

SENATE BILL 128

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

INTRODUCED BY

Michael Padilla

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 THE PUBLIC EMPLOYEES RETIREMENT ACT; CREATING A STATE FIRE MEMBER; PROVIDING A DEFINITION FOR A "STATE FIRE MEMBER"; CHANGING THE NAME OF STATE POLICE MEMBER, CORRECTIONAL OFFICER MEMBER AND PROBATION AND PAROLE OFFICER MEMBER COVERAGE PLAN 1 TO STATE PUBLIC SAFETY MEMBER COVERAGE PLAN 1; INCLUDING STATE FIRE MEMBERS UNDER STATE PUBLIC SAFETY MEMBER COVERAGE PLAN 1; PROVIDING FOR AN ELECTION PERTAINING TO THE ADOPTION OF STATE PUBLIC SAFETY MEMBER COVERAGE PLAN 1; MAKING TECHNICAL

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CHANGES.

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

SECTION 1. Section 10-11-2 NMSA 1978 (being Laws 1987, Chapter 253, Section 2, as amended) is amended to read:

"10-11-2. DEFINITIONS.--As used in the Public Employees Retirement Act:

A. "accumulated member contributions" means the amounts deducted from the salary of a member and credited to the member's individual account, together with interest, if any, credited to that account;

B. "affiliated public employer" means the state and any public employer affiliated with the association as provided in the Public Employees Retirement Act, but does not include an employer pursuant to the Magistrate Retirement Act, the Judicial Retirement Act or the Educational Retirement Act;

C. "association" means the public employees retirement association established under the Public Employees Retirement Act;

D. "coverage plan funded ratio" means the ratio of the actuarial value of the assets of a coverage plan to the actuarial accrued liability of the association for payments from the coverage plan, as determined by the association's actuaries;

E. "disability retired member" means a retired member who is receiving a pension pursuant to the disability

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retirement provisions of the Public Employees Retirement Act;

F. "disability retirement pension" means the pension paid pursuant to the disability retirement provisions of the Public Employees Retirement Act;

G. "educational retirement system" means that retirement system provided for in the Educational Retirement Act;

H. "employee" means any employee of an affiliated public employer;

I. "federal social security program" means that program or those programs created and administered pursuant to the act of congress approved August 14, 1935, Chapter 531, 49 Stat. 620, as that act may be amended;

J. "final average salary" means the final average salary calculated in accordance with the provisions of the applicable coverage plan;

K. "form of payment" means the applicable form of payment of a pension provided for in Section 10-11-117 NMSA 1978;

L. "former member" means a person who was previously employed by an affiliated public employer, who has terminated that employment and who has received a refund of member contributions;

M. "fund" means the funds included under the Public Employees Retirement Act;

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N. "member" means a currently employed, contributing employee of an affiliated public employer, or a person who has been but is not currently employed by an affiliated public employer, who has not retired and who has not received a refund of member contributions; "member" also includes the following:

(1) "adult correctional officer member" means a member who is employed as an adult correctional officer or an adult correctional officer specialist by a state correctional facility of the corrections department or its successor agency;

(2) "adult probation and parole officer member" means a member who is employed as a probation and parole officer by the corrections department or its successor agency;

(3) "juvenile correctional officer member" means a member who is employed as a juvenile correctional officer by the children, youth and families department or its successor agency;

(4) "juvenile probation and parole officer member" means a member who is employed as a probation and parole officer by the children, youth and families department or its successor agency;

(5) "municipal detention officer member" means a member who is employed by an affiliated public employer other than the state and who has inmate custodial responsibilities at

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a facility used for the confinement of persons charged with or convicted of a violation of a law or ordinance;

(6) "municipal fire member" means any member who is employed as a full-time nonvolunteer firefighter by an affiliated public employer, other than the state, and who has taken the oath prescribed for firefighters;

(7) "municipal police member" means any member who is employed as a police officer by an affiliated public employer, other than the state, and who has taken the oath prescribed for police officers; [~~and~~]

(8) "state fire member" means any member who is employed as a nonvolunteer firefighter of the state and who has taken the oath prescribed for firefighters; and

[~~(8)~~] (9) "state police member" means a member who is an officer of the New Mexico state police division and who has taken the oath prescribed for such officers and shall include a member who is an officer of the New Mexico state police division and who was certified and commissioned in the former motor transportation division or the former special investigations division of the department of public safety;

O. "membership" means membership in the association;

P. "pension" means a series of monthly payments to a retired member or survivor beneficiary as provided in the Public Employees Retirement Act;

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Q. "public employer" means the state, any municipality, city, county, metropolitan arroyo flood control authority, economic development district, regional housing authority, soil and water conservation district, entity created pursuant to a joint powers agreement, council of government, conservancy district, irrigation district, water and sanitation district, water district and metropolitan water board, including the boards, departments, bureaus and agencies of a public employer, so long as these entities fall within the meaning of governmental plan as that term is used in Section 414(d) of the Internal Revenue Code of 1986, as amended;

R. "refund beneficiary" means a supplemental needs trust or a natural person designated by the member, in writing, in the form prescribed by the association, as the trust or person that would be refunded the member's accumulated member contributions payable if the member dies and no survivor pension is payable or that would receive the difference between pension paid and accumulated member contributions if the retired member dies before receiving in pension payments the amount of the accumulated member contributions;

S. "retire" means to:

(1) terminate employment with all employers covered by any state system or the educational retirement system; and

(2) receive a pension from a state system or

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the educational retirement system;

T. "retired member" means a person who has met all requirements for retirement and who is receiving a pension from the fund;

U. "retirement board" means the retirement board provided for in the Public Employees Retirement Act;

V. "salary" means the base salary or wages paid a member, including longevity pay, for personal services rendered an affiliated public employer. "Salary" shall not include overtime pay, unless the overtime payment is required for a regular scheduled tour of duty as set forth in Section 207(k) of Title 29 of the United States Code and is made on the regular payroll for the period represented by that payment, allowances for housing, clothing, equipment or travel, payments for unused sick leave, unless the unused sick leave payment is made through continuation of the member on the regular payroll for the period represented by that payment, and any other form of remuneration not specifically designated by law as included in salary for Public Employees Retirement Act purposes. Salary in excess of the limitations set forth in Section 401(a)(17) of the Internal Revenue Code of 1986, as amended, shall be disregarded. The limitation on compensation for eligible employees shall not be less than the amount that was allowed to be taken into account under the state retirement system acts in effect on July 1, 1993. For purposes of this subsection,

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"eligible employee" means an individual who was a member of a state system before the first plan year beginning after December 31, 1995;

W. "state system" means the retirement programs provided for in the Public Employees Retirement Act, the Magistrate Retirement Act and the Judicial Retirement Act;

X. "state retirement system acts" means collectively the Public Employees Retirement Act, the Magistrate Retirement Act, the Judicial Retirement Act and the Volunteer Firefighters Retirement Act;

Y. "supplemental needs trust" means a valid third-party irrevocable trust that is authorized by the federal Social Security Act, as amended, for the sole benefit and lifetime of a trust beneficiary who is disabled and is created for the purpose of providing, accounting for or receiving supplemental assets that do not supplant, impair or diminish any benefits or assistance of any federal, state or other government entity for which the beneficiary would otherwise be eligible; and

Z. "survivor beneficiary" means a supplemental needs trust or a natural person that receives a pension or that has been designated to be paid a pension as a result of the death of a member or retired member."

SECTION 2. Section 10-11-27 NMSA 1978 (being Laws 1987, Chapter 253, Section 27, as amended) is amended to read:

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"10-11-27. STATE [~~POLICE MEMBER, CORRECTIONAL OFFICER MEMBER AND PROBATION AND PAROLE OFFICER~~] PUBLIC SAFETY MEMBER COVERAGE PLAN 1--APPLICABILITY--CREDITED SERVICE.--

A. State [~~police member, correctional officer member and probation and parole officer~~] public safety member coverage plan 1 is applicable to:

- (1) state police members who are not specifically covered by another coverage plan;
- (2) adult correctional officer members;
- ~~[(3) juvenile correctional officer members;~~
- ~~(4)]~~ (3) adult probation and parole officer members; [~~and~~
- ~~(5)]~~ (4) juvenile probation and parole officer members; and
- (5) state fire members.

B. The credited service of a state police member who was a retired member or a member on or before June 30, 2013 or of an adult correctional officer member shall have actual credited service increased by twenty percent for the purposes of state [~~police member, correctional officer member and probation and parole officer~~] public safety member coverage plan 1.

C. The credited service, accrued after July 1, 2021, of [~~a juvenile correctional officer member~~] an adult probation and parole officer or a juvenile probation and parole

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officer shall be increased by twenty percent for the purposes of state [~~police member, correctional officer member and probation and parole officer~~] public safety member coverage plan 1.

D. The credited service, accrued after July 1, SHPAC→2025←SHPAC SHPAC→2024←SHPAC , of a state fire member shall be increased by twenty percent for the purposes of state public safety member coverage plan 1.

E. The increase of twenty percent to accrued credited service provided by this section shall only apply to a state public safety member who was a retired member or a member on or before June 30, 2013.

[D.] F. Except as provided in [Subsection] Subsections B through E of this section, the credited service of a member covered under state [~~police member, correctional officer member and probation and parole officer~~] public safety member coverage plan 1 shall be credited as provided in Section 10-11-4 NMSA 1978.

[E.] G. State [~~police member, correctional officer member and probation and parole officer~~] public safety member coverage plan 1 is applicable to [~~juvenile correctional officer members~~] adult probation and parole officer members and juvenile probation and parole officer members in the first full pay period after July 1, 2021 if the retirement board certifies to the secretary of state that, of those [~~juvenile correctional~~

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~~officer members~~] adult probation and parole officer members and juvenile probation and parole officer members to be covered under state [~~police member, correctional officer member and probation and parole officer~~] public safety member coverage plan 1, a majority of the respective members voting have voted to approve adoption of that plan at an election conducted pursuant to Laws 2020, Chapter 11, Sections 63 through 66.

H. State public safety member coverage plan 1 is applicable in the first full pay period after July 1,

SHPAC→2025←SHPAC SHPAC→2024←SHPAC for:

(1) state fire members who begin employment as a state fire member on or after July 1, SHPAC→2025←SHPAC SHPAC→2024←SHPAC ; and

(2) state fire members who were employed in a position and were subject to the definition of a "state fire member" prior to July 1, SHPAC→2025←SHPAC SHPAC→2024←SHPAC , if the retirement board certifies to the secretary of state that, of those state fire members to be covered under state public safety member coverage plan 1, a majority of the respective members voting have voted to approve the adoption of that plan at an election conducted pursuant to Section 8 of this 2024 act."

SECTION 3. Section 10-11-27.1 NMSA 1978 (being Laws 2003, Chapter 268, Section 10, as amended) is amended to read:

"10-11-27.1. STATE [~~POLICE MEMBER, CORRECTIONAL OFFICER~~ .226481.4GLGAIC January 30, 2024 (2:15pm)

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~~MEMBER AND PROBATION AND PAROLE OFFICER]~~ PUBLIC SAFETY MEMBER
COVERAGE PLAN 1--SERVICE CREDIT REQUIRED.--Notwithstanding the
provisions of Section 10-11-27 NMSA 1978, to qualify for
payment under state [~~police member, correctional officer member
and probation and parole officer]~~ public safety member coverage
plan 1, an adult correctional officer member shall have
eighteen months of service credit earned under state [~~police
member, correctional officer member and probation and parole
officer]~~ public safety member coverage plan 1 subsequent to
July 1, 2004."

SECTION 4. Section 10-11-28 NMSA 1978 (being Laws 1987,
Chapter 253, Section 28, as amended) is amended to read:

"10-11-28. STATE [~~POLICE MEMBER, CORRECTIONAL OFFICER
MEMBER AND PROBATION AND PAROLE OFFICER]~~ PUBLIC SAFETY MEMBER
COVERAGE PLAN 1--AGE AND SERVICE REQUIREMENTS FOR NORMAL
RETIREMENT.--Under state [~~police member, correctional officer
member and probation and parole officer]~~ public safety member
coverage plan 1:

A. for a member who was a retired member or a
member on June 30, 2013, the age and service requirements for
normal retirement are:

(1) age sixty-five years or older and five or
more years of credited service;

(2) age sixty-four years and eight or more
years of credited service;

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(3) age sixty-three years and eleven or more years of credited service;

(4) age sixty-two years and fourteen or more years of credited service;

(5) age sixty-one years and seventeen or more years of credited service;

(6) age sixty years and twenty or more years of credited service; or

(7) any age and twenty-five or more years of credited service; and

B. for a member who was not a retired member or a member on June 30, 2013, the age and service requirements for normal retirement are:

(1) age sixty years or older and five or more years of service credit; or

(2) any age and twenty-five or more years of service credit."

SECTION 5. 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~~] PUBLIC SAFETY MEMBER COVERAGE PLAN 1--AMOUNT OF PENSION--FORM OF PAYMENT A.--Under state [~~police member, correctional officer member and probation and parole officer~~] public safety member coverage plan 1, the amount of pension under form of payment A is equal to three

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percent of final average salary multiplied by credited service. The amount shall not exceed one hundred percent of the final average salary."

SECTION 6. Section 10-11-31 NMSA 1978 (being Laws 1987, Chapter 253, Section 31, as amended) is amended to read:

"10-11-31. STATE [~~POLICE MEMBER, CORRECTIONAL OFFICER MEMBER AND PROBATION AND PAROLE OFFICER~~] PUBLIC SAFETY MEMBER COVERAGE PLAN 1--MEMBER CONTRIBUTION RATE.--A member under state [~~police member, correctional officer member and probation and parole officer~~] public safety member coverage plan 1 shall contribute seven and six-tenths percent of salary, except that a member whose annual salary is greater than twenty-five thousand dollars (\$25,000) shall contribute nine and one-tenth percent of salary."

SECTION 7. Section 10-11-32 NMSA 1978 (being Laws 1987, Chapter 253, Section 32, as amended) is amended to read:

"10-11-32. STATE [~~POLICE MEMBER, CORRECTIONAL OFFICER MEMBER AND PROBATION AND PAROLE OFFICER~~] PUBLIC SAFETY MEMBER COVERAGE PLAN 1--STATE CONTRIBUTION RATE.--The state shall contribute twenty-five and one-half percent of the salary of each member under state [~~police member, correctional officer member and probation and parole officer~~] public safety member coverage plan 1."

SECTION 8. TEMPORARY PROVISION--STATE PUBLIC SAFETY MEMBER COVERAGE PLAN 1--STATE FIRE MEMBERS--ELECTION.--On or

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before SHPAC→December←SHPAC SHPAC→June←SHPAC 30, 2024, the retirement board provided for in the Public Employees Retirement Act shall conduct an election to submit to state fire members currently contributing under state general member coverage plan 3 the question of adopting state public safety member coverage plan 1.

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