

FIFTY-FIFTH LEGISLATURE  
SECOND SESSION, 2022

SB 2/a

February 7, 2022

Mr. President:

Your **FINANCE COMMITTEE**, to whom has been referred

**SENATE BILL 2**

has had it under consideration and reports same with recommendation that it **DO PASS**, amended as follows:

1. On page 1, line 11, after the semicolon, strike the remainder of the line, strike lines 12 through 14 in their entirety and strike line 15 through the semicolon.

2. On page 1, lines 18 and 19, strike "MAKING APPROPRIATIONS" and insert in lieu thereof "PROVIDING THAT THE LEGISLATURE SHALL ESTABLISH AND PROVIDE SALARIES FOR MAGISTRATES; REVISING STATE GENERAL MEMBER COVERAGE PLAN 3 PROVISIONS IN THE PUBLIC EMPLOYEES RETIREMENT ACT TO INCLUDE MAGISTRATES".

3. On pages 1 through 17, strike Sections 1 through 7 in their entirety and insert in lieu thereof the following:

"SECTION 1. Section 10-11-2 NMSA 1978 (being Laws 1987, Chapter 253, Section 2, as amended by Laws 2021, Chapter 36, Section 1 and by Laws 2021, Chapter 38, Section 1) 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 in the Public Employees Retirement Act, but does not include an employer pursuant to the Magistrate Retirement Act, the Judicial Retirement Act or the Educational Retirement Act;

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

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

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

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

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

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

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

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

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

L. "former member" means a person who was previously employed by an affiliated public employer, who has terminated that

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employment and who has received a refund of member contributions;

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

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

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

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

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

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

(5) "magistrate member" means a magistrate judge who is elected or appointed to an initial term of office on or after July 1, 2022;

~~(5)~~ (6) "municipal detention officer member" means a member who is employed by an affiliated public employer other than the state and who has inmate custodial responsibilities at a facility used for the confinement of persons charged with or convicted of a violation of a law or ordinance;

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~~[(6)]~~ (7) "municipal fire member" means any member who is employed as a full-time nonvolunteer firefighter by an affiliated public employer and who has taken the oath prescribed for firefighters;

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

~~[(8)]~~ (9) "state police member" means a member who is an officer of the New Mexico state police division and who has taken the oath prescribed for such officers and shall include a member who is an officer of the New Mexico state police division and who was certified and commissioned in the former motor transportation division or the former special investigations division of the department of public safety;

O. "membership" means membership in the association;

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

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

R. "refund beneficiary" means a person designated by the member, in writing, in the form prescribed by the association, as

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the person who would be refunded the member's accumulated member contributions payable if the member dies and no survivor pension is payable or who would receive the difference between pension paid and accumulated member contributions if the retired member dies before receiving in pension payments the amount of the accumulated member contributions;

S. "retire" means to:

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

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

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

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

V. "salary" means the base salary or wages paid a member, including longevity pay, for personal services rendered an affiliated public employer. "Salary" shall not include overtime pay, unless the overtime payment is required for a regular scheduled tour of duty as set forth in Section 207(k) of Title 29 of the United States Code and is made on the regular payroll for the period represented by that payment, allowances for housing, clothing, equipment or travel, payments for unused sick leave, unless the unused sick leave payment is made through continuation of the member on the regular payroll for the period represented by that payment, and any other form of remuneration not specifically designated by law as included in salary for Public Employees Retirement Act purposes. Salary in excess of the limitations set forth in Section 401(a)(17) of the Internal Revenue Code of 1986, as amended, shall be disregarded. The limitation on compensation for eligible

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employees shall not be less than the amount that was allowed to be taken into account under the state retirement system acts in effect on July 1, 1993. For purposes of this subsection, "eligible employee" means an individual who was a member of a state system before the first plan year beginning after December 31, 1995;

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

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

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

**SECTION 2.** Section 10-11-26.1 NMSA 1978 (being Laws 1994, Chapter 128, Section 2, as amended) is amended to read:

"10-11-26.1. STATE GENERAL MEMBER COVERAGE PLAN 3--  
APPLICABILITY.--State general member coverage plan 3 is applicable to:

A. peace officer members and is applicable to state general members in the first full pay period after July 1, 1995 if the retirement board certifies to the secretary of state that a majority of the members voting of those members to be covered under state general member coverage plan 3 has voted to approve adoption of this plan at an election conducted pursuant to Laws 1994, Chapter 128, Section 17; and

B. magistrate members."

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**SECTION 3.** Section 10-12C-2 NMSA 1978 (being Laws 1992, Chapter 118, Section 2, as amended by Laws 2014, Chapter 39, Section 2 and by Laws 2014, Chapter 43, Section 2) is amended to read:

"10-12C-2. DEFINITIONS.--As used in the Magistrate Retirement Act:

A. "association" means the public employees retirement association provided for in the Public Employees Retirement Act;

B. "board" means the retirement board provided for in the Public Employees Retirement Act;

C. "dependent child" means a natural or adopted child who is physically or mentally incapable of financial self-support, regardless of age;

D. "educational retirement system" means the retirement system provided for in the Educational Retirement Act;

E. "effective date of retirement" means the first day of the month following the month in which the member met all requirements for retirement;

F. "final average salary" means the amount that is one-sixtieth of the greatest aggregate amount of salary paid a member for sixty consecutive, but not necessarily continuous, months of service credit;

G. "former member" means a person no longer in office who was previously covered pursuant to the provisions of Sections 10-12A-1 through 10-12A-13 NMSA 1978, but who has not retired pursuant to the provisions of the Magistrate Retirement Act and who has received a refund of member contributions pursuant to the provisions of Sections 10-12C-1 through 10-12C-18 NMSA 1978;

H. "fund" means the magistrate retirement fund;

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I. "magistrate" means a magistrate judge;

J. "member" means any magistrate who [~~is~~] was in office prior to July 1, 2022 and covered pursuant to the provisions of the Magistrate Retirement Act, or any person no longer in office who was previously a magistrate covered pursuant to the provisions of the Magistrate Retirement Act, who has not retired and who has not received a refund of member contributions from the fund;

K. "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 thereto;

L. "minor child" means a natural or adopted child who has not reached [~~his~~] the child's eighteenth birthday and who has not been emancipated by marriage or otherwise;

M. "pension" means a series of monthly payments to a retired member or survivor beneficiary pursuant to the provisions of the Magistrate Retirement Act;

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

O. "retire" means to:

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

(2) receive a pension from one state system or the



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educational retirement system;

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

Q. "salary" means the base salary or wages paid a member, including longevity pay, for personal services rendered; provided that salary does not include overtime pay; allowances for housing, clothing, equipment or travel; payments for unused sick leave, unless the unused sick leave payment is made through continuation of the member on the regular payroll for the period represented by that payment; and any other form of remuneration not specifically designated by law as included in salary pursuant to the provisions of the Magistrate Retirement Act;

R. "state system" means the retirement programs provided pursuant to the provisions of the Public Employees Retirement Act, the Magistrate Retirement Act and the Judicial Retirement Act;

S. "surviving spouse" means the spouse to whom the member was married at the time of the member's death;

T. "survivor beneficiary" means a person who receives a pension or who has been designated to be paid a pension as a result of the death of a member or retired member; and

U. "years of service" means a period of time beginning on the date a person commences to hold office as a magistrate because of appointment or election and ending on the date a person ceases to hold office as a magistrate because of expiration of the magistrate's term, voluntary resignation, death or disability and shall include any fractions of years of service."

**SECTION 4.** Section 10-12C-4 NMSA 1978 (being Laws 1992, Chapter 118, Section 4, as amended by Laws 2014, Chapter 39, Section 3 and by Laws 2014, Chapter 43, Section 3) is amended to read:

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"10-12C-4. MEMBERSHIP.--Prior to July 1, 2022, every magistrate while in office shall become a member and shall be subject to the provisions of the Magistrate Retirement Act; provided, however, that a magistrate who, prior to July 1, 2014, applied for and received an exemption from membership shall not become a member until such exemption ends. A magistrate who is retired under any state system or the educational retirement system shall:

A. pay the applicable member contributions and the state, through the administrative office of the courts, shall pay the applicable employer contributions as provided pursuant to the Magistrate Retirement Act; and

B. not accrue a service credit and shall not be eligible to purchase service credit nor to retire pursuant to the Magistrate Retirement Act."

**SECTION 5.** Section 34-1-9 NMSA 1978 (being Laws 1993, Chapter 278, Section 1, as amended) is amended to read:

"34-1-9. SALARIES OF JUSTICES, JUDGES AND MAGISTRATES.--

A. Justices of the supreme court shall each receive an annual salary [~~as provided by the legislature~~] in an amount equal to the annual salary received by New Mexico federal magistrate court judges, as provided by the legislature in an appropriations act; provided that the salary shall be adjusted on a biennial basis. The chief justice of the supreme court shall receive an annual salary that is two thousand dollars (\$2,000) more than the annual salary of a justice of the supreme court.

B. The chief judge of:

(1) the court of appeals shall receive an annual salary that is ninety-five percent of the annual salary of the chief

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justice of the supreme court;

(2) a district court shall receive an annual salary that is ninety-five percent of the annual salary of the chief judge of the court of appeals; and

(3) a metropolitan court shall receive an annual salary that is ninety-five percent of the annual salary of the chief judge of a district court.

~~[C. The presiding magistrate of a magistrate district where three or more divisions operate as a single court shall receive an annual salary that is seventy-five percent of the annual salary of the chief judge of a metropolitan court.~~

~~D. Notwithstanding any other provision of law or any other provision of this section]~~

C. The annual salaries of the following judges [and magistrates] shall be [established] as follows:

(1) a judge of the court of appeals shall receive an annual salary that is ninety-five percent of the annual salary of a justice of the supreme court;

(2) a district court judge shall receive an annual salary that is ninety-five percent of the annual salary of a judge of the court of appeals; and

(3) a metropolitan court judge shall receive an annual salary that is ninety-five percent of the annual salary of a district court judge.

~~[(4) a full-time magistrate shall receive an annual salary that is seventy-five percent of the annual salary of a metropolitan court judge;~~

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~~(5) a half-time magistrate shall receive an annual salary that is fifty percent of the annual salary of a full-time magistrate; and~~

~~(6) a quarter-time magistrate shall receive an annual salary that is twenty-five percent of the annual salary of a full-time magistrate.~~

~~E. For fiscal year 1995 and all subsequent fiscal years]~~

D. The annual salary for justices of the supreme court, judges of the court of appeals, district court judges, metropolitan court judges and magistrates shall be [~~established~~] provided by the legislature in an appropriations act.

E. The annual salary for magistrates shall be established and provided by the legislature in an appropriations act.

F. No additional salaries shall be paid to justices, judges or magistrates on account of services rendered the state. Justices of the supreme court, judges of the court of appeals, district court judges, metropolitan court judges and magistrates shall receive per diem and mileage for necessary travel on official business of the court as provided in the Per Diem and Mileage Act."

**SECTION 6. TEMPORARY PROVISION.**--Magistrates covered pursuant to the Magistrate Retirement Act prior to July 1, 2022 shall continue to be covered by the provisions of that act.

**SECTION 7. EFFECTIVE DATE.**--The effective date of the provisions of this act is July 1, 2022."

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Respectfully submitted,

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GEORGE MUÑOZ, CHAIR

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 9 For 0 Against

Yes: 9

No: 0

Excused: Hemphill, Steinborn

Absent: None

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