

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 90

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

AN ACT

RELATING TO PUBLIC EMPLOYEE RETIREMENT; INCLUDING OVERTIME PAY
REQUIRED FOR A REGULAR SCHEDULED TOUR OF DUTY IN THE DEFINITION
OF "SALARY" IN THE PUBLIC EMPLOYEES RETIREMENT ACT; INCREASING
EMPLOYEE CONTRIBUTION RATES FOR ALL MUNICIPAL FIRE MEMBER
COVERAGE PLANS.

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;

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underscoring material = new
~~[bracketed material] = delete~~

1 B. "affiliated public employer" means the state and
2 any public employer affiliated with the association as provided
3 in the Public Employees Retirement Act, but does not include an
4 employer pursuant to the Magistrate Retirement Act, the
5 Judicial Retirement Act or the Educational Retirement Act;

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

9 D. "coverage plan funded ratio" means the ratio of
10 the actuarial value of the assets of a coverage plan to the
11 actuarial accrued liability of the association for payments
12 from the coverage plan, as determined by the association's
13 actuaries;

14 E. "disability retired member" means a retired
15 member who is receiving a pension pursuant to the disability
16 retirement provisions of the Public Employees Retirement Act;

17 F. "disability retirement pension" means the
18 pension paid pursuant to the disability retirement provisions
19 of the Public Employees Retirement Act;

20 G. "educational retirement system" means that
21 retirement system provided for in the Educational Retirement
22 Act;

23 H. "employee" means any employee of an affiliated
24 public employer;

25 I. "federal social security program" means that

1 program or those programs created and administered pursuant to
2 the act of congress approved August 14, 1935, Chapter 531, 49
3 Stat. 620, as that act may be amended;

4 J. "final average salary" means the final average
5 salary calculated in accordance with the provisions of the
6 applicable coverage plan;

7 K. "form of payment" means the applicable form of
8 payment of a pension provided for in Section 10-11-117 NMSA
9 1978;

10 L. "former member" means a person who was
11 previously employed by an affiliated public employer, who has
12 terminated that employment and who has received a refund of
13 member contributions;

14 M. "fund" means the funds included under the Public
15 Employees Retirement Act;

16 N. "member" means a currently employed,
17 contributing employee of an affiliated public employer, or a
18 person who has been but is not currently employed by an
19 affiliated public employer, who has not retired and who has not
20 received a refund of member contributions; "member" also
21 includes the following:

22 (1) "adult correctional officer member" means
23 a member who is employed as an adult correctional officer or an
24 adult correctional officer specialist by a state correctional
25 facility of the corrections department or its successor agency;

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1 (2) "adult probation and parole officer
2 member" means a member who is employed as a probation and
3 parole officer by the corrections department or its successor
4 agency;

5 (3) "juvenile correctional officer member"
6 means a member who is employed as a juvenile correctional
7 officer by the children, youth and families department or its
8 successor agency;

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

13 (5) "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 (6) "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 (7) "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 (8) "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 O. "membership" means membership in the
10 association;

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

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

20 V. "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 not include
23 overtime pay, unless the overtime payment is required for a
24 regular scheduled tour of duty as set forth in Section 207(k)
25 of Title 29 of the United States Code and is made on the

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

17 W. "state system" means the retirement programs
18 provided for in the Public Employees Retirement Act, the
19 Magistrate Retirement Act and the Judicial Retirement Act;

20 X. "state retirement system acts" means
21 collectively the Public Employees Retirement Act, the
22 Magistrate Retirement Act, the Judicial Retirement Act and the
23 Volunteer Firefighters Retirement Act; and

24 Y. "survivor beneficiary" means a person who
25 receives a pension or who has been designated to be paid a

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1 pension as a result of the death of a member or retired
2 member."

3 SECTION 2. Section 10-11-90 NMSA 1978 (being Laws 1987,
4 Chapter 253, Section 90, as amended) is amended to read:

5 "10-11-90. MUNICIPAL FIRE MEMBER COVERAGE PLAN 1--MEMBER
6 CONTRIBUTION RATE.--A member under municipal fire member
7 coverage plan 1 shall contribute eight percent of salary with
8 the first full pay period in the calendar month in which
9 municipal fire member coverage plan 1 becomes applicable to the
10 member, except that a member whose annual salary is greater
11 than twenty-five thousand dollars (\$25,000) shall contribute:

12 A. [~~prior to July 1, 2022, nine and one-half~~]
13 beginning July 1, 2021 and continuing through June 30, 2022,
14 eleven percent of salary;

15 B. beginning July 1, 2022 and continuing through
16 June 30, 2023, [~~ten~~] eleven and one-half percent of salary;

17 C. beginning July 1, 2023 and continuing through
18 June 30, 2024, [~~ten and one-half~~] twelve percent of salary;

19 D. beginning July 1, 2024 and continuing through
20 June 30, 2025, [~~eleven~~] twelve and one-half percent of salary;
21 and

22 E. beginning July 1, 2025 and thereafter, [~~eleven~~
23 ~~and one-half~~] thirteen percent of salary."

24 SECTION 3. Section 10-11-96 NMSA 1978 (being Laws 1987,
25 Chapter 253, Section 96, as amended) is amended to read:

1 "10-11-96. MUNICIPAL FIRE MEMBER COVERAGE PLAN 2--MEMBER
 2 CONTRIBUTION RATE.--A member under municipal fire member
 3 coverage plan 2 shall contribute eight percent of salary with
 4 the first full pay period in the calendar month in which
 5 municipal fire member coverage plan 2 becomes applicable to the
 6 member, except that a member whose annual salary is greater
 7 than twenty-five thousand dollars (\$25,000) shall contribute:

8 A. [~~prior to July 1, 2022, nine and one-half~~]
 9 beginning July 1, 2021 and continuing through June 30, 2022,
 10 eleven percent of salary;

11 B. beginning July 1, 2022 and continuing through
 12 June 30, 2023, [~~ten~~] eleven and one-half percent of salary;

13 C. beginning July 1, 2023 and continuing through
 14 June 30, 2024, [~~ten and one-half~~] twelve percent of salary;

15 D. beginning July 1, 2024 and continuing through
 16 June 30, 2025, [~~eleven~~] twelve and one-half percent of salary;
 17 and

18 E. beginning July 1, 2025 and thereafter, [~~eleven~~
 19 ~~and one-half~~] thirteen percent of salary."

20 SECTION 4. Section 10-11-102 NMSA 1978 (being Laws 1987,
 21 Chapter 253, Section 102, as amended) is amended to read:

22 "10-11-102. MUNICIPAL FIRE MEMBER COVERAGE PLAN 3--MEMBER
 23 CONTRIBUTION RATE.--A member under municipal fire member
 24 coverage plan 3 shall contribute eight percent of salary with
 25 the first full pay period in the calendar month in which

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1 municipal fire member coverage plan 3 becomes applicable to the
2 member, except that a member whose annual salary is greater
3 than twenty-five thousand dollars (\$25,000) shall contribute:

4 A. ~~[prior to July 1, 2022, nine and one-half]~~
5 beginning July 1, 2021 and continuing through June 30, 2022,
6 eleven percent of salary;

7 B. beginning July 1, 2022 and continuing through
8 June 30, 2023, ~~[ten]~~ eleven and one-half percent of salary;

9 C. beginning July 1, 2023 and continuing through
10 June 30, 2024, ~~[ten and one-half]~~ twelve percent of salary;

11 D. beginning July 1, 2024 and continuing through
12 June 30, 2025, ~~[eleven]~~ twelve and one-half percent of salary;
13 and

14 E. beginning July 1, 2025 and thereafter, ~~[eleven~~
15 ~~and one-half]~~ thirteen percent of salary."

16 SECTION 5. Section 10-11-108 NMSA 1978 (being Laws 1987,
17 Chapter 253, Section 108, as amended) is amended to read:

18 "10-11-108. MUNICIPAL FIRE MEMBER COVERAGE PLAN 4--MEMBER
19 CONTRIBUTION RATE.--A member under municipal fire member
20 coverage plan 4 shall contribute twelve and eight-tenths
21 percent of salary with the first full pay period in the
22 calendar month in which municipal fire member coverage plan 4
23 becomes applicable to the member, except that a member whose
24 annual salary is greater than twenty-five thousand dollars
25 (\$25,000) shall contribute:

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1 A. ~~[prior to July 1, 2022, fourteen and three-~~
2 ~~tenths]~~ beginning July 1, 2021 and continuing through June 30,
3 2022, fifteen and eight-tenths percent of salary;

4 B. beginning July 1, 2022 and continuing through
5 June 30, 2023, ~~[fourteen and eight-tenths]~~ sixteen and
6 three-tenths percent of salary;

7 C. beginning July 1, 2023 and continuing through
8 June 30, 2024, ~~[fifteen and three-tenths]~~ sixteen and
9 eight-tenths percent of salary;

10 D. beginning July 1, 2024 and continuing through
11 June 30, 2025, ~~[fifteen and eight-tenths]~~ seventeen and
12 three-tenths percent of salary; and

13 E. beginning July 1, 2025 and thereafter, ~~[sixteen~~
14 ~~and three-tenths]~~ seventeen and eight-tenths percent of
15 salary."

16 SECTION 6. Section 10-11-114 NMSA 1978 (being Laws 1987,
17 Chapter 253, Section 114, as amended) is amended to read:

18 "10-11-114. MUNICIPAL FIRE MEMBER COVERAGE PLAN 5--MEMBER
19 CONTRIBUTION RATE.--A member under municipal fire member
20 coverage plan 5 shall contribute sixteen and two-tenths percent
21 of salary with the first full pay period in the calendar month
22 in which municipal fire member coverage plan 5 becomes
23 applicable to the member, except that a member whose annual
24 salary is greater than twenty-five thousand dollars (\$25,000)
25 shall contribute:

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1 A. ~~[prior to July 1, 2022, seventeen and seven-~~
2 ~~tenths]~~ beginning July 1, 2021 and continuing through June 30,
3 2022, nineteen and two-tenths percent of salary;

4 B. beginning July 1, 2022 and continuing through
5 June 30, 2023, ~~[eighteen and two-tenths]~~ nineteen and
6 seven-tenths percent of salary;

7 C. beginning July 1, 2023 and continuing through
8 June 30, 2024, ~~[eighteen and seven-tenths]~~ twenty and
9 two-tenths percent of salary;

10 D. beginning July 1, 2024 and continuing through
11 June 30, 2025, ~~[nineteen and two-tenths]~~ twenty and
12 seven-tenths percent of salary; and

13 E. beginning July 1, 2025 and thereafter, ~~[nineteen~~
14 ~~and seven-tenths]~~ twenty-one and two-tenths percent of salary."

15 SECTION 7. APPLICABILITY.--The provisions of Section 1 of
16 this act apply to a member's salary or wages earned on or after
17 the effective date of this act.

18 SECTION 8. EFFECTIVE DATE.--The effective date of the
19 provisions of this act is July 1, 2021.