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SENATE BILL 235

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

George K. Munoz

AN ACT

RELATING TO PUBLIC EMPLOYEES; PROVIDING FOR AN INVESTMENT-  
PERFORMANCE-BASED FRAMEWORK FOR THE COMPENSATION OF PUBLIC  
EMPLOYEES RETIREMENT ASSOCIATION AND EDUCATIONAL RETIREMENT  
BOARD INVESTMENT STAFF; EXEMPTING THOSE AGENCIES' INVESTMENT  
STAFF POSITIONS FROM THE PERSONNEL ACT.

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

SECTION 1. A new section of the Public Employees  
Retirement Act is enacted to read:

"[NEW MATERIAL] INVESTMENT STAFF--INVESTMENT-PERFORMANCE-  
BASED COMPENSATION--REPORTING.--

A. Each year, the retirement board, in consultation  
with the executive director of the association, shall establish  
a framework for the compensation of the association's chief  
investment officer and other investment staff that:

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- 1 (1) includes, for each of those positions:  
2 (a) a base compensation component; and  
3 (b) a variable, investment-performance-  
4 based component aligned with investment industry norms and best  
5 practices; and

6 (2) applies to the following fiscal year.

7 B. The association's chief investment officer and  
8 other investment staff shall receive compensation in accordance  
9 with the framework developed by the retirement board.

10 C. Each year, the executive director of the  
11 association shall report to the legislative finance committee  
12 and, as appropriate, to one or more other legislative interim  
13 committees, on the compensation framework established in  
14 accordance with Subsection A of this section."

15 SECTION 2. A new section of the Educational Retirement  
16 Act is enacted to read:

17 "[NEW MATERIAL] INVESTMENT STAFF--INVESTMENT-PERFORMANCE-  
18 BASED COMPENSATION--REPORTING.--

19 A. Each year, the board, in consultation with the  
20 director, shall establish a framework for the compensation of  
21 the board's chief investment officer and other investment staff  
22 that:

- 23 (1) includes, for each of those positions:  
24 (a) a base compensation component; and  
25 (b) a variable, investment-performance-

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1 based component aligned with investment industry norms and best  
2 practices; and

3 (2) applies to the following fiscal year.

4 B. The board's chief investment officer and other  
5 investment staff shall receive compensation in accordance with  
6 the framework developed by the board.

7 C. Each year, the director shall report to the  
8 legislative finance committee and, as appropriate, to one or  
9 more other legislative interim committees, on the compensation  
10 framework established in accordance with Subsection A of this  
11 section."

12 SECTION 3. Section 10-9-4 NMSA 1978 (being Laws 1961,  
13 Chapter 240, Section 4, as amended) is amended to read:

14 "10-9-4. COVERAGE OF SERVICE.--The Personnel Act and the  
15 service cover all state positions except:

16 A. officials elected by popular vote or appointed  
17 to fill vacancies to elective offices;

18 B. members of boards and commissions and heads of  
19 agencies appointed by the governor;

20 C. heads of agencies appointed by boards or  
21 commissions;

22 D. directors of department divisions;

23 E. those in educational institutions and in public  
24 schools;

25 F. those who are employed by state institutions and

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1 by state agencies providing educational programs and who are  
2 required to hold valid certificates as certified school  
3 instructors, as defined in Section 22-1-2 NMSA 1978, issued by  
4 the public education department;

5 G. those in the governor's office;

6 H. those in the state militia or the commissioned  
7 officers of the New Mexico state police division of the  
8 department of public safety;

9 I. those in the judicial branch of government;

10 J. those in the public defender department, upon  
11 implementation of personnel policies and rules by the public  
12 defender commission;

13 K. those in the legislative branch of government;

14 L. ~~[not more than]~~ up to two assistants and one  
15 secretary in the office of each official listed in Subsections  
16 A [B] and C of this section ~~[excluding members of boards and~~  
17 ~~commissions in Subsection B of this section]~~ and in the office  
18 of each head of an agency appointed by the governor;

19 M. those of a professional or scientific nature and  
20 that are temporary ~~[in nature];~~

21 N. those filled by patients or inmates in  
22 charitable, penal or correctional institutions;

23 O. state employees if the board in its discretion  
24 decides that the position is one of policymaking; ~~and]~~

25 P. disadvantaged youth under twenty-two years of

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1 age who are regularly enrolled or to be enrolled in a secondary  
2 educational institution approved by the public education  
3 department or in an accredited state institution of advanced  
4 learning or vocational training and who are to be employed for  
5 not more than seven hundred twenty hours during any calendar  
6 year:

7 (1) the term "disadvantaged youth" shall be  
8 defined for purposes of this exemption by regulation duly  
9 promulgated by the board; and

10 (2) the board shall:

11 (a) require that all the criteria of  
12 this subsection have been met;

13 (b) establish employment lists for the  
14 certification of the highest-standing candidates to the  
15 prospective employers; and

16 (c) establish the pay rates for such  
17 employees;

18 Q. the chief investment officer of the public  
19 employees retirement association and those subject to the  
20 investment-performance-based compensation framework provided  
21 for by Section 1 of this 2019 act; and

22 R. the chief investment officer of the educational  
23 retirement board and those subject to the investment-  
24 performance-based compensation framework provided for by  
25 Section 2 of this 2019 act."

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1           SECTION 4. Section 10-9-5 NMSA 1978 (being Laws 1978,  
2 Chapter 96, Section 1, as amended) is amended to read:

3           "10-9-5. PUBLIC OFFICERS AND PUBLIC EMPLOYEES--EXECUTIVE  
4 BRANCH--ANNUAL EXEMPT SALARIES PLAN.--

5           A. The department of finance and administration  
6 shall prepare, by December 1 of each year, an exempt salaries  
7 plan for the governor's approval [~~The plan shall specify~~] that  
8 specifies salary ranges for the following public officer and  
9 public employee positions of the executive branch of  
10 government:

- 11                           (1) members of boards and commissions  
12 appointed by the governor;
- 13                           (2) heads of agencies or departments appointed  
14 by the governor;
- 15                           (3) heads of agencies or departments appointed  
16 by the respective boards and commissions of the agencies;
- 17                           (4) directors of department divisions;
- 18                           (5) employees in the governor's office;
- 19                           (6) positions in the state militia and the  
20 commissioned officers of the New Mexico state police division  
21 of the department of public safety;
- 22                           (7) assistants and secretaries in the offices  
23 of each official covered by Paragraphs (2) and (3) [~~and (10)~~]  
24 of this subsection;
- 25                           (8) temporary positions of a professional or

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1 scientific nature [~~which are temporary in nature~~]; and

2 (9) state employees whose positions the  
3 [~~personnel~~] board has classified as [~~policy-making~~]  
4 policymaking positions and exempt employees of elective public  
5 officials [~~and~~

6 ~~(10) secretaries of departments appointed by~~  
7 ~~the governor~~].

8 B. Excluded from the provisions of this section  
9 are:

10 (1) employees of the [~~commission on~~] higher  
11 education [~~and~~] department;

12 (2) employees of state educational  
13 institutions named in Article 12, Section 11 of the  
14 constitution of New Mexico;

15 (3) the chief investment officer of the public  
16 employees retirement association and those subject to the  
17 investment-performance-based compensation framework provided  
18 for by Section 1 of this 2019 act; and

19 (4) the chief investment officer of the  
20 educational retirement board and those subject to the  
21 investment-performance-based compensation framework provided  
22 for by Section 2 of this 2019 act.

23 C. The exempt salaries plan for the ensuing fiscal  
24 year, as prepared by the department of finance and  
25 administration and approved by the governor, shall be published

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1 as a part of the executive budget document presented to the  
2 legislature at its next regular session following the  
3 preparation of the plan.

4 D. Upon the governor's approval, the plan shall  
5 take effect at the beginning of the subsequent fiscal year."

6 SECTION 5. Section 10-11-2 NMSA 1978 (being Laws 1987,  
7 Chapter 253, Section 2, as amended) is amended to read:

8 "10-11-2. DEFINITIONS.--As used in the Public Employees  
9 Retirement Act:

10 A. "accumulated member contributions" means the  
11 amounts deducted from the salary of a member and credited to  
12 the member's individual account, together with interest, if  
13 any, credited to that account;

14 B. "affiliated public employer" means the state and  
15 any public employer affiliated with the association as provided  
16 in the Public Employees Retirement Act, but does not include an  
17 employer pursuant to the Magistrate Retirement Act, the  
18 Judicial Retirement Act or the Educational Retirement Act;

19 C. "association" means the public employees  
20 retirement association established under the Public Employees  
21 Retirement Act;

22 D. "disability retired member" means a retired  
23 member who is receiving a pension pursuant to the disability  
24 retirement provisions of the Public Employees Retirement Act;

25 E. "disability retirement pension" means the

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1 pension paid pursuant to the disability retirement provisions  
2 of the Public Employees Retirement Act;

3 F. "educational retirement system" means that  
4 retirement system provided for in the Educational Retirement  
5 Act;

6 G. "employee" means any employee of an affiliated  
7 public employer;

8 H. "federal social security program" means that  
9 program or those programs created and administered pursuant to  
10 the act of congress approved August 14, 1935, Chapter 531, 49  
11 Stat. 620, as that act may be amended;

12 I. "final average salary" means the final average  
13 salary calculated in accordance with the provisions of the  
14 applicable coverage plan;

15 J. "form of payment" means the applicable form of  
16 payment of a pension provided for in Section 10-11-117 NMSA  
17 1978;

18 K. "former member" means a person who was  
19 previously employed by an affiliated public employer, who has  
20 terminated that employment and who has received a refund of  
21 member contributions;

22 L. "fund" means the funds included under the Public  
23 Employees Retirement Act;

24 M. "member" means a currently employed,  
25 contributing employee of an affiliated public employer, or a

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1 person who has been but is not currently employed by an  
2 affiliated public employer, who has not retired and who has not  
3 received a refund of member contributions; "member" also  
4 includes the following:

5 (1) "adult correctional officer member" means  
6 a member who is employed as an adult correctional officer or an  
7 adult correctional officer specialist by a state correctional  
8 facility of the corrections department or its successor agency;

9 (2) "juvenile correctional officer member"  
10 means a member who is employed as a juvenile correctional  
11 officer by the children, youth and families department or its  
12 successor agency;

13 (3) "municipal detention officer member" means  
14 a member who is employed by an affiliated public employer other  
15 than the state and who has inmate custodial responsibilities at  
16 a facility used for the confinement of persons charged with or  
17 convicted of a violation of a law or ordinance;

18 (4) "municipal fire member" means any member  
19 who is employed as a full-time nonvolunteer firefighter by an  
20 affiliated public employer and who has taken the oath  
21 prescribed for firefighters;

22 (5) "municipal police member" means any member  
23 who is employed as a police officer by an affiliated public  
24 employer, other than the state, and who has taken the oath  
25 prescribed for police officers; and

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1                   (6) "state police member" means a member who  
2 is an officer of the New Mexico state police and who has taken  
3 the oath prescribed for such officers, except that a state  
4 police member shall not include a member who is an officer of  
5 the New Mexico state police division and who was certified and  
6 commissioned as of June 30, 2015 in the former motor  
7 transportation division or the former special investigations  
8 division of the department of public safety;

9                   N. "membership" means membership in the  
10 association;

11                   O. "pension" means a series of monthly payments to  
12 a retired member or survivor beneficiary as provided in the  
13 Public Employees Retirement Act;

14                   P. "public employer" means the state, any  
15 municipality, city, county, metropolitan arroyo flood control  
16 authority, economic development district, regional housing  
17 authority, soil and water conservation district, entity created  
18 pursuant to a joint powers agreement, council of government,  
19 conservancy district, irrigation district, water and sanitation  
20 district, water district and metropolitan water board,  
21 including the boards, departments, bureaus and agencies of a  
22 public employer, so long as these entities fall within the  
23 meaning of governmental plan as that term is used in Section  
24 414(d) of the Internal Revenue Code of 1986, as amended;

25                   Q. "refund beneficiary" means a person designated

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1 by the member, in writing, in the form prescribed by the  
2 association, as the person who would be refunded the member's  
3 accumulated member contributions payable if the member dies and  
4 no survivor pension is payable or who would receive the  
5 difference between pension paid and accumulated member  
6 contributions if the retired member dies before receiving in  
7 pension payments the amount of the accumulated member  
8 contributions;

9 R. "retire" means to:

10 (1) terminate employment with all employers  
11 covered by any state system or the educational retirement  
12 system; and

13 (2) receive a pension from a state system or  
14 the educational retirement system;

15 S. "retired member" means a person who has met all  
16 requirements for retirement and who is receiving a pension from  
17 the fund;

18 T. "retirement board" means the retirement board  
19 provided for in the Public Employees Retirement Act;

20 U. "salary" means the base salary or wages paid a  
21 member, including longevity pay, for personal services rendered  
22 an affiliated public employer. "Salary" [~~shall~~] does not  
23 include overtime pay, allowances for housing, clothing,  
24 equipment or travel, payments for unused sick leave, unless the  
25 unused sick leave payment is made through continuation of the

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1 member on the regular payroll for the period represented by  
2 that payment, [~~and~~] investment-performance-based compensation  
3 received in accordance with Section 1 or 2 of this 2019 act or  
4 any other form of remuneration not specifically designated by  
5 law as included in salary for Public Employees Retirement Act  
6 purposes. Salary in excess of the limitations set forth in  
7 Section 401(a)(17) of the Internal Revenue Code of 1986, as  
8 amended, shall be disregarded. The limitation on compensation  
9 for eligible employees shall not be less than the amount that  
10 was allowed to be taken into account under the state retirement  
11 system acts in effect on July 1, 1993. For purposes of this  
12 subsection, "eligible employee" means an individual who was a  
13 member of a state system before the first plan year beginning  
14 after December 31, 1995;

15 V. "state system" means the retirement programs  
16 provided for in the Public Employees Retirement Act, the  
17 Magistrate Retirement Act and the Judicial Retirement Act;

18 W. "state retirement system acts" means  
19 collectively the Public Employees Retirement Act, the  
20 Magistrate Retirement Act, the Judicial Retirement Act and the  
21 Volunteer Firefighters Retirement Act; and

22 X. "survivor beneficiary" means a person who  
23 receives a pension or who has been designated to be paid a  
24 pension as a result of the death of a member or retired  
25 member."

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SECTION 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2020.