SENATE BILL 90

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

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AN ACT

RELATING TO PUBLIC EMPLOYEE RETIREMENT; INCLUDING OVERTIME PAY REQUIRED FOR A REGULAR SCHEDULED TOUR OF DUTY IN THE DEFINITION OF "SALARY" IN THE PUBLIC EMPLOYEES RETIREMENT ACT.

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 .218928.1
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
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
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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;

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 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 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 police member" means a member who is an officer of the New Mexico state police and who has taken

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the oath prescribed for such officers, except that a state
police member shall not include a member who is an officer of
the New Mexico state police division and who was certified and
commissioned as of June 30, 2015 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;

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 person designated
by the member, in writing, in the form prescribed by the
association, as the person who would be refunded the member's
accumulated member contributions payable if the member dies and
no survivor pension is payable or who would receive the
difference between pension paid and accumulated member
ccontributions 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
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,
"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; and

Y. "survivor beneficiary" means a person who
receives a pension or who has been designated to be paid a
pension as a result of the death of a member or retired
member."
SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2021.

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