

1 SENATE BILL 90  
2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY  
4 George K. Munoz  
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9  
10 AN ACT

11 RELATING TO PUBLIC EMPLOYEE RETIREMENT; INCLUDING OVERTIME PAY  
12 REQUIRED FOR A REGULAR SCHEDULED TOUR OF DUTY IN THE DEFINITION  
13 OF "SALARY" IN THE PUBLIC EMPLOYEES RETIREMENT ACT.  
14

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

16 SECTION 1. Section 10-11-2 NMSA 1978 (being Laws 1987,  
17 Chapter 253, Section 2, as amended) is amended to read:

18 "10-11-2. DEFINITIONS.--As used in the Public Employees  
19 Retirement Act:

20 A. "accumulated member contributions" means the  
21 amounts deducted from the salary of a member and credited to  
22 the member's individual account, together with interest, if  
23 any, credited to that account;

24 B. "affiliated public employer" means the state and  
25 any public employer affiliated with the association as provided

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1 in the Public Employees Retirement Act, but does not include an  
2 employer pursuant to the Magistrate Retirement Act, the  
3 Judicial Retirement Act or the Educational Retirement Act;

4 C. "association" means the public employees  
5 retirement association established under the Public Employees  
6 Retirement Act;

7 D. "coverage plan funded ratio" means the ratio of  
8 the actuarial value of the assets of a coverage plan to the  
9 actuarial accrued liability of the association for payments  
10 from the coverage plan, as determined by the association's  
11 actuaries;

12 E. "disability retired member" means a retired  
13 member who is receiving a pension pursuant to the disability  
14 retirement provisions of the Public Employees Retirement Act;

15 F. "disability retirement pension" means the  
16 pension paid pursuant to the disability retirement provisions  
17 of the Public Employees Retirement Act;

18 G. "educational retirement system" means that  
19 retirement system provided for in the Educational Retirement  
20 Act;

21 H. "employee" means any employee of an affiliated  
22 public employer;

23 I. "federal social security program" means that  
24 program or those programs created and administered pursuant to  
25 the act of congress approved August 14, 1935, Chapter 531, 49

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1 Stat. 620, as that act may be amended;

2 J. "final average salary" means the final average  
3 salary calculated in accordance with the provisions of the  
4 applicable coverage plan;

5 K. "form of payment" means the applicable form of  
6 payment of a pension provided for in Section 10-11-117 NMSA  
7 1978;

8 L. "former member" means a person who was  
9 previously employed by an affiliated public employer, who has  
10 terminated that employment and who has received a refund of  
11 member contributions;

12 M. "fund" means the funds included under the Public  
13 Employees Retirement Act;

14 N. "member" means a currently employed,  
15 contributing employee of an affiliated public employer, or a  
16 person who has been but is not currently employed by an  
17 affiliated public employer, who has not retired and who has not  
18 received a refund of member contributions; "member" also  
19 includes the following:

20 (1) "adult correctional officer member" means  
21 a member who is employed as an adult correctional officer or an  
22 adult correctional officer specialist by a state correctional  
23 facility of the corrections department or its successor agency;

24 (2) "adult probation and parole officer  
25 member" means a member who is employed as a probation and

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1 parole officer by the corrections department or its successor  
2 agency;

3 (3) "juvenile correctional officer member"  
4 means a member who is employed as a juvenile correctional  
5 officer by the children, youth and families department or its  
6 successor agency;

7 (4) "juvenile probation and parole officer  
8 member" means a member who is employed as a probation and  
9 parole officer by the children, youth and families department  
10 or its successor agency;

11 (5) "municipal detention officer member" means  
12 a member who is employed by an affiliated public employer other  
13 than the state and who has inmate custodial responsibilities at  
14 a facility used for the confinement of persons charged with or  
15 convicted of a violation of a law or ordinance;

16 (6) "municipal fire member" means any member  
17 who is employed as a full-time nonvolunteer firefighter by an  
18 affiliated public employer and who has taken the oath  
19 prescribed for firefighters;

20 (7) "municipal police member" means any member  
21 who is employed as a police officer by an affiliated public  
22 employer, other than the state, and who has taken the oath  
23 prescribed for police officers; and

24 (8) "state police member" means a member who  
25 is an officer of the New Mexico state police and who has taken

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1 the oath prescribed for such officers, except that a state  
2 police member shall not include a member who is an officer of  
3 the New Mexico state police division and who was certified and  
4 commissioned as of June 30, 2015 in the former motor  
5 transportation division or the former special investigations  
6 division of the department of public safety;

7 O. "membership" means membership in the  
8 association;

9 P. "pension" means a series of monthly payments to  
10 a retired member or survivor beneficiary as provided in the  
11 Public Employees Retirement Act;

12 Q. "public employer" means the state, any  
13 municipality, city, county, metropolitan arroyo flood control  
14 authority, economic development district, regional housing  
15 authority, soil and water conservation district, entity created  
16 pursuant to a joint powers agreement, council of government,  
17 conservancy district, irrigation district, water and sanitation  
18 district, water district and metropolitan water board,  
19 including the boards, departments, bureaus and agencies of a  
20 public employer, so long as these entities fall within the  
21 meaning of governmental plan as that term is used in Section  
22 414(d) of the Internal Revenue Code of 1986, as amended;

23 R. "refund beneficiary" means a person designated  
24 by the member, in writing, in the form prescribed by the  
25 association, as the person who would be refunded the member's

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1 accumulated member contributions payable if the member dies and  
2 no survivor pension is payable or who would receive the  
3 difference between pension paid and accumulated member  
4 contributions if the retired member dies before receiving in  
5 pension payments the amount of the accumulated member  
6 contributions;

7 S. "retire" means to:

8 (1) terminate employment with all employers  
9 covered by any state system or the educational retirement  
10 system; and

11 (2) receive a pension from a state system or  
12 the educational retirement system;

13 T. "retired member" means a person who has met all  
14 requirements for retirement and who is receiving a pension from  
15 the fund;

16 U. "retirement board" means the retirement board  
17 provided for in the Public Employees Retirement Act;

18 V. "salary" means the base salary or wages paid a  
19 member, including longevity pay, for personal services rendered  
20 an affiliated public employer. "Salary" shall not include  
21 overtime pay, unless the overtime payment is required for a  
22 regular scheduled tour of duty as set forth in Section 207(k)  
23 of Title 29 of the United States Code and is made on the  
24 regular payroll for the period represented by that payment,  
25 allowances for housing, clothing, equipment or travel, payments

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1 for unused sick leave, unless the unused sick leave payment is  
2 made through continuation of the member on the regular payroll  
3 for the period represented by that payment, and any other form  
4 of remuneration not specifically designated by law as included  
5 in salary for Public Employees Retirement Act purposes. Salary  
6 in excess of the limitations set forth in Section 401(a)(17) of  
7 the Internal Revenue Code of 1986, as amended, shall be  
8 disregarded. The limitation on compensation for eligible  
9 employees shall not be less than the amount that was allowed to  
10 be taken into account under the state retirement system acts in  
11 effect on July 1, 1993. For purposes of this subsection,  
12 "eligible employee" means an individual who was a member of a  
13 state system before the first plan year beginning after  
14 December 31, 1995;

15 W. "state system" means the retirement programs  
16 provided for in the Public Employees Retirement Act, the  
17 Magistrate Retirement Act and the Judicial Retirement Act;

18 X. "state retirement system acts" means  
19 collectively the Public Employees Retirement Act, the  
20 Magistrate Retirement Act, the Judicial Retirement Act and the  
21 Volunteer Firefighters Retirement Act; and

22 Y. "survivor beneficiary" means a person who  
23 receives a pension or who has been designated to be paid a  
24 pension as a result of the death of a member or retired  
25 member."

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SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2021.