

HOUSE LABOR AND HUMAN RESOURCES COMMITTEE SUBSTITUTE FOR
HOUSE BILL 683

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

AN ACT

RELATING TO RETURN TO EMPLOYMENT; PROVIDING THAT A RETIRED
MEMBER OF THE PUBLIC EMPLOYEES RETIREMENT ASSOCIATION MAY
RETURN TO EMPLOYMENT AS AN ELECTED OFFICIAL WITHOUT THE
REQUIREMENT OF CONTRIBUTIONS BY THE MEMBER OR BY THE PUBLIC
EMPLOYER AND WITHOUT A BREAK IN SERVICE; 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--EMPLOYER CONTRIBUTIONS.--

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underscoring material = new
[bracketed material] = delete

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 of this
19 section, a retired member may be subsequently employed by an
20 affiliated public employer if the following conditions apply:

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

1 without first completing ninety consecutive days of
2 retirement:

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

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

10 (2) effective the first day of the month
11 following the month in which the retired member's earnings
12 total twenty-five thousand dollars (\$25,000) during a calendar
13 year, a retired member who returns to employment shall be
14 required to make contributions to the fund as specified in the
15 Public Employees Retirement Act; provided, however, that after
16 December 31, 2006, no additional contributions shall be
17 required pursuant to this 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]~~ Except for Paragraph (4) of Subsection C of this
8 section, the other provisions of that subsection do not apply
9 to:

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

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

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

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

23 (d) filing an irrevocable exemption
24 shall irrevocably bar the retired member from acquiring service
25 credit for the period of exemption from membership; [~~or~~]

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1 (2) a retired member employed by the
2 legislature for legislative session work; or

3 (3) a retired member who is elected to serve a
4 term as an elected official; provided that:

5 (a) the retired member files an
6 irrevocable exemption from membership with the association
7 within thirty days of taking office; and

8 (b) the irrevocable exemption shall be
9 for the elected official's term of office.

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

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

21 (2) when a previously retired member
22 terminates the subsequent employment with an affiliated public
23 employer, [~~he~~] the previously retired member shall retire
24 according to the provisions of the Public Employees Retirement
25 Act, subject to the following conditions:

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1 (a) payment of the pension shall resume
2 in accordance with the provisions of Subsection A of this
3 section;

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

11 (c) the recalculated pension shall not
12 be less than the amount of the suspended pension.

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

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

18 Section 2. REPEAL.--Laws 2004, Chapter 2, Section 1 is
19 repealed.

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

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