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HOUSE BILL 202

**52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

INTRODUCED BY

Patricio Ruiloba

AN ACT

RELATING TO PUBLIC SAFETY; DIRECTING THE SECRETARY OF PUBLIC SAFETY TO ESTABLISH WITHIN THE NEW MEXICO LAW ENFORCEMENT ACADEMY A REGISTRY OF RECENTLY RETIRED CERTIFIED LAW ENFORCEMENT OFFICERS AVAILABLE FOR SHORT-TERM ASSIGNMENTS BY AFFILIATED PUBLIC EMPLOYERS FOR SPECIAL EVENTS; AMENDING THE PUBLIC EMPLOYEES RETIREMENT ACT TO ALLOW CERTAIN RETIRED MEMBERS TO RETURN TO WORK UNDER CERTAIN CIRCUMSTANCES.

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

**SECTION 1.** A new section of the Department of Public Safety Act is enacted to read:

"[NEW MATERIAL] SECRETARY--DUTY TO DEVELOP REGISTRY OF RETIRED CERTIFIED LAW ENFORCEMENT OFFICERS.--

A. In addition to all other duties established in Section 9-19-6 NMSA 1978, the secretary, in consultation with

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1 the director of the New Mexico law enforcement academy and the  
2 New Mexico law enforcement academy board, shall develop and  
3 maintain a registry of all retired certified law enforcement  
4 officers who have maintained their certifications after  
5 retirement.

6 B. The secretary shall make the registry of retired  
7 certified law enforcement officers available to local law  
8 enforcement agencies."

9 SECTION 2. Section 10-11-8 NMSA 1978 (being Laws 1987,  
10 Chapter 253, Section 8, as amended by Laws 2014, Chapter 35,  
11 Section 1 and by Laws 2014, Chapter 39, Section 1 and also by  
12 Laws 2014, Chapter 43, Section 1) is amended to read:

13 "10-11-8. NORMAL RETIREMENT--RETURN TO EMPLOYMENT--  
14 BENEFITS CONTINUED--CONTRIBUTIONS.--

15 A. A member may retire upon fulfilling the  
16 following requirements prior to the selected date of  
17 retirement:

18 (1) a written application for normal  
19 retirement, in the form prescribed by the association, is filed  
20 with the association;

21 (2) employment is terminated with all  
22 employers covered by any state system or the educational  
23 retirement system;

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

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1 (4) the member meets the age and service  
2 credit requirement for normal retirement specified in the  
3 coverage plan applicable to the member.

4 B. The amount of normal retirement pension is  
5 determined in accordance with the coverage plan applicable to  
6 the member.

7 ~~[G. Except as provided in Subsection E of this~~  
8 ~~section, on or after July 1, 2010, a retired member may be~~  
9 ~~subsequently employed by an affiliated public employer only~~  
10 ~~pursuant to the following provisions:~~

11 ~~(1) the retired member has not been employed~~  
12 ~~as an employee of an affiliated public employer or retained as~~  
13 ~~an independent contractor by the affiliated public employer~~  
14 ~~from which the retired member retired for at least twelve~~  
15 ~~consecutive months from the date of retirement to the~~  
16 ~~commencement of subsequent employment or reemployment with an~~  
17 ~~affiliated public employer;~~

18 ~~(2) the retired member's pension shall be~~  
19 ~~suspended upon commencement of the subsequent employment;~~

20 ~~(3) except as provided in Subsection G of this~~  
21 ~~section, the retired member shall not become a member and shall~~  
22 ~~not accrue service credit, and the retired member and that~~  
23 ~~person's subsequent affiliated public employer shall not make~~  
24 ~~contributions under any coverage plan pursuant to the Public~~  
25 ~~Employees Retirement Act; and~~

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1                   ~~(4) upon termination of the subsequent~~  
2 ~~employment, the retired member's pension shall resume in~~  
3 ~~accordance with the provisions of Subsection A of this section.~~

4                   ~~D. Notwithstanding the provisions of Subsection B~~  
5 ~~of Section 10-11-118 NMSA 1978, on and after July 1, 2013, if a~~  
6 ~~retired member becomes employed with an employer pursuant to~~  
7 ~~the Educational Retirement Act, and effective July 1, 2014, if~~  
8 ~~a retired member who, subsequent to retirement, is employed and~~  
9 ~~covered pursuant to the Judicial Retirement Act, and, effective~~  
10 ~~July 1, 2014, if a retired member who, subsequent to~~  
11 ~~retirement, is employed and covered pursuant to the Magistrate~~  
12 ~~Retirement Act:~~

13                   ~~(1) the retired member's cost-of-living~~  
14 ~~pension adjustment shall be suspended upon commencement of the~~  
15 ~~employment; and~~

16                   ~~(2) upon termination of the employment, the~~  
17 ~~retired member's suspended cost-of-living pension adjustment~~  
18 ~~shall be reinstated as provided under Subsection B of Section~~  
19 ~~10-11-118 NMSA 1978.~~

20                   ~~E. The provisions of Subsections C, H and I of this~~  
21 ~~section do not apply to:~~

22                   ~~(1) a retired member employed by the~~  
23 ~~legislature for legislative session work;~~

24                   ~~(2) a retired member employed temporarily as a~~  
25 ~~precinct board member for a municipal election or an election~~

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1 covered by the Election Code; or

2 ~~(3) a retired member who is elected to serve a~~  
3 ~~term as an elected official in an office covered pursuant to~~  
4 ~~the Public Employees Retirement Act; provided that:~~

5 ~~(a) the retired member files an~~  
6 ~~irrevocable exemption from membership with the association~~  
7 ~~within thirty days of taking office; and~~

8 ~~(b) the irrevocable exemption shall be~~  
9 ~~for the elected official's term of office.~~

10 ~~F. A retired member who returns to employment~~  
11 ~~during retirement pursuant to Subsection E of this section is~~  
12 ~~entitled to receive retirement benefits but is not entitled to~~  
13 ~~accrue service credit or to acquire or purchase service credit~~  
14 ~~in the future for the period of the retired member's subsequent~~  
15 ~~employment with an affiliated public employer.~~

16 ~~G. At any time during a retired member's subsequent~~  
17 ~~employment pursuant to Subsection C of this section, the~~  
18 ~~retired member may elect to become a member and the following~~  
19 ~~conditions shall apply:~~

20 ~~(1) the previously retired member and the~~  
21 ~~subsequent affiliated public employer shall make the required~~  
22 ~~employee and employer contributions, and the previously retired~~  
23 ~~member shall accrue service credit for the period of subsequent~~  
24 ~~employment; and~~

25 ~~(2) when the previously retired member~~

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1 ~~terminates the subsequent employment with an affiliated public~~  
2 ~~employer, the previously retired member shall retire according~~  
3 ~~to the provisions of the Public Employees Retirement Act,~~  
4 ~~subject to the following conditions:~~

5 ~~(a) payment of the pension shall resume~~  
6 ~~in accordance with the provisions of Subsection A of this~~  
7 ~~section;~~

8 ~~(b) unless the previously retired member~~  
9 ~~accrued at least three years of service credit on account of~~  
10 ~~the subsequent employment, the recalculation of pension shall:~~  
11 ~~1) employ the form of payment selected by the previously~~  
12 ~~retired member at the time of the first retirement; and 2) use~~  
13 ~~the provisions of the coverage plan applicable to the member on~~  
14 ~~the date of the first retirement; and~~

15 ~~(c) the recalculated pension shall not~~  
16 ~~be less than the amount of the suspended pension.~~

17 ~~H. A retired member who returned to work with an~~  
18 ~~affiliated public employer prior to July 1, 2010 shall be~~  
19 ~~subject to the provisions of this section in effect on the date~~  
20 ~~the retired member returned to work; provided that:~~

21 ~~(1) on and after July 1, 2010, the retired~~  
22 ~~member shall pay the employee contribution in an amount~~  
23 ~~specified in the Public Employees Retirement Act for the~~  
24 ~~position in which the retired member is subsequently employed;~~

25 ~~(2) notwithstanding the provisions of~~

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1 ~~Subsection B of Section 10-11-118 NMSA 1978, on and after July~~  
2 ~~1, 2013, the retired member's cost-of-living pension adjustment~~  
3 ~~shall be suspended; and~~

4 ~~(3) upon termination of the subsequent~~  
5 ~~employment with the affiliated public employer, the retired~~  
6 ~~member's cost-of-living pension adjustment shall be reinstated~~  
7 ~~as provided in Subsection B of Section 10-11-118 NMSA 1978.~~

8 ~~I. Effective July 1, 2014, if a retired member who,~~  
9 ~~subsequent to retirement, is employed and covered pursuant to~~  
10 ~~the provisions of the Magistrate Retirement Act or Judicial~~  
11 ~~Retirement Act, during the period of subsequent employment:~~

12 ~~(1) the member shall be entitled to receive~~  
13 ~~retirement benefits;~~

14 ~~(2) the retired member's cost-of-living~~  
15 ~~pension adjustment shall be suspended upon commencement of the~~  
16 ~~employment; and~~

17 ~~(3) upon termination of the employment, the~~  
18 ~~retired member's suspended cost-of-living pension adjustment~~  
19 ~~shall be reinstated as provided under Subsection B of Section~~  
20 ~~10-11-118 NMSA 1978.~~

21 ~~J.]~~ C. The pension of a member who has earned  
22 service credit under more than one coverage plan shall be  
23 determined as follows:

24 (1) the pension of a member who has three or  
25 more years of service credit earned on or before June 30, 2013

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1 under each of two or more coverage plans shall be determined in  
2 accordance with the coverage plan that produces the highest  
3 pension;

4 (2) the pension of a member who has service  
5 credit earned on or before June 30, 2013 under two or more  
6 coverage plans but who has three or more years of service  
7 credit under only one of those coverage plans shall be  
8 determined in accordance with the coverage plan in which the  
9 member has three or more years of service credit. If the  
10 service credit is acquired under two different coverage plans  
11 applied to the same affiliated public employer as a consequence  
12 of an election by the members, adoption by the affiliated  
13 public employer or a change in the law that results in the  
14 application of a coverage plan with a greater pension, the  
15 greater pension shall be paid a member retiring from the  
16 affiliated public employer under which the change in coverage  
17 plan took place regardless of the amount of service credit  
18 under the coverage plan producing the greater pension; provided  
19 that the member has three or more years of continuous  
20 employment with that affiliated public employer immediately  
21 preceding or immediately preceding and immediately following  
22 the date the coverage plan changed;

23 (3) the pension of a member who has service  
24 credit earned on or before June 30, 2013 under each of two or  
25 more coverage plans and who has service credit earned under any

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1 coverage plan on or after July 1, 2013 shall be equal to the  
2 sum of:

3 (a) the pension attributable to the  
4 service credit earned on or before June 30, 2013 determined  
5 pursuant to Paragraph (1) or (2) of this subsection; and

6 (b) the pension attributable to the  
7 service credit earned under each coverage plan on or after July  
8 1, 2013;

9 (4) the pension of a member who has service  
10 credit earned only on and after July 1, 2013 shall be equal to  
11 the sum of the pension attributable to the service credit the  
12 member has accrued under each coverage plan; and

13 (5) the provisions of each coverage plan for  
14 the purpose of this subsection shall be those in effect at the  
15 time the member ceased to be covered by the coverage plan.

16 "Service credit", for the purposes of this subsection, shall be  
17 only personal service rendered an affiliated public employer  
18 and credited to the member under the provisions of Subsection A  
19 of Section 10-11-4 NMSA 1978. Service credited under any other  
20 provision of the Public Employees Retirement Act shall not be  
21 used to satisfy the three-year service credit requirement of  
22 this subsection."

23 SECTION 3. A new section of the Public Employees  
24 Retirement Act is enacted to read:

25 "[NEW MATERIAL] RETURN TO EMPLOYMENT--PENSION--

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1 CONTRIBUTIONS--SERVICE CREDIT.--

2 A. A retired member may be subsequently employed by  
3 an affiliated public employer if the retired member has not  
4 been employed as an employee of an affiliated public employer  
5 or retained as an independent contractor by the affiliated  
6 public employer from which the retired member retired for at  
7 least twelve consecutive months from the date of retirement to  
8 the commencement of subsequent employment with an affiliated  
9 public employer; provided that, during the period of subsequent  
10 employment:

11 (1) the retired member's pension, including  
12 any cost-of-living adjustment, shall be suspended upon  
13 commencement of the subsequent employment;

14 (2) the retired member shall not become a  
15 member;

16 (3) the retired member shall not accrue  
17 service credit;

18 (4) the retired member and the retired  
19 member's subsequent affiliated public employer shall not make  
20 contributions under any coverage plan pursuant to the Public  
21 Employees Retirement Act; and

22 (5) upon termination of the subsequent  
23 employment, the retired member's pension shall resume in  
24 accordance with the provisions of Section 10-11-8 NMSA 1978.

25 B. At any time during a retired member's subsequent

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1 employment pursuant to Subsection A of this section, the  
2 retired member may elect to become a member; provided that,  
3 commencing at the time of election to become a member:

4 (1) the previously retired member; and the  
5 subsequent affiliated public employer shall make the required  
6 member and employer contributions;

7 (2) the previously retired member shall accrue  
8 service credit; and

9 (3) when the previously retired member  
10 terminates the subsequent employment with an affiliated public  
11 employer, the previously retired member shall retire according  
12 to the provisions of the Public Employees Retirement Act,  
13 subject to the following conditions:

14 (a) payment of the pension shall resume  
15 in accordance with the provisions of Section 10-11-8 NMSA 1978;

16 (b) unless the previously retired member  
17 accrued at least three years of service credit on account of  
18 the subsequent employment, the pension shall be recalculated  
19 applying the provisions of the coverage plan applicable to the  
20 member on the date of the first retirement and the form of  
21 payment selected by the previously retired member at the time  
22 of the first retirement; and

23 (c) the recalculated pension shall not  
24 be less than the amount of the suspended pension.

25 C. On and after July 1, 2013, if a retired member

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1 becomes employed with an employer pursuant to the Educational  
2 Retirement Act, and effective July 1, 2014, if a retired member  
3 is employed in a position covered pursuant to the Judicial  
4 Retirement Act or the Magistrate Retirement Act:

5 (1) the retired member shall be entitled to  
6 continue to receive a pension during the period of subsequent  
7 employment;

8 (2) the retired member's cost-of-living  
9 pension adjustment shall be suspended upon commencement of the  
10 subsequent employment; and

11 (3) upon termination of the subsequent  
12 employment, the retired member's suspended cost-of-living  
13 pension adjustment shall be reinstated as provided by Section  
14 10-11-118 NMSA 1978.

15 D. The provisions of Subsection A of this section  
16 do not apply to:

17 (1) a retired member employed temporarily by  
18 the legislature for legislative session work; or

19 (2) a retired member employed temporarily as a  
20 precinct board member for a municipal election or an election  
21 covered by the Election Code; provided that the retired member  
22 subsequently employed pursuant to this paragraph is entitled to  
23 continue to receive a pension but is not entitled to accrue  
24 service credit or to acquire or purchase service credit in the  
25 future for the period of the retired member's subsequent

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1 employment with an affiliated public employer.

2 E. Within thirty days of taking office, a retired  
3 member who is elected to serve a term as an elected official in  
4 an office covered pursuant to the Public Employees Retirement  
5 Act shall file with the association an irrevocable application  
6 for the elected official's term of office to:

7 (1) be exempt from membership and continue to  
8 receive a pension during the term of elected office; provided  
9 that the elected official shall not:

10 (a) accrue service credit and shall not  
11 purchase service credit in the future for all or any part of  
12 the term of elected office; and

13 (b) make member contributions and the  
14 affiliated public employer shall not make employer  
15 contributions during the term of elected office; or

16 (2) terminate retirement and reinstate  
17 membership during the term of elected office; provided that,  
18 during the term of elected office:

19 (a) payment of the pension shall be  
20 suspended;

21 (b) the elected official shall accrue  
22 service credit;

23 (c) the elected official and the  
24 affiliated public employer shall make the appropriate  
25 contributions; and

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1 (d) at the conclusion of the term of  
2 elected office, the elected official shall retire under the  
3 terms of the retirement plan under which the elected official  
4 first retired.

5 F. A retired member who returned to work with an  
6 affiliated public employer prior to July 1, 2010 shall be  
7 subject to the provisions of Section 10-11-8 NMSA 1978 in  
8 effect on the date the retired member returned to work;  
9 provided that:

10 (1) on and after July 1, 2010, the retired  
11 member shall pay the member contribution for the position in  
12 which the retired member is subsequently employed;

13 (2) notwithstanding the provisions of Section  
14 10-11-118 NMSA 1978, on and after July 1, 2013, the retired  
15 member's cost-of-living pension adjustment shall be suspended  
16 during the period of subsequent employment; and

17 (3) upon termination of the subsequent  
18 employment with the affiliated public employer, the retired  
19 member's cost-of-living pension adjustment shall be reinstated  
20 as provided in Subsection B of Section 10-11-118 NMSA 1978.

21 G. Notwithstanding the provisions of Subsection A  
22 of this section, a certified law enforcement officer who has  
23 retired under any municipal police coverage plan or state  
24 police member and adult correctional officer member coverage  
25 plan 1 and who is listed in the registry of retired certified

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1 law enforcement officers maintained by the secretary of public  
2 safety may be subsequently temporarily employed by an  
3 affiliated public employer for a period of not more than thirty  
4 days for special events that require supplemental officers;  
5 provided that:

6 (1) the retired member has retired not more  
7 than three years prior to the date of commencement of the  
8 subsequent employment;

9 (2) the retired member has maintained New  
10 Mexico law enforcement officer certification during retirement;

11 (3) the retired member's pension, including  
12 any cost-of-living adjustment, shall continue to be paid upon  
13 commencement of the subsequent employment;

14 (4) the retired member shall not become a  
15 member during the period of subsequent employment;

16 (5) the retired member shall not accrue  
17 service credit for any portion of the period of subsequent  
18 employment; and

19 (6) the retired member and the subsequent  
20 affiliated public employer shall not make the member and  
21 employer contributions that would otherwise be applicable to  
22 the position during the term of subsequent employment."