

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 1024

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Miguel P. Garcia

AN ACT

RELATING TO PUBLIC EMPLOYEE RETIREMENT; AMENDING THE PUBLIC
EMPLOYEES RETIREMENT ACT TO ALLOW RETIREES TO RETURN TO WORK
ONLY FOR CERTAIN AFFILIATED PUBLIC EMPLOYERS.

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 by Laws 2004, Chapter 2,
Section 1 and by Laws 2004, Chapter 68, Section 4) is amended
to read:

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

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

- (1) a written application for normal

underscoring material = new
[bracketed material] = delete

1 retirement, in the form prescribed by the association, is filed
2 with the association;

3 (2) employment is terminated with all
4 employers covered by any state system or the educational
5 retirement system;

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

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

11 B. The amount of normal retirement pension is
12 determined in accordance with the coverage plan applicable to
13 the member.

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

17 (1) the member has not been employed as an
18 employee of an affiliated public employer for at least ninety
19 consecutive days from the date of retirement to the
20 commencement of employment or reemployment with an affiliated
21 public employer. If the retired member returns to employment
22 without first completing ninety consecutive days of
23 retirement:

24 (a) the retired member's pension shall
25 be suspended immediately and the previously retired member

.156403.1

underscored material = new
[bracketed material] = delete

1 shall become a member; and

2 (b) upon termination of the subsequent
3 employment, the previously retired member's pension shall be
4 calculated pursuant to Paragraph (2) of Subsection E of this
5 section;

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

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

20 (4) the affiliated public employer employing
21 the retired member is:

22 (a) a municipality with a population, as
23 shown by the most recent federal decennial census, of less than
24 twenty thousand; or

25 (b) a county with a population, as shown

underscoring material = new
[bracketed material] = delete

1 by the most recent federal decennial census, of less than fifty
2 thousand; and

3 ~~[(4)]~~ (5) a retired member who returns to
4 employment during retirement pursuant to this subsection is
5 entitled to receive retirement benefits but is not entitled to
6 acquire service credit or to acquire or purchase service credit
7 in the future for the period of the retired member's
8 reemployment with an affiliated public employer.

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

12 (1) a retired member who is appointed chief of
13 police of an affiliated public employer, other than the
14 affiliated public employer from which the retired member
15 retired, or who is appointed undersheriff; provided that:

16 (a) the retired member files an
17 irrevocable exemption from membership with the association
18 within thirty days of appointment;

19 (b) each sheriff's office shall be
20 limited to one undersheriff qualifying pursuant to this
21 paragraph;

22 (c) the irrevocable exemption shall be
23 for the chief of police's or the undersheriff's term of office;
24 and

25 (d) filing an irrevocable exemption

.156403.1

underscored material = new
[bracketed material] = delete

1 shall irrevocably bar the retired member from acquiring service
2 credit for the period of exemption from membership; or

3 (2) a retired member employed by the
4 legislature for legislative session work.

5 E. At any time during a retired member's subsequent
6 employment pursuant to Subsection C of this section, the
7 retired member may elect to suspend the pension. When the
8 pension is suspended, the following conditions shall apply:

9 (1) the retired member who is subsequently
10 employed by an affiliated public employer shall become a
11 member. The previously retired member and the subsequent
12 affiliated public employer shall make the required employee and
13 employer contributions, and the previously retired member shall
14 accrue service credit for the period of subsequent employment;
15 and

16 (2) when a previously retired member
17 terminates the subsequent employment with an affiliated public
18 employer, ~~[he]~~ the previously retired member shall retire
19 according to the provisions of the Public Employees Retirement
20 Act, subject to the following conditions:

21 (a) payment of the pension shall resume
22 in accordance with the provisions of Subsection A of this
23 section;

24 (b) unless the previously retired member
25 accrued at least three years of service credit on account of

.156403.1

underscored material = new
[bracketed material] = delete

1 the subsequent employment, the recalculation of pension shall:
2 1) employ the form of payment selected by the previously
3 retired member at the time of the first retirement; and 2) use
4 the provisions of the coverage plan applicable to the member on
5 the date of the first retirement; and

6 (c) the recalculated pension shall not
7 be less than the amount of the suspended pension.

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

.156403.1

underscoring material = new
[bracketed material] = delete

1 continuous employment with that affiliated public employer
2 immediately preceding or immediately preceding and immediately
3 following the date the coverage plan changed. The provisions
4 of each coverage plan for the purpose of this subsection shall
5 be those in effect at the time the member ceased to be covered
6 by the coverage plan. "Service credit", for the purposes of
7 this subsection, shall be only personal service rendered an
8 affiliated public employer and credited to the member under the
9 provisions of Subsection A of Section 10-11-4 NMSA 1978.
10 Service credited under any other provision of the Public
11 Employees Retirement Act shall not be used to satisfy the
12 three-year service credit requirement of this subsection."

13 Section 2. TEMPORARY PROVISION--APPLICABILITY.--The
14 provisions of this act apply to all retired members who
15 returned to employment before the effective date of this act
16 and to all retired members who return to employment after the
17 effective date of this act.

18 Section 3. EFFECTIVE DATE.--The effective date of the
19 provisions of this act is July 1, 2005.