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AN ACT

RELATING TO THE RETIREMENT OF PUBLIC EMPLOYEES; AMENDING THE PUBLIC EMPLOYEES RETIREMENT ACT TO DEFINE "STATE LEGISLATOR MEMBER", TO EXPAND THE PERIOD IN WHICH CERTAIN ELECTED OFFICIALS MAY ELECT TO BE EXCLUDED FROM MEMBERSHIP, TO CHANGE THE CONDITIONS FOR CERTAIN MEMBERS TO PURCHASE SERVICE CREDIT, TO CHANGE THE CONTRIBUTION REQUIREMENTS FOR CERTAIN RETIREES WHO RETURN TO WORK AND FOR CERTAIN EMPLOYERS AND TO PROVIDE MEMBERSHIP FOR CERTAIN RETIREES TO RETURN TO WORK; DECLARING AN EMERGENCY.

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:

"ADDITIONAL DEFINITION--STATE LEGISLATOR MEMBER.--As used in the Public Employees Retirement Act, "state legislator member" means a person who is currently serving or who has served as a state legislator or lieutenant governor and who has elected to participate in a state legislator member retirement plan. A former state legislator or former lieutenant governor may be a state legislator member whether or not currently receiving a pension under a state legislator member coverage plan."

Section 2. Section 10-11-3 NMSA 1978 (being Laws 1987, Chapter 253, Section 3, as amended) is amended to read:

1 "10-11-3. MEMBERSHIP--REQUIREMENTS--EXCLUSIONS--
2 TERMINATION.--

3 A. Except as may be provided for in the Volunteer
4 Firefighters Retirement Act, the Judicial Retirement Act, the
5 Magistrate Retirement Act, the Educational Retirement Act and
6 the provisions of Sections 29-4-1 through 29-4-11 NMSA 1978
7 governing the state police pension fund, each employee and
8 elected official of every affiliated public employer shall be
9 a member of the association, unless excluded from membership
10 in accordance with Subsection B of this section.

11 B. The following employees and elected officials
12 are excluded from membership in the association:

13 (1) elected officials who file with the
14 association a written application for exemption from
15 membership within twenty-four months of taking office;

16 (2) elected officials who file with the
17 association a written application for exemption from
18 membership within twenty-four months of the date the elected
19 official's public employer becomes an affiliated public
20 employer;

21 (3) employees designated by the affiliated
22 public employer as seasonal or student employees;

23 (4) employees who file with the association
24 a written application for exemption from membership within
25 thirty days of the date the employee's public employer

1 becomes an affiliated public employer;

2 (5) employees of an affiliated public
3 employer that is making contributions to a private retirement
4 program on behalf of the employee as part of a compensation
5 arrangement who file with the association a written
6 application for exemption within thirty days of employment,
7 unless the employee has previously retired under the
8 provisions of the Public Employees Retirement Act;

9 (6) employees of an affiliated public
10 employer who have retired under and are receiving a pension
11 pursuant to the provisions of the Educational Retirement Act;
12 and

13 (7) retired members who return to work
14 pursuant to Section 10-11-8 NMSA 1978 and are exempted from
15 membership by the provisions of that section.

16 C. Employees designated as seasonal and student
17 employees shall be notified in writing by their affiliated
18 public employer of the designation and the consequences of
19 the designation with respect to membership, service credit
20 and benefits. A copy of the notification shall be filed with
21 the association within thirty days of the date of employment.

22 D. An exemption from membership by an elected
23 official shall expire at the end of the term of office for
24 which filed.

25 E. Employees and elected officials who have

1 exempted themselves from membership may subsequently withdraw
2 the exemption by filing a membership application. Membership
3 shall commence the first day of the first pay period
4 following the date the application is filed.

5 F. The membership of an employee or elected
6 official shall cease if the employee terminates employment
7 with an affiliated public employer or the elected official
8 leaves office and the employee or elected official requests
9 and receives a refund of member contributions."

10 Section 3. Section 10-11-7 NMSA 1978 (being Laws 1987,
11 Chapter 253, Section 7, as amended) is amended to read:

12 "10-11-7. CREDITED SERVICE--PURCHASE OF SERVICE.--

13 A. A member who entered a uniformed service of the
14 United States may purchase service credit for periods of
15 active duty in the uniformed services subject to the
16 following conditions:

17 (1) the member pays the association the
18 purchase cost determined according to Subsection E of this
19 section;

20 (2) the member has five or more years of
21 service credit acquired as a result of personal service
22 rendered in the employ of an affiliated public employer;

23 (3) the aggregate amount of service credit
24 purchased pursuant to this subsection does not exceed five
25 years reduced by any period of service credit acquired for

1 military service pursuant to any other provision of the
2 Public Employees Retirement Act;

3 (4) service credit may not be purchased for
4 periods of service in the uniformed services that are used to
5 obtain or increase a benefit from another retirement program;
6 and

7 (5) the member must not have received a
8 discharge or separation from uniformed service under other
9 than honorable conditions.

10 B. A member who was a civilian prisoner of war
11 captured while in service to the United States as an employee
12 of the federal government or as an employee of a contractor
13 with the federal government may purchase service credit for
14 the period of internment as a civilian prisoner of war,
15 provided that:

16 (1) the member provides proof of employment
17 with the federal government or as a contractor to the federal
18 government in a form acceptable to the association;

19 (2) the member provides proof of the period
20 of internment in a form acceptable to the association;

21 (3) the member has at least five years of
22 service credit acquired as a result of personal service
23 rendered in the employ of an affiliated public employer;

24 (4) the aggregate amount of service credit
25 purchased pursuant to this subsection does not exceed five

1 years reduced by any period of service credit acquired for
2 military service pursuant to any other provision of the
3 Public Employees Retirement Act;

4 (5) service credit may not be purchased for
5 periods of service in internment as a civilian prisoner of
6 war if such periods are used to obtain or increase a benefit
7 from another retirement program; and

8 (6) the member pays the association the
9 purchase cost determined according to Subsection E of this
10 section.

11 C. A member who was employed by a utility company,
12 library, museum, transit company or nonprofit organization
13 administering federally funded public service programs, which
14 utility company, library, museum, transit company or
15 nonprofit organization administering federally funded public
16 service programs or federally funded public service programs
17 administered by a nonprofit organization are subsequently
18 taken over by an affiliated public employer, or a member who
19 was employed by an entity created pursuant to a joint powers
20 agreement between two or more affiliated public employers for
21 the purpose of administering or providing drug or alcohol
22 addiction treatment services irrespective of whether the
23 entity is subsequently taken over by an affiliated public
24 employer, may purchase credited service for the period of
25 employment subject to the following conditions:

1 (1) the member pays the association the
2 purchase cost determined according to Subsection E of this
3 section;

4 (2) the member has five or more years of
5 credited service acquired as a result of personal service
6 rendered in the employ of an affiliated public employer; and

7 (3) the aggregate amount of credited service
8 purchased pursuant to this subsection does not exceed five
9 years.

10 D. A member who was appointed to participate in a
11 cooperative work study training program established jointly
12 by the state highway and transportation department and the
13 university of New Mexico or New Mexico state university may
14 purchase credited service for the period of participation
15 subject to the following conditions:

16 (1) the member pays the association the
17 purchase cost determined according to Subsection E of this
18 section;

19 (2) the member has five or more years of
20 credited service acquired as a result of personal service
21 rendered in the employ of an affiliated public employer; and

22 (3) the aggregate amount of credited service
23 purchased pursuant to this subsection does not exceed five
24 years.

25 E. Except for service to be used under a state

1 legislator coverage plan, the purchase cost for each month of
2 credited service purchased pursuant to the provisions of this
3 section is equal to the member's final average salary
4 multiplied by the sum of the member contribution rate and
5 employer contribution rate, determined in accordance with the
6 coverage plan applicable to the member at the time of the
7 written election to purchase. The purchase cost for each
8 year of credited service to be used under a state legislator
9 coverage plan is equal to three times the normal member
10 contribution per year of credited service under the state
11 legislator coverage plan applicable to the member. Full
12 payment shall be made in a single lump sum within sixty days
13 of the date the member is informed of the amount of the
14 payment. The portion of the purchase cost derived from the
15 employer contribution rate shall be credited to the
16 employer's accumulation fund and shall not be paid out of the
17 association in the event of cessation of membership. In no
18 case shall a member be credited with a month of service for
19 less than the purchase cost as defined in this section.

20 F. A member shall be refunded, upon written
21 request filed with the association, the portion of the
22 purchase cost of credited service purchased pursuant to this
23 section that the association determines to have been
24 unnecessary to provide the member with the maximum pension
25 applicable to the member. The association shall not pay

1 interest on the portion of the purchase cost refunded to the
2 member.

3 G. A member of the magistrate retirement system
4 who during his service as a magistrate was eligible to become
5 a member of the public employees retirement system and elected
6 not to become a member of that system may purchase service
7 credit pursuant to the public employees retirement system for
8 the period for which the magistrate elected not to become a
9 public employees retirement system member, by paying the
10 amount of the increase in the actuarial present value of the
11 magistrate pension as a consequence of the purchase as
12 determined by the association. Full payment shall be made in
13 a single lump-sum amount in accordance with procedures
14 established by the retirement board. Except as provided in
15 Subsection F of this section, seventy-five percent of the
16 purchase cost shall be considered to be employer contributions
17 and shall not be refunded to the member in the event of
18 cessation of membership.

19 H. At any time prior to retirement, any member may
20 purchase service credit in monthly increments, subject to the
21 following conditions:

22 (1) the member has at least five years of
23 service credit acquired as a result of personal service
24 rendered in the employ of an affiliated public employer;

25 (2) the aggregate amount of service credit

1 purchased pursuant to this subsection does not exceed one
2 year;

3 (3) the member pays full actuarial present
4 value of the amount of the increase in the employee's pension
5 as a consequence of the purchase as determined by the
6 association;

7 (4) the member pays the full cost of the
8 purchase within sixty days of the date the member is informed
9 of the amount of the payment; and

10 (5) the purchase of service under this
11 subsection cannot be used to determine the final average
12 salary or the pension factor or be used to exceed the pension
13 maximum."

14 Section 4. Section 10-11-8 NMSA 1978 (being Laws 1987,
15 Chapter 253, Section 8, as amended) is amended to read:

16 "10-11-8. NORMAL RETIREMENT--RETURN TO EMPLOYMENT--
17 BENEFITS CONTINUED--EMPLOYER CONTRIBUTIONS.--

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

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

24 (2) employment is terminated with all
25 employers covered by any state system or the educational

1 retirement system;

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

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

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

10 C. Except as provided in Subsection D or E of this
11 section, a retired member may be subsequently employed by an
12 affiliated public employer if the following conditions apply:

13 (1) the member has not been employed as an
14 employee of an affiliated public employer for at least ninety
15 consecutive days from the date of retirement to the
16 commencement of employment or re-employment with an affiliated
17 public employer. If the retired member returns to employment
18 without first completing ninety consecutive days of
19 retirement:

20 (a) the retired member's pension shall
21 be suspended immediately and the previously retired member
22 shall become a member; and

23 (b) upon termination of the subsequent
24 employment, the previously retired member's pension shall be
25 calculated pursuant to Paragraph (2) of Subsection E of this

1 section;

2 (2) effective the first day of the month
3 following the month in which the retired member's earnings
4 total twenty-five thousand dollars (\$25,000) during a calendar
5 year, a retired member who returns to employment shall be
6 required to make contributions to the fund as specified in the
7 Public Employees Retirement Act; provided, however, that after
8 December 31, 2006, no additional contributions shall be
9 required pursuant to this paragraph;

10 (3) until the subsequent employment is
11 terminated, the affiliated public employer that employs the
12 retired member shall make contributions to the fund in the
13 amount specified in the Public Employees Retirement Act or in
14 a higher amount adjusted for full actuarial cost as determined
15 annually by the association; and

16 (4) a retired member who returns to
17 employment during retirement pursuant to this subsection is
18 entitled to receive retirement benefits but is not entitled to
19 acquire service credit or to acquire or purchase service
20 credit in the future for the period of the retired member's
21 re-employment with an affiliated public employer.

22 D. The provisions of Paragraphs (2) and (3) of
23 Subsection C of this section that require employee or employer
24 contributions do not apply to:

25 (1) a retired member who is appointed chief

1 of police of an affiliated public employer, other than the
2 affiliated public employer from which the retired member
3 retired, or who is appointed undersheriff; provided that:

4 (a) the retired member files an
5 irrevocable exemption from membership with the association
6 within thirty days of appointment;

7 (b) each sheriff's office shall be
8 limited to one undersheriff qualifying pursuant to this
9 paragraph;

10 (c) the irrevocable exemption shall be
11 for the chief of police's or the undersheriff's term of
12 office; and

13 (d) filing an irrevocable exemption
14 shall irrevocably bar the retired member from acquiring
15 service credit for the period of exemption from membership; or

16 (2) a retired member employed by the
17 legislature for legislative session work.

18 E. At any time during a retired member's
19 subsequent employment pursuant to Subsection C of this
20 section, the retired member may elect to suspend the pension.
21 When the pension is suspended, the following conditions shall
22 apply:

23 (1) the retired member who is subsequently
24 employed by an affiliated public employer shall become a
25 member. The previously retired member and the subsequent

1 affiliated public employer shall make the required employee
2 and employer contributions, and the previously retired member
3 shall accrue service credit for the period of subsequent
4 employment; and

5 (2) when a previously retired member
6 terminates the subsequent employment with an affiliated public
7 employer, he shall retire according to the provisions of the
8 Public Employees Retirement Act, subject to the following
9 conditions:

10 (a) payment of the pension shall resume
11 in accordance with the provisions of Subsection A of this
12 section;

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

20 (c) the recalculated pension shall not
21 be less than the amount of the suspended pension.

22 F. The pension of a member who has three or more
23 years of service credit under each of two or more coverage
24 plans shall be determined in accordance with the coverage plan
25 that produces the highest pension. The pension of a member

1 who has service credit under two or more coverage plans but
2 who has three or more years of service credit under only one
3 of those coverage plans shall be determined in accordance with
4 the coverage plan in which the member has three or more years
5 of service credit. If the service credit is acquired under
6 two different coverage plans applied to the same affiliated
7 public employer as a consequence of an election by the
8 members, adoption by the affiliated public employer or a
9 change in the law that results in the application of a
10 coverage plan with a greater pension, the greater pension
11 shall be paid a member retiring from the affiliated public
12 employer under which the change in coverage plan took place
13 regardless of the amount of service credit under the coverage
14 plan producing the greater pension; provided the member has
15 three or more years of continuous employment with that
16 affiliated public employer immediately preceding or
17 immediately preceding and immediately following the date the
18 coverage plan changed. The provisions of each coverage plan
19 for the purpose of this subsection shall be those in effect at
20 the time the member ceased to be covered by the coverage plan.
21 "Service credit", for the purposes of this subsection, shall
22 be only personal service rendered an affiliated public
23 employer and credited to the member under the provisions of
24 Subsection A of Section 10-11-4 NMSA 1978. Service credited
25 under any other provision of the Public Employees Retirement

1 Act shall not be used to satisfy the three-year service credit
2 requirement of this subsection."

3 Section 5. TEMPORARY PROVISION--APPLICABILITY.--The
4 provisions of this act that change any contribution or the
5 refundability of any contribution are applicable to salaries
6 received in the first full pay period beginning after the
7 effective date of this act.

8 Section 6. EMERGENCY.--It is necessary for the public
9 peace, health and safety that this act take effect
10 immediately.

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