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HOUSE BILL 724

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Ben Lujan

AN ACT

RELATING TO PUBLIC EMPLOYEES RETIREMENT; AMENDING A SECTION OF THE PUBLIC EMPLOYEES RETIREMENT ACT RELATING TO DISABILITY RETIREMENT.

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 who is appointed by the retirement board. The disability review committee shall review all applications for disability retirement, review reports

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1 required under this section and approve or deny applications
2 for disability retirement. Notwithstanding any other
3 provisions of law, the public shall be excluded from
4 proceedings involving applications for disability retirement,
5 except for final actions being taken at open public meetings.

6 B. The disability review committee may retire a
7 member on ~~[account]~~ the basis of disability before the time
8 the member would otherwise be eligible for retirement if the
9 following requirements are satisfied:

10 (1) the member applying for disability
11 retirement was a member at the time the disability was
12 incurred;

13 (2) the member has filed a written
14 application for disability retirement, in the form and
15 containing the information prescribed by the association [~~has~~
16 ~~been filed with the association by the member or by the~~
17 ~~member's affiliated public employer~~];

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

21 (4) ~~[if:—(a)]~~ the member has five or more
22 years of service credit or ~~[(b)]~~ the disability review
23 committee finds the disability to have been the natural and
24 proximate result of causes arising solely and exclusively out
25 of and in the course of the member's performance of duty with

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1 an affiliated public employer;

2 (5) the member [~~submits~~] has submitted to all
3 medical examinations and tests and [~~furnishes~~] furnished
4 copies of all medical reports requested by the association or
5 disability review committee; provided that if the disability
6 review committee requires independent medical or other
7 examinations, those examinations shall be performed at the
8 association's expense; and

9 (6) the disability review committee makes the
10 determination required under Subsection C or D of this
11 section.

12 [~~C. The disability review committee shall review~~
13 ~~applications for disability retirement to determine whether:~~

14 (1) ~~if the member is a currently employed,~~
15 ~~contributing employee of an affiliated public employer:~~

16 (a)]

17 C. If the member was a contributing employee of an
18 affiliated public employer at any time within the twelve
19 months prior to the date the application for disability
20 retirement was filed, the standard the member shall meet for
21 the disability review committee to find the member disabled is
22 as follows:

23 (1) the member is mentally or physically
24 totally incapacitated for continued employment with [~~an~~] the
25 affiliated public employer; and

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1 [~~(b)~~] (2) the incapacity is likely to be
2 permanent [~~or~~

3 ~~(2) if the member is not a currently~~
4 ~~employed, contributing employee of an affiliated public~~
5 ~~employer].~~

6 D. If the member was not a contributing employee
7 of an affiliated public employer at any time within the twelve
8 months prior to the date the application for disability
9 retirement was filed, the standard the member must meet for
10 the disability review committee to find that member disabled
11 is as follows:

12 [~~(a)~~] (1) the member is mentally or
13 physically totally incapacitated for any gainful employment;
14 and

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

17 [~~D.~~] E. The disability retirement pension shall be
18 paid for a period of one year after approval of the initial
19 application unless the disability review committee for good
20 cause shown grants disability retirement for a longer period
21 of time. After approval, payment shall be effective
22 commencing the first of the month following submission of the
23 initial application and termination of employment.

24 [~~E.~~ ~~At the end of the first year that a disability~~
25 ~~retirement pension is paid, the disability retired member's~~

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1 ~~condition shall be reevaluated to determine eligibility for~~
2 ~~continuation of payment of a disability retirement pension.~~
3 ~~If the disability retired member has applied for disability~~
4 ~~benefits under the federal social security program, he shall~~
5 ~~submit copies of his application. The association shall~~
6 ~~continue payment of the state disability retirement pension if~~
7 ~~the disability retired member presents a written final~~
8 ~~determination from the federal social security administration~~
9 ~~that the disability retired member qualifies, based on the~~
10 ~~same condition or conditions as presented in the application~~
11 ~~for a state disability retirement pension, for federal~~
12 ~~disability benefits.~~

13 ~~F. If the disability retired member applied for~~
14 ~~federal disability benefits within thirty days of receiving~~
15 ~~approval for a state disability retirement pension but the~~
16 ~~federal social security administration has not made a written~~
17 ~~final determination of entitlement by the end of the first~~
18 ~~year that the disability retired member has received a state~~
19 ~~disability retirement pension, eligibility for continued~~
20 ~~payment of the state disability retirement pension shall be~~
21 ~~determined by the disability review committee. The state~~
22 ~~disability retirement pension shall be discontinued if the~~
23 ~~disability review committee finds that the disability retired~~
24 ~~member is capable of any gainful employment.~~

25 ~~G. The disability retired member shall notify the~~

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

22 H. ~~If, at the time of reevaluation under~~
23 ~~Subsection E of this section, the disability retired member~~
24 ~~has applied for and has qualified for federal disability~~
25 ~~benefits, but for a different condition than was reviewed by~~

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1 ~~the disability review committee, the disability review~~
2 ~~committee shall review the disability retired member's~~
3 ~~condition as described by the application for federal~~
4 ~~disability benefits. The process set forth in Subsection I of~~
5 ~~this section shall be followed to determine whether payment of~~
6 ~~a state disability retirement pension should be continued.~~

7 I. ~~If the disability retired member is not~~
8 ~~eligible to apply for federal disability benefits or is not a~~
9 ~~member of the federal social security program, the disability~~
10 ~~review committee annually shall determine eligibility for~~
11 ~~continuation of payment of a state disability retirement~~
12 ~~pension. To make its determination of continued entitlement,~~
13 ~~the disability review committee shall use the guidelines~~
14 ~~established by the federal social security administration for~~
15 ~~determination of eligibility for federal disability benefits.~~
16 ~~The determination shall be based on:~~

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

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

22 (3) ~~any and all medical, vocational or other~~
23 ~~information related to the disability compiled during the~~
24 ~~period of disability by any medical or other practitioner~~
25 ~~consulted by the disability retired member regarding the~~

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1 ~~disability which was not paid for by the association.]~~

2 F. Unless a longer period of time is granted by
3 the disability review committee, the disability retired
4 member's condition shall be reevaluated at the end of the
5 first year that a disability retirement pension is paid to
6 determine eligibility for continuation of payment of a
7 disability retirement pension. The disability retirement
8 pension shall be continued if the disability review committee
9 finds that the member is mentally or physically totally
10 incapacitated for any gainful employment and the incapacity is
11 likely to be permanent.

12 G. Appeal of the decision of the disability review
13 committee shall be taken to the retirement board in accordance
14 with Section 10-11-120 NMSA 1978.

15 H. If eligible, the disability retired member
16 shall apply for federal social security within thirty days of
17 receiving approval for a state disability retirement pension
18 and submit to the association a complete copy of his
19 application. The disability retired member shall submit to
20 the association copies of all determinations by the federal
21 social security administration within fifteen working days of
22 the date of issuance. The determination by the federal social
23 security administration is not determinative of state
24 disability under this section.

25 [~~J.~~] I. Each disability retired member annually

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1 shall submit to the association, prior to July 1, a statement
2 of earnings from gainful employment during the preceding
3 calendar year. The statement of earnings shall be in the form
4 prescribed by the association and may include the federal tax
5 return or other proof of earnings acceptable to the
6 association if a federal tax return does not exist.

7 Payment of the state disability retirement pension shall be
8 discontinued if the amount of earnings from gainful employment
9 is one hundred percent or more of the amount which causes a
10 decrease or suspension of an old age benefit under the federal
11 social security program, or fifteen thousand dollars
12 (\$15,000), whichever is less. Payment of the state disability
13 retirement pension shall be discontinued starting with the
14 month of July if the statement of earnings is not received by
15 the association prior to July 1.

16 ~~[K. Upon prior approval by the association, a~~
17 ~~disability retired member may return to employment with an~~
18 ~~affiliated public employer or other employer for a trial~~
19 ~~period not to exceed one hundred twenty calendar days without~~
20 ~~becoming a member or causing suspension or discontinuation of~~
21 ~~payment of a state disability retirement pension. If the~~
22 ~~trial period of employment is successfully completed, payment~~
23 ~~of the disability retirement pension shall be discontinued~~
24 ~~beginning the first of the month following the one hundred~~
25 ~~twentieth day of the trial period of employment. Trial~~

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1 ~~periods of employment shall be limited to two in any five-year~~
2 ~~period following disability retirement.]~~

3 J. If the disability retired member returns to any
4 employment, that member's disability retirement pension shall
5 be discontinued beginning the first of the month following the
6 beginning of employment.

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

17 ~~[M— If the disability review committee found the~~
18 ~~disability to be the natural and proximate result of causes~~
19 ~~arising solely and exclusively out of and in the course of the~~
20 ~~member's employment with an affiliated public employer,~~
21 ~~service credit shall continue to accrue during the disability~~
22 ~~retirement period as though the disability retired member was~~
23 ~~actively employed.]~~

24 ~~N.]~~ L. The amount of a disability retirement
25 pension shall be calculated according to the provisions of the

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

12 0. ~~For the purposes of this section, the following~~
13 ~~definitions apply:~~

14 (1) ~~"continued employment with the affiliated~~
15 ~~public employer" means the ability of the member to fulfill~~
16 ~~the required duties of the position in which the member was~~
17 ~~last employed by his affiliated public employer;~~

18 (2) ~~"gainful employment" means remunerative~~
19 ~~employment or self-employment that is commensurate with the~~
20 ~~applicant's background, age, education, experience and any new~~
21 ~~skills or training the applicant may have acquired after~~
22 ~~terminating public employment or incurring the disability]~~
23 calculated as follows:

24 (1) if the disability has been found by the
25 disability review committee to be the natural and proximate

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1 result of causes arising solely and exclusively out of and in
2 the course of the member's performance of duty for an
3 affiliated public employer, the association shall, for the
4 purpose of calculating the pension, impute the amount of
5 service credit necessary to meet the minimum service credit
6 requirements for normal retirement and actual service credit
7 shall continue to accrue during the disability retirement
8 period as though the disability retired member was actively
9 employed; or

10 (2) in all other instances, the service
11 credit requirement shall be waived and the actual amount of
12 accrued service credit shall be used instead.

13 M For the purposes of this section:

14 (1) "gainful employment" means any
15 occupation, job or self-employment for remuneration or profit,
16 considering the member's background, age, education, skills
17 and experience;

18 (2) "solely and exclusively" means that the
19 member's workplace injury is completely and entirely
20 responsible for the member's disability;

21 (3) "state disability retirement pension"
22 means the pension paid pursuant to the provisions of this
23 section; and

24 (4) "federal disability benefits" means those
25 benefits paid by the federal social security program "

1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999
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6 March 2, 1999
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8 Mr. Speaker:
9

10 Your GOVERNMENT AND URBAN AFFAIRS COMMITTEE, to
11 whom has been referred
12

13 HOUSE BILL 724
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15 has had it under consideration and reports same with
16 recommendation that it DO PASS, and thence referred to the
17 APPROPRIATIONS AND FINANCE COMMITTEE.

18 Respectfully submitted,
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22 _____
23 James G. Taylor, Chairman
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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HGUAC/HB 724

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

Excused: Mallory

Absent: None

J: \99BillSWP\H0724

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