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SENATE BILL 168

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Clemente Sanchez

FOR THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC EMPLOYEE RETIREMENT; ADDING AN EXCEPTION FOR
RETIRED STATE POLICE MEMBERS, ADULT CORRECTIONAL MEMBERS AND
MUNICIPAL POLICE MEMBERS TO THE RETURN TO WORK RESTRICTIONS IN
THE PUBLIC EMPLOYEES RETIREMENT ACT; ESTABLISHING CONDITIONS
FOR STATE POLICE, ADULT CORRECTIONAL AND MUNICIPAL POLICE
MEMBERS TO RETURN TO WORK WITH AN AFFILIATED PUBLIC EMPLOYER
WHILE CONTINUING TO RECEIVE RETIREMENT BENEFITS.

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) 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 of this
17 section, on or after July 1, 2010, a retired member may be
18 subsequently employed by an affiliated public employer only
19 pursuant to the following provisions:

20 (1) the retired member has not been employed
21 as an employee of an affiliated public employer or retained as
22 an independent contractor by the affiliated public employer
23 from which the retired member retired for at least twelve
24 consecutive months from the date of retirement to the
25 commencement of employment or reemployment with an affiliated

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1 public employer;

2 (2) the retired member's pension shall be
3 suspended upon commencement of the employment;

4 (3) except as provided in Subsection F of this
5 section, the previously retired member shall not become a
6 member and thus the previously retired member shall accrue no
7 service credit and the previously retired member and that
8 person's affiliated public employer shall make no contributions
9 under any coverage plan pursuant to the Public Employees
10 Retirement Act; and

11 (4) upon termination of the subsequent
12 employment, the previously retired member's pension shall
13 resume in accordance with the provisions of Subsection A of
14 this section.

15 D. The provisions of Subsection C of this section
16 do not apply to:

17 (1) a retired member employed by the
18 legislature for legislative session work;

19 (2) a retired member employed temporarily as a
20 precinct board member for a municipal election or an election
21 covered by the Election Code; ~~[or]~~

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

24 (a) the retired member files an
25 irrevocable exemption from membership with the association

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1 within thirty days of taking office; and

2 (b) the irrevocable exemption shall be
3 for the elected official's term of office; or

4 (4) a state police member, adult correctional
5 officer member or municipal police member who has not been
6 employed as an employee of an affiliated public employer or
7 retained as an independent contractor by the affiliated public
8 employer from which the member retired for at least ninety
9 consecutive days from the date of retirement to the
10 commencement of employment or reemployment with an affiliated
11 public employer.

12 E. ~~[A retired member who returns to employment~~
13 ~~during retirement pursuant to Subsection D of this section is~~
14 ~~entitled to receive retirement benefits but is not entitled to~~
15 ~~accrue service credit or to acquire or purchase service credit~~
16 ~~in the future for the period of the previously retired member's~~
17 ~~reemployment with an affiliated public employer]~~

18 In the case of a retired member who returns to employment
19 during retirement pursuant to:

20 (1) Paragraph (1), (2) or (3) of Subsection D
21 of this section:

22 (a) the member shall be entitled to the
23 continuation of retirement benefits;

24 (b) the member shall not accrue service
25 credit or acquire or purchase service credit in the future for

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1 the period of the previously retired member's reemployment with
2 an affiliated public employee; and

3 (c) the member and the subsequent
4 affiliated public employer shall not make the employee and
5 employer contributions pursuant to the Public Employees
6 Retirement Act for the appropriate coverage plan otherwise
7 associated with the member's reemployment; or

8 (2) Paragraph (4) of Subsection D of this
9 section:

10 (a) the member shall be entitled to the
11 continuation of retirement benefits;

12 (b) the member shall not accrue service
13 credit or acquire or purchase service credit in the future for
14 the period of the previously retired member's reemployment with
15 an affiliated public employee; and

16 (c) the member and the subsequent
17 affiliated public employer shall make the employee and employer
18 contributions pursuant to the Public Employees Retirement Act
19 for the appropriate coverage plan associated with the member's
20 reemployment.

21 F. At any time during a previously retired member's
22 subsequent employment pursuant to Subsection C of this section,
23 the previously retired member may elect to become a member and
24 the following conditions shall apply:

25 (1) the previously retired member and the

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1 subsequent affiliated public employer shall make the required
2 employee and employer contributions, and the previously retired
3 member shall accrue service credit for the period of subsequent
4 employment; and

5 (2) when the previously retired member
6 terminates the subsequent employment with an affiliated public
7 employer, the previously retired member shall retire according
8 to the provisions of the Public Employees Retirement Act,
9 subject to the following conditions:

10 (a) payment of the pension shall resume
11 in accordance with the provisions of Subsection A of this
12 section;

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

20 (c) the recalculated pension shall not
21 be less than the amount of the suspended pension.

22 G. A previously retired member who returned to work
23 with an affiliated public employer prior to July 1, 2010 shall
24 be subject to the provisions of this section in effect on the
25 date the previously retired member returned to work; provided

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1 that, on and after July 1, 2010, the previously retired member
2 shall pay the employee contribution in an amount specified in
3 the Public Employees Retirement Act for the position in which
4 the previously retired member is employed.

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

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1 of each coverage plan for the purpose of this subsection shall
2 be those in effect at the time the member ceased to be covered
3 by the coverage plan. "Service credit", for the purposes of
4 this subsection, shall be only personal service rendered an
5 affiliated public employer and credited to the member under the
6 provisions of Subsection A of Section 10-11-4 NMSA 1978.
7 Service credited under any other provision of the Public
8 Employees Retirement Act shall not be used to satisfy the
9 three-year service credit requirement of this subsection."

10 SECTION 2. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2013.