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SENATE BILL 71

**54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

INTRODUCED BY

George K. Munoz and Phelps Anderson

AN ACT

RELATING TO PUBLIC EMPLOYEES; PROVIDING FOR AN INVESTMENT-  
PERFORMANCE-BASED FRAMEWORK FOR THE COMPENSATION OF PUBLIC  
EMPLOYEES RETIREMENT ASSOCIATION AND EDUCATIONAL RETIREMENT  
BOARD STAFF; EXEMPTING THOSE AGENCIES' INVESTMENT STAFF  
POSITIONS FROM THE PERSONNEL ACT.

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

SECTION 1. A new section of the Public Employees  
Retirement Act is enacted to read:

"[NEW MATERIAL] INVESTMENT STAFF--INVESTMENT-PERFORMANCE-  
BASED COMPENSATION--REPORTING.--

A. Each year, the retirement board, in consultation  
with the executive director of the association, may establish a  
framework for the compensation of the association's chief  
investment officer and other investment staff that:

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- 1 (1) includes, for each of those positions:  
2 (a) a base compensation component; and  
3 (b) a variable, investment-performance-  
4 based component aligned with investment industry norms and best  
5 practices; and

6 (2) applies to the following fiscal year.

7 B. The association's chief investment officer and  
8 other investment staff may receive compensation in accordance  
9 with the framework developed by the retirement board.

10 C. Each year, the executive director of the  
11 association shall report to the legislative finance committee  
12 and, as appropriate, to one or more other legislative interim  
13 committees, on the compensation framework established in  
14 accordance with Subsection A of this section."

15 SECTION 2. A new section of the Educational Retirement  
16 Act is enacted to read:

17 "[NEW MATERIAL] INVESTMENT STAFF--INVESTMENT-PERFORMANCE-  
18 BASED COMPENSATION--REPORTING.--

19 A. Each year, the board, in consultation with the  
20 director, may establish a framework for the compensation of the  
21 board's chief investment officer and other investment staff  
22 that:

- 23 (1) includes, for each of those positions:  
24 (a) a base compensation component; and  
25 (b) a variable, investment-performance-

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1 based component aligned with investment industry norms and best  
2 practices; and

3 (2) applies to the following fiscal year.

4 B. The board's chief investment officer and other  
5 investment staff may receive compensation in accordance with  
6 the framework developed by the board.

7 C. Each year, the director shall report to the  
8 legislative finance committee and, as appropriate, to one or  
9 more other legislative interim committees, on the compensation  
10 framework established in accordance with Subsection A of this  
11 section."

12 SECTION 3. Section 10-9-4 NMSA 1978 (being Laws 1961,  
13 Chapter 240, Section 4, as amended) is amended to read:

14 "10-9-4. COVERAGE OF SERVICE.--The Personnel Act and the  
15 service cover all state positions except:

16 A. officials elected by popular vote or appointed  
17 to fill vacancies to elective offices;

18 B. members of boards and commissions and heads of  
19 agencies appointed by the governor;

20 C. heads of agencies appointed by boards or  
21 commissions;

22 D. directors of department divisions;

23 E. those in educational institutions and in public  
24 schools;

25 F. those who are employed by state institutions and

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1 by state agencies providing educational programs and who are  
2 required to hold valid certificates as certified school  
3 instructors, as defined in Section 22-1-2 NMSA 1978, issued by  
4 the public education department;

5 G. those in the governor's office;

6 H. those in the state militia or the commissioned  
7 officers of the New Mexico state police division of the  
8 department of public safety;

9 I. those in the judicial branch of government;

10 J. those in the public defender department, upon  
11 implementation of personnel policies and rules by the public  
12 defender commission;

13 K. those in the legislative branch of government;

14 L. ~~[not more than]~~ up to two assistants and one  
15 secretary in the office of each official listed in Subsections  
16 A [B] and C of this section ~~[excluding members of boards and~~  
17 ~~commissions in Subsection B of this section]~~ and in the office  
18 of each head of an agency appointed by the governor;

19 M. those of a professional or scientific nature and  
20 that are temporary ~~[in nature]~~;

21 N. those filled by patients or inmates in  
22 charitable, penal or correctional institutions;

23 O. state employees if the board in its discretion  
24 decides that the position is one of policymaking; ~~and]~~

25 P. disadvantaged youth under twenty-two years of

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1 age who are regularly enrolled or to be enrolled in a secondary  
2 educational institution approved by the public education  
3 department or in an accredited state institution of advanced  
4 learning or vocational training and who are to be employed for  
5 not more than seven hundred twenty hours during any calendar  
6 year:

7 (1) the term "disadvantaged youth" shall be  
8 defined for purposes of this exemption by regulation duly  
9 promulgated by the board; and

10 (2) the board shall:

11 (a) require that all the criteria of  
12 this subsection have been met;

13 (b) establish employment lists for the  
14 certification of the highest-standing candidates to the  
15 prospective employers; and

16 (c) establish the pay rates for such  
17 employees;

18 Q. the chief investment officer of the public  
19 employees retirement association and those subject to the  
20 investment-performance-based compensation framework provided  
21 for by Section 1 of this 2020 act; provided, however, that the  
22 framework has been adopted; and

23 R. the chief investment officer of the educational  
24 retirement board and those subject to the investment-  
25 performance-based compensation framework provided for by

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1 Section 2 of this 2020 act; provided, however, that the  
2 framework has been adopted."

3 SECTION 4. Section 10-9-5 NMSA 1978 (being Laws 1978,  
4 Chapter 96, Section 1, as amended) is amended to read:

5 "10-9-5. PUBLIC OFFICERS AND PUBLIC EMPLOYEES--EXECUTIVE  
6 BRANCH--ANNUAL EXEMPT SALARIES PLAN.--

7 A. The department of finance and administration  
8 shall prepare, by December 1 of each year, an exempt salaries  
9 plan for the governor's approval [~~The plan shall specify~~] that  
10 specifies salary ranges for the following public officer and  
11 public employee positions of the executive branch of  
12 government:

- 13 (1) members of boards and commissions  
14 appointed by the governor;
- 15 (2) heads of agencies or departments appointed  
16 by the governor;
- 17 (3) heads of agencies or departments appointed  
18 by the respective boards and commissions of the agencies;
- 19 (4) directors of department divisions;
- 20 (5) employees in the governor's office;
- 21 (6) positions in the state militia and the  
22 commissioned officers of the New Mexico state police division  
23 of the department of public safety;
- 24 (7) assistants and secretaries in the offices  
25 of each official covered by Paragraphs (2) and (3) [~~and (10)~~]

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1 of this subsection;

2 (8) temporary positions of a professional or  
3 scientific nature [~~which are temporary in nature~~]; and

4 (9) state employees whose positions the  
5 [~~personnel~~] board has classified as [~~policy-making~~]  
6 policymaking positions and exempt employees of elective public  
7 officials [~~and~~

8 ~~(10) secretaries of departments appointed by~~  
9 ~~the governor~~].

10 B. Excluded from the provisions of this section  
11 are:

12 (1) employees of the [~~commission on~~] higher  
13 education [~~and~~] department;

14 (2) employees of state educational  
15 institutions named in Article 12, Section 11 of the  
16 constitution of New Mexico;

17 (3) the chief investment officer of the public  
18 employees retirement association and those subject to the  
19 investment-performance-based compensation framework provided  
20 for by Section 1 of this 2020 act; provided, however, that the  
21 framework has been adopted; and

22 (4) the chief investment officer of the  
23 educational retirement board and those subject to the  
24 investment-performance-based compensation framework provided  
25 for by Section 2 of this 2020 act; provided, however, that the

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1 framework has been adopted.

2 C. The exempt salaries plan for the ensuing fiscal  
3 year, as prepared by the department of finance and  
4 administration and approved by the governor, shall be published  
5 as a part of the executive budget document presented to the  
6 legislature at its next regular session following the  
7 preparation of the plan.

8 D. Upon the governor's approval, the plan shall  
9 take effect at the beginning of the subsequent fiscal year."

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

12 "10-11-2. DEFINITIONS.--As used in the Public Employees  
13 Retirement Act:

14 A. "accumulated member contributions" means the  
15 amounts deducted from the salary of a member and credited to  
16 the member's individual account, together with interest, if  
17 any, credited to that account;

18 B. "affiliated public employer" means the state and  
19 any public employer affiliated with the association as provided  
20 in the Public Employees Retirement Act, but does not include an  
21 employer pursuant to the Magistrate Retirement Act, the  
22 Judicial Retirement Act or the Educational Retirement Act;

23 C. "association" means the public employees  
24 retirement association established under the Public Employees  
25 Retirement Act;

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1           D. "disability retired member" means a retired  
2 member who is receiving a pension pursuant to the disability  
3 retirement provisions of the Public Employees Retirement Act;

4           E. "disability retirement pension" means the  
5 pension paid pursuant to the disability retirement provisions  
6 of the Public Employees Retirement Act;

7           F. "educational retirement system" means that  
8 retirement system provided for in the Educational Retirement  
9 Act;

10          G. "employee" means any employee of an affiliated  
11 public employer;

12          H. "federal social security program" means that  
13 program or those programs created and administered pursuant to  
14 the act of congress approved August 14, 1935, Chapter 531, 49  
15 Stat. 620, as that act may be amended;

16          I. "final average salary" means the final average  
17 salary calculated in accordance with the provisions of the  
18 applicable coverage plan;

19          J. "form of payment" means the applicable form of  
20 payment of a pension provided for in Section 10-11-117 NMSA  
21 1978;

22          K. "former member" means a person who was  
23 previously employed by an affiliated public employer, who has  
24 terminated that employment and who has received a refund of  
25 member contributions;

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1           L. "fund" means the funds included under the Public  
2 Employees Retirement Act;

3           M. "member" means a currently employed,  
4 contributing employee of an affiliated public employer, or a  
5 person who has been but is not currently employed by an  
6 affiliated public employer, who has not retired and who has not  
7 received a refund of member contributions; "member" also  
8 includes the following:

9                   (1) "adult correctional officer member" means  
10 a member who is employed as an adult correctional officer or an  
11 adult correctional officer specialist by a state correctional  
12 facility of the corrections department or its successor agency;

13                   (2) "juvenile correctional officer member"  
14 means a member who is employed as a juvenile correctional  
15 officer by the children, youth and families department or its  
16 successor agency;

17                   (3) "municipal detention officer member" means  
18 a member who is employed by an affiliated public employer other  
19 than the state and who has inmate custodial responsibilities at  
20 a facility used for the confinement of persons charged with or  
21 convicted of a violation of a law or ordinance;

22                   (4) "municipal fire member" means any member  
23 who is employed as a full-time nonvolunteer firefighter by an  
24 affiliated public employer and who has taken the oath  
25 prescribed for firefighters;

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1 (5) "municipal police member" means any member  
2 who is employed as a police officer by an affiliated public  
3 employer, other than the state, and who has taken the oath  
4 prescribed for police officers; and

5 (6) "state police member" means a member who  
6 is an officer of the New Mexico state police and who has taken  
7 the oath prescribed for such officers, except that a state  
8 police member shall not include a member who is an officer of  
9 the New Mexico state police division and who was certified and  
10 commissioned as of June 30, 2015 in the former motor  
11 transportation division or the former special investigations  
12 division of the department of public safety;

13 N. "membership" means membership in the  
14 association;

15 O. "pension" means a series of monthly payments to  
16 a retired member or survivor beneficiary as provided in the  
17 Public Employees Retirement Act;

18 P. "public employer" means the state, any  
19 municipality, city, county, metropolitan arroyo flood control  
20 authority, economic development district, regional housing  
21 authority, soil and water conservation district, entity created  
22 pursuant to a joint powers agreement, council of government,  
23 conservancy district, irrigation district, water and sanitation  
24 district, water district and metropolitan water board,  
25 including the boards, departments, bureaus and agencies of a

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1 public employer, so long as these entities fall within the  
2 meaning of governmental plan as that term is used in Section  
3 414(d) of the Internal Revenue Code of 1986, as amended;

4 Q. "refund beneficiary" means a person designated  
5 by the member, in writing, in the form prescribed by the  
6 association, as the person who would be refunded the member's  
7 accumulated member contributions payable if the member dies and  
8 no survivor pension is payable or who would receive the  
9 difference between pension paid and accumulated member  
10 contributions if the retired member dies before receiving in  
11 pension payments the amount of the accumulated member  
12 contributions;

13 R. "retire" means to:

14 (1) terminate employment with all employers  
15 covered by any state system or the educational retirement  
16 system; and

17 (2) receive a pension from a state system or  
18 the educational retirement system;

19 S. "retired member" means a person who has met all  
20 requirements for retirement and who is receiving a pension from  
21 the fund;

22 T. "retirement board" means the retirement board  
23 provided for in the Public Employees Retirement Act;

24 U. "salary" means the base salary or wages paid a  
25 member, including longevity pay, for personal services rendered

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1 an affiliated public employer. "Salary" [~~shall~~] does not  
2 include overtime pay, allowances for housing, clothing,  
3 equipment or travel, payments for unused sick leave, unless the  
4 unused sick leave payment is made through continuation of the  
5 member on the regular payroll for the period represented by  
6 that payment, [~~and~~] investment-performance-based compensation  
7 received in accordance with Section 1 or 2 of this 2020 act or  
8 any other form of remuneration not specifically designated by  
9 law as included in salary for Public Employees Retirement Act  
10 purposes. Salary in excess of the limitations set forth in  
11 Section 401(a)(17) of the Internal Revenue Code of 1986, as  
12 amended, shall be disregarded. The limitation on compensation  
13 for eligible employees shall not be less than the amount that  
14 was allowed to be taken into account under the state retirement  
15 system acts in effect on July 1, 1993. For purposes of this  
16 subsection, "eligible employee" means an individual who was a  
17 member of a state system before the first plan year beginning  
18 after December 31, 1995;

19 V. "state system" means the retirement programs  
20 provided for in the Public Employees Retirement Act, the  
21 Magistrate Retirement Act and the Judicial Retirement Act;

22 W. "state retirement system acts" means  
23 collectively the Public Employees Retirement Act, the  
24 Magistrate Retirement Act, the Judicial Retirement Act and the  
25 Volunteer Firefighters Retirement Act; and

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1 X. "survivor beneficiary" means a person who  
2 receives a pension or who has been designated to be paid a  
3 pension as a result of the death of a member or retired  
4 member."

5 SECTION 6. EFFECTIVE DATE.--The effective date of the  
6 provisions of this act is July 1, 2021.

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