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SENATE BILL 317

**51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**

INTRODUCED BY

Gay G. Kernan

AN ACT

RELATING TO PENSIONS; PROVIDING EXCEPTIONS AND ESTABLISHING  
CONDITIONS FOR RETIRED STATE POLICE OFFICERS, ADULT  
CORRECTIONAL OFFICERS, MUNICIPAL POLICE OFFICERS AND CERTAIN  
LICENSED SOCIAL WORKERS TO RETURN TO WORK WITH AN AFFILIATED  
PUBLIC EMPLOYER WITHOUT SUSPENDING THEIR PENSION 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--  
EXCEPTIONS AND CONDITIONS--BENEFITS CONTINUED--CONTRIBUTIONS.--

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

- (1) a written application for normal

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1 retirement, in the form prescribed by the association, is filed  
2 with the association;

3 (2) employment is terminated with all  
4 employers covered by any state system or the educational  
5 retirement system;

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

8 (4) the member meets the age and service  
9 credit requirement for normal retirement specified in the  
10 coverage plan applicable to the member.

11 B. The amount of normal retirement pension is  
12 determined in accordance with the coverage plan applicable to  
13 the member.

14 C. Except as provided in Subsection E of this  
15 section, on or after July 1, 2010, a retired member may be  
16 subsequently employed by an affiliated public employer only  
17 pursuant to the following provisions:

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

25 (2) the [~~previously~~] retired member's pension

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1 shall be suspended upon commencement of the employment;

2 (3) except as provided in Subsection [G] H of  
3 this section, the [~~previously~~] retired member shall not become  
4 a member and thus the [~~previously~~] retired member shall not  
5 accrue service credit, and the [~~previously~~] retired member and  
6 that person's subsequent affiliated public employer shall not  
7 make contributions under any coverage plan pursuant to the  
8 Public Employees Retirement Act; and

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

13 D. Notwithstanding the provisions of Subsection B  
14 of Section 10-11-118 NMSA 1978, on and after July 1, 2013, if a  
15 retired member becomes employed with an employer pursuant to  
16 the Educational Retirement Act:

17 (1) the retired member's cost-of-living  
18 pension adjustment shall be suspended upon commencement of the  
19 subsequent employment; and

20 (2) upon termination of the subsequent  
21 employment, the retired member's suspended cost-of-living  
22 pension adjustment shall be reinstated as provided under  
23 Subsection B of Section 10-11-118 NMSA 1978.

24 E. The provisions of Subsections C and [H] I of  
25 this section do not apply to:

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

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

6 (3) a retired licensed social worker employed  
7 by an affiliated public employer;

8 (4) a retired state police member, a retired  
9 adult correctional officer member, a retired municipal police  
10 member, a retired municipal fire member or a retired county  
11 sheriff, each of whom has not been employed with an affiliated  
12 public employer or retained as an independent contractor by the  
13 affiliated public employer from which the member retired for at  
14 least ninety consecutive days from the date of retirement until  
15 the date of the commencement of the subsequent employment; or

16 [~~(3)~~] (5) a retired member who is elected to  
17 serve a term as an elected official; provided that:

18 (a) the retired member files an  
19 irrevocable exemption from membership with the association  
20 within thirty days of taking office; and

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

23 F. A retired member who returns to employment  
24 during retirement pursuant to Subsection E of this section is  
25 entitled to receive retirement benefits but is not entitled to

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1 accrue service credit or to acquire or purchase service credit  
2 in the future for the period of the [~~previously~~] retired  
3 member's [~~reemployment~~] subsequent employment with an  
4 affiliated public employer and, except as provided in  
5 Subsection G of this section, the retired member shall not pay  
6 the member contributions and the retired member's subsequent  
7 affiliated public employer shall not pay the employer  
8 contributions applicable to the member coverage plan associated  
9 with the retired member's subsequent employment.

10 G. A member who returns to employment pursuant to  
11 Paragraph (3) or (4) of Subsection E of this section shall pay  
12 the member contributions, and the retired member's subsequent  
13 affiliated public employer shall pay the employer  
14 contributions, applicable to the member coverage plan  
15 associated with the retired member's subsequent employment.

16 [~~G.~~] H. At any time during a [~~previously~~] retired  
17 member's subsequent employment pursuant to Subsection C of this  
18 section, the [~~previously~~] retired member may elect to become a  
19 member and the following conditions shall apply:

20 (1) the [~~previously~~] retired member and the  
21 subsequent affiliated public employer shall make the required  
22 employee and employer contributions, and the [~~previously~~]  
23 retired member shall accrue service credit for the period of  
24 subsequent employment; and

25 (2) when the [~~previously~~] retired member

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1 terminates the subsequent employment with an affiliated public  
2 employer, 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  
9 member accrued at least three years of service credit on  
10 account of the subsequent employment, the recalculation of  
11 pension shall: 1) employ the form of payment selected by the  
12 [~~previously~~] retired member at the time of the first  
13 retirement; and 2) use the provisions of the coverage plan  
14 applicable to the member on the date of the first retirement;  
15 and

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

18 [~~H.~~] I. A [~~previously~~] retired member who returned  
19 to work with an affiliated public employer prior to July 1,  
20 2010 shall be subject to the provisions of this section in  
21 effect on the date the [~~previously~~] retired member returned to  
22 work; provided that:

23 (1) on and after July 1, 2010, the previously  
24 retired member shall pay the employee contribution in an amount  
25 specified in the Public Employees Retirement Act for the

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1 position in which the previously retired member is subsequently  
2 employed;

3 (2) notwithstanding the provisions of  
4 Subsection B of Section 10-11-118 NMSA 1978, on and after July  
5 1, 2013, the previously retired member's cost-of-living pension  
6 adjustment shall be suspended; and

7 (3) upon termination of the subsequent  
8 employment with an affiliated public employer, the previously  
9 retired member's cost-of-living pension adjustment shall be  
10 reinstated as provided in Subsection B of Section 10-11-118  
11 NMSA 1978.

12 [~~F.~~] J. The pension of a member who has earned  
13 service credit under more than one coverage plan shall be  
14 determined as follows:

15 (1) the pension of a member who has three or  
16 more years of service credit earned on or before June 30, 2013  
17 under each of two or more coverage plans shall be determined in  
18 accordance with the coverage plan that produces the highest  
19 pension;

20 (2) the pension of a member who has service  
21 credit earned on or before June 30, 2013 under two or more  
22 coverage plans but who has three or more years of service  
23 credit under only one of those coverage plans shall be  
24 determined in accordance with the coverage plan in which the  
25 member has three or more years of service credit. If the

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1 service credit is acquired under two different coverage plans  
2 applied to the same affiliated public employer as a consequence  
3 of an election by the members, adoption by the affiliated  
4 public employer or a change in the law that results in the  
5 application of a coverage plan with a greater pension, the  
6 greater pension shall be paid a member retiring from the  
7 affiliated public employer under which the change in coverage  
8 plan took place regardless of the amount of service credit  
9 under the coverage plan producing the greater pension; provided  
10 that the member has three or more years of continuous  
11 employment with that affiliated public employer immediately  
12 preceding or immediately preceding and immediately following  
13 the date the coverage plan changed;

14 (3) the pension of a member who has service  
15 credit earned on or before June 30, 2013 under each of two or  
16 more coverage plans and who has service credit earned under any  
17 coverage plan on or after July 1, 2013 shall be equal to the  
18 sum of:

19 (a) the pension attributable to the  
20 service credit earned on or before June 30, 2013 determined  
21 pursuant to Paragraph (1) or (2) of this subsection; and

22 (b) the pension attributable to the  
23 service credit earned under each coverage plan on or after July  
24 1, 2013;

25 (4) the pension of a member who has service

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1 credit earned only on and after July 1, 2013 shall be equal to  
2 the sum of the pension attributable to the service credit the  
3 member has accrued under each coverage plan; and

4 (5) the provisions of each coverage plan for  
5 the purpose of this subsection shall be those in effect at the  
6 time the member ceased to be covered by the coverage plan.

7 "Service credit", for the purposes of this subsection, shall be  
8 only personal service rendered an affiliated public employer  
9 and credited to the member under the provisions of Subsection A  
10 of Section 10-11-4 NMSA 1978. Service credited under any other  
11 provision of the Public Employees Retirement Act shall not be  
12 used to satisfy the three-year service credit requirement of  
13 this subsection."

14 **SECTION 2. EFFECTIVE DATE.**--The effective date of the  
15 provisions of this act is July 1, 2014.