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SENATE BILL 300

**47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006**

INTRODUCED BY

John Arthur Smith

FOR THE STATE PERMANENT FUND TASK FORCE AND  
THE LEGISLATIVE FINANCE COMMITTEE

AN ACT

RELATING TO RETURN TO EMPLOYMENT; RESTRICTING RETURN TO  
EMPLOYMENT AFTER JUNE 30, 2006 PURSUANT TO THE PUBLIC EMPLOYEES  
RETIREMENT ACT AND THE EDUCATIONAL RETIREMENT ACT; RECONCILING  
MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2003;  
RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN  
LAWS 2004 BY REPEALING LAWS 2004, CHAPTER 2, SECTION 1.

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 FOR CERTAIN RETIRED MEMBERS--EMPLOYER  
CONTRIBUTIONS.--

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

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

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

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

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

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

18           C. Except as provided in Subsection D, ~~[or]~~ E or F  
19 of this section, a retired member may be subsequently employed  
20 prior to July 1, 2006 by an affiliated public employer if the  
21 following conditions apply:

22                   (1) the member has not been employed as an  
23 employee of an affiliated public employer for at least ninety  
24 consecutive days from the date of retirement to the  
25 commencement of employment or re-employment with an affiliated

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1 public employer. If the retired member returns to employment  
2 without first completing ninety consecutive days of  
3 retirement:

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

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

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

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

25 (4) a retired member who returns to employment

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1 during retirement pursuant to this subsection is entitled to  
2 receive retirement benefits but is not entitled to acquire  
3 service credit or to acquire or purchase service credit in the  
4 future for the period of the retired member's re-employment  
5 with an affiliated public employer.

6 D. If a member retires and is subsequently employed  
7 by an affiliated public employer on or after July 1, 2006, the  
8 retired member's pension shall be suspended the first day of  
9 the month following the month in which the retired member's  
10 earnings for a calendar year from that subsequent employment  
11 exceed fifteen thousand dollars (\$15,000).

12 [~~D.~~] E. The provisions of Paragraphs (2) and (3) of  
13 Subsection C of this section [~~that require employee or employer~~  
14 ~~contributions~~] and the provisions of Subsection D of this  
15 section do not apply to:

16 (1) a retired member who is appointed chief of  
17 police of an affiliated public employer, other than the  
18 affiliated public employer from which the retired member  
19 retired, or who is appointed undersheriff; provided that:

20 (a) the retired member files an  
21 irrevocable exemption from membership with the association  
22 within thirty days of appointment;

23 (b) each sheriff's office shall be  
24 limited to one undersheriff qualifying pursuant to this  
25 paragraph;

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1 (c) the irrevocable exemption shall be  
2 for the chief of police's or the undersheriff's term of office;  
3 and

4 (d) filing an irrevocable exemption  
5 shall irrevocably bar the retired member from acquiring service  
6 credit for the period of exemption from membership; or

7 (2) a retired member employed by the  
8 legislature for legislative session work.

9 ~~[E-]~~ F. At any time during a retired member's  
10 subsequent employment pursuant to Subsection C or D of this  
11 section, the retired member may elect to suspend the pension.  
12 ~~[When the pension is suspended, the following conditions shall~~  
13 ~~apply]~~

14 G. When a pension is suspended pursuant to  
15 Subparagraph (a) of Paragraph (1) of Subsection C of this  
16 section, Subsection D of this section or Subsection F of this  
17 section, the following conditions apply:

18 (1) the retired member who is subsequently  
19 employed by an affiliated public employer shall become a  
20 member. The previously retired member and the subsequent  
21 affiliated public employer shall make the required employee and  
22 employer contributions, and the previously retired member shall  
23 accrue service credit for the period of subsequent employment;  
24 and

25 (2) when a previously retired member

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1 terminates the subsequent employment with an affiliated public  
2 employer, [~~he~~] the previously retired member shall retire  
3 according to the provisions of the Public Employees Retirement  
4 Act, subject to the following conditions:

5 (a) payment of the pension shall resume  
6 in accordance with the provisions of Subsection A of this  
7 section;

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

15 (c) the recalculated pension shall not  
16 be less than the amount of the suspended pension.

17 [~~F.~~] H. The pension of a member who has three or  
18 more years of service credit under each of two or more coverage  
19 plans shall be determined in accordance with the coverage plan  
20 that produces the highest pension. The pension of a member who  
21 has service credit under two or more coverage plans but who has  
22 three or more years of service credit under only one of those  
23 coverage plans shall be determined in accordance with the  
24 coverage plan in which the member has three or more years of  
25 service credit. If the service credit is acquired under two

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1 different coverage plans applied to the same affiliated public  
2 employer as a consequence of an election by the members,  
3 adoption by the affiliated public employer or a change in the  
4 law that results in the application of a coverage plan with a  
5 greater pension, the greater pension shall be paid a member  
6 retiring from the affiliated public employer under which the  
7 change in coverage plan took place regardless of the amount of  
8 service credit under the coverage plan producing the greater  
9 pension; provided the member has three or more years of  
10 continuous employment with that affiliated public employer  
11 immediately preceding or immediately preceding and immediately  
12 following the date the coverage plan changed. The provisions  
13 of each coverage plan for the purpose of this subsection shall  
14 be those in effect at the time the member ceased to be covered  
15 by the coverage plan. "Service credit", for the purposes of  
16 this subsection, shall be only personal service rendered an  
17 affiliated public employer and credited to the member under the  
18 provisions of Subsection A of Section 10-11-4 NMSA 1978.  
19 Service credited under any other provision of the Public  
20 Employees Retirement Act shall not be used to satisfy the  
21 three-year service credit requirement of this subsection."

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

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1 "22-11-25.1. RETURN TO EMPLOYMENT--BENEFITS CONTINUED FOR  
2 CERTAIN MEMBERS--ADMINISTRATIVE UNIT CONTRIBUTIONS.--

3 A. Except as provided in Subsections B and E of  
4 this section, beginning January 1, 2002 and continuing [~~until~~  
5 ~~January 1, 2012~~] through June 30, 2006, a retired member may  
6 begin employment at a local administrative unit and shall not  
7 be required to suspend retirement benefits if the member has  
8 not been employed as an employee or independent contractor by a  
9 local administrative unit for at least twelve consecutive  
10 months from the date of retirement to the commencement of  
11 employment or reemployment with a local administrative unit.  
12 If the retired member returns to employment without first  
13 completing twelve consecutive months of retirement, the retired  
14 member shall remove himself from retirement.

15 B. A retired member who was retired on or before  
16 January 1, 2001, has not since suspended or been required to  
17 suspend retirement benefits pursuant to the Educational  
18 Retirement Act and is reemployed by a local administrative unit  
19 prior to July 1, 2006 may continue employment at the local  
20 administrative unit and shall not be required to suspend  
21 retirement benefits.

22 C. A retired member who returns to employment  
23 during retirement pursuant to Subsection A, [~~or~~] B or E of this  
24 section is entitled to continue to receive retirement benefits  
25 but is not entitled to acquire service credit or to acquire or

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1 purchase service credit in the future for the period of the  
2 retired member's reemployment with a local administrative unit.

3 D. A retired member who returns to employment  
4 pursuant to ~~[Subsections]~~ Subsection A, ~~[or]~~ B or E of this  
5 section shall not make contributions to the fund as specified  
6 in the Educational Retirement Act; however, the local  
7 administrative unit's contributions as specified in that act  
8 shall be paid to the fund as if the retired member was a non-  
9 retired employee.

10 E. Beginning July 1, 2003 and continuing ~~[until~~  
11 ~~January 1, 2012]~~ through July 1, 2006, a retired member who  
12 retired on or before January 1, 2001 and who has not been  
13 employed as an employee or independent contractor by a local  
14 administrative unit for at least ninety days may begin  
15 employment at a local administrative unit without suspending  
16 retirement benefits if the retired member was not employed by a  
17 local administrative unit for an additional twelve or more  
18 consecutive months after the initial date of the retirement;  
19 provided that the ninety-day period shall not include any part  
20 of a summer or other scheduled break or vacation period.

21 F. A retired member who returns to employment with  
22 a local administrative unit prior to July 1, 2006 and, pursuant  
23 to the provisions of this section, is entitled to continue to  
24 receive retirement benefits shall not be required to suspend  
25 retirement benefits at any time in the future if the member

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1 remains employed by the local administrative unit or is  
2 employed by another local administrative unit; provided,  
3 however, that if the member voluntarily suspends retirement  
4 benefits at any time, the member shall be entitled to continue  
5 to receive retirement benefits pursuant to the provisions of  
6 this section only if the member would be eligible to do so  
7 based upon the effective date of the member's most recent  
8 retirement."

9 Section 3. REPEAL.--Laws 2004, Chapter 2, Section 1 is  
10 repealed.

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