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SENATE BILL 128

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

INTRODUCED BY

Michael Padilla

AN ACT

RELATING TO THE PUBLIC EMPLOYEES RETIREMENT ACT; CREATING A STATE FIRE MEMBER; PROVIDING A DEFINITION FOR A "STATE FIRE MEMBER"; CHANGING THE NAME OF STATE POLICE MEMBER, CORRECTIONAL OFFICER MEMBER AND PROBATION AND PAROLE OFFICER MEMBER COVERAGE PLAN 1 TO STATE PUBLIC SAFETY MEMBER COVERAGE PLAN 1; INCLUDING STATE FIRE MEMBERS UNDER STATE PUBLIC SAFETY MEMBER COVERAGE PLAN 1; PROVIDING FOR AN ELECTION PERTAINING TO THE ADOPTION OF STATE PUBLIC SAFETY MEMBER COVERAGE PLAN 1; MAKING TECHNICAL CHANGES.

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:

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

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

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

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

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

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

24 G. "educational retirement system" means that
25 retirement system provided for in the Educational Retirement

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1 Act;

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

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

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

11 K. "form of payment" means the applicable form of
12 payment of a pension provided for in Section 10-11-117 NMSA
13 1978;

14 L. "former member" means a person who was
15 previously employed by an affiliated public employer, who has
16 terminated that employment and who has received a refund of
17 member contributions;

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

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

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

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

9 (3) "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 (4) "juvenile probation and parole officer
14 member" means a member who is employed as a probation and
15 parole officer by the children, youth and families department
16 or its successor agency;

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

22 (6) "municipal fire member" means any member
23 who is employed as a full-time nonvolunteer firefighter by an
24 affiliated public employer, other than the state, and who has
25 taken the oath prescribed for firefighters;

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

5 (8) "state fire member" means any member who
6 is employed as a nonvolunteer firefighter of the state and who
7 has taken the oath prescribed for firefighters; and

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

15 O. "membership" means membership in the
16 association;

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

20 Q. "public employer" means the state, any
21 municipality, city, county, metropolitan arroyo flood control
22 authority, economic development district, regional housing
23 authority, soil and water conservation district, entity created
24 pursuant to a joint powers agreement, council of government,
25 conservancy district, irrigation district, water and sanitation

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1 district, water district and metropolitan water board,
2 including the boards, departments, bureaus and agencies of a
3 public employer, so long as these entities fall within the
4 meaning of governmental plan as that term is used in Section
5 414(d) of the Internal Revenue Code of 1986, as amended;

6 R. "refund beneficiary" means a supplemental needs
7 trust or a natural person designated by the member, in writing,
8 in the form prescribed by the association, as the trust or
9 person that would be refunded the member's accumulated member
10 contributions payable if the member dies and no survivor
11 pension is payable or that would receive the difference between
12 pension paid and accumulated member contributions if the
13 retired member dies before receiving in pension payments the
14 amount of the accumulated member contributions;

15 S. "retire" means to:

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

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

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

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

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1 V. "salary" means the base salary or wages paid a
2 member, including longevity pay, for personal services rendered
3 an affiliated public employer. "Salary" shall not include
4 overtime pay, unless the overtime payment is required for a
5 regular scheduled tour of duty as set forth in Section 207(k)
6 of Title 29 of the United States Code and is made on the
7 regular payroll for the period represented by that payment,
8 allowances for housing, clothing, equipment or travel, payments
9 for unused sick leave, unless the unused sick leave payment is
10 made through continuation of the member on the regular payroll
11 for the period represented by that payment, and any other form
12 of remuneration not specifically designated by law as included
13 in salary for Public Employees Retirement Act purposes. Salary
14 in excess of the limitations set forth in Section 401(a)(17) of
15 the Internal Revenue Code of 1986, as amended, shall be
16 disregarded. The limitation on compensation for eligible
17 employees shall not be less than the amount that was allowed to
18 be taken into account under the state retirement system acts in
19 effect on July 1, 1993. For purposes of this subsection,
20 "eligible employee" means an individual who was a member of a
21 state system before the first plan year beginning after
22 December 31, 1995;

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

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

5 Y. "supplemental needs trust" means a valid third-
6 party irrevocable trust that is authorized by the federal
7 Social Security Act, as amended, for the sole benefit and
8 lifetime of a trust beneficiary who is disabled and is created
9 for the purpose of providing, accounting for or receiving
10 supplemental assets that do not supplant, impair or diminish
11 any benefits or assistance of any federal, state or other
12 government entity for which the beneficiary would otherwise be
13 eligible; and

14 Z. "survivor beneficiary" means a supplemental
15 needs trust or a natural person that receives a pension or that
16 has been designated to be paid a pension as a result of the
17 death of a member or retired member."

18 SECTION 2. Section 10-11-27 NMSA 1978 (being Laws 1987,
19 Chapter 253, Section 27, as amended) is amended to read:

20 "10-11-27. STATE [~~POLICE MEMBER, CORRECTIONAL OFFICER~~
21 ~~MEMBER AND PROBATION AND PAROLE OFFICER~~] PUBLIC SAFETY MEMBER
22 COVERAGE PLAN 1--APPLICABILITY--CREDITED SERVICE.--

23 A. State [~~police member, correctional officer~~
24 ~~member and probation and parole officer~~] public safety member
25 coverage plan 1 is applicable to:

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- 1 (1) state police members who are not
2 specifically covered by another coverage plan;
- 3 (2) adult correctional officer members;
4 [~~(3) juvenile correctional officer members;~~
5 ~~(4)~~] (3) adult probation and parole officer
6 members; [~~and~~
7 ~~(5)~~] (4) juvenile probation and parole officer
8 members; and
9 (5) state fire members.

10 B. The credited service of a state police member
11 who was a retired member or a member on or before June 30, 2013
12 or of an adult correctional officer member shall have actual
13 credited service increased by twenty percent for the purposes
14 of state [~~police member, correctional officer member and~~
15 ~~probation and parole officer~~] public safety member coverage
16 plan 1.

17 C. The credited service, accrued after July 1,
18 2021, of [~~a juvenile correctional officer member~~] an adult
19 probation and parole officer or a juvenile probation and parole
20 officer shall be increased by twenty percent for the purposes
21 of state [~~police member, correctional officer member and~~
22 ~~probation and parole officer~~] public safety member coverage
23 plan 1.

24 D. The credited service, accrued after July 1,
25 2025, of a state fire member shall be increased by twenty

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1 percent for the purposes of state public safety member coverage
2 plan 1.

3 E. The increase of twenty percent to accrued
4 credited service provided by this section shall only apply to a
5 state public safety member who was a retired member or a member
6 on or before June 30, 2013.

7 [~~D.~~] F. Except as provided in [~~Subsection~~]
8 Subsections B through E of this section, the credited service
9 of a member covered under state [~~police member, correctional~~
10 ~~officer member and probation and parole officer~~] public safety
11 member coverage plan 1 shall be credited as provided in Section
12 10-11-4 NMSA 1978.

13 [~~E.~~] G. State [~~police member, correctional officer~~
14 ~~member and probation and parole officer~~] public safety member
15 coverage plan 1 is applicable to [~~juvenile correctional officer~~
16 ~~members~~] adult probation and parole officer members and
17 juvenile probation and parole officer members in the first full
18 pay period after July 1, 2021 if the retirement board certifies
19 to the secretary of state that, of those [~~juvenile correctional~~
20 ~~officer members~~] adult probation and parole officer members and
21 juvenile probation and parole officer members to be covered
22 under state [~~police member, correctional officer member and~~
23 ~~probation and parole officer~~] public safety member coverage
24 plan 1, a majority of the respective members voting have voted
25 to approve adoption of that plan at an election conducted

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1 pursuant to Laws 2020, Chapter 11, Sections 63 through 66.

2 H. State public safety member coverage plan 1 is
3 applicable in the first full pay period after July 1, 2025 for:

4 (1) state fire members who begin employment as
5 a state fire member on or after July 1, 2025; and

6 (2) state fire members who were employed in a
7 position and were subject to the definition of a "state fire
8 member" prior to July 1, 2025, if the retirement board
9 certifies to the secretary of state that, of those state fire
10 members to be covered under state public safety member coverage
11 plan 1, a majority of the respective members voting have voted
12 to approve the adoption of that plan at an election conducted
13 pursuant to Section 8 of this 2024 act."

14 SECTION 3. Section 10-11-27.1 NMSA 1978 (being Laws 2003,
15 Chapter 268, Section 10, as amended) is amended to read:

16 "10-11-27.1. STATE [~~POLICE MEMBER, CORRECTIONAL OFFICER~~
17 ~~MEMBER AND PROBATION AND PAROLE OFFICER]~~ PUBLIC SAFETY MEMBER
18 COVERAGE PLAN 1--SERVICE CREDIT REQUIRED.--Notwithstanding the
19 provisions of Section 10-11-27 NMSA 1978, to qualify for
20 payment under state [~~police member, correctional officer member~~
21 ~~and probation and parole officer]~~ public safety member coverage
22 plan 1, an adult correctional officer member shall have
23 eighteen months of service credit earned under state [police
24 member, correctional officer member and probation and parole
25 officer] public safety member coverage plan 1 subsequent to

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1 July 1, 2004."

2 SECTION 4. Section 10-11-28 NMSA 1978 (being Laws 1987,
3 Chapter 253, Section 28, as amended) is amended to read:

4 "10-11-28. STATE [~~POLICE MEMBER, CORRECTIONAL OFFICER~~
5 ~~MEMBER AND PROBATION AND PAROLE OFFICER~~] PUBLIC SAFETY MEMBER
6 COVERAGE PLAN 1--AGE AND SERVICE REQUIREMENTS FOR NORMAL
7 RETIREMENT.--Under state [~~police member, correctional officer~~
8 ~~member and probation and parole officer~~] public safety member
9 coverage plan 1:

10 A. for a member who was a retired member or a
11 member on June 30, 2013, the age and service requirements for
12 normal retirement are:

13 (1) age sixty-five years or older and five or
14 more years of credited service;

15 (2) age sixty-four years and eight or more
16 years of credited service;

17 (3) age sixty-three years and eleven or more
18 years of credited service;

19 (4) age sixty-two years and fourteen or more
20 years of credited service;

21 (5) age sixty-one years and seventeen or more
22 years of credited service;

23 (6) age sixty years and twenty or more years
24 of credited service; or

25 (7) any age and twenty-five or more years of

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1 credited service; and

2 B. for a member who was not a retired member or a
3 member on June 30, 2013, the age and service requirements for
4 normal retirement are:

5 (1) age sixty years or older and five or more
6 years of service credit; or

7 (2) any age and twenty-five or more years of
8 service credit."

9 SECTION 5. Section 10-11-29 NMSA 1978 (being Laws 1987,
10 Chapter 253, Section 29, as amended) is amended to read:

11 "10-11-29. STATE [~~POLICE MEMBER, CORRECTIONAL OFFICER~~
12 ~~MEMBER AND PROBATION AND PAROLE OFFICER]~~ PUBLIC SAFETY MEMBER
13 COVERAGE PLAN 1--AMOUNT OF PENSION--FORM OF PAYMENT A.--Under
14 state [~~police member, correctional officer member and probation~~
15 and ~~parole officer]~~ public safety member coverage plan 1, the
16 amount of pension under form of payment A is equal to three
17 percent of final average salary multiplied by credited service.
18 The amount shall not exceed one hundred percent of the final
19 average salary."

20 SECTION 6. Section 10-11-31 NMSA 1978 (being Laws 1987,
21 Chapter 253, Section 31, as amended) is amended to read:

22 "10-11-31. STATE [~~POLICE MEMBER, CORRECTIONAL OFFICER~~
23 ~~MEMBER AND PROBATION AND PAROLE OFFICER]~~ PUBLIC SAFETY MEMBER
24 COVERAGE PLAN 1--MEMBER CONTRIBUTION RATE.--A member under
25 state [~~police member, correctional officer member and probation~~

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1 ~~and parole officer]~~ public safety member coverage plan 1 shall
2 contribute seven and six-tenths percent of salary, except that
3 a member whose annual salary is greater than twenty-five
4 thousand dollars (\$25,000) shall contribute nine and one-tenth
5 percent of salary."

6 SECTION 7. Section 10-11-32 NMSA 1978 (being Laws 1987,
7 Chapter 253, Section 32, as amended) is amended to read:

8 "10-11-32. STATE [~~POLICE MEMBER, CORRECTIONAL OFFICER~~
9 ~~MEMBER AND PROBATION AND PAROLE OFFICER]~~ PUBLIC SAFETY MEMBER
10 COVERAGE PLAN 1--STATE CONTRIBUTION RATE.--The state shall
11 contribute twenty-five and one-half percent of the salary of
12 each member under state [~~police member, correctional officer~~
13 ~~member and probation and parole officer]~~ public safety member
14 coverage plan 1."

15 SECTION 8. TEMPORARY PROVISION--STATE PUBLIC SAFETY
16 MEMBER COVERAGE PLAN 1--STATE FIRE MEMBERS--ELECTION.--On or
17 before December 30, 2024, the retirement board provided for in
18 the Public Employees Retirement Act shall conduct an election
19 to submit to state fire members currently contributing under
20 state general member coverage plan 3 the question of adopting
21 state public safety member coverage plan 1.