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SENATE BILL 384

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

INTRODUCED BY

Pete Campos

AN ACT

RELATING TO PUBLIC EMPLOYEES; AMENDING SECTIONS OF THE PUBLIC  
EMPLOYEES RETIREMENT ACT TO INCLUDE CERTAIN SPECIAL HOSPITAL  
DISTRICTS AS PUBLIC EMPLOYERS.

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

**SECTION 1.** Section 10-11-2 NMSA 1978 (being Laws 1987,  
Chapter 253, Section 2, as amended) is amended to read:

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

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

B. "affiliated public employer" means the state and  
any public employer affiliated with the association as provided

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1 in the Public Employees Retirement Act, but does not include an  
2 employer pursuant to the Magistrate Retirement Act, the  
3 Judicial Retirement Act or the Educational Retirement Act;

4 C. "association" means the public employees  
5 retirement association established under the Public Employees  
6 Retirement Act;

7 D. "disability retired member" means a retired  
8 member who is receiving a pension pursuant to the disability  
9 retirement provisions of the Public Employees Retirement Act;

10 E. "disability retirement pension" means the  
11 pension paid pursuant to the disability retirement provisions  
12 of the Public Employees Retirement Act;

13 F. "educational retirement system" means that  
14 retirement system provided for in the Educational Retirement  
15 Act;

16 G. "employee" means any employee of an affiliated  
17 public employer;

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

22 I. "final average salary" means the final average  
23 salary calculated in accordance with the provisions of the  
24 applicable coverage plan;

25 J. "form of payment" means the applicable form of

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1 payment of a pension provided for in Section 10-11-117 NMSA  
2 1978;

3 K. "former member" means a person who was  
4 previously employed by an affiliated public employer, who has  
5 terminated that employment and who has received a refund of  
6 member contributions;

7 L. "fund" means the funds included under the Public  
8 Employees Retirement Act;

9 M. "member" means a currently employed,  
10 contributing employee of an affiliated public employer, or a  
11 person who has been but is not currently employed by an  
12 affiliated public employer, who has not retired and who has not  
13 received a refund of member contributions; "member" also  
14 includes the following:

15 (1) "adult correctional officer member" means  
16 a member who is employed as an adult correctional officer or an  
17 adult correctional officer specialist by a state correctional  
18 facility of the corrections department or its successor agency;

19 (2) "juvenile correctional officer member"  
20 means a member who is employed as a juvenile correctional  
21 officer by the children, youth and families department or its  
22 successor agency;

23 (3) "municipal detention officer member" means  
24 a member who is employed by an affiliated public employer other  
25 than the state and who has inmate custodial responsibilities at

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1 a facility used for the confinement of persons charged with or  
2 convicted of a violation of a law or ordinance;

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

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

11 (6) "state police member" means a member who  
12 is an officer of the New Mexico state police and who has taken  
13 the oath prescribed for such officers, except that a state  
14 police member shall not include a member who is an officer of  
15 the New Mexico state police division and who was certified and  
16 commissioned as of June 30, 2015 in the former motor  
17 transportation division or the former special investigations  
18 division of the department of public safety;

19 N. "membership" means membership in the  
20 association;

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

24 P. "public employer" means the state, any  
25 municipality, city, county, metropolitan arroyo flood control

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1 authority, economic development district, special hospital  
2 district, regional housing authority, soil and water  
3 conservation district, entity created pursuant to a joint  
4 powers agreement, council of government, conservancy district,  
5 irrigation district, water and sanitation district, water  
6 district and metropolitan water board, including the boards,  
7 departments, bureaus and agencies of a public employer, so long  
8 as these entities fall within the meaning of governmental plan  
9 as that term is used in Section 414(d) of the Internal Revenue  
10 Code of 1986, as amended;

11 Q. "refund beneficiary" means a person designated  
12 by the member, in writing, in the form prescribed by the  
13 association, as the person who would be refunded the member's  
14 accumulated member contributions payable if the member dies and  
15 no survivor pension is payable or who would receive the  
16 difference between pension paid and accumulated member  
17 contributions if the retired member dies before receiving in  
18 pension payments the amount of the accumulated member  
19 contributions;

20 R. "retire" means to:

21 (1) terminate employment with all employers  
22 covered by any state system or the educational retirement  
23 system; and

24 (2) receive a pension from a state system or  
25 the educational retirement system;

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1           S. "retired member" means a person who has met all  
2 requirements for retirement and who is receiving a pension from  
3 the fund;

4           T. "retirement board" means the retirement board  
5 provided for in the Public Employees Retirement Act;

6           U. "salary" means the base salary or wages paid a  
7 member, including longevity pay, for personal services rendered  
8 an affiliated public employer. "Salary" shall not include  
9 overtime pay, allowances for housing, clothing, equipment or  
10 travel, payments for unused sick leave, unless the unused sick  
11 leave payment is made through continuation of the member on the  
12 regular payroll for the period represented by that payment, and  
13 any other form of remuneration not specifically designated by  
14 law as included in salary for Public Employees Retirement Act  
15 purposes. Salary in excess of the limitations set forth in  
16 Section 401(a)(17) of the Internal Revenue Code of 1986, as  
17 amended, shall be disregarded. The limitation on compensation  
18 for eligible employees shall not be less than the amount that  
19 was allowed to be taken into account under the state retirement  
20 system acts in effect on July 1, 1993. For purposes of this  
21 subsection, "eligible employee" means an individual who was a  
22 member of a state system before the first plan year beginning  
23 after December 31, 1995;

24           V. "state system" means the retirement programs  
25 provided for in the Public Employees Retirement Act, the

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1 Magistrate Retirement Act and the Judicial Retirement Act;  
2 W. "state retirement system acts" means  
3 collectively the Public Employees Retirement Act, the  
4 Magistrate Retirement Act, the Judicial Retirement Act and the  
5 Volunteer Firefighters Retirement Act; and

6 X. "survivor beneficiary" means a person who  
7 receives a pension or who has been designated to be paid a  
8 pension as a result of the death of a member or retired  
9 member."

10 SECTION 2. Section 10-11-3 NMSA 1978 (being Laws 1987,  
11 Chapter 253, Section 3, as amended) is amended to read:

12 "10-11-3. MEMBERSHIP--REQUIREMENTS--EXCLUSIONS--  
13 TERMINATION.--

14 A. Except as may be provided for in the Volunteer  
15 Firefighters Retirement Act, the Judicial Retirement Act, the  
16 Magistrate Retirement Act, the Educational Retirement Act and  
17 the provisions of Sections 29-4-1 through 29-4-11 NMSA 1978  
18 governing the state police pension fund, each employee and  
19 elected official of every affiliated public employer shall be a  
20 member of the association, unless excluded from membership in  
21 accordance with Subsection B of this section.

22 B. The following employees and elected officials  
23 are excluded from membership in the association:

24 (1) elected officials who file with the  
25 association a written application for exemption from membership

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1 within twenty-four months of taking office;

2 (2) elected officials who file with the  
3 association a written application for exemption from membership  
4 within twenty-four months of the date the elected official's  
5 public employer becomes an affiliated public employer;

6 (3) employees designated by the affiliated  
7 public employer as seasonal or student employees or as trainee  
8 participants of the federally funded and state-funded senior  
9 employment trainee program, administered by the aging and long-  
10 term services department;

11 (4) employees who file with the association a  
12 written application for exemption from membership within thirty  
13 days of the date the employee's public employer becomes an  
14 affiliated public employer;

15 (5) employees of an affiliated public employer  
16 that is making contributions to a private retirement program on  
17 behalf of the employee as part of a compensation arrangement  
18 who file with the association a written application for  
19 exemption within thirty days of employment, unless the employee  
20 has previously retired under the provisions of the Public  
21 Employees Retirement Act;

22 (6) employees of an affiliated public employer  
23 who have retired under and are receiving a pension pursuant to  
24 the provisions of the Educational Retirement Act; ~~and~~

25 (7) retired members who return to work

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1 pursuant to Section 10-11-8 NMSA 1978 and are exempted from  
2 membership by the provisions of that section; and

3 (8) employees of public employers that are  
4 special hospital districts, which special hospital districts  
5 opt not to affiliate with the association.

6 C. Employees designated as seasonal and student  
7 employees shall be notified in writing by their affiliated  
8 public employer of the designation and the consequences of the  
9 designation with respect to membership, service credit and  
10 benefits. A copy of the notification shall be filed with the  
11 association within thirty days of the date of employment.

12 D. An exemption from membership by an elected  
13 official shall expire at the end of the term of office for  
14 which filed.

15 E. Employees and elected officials who have  
16 exempted themselves from membership may subsequently withdraw  
17 the exemption by filing a membership application; provided that  
18 an employee of a public employer that is a special hospital  
19 district shall not be permitted to file a membership  
20 application unless the special hospital district by which the  
21 employee is employed has opted to affiliate with the  
22 association. Membership shall commence the first day of the  
23 first pay period following the date the application is filed.

24 F. The membership of an employee or elected  
25 official shall cease if the employee terminates employment with

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1 an affiliated public employer or the elected official leaves  
2 office and the employee or elected official requests and  
3 receives a refund of member contributions."

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