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HOUSE BILL 616

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Luciano "Lucky" Varela

AN ACT

RELATING TO PUBLIC EMPLOYEES RETIREMENT; AMENDING PROVISIONS OF
THE PUBLIC EMPLOYEES RETIREMENT ACT CONCERNING RETIREES WHO
RETURN TO EMPLOYMENT; RECONCILING CONFLICTING 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]~~ F of
19 this section, a retired member may be subsequently employed by
20 an affiliated public employer if the following conditions
21 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 reemployment 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 of this~~
10 ~~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]~~

15 (1) except as provided in Paragraph (4) of
16 this subsection, for a retired member who has returned to work
17 prior to July 1, 2009, the member shall not have been employed
18 as an employee of an affiliated public employer for at least
19 ninety consecutive days from the date of retirement to the
20 commencement of reemployment; provided that a retired member
21 who has returned to work under this paragraph shall be subject
22 to the provisions of Paragraph (3) of this subsection;

23 (2) except as provided in Paragraph (4) of
24 this subsection, for a retired member who returns to work after
25 July 1, 2009, the retired member shall not have been employed

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1 as an employee of an affiliated public employer or retained as
2 an independent contractor performing the same duties as were
3 performed before retirement for at least twelve consecutive
4 months from the date of retirement to the commencement of
5 reemployment; provided that a retired member who returns to
6 work under this paragraph shall be subject to the provisions of
7 Paragraph (3) of this subsection;

8 (3) on and after July 1, 2010, for a retired
9 member who returns to work pursuant to Paragraph (1) or (2) of
10 this subsection, the retired member's pension shall be
11 suspended on the first day of the month following the month in
12 which the retired member's earnings after July 1, 2010 from
13 that subsequent employment exceed thirty thousand dollars
14 (\$30,000);

15 (4) the retired member may return to work and
16 not be subject to the provisions of Paragraph (3) of this
17 subsection if:

18 (a) the retired member was not employed
19 as an employee of an affiliated public employer for at least
20 ninety consecutive days from the date of retirement to the
21 commencement of reemployment;

22 (b) prior to July 1, 2010 or the
23 commencement of reemployment, whichever is later, the governing
24 body of the affiliated public employer adopts a resolution
25 declaring that the subsequent employment of the retired member

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1 will fill a critical need of the affiliated public employer and
2 files a copy of the resolution with the retirement board. As
3 used in this subparagraph and Subparagraph (c) of this
4 paragraph, "governing body" means: 1) the governing body of
5 the political subdivision if the affiliated public employer is
6 a political subdivision of the state; 2) the supreme court if
7 the affiliated public employer is in the judicial branch of
8 state government or is a district attorney; 3) the New Mexico
9 legislative council if the affiliated public employer is in the
10 legislative branch of state government; or 4) the personnel
11 board if the affiliated public employer is not included in Item
12 1), 2) or 3) of this subparagraph; and

13 (c) the employment is for a term of two
14 years or less; provided, however, that the governing body may
15 renew the employment by adopting another resolution declaring a
16 continuing need and filing a copy of the resolution with the
17 retirement board;

18 (5) if the retired member returns to
19 employment pursuant to Paragraph (1), (2) or (4) of this
20 subsection without first completing the required ninety
21 consecutive days or twelve consecutive months of retirement,
22 the retired member's pension shall be suspended immediately;

23 (6) effective the first day of the month
24 following the month in which the retired member's earnings
25 total thirty thousand dollars (\$30,000) during a calendar year,

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1 a retired member who returns to employment shall be required to
2 make contributions to the fund as specified in the Public
3 Employees Retirement Act; [~~provided, however, that after~~
4 ~~December 31, 2006, no additional contributions shall be~~
5 ~~required pursuant to this paragraph;~~

6 ~~(3)~~ (7) until the subsequent employment is
7 terminated, the affiliated public employer that employs the
8 retired member shall make contributions to the fund in the
9 amount specified in the Public Employees Retirement Act or in a
10 higher amount adjusted for full actuarial cost as determined
11 annually by the association; [~~and~~

12 ~~(4)~~ ~~a~~ (8) the retired member who returns to
13 employment during retirement pursuant to this subsection is
14 entitled to receive retirement benefits but is not entitled to
15 acquire service credit or to acquire or purchase service credit
16 in the future for the period of the retired member's
17 reemployment with an affiliated public employer; and

18 (9) until the subsequent employment is
19 terminated, both the retired member and the affiliated public
20 employer that employs the retired member shall make
21 contributions to the retiree health care fund in the amount
22 specified in Subsections A and B of Section 10-7C-15 NMSA 1978.

23 D. [~~The provisions of Paragraphs (2) and (3) of~~
24 ~~Subsection C of this section that require employee or employer~~
25 ~~contributions] Except for the provisions of Paragraph (8) of~~

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1 Subsection C of this section, the provisions of the other
2 paragraphs of that subsection do not apply to:

3 (1) a retired member who is appointed chief of
4 police of an affiliated public employer, other than the
5 affiliated public employer from which the retired member
6 retired, or who is appointed undersheriff; provided that:

7 (a) the retired member files an
8 irrevocable exemption from membership with the association
9 within thirty days of appointment;

10 (b) each sheriff's office shall be
11 limited to one undersheriff qualifying pursuant to this
12 paragraph;

13 (c) the irrevocable exemption shall be
14 for the chief of police's or the undersheriff's term of office;
15 and

16 (d) filing an irrevocable exemption
17 shall irrevocably bar the retired member from acquiring service
18 credit for the period of exemption from membership; or

19 (2) a retired member employed by the
20 legislature for legislative session work.

21 E. At any time during a retired member's subsequent
22 employment pursuant to Subsection C of this section, the
23 retired member may elect to suspend the pension.

24 F. When ~~[the]~~ a pension is suspended, pursuant to
25 Paragraph (3) or Paragraph (5) of Subsection C of this section

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1 or Subsection E of this section, the following conditions shall
2 apply:

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

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

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

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

25 (c) the recalculated pension shall not

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1 be less than the amount of the suspended pension.

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

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1 this subsection, shall be only personal service rendered an
2 affiliated public employer and credited to the member under the
3 provisions of Subsection A of Section 10-11-4 NMSA 1978.
4 Service credited under any other provision of the Public
5 Employees Retirement Act shall not be used to satisfy the
6 three-year service credit requirement of this subsection."

7 Section 2. REPEAL.--Laws 2004, Chapter 2, Section 1 is
8 repealed.

9 Section 3. EFFECTIVE DATE.--The effective date of the
10 provisions of this act is July 1, 2009.