

1 SENATE BILL 466

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Stuart Ingle

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10 AN ACT

11 RELATING TO PUBLIC EMPLOYEE RETIREMENT; ADDING AN EXCEPTION FOR
12 RETIRED COMMISSIONED POLICE OFFICER, STATE POLICE AND
13 UNDERSHERIFF MEMBERS TO THE RETURN-TO-WORK RESTRICTIONS IN THE
14 PUBLIC EMPLOYEES RETIREMENT ACT; ESTABLISHING CONDITIONS FOR
15 COMMISSIONED POLICE OFFICER, STATE POLICE AND UNDERSHERIFF
16 MEMBERS TO RETURN TO WORK WITH AN AFFILIATED PUBLIC EMPLOYER
17 WHILE CONTINUING TO RECEIVE RETIREMENT BENEFITS.

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

20 SECTION 1. Section 10-11-8 NMSA 1978 (being Laws 1987,
21 Chapter 253, Section 8, as amended by Laws 2014, Chapter 35,
22 Section 1 and by Laws 2014, Chapter 39, Section 1 and also by
23 Laws 2014, Chapter 43, Section 1) is amended to read:

24 "10-11-8. NORMAL RETIREMENT--RETURN TO EMPLOYMENT--
25 BENEFITS CONTINUED--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 E of this
19 section, on or after July 1, 2010, a retired member may be
20 subsequently employed by an affiliated public employer only
21 pursuant to the following provisions:

22 (1) the retired member has not been employed
23 as an employee of an affiliated public employer or retained as
24 an independent contractor by the affiliated public employer
25 from which the retired member retired for at least twelve

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1 consecutive months from the date of retirement to the
2 commencement of subsequent employment or reemployment with an
3 affiliated public employer;

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

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

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

15 D. Notwithstanding the provisions of Subsection B
16 of Section 10-11-118 NMSA 1978, on and after July 1, 2013, if a
17 retired member becomes employed with an employer pursuant to
18 the Educational Retirement Act, and effective July 1, 2014, if
19 a retired member who, subsequent to retirement, is employed and
20 covered pursuant to the Judicial Retirement Act, and, effective
21 July 1, 2014, if a retired member who, subsequent to
22 retirement, is employed and covered pursuant to the Magistrate
23 Retirement Act:

24 (1) the retired member's cost-of-living
25 pension adjustment shall be suspended upon commencement of the

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1 employment; and

2 (2) upon termination of the employment, the
3 retired member's suspended cost-of-living pension adjustment
4 shall be reinstated as provided under Subsection B of Section
5 10-11-118 NMSA 1978.

6 E. The provisions of Subsections C, H and I of this
7 section do not apply to:

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

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

13 (3) a retired member who is elected to serve a
14 term as an elected official in an office covered pursuant to
15 the Public Employees Retirement Act; provided that:

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

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

21 ~~[F. A retired member who returns to employment~~
22 ~~during retirement pursuant to Subsection E of this section is~~
23 ~~entitled to receive retirement benefits but is not entitled to~~
24 ~~accrue service credit or to acquire or purchase service credit~~
25 ~~in the future for the period of the retired member's subsequent~~

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1 ~~employment with an affiliated public employer]~~

2 (4) a commissioned police officer, state
3 police or undersheriff member who has not been employed as an
4 employee of an affiliated public employer or retained as an
5 independent contractor by the affiliated public employer from
6 which the member retired for at least sixty consecutive days
7 from the date of retirement to the commencement of employment
8 or reemployment with an affiliated public employer.

9 F. In the case of a retired member who returns to
10 employment during retirement pursuant to:

11 (1) Paragraph (1), (2) or (3) of Subsection E
12 of this section:

13 (a) the member shall be entitled to the
14 continuation of retirement benefits;

15 (b) the member shall not accrue service
16 credit or acquire or purchase service credit in the future for
17 the period of the previously retired member's reemployment with
18 an affiliated public employer; and

19 (c) the member and the subsequent
20 affiliated public employer shall not make the employee and
21 employer contributions pursuant to the Public Employees
22 Retirement Act for the appropriate coverage plan otherwise
23 associated with the member's reemployment; or

24 (2) Paragraph (4) of Subsection E of this
25 section:

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1 (a) the member shall be entitled to
2 return to work as a commissioned police officer, state police
3 or undersheriff member;

4 (b) the member shall be entitled to the
5 continuation of retirement benefits;

6 (c) the member shall not accrue service
7 credit or acquire or purchase service credit in the future for
8 the period of the previously retired member's reemployment with
9 an affiliated public employer; and

10 (d) the member and the subsequent
11 affiliated public employer shall make the employee and employer
12 contributions pursuant to the Public Employees Retirement Act
13 for the appropriate coverage plan associated with the member's
14 reemployment.

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

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

24 (2) when the previously retired member
25 terminates the subsequent employment with an affiliated public

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1 employer, the previously retired member shall retire according
2 to the provisions of the Public Employees Retirement Act,
3 subject to the following conditions:

4 (a) payment of the pension shall resume
5 in accordance with the provisions of Subsection A of this
6 section;

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

14 (c) the recalculated pension shall not
15 be less than the amount of the suspended pension.

16 H. A retired member who returned to work with an
17 affiliated public employer prior to July 1, 2010 shall be
18 subject to the provisions of this section in effect on the date
19 the retired member returned to work; provided that:

20 (1) on and after July 1, 2010, the retired
21 member shall pay the employee contribution in an amount
22 specified in the Public Employees Retirement Act for the
23 position in which the retired member is subsequently employed;

24 (2) notwithstanding the provisions of
25 Subsection B of Section 10-11-118 NMSA 1978, on and after July

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1 1, 2013, the retired member's cost-of-living pension adjustment
2 shall be suspended; and

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

7 I. Effective July 1, 2014, if a retired member who,
8 subsequent to retirement, is employed and covered pursuant to
9 the provisions of the Magistrate Retirement Act or Judicial
10 Retirement Act, during the period of subsequent employment:

11 (1) the member shall be entitled to receive
12 retirement benefits;

13 (2) the retired member's cost-of-living
14 pension adjustment shall be suspended upon commencement of the
15 employment; and

16 (3) upon termination of the employment, the
17 retired member's suspended cost-of-living pension adjustment
18 shall be reinstated as provided under Subsection B of Section
19 10-11-118 NMSA 1978.

20 J. The pension of a member who has earned service
21 credit under more than one coverage plan shall be determined as
22 follows:

23 (1) the pension of a member who has three or
24 more years of service credit earned on or before June 30, 2013
25 under each of two or more coverage plans shall be determined in

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1 accordance with the coverage plan that produces the highest
2 pension;

3 (2) the pension of a member who has service
4 credit earned on or before June 30, 2013 under two or more
5 coverage plans but who has three or more years of service
6 credit under only one of those coverage plans shall be
7 determined in accordance with the coverage plan in which the
8 member has three or more years of service credit. If the
9 service credit is acquired under two different coverage plans
10 applied to the same affiliated public employer as a consequence
11 of an election by the members, adoption by the affiliated
12 public employer or a change in the law that results in the
13 application of a coverage plan with a greater pension, the
14 greater pension shall be paid a member retiring from the
15 affiliated public employer under which the change in coverage
16 plan took place regardless of the amount of service credit
17 under the coverage plan producing the greater pension; provided
18 that the member has three or more years of continuous
19 employment with that affiliated public employer immediately
20 preceding or immediately preceding and immediately following
21 the date the coverage plan changed;

22 (3) the pension of a member who has service
23 credit earned on or before June 30, 2013 under each of two or
24 more coverage plans and who has service credit earned under any
25 coverage plan on or after July 1, 2013 shall be equal to the

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1 sum of:

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

5 (b) the pension attributable to the
6 service credit earned under each coverage plan on or after July
7 1, 2013;

8 (4) the pension of a member who has service
9 credit earned only on and after July 1, 2013 shall be equal to
10 the sum of the pension attributable to the service credit the
11 member has accrued under each coverage plan; and

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

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