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SENATE BILL 144

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

Steve Komadi na

AN ACT

RELATING TO RETIREMENT OF PUBLIC EMPLOYEES; PROVIDING THAT
RETIREEES PURSUANT TO THE PUBLIC EMPLOYEES RETIREMENT ACT MAY
CONTINUE TO RECEIVE BENEFITS IF SUBSEQUENTLY EMPLOYED BY AN
AFFILIATED PUBLIC EMPLOYER; PROVIDING THAT RETIREEES PURSUANT
TO THE EDUCATIONAL RETIREMENT ACT MAY CONTINUE TO RECEIVE
BENEFITS IF SUBSEQUENTLY EMPLOYED BY A LOCAL ADMINISTRATIVE
UNIT.

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

Section 1. Section 10-11-3 NMSA 1978 (being Laws 1987,
Chapter 253, Section 3, as amended) is amended to read:

"10-11-3. MEMBERSHIP--REQUIREMENTS--EXCLUSIONS--
TERMINATION.--

A. Except as may be provided for in the Volunteer
Firefighters Retirement Act, the Judicial Retirement Act, the

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1 Magistrate Retirement Act, the Educational Retirement Act and
2 the provisions of Sections 29-4-1 through 29-4-11 NMSA 1978
3 governing the state police pension fund, each employee and
4 elected official of every affiliated public employer shall be
5 a member of the association, unless excluded from membership
6 in accordance with Subsection B of this section.

7 B. The following employees and elected officials
8 are excluded from membership in the association:

9 (1) elected officials who file with the
10 association a written application for exemption from
11 membership within thirty days of taking office;

12 (2) elected officials who file with the
13 association a written application for exemption from
14 membership within thirty days of the date the elected
15 official's public employer becomes an affiliated public
16 employer;

17 (3) employees designated by the affiliated
18 public employer as seasonal or student employees;

19 (4) employees who file with the association a
20 written application for exemption from membership within
21 thirty days of the date the employee's public employer becomes
22 an affiliated public employer;

23 (5) employees of an affiliated public
24 employer that is making contributions to a private retirement
25 program on behalf of the employee as part of a compensation

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1 arrangement who file with the association a written
2 application for exemption within thirty days of employment,
3 unless the employee has previously retired under the
4 provisions of the Public Employees Retirement Act; [~~and~~]

5 (6) employees of an affiliated public
6 employer who have retired under and are receiving a pension
7 pursuant to the provisions of the Educational Retirement Act;
8 and

9 (7) retired members who are employed by an
10 affiliated public employer after July 1, 2002.

11 C. Employees designated as seasonal and student
12 employees shall be notified in writing by their affiliated
13 public employer of the designation and the consequences of the
14 designation with respect to membership, service credit and
15 benefits. A copy of the notification shall be filed with the
16 association within thirty days of the date of employment.

17 D. An exemption from membership by an elected
18 official shall expire at the end of the term of office for
19 which filed.

20 E. Employees and elected officials who have
21 exempted themselves from membership may subsequently withdraw
22 the exemption by filing a membership application. Membership
23 shall commence the first day of the first pay period following
24 the date the application is filed.

25 F. The membership of an employee or elected

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1 official shall cease if the employee terminates employment
2 with an affiliated public employer or the elected official
3 leaves office and the employee or elected official requests
4 and receives a refund of member contributions. "

5 Section 2. Section 10-11-8 NMSA 1978 (being Laws 1987,
6 Chapter 253, Section 8, as amended) is amended to read:

7 "10-11-8. NORMAL RETIREMENT--SUSPENSION. --

8 A. A member may retire upon fulfilling the
9 following requirements:

10 (1) a written application for normal
11 retirement, in the form prescribed by the association, is
12 filed with the association prior to the selected date of
13 retirement;

14 (2) employment is terminated with all
15 employers covered by any state system or the educational
16 retirement system prior to the selected date of retirement;

17 (3) the member selects an effective date of
18 retirement that is the first day of a calendar month; and

19 (4) the member meets the age and service
20 credit requirement for normal retirement specified in the
21 coverage plan applicable to the member.

22 B. The amount of normal retirement pension is
23 determined in accordance with the coverage plan applicable to
24 the member.

25 C. If a member retires and is subsequently

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1 employed by any affiliated public employer, the retired
2 member's pension will be suspended effective the first day of
3 the month following the month in which the previously retired
4 member earns one hundred percent or more of the amount that
5 causes a decrease or suspension of an old age benefit under
6 the federal social security program or fifteen thousand
7 dollars (\$15,000), whichever is less. When the pension is
8 suspended, the following conditions shall apply:

9 (1) the retired member who is subsequently
10 employed by an affiliated public employer shall become a
11 member. The previously retired member and the subsequent
12 affiliated public employer shall make the required employee
13 and employer contributions, and the previously retired member
14 shall accrue service credit for the period of subsequent
15 employment; and

16 (2) when a previously retired member
17 terminates the subsequent employment with an affiliated public
18 employer, he shall retire according to the provisions of the
19 Public Employees Retirement Act, subject to the following
20 conditions:

21 (a) payment of the pension shall resume
22 in accordance with the provisions of Subsection A of this
23 section;

24 (b) unless the previously retired
25 member accrued at least three years of service credit on

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1 account of the subsequent employment, the recalculation of
2 pension shall: 1) employ the form of payment selected by the
3 previously retired member at the time of the first retirement;
4 and 2) use the provisions of the coverage plan applicable to
5 the member on the date of the first retirement; and

6 (c) the recalculated pension shall not
7 be less than the amount of the suspended pension.

8 D. The provisions of Subsection C of this section
9 shall not apply to a retired member who is appointed chief of
10 police of an affiliated public employer, other than of the
11 affiliated public employer from which retired, or who is
12 appointed undersheriff if the retired member files an
13 irrevocable exemption from membership with the association
14 within thirty days of appointment. For purposes of this
15 subsection, each sheriff's office shall be limited to one
16 undersheriff. The irrevocable exemption shall be for the
17 chief of police's or the undersheriff's term of office.

18 Filing of an irrevocable exemption shall irrevocably bar the
19 retired member from acquiring service credit for the period of
20 exemption from membership.

21 E. The provisions of Subsection C of this section
22 shall not apply to any retired member who is subsequently
23 employed by an employer ~~[who]~~ that is not an affiliated public
24 employer.

25 F. The provisions of Subsection C of this section

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1 shall not apply to a retired member who is elected to serve a
2 term as an elected official if the retired member files an
3 irrevocable exemption from membership with the association
4 within thirty days of taking office. Filing of an irrevocable
5 exemption shall irrevocably bar the retired member from
6 acquiring service credit for the period of exemption from
7 membership.

8 G. The provisions of Subsection C of this section
9 shall not apply to a retired member who, after July 1, 2002,
10 is subsequently employed by an affiliated public employer.
11 The retired member is entitled to continue to receive
12 retirement benefits but is not entitled to acquire service
13 credit or to acquire or purchase service credit in the future
14 for the period of the retired member's employment.

15 [~~G.~~] H. The pension of a member who has three or
16 more years of service credit under each of two or more
17 coverage plans shall be determined in accordance with the
18 coverage plan that produces the highest pension. The pension
19 of a member who has service credit under two or more coverage
20 plans but who has three or more years of service credit under
21 only one of those coverage plans shall be determined in
22 accordance with the coverage plan in which the member has
23 three or more years of service credit. If the service credit
24 is acquired under two different coverage plans applied to the
25 same affiliated public employer as a consequence of an

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1 election by the members, adoption by the affiliated public
2 employer or a change in the law that results in the
3 application of a coverage plan with a greater pension, the
4 greater pension shall be paid a member retiring from the
5 affiliated public employer under which the change in coverage
6 plan took place regardless of the amount of service credit
7 under the coverage plan producing the greater pension,
8 provided the member has three or more years of continuous
9 employment with that affiliated public employer immediately
10 preceding or immediately preceding and immediately following
11 the date the coverage plan changed. The provisions of each
12 coverage plan for the purpose of this subsection shall be
13 those in effect at the time the member ceased to be covered by
14 the coverage plan. "Service credit", for the purposes of this
15 subsection, shall be only personal service rendered an
16 affiliated public employer and credited to the member under
17 the provisions of Subsection A of Section 10-11-4 NMSA 1978.
18 Service credited under any other provision of the Public
19 Employees Retirement Act shall not be used to satisfy the
20 three-year service credit requirement of this subsection. "

21 Section 3. Section 22-11-25.1 NMSA 1978 (being Laws
22 2001, Chapter 283, Section 2) is amended to read:

23 "22-11-25.1. RETURN TO EMPLOYMENT-- BENEFITS CONTINUED
24 [~~ADMINISTRATIVE UNIT CONTRIBUTIONS~~]. --

25 [A. ~~Beginning January 1, 2002 and continuing until~~

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1 ~~January 1, 2012]~~ A retired member may begin employment at a
2 local administrative unit and shall not be required to suspend
3 retirement benefits. ~~[if the member has not been employed as~~
4 ~~an employee or independent contractor by a local~~
5 ~~administrative unit for at least twelve consecutive months~~
6 ~~from the date of retirement to the commencement of employment~~
7 ~~or re-employment with a local administrative unit. If the~~
8 ~~retired member returns to employment without first completing~~
9 ~~twelve consecutive months of retirement, the retired member~~
10 ~~shall remove himself from retirement.~~

11 B.] A retired member who returns to employment
12 during retirement pursuant to ~~[Subsection A of]~~ this section
13 is entitled to continue to receive retirement benefits but is
14 not entitled to acquire service credit or to acquire or
15 purchase service credit in the future for the period of the
16 retired member's re-employment with a local administrative
17 unit.

18 ~~[C. A retired member who returns to employment~~
19 ~~shall not make contributions to the fund as specified in the~~
20 ~~Educational Retirement Act; however, the administrative~~
21 ~~unit's contributions as specified in that act shall be paid~~
22 ~~to the fund as if the retired member was a non-retired~~
23 ~~employee.]"~~

24 Section 4. EFFECTIVE DATE. -- The effective date of the
25 provisions of this act is July 1, 2002.