employer, the previously retired member shall retire according to the provisions of the Public Employees Retirement Act,~~

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~~subject to the following conditions:~~

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

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

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

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

~~H. Effective July 1, 2014, if a retired member who, subsequent to retirement, is employed and covered pursuant to the provisions of the Magistrate Retirement Act or Judicial Retirement Act, during the period of subsequent employment:~~

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~~(1) the member shall be entitled to receive retirement benefits;~~

~~(2) the retired member's cost-of-living pension adjustment shall be suspended upon commencement of the employment; and~~

~~(3) upon termination of the employment, the retired member's suspended cost-of-living pension adjustment shall be reinstated as provided under Section 10-11-118 NMSA 1978.~~

~~I. The pension of a member who has earned service credit under more than one coverage plan shall be determined as follows:~~

~~(1) the pension of a member who has three or more years of service credit earned on or before June 30, 2013 under each of two or more coverage plans shall be determined in accordance with the coverage plan that produces the highest pension;~~

~~(2) the pension of a member who has service credit earned on or before June 30, 2013 under two or more coverage plans but who has three or more years of service credit under only one of those coverage plans shall be determined in accordance with the coverage plan in which the member has three or more years of service credit. If the service credit is acquired under two different coverage plans applied to the same affiliated public employer as a consequence~~

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~~of an election by the members, adoption by the affiliated public employer or a change in the law that results in the application of a coverage plan with a greater pension, the greater pension shall be paid a member retiring from the affiliated public employer under which the change in coverage plan took place regardless of the amount of service credit under the coverage plan producing the greater pension; provided that the member has three or more years of continuous employment with that affiliated public employer immediately preceding or immediately preceding and immediately following the date the coverage plan changed;~~

~~(3) the pension of a member who has service credit earned on or before June 30, 2013 under each of two or more coverage plans and who has service credit earned under any coverage plan on or after July 1, 2013 shall be equal to the sum of:~~

~~(a) the pension attributable to the service credit earned on or before June 30, 2013 determined pursuant to Paragraph (1) or (2) of this subsection; and~~

~~(b) the pension attributable to the service credit earned under each coverage plan on or after July 1, 2013;~~

~~(4) the pension of a member who has service credit earned only on and after July 1, 2013 shall be equal to the sum of the pension attributable to the service credit the~~

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~~member has accrued under each coverage plan; and~~

~~(5) the provisions of each coverage plan for the purpose of this subsection shall be those in effect at the time the member ceased to be covered by the coverage plan.~~

~~"Service credit", for the purposes of this subsection, shall be only personal service rendered an affiliated public employer and credited to the member under the provisions of Subsection A of Section 10-11-4 NMSA 1978. Service credited under any other provision of the Public Employees Retirement Act shall not be used to satisfy the three-year service credit requirement of this subsection.~~

~~J. Notwithstanding any other provision of this section, a certified law enforcement officer who has retired on or before December 31, 2022 under any municipal police member coverage plan or under the state police member, correctional officer member and probation and parole officer member coverage plan may be subsequently employed as a certified law enforcement officer by an affiliated public employer; provided that the:~~

~~(1) retired member's pension, including any cost-of-living adjustment, shall continue to be paid during the period of subsequent employment;~~

~~(2) retired member shall not become a member during the period of subsequent employment;~~

~~(3) retired member shall not accrue service~~

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~~credit for any portion of the period of subsequent employment;~~

~~(4) retired member and the retired member's subsequent affiliated public employer shall make the contributions that would be required for members and employers under the applicable coverage plan during the entire period of subsequent employment;~~

~~(5) contributions paid by or on behalf of the retired member during the term of subsequent employment shall not be refundable at the termination of the subsequent employment;~~

~~(6) retired member is subsequently employed by:~~

~~(a) the affiliated public employer in an entry-level or civilian position, as certified by the affiliated public employer to the association; or~~

~~(b) an affiliated public employer in a municipality with a population of less than sixty thousand, without regard to the level of position; and~~

~~(7) subsequent employment occurs prior to July 1, 2028."~~←HLVMC

SECTION HLVMC→4.←HLVMC HLVMC→3.←HLVMC Section 10-11-29 NMSA 1978 (being Laws 1987, Chapter 253, Section 29, as amended) is amended to read:

"10-11-29. STATE POLICE MEMBER, CORRECTIONAL OFFICER MEMBER AND PROBATION AND PAROLE OFFICER MEMBER COVERAGE PLAN

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1--AMOUNT OF PENSION--FORM OF PAYMENT A.--Under state police member, correctional officer member and probation and parole officer member coverage plan 1, the amount of pension under form of payment A is equal to three percent of final average salary multiplied by credited service. The amount shall not exceed [~~ninety~~] one hundred percent of the final average salary."

SECTION HLVMC→5.←HLVMC HLVMC→4.←HLVMC Section 10-11-58 NMSA 1978 (being Laws 1987, Chapter 253, Section 58, as amended) is amended to read:

"10-11-58. MUNICIPAL POLICE MEMBER COVERAGE PLAN 1--AMOUNT OF PENSION--FORM OF PAYMENT A.--Under municipal police member coverage plan 1, the amount of pension under form of payment A is equal to two percent of the final average salary multiplied by credited service. The amount shall not exceed [~~ninety~~] one hundred percent of the final average salary."

SECTION HLVMC→6.←HLVMC HLVMC→5.←HLVMC Section 10-11-64 NMSA 1978 (being Laws 1987, Chapter 253, Section 64, as amended) is amended to read:

"10-11-64. MUNICIPAL POLICE MEMBER COVERAGE PLAN 2--AMOUNT OF PENSION--FORM OF PAYMENT A.--Under municipal police member coverage plan 2:

A. for a member with age and service requirements provided under Subsection A of Section 10-11-63 NMSA 1978, the amount of pension under form of payment A is equal to two and one-half percent of the final average salary multiplied by

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credited service. The amount shall not exceed [~~ninety~~] one hundred percent of the final average salary; and

B. for a member with age and service requirements provided under Subsection B of Section 10-11-63 NMSA 1978, the amount of pension under form of payment A is equal to two percent of the final average salary multiplied by credited service. The amount shall not exceed [~~ninety~~] one hundred percent of the final average salary."

SECTION HLVMC→7.←HLVMC HLVMC→6.←HLVMC Section 10-11-70 NMSA 1978 (being Laws 1987, Chapter 253, Section 70, as amended) is amended to read:

"10-11-70. MUNICIPAL POLICE MEMBER COVERAGE PLAN 3-- AMOUNT OF PENSION--FORM OF PAYMENT A.--Under municipal police member coverage plan 3:

A. for a member with age and service requirements provided under Subsection A of Section 10-11-69 NMSA 1978, the amount of pension under form of payment A is equal to two and one-half percent of the final average salary multiplied by credited service. The amount shall not exceed [~~ninety~~] one hundred percent of the final average salary; and

B. for a member with age and service requirements provided under Subsection B of Section 10-11-69 NMSA 1978, the amount of pension under form of payment A is equal to two percent of the final average salary multiplied by credited service. The amount shall not exceed [~~ninety~~] one hundred percent of the final average salary."

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SECTION HLVMC→8.←HLVMC HLVMC→7.←HLVMC Section 10-11-76

NMSA 1978 (being Laws 1987, Chapter 253, Section 76, as amended) is amended to read:

"10-11-76. MUNICIPAL POLICE MEMBER COVERAGE PLAN 4-- AMOUNT OF PENSION--FORM OF [PENSION] PAYMENT A.--Under municipal police member coverage plan 4:

A. for a member with age and service requirements provided under Subsection A of Section 10-11-75 NMSA 1978, the amount of pension under form of payment A is equal to three percent of the final average salary multiplied by credited service. The amount shall not exceed [ninety] one hundred percent of the final average salary; and

B. for a member with age and service requirements provided under Subsection B of Section 10-11-75 NMSA 1978, the amount of pension under form of payment A is equal to two and one-half percent of the final average salary multiplied by credited service. The amount shall not exceed [ninety] one hundred percent of the final average salary."

SECTION HLVMC→9.←HLVMC HLVMC→8.←HLVMC Section 10-11-82

NMSA 1978 (being Laws 1987, Chapter 253, Section 82, as amended) is amended to read:

"10-11-82. MUNICIPAL POLICE MEMBER COVERAGE PLAN 5-- AMOUNT OF PENSION--FORM OF PAYMENT A.--Under municipal police member coverage plan 5:

A. for a member with age and service requirements provided under Subsection A of Section 10-11-81 NMSA 1978, the

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amount of pension under form of payment A is equal to three and one-half percent of the final average salary multiplied by credited service. The amount shall not exceed [~~ninety~~] one hundred percent of the final average salary; and

B. for a member with age and service requirements provided under Subsection B of Section 10-11-81 NMSA 1978, the amount of pension under form of payment A is equal to three percent of the final average salary multiplied by credited service. The amount shall not exceed [~~ninety~~] one hundred percent of the final average salary."

SECTION HLVMC→~~10.~~←HLVMC HLVMC→~~9.~~←HLVMC APPLICABILITY.--
The provisions of Sections HLVMC→~~4 through 9~~←HLVMC HLVMC→~~3 through 8~~←HLVMC of this act apply to credited service performed on or after the effective date of this act. Any credited service performed or amount of pension earned prior to the effective date of this act shall not be calculated or adjusted to conform to the provisions of this act.

SECTION HLVMC→~~11.~~←HLVMC HLVMC→~~10.~~←HLVMC EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2023.