

SENATE FINANCE COMMITTEE SUBSTITUTE FOR  
SENATE BILL 430

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

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;  
CHANGING THE COMPOSITION OF THE PUBLIC EMPLOYEES RETIREMENT  
BOARD; CHANGING CERTAIN ELECTION REQUIREMENTS; REQUIRING NOTICE  
OF AN EMERGENCY MEETING.

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

SECTION 1. Section 10-11-130 NMSA 1978 (being Laws 1987,  
Chapter 253, Section 130, as amended) is amended to read:

"10-11-130. RETIREMENT BOARD--AUTHORITY--MEMBERSHIP.--

A. The "retirement board" is created and is the  
trustee of the association and the funds created by the state  
retirement system acts and has all the powers necessary or  
convenient to carry out and effectuate the purposes and  
provisions of the state retirement system acts, including, in  
addition to any specific powers provided for in the Public

.220533.1

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1 Employees Retirement Act but without limiting the generality of  
2 the foregoing, the power to:

3 (1) administer the state retirement system  
4 acts, including the management of the association and making  
5 effective the provisions of those acts, as well as to  
6 administer and manage any other employee benefit acts as  
7 provided by law;

8 (2) in addition to utilizing services of the  
9 attorney general and notwithstanding any other provision of  
10 law, employ or contract with and compensate competent legal  
11 counsel to handle the legal matters and litigation of the  
12 retirement board and the association and to give advice and  
13 counsel in regard to any matter connected with the duties of  
14 the retirement board;

15 (3) administer oaths;

16 (4) adopt and use a seal for authentication of  
17 records, processes and proceedings;

18 (5) create and maintain records relating to  
19 all members, affiliated public employers and all activities and  
20 duties required of the retirement board;

21 (6) issue subpoenas and compel the production  
22 of evidence and attendance of witnesses in connection with any  
23 hearings or proceedings of the retirement board;

24 (7) make and execute contracts;

25 (8) purchase, acquire or hold land adjacent to

.220533.1

1 the state capitol grounds or other suitable location and build  
2 thereon a building to house the association and its employees  
3 and, in the event additional office space is available in the  
4 building after the retirement board and its employees have been  
5 housed, to rent or lease the additional space to any public  
6 agency or private person; provided that first priority for the  
7 rental or leasing shall be to public agencies; and further  
8 provided that for the purpose of purchasing, acquiring or  
9 holding the land and the building thereon, the retirement board  
10 may use funds from the income fund and any other funds  
11 controlled by the retirement board the use of which for such  
12 purposes is not prohibited by law;

13 (9) after the sale of the land and building  
14 acquired pursuant to Paragraph (8) of this subsection, acquire  
15 land and build thereon a new building to house the association  
16 and its employees and hold the building and land in fee simple  
17 in the name of the association. In order to acquire the land  
18 and plan, design and construct the building, the retirement  
19 board may expend the proceeds of the sale of the land and  
20 building acquired pursuant to Paragraph (8) of this subsection  
21 or any funds controlled by the board, the use of which for such  
22 purposes is not otherwise prohibited by law;

23 (10) make and adopt such reasonable rules as  
24 may be necessary or convenient to carry out the duties of the  
25 retirement board and activities of the association, including

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1 any rules necessary to preserve the status of the association  
2 as a qualified pension plan under the provisions of the  
3 Internal Revenue Code of 1986, as amended, or under successor  
4 or related provisions of law;

5 (11) designate committees and designate  
6 committee members, including individuals who may not be members  
7 of the association; and

8 (12) select and contract for the services of  
9 one or more custodian banks for all funds under the retirement  
10 board's management. For the purpose of this paragraph,  
11 "custodian bank" means a financial institution with the general  
12 fiduciary duties to manage, control and collect the assets of  
13 an investment fund, including receiving all deposits and paying  
14 all disbursements as directed by staff, safekeeping of assets,  
15 coordination of asset transfers, timely settlement of  
16 securities transactions and accurate and timely reporting of  
17 the assets by individual account and in total.

18 B. The retirement board consists of

- 19 ~~[(1) the secretary of state;~~  
20 ~~(2) the state treasurer;~~  
21 ~~(3) four members under a state coverage plan~~  
22 ~~to be elected by the members under state coverage plans;~~  
23 ~~(4) four members under a municipal coverage~~  
24 ~~plan to be elected by the members under municipal coverage~~  
25 ~~plans, provided one member shall be a municipal member employed~~

.220533.1

1 ~~by a county; and~~

2 ~~(5) two retired members to be elected by the~~  
3 ~~retired members of the association.~~

4 C. ~~The results of elections of elected members of~~  
5 ~~the retirement board shall be certified at the annual meeting~~  
6 ~~of the association. Elections shall be conducted according to~~  
7 ~~rules the retirement board adopts from time to time] the~~  
8 ~~following members:~~

9 (1) the state treasurer or the treasurer's  
10 designee;

11 (2) the secretary of finance and  
12 administration or the secretary's designee;

13 (3) two retired members who have backgrounds  
14 in investments, finance or pension fund administration to be  
15 elected by the retired members of the association; and

16 (4) eight members appointed as follows, with  
17 due regard to the cultural diversity of the state and  
18 geographical representation of counties statewide:

19 (a) one active member of a municipal  
20 fire member coverage plan, to be appointed by the labor  
21 organization representing the largest number of those members;

22 (b) one active member of a municipal  
23 police member coverage plan, to be appointed by the labor  
24 organization representing the largest number of those members;

25 (c) one active member of a municipal

.220533.1

1 general member coverage plan, to be appointed by the labor  
2 organization representing the largest number of those members;

3 (d) one active member of a municipal  
4 plan who has a background in investments, finance or pension  
5 fund administration, to be appointed for the first term by the  
6 New Mexico association of counties, for the second term by the  
7 New Mexico municipal league and with the New Mexico association  
8 of counties and New Mexico municipal league alternating  
9 appointments every term thereafter;

10 (e) one active member of a state plan,  
11 other than a state general member coverage plan, to be  
12 appointed by the labor organization representing the largest  
13 number of those members;

14 (f) one active member of a state general  
15 member coverage plan, to be appointed by the labor organization  
16 representing the largest number of those members;

17 (g) one active member of a state plan  
18 who has a background in investments, finance or pension fund  
19 administration, to be appointed by the speaker of the house of  
20 representatives; and

21 (h) one active member of a state plan  
22 who has a background in investments, finance or pension fund  
23 administration, to be appointed by the president pro tempore of  
24 the senate.

25 ~~[D-]~~ C. Except as provided in Subsection D of this

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1 section, the regular term of office of the elected or appointed  
 2 members of the retirement board is [~~four~~] six years. [~~The term~~  
 3 ~~of one retirement board member under a state coverage plan~~  
 4 ~~expires annually on December 31. The terms of retirement board~~  
 5 ~~members under a municipal coverage plan expire on December 31~~  
 6 ~~of noncoinciding years in the pattern set by the retirement~~  
 7 ~~board]~~ An appointed or elected member shall not serve more than  
 8 one regular term of office. Members of the retirement board  
 9 serve until their successors have qualified.

10 ~~[E.—A]~~ D. The initial regular term of office for  
 11 the first members appointed or elected to the retirement board  
 12 pursuant to this 2021 act shall be as follows; provided that  
 13 the initial term shall constitute a regular term of office and  
 14 subsequent terms shall be for six years:

15 (1) the members appointed pursuant to  
 16 Subparagraphs (c), (d) and (e) of Paragraph (4) of Subsection B  
 17 of this section shall serve an initial term of two years  
 18 beginning July 1, 2021;

19 (2) the members appointed pursuant to  
 20 Subparagraphs (b) and (f) of Paragraph (4) of Subsection B of  
 21 this section shall serve an initial term of four years  
 22 beginning July 1, 2021;

23 (3) the members appointed pursuant to  
 24 Subparagraphs (a), (g) and (h) of Paragraph (4) of Subsection B  
 25 of this section shall serve an initial term of six years

.220533.1

1 beginning July 1, 2021;

2 (4) the retired member who was previously  
3 elected by the retired members of the association and serving  
4 on the board on the effective date of this 2021 act, for a term  
5 of office ending in calendar year 2023, shall serve until June  
6 of 2023, at which time an election shall be held for that  
7 office for an initial term of four years with the term of  
8 office beginning on July 1, 2023; provided that the term of  
9 office of that previously elected member serving on the board  
10 on the effective date of this 2021 act shall constitute a  
11 regular term of office; and

12 (5) the retired member who was previously  
13 elected by the retired members of the association and serving  
14 on the board on the effective date of this 2021 act, for a term  
15 of office ending in calendar year 2024, shall serve until June  
16 of 2025, at which time an election shall be held for that  
17 office for an initial term of six years with the term beginning  
18 on July 1, 2025; provided that the term of office of that  
19 previously elected member serving on the board on the effective  
20 date of this 2021 shall constitute a regular term of office.

21 E. An appointed or elected member [elected to] of  
22 the retirement board who fails to attend four consecutively  
23 scheduled meetings of the retirement board, unless in each case  
24 excused for cause by the retirement board members in  
25 attendance, is considered to have resigned from the retirement

.220533.1

1 board, and the retirement board shall by resolution declare the  
2 office vacated as of the date of adoption of the resolution.

3 ~~[A vacancy occurring on the retirement board, except in the  
4 case of an elected official, shall be filled by the remaining  
5 retirement board members, without requirement that a quorum be  
6 present. The member appointed to fill the vacancy serves for  
7 the remainder of the vacated term.]~~

8 F. When a vacancy on the retirement board occurs,  
9 except in the case of an ex-officio member, the original  
10 appointing authority shall select a successor in the same  
11 manner as the original selection was made. A vacancy on the  
12 retirement board of an appointed member shall be filled by  
13 appointment no later than sixty days following notification of  
14 a vacancy and shall be filled by the original appointing  
15 authority for the remainder of the unexpired term of office, or  
16 in the case of an elected member, shall be filled by election  
17 for the remainder of the unexpired term of office no later than  
18 one hundred eighty days following notification of a vacancy.  
19 An appointed or elected member may be removed by the retirement  
20 board; provided that the retirement board holds a removal  
21 hearing regarding the member and finds cause, by a two-thirds'  
22 vote of the members of the retirement board, to remove the  
23 member for reasons of incompetence, breach of fiduciary duty or  
24 malfeasance.

25 ~~[F-]~~ G. Members of the retirement board serve

.220533.1

1 without salary for their services as retirement board members,  
2 but they shall receive those amounts authorized under the Per  
3 Diem and Mileage Act.

4           [~~G.~~] H. The retirement board shall hold four  
5 regular meetings each year and shall designate in advance the  
6 time and place of the meetings. Special meetings and emergency  
7 meetings of the retirement board may be held upon call of the  
8 chair or any three members of the retirement board. Written  
9 notice of special meetings shall be sent to each member of the  
10 retirement board at least seventy-two hours in advance of the  
11 special meeting. [~~Verbal~~] Written notice of emergency  
12 meetings, including written notice provided through electronic  
13 means, shall be [~~given to as many members as is feasible~~] sent  
14 to each member at least eight hours before the emergency  
15 meeting, and the meeting shall commence with a statement of the  
16 nature of the emergency. The retirement board shall adopt its  
17 own rules of procedure and shall keep a record of its  
18 proceedings. All meetings of the retirement board shall comply  
19 with the Open Meetings Act. A majority of retirement board  
20 members shall constitute a quorum. Each attending member of  
21 the retirement board is entitled to one vote on each question  
22 before the retirement board, and at least a majority of a  
23 quorum shall be necessary for a decision by the retirement  
24 board.

25           [~~H.~~] I. Annual meetings of the members of the

1 association shall be held in Santa Fe at such time and place as  
2 the retirement board shall from time to time determine.  
3 Special meetings of the members of the association shall be  
4 held in Santa Fe upon call of any seven retirement board  
5 members. The retirement board shall send a written notice to  
6 the last known residence address of each member currently  
7 employed by an affiliated public employer at least ten days  
8 prior to any meeting of the members of the association. The  
9 notice shall contain the call of the meeting and the principal  
10 purpose of the meeting. All meetings of the association shall  
11 be public and shall be conducted according to procedures the  
12 retirement board shall from time to time adopt. The retirement  
13 board shall keep a record of the proceedings of each meeting of  
14 the association.

15 ~~[F.]~~ J. Neither the retirement board nor the  
16 association shall allow public inspection of, or disclosure of,  
17 information from any member or retiree file unless a prior  
18 release and consent, in the form prescribed by the association,  
19 has been executed by the member or retiree; except that  
20 applicable coverage plans, amounts of retirement plan  
21 contributions made by members and affiliated public employers,  
22 pension amounts paid and the names and addresses of public  
23 employees retirement association members or retirees requested  
24 for election purposes by candidates for election to the  
25 retirement board may be produced or disclosed without release

.220533.1

1 or consent.

2 K. For the purpose of determining which labor  
3 organization represents the largest number of the members of  
4 any plan, the public employee labor relations board shall  
5 calculate the membership numbers as of ninety days prior to the  
6 expiration of the relevant retirement board member's term. In  
7 the event of a dispute over which labor organization represents  
8 the largest number of the members of any plan, the public  
9 employee labor relations board shall make a binding and final  
10 determination on which organization shall serve as the  
11 appointing authority.

12 L. Elections for the retirement board shall be  
13 conducted according to rules promulgated by the secretary of  
14 state; provided that such rules shall provide for the elections  
15 to:

16 (1) be held in June during the years that  
17 correspond to the vacancy of an elected position on the board;

18 (2) be conducted by mail; and

19 (3) conform to standards consistent with  
20 existing law related to campaign finance limits and  
21 transparency.

22 M. A candidate for election to the board shall  
23 certify by notarized affidavit that the candidate meets the  
24 required qualifications to serve as a member of the board. The  
25 affidavit shall be filed with the declaration of candidacy.

1 The affidavit shall be on a form provided by the secretary of  
 2 state that shall require a candidate to list with particularity  
 3 the candidate's specific experience that meets required  
 4 qualifications."

5 SECTION 2. Section 10-11-130.1 NMSA 1978 (being Laws  
 6 1999, Chapter 153, Section 1) is amended to read:

7 "10-11-130.1. RESTRICTIONS ON RECEIPT OF GIFTS--  
 8 RESTRICTION ON CAMPAIGN CONTRIBUTIONS [~~REQUIRED REPORTING~~].--

9 A. Except for gifts of food or beverage given in a  
 10 place of public accommodation, consumed at the time of receipt,  
 11 not exceeding fifty dollars (\$50.00) for a single gift and the  
 12 aggregate value of which gifts may not exceed one hundred fifty  
 13 dollars (\$150) in a calendar year, neither a retirement board  
 14 member nor an employee of the retirement board or association  
 15 shall receive or accept anything of value directly or  
 16 indirectly from a person who:

17 (1) has a current contract with the retirement  
 18 board or association;

19 (2) is a potential bidder, offeror or  
 20 contractor for the provision of services or personal property  
 21 to the retirement board or association;

22 (3) is authorized to invest public funds  
 23 pursuant to state or federal law or is an employee or agent of  
 24 such a person; or

25 (4) is an organization, association or other

.220533.1

1 entity having a membership that includes persons described in  
2 Paragraphs (1) through (3) of this subsection.

3 B. No person who is a candidate in a primary or  
4 general election for a position that qualifies the person for  
5 ex-officio membership on the retirement board, no member  
6 serving ex officio on the retirement board and no person who is  
7 a nominee for retirement board membership by election [~~by some~~  
8 ~~or all of the members of the association~~] pursuant to the  
9 Public Employees Retirement Act shall accept anything of a  
10 value of more than twenty-five dollars (\$25.00) as a  
11 contribution to an ex-officio member's statewide campaign in a  
12 primary or general election or as a contribution to the  
13 campaign of a nominee for membership on the board [~~as a member~~  
14 ~~elected by all or some of the members of the association~~] from  
15 a person who:

16 (1) has a current contract with the retirement  
17 board or association;

18 (2) is a potential bidder, offeror or  
19 contractor for the provision of services or personal property  
20 to the retirement board or association;

21 (3) is authorized to invest public funds  
22 pursuant to state or federal law or is an employee or agent of  
23 such a person; or

24 (4) is an organization, association or other  
25 entity having a membership that includes persons described in

.220533.1

1 Paragraphs (1) through (3) of this subsection.

2 ~~[C. Within ten days after an election in which one~~  
 3 ~~or more board members are elected by some or all of the members~~  
 4 ~~of the association pursuant to the Public Employees Retirement~~  
 5 ~~Act, all persons who were candidates for board membership in~~  
 6 ~~that election shall file with the association a report~~  
 7 ~~disclosing all contributions to their respective campaigns~~  
 8 ~~whether made directly to the candidate, a political action~~  
 9 ~~committee or to some other entity supporting the candidate's~~  
 10 ~~election. The contributions shall be reported by amount and~~  
 11 ~~specific source. Within sixty days after the election, the~~  
 12 ~~association shall publish the reports required by this~~  
 13 ~~subsection.]"~~

14 SECTION 3. Section 10-11-131 NMSA 1978 (being Laws 1987,  
 15 Chapter 253, Section 131, as amended) is amended to read:

16 "10-11-131. RETIREMENT BOARD--OFFICERS--EMPLOYMENT OF  
 17 SERVICES.--

18 A. The retirement board shall hold a meeting  
 19 following the beginning of a regular term of office for the  
 20 members appointed or elected to the retirement board to elect  
 21 from its own number a [chairman] chair and a vice [chairman]  
 22 chair for a term of two years. In the case of a vacancy in the  
 23 position of chair or vice chair, the retirement board shall  
 24 elect from its own number a replacement to fill the remainder  
 25 of the unexpired term.

.220533.1

1           B. The retirement board shall appoint an executive  
2 director who shall be the chief administrative officer for the  
3 retirement board and the association.

4           C. The retirement board shall employ professional,  
5 technical, clerical and other services as required for the  
6 operation of the association. The compensation for employed  
7 services shall be fixed by the retirement board.

8           D. The state treasurer shall be the treasurer of  
9 the association and the custodian of its funds. The  
10 treasurer's general bond to the state shall cover all liability  
11 for acts as treasurer of the association. The treasurer shall  
12 credit all receipts of money and assets of the association to  
13 the association. The treasurer shall make disbursements from  
14 association assets only upon warrants issued by the secretary  
15 of finance and administration based upon vouchers signed by the  
16 ~~[executive secretary or vouchers signed by the state treasurer]~~  
17 executive director of the association or vouchers signed by the  
18 state treasurer for purposes of investment."

19           SECTION 4. TEMPORARY PROVISION.--

20           A. The terms of office of the members serving on  
21 the retirement board on the effective date of this act, except  
22 for the two retired members that are elected by the retired  
23 members of the public employees retirement association, shall  
24 end on June 30, 2021, and new members shall be appointed for a  
25 term of office that shall begin on July 1, 2021 according to

.220533.1

1 the provisions of Section 10-11-130 NMSA 1978.

2 B. The two retired members that are elected by the  
3 retired members of the public employees retirement association  
4 prior to the effective date of this act shall continue to serve  
5 on the retirement board until their successors are elected and  
6 qualified pursuant to Section 10-11-130 NMSA 1978.

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