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HOUSE BILL 51

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

Phelps Anderson and George K. Munoz

AN ACT

RELATING TO PUBLIC EMPLOYEE RETIREMENT; 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

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1 Employees Retirement Act but without limiting the generality of
2 the foregoing, the power to:

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

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

15 (3) administer oaths;

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

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

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

24 (7) make and execute contracts;

25 (8) purchase, acquire or hold land adjacent to

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

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

23 (10) make and adopt such reasonable rules as
24 may be necessary or convenient to carry out the duties of the
25 retirement board and activities of the association, including

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1 any rules necessary to preserve the status of the association
2 as a qualified pension plan under the provisions of the
3 Internal Revenue Code of 1986, as amended, or under successor
4 or related provisions of law;

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

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

18 B. The retirement board consists of

19 ~~[(1) the secretary of state;~~

20 ~~(2) the state treasurer;~~

21 ~~(3) four members under a state coverage plan~~
22 ~~to be elected by the members under state coverage plans;~~

23 ~~(4) four members under a municipal coverage~~
24 ~~plan to be elected by the members under municipal coverage~~
25 ~~plans, provided one member shall be a municipal member employed~~

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1 ~~by a county; and~~

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

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

9 (1) two retired members who have skill,
10 knowledge and experience in financial matters to be elected by
11 the retired members of the association; and

12 (2) seven members appointed as follows, with
13 due regard to the cultural diversity of the state and
14 geographical representation of counties statewide:

15 (a) one active member of a municipal
16 coverage plan to be appointed for the first term by the labor
17 organization representing the largest number of police member
18 coverage plan members; for the second term by the labor
19 organization representing the largest number of municipal fire
20 member coverage plan members; and with the labor organization
21 representing the largest number of police member coverage plan
22 members and the labor organization representing the largest
23 number of municipal fire member coverage plan members
24 alternating appointments every term thereafter;

25 (b) one active member of a municipal

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1 coverage plan who has skill, knowledge and experience in
2 financial matters to be appointed by the New Mexico municipal
3 league;

4 (c) one active member of a municipal
5 coverage plan who has skill, knowledge and experience in
6 financial matters to be appointed by the New Mexico association
7 of counties;

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

11 (e) two active members of a state
12 coverage plan who have experience in the financial, actuarial
13 or fiduciary aspects of pension or investment fund management
14 to be appointed by the New Mexico legislative council; and

15 (f) one public member, who is not a
16 member of any coverage plan and who has experience in the
17 financial, actuarial or fiduciary aspects of pension or
18 investment fund management, to be appointed by the governor;
19 provided that the member shall certify by notarized affidavit
20 that the member has not had any professional or contractual
21 relationship relating to the administration or investment of
22 the fund for the two years immediately preceding appointment
23 and that the member will not have any professional or
24 contractual relationship relating to the administration or
25 investment of the fund for a minimum of two years following the

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1 end of the member's term of office.

2 ~~[D.]~~ C. Except as provided in Subsection D of this
3 section, the regular term of office of the elected or appointed
4 members of the retirement board is ~~[four]~~ six years. ~~[The term~~
5 ~~of one retirement board member under a state coverage plan~~
6 ~~expires annually on December 31. The terms of retirement board~~
7 ~~members under a municipal coverage plan expire on December 31~~
8 ~~of noncoinciding years in the pattern set by the retirement~~
9 ~~board.]~~ An appointed or elected member shall not serve more
10 than one regular term of office; provided that a regular term
11 of office shall include a period of membership on the
12 retirement board for three years or longer or any membership on
13 the retirement board prior to the effective date of this 2022
14 act. Members of the retirement board serve until their
15 successors have qualified.

16 D. The initial regular term of office for the first
17 members appointed or elected to the retirement board pursuant
18 to this 2022 act shall be as follows; provided that the initial
19 term shall constitute a regular term of office and subsequent
20 terms shall be for six years:

21 (1) the members appointed pursuant to
22 Subparagraphs (a) and (e) of Paragraph (2) of Subsection B of
23 this section shall serve an initial term of two years beginning
24 July 1, 2022;

25 (2) the members appointed pursuant to

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1 Subparagraphs (b) and (f) of Paragraph (2) of Subsection B of
2 this section shall serve an initial term of four years
3 beginning July 1, 2022;

4 (3) the members appointed pursuant to
5 Subparagraphs (c) and (d) of Paragraph (2) of Subsection B of
6 this section shall serve an initial term of six years beginning
7 July 1, 2022;

8 (4) the retired member who was previously
9 elected by the retired members of the association and serving
10 on the retirement board on the effective date of this 2022 act,
11 for a term of office ending in calendar year 2023, shall serve
12 until June 2023, at which time an election shall be held for
13 that office for an initial term of four years, with the term of
14 office beginning on July 1, 2023; provided that the term of
15 office of that previously elected member serving on the
16 retirement board on the effective date of this 2022 act shall
17 constitute a regular term of office; and

18 (5) the retired member who was previously
19 elected by the retired members of the association and serving
20 on the retirement board on the effective date of this 2022 act,
21 for a term of office ending in calendar year 2024, shall serve
22 until June 2025, at which time an election shall be held for
23 that office for an initial term of six years, with the term of
24 office beginning on July 1, 2025; provided that the term of
25 office of that previously elected member serving on the

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1 retirement board on the effective date of this 2022 act shall
2 constitute a regular term of office.

3 E. Annually, pursuant to guidelines adopted by the
4 retirement board, each member shall provide written
5 certification to the retirement board that the member has
6 completed a minimum of sixteen hours of continuing education
7 during the preceding year relevant to pension or investment
8 fund management. Failure to provide a written certification
9 that complies with this subsection shall constitute grounds for
10 removal from the retirement board.

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

23 G. When a vacancy on the retirement board occurs,
24 the original appointing authority shall select a successor in
25 the same manner as the original selection was made. A vacancy

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1 on the retirement board of an appointed member shall be filled
2 by appointment no later than sixty days following notification
3 of a vacancy and shall be filled by the original appointing
4 authority for the remainder of the unexpired term of office, or
5 in the case of an elected member, shall be filled by a majority
6 vote of the remaining members of the retirement board for the
7 remainder of the unexpired term of office no later than sixty
8 days following notification of a vacancy. An appointed or
9 elected member may be removed by the retirement board; provided
10 that the retirement board holds a removal hearing regarding the
11 member and finds cause, by a two-thirds' vote of the members of
12 the retirement board, to remove the member for reason of
13 incompetence, breach of fiduciary duty or malfeasance.

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

18 [G.] I. The retirement board shall hold four
19 regular meetings each year and shall designate in advance the
20 time and place of the meetings. Special meetings and emergency
21 meetings of the retirement board may be held upon call of the
22 chair or any three members of the retirement board. Written
23 notice of special meetings shall be sent to each member of the
24 retirement board at least seventy-two hours in advance of the
25 special meeting. ~~[Verbal]~~ Written notice of emergency

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1 meetings, including written notice provided through electronic
2 means, shall be ~~[given to as many members as is feasible]~~ sent
3 to each member at least eight hours before the emergency
4 meeting, and the meeting shall commence with a statement of the
5 nature of the emergency. The retirement board shall adopt its
6 own rules of procedure and shall keep a record of its
7 proceedings. All meetings of the retirement board shall comply
8 with the Open Meetings Act. A majority of retirement board
9 members, including members participating through a virtual
10 platform, shall constitute a quorum. Each attending member of
11 the retirement board is entitled to one vote on each question
12 before the retirement board, and at least a majority of a
13 quorum shall be necessary for a decision by the retirement
14 board; provided that a vote shall not be cast pursuant to a
15 proxy.

16 [H.] J. Annual meetings of the members of the
17 association shall be held in Santa Fe at such time and place as
18 the retirement board shall from time to time determine.
19 Special meetings of the members of the association shall be
20 held in Santa Fe upon call of any ~~[seven]~~ five retirement board
21 members. The retirement board shall send a written notice to
22 the last known residence address of each member currently
23 employed by an affiliated public employer at least ten days
24 prior to any meeting of the members of the association. The
25 notice shall contain the call of the meeting and the principal

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1 purpose of the meeting. All meetings of the association shall
2 be public and shall be conducted according to procedures the
3 retirement board shall from time to time adopt. The retirement
4 board shall keep a record of the proceedings of each meeting of
5 the association.

6 ~~[F.]~~ K. Neither the retirement board nor the
7 association shall allow public inspection of, or disclosure of,
8 information from any member or retiree file unless a prior
9 release and consent, in the form prescribed by the association,
10 has been executed by the member or retiree; except that
11 applicable coverage plans, amounts of retirement plan
12 contributions made by members and affiliated public employers,
13 pension amounts paid and the names and addresses of public
14 employees retirement association members or retirees requested
15 for election purposes by candidates for election to the
16 retirement board may be produced or disclosed without release
17 or consent.

18 L. For the purpose of determining which labor
19 organization represents the largest number of the members of
20 any plan, the public employee labor relations board shall
21 calculate the membership numbers as of ninety days prior to the
22 expiration of the relevant retirement board member's term. In
23 the event of a dispute over which labor organization represents
24 the largest number of the members of any plan, the public
25 employee labor relations board shall make a binding and final

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1 determination on which organization shall serve as the
2 appointing authority.

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

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

9 (2) be conducted by mail; and

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

13 N. A candidate for election to the retirement board
14 shall certify by notarized affidavit that the candidate meets
15 the required qualifications to serve as a member of the
16 retirement board. The affidavit shall be filed with the
17 declaration of candidacy. The affidavit shall be on a form
18 provided by the secretary of state that shall require a
19 candidate to list with particularity the candidate's specific
20 experience that meets required qualifications."

21 SECTION 2. Section 10-11-130.1 NMSA 1978 (being Laws
22 1999, Chapter 153, Section 1) is amended to read:

23 "10-11-130.1. RESTRICTIONS ON RECEIPT OF GIFTS--
24 RESTRICTION ON CAMPAIGN CONTRIBUTIONS [~~REQUIRED REPORTING~~].--

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

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

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

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

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

19 B. No person ~~[who is a candidate in a primary or~~
20 ~~general election for a position that qualifies the person for~~
21 ~~ex-officio membership on the retirement board, no member~~
22 ~~servng ex officio on the retirement board and no person]~~ who
23 is a nominee for retirement board membership by election ~~[by~~
24 ~~some or all of the members of the association]~~ pursuant to the
25 Public Employees Retirement Act shall accept anything of a

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1 value of more than twenty-five dollars (\$25.00) as a
2 contribution [~~to an ex-officio member's statewide campaign in a~~
3 ~~primary or general election or as a contribution~~] to the
4 campaign of a nominee for membership on the board [~~as a member~~
5 ~~elected by all or some of the members of the association~~] from
6 a person who:

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

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

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

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

18 [~~C. Within ten days after an election in which one~~
19 ~~or more board members are elected by some or all of the members~~
20 ~~of the association pursuant to the Public Employees Retirement~~
21 ~~Act, all persons who were candidates for board membership in~~
22 ~~that election shall file with the association a report~~
23 ~~disclosing all contributions to their respective campaigns~~
24 ~~whether made directly to the candidate, a political action~~
25 ~~committee or to some other entity supporting the candidate's~~

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1 ~~election. The contributions shall be reported by amount and~~
2 ~~specific source. Within sixty days after the election, the~~
3 ~~association shall publish the reports required by this~~
4 ~~subsection.]"~~

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

7 "10-11-131. RETIREMENT BOARD--OFFICERS--EMPLOYMENT OF
8 SERVICES.--

9 A. The retirement board shall hold a meeting
10 following the beginning of a regular term of office for the
11 members appointed or elected to the retirement board to elect
12 from its own number a [chairman] chair and a vice [chairman]
13 chair for a term of two years. In the case of a vacancy in the
14 position of chair or vice chair, the retirement board shall
15 elect from its own number a replacement to fill the remainder
16 of the unexpired term.

17 B. The retirement board shall appoint an executive
18 director who shall be the chief administrative officer for the
19 retirement board and the association.

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

24 D. The ~~[state treasurer shall be the treasurer of~~
25 ~~the association and the custodian of its funds. The~~

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1 ~~treasurer's general bond to the state shall cover all liability~~
2 ~~for acts as treasurer of the association. The treasurer]~~
3 executive director or the executive director's designee shall
4 credit all receipts of money and assets of the association to
5 the association. The [~~treasurer~~] executive director or the
6 executive director's designee shall make disbursements from
7 association assets only upon warrants issued by the secretary
8 of finance and administration based upon vouchers signed by the
9 executive [~~secretary~~] director of the association or vouchers
10 signed by the state treasurer for purposes of investment."

11 SECTION 4. TEMPORARY PROVISION.--

12 A. The terms of office of the members serving on
13 the retirement board on the effective date of this act, except
14 for the two retired members that are elected by the retired
15 members of the public employees retirement association, shall
16 end on June 30, 2022, and new members shall be appointed for a
17 term of office that shall begin on July 1, 2022 according to
18 the provisions of Section 10-11-130 NMSA 1978.

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