

HOUSE BILL 171

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

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This document incorporates committee amendments adopted during standing committee(s) consideration of this measure. It is a tool to show the amendments in context and is not to be used for introduction, amendment or substitution.

AN ACT

RELATING TO PUBLIC EMPLOYEES RETIREMENT; ALLOWING CERTAIN RETIRED LAW ENFORCEMENT OFFICERS TO RETURN TO WORK FOR AFFILIATED PUBLIC EMPLOYERS UNDER CERTAIN CONDITIONS; DECLARING AN EMERGENCY.

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 2014, Chapter 35, Section 1 and by Laws 2014, Chapter 39, Section 1 and also by Laws 2014, Chapter 43, Section 1) is amended to read:

"10-11-8. NORMAL RETIREMENT--RETURN TO EMPLOYMENT-- 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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retirement, in the form prescribed by the association, is filed with the association;

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

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

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

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

C. Except as provided in [~~Subsection~~] Subsections E and K of this section, on or after July 1, 2010, a retired member may be subsequently employed by an affiliated public employer only pursuant to the following provisions:

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

(2) the retired member's pension shall be

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suspended upon commencement of the subsequent employment;

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

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

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

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

(2) upon termination of the employment, the retired member's suspended cost-of-living pension adjustment shall be reinstated as provided under Subsection B of Section

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10-11-118 NMSA 1978.

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

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

(2) a retired member employed temporarily as a precinct board member for a municipal election or an election covered by the Election Code; or

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

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

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

F. A retired member who returns to employment during retirement pursuant to Subsection E of this section is entitled to receive retirement benefits but is not entitled to accrue service credit or to acquire or purchase service credit in the future for the period of the retired member's subsequent employment with an affiliated public employer.

G. At any time during a retired member's subsequent employment pursuant to Subsection C of this section, the retired member may elect to become a member and the following

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conditions shall apply:

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

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

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

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

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

H. A retired member who returned to work with an affiliated public employer prior to July 1, 2010 shall be

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subject to the provisions of this section in effect on the date the retired member returned to work; provided that:

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

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

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

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

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

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

(3) upon termination of the employment, the retired member's suspended cost-of-living pension adjustment

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shall be reinstated as provided under Subsection B of Section 10-11-118 NMSA 1978.

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

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

(2) the pension of a member who has service credit earned on or before June 30, 2013 under two or more coverage plans but who has three or more years of service credit under only one of those coverage plans shall be determined in accordance with the coverage plan in which the member has three or more years of service credit. If the service credit is acquired under two different coverage plans applied to the same affiliated public employer as a consequence of an election by the members, adoption by the affiliated public employer or a change in the law that results in the application of a coverage plan with a greater pension, the greater pension shall be paid a member retiring from the affiliated public employer under which the change in coverage plan took place regardless of the amount of service credit under the coverage plan producing the greater pension; provided

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that the member has three or more years of continuous employment with that affiliated public employer immediately preceding or immediately preceding and immediately following the date the coverage plan changed;

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

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

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

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

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

"Service credit", for the purposes of this subsection, shall be only personal service rendered an affiliated public employer and credited to the member under the provisions of Subsection A

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of Section 10-11-4 NMSA 1978. Service credited under any other provision of the Public Employees Retirement Act shall not be used to satisfy the three-year service credit requirement of this subsection.

K. Notwithstanding the provisions of any other subsection of this section, certified law enforcement officers who have retired on or before December 31, 2015 under any municipal police member coverage plan or as a certified law enforcement officer covered under state police member and adult correctional officer member coverage plan 1 may be subsequently employed as certified law enforcement officers by an affiliated public employer if the retired member has not been employed as an employee of an affiliated public employer or retained as an independent contractor by the affiliated public employer from which the retired member retired for at least ninety consecutive days from the date of retirement to the commencement of subsequent employment or reemployment with an affiliated public employer; provided that:

(1) the retired member's pension, including any cost-of-living adjustment, shall continue to be paid during the period of subsequent employment;

(2) the retired member shall not become a member during the period of subsequent employment;

(3) the retired member shall not accrue service credit for any portion of the period of subsequent

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employment;

(4) the retired member and the retired member's subsequent affiliated public employer shall make the contributions that would be required for members and employers under the applicable coverage plan during the entire period of subsequent employment;

(5) the contributions paid by or on behalf of the retired member during the term of subsequent employment shall not be refundable at the termination of the subsequent employment;

(6) the period of subsequent employment of a retired member pursuant to this subsection shall be no more than a total of five years from the date of hire with any affiliated public employer;

(7) the chief of police, the sheriff or the equivalent senior-most-ranking law enforcement officer of the affiliated public employer ~~has the sole discretion to select~~ shall screen retired members for subsequent employment or reemployment pursuant to this subsection and shall hire or recommend for hire in accordance with the established hiring process for the affiliated public employer;

(8) an affiliated public employer that is a class A county with a population over six hundred thousand or is a municipality with a population over fifty thousand located within a that class A county may not employ a number of retired

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members pursuant to this subsection that exceeds ten percent of the affiliated public employer's authorized police force; provided that retired members who were reemployed prior to the effective date of this 2016 act shall not be counted toward the maximum number allowed in this paragraph;~~and~~

(9) an affiliated public employer that is a class A county with a population over six hundred thousand or is a municipality with a population over fifty thousand located within a that class A county shall employ retired members only at ranks below sergeant and shall not promote subsequently employed retired members above the rank of sergeant at any time during the subsequent employment."~~;~~ and

(10) an affiliated public employer that is recruiting for a chief of police may hire a retired certified law enforcement officer in accordance with the established hiring process for the affiliated public employer."

SECTION 2. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.