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HOUSE BILL 294

**56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

INTRODUCED BY

T. Ryan Lane

AN ACT

RELATING TO PUBLIC EMPLOYEES; ALLOWING CERTAIN PUBLIC EMPLOYEES  
TO RETURN TO WORK UNDER CERTAIN CONDITIONS.

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

SECTION 1. Section 10-11-8 NMSA 1978 (being Laws 1987,  
Chapter 253, Section 8, as amended) is amended to read:

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

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

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

(2) employment is terminated with all

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1 employers covered by any state system or the educational  
2 retirement system;

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

5 (4) the member meets the age and service  
6 credit requirement for normal retirement specified in the  
7 coverage plan applicable to the member.

8 B. The amount of normal retirement pension is  
9 determined in accordance with the coverage plan applicable to  
10 the member.

11 C. Except as provided in [~~Subsection~~] Subsections D  
12 and J of this section, on or after July 1, 2010, a retired  
13 member may be subsequently employed by an affiliated public  
14 employer only pursuant to the following provisions:

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

22 (2) the retired member's pension shall be  
23 suspended upon commencement of the subsequent employment;

24 (3) except as provided in Subsection F of this  
25 section, the retired member shall not become a member and shall

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1 not accrue service credit, and the retired member and that  
2 person's subsequent affiliated public employer shall not make  
3 contributions under any coverage plan pursuant to the Public  
4 Employees Retirement Act; and

5 (4) upon termination of the subsequent  
6 employment, the retired member's pension shall resume in  
7 accordance with the provisions of Subsection A of this section.

8 D. The provisions of Subsections C, G, [~~and~~] H and  
9 J of this section do not apply to:

10 (1) a retired member employed by the  
11 legislature for legislative session work;

12 (2) a retired member employed temporarily as a  
13 precinct board member for a municipal election or an election  
14 covered by the Election Code; or

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

18 (a) the retired member files an  
19 irrevocable exemption from membership with the association  
20 within thirty days of taking office; and

21 (b) the irrevocable exemption shall be  
22 for the elected official's term of office.

23 E. A retired member who returns to employment  
24 during retirement pursuant to Subsection D of this section is  
25 entitled to receive retirement benefits but is not entitled to

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1 accrue service credit or to acquire or purchase service credit  
2 in the future for the period of the retired member's subsequent  
3 employment with an affiliated public employer.

4 F. At any time during a retired member's subsequent  
5 employment pursuant to Subsection C of this section, the  
6 retired member may elect to become a member and the following  
7 conditions shall apply:

8 (1) the previously retired member and the  
9 subsequent affiliated public employer shall make the required  
10 employee and employer contributions, and the previously retired  
11 member shall accrue service credit for the period of subsequent  
12 employment; and

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

18 (a) payment of the pension shall resume  
19 in accordance with the provisions of Subsection A of this  
20 section;

21 (b) unless the previously retired member  
22 accrued at least three years of service credit on account of  
23 the subsequent employment, the recalculation of pension shall:  
24 1) employ the form of payment selected by the previously  
25 retired member at the time of the first retirement; and 2) use

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1 the provisions of the coverage plan applicable to the member on  
2 the date of the first retirement; and

3 (c) the recalculated pension shall not  
4 be less than the amount of the suspended pension.

5 G. 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 this section in effect on the date  
8 the retired member returned to work; provided that on and after  
9 July 1, 2010, the retired member shall pay the employee  
10 contribution in an amount specified in the Public Employees  
11 Retirement Act for the position in which the retired member is  
12 subsequently employed.

13 H. Effective July 1, 2014, if a retired member who,  
14 subsequent to retirement, is employed and covered pursuant to  
15 the provisions of the Magistrate Retirement Act or Judicial  
16 Retirement Act, during the period of subsequent employment:

17 (1) the member shall be entitled to receive  
18 retirement benefits;

19 (2) the retired member's cost-of-living  
20 pension adjustment shall be suspended upon commencement of the  
21 employment; and

22 (3) upon termination of the employment, the  
23 retired member's suspended cost-of-living pension adjustment  
24 shall be reinstated as provided under Section 10-11-118 NMSA  
25 1978.

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1 I. The pension of a member who has earned service  
2 credit under more than one coverage plan shall be determined as  
3 follows:

4 (1) the pension of a member who has three or  
5 more years of service credit earned on or before June 30, 2013  
6 under each of two or more coverage plans shall be determined in  
7 accordance with the coverage plan that produces the highest  
8 pension;

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

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1 preceding or immediately preceding and immediately following  
2 the date the coverage plan changed;

3 (3) the pension of a member who has service  
4 credit earned on or before June 30, 2013 under each of two or  
5 more coverage plans and who has service credit earned under any  
6 coverage plan on or after July 1, 2013 shall be equal to the  
7 sum of:

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

11 (b) the pension attributable to the  
12 service credit earned under each coverage plan on or after July  
13 1, 2013;

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

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

21 "Service credit", for the purposes of this subsection, shall be  
22 only personal service rendered an affiliated public employer  
23 and credited to the member under the provisions of Subsection A  
24 of Section 10-11-4 NMSA 1978. Service credited under any other  
25 provision of the Public Employees Retirement Act shall not be

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1 used to satisfy the three-year service credit requirement of  
2 this subsection.

3 J. Notwithstanding the provisions of any other  
4 subsection of this section, a retired member who was a  
5 certified law enforcement officer under any municipal police  
6 member coverage plan or the state police member, correctional  
7 officer member and probation and parole officer member coverage  
8 plan 1 may be subsequently employed by an affiliated public  
9 employer; provided that the retired member is not subsequently  
10 employed by a class A county with a population that is greater  
11 than six hundred thousand according to the most recent federal  
12 decennial census; and further provided that the retired member  
13 has not been employed as an employee of an affiliated public  
14 employer or retained as an independent contractor by the  
15 affiliated public employer from which the retired member  
16 retired for at least ninety consecutive days from the date of  
17 retirement to the commencement of subsequent employment or  
18 reemployment with an affiliated public employer; and further  
19 provided that the:

20 (1) retired member's pension, including any  
21 cost-of-living adjustment, shall continue to be paid during the  
22 period of subsequent employment;

23 (2) retired member shall not become a member  
24 during the period of subsequent employment;

25 (3) retired member shall not accrue service

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1 credit for any portion of the period of subsequent employment;

2 (4) retired member and the retired member's  
3 subsequent affiliated public employer shall make the  
4 contributions that would be required for members and employers  
5 under the applicable coverage plan during the entire period of  
6 subsequent employment;

7 (5) contributions paid by or on behalf of the  
8 retired member during the term of subsequent employment shall  
9 not be refundable at the termination of the subsequent  
10 employment;

11 (6) retired member is subsequently employed by  
12 an affiliated public employer as a school resource officer or  
13 to provide security or protective services for a courthouse, as  
14 certified annually by the affiliated public employer to the  
15 association; and

16 (7) subsequent employment occurs prior to July  
17 1, 2026."

18 SECTION 2. EFFECTIVE DATE.--The effective date of the  
19 provisions of this act is July 1, 2023.