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SENATE BILL 875

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

INTRODUCED BY

Ben D. Altamirano

AN ACT

RELATING TO PUBLIC EMPLOYEE RETIREMENT; AMENDING CERTAIN SECTIONS OF THE PUBLIC EMPLOYEE RETIREMENT ACT AND THE EDUCATIONAL RETIREMENT ACT CONCERNING RETIREES WHO RETURN TO WORK; RECONCILING CONFLICTING AMENDMENTS TO CERTAIN SECTIONS OF THE NMSA 1978.

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

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1 retirement:

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

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

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

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

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

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

19 (1) the member has not been employed as an  
20 employee or independent contractor of an affiliated public  
21 employer for at least [~~ninety consecutive days~~] twelve  
22 consecutive months from the date of retirement to the  
23 commencement of employment or reemployment with an affiliated  
24 public employer. If the retired member returns to employment  
25 without first completing [~~ninety consecutive days~~] twelve

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1 consecutive months of retirement:

2 (a) the retired member's pension shall  
3 be suspended immediately and the previously retired member  
4 shall become a member; and

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

9 (2) effective the first day of the month  
10 following the month in which the retired member's earnings  
11 total [~~twenty-five thousand dollars (\$25,000)~~] thirty thousand  
12 dollars (\$30,000) during a calendar year, a retired member who  
13 returns to employment shall be required to make contributions  
14 to the fund as specified in the Public Employees Retirement  
15 Act; [~~provided, however, that after December 31, 2006, no~~  
16 ~~additional contributions shall be required pursuant to this~~  
17 ~~paragraph;~~]

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

24 (4) a retired member who returns to employment  
25 during retirement pursuant to this subsection is entitled to

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1 receive retirement benefits but is not entitled to acquire  
2 service credit or to acquire or purchase service credit in the  
3 future for the period of the retired member's reemployment with  
4 an affiliated public employer.

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

8 (1) a retired member who is appointed chief of  
9 police of an affiliated public employer, other than the  
10 affiliated public employer from which the retired member  
11 retired, or who is appointed undersheriff; provided that:

12 (a) the retired member files an  
13 irrevocable exemption from membership with the association  
14 within thirty days of appointment;

15 (b) each sheriff's office shall be  
16 limited to one undersheriff qualifying pursuant to this  
17 paragraph;

18 (c) the irrevocable exemption shall be  
19 for the chief of police's or the undersheriff's term of office;  
20 and

21 (d) filing an irrevocable exemption  
22 shall irrevocably bar the retired member from acquiring service  
23 credit for the period of exemption from membership; or

24 (2) a retired member employed by the  
25 legislature for legislative session work.

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

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

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

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

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

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1 the date of the first retirement; and

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

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

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1 be those in effect at the time the member ceased to be covered  
2 by the coverage plan. "Service credit", for the purposes of  
3 this subsection, shall be only personal service rendered an  
4 affiliated public employer and credited to the member under the  
5 provisions of Subsection A of Section 10-11-4 NMSA 1978.

6 Service credited under any other provision of the Public  
7 Employees Retirement Act shall not be used to satisfy the  
8 three-year service credit requirement of this subsection. "

9 Section 2. Section 22-11-25.1 NMSA 1978 (being Laws 2001,  
10 Chapter 283, Section 2, as amended by Laws 2003, Chapter 80,  
11 Section 1 and by Laws 2003, Chapter 145, Section 1) is amended  
12 to read:

13 "22-11-25.1. RETURN TO EMPLOYMENT-- BENEFITS CONTINUED--  
14 ADMINISTRATIVE UNIT CONTRIBUTIONS. --

15 A. Except as provided in Subsections B, [~~and~~] E and  
16 F of this section, beginning January 1, 2002 and continuing  
17 until January 1, 2012, a retired member may begin employment at  
18 a local administrative unit and shall not be required to  
19 suspend retirement benefits if the member has not been employed  
20 as an employee or independent contractor by a local  
21 administrative unit for at least twelve consecutive months from  
22 the date of retirement to the commencement of employment or  
23 reemployment with a local administrative unit. If the retired  
24 member returns to employment without first completing twelve  
25 consecutive months of retirement, the retired member shall

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1 remove himself from retirement.

2 B. A retired member who was retired on or before  
3 January 1, 2001, has not since suspended or been required to  
4 suspend retirement benefits pursuant to the Educational  
5 Retirement Act and is reemployed by a local administrative unit  
6 prior to July 1, 2005 may continue employment at the local  
7 administrative unit and shall not be required to suspend  
8 retirement benefits.

9 C. A retired member who returns to employment  
10 during retirement pursuant to Subsection A, ~~[or]~~ B or E of this  
11 section is entitled to continue to receive retirement benefits  
12 but is not entitled to acquire service credit or to acquire or  
13 purchase service credit in the future for the period of the  
14 retired member's reemployment with a local administrative unit.

15 D. For a retired member who returns to employment  
16 pursuant to ~~[Subsections]~~ Subsection A, ~~[or]~~ B or E of this  
17 section, ~~[shall not]~~ effective the first day of the month  
18 following the month in which the retired member's earnings  
19 total thirty thousand dollars (\$30,000) during a calendar year,  
20 the retired member shall make contributions to the fund as  
21 specified in the Educational Retirement Act; however, the local  
22 administrative unit's contributions as specified in that act  
23 shall be paid at all times to the fund as if the retired member  
24 was a non-retired employee.

25 E. Except as provided in Subsection F of this

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1 section, beginning July 1, 2003 and continuing until January 1,  
2 2012, a retired member who retired on or before January 1, 2001  
3 and who has not been employed as an employee or independent  
4 contractor by a local administrative unit for at least ninety  
5 days may begin employment at a local administrative unit  
6 without suspending retirement benefits if the retired member  
7 was not employed by a local administrative unit for an  
8 additional twelve or more consecutive months after the initial  
9 date of the retirement; provided that the ninety-day period  
10 shall not include any part of a summer or other scheduled break  
11 or vacation period.

12 F. On and after July 1, 2005, no retired member  
13 shall begin employment pursuant to this section without  
14 suspending retirement benefits unless the retired member is  
15 employed as a teacher in a public school or an instructor in a  
16 public post-secondary educational institution."

17 Section 3. APPLICABILITY.--The provisions of Section 1 of  
18 this act that require twelve consecutive months of retirement  
19 before returning to work apply to retired members who return to  
20 work on or after July 1, 2005.

21 Section 4. EFFECTIVE DATE.--The effective date of the  
22 provisions of this act is July 1, 2005.