SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 430

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

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
CHANGING THE COMPOSITION OF THE PUBLIC EMPLOYEES RETIREMENT
BOARD; CHANGING CERTAIN ELECTION REQUIREMENTS; REQUIRING NOTICE
OF AN EMERGENCY MEETING.

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

SECTION 1. Section 10-11-130 NMSA 1978 (being Laws 1987, Chapter 253, Section 130, as amended) is amended to read:

"10-11-130. RETIREMENT BOARD--AUTHORITY--MEMBERSHIP.--

A. The "retirement board" is created and is the trustee of the association and the funds created by the state retirement system acts and has all the powers necessary or convenient to carry out and effectuate the purposes and provisions of the state retirement system acts, including, in addition to any specific powers provided for in the Public

.220533.1
Employees Retirement Act but without limiting the generality of
the foregoing, the power to:

(1) administer the state retirement system
acts, including the management of the association and making
effective the provisions of those acts, as well as to
administer and manage any other employee benefit acts as
provided by law;

(2) in addition to utilizing services of the
attorney general and notwithstanding any other provision of
law, employ or contract with and compensate competent legal
counsel to handle the legal matters and litigation of the
retirement board and the association and to give advice and
counsel in regard to any matter connected with the duties of
the retirement board;

(3) administer oaths;

(4) adopt and use a seal for authentication of
records, processes and proceedings;

(5) create and maintain records relating to
all members, affiliated public employers and all activities and
duties required of the retirement board;

(6) issue subpoenas and compel the production
of evidence and attendance of witnesses in connection with any
hearings or proceedings of the retirement board;

(7) make and execute contracts;

(8) purchase, acquire or hold land adjacent to
the state capitol grounds or other suitable location and build
thereon a building to house the association and its employees
and, in the event additional office space is available in the
building after the retirement board and its employees have been
housed, to rent or lease the additional space to any public
agency or private person; provided that first priority for the
rental or leasing shall be to public agencies; and further
provided that for the purpose of purchasing, acquiring or
holding the land and the building thereon, the retirement board
may use funds from the income fund and any other funds
controlled by the retirement board the use of which for such
purposes is not prohibited by law;

(9) after the sale of the land and building
acquired pursuant to Paragraph (8) of this subsection, acquire
land and build thereon a new building to house the association
and its employees and hold the building and land in fee simple
in the name of the association. In order to acquire the land
and plan, design and construct the building, the retirement
board may expend the proceeds of the sale of the land and
building acquired pursuant to Paragraph (8) of this subsection
or any funds controlled by the board, the use of which for such
purposes is not otherwise prohibited by law;

(10) make and adopt such reasonable rules as
may be necessary or convenient to carry out the duties of the
retirement board and activities of the association, including
any rules necessary to preserve the status of the association
as a qualified pension plan under the provisions of the
Internal Revenue Code of 1986, as amended, or under successor
or related provisions of law;

(11) designate committees and designate
committee members, including individuals who may not be members
of the association; and

(12) select and contract for the services of
one or more custodian banks for all funds under the retirement
board's management. For the purpose of this paragraph,
"custodian bank" means a financial institution with the general
fiduciary duties to manage, control and collect the assets of
an investment fund, including receiving all deposits and paying
all disbursements as directed by staff, safekeeping of assets,
coordination of asset transfers, timely settlement of
securities transactions and accurate and timely reporting of
the assets by individual account and in total.

B. The retirement board consists of

[(1) the secretary of state;
(2) the state treasurer;
(3) four members under a state coverage plan
to be elected by the members under state coverage plans;
(4) four members under a municipal coverage
plan to be elected by the members under municipal coverage
plans, provided one member shall be a municipal member employed
]
by a county; and

(5) two retired members to be elected by the
retired members of the association.

C. The results of elections of elected members of
the retirement board shall be certified at the annual meeting
of the association. Elections shall be conducted according to
rules the retirement board adopts from time to time] the
following members:

(1) the state treasurer or the treasurer's
designee;

(2) the secretary of finance and
administration or the secretary's designee;

(3) two retired members who have backgrounds
in investments, finance or pension fund administration to be
elected by the retired members of the association; and

(4) eight members appointed as follows, with
due regard to the cultural diversity of the state and
geographical representation of counties statewide:

(a) one active member of a municipal
fire member coverage plan, to be appointed by the labor
organization representing the largest number of those members;

(b) one active member of a municipal
police member coverage plan, to be appointed by the labor
organization representing the largest number of those members;

(c) one active member of a municipal
general member coverage plan, to be appointed by the labor
organization representing the largest number of those members;

(d) one active member of a municipal
plan who has a background in investments, finance or pension
fund administration, to be appointed for the first term by the
New Mexico association of counties, for the second term by the
New Mexico municipal league and with the New Mexico association
of counties and New Mexico municipal league alternating
appointments every term thereafter;

(e) one active member of a state plan,
other than a state general member coverage plan, to be
appointed by the labor organization representing the largest
number of those members;

(f) one active member of a state general
member coverage plan, to be appointed by the labor organization
representing the largest number of those members;

(g) one active member of a state plan
who has a background in investments, finance or pension fund
administration, to be appointed by the speaker of the house of
representatives; and

(h) one active member of a state plan
who has a background in investments, finance or pension fund
administration, to be appointed by the president pro tempore of
the senate.

[D-r] C. Except as provided in Subsection D of this
section, the regular term of office of the elected or appointed members of the retirement board is [four] six years. [The term of one retirement board member under a state coverage plan expires annually on December 31. The terms of retirement board members under a municipal coverage plan expire on December 31 of nonecoinciding years in the pattern set by the retirement board] An appointed or elected member shall not serve more than one regular term of office. Members of the retirement board serve until their successors have qualified.

[E. A] D. The initial regular term of office for the first members appointed or elected to the retirement board pursuant to this 2021 act shall be as follows; provided that the initial term shall constitute a regular term of office and subsequent terms shall be for six years:

1. the members appointed pursuant to Subparagraphs (c), (d) and (e) of Paragraph (4) of Subsection B of this section shall serve an initial term of two years beginning July 1, 2021;
2. the members appointed pursuant to Subparagraphs (b) and (f) of Paragraph (4) of Subsection B of this section shall serve an initial term of four years beginning July 1, 2021;
3. the members appointed pursuant to Subparagraphs (a), (g) and (h) of Paragraph (4) of Subsection B of this section shall serve an initial term of six years
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beginning July 1, 2021;

(4) the retired member who was previously elected by the retired members of the association and serving on the board on the effective date of this 2021 act, for a term of office ending in calendar year 2023, shall serve until June of 2023, at which time an election shall be held for that office for an initial term of four years with the term of office beginning on July 1, 2023; provided that the term of office of that previously elected member serving on the board on the effective date of this 2021 act shall constitute a regular term of office; and

(5) the retired member who was previously elected by the retired members of the association and serving on the board on the effective date of this 2021 act, for a term of office ending in calendar year 2024, shall serve until June of 2025, at which time an election shall be held for that office for an initial term of six years with the term beginning on July 1, 2025; provided that the term of office of that previously elected member serving on the board on the effective date of this 2021 shall constitute a regular term of office.

E. An appointed or elected member [elected to] of the retirement board who fails to attend four consecutively scheduled meetings of the retirement board, unless in each case excused for cause by the retirement board members in attendance, is considered to have resigned from the retirement board.
board, and the retirement board shall by resolution declare the office vacated as of the date of adoption of the resolution. [A vacancy occurring on the retirement board, except in the case of an elected official, shall be filled by the remaining retirement board members, without requirement that a quorum be present. The member appointed to fill the vacancy serves for the remainder of the vacated term.]

F. When a vacancy on the retirement board occurs, except in the case of an ex-officio member, the original appointing authority shall select a successor in the same manner as the original selection was made. A vacancy on the retirement board of an appointed member shall be filled by appointment no later than sixty days following notification of a vacancy and shall be filled by the original appointing authority for the remainder of the unexpired term of office, or in the case of an elected member, shall be filled by election for the remainder of the unexpired term of office no later than one hundred eighty days following notification of a vacancy. An appointed or elected member may be removed by the retirement board; provided that the retirement board holds a removal hearing regarding the member and finds cause, by a two-thirds' vote of the members of the retirement board, to remove the member for reasons of incompetence, breach of fiduciary duty or malfeasance.

[F-] G. Members of the retirement board serve
without salary for their services as retirement board members, but they shall receive those amounts authorized under the Per Diem and Mileage Act.

The retirement board shall hold four regular meetings each year and shall designate in advance the time and place of the meetings. Special meetings and emergency meetings of the retirement board may be held upon call of the chair or any three members of the retirement board. Written notice of special meetings shall be sent to each member of the retirement board at least seventy-two hours in advance of the special meeting. [Verbal] Written notice of emergency meetings, including written notice provided through electronic means, shall be [given to as many members as is feasible] sent to each member at least eight hours before the emergency meeting, and the meeting shall commence with a statement of the nature of the emergency. The retirement board shall adopt its own rules of procedure and shall keep a record of its proceedings. All meetings of the retirement board shall comply with the Open Meetings Act. A majority of retirement board members shall constitute a quorum. Each attending member of the retirement board is entitled to one vote on each question before the retirement board, and at least a majority of a quorum shall be necessary for a decision by the retirement board.

Annual meetings of the members of the
association shall be held in Santa Fe at such time and place as
the retirement board shall from time to time determine.
Special meetings of the members of the association shall be
held in Santa Fe upon call of any seven retirement board
members. The retirement board shall send a written notice to
the last known residence address of each member currently
employed by an affiliated public employer at least ten days
prior to any meeting of the members of the association. The
notice shall contain the call of the meeting and the principal
purpose of the meeting. All meetings of the association shall
be public and shall be conducted according to procedures the
retirement board shall from time to time adopt. The retirement
board shall keep a record of the proceedings of each meeting of
the association.

Neither the retirement board nor the
association shall allow public inspection of, or disclosure of,
information from any member or retiree file unless a prior
release and consent, in the form prescribed by the association,
has been executed by the member or retiree; except that
applicable coverage plans, amounts of retirement plan
contributions made by members and affiliated public employers,
pension amounts paid and the names and addresses of public
employees retirement association members or retirees requested
for election purposes by candidates for election to the
retirement board may be produced or disclosed without release
K. For the purpose of determining which labor organization represents the largest number of the members of any plan, the public employee labor relations board shall calculate the membership numbers as of ninety days prior to the expiration of the relevant retirement board member's term. In the event of a dispute over which labor organization represents the largest number of the members of any plan, the public employee labor relations board shall make a binding and final determination on which organization shall serve as the appointing authority.

L. Elections for the retirement board shall be conducted according to rules promulgated by the secretary of state; provided that such rules shall provide for the elections to:

   (1) be held in June during the years that correspond to the vacancy of an elected position on the board;

   (2) be conducted by mail; and

   (3) conform to standards consistent with existing law related to campaign finance limits and transparency.

M. A candidate for election to the board shall certify by notarized affidavit that the candidate meets the required qualifications to serve as a member of the board. The affidavit shall be filed with the declaration of candidacy.
The affidavit shall be on a form provided by the secretary of state that shall require a candidate to list with particularity the candidate's specific experience that meets required qualifications."

SECTION 2. Section 10-11-130.1 NMSA 1978 (being Laws 1999, Chapter 153, Section 1) is amended to read:

"10-11-130.1. RESTRICTIONS ON RECEIPT OF GIFTS--RESTRICTION ON CAMPAIGN CONTRIBUTIONS [REQUIRED REPORTING].--

A. Except for gifts of food or beverage given in a place of public accommodation, consumed at the time of receipt, not exceeding fifty dollars ($50.00) for a single gift and the aggregate value of which gifts may not exceed one hundred fifty dollars ($150) in a calendar year, neither a retirement board member nor an employee of the retirement board or association shall receive or accept anything of value directly or indirectly from a person who:

(1) has a current contract with the retirement board or association;

(2) is a potential bidder, offeror or contractor for the provision of services or personal property to the retirement board or association;

(3) is authorized to invest public funds pursuant to state or federal law or is an employee or agent of such a person; or

(4) is an organization, association or other
entity having a membership that includes persons described in Paragraphs (1) through (3) of this subsection.

B. No person who is a candidate in a primary or general election for a position that qualifies the person for ex-officio membership on the retirement board, no member serving ex officio on the retirement board and no person who is a nominee for retirement board membership by election [by some or all of the members of the association] pursuant to the Public Employees Retirement Act shall accept anything of a value of more than twenty-five dollars ($25.00) as a contribution to an ex-officio member's statewide campaign in a primary or general election or as a contribution to the campaign of a nominee for membership on the board [as a member elected by all or some of the members of the association] from a person who:

(1) has a current contract with the retirement board or association;

(2) is a potential bidder, offeror or contractor for the provision of services or personal property to the retirement board or association;

(3) is authorized to invest public funds pursuant to state or federal law or is an employee or agent of such a person; or

(4) is an organization, association or other entity having a membership that includes persons described in .220533.1
Paragraphs (1) through (3) of this subsection.

[6. Within ten days after an election in which one or more board members are elected by some or all of the members of the association pursuant to the Public Employees Retirement Act, all persons who were candidates for board membership in that election shall file with the association a report disclosing all contributions to their respective campaigns whether made directly to the candidate, a political action committee or to some other entity supporting the candidate's election. The contributions shall be reported by amount and specific source. Within sixty days after the election, the association shall publish the reports required by this subsection.]

SECTION 3. Section 10-11-131 NMSA 1978 (being Laws 1987, Chapter 253, Section 131, as amended) is amended to read:

"10-11-131. RETIREMENT BOARD--OFFICERS--EMPLOYMENT OF SERVICES.--

A. The retirement board shall hold a meeting following the beginning of a regular term of office for the members appointed or elected to the retirement board to elect from its own number a [chairman] chair and a vice [chairman] chair for a term of two years. In the case of a vacancy in the position of chair or vice chair, the retirement board shall elect from its own number a replacement to fill the remainder of the unexpired term.
B. The retirement board shall appoint an executive
director who shall be the chief administrative officer for the
retirement board and the association.

C. The retirement board shall employ professional,
technical, clerical and other services as required for the
operation of the association. The compensation for employed
services shall be fixed by the retirement board.

D. The state treasurer shall be the treasurer of
the association and the custodian of its funds. The
treasurer's general bond to the state shall cover all liability
for acts as treasurer of the association. The treasurer shall
credit all receipts of money and assets of the association to
the association. The treasurer shall make disbursements from
association assets only upon warrants issued by the secretary
of finance and administration based upon vouchers signed by the
executive director of the association or vouchers signed by the
state treasurer for purposes of investment."

SECTION 4. TEMPORARY PROVISION.--

A. The terms of office of the members serving on
the retirement board on the effective date of this act, except
for the two retired members that are elected by the retired
members of the public employees retirement association, shall
end on June 30, 2021, and new members shall be appointed for a
term of office that shall begin on July 1, 2021 according to
.220533.1

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the provisions of Section 10-11-130 NMSA 1978.

B. The two retired members that are elected by the retired members of the public employees retirement association prior to the effective date of this act shall continue to serve on the retirement board until their successors are elected and qualified pursuant to Section 10-11-130 NMSA 1978.