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HOUSE BILL 671

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

PATSY G. TRUJILLO

AN ACT

RELATING TO DISABILITY RETIREMENT; AMENDING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1. Section 10-11-10.1 NMSA 1978 (being Laws 1993, Chapter 160, Section 3) is amended to read:

"10-11-10.1. DISABILITY RETIREMENT. --

A. There is created a "disability review committee" of the retirement board. The disability review committee shall consist of at least three but not more than five retirement board members and at least one physician licensed in New Mexico appointed by the retirement board. ~~[The disability review committee shall review all applications for disability retirement, review reports required under this section and approve or deny applications for disability retirement]~~

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1 B. The retirement board or the disability review
2 committee may retire a member on account of disability before
3 the time the member would otherwise be eligible for retirement
4 if the following requirements are satisfied:

5 (1) the member applying for disability
6 retirement was a member at the time the disability was incurred;

7 (2) the member or the member's affiliated
8 public employer has filed a written application for disability
9 retirement, in the form and containing the information
10 prescribed by the association [~~has been filed with the~~
11 ~~association by the member or by the member's affiliated public~~
12 ~~employer~~];

13 (3) [~~employment is terminated~~] the member has
14 terminated employment within forty-five days of the date of
15 approval of the application for disability retirement;

16 (4) [~~if:—(a)~~] the member has five or more
17 years of service credit or

18 [~~(b)~~] the retirement board or the
19 disability review committee finds the disability to have been
20 the natural and proximate result of causes arising solely and
21 exclusively out of and in the course of the member's performance
22 of duty with an affiliated public employer;

23 (5) the member [~~submits~~] has submitted to all
24 medical examinations and tests and [~~furnishes~~] furnished copies
25 of all medical reports requested by the [~~association or~~]

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1 retirement board or the disability review committee; provided
2 that if the disability review committee requires independent
3 medical or other examinations, those examinations shall be
4 performed at the association's expense; and

5 (6) ~~the [disability review committee makes the~~
6 ~~determination required under Subsection C of this section.~~

7 ~~C. The disability review committee shall review~~
8 ~~applications for disability retirement to determine whether:~~

9 (1) ~~if the member is a currently employed,~~
10 ~~contributing employee of an affiliated public employer] member~~
11 ~~is disabled.~~

12 C. A member is disabled if:

13 [(a)] (1) the member is mentally or physically
14 totally incapacitated for [continued] any gainful employment
15 [with an affiliated public employer]; and

16 [(b)] (2) the incapacity is likely to be
17 permanent. [~~or~~

18 (2) ~~if the member is not a currently employed,~~
19 ~~contributing employee of an affiliated public employer:~~

20 (a) ~~the member is mentally or physically~~
21 ~~totally incapacitated for any gainful employment; and~~

22 (b) ~~the incapacity is likely to be~~
23 ~~permanent.~~

24 ~~D. The disability retirement pension shall be paid~~
25 ~~for a period of one year after approval of the initial~~

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1 ~~application unless the disability review committee for good~~
2 ~~cause shown grants disability retirement for a longer period of~~
3 ~~time. After approval, payment shall be effective commencing the~~
4 ~~first of the month following submission of the initial~~
5 ~~application and termination of employment.~~

6 E. ~~At the end of the first year that a disability~~
7 ~~retirement pension is paid, the disability retired member's~~
8 ~~condition shall be reevaluated to determine eligibility for~~
9 ~~continuation of payment of a disability retirement pension. If~~
10 ~~the disability retired member has applied for disability~~
11 ~~benefits under the federal social security program, he shall~~
12 ~~submit copies of his application. The association shall~~
13 ~~continue payment of the state disability retirement pension if~~
14 ~~the disability retired member presents a written final~~
15 ~~determination from the federal social security administration~~
16 ~~that the disability retired member qualifies, based on the same~~
17 ~~condition or conditions as presented in the application for a~~
18 ~~state disability retirement pension, for federal disability~~
19 ~~benefits.~~

20 F. ~~If the disability retired member applied for~~
21 ~~federal disability benefits within thirty days of receiving~~
22 ~~approval for a state disability retirement pension but the~~
23 ~~federal social security administration has not made a written~~
24 ~~final determination of entitlement by the end of the first year~~
25 ~~that the disability retired member has received a state~~

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1 ~~disability retirement pension, eligibility for continued payment~~
2 ~~of the state disability retirement pension shall be determined~~
3 ~~by the disability review committee. The state disability~~
4 ~~retirement pension shall be discontinued if the disability~~
5 ~~review committee finds that the disability retired member is~~
6 ~~capable of any gainful employment.~~

7 G. ~~The disability retired member shall notify the~~
8 ~~association of the federal social security administration's~~
9 ~~final determination within fifteen working days of the date of~~
10 ~~issuance of the final written determination. If the federal~~
11 ~~social security administration denies federal disability~~
12 ~~benefits, the state disability retirement pension shall be~~
13 ~~discontinued effective the first of the month following the~~
14 ~~month in which the written final determination of the federal~~
15 ~~social security administration was issued. If the federal~~
16 ~~social security administration grants federal disability~~
17 ~~benefits, the state disability retirement pension shall be~~
18 ~~continued so long as the disability retired member provides~~
19 ~~annually, on or before the anniversary date of commencement of~~
20 ~~payment of the state disability retirement pension, written~~
21 ~~evidence of continuation of payment of federal disability~~
22 ~~benefits. If the disability review committee has denied~~
23 ~~continuation of payment of a state disability retirement pension~~
24 ~~and the disability retired member is later granted federal~~
25 ~~disability benefits, the state disability retirement pension~~

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1 ~~shall be reinstated effective the first of the month following~~
2 ~~the month in which the state disability retirement pension was~~
3 ~~discontinued.~~

4 ~~H. If, at the time of reevaluation under Subsection~~
5 ~~E of this section, the disability retired member has applied for~~
6 ~~and has qualified for federal disability benefits, but for a~~
7 ~~different condition than was reviewed by the disability review~~
8 ~~committee, the disability review committee shall review the~~
9 ~~disability retired member's condition as described by the~~
10 ~~application for federal disability benefits. The process set~~
11 ~~forth in Subsection I of this section shall be followed to~~
12 ~~determine whether payment of a state disability retirement~~
13 ~~pension should be continued.~~

14 ~~I. If the disability retired member is not eligible~~
15 ~~to apply for federal disability benefits or is not a member of~~
16 ~~the federal social security program, the disability review~~
17 ~~committee annually shall determine eligibility for continuation~~
18 ~~of payment of a state disability retirement pension. To make~~
19 ~~its determination of continued entitlement, the disability~~
20 ~~review committee shall use the guidelines established by the~~
21 ~~federal social security administration for determination of~~
22 ~~eligibility for federal disability benefits. The determination~~
23 ~~shall be based on:~~

24 ~~(1) the medical and all other information~~
25 ~~provided by the disability retired member;~~

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1 ~~(2) at least one independent medical or other~~
2 ~~examination performed at the association's expense if required~~
3 ~~by the disability review committee; and~~

4 ~~(3) any and all medical, vocational or other~~
5 ~~information related to the disability compiled during the period~~
6 ~~of disability by any medical or other practitioner consulted by~~
7 ~~the disability retired member regarding the disability which was~~
8 ~~not paid for by the association.~~

9 ~~J. Each disability retired member annually shall~~
10 ~~submit to the association, prior to July 1, a statement of~~
11 ~~earnings from gainful employment during the preceding calendar~~
12 ~~year. The statement of earnings shall be in the form prescribed~~
13 ~~by the association. Payment of the state disability retirement~~
14 ~~pension shall be discontinued if the amount of earnings from~~
15 ~~gainful employment is one hundred percent or more of the amount~~
16 ~~which causes a decrease or suspension of an old age benefit~~
17 ~~under the federal social security program, or fifteen thousand~~
18 ~~dollars (\$15,000), whichever is less. Payment of the state~~
19 ~~disability retirement pension shall be discontinued starting~~
20 ~~with the month of July if the statement of earnings is not~~
21 ~~received by the association prior to July 1.~~

22 ~~K. Upon prior approval by the association, a~~
23 ~~disability retired member may return to employment with an~~
24 ~~affiliated public employer or other employer for a trial period~~
25 ~~not to exceed one hundred twenty calendar days without becoming~~

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1 ~~a member or causing suspension or discontinuation of payment of~~
2 ~~a state disability retirement pension. If the trial period of~~
3 ~~employment is successfully completed, payment of the disability~~
4 ~~retirement pension shall be discontinued beginning the first of~~
5 ~~the month following the one hundred twentieth day of the trial~~
6 ~~period of employment. Trial periods of employment shall be~~
7 ~~limited to two in any five-year period following disability~~
8 ~~retirement.~~

9 L. ~~If the disability retired member meets the~~
10 ~~minimum age and service credit requirements for normal~~
11 ~~retirement while receiving a disability retirement pension, the~~
12 ~~disability retirement pension shall be reclassified by the~~
13 ~~association as a normal retirement pension and no further~~
14 ~~determinations of eligibility for continuation of payment of the~~
15 ~~disability retirement pension shall be made. Upon~~
16 ~~reclassification as a normal retirement pension, all the~~
17 ~~provisions of this act regarding normal retirement shall be~~
18 ~~applicable.]~~

19 D. A member may elect to apply for a one-year
20 disability determination if the member was a currently
21 contributing employee of an affiliated public employer at any
22 time within the twelve months prior to the date the application
23 for disability retirement was filed or if the member's
24 disability was the natural and proximate result of causes
25 arising solely and exclusively out of and in the course of the

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1 member's performance of duty with an affiliated public employer.

2 Members who elect to apply for a one-year disability

3 determination are subject to the following:

4 (1) in order to receive disability benefits for
5 one year under this election, the member must prove that:

6 (a) the member is mentally or physically
7 totally incapacitated for continued employment with the
8 affiliated public employer; and

9 (b) the incapacity is likely to be
10 permanent; and

11 (2) in order to continue to receive disability
12 retirement benefits after one year, the member must meet the
13 disability standard set forth in Subsection D of this section.

14 E. The amount of the disability retirement pension
15 shall be calculated according to the provisions of the coverage
16 plan applicable to the member at the time of application, except
17 that the service credit requirement shall be calculated as
18 follows:

19 [M-] (1) if the disability [review committee
20 found the disability] has been found by the retirement board or
21 the disability review committee to be the natural and proximate
22 result of causes arising solely and exclusively out of and in
23 the course of the member's employment with an affiliated public
24 employer, the association shall, for the purpose of calculating
25 the pension, impute to the member the amount of service credit

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1 necessary to meet the minimum service credit requirements for
2 normal retirement. In this event, actual service credit shall
3 continue to accrue during the disability retirement period as
4 though the disability retired member was actively employed

5 ~~[N. The amount of a disability retirement pension~~
6 ~~shall be calculated according to the provisions of the coverage~~
7 ~~plan applicable to the member at the time of application, except~~
8 ~~that the service credit requirement shall be waived and the~~
9 ~~actual amount of service credit shall be used instead. If the~~
10 ~~disability is the natural and proximate result of causes arising~~
11 ~~solely and exclusively out of and in the course of the member's~~
12 ~~performance of duty for an affiliated public employer, the~~
13 ~~amount of disability retirement pension shall be calculated~~
14 ~~according to the provisions of the coverage plan applicable to~~
15 ~~the member, imputing the amount of service credit necessary to~~
16 ~~meet the minimum service credit requirements for normal~~
17 ~~retirement]~~ with an affiliated public employer; and

18 (2) in all other instances, the service credit
19 requirement shall be waived and the actual amount of accrued
20 service credit shall be used instead.

21 F. If while receiving a disability retirement
22 pension the disability retired member meets the minimum age and
23 service credit requirements for normal retirement specified by
24 the coverage plan applicable to the disability retired member,
25 the disability retirement pension shall be reclassified by the

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1 association as a normal retirement pension.

2 G. Each disability retired member shall submit to
3 the association, prior to July 1 of each year, a statement of
4 earnings from gainful employment during the preceding calendar
5 year. The statement of earnings shall be in the form prescribed
6 by the association. Payment of the disability retirement
7 pension shall be discontinued if the amount of earnings from
8 gainful employment is one hundred percent or more of the amount
9 that causes a decrease or suspension of an old age benefit under
10 the federal social security program or fifteen thousand dollars
11 (\$15,000), whichever is less. Payment of the disability
12 retirement pension shall be discontinued starting with the month
13 of July in any year in which the statement of earnings is not
14 received by the association prior to July 1 of that year.

15 ~~[0-]~~ H. For the purposes of this section, the
16 following definitions apply:

17 (1) "continued employment with the affiliated
18 public employer" means the ability of the member to fulfill the
19 required duties of the position in which the member was last
20 employed by his affiliated public employer; and

21 (2) "gainful employment" means remunerative
22 employment or self-employment that is commensurate with the
23 applicant's background, age, education, experience and any new
24 skills or training the applicant may have acquired or is capable
25 of acquiring after terminating public employment or incurring

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1 the disability

2 [~~(3)~~ "state disability retirement pension"
3 means the pension paid pursuant to the provisions of this
4 section; and

5 ~~(4)~~ "federal disability benefits" means those
6 benefits paid by the federal social security program]. "

7 Section 2. A new section of the Public Employees
8 Retirement Act, Section 10-11-10.2 NMSA 1978, is enacted to
9 read:

10 "10-11-10.2. [NEW MATERIAL] REEVALUATION OF DISABILITY
11 RETIREMENT--TERMINATION OF DISABILITY PENSION. --

12 A. During the period of disability retirement, the
13 retirement board or the disability review committee may require
14 a disability retired member to submit acceptable evidence that
15 the member continues to be disabled. If the retirement board or
16 the disability review committee requires independent
17 examinations or tests, those examinations or tests shall be
18 performed at the association's expense.

19 B. The retirement board or the disability review
20 committee may suspend payment of a disability pension if the
21 disability retired member refuses to submit to medical or other
22 reevaluation or submit acceptable evidence that the member
23 continues to be disabled. If the refusal continues for one
24 year, the retirement board or the disability review committee
25 may terminate the disability retirement and revoke the

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1 disability retirement pension.

2 C. If the retirement board or the disability review
3 committee finds that the disability retired member is no longer
4 disabled, the retirement board or the disability review
5 committee shall terminate the disability retirement and revoke
6 the disability retirement pension.

7 D. Upon prior approval by the association, a
8 disability retired member may return to any employment for a
9 trial period not to exceed one hundred twenty calendar days
10 without causing suspension or revocation of the disability
11 retirement pension or termination of the disability retirement.
12 If the trial period of employment is successfully completed,
13 payment of the disability retirement pension shall be
14 discontinued beginning the first of the month following the one
15 hundred twentieth day of the trial period of employment. Each
16 disability retiree shall be limited to two trial periods of
17 employment in any five-year period following disability
18 retirement. "

State of New Mexico
House of Representatives

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4 FORTY-THIRD LEGISLATURE
5 FIRST SESSION, 1997
6
7

8 February 25, 1997
9

10
11 Mr. Speaker:
12

13 Your CONSUMER AND PUBLIC AFFAIRS COMMITTEE, to
14 whom has been referred

15 HOUSE BILL 671
16

17 has had it under consideration and reports same with
18 recommendation that it DO PASS, amended as follows:
19

20
21 1. On page 3, line 2, after "the" insert "retirement board
22 or the".

23 2. On page 9, line 13, strike the underscored "D" and insert
24 in lieu thereof "C".,
25

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HCPAC/HB 671

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and thence referred to the JUDICIARY COMMITTEE.

Respectfully submitted,

Gary King, Chairman

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

Excused: Rios, Sandel, Vigil

Absent: None

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**State of New Mexico
House of Representatives**

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 10, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 671, as amended

has had it under consideration and reports same with
recommendation that it DO PASS.

Respectfully submitted,

Thomas P. Foy, Chairman

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 8 For 0 Against

Yes: 8

Excused: Mallory, Pederson, Rios, Sanchez, Stewart

Absent: None

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 19, 1997

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 671, as amended

has had it under consideration and reports same with
recommendation that it DO PASS.

Respectfully submitted,

Fernando R. Macias, Chairman

Adopted _____ Not Adopted _____

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Sanchez, Tsosie, Vernon

Absent: None

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Underscored material = new
[bracketed material] = delete