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SENATE BILL 1188

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

Richard C. Martinez

AN ACT

RELATING TO PUBLIC EMPLOYEES RETIREMENT; PROVIDING AN  
ALTERNATIVE RETIREMENT PLAN FOR STATE FIRE MARSHAL MEMBERS;  
RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN  
LAWS 2003.

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

Section 1. Section 10-11-2 NMSA 1978 (being Laws 1987,  
Chapter 253, Section 2, as amended) is amended to read:

"10-11-2. DEFINITIONS.--As used in the Public Employees  
Retirement Act:

A. "accumulated member contributions" means the  
amounts deducted from the salary of a member and credited to  
the member's individual account, together with interest, if  
any, credited to that account;

B. "affiliated public employer" means the state and

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1 any public employer affiliated with the association as provided  
2 in the Public Employees Retirement Act, but does not include an  
3 employer pursuant to the Magistrate Retirement Act, the  
4 Judicial Retirement Act or the Educational Retirement Act;

5 C. "association" means the public employees  
6 retirement association established under the Public Employees  
7 Retirement Act;

8 D. "disability retired member" means a retired  
9 member who is receiving a pension pursuant to the disability  
10 retirement provisions of the Public Employees Retirement Act;

11 E. "disability retirement pension" means the  
12 pension paid pursuant to the disability retirement provisions  
13 of the Public Employees Retirement Act;

14 F. "educational retirement system" means that  
15 retirement system provided for in the Educational Retirement  
16 Act;

17 G. "employee" means any employee of an affiliated  
18 public employer;

19 H. "federal social security program" means that  
20 program or those programs created and administered pursuant to  
21 the act of congress approved August 14, 1935, Chapter 531, 49  
22 Stat. 620, as that act may be amended;

23 I. "final average salary" means the final average  
24 salary calculated in accordance with the provisions of the  
25 applicable coverage plan;

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1           J. "form of payment" means the applicable form of  
2 payment of a pension provided for in Section 10-11-117 NMSA  
3 1978;

4           K. "former member" means a person who was  
5 previously employed by an affiliated public employer, who has  
6 terminated that employment and who has received a refund of  
7 member contributions;

8           L. "fund" means the funds included under the Public  
9 Employees Retirement Act;

10          M. "member" means a currently employed,  
11 contributing employee of an affiliated public employer, or a  
12 person who has been but is not currently employed by an  
13 affiliated public employer, who has not retired and who has not  
14 received a refund of member contributions; "member" also  
15 includes the following:

16                   (1) "adult correctional officer member" means  
17 a member who is an adult correctional officer or an adult  
18 correctional officer specialist employed by a correctional  
19 facility of the corrections department or its successor agency;

20                   (2) "hazardous duty member" means a member who  
21 is a juvenile correctional officer employed by the children,  
22 youth and families department or its successor agency;

23                   (3) "municipal detention officer member" means  
24 a member who is employed by an affiliated public employer other  
25 than the state and who has inmate custodial responsibilities at

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1 a facility used for the confinement of persons charged with or  
2 convicted of a violation of a law or ordinance;

3 (4) "municipal fire member" means any member  
4 who is employed as a full-time nonvolunteer firefighter by an  
5 affiliated public employer and who has taken the oath  
6 prescribed for firefighters;

7 (5) "municipal police member" means any member  
8 who is employed as a police officer by an affiliated public  
9 employer, other than the state, and who has taken the oath  
10 prescribed for police officers; [~~and~~]

11 (6) "state fire marshal member" means the  
12 state fire marshal or a member who is employed in the office of  
13 the state fire marshal and whose duties are defined in Chapter  
14 59A, Article 52 NMSA 1978; and

15 [~~(6)~~] (7) "state police member" means any  
16 member who is an officer of the New Mexico state police and who  
17 has taken the oath prescribed for such officers;

18 N. "membership" means membership in the  
19 association;

20 O. "pension" means a series of monthly payments to  
21 a retired member or survivor beneficiary as provided in the  
22 Public Employees Retirement Act;

23 P. "public employer" means the state, any  
24 municipality, city, county, metropolitan arroyo flood control  
25 authority, economic development district, regional housing

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1 authority, soil and water conservation district, entity created  
2 pursuant to a joint powers agreement, council of government,  
3 conservancy district, irrigation district, water and sanitation  
4 district, water district and metropolitan water board,  
5 including the boards, departments, bureaus and agencies of a  
6 public employer, so long as these entities fall within the  
7 meaning of governmental plan as that term is used in Section  
8 414(d) of the Internal Revenue Code of 1986, as amended;

9 Q. "refund beneficiary" means a person designated  
10 by the member, in writing, in the form prescribed by the  
11 association, as the person who would be refunded the member's  
12 accumulated member contributions payable if the member dies and  
13 no survivor pension is payable or who would receive the  
14 difference between pension paid and accumulated member  
15 contributions if the retired member dies before receiving in  
16 pension payments the amount of the accumulated member  
17 contributions;

18 R. "retire" means to:

19 (1) terminate employment with all employers  
20 covered by any state system or the educational retirement  
21 system; and

22 (2) receive a pension from a state system or  
23 the educational retirement system;

24 S. "retired member" means a person who has met all  
25 requirements for retirement and who is receiving a pension from

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1 the fund;

2 T. "retirement board" means the retirement board  
3 provided for in the Public Employees Retirement Act;

4 U. "salary" means the base salary or wages paid a  
5 member, including longevity pay, for personal services rendered  
6 an affiliated public employer. "Salary" shall not include  
7 overtime pay, allowances for housing, clothing, equipment or  
8 travel, payments for unused sick leave, unless the unused sick  
9 leave payment is made through continuation of the member on the  
10 regular payroll for the period represented by that payment, and  
11 any other form of remuneration not specifically designated by  
12 law as included in salary for Public Employees Retirement Act  
13 purposes. Salary in excess of the limitations set forth in  
14 Section 401(a) (17) of the Internal Revenue Code of 1986, as  
15 amended, shall be disregarded. The limitation on compensation  
16 for eligible employees shall not be less than the amount that  
17 was allowed to be taken into account under the state retirement  
18 system acts in effect on July 1, 1993. For purposes of this  
19 subsection, "eligible employee" means an individual who was a  
20 member of a state system before the first plan year beginning  
21 after December 31, 1995;

22 V. "state system" means the retirement programs  
23 provided for in the Public Employees Retirement Act, the  
24 Magistrate Retirement Act and the Judicial Retirement Act;

25 W. "state retirement system acts" means

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1 collectively the Public Employees Retirement Act, the  
2 Magistrate Retirement Act, the Judicial Retirement Act and the  
3 Volunteer Firefighters Retirement Act; and

4 X. "survivor beneficiary" means a person who  
5 receives a pension or who has been designated to be paid a  
6 pension as a result of the death of a member or retired  
7 member."

8 Section 2. Section 10-11-27 NMSA 1978 (being Laws 1987,  
9 Chapter 253, Section 27, as amended by Laws 2003, Chapter 268,  
10 Section 9 and by Laws 2003, Chapter 269, Section 1) is amended  
11 to read:

12 "10-11-27. STATE POLICE MEMBER, [~~AND~~] ADULT CORRECTIONAL  
13 OFFICER MEMBER AND STATE FIRE MARSHAL MEMBER COVERAGE PLAN 1--  
14 APPLICABILITY.--

15 A. State police member, [~~and~~] adult correctional  
16 officer member and state fire marshal member coverage plan 1 is  
17 applicable to state police members who are not specifically  
18 covered by another coverage plan, [~~and~~] adult correctional  
19 officer members and state fire marshal members. The credited  
20 service of a state police member who has held the permanent  
21 rank of patrolman, sergeant, lieutenant or captain and does not  
22 hold an exempt rank or who is assigned to the aircraft division  
23 as a pilot, [~~or~~] of an adult correctional officer member or a  
24 state fire marshal member shall have actual credited service  
25 increased by twenty percent for the purposes of state police

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1 member, adult correctional officer member and state fire  
2 marshal member coverage plan 1.

3 B. State police member, [~~and~~] adult correctional  
4 officer member and state fire marshal member coverage plan 1 is  
5 applicable to:

6 (1) adult correctional officer members in the  
7 first full pay period after July 1, 2004 if the retirement  
8 board certifies to the secretary of state that, of those adult  
9 correctional officer members to be covered under state police  
10 member, [~~and~~] adult correctional officer member and state fire  
11 marshal member coverage plan 1, a majority of the members  
12 voting have voted to approve adoption of that plan at an  
13 election conducted pursuant to [~~Section 16 of this 2003 act~~]  
14 Laws 2003, Chapter 268, Section 16; and

15 (2) state fire marshal members in the first  
16 full pay period after July 1, 2008 if the retirement board  
17 certifies to the secretary of state that, of those state fire  
18 marshal members to be covered under state police member, adult  
19 correctional officer member and state fire marshal member  
20 coverage plan 1, a majority of the members voting have voted to  
21 approve adoption of that plan at an election conducted pursuant  
22 to Section 9 of this 2007 act."

23 Section 3. Section 10-11-27.1 NMSA 1978 (being Laws 2003,  
24 Chapter 268, Section 10) is amended to read:

25 "10-11-27.1. STATE POLICE MEMBER, [~~AND~~] ADULT

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1 CORRECTIONAL OFFICER MEMBER AND STATE FIRE MARSHAL MEMBER  
2 COVERAGE PLAN 1--SERVICE CREDIT REQUIRED.--Notwithstanding the  
3 provisions of Section 10-11-27 NMSA 1978, to qualify for  
4 payment under state police member, [~~and~~] adult correctional  
5 officer member and state fire marshal member coverage plan 1:

6 A. an adult correctional officer member shall have  
7 eighteen months of service credit earned under the state police  
8 member, [~~and~~] adult correctional officer member and state fire  
9 marshal member coverage plan 1 subsequent to July 1, 2004; and

10 B. a state fire marshal member shall have eighteen  
11 months of service credit earned under the state police member,  
12 adult correctional officer member and state fire marshal member  
13 coverage plan 1 subsequent to July 1, 2008."

14 Section 4. Section 10-11-28 NMSA 1978 (being Laws 1987,  
15 Chapter 253, Section 28, as amended) is amended to read:

16 "10-11-28. STATE POLICE MEMBER, [~~AND~~] ADULT CORRECTIONAL  
17 OFFICER MEMBER AND STATE FIRE MARSHAL MEMBER COVERAGE PLAN 1--  
18 AGE AND SERVICE REQUIREMENTS FOR NORMAL RETIREMENT.--Under  
19 state police member, [~~and~~] adult correctional officer member  
20 and state fire marshal member coverage plan 1, the age and  
21 service requirements for normal retirement are:

22 A. age sixty-five years or older and five or more  
23 years of credited service;

24 B. age sixty-four years and eight or more years of  
25 credited service;

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1 C. age sixty-three years and eleven or more years  
2 of credited service;

3 D. age sixty-two years and fourteen or more years  
4 of credited service;

5 E. age sixty-one years and seventeen or more years  
6 of credited service;

7 F. age sixty years and twenty or more years of  
8 credited service; or

9 G. any age and twenty-five or more years of  
10 credited service."

11 Section 5. Section 10-11-29 NMSA 1978 (being Laws 1987,  
12 Chapter 253, Section 29, as amended) is amended to read:

13 "10-11-29. STATE POLICE MEMBER, [~~AND~~] ADULT CORRECTIONAL  
14 OFFICER MEMBER AND STATE FIRE MARSHAL MEMBER COVERAGE PLAN 1--  
15 AMOUNT OF PENSION--FORM OF PAYMENT A.--Under state police  
16 member, [~~and~~] adult correctional officer member and state fire  
17 marshal member coverage plan 1, the amount of pension under  
18 form of payment A is equal to three percent of final average  
19 salary multiplied by credited service. The amount shall not  
20 exceed eighty percent of the final average salary."

21 Section 6. Section 10-11-30 NMSA 1978 (being Laws 1987,  
22 Chapter 253, Section 30, as amended) is amended to read:

23 "10-11-30. STATE POLICE MEMBER, [~~AND~~] ADULT CORRECTIONAL  
24 OFFICER MEMBER AND STATE FIRE MARSHAL MEMBER COVERAGE PLAN 1--  
25 FINAL AVERAGE SALARY.--Under state police member, [~~and~~] adult

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1        correctional officer member and state fire marshal member  
2        coverage plan 1, the final average salary is one thirty-sixth  
3        of the greatest aggregate amount of salary paid a member for  
4        thirty-six consecutive months of credited service. Under state  
5        police member, [~~and~~] adult correctional officer member and  
6        state fire marshal member coverage plan 1, if a [~~state police~~]  
7        member has less than thirty-six months of credited service, the  
8        final average salary is the aggregate amount of salary paid a  
9        member for the member's period of credited service divided by  
10       the member's credited service."

11            Section 7. Section 10-11-31 NMSA 1978 (being Laws 1987,  
12        Chapter 253, Section 31, as amended) is amended to read:

13            "10-11-31. STATE POLICE MEMBER, [~~AND~~] ADULT CORRECTIONAL  
14        OFFICER MEMBER AND STATE FIRE MARSHAL MEMBER COVERAGE PLAN 1--  
15        MEMBER CONTRIBUTION RATE.--A member under state police member,  
16        [~~and~~] adult correctional officer member and state fire marshal  
17        coverage plan 1 shall contribute seven and six-tenths percent  
18        of salary."

19            Section 8. Section 10-11-32 NMSA 1978 (being Laws 1987,  
20        Chapter 253, Section 32, as amended) is amended to read:

21            "10-11-32. STATE POLICE MEMBER, [~~AND~~] ADULT CORRECTIONAL  
22        OFFICER MEMBER AND STATE FIRE MARSHAL MEMBER COVERAGE PLAN 1--  
23        STATE CONTRIBUTION RATE.--The state shall contribute twenty-  
24        five and one-tenth percent of the salary of each member under  
25        state police member, [~~and~~] adult correctional officer member

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1 and state fire marshal member coverage plan 1."

2 Section 9. TEMPORARY PROVISION--STATE POLICE MEMBER,  
3 ADULT CORRECTIONAL OFFICER MEMBER AND STATE FIRE MARSHAL MEMBER  
4 COVERAGE PLAN 1--ELECTIONS.--On or before October 1, 2007, the  
5 retirement board of the public employees retirement association  
6 shall conduct an election to submit to state fire marshal  
7 members the question of adopting state police member, adult  
8 correctional officer member and state fire marshal member  
9 coverage plan 1. The election shall be conducted in accordance  
10 with procedures adopted by the retirement board, and the  
11 retirement board shall certify the results of the election to  
12 the secretary of state on or before November 1, 2007.

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