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HOUSE BILL 137

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

Yvette Herrell

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:

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1 (1) a written application for normal
2 retirement, in the form prescribed by the association, is filed
3 with the association;

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

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

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

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

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

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

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

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

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

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

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

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

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1 shall be reinstated as provided under Subsection B of Section
2 10-11-118 NMSA 1978.

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

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

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

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

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

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

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

24 G. At any time during a retired member's subsequent
25 employment pursuant to Subsection C of this section, the

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1 retired member may elect to become a member and the following
2 conditions shall apply:

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

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

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

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

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

25 H. A retired member who returned to work with an

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1 affiliated public employer prior to July 1, 2010 shall be
2 subject to the provisions of this section in effect on the date
3 the retired member returned to work; provided that:

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

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

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

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

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

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

25 (3) upon termination of the employment, the

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1 retired member's suspended cost-of-living pension adjustment
2 shall be reinstated as provided under Subsection B of Section
3 10-11-118 NMSA 1978.

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

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

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

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1 under the coverage plan producing the greater pension; provided
2 that the member has three or more years of continuous
3 employment with that affiliated public employer immediately
4 preceding or immediately preceding and immediately following
5 the date the coverage plan changed;

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

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

14 (b) the pension attributable to the
15 service credit earned under each coverage plan on or after July
16 1, 2013;

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

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

24 "Service credit", for the purposes of this subsection, shall be
25 only personal service rendered an affiliated public employer

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1 and credited to the member under the provisions of Subsection A
2 of Section 10-11-4 NMSA 1978. Service credited under any other
3 provision of the Public Employees Retirement Act shall not be
4 used to satisfy the three-year service credit requirement of
5 this subsection.

6 K. Notwithstanding the provisions of any other
7 subsection of this section, certified law enforcement officers
8 who have retired on or before December 31, 2016 under any
9 municipal police member coverage plan or as a certified law
10 enforcement officer covered under state police member and adult
11 correctional officer member coverage plan l may be subsequently
12 employed as certified law enforcement officers by an affiliated
13 public employer if the retired member has not been employed as
14 an employee of an affiliated public employer or retained as an
15 independent contractor by the affiliated public employer from
16 which the retired member retired for at least ninety
17 consecutive days from the date of retirement to the
18 commencement of subsequent employment or reemployment with an
19 affiliated public employer; provided that:

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

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

25 (3) the retired member shall not accrue

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1 service credit for any portion of the period of subsequent
2 employment;

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

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

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

16 (7) the chief of police, the sheriff or the
17 equivalent senior-most-ranking law enforcement officer of the
18 affiliated public employer shall screen retired members for
19 subsequent employment or reemployment pursuant to this
20 subsection and shall hire or recommend for hire in accordance
21 with the established hiring process for the affiliated public
22 employer;

23 (8) an affiliated public employer that is a
24 class A county with a population of more than six hundred
25 thousand persons or is a municipality with a population of more

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1 than fifty thousand persons located within that class A county
2 may not employ a number of retired members pursuant to this
3 subsection that exceeds ten percent of the affiliated public
4 employer's authorized police force; provided that retired
5 members who were reemployed prior to the effective date of this
6 2018 act shall not be counted toward the maximum number allowed
7 in this paragraph;

8 (9) an affiliated public employer that is a
9 class A county with a population of more than six hundred
10 thousand persons or is a municipality with a population of more
11 than fifty thousand persons located within that class A county
12 shall employ retired members only at ranks below sergeant and
13 shall not promote subsequently employed retired members above
14 the rank of sergeant at any time during the subsequent
15 employment; and

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

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