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HOUSE BILL 191

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

KIP W. NICELY

AN ACT

RELATING TO PUBLIC EMPLOYEE RETIREMENT; PROVIDING A PORTABLE
RETIREMENT OPTION (PRO) FOR MEMBERS OF THE PUBLIC EMPLOYEES
RETIREMENT ASSOCIATION.

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

Section 1. A new section of the Public Employees

Retirement Act is enacted to read:

" [NEW MATERIAL] PORTABLE RETIREMENT PLAN-- OPTION. --

A. At any time not later than December 31, 1999 or
six months after initial employment with an affiliated public
employer, whichever is later, a member may elect to be placed
under a portable retirement plan in lieu of the coverage plan
that would otherwise be applicable.

B. Any election made pursuant to this section
shall be in writing on forms prescribed by the retirement

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1 board and shall be filed with the executive director.

2 C. Once an election is made pursuant to this
3 section, except as provided in Subsection E of this section,
4 the amount of all pensions and other benefits obtained
5 pursuant to the Public Employees Retirement Act shall be
6 determined exclusively by those provisions of that act
7 relating to portable retirement plans.

8 D. An election made pursuant to this section is
9 irrevocable. Except as provided in Subsection E of this
10 section, the rights and benefits of a member, who at any time
11 has made an election pursuant to this section, shall be only
12 those available pursuant to those provisions of the Public
13 Employees Retirement Act relating to portable retirement
14 plans.

15 E. Nothing in this section or other provisions of
16 the Public Employees Retirement Act prevents a member who has
17 elected to be placed under a portable retirement plan from
18 participating in a group health insurance plan under Section
19 10-11-121 NMSA 1978 or under the provisions of the Retiree
20 Health Care Act. "

21 Section 2. A new section of the Public Employees
22 Retirement Act is enacted to read:

23 "[NEW MATERIAL] PORTABLE RETIREMENT PLAN FUND. --

24 A. The portable retirement plan fund is the
25 accounting fund for individual portable retirement plan

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1 accounts. Each portable retirement account shall be invested
2 as directed by the member in whose name the account is held.

3 B. The portable retirement plan fund is a trust
4 fund of which the retirement board is trustee. Members of the
5 retirement board jointly and individually shall be indemnified
6 from the fund by the state from all claims, demands, suits,
7 actions, damages, judgments, costs, charges and expenses,
8 including court costs and attorney fees, and against all
9 liability losses and damages of any nature that members
10 sustain by reason of any decision made in the performance of
11 their duties pursuant to the state retirement system acts.
12 The retirement board may invest the portability retirement
13 plan fund only as provided in Subsection A of this section."

14 Section 3. A new section of the Public Employees
15 Retirement Act is enacted to read:

16 "[NEW MATERIAL] PORTABLE RETIREMENT PLAN ACCOUNTS. --

17 A. The retirement board shall maintain an
18 individual portable retirement plan account within the
19 portable retirement plan fund for each member who has elected
20 to be placed under a portable retirement plan. A member's
21 individual portable retirement plan account includes the
22 amounts transferred to the account pursuant to this section
23 and any gain or loss from the investment of the account, less
24 any deductions taken from the account for administrative
25 expenses.

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1 B. Upon the election of a member to be placed
2 under a portable retirement plan, the following amounts shall
3 be transferred to the member's individual portable retirement
4 plan account:

5 (1) an amount from the member contribution
6 fund equal to the member's individual account;

7 (2) an amount from the employer's
8 accumulation fund equal to the total contributions made on
9 behalf of the member by affiliated public employers; provided
10 that if the amount to be transferred pursuant to this
11 paragraph plus the amount to be transferred pursuant to
12 Paragraph (1) of this subsection would exceed the limitation
13 contained in Section 415(c) of the Internal Revenue Code of
14 1986, as amended, then only the amount necessary to reach that
15 limitation shall be transferred pursuant to this paragraph;
16 and

17 (3) an amount from the employer's
18 accumulation fund equal to distributions made from the income
19 fund and attributable to the total contributions made on
20 behalf of the member by affiliated public employers.

21 C. After the election of a member to be placed
22 under a portable retirement plan, the following amounts shall
23 be transferred to the member's individual portable retirement
24 plan account upon receipt from the affiliated public employer:

25 (1) an amount from the member contribution

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1 fund equal to each deduction made from the member's salary and
2 remitted to the member contribution fund by the affiliated
3 public employer; and

4 (2) an amount from the employer's
5 accumulation fund equal to each contribution made to the
6 employer's accumulation fund on behalf of the member by
7 affiliated public employers; provided that if the amount to be
8 transferred pursuant to this paragraph plus the amount to be
9 transferred pursuant to Paragraph (1) of this subsection would
10 exceed the limitation contained in Section 415(c) of the
11 Internal Revenue Code of 1986, as amended, then only the
12 amount necessary to reach that limitation shall be transferred
13 pursuant to this paragraph. "

14 Section 4. A new section of the Public Employees
15 Retirement Act is enacted to read:

16 "[NEW MATERIAL] PORTABLE RETIREMENT PLAN ACCOUNTS--
17 PORTABILITY.--

18 A. A member is vested in a portable retirement
19 plan if he has elected to be placed under a portable
20 retirement plan and:

21 (1) is employed by an affiliated public
22 employer on January 1, 2000 and has five or more years of
23 credited service;

24 (2) is employed by an affiliated public
25 employer on January 1, 2001 and has four or more years of

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1 credited service;

2 (3) is employed by an affiliated public
3 employer on January 1, 2002 and has three or more years of
4 credited service;

5 (4) is employed by an affiliated public
6 employer on January 1, 2003 and has two or more years of
7 credited service; or

8 (5) is employed by an affiliated public
9 employer on January 1, 2004 and has one or more years of
10 credited service.

11 B. If a member vested in a portable retirement
12 plan terminates employment, upon written request of the member
13 in a form prescribed by the retirement board, a
14 trustee-to-trustee transfer shall be made of the total amount
15 in the member's individual portable retirement plan account to
16 another qualified plan as allowed by the Internal Revenue Code
17 of 1986, as amended.

18 C. Upon the termination of employment by a member
19 who has elected to be placed under a portable retirement plan
20 and is not vested in the plan, the member shall receive an
21 amount equal to that portion of the member's individual
22 portable retirement plan account that is attributable to the
23 member contributions. "

24 Section 5. A new section of the Public Employees
25 Retirement Act is enacted to read:

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1 " [NEW MATERIAL] PORTABLE RETIREMENT PLAN ACCOUNTS--
2 INVESTMENT-- EXPENSES. --

3 A. The retirement board shall offer as many
4 investment plans and retirement options as practicable to
5 those members who have elected to be placed in a portable
6 retirement plan. For that purpose, the executive director,
7 with the approval of the retirement board, shall hire or
8 contract with a plan administrator to administer the portable
9 retirement plan accounts. The administrator may:

10 (1) contract with private pension, insurance,
11 annuity, mutual fund, bank, savings association or other
12 qualified companies or any combination of these companies to
13 provide investment advice or services; and

14 (2) purchase group annuity contracts,
15 individual retirement annuities, disability insurance
16 investment contracts, securities, mutual funds, interests in
17 trusts and other financial instruments, health care benefit
18 plans and group insurance as necessary or appropriate for the
19 plan to provide optimum retirement and related benefits.

20 B. The plan administrator shall prepare a
21 quarterly statement for each member's individual portable
22 retirement plan account. The statement shall include the
23 current market value of the account, including self-directed
24 investment options, an itemization of changes in the account
25 and other information required by the executive director or

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1 the retirement board.

2 C. The executive director shall transfer from the
3 portable retirement plan fund to the income fund an amount
4 necessary to pay all expenses for administering portable
5 retirement plans. A proportionate share of the administrative
6 expenses shall be deducted from each individual portable
7 retirement plan account. "

8 Section 6. A new section of the Public Employees
9 Retirement Act is enacted to read:

10 "[NEW MATERIAL] PORTABLE RETIREMENT PLANS--RETIREMENT
11 REQUIREMENTS--CONTRIBUTION RATES.--The age and service
12 requirements for normal retirement, member contribution rates
13 and employer contribution rates for a member who has elected
14 to be placed under a portable retirement plan are the
15 requirements and rates that would otherwise be applicable if
16 the member had not elected to be placed under a portable
17 retirement plan. "

18 Section 7. A new section of the Public Employees
19 Retirement Act is enacted to read:

20 "[NEW MATERIAL] RETIREMENT BOARD--RULES.--The retirement
21 board shall adopt such rules relating to portable retirement
22 plans as are necessary to implement and carry out the
23 provisions of the Public Employees Retirement Act relating to
24 portable retirement plans, including any rules necessary to
25 preserve the status of the plans as qualified pension plans

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1 under the provisions of the Internal Revenue Code of 1986, as
2 amended. "

3 Section 8. Section 10-11-2 NMSA 1978 (being Laws 1987,
4 Chapter 253, Section 2, as amended) is amended to read:

5 "10-11-2. DEFINITIONS. --As used in the Public Employees
6 Retirement Act:

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

11 B. "affiliated public employer" means the state
12 and any public employer affiliated with the association as
13 provided in the Public Employees Retirement Act, but does not
14 include an employer pursuant to the Magistrate Retirement Act,
15 the Judicial Retirement Act or the Educational Retirement Act;

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

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

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

25 F. "educational retirement system" means that

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1 retirement system provided for in the Educational Retirement
2 Act;

3 G. "employee" means any employee of an affiliated
4 public employer;

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

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

12 J. "form of payment" means the applicable form of
13 payment of a pension provided for in Section 10-11-117 NMSA
14 1978;

15 K. "former member" means a person who was
16 previously employed by an affiliated public employer, who has
17 terminated that employment and who has either received a
18 refund of member contributions or obtained a transfer of the
19 amount in the member's individual portable retirement plan
20 account;

21 L. "fund" means the funds included under the
22 Public Employees Retirement Act;

23 M. "member" means a currently employed,
24 contributing employee of an affiliated public employer, or a
25 person who has been but is not currently employed by an

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1 affiliated public employer, who has not retired and who has
2 [~~not~~] neither received a refund of member contributions nor
3 obtained a transfer of the amount in the member's individual
4 portable retirement plan account; "member" also includes the
5 following:

6 (1) "hazardous duty member" means a state
7 policeman who is a member and who is a juvenile or adult
8 correctional officer employed by a corrections facility of the
9 corrections department or its successor agency;

10 (2) "municipal fire member" means any member
11 who is employed as a full-time nonvolunteer firefighter by an
12 affiliated public employer and who has taken the oath
13 prescribed for firefighters;

14 (3) "municipal police member" means any
15 member who is employed as a police officer by an affiliated
16 public employer, other than the state, and who has taken the
17 oath prescribed for police officers; and

18 (4) "state police member" means any member
19 who is an officer of the New Mexico state police and who has
20 taken the oath prescribed for such officers;

21 N. "membership" means membership in the
22 association;

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

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1 P. "public employer" means the state, any
2 municipality, city, county, metropolitan arroyo flood control
3 authority, economic development district, regional housing
4 authority, soil and water conservation district, entity
5 created pursuant to a joint powers agreement, council of
6 government, conservancy district, water and sanitation
7 district, water district and metropolitan water board,
8 including the boards, departments, bureaus and agencies of a
9 public employer, so long as these entities fall within the
10 meaning of governmental plan as that term is used in Section
11 414(d) of the Internal Revenue Code of 1986, as amended;

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

21 R. "retire" means to:

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

25 (2) receive a pension from a state system or

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1 the educational retirement system;

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

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

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

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

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

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

12 Section 9. Section 10-11-3 NMSA 1978 (being Laws 1987,
13 Chapter 253, Section 3, as amended) is amended to read:

14 "10-11-3. ~~MEMBERSHIP--REQUIREMENTS--EXCLUSIONS--~~
15 ~~TERMINATION.--~~

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

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

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1 (1) elected officials who file with the
2 association a written application for exemption from
3 membership within thirty days of taking office;

4 (2) elected officials who file with the
5 association a written application for exemption from
6 membership within thirty days of the date the elected
7 official's public employer becomes an affiliated public
8 employer;

9 (3) employees designated by the affiliated
10 public employer as seasonal or student employees;

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

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

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

25 C. Employees designated as seasonal and student

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1 employees shall be notified in writing by their affiliated
2 public employer of the designation and the consequences of the
3 designation with respect to membership, service credit and
4 benefits. A copy of the notification shall be filed with the
5 association within thirty days of the date of employment.

6 D. An exemption from membership by an elected
7 official shall expire at the end of the term of office for
8 which filed.

9 E. Employees and elected officials who have
10 exempted themselves from membership may subsequently withdraw
11 the exemption by filing a membership application. Membership
12 shall commence the first day of the first pay period following
13 the date the application is filed.

14 F. The membership of an employee or elected
15 official shall cease if the employee terminates employment
16 with an affiliated public employer or the elected official
17 leaves office and the employee or elected official either
18 requests and receives a refund of member contributions or
19 requests and obtains a transfer of the amount in the
20 employee's or elected official's individual portable
21 retirement plan account. "

22 Section 10. Section 10-11-4 NMSA 1978 (being Laws 1987,
23 Chapter 253, Section 4, as amended) is amended to read:

24 "10-11-4. SERVICE CREDIT-- REQUIREMENTS FOR-- FORFEITURE--
25 REINSTATEMENT. --

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1 A. Personal service rendered an affiliated public
2 employer by a member shall be credited to the member's service
3 credit account in accordance with retirement board rules [and
4 regulations]. Service shall be credited to the nearest month.
5 In no case shall any member be credited with a year of service
6 for less than twelve months of service in any calendar year or
7 more than a month of service for all service in any calendar
8 month or more than a year of service for all service in any
9 calendar year. In no case shall any member be allowed to
10 purchase service credit unless the purchase is authorized in
11 the Public Employees Retirement Act.

12 B. Personal service rendered an affiliated public
13 employer prior to August 1, 1947 shall be credited to a member
14 if the member acquires one year of service credit for personal
15 service rendered an affiliated public employer.

16 C. Personal service rendered an affiliated public
17 employer after July 31, 1947 but prior to the date the public
18 employer became an affiliated public employer is prior service
19 and shall be credited to a member if:

20 (1) the member acquires five years of service
21 credit for personal service rendered an affiliated public
22 employer; and

23 (2) the member pays the association the
24 amount determined in accordance with Subsection D of this
25 section.

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1 D. The purchase cost for each month of service
2 credit purchased under the provisions of this section is equal
3 to the member's final average salary multiplied by the sum of
4 the member contribution rate and employer contribution rate
5 determined in accordance with the coverage plan applicable to
6 the member at the time of the written election to purchase.
7 Full payment shall be made in a single lump-sum amount in
8 accordance with the procedures established by the retirement
9 board. The portion of the purchase cost derived from the
10 employer contribution rate shall be credited to the employer
11 accumulation fund and shall not be refunded to the member in
12 the event of cessation of membership. In no case shall any
13 member be credited with a month of service for less than the
14 purchase cost as defined in this section.

15 E. Service credit shall be forfeited if a member
16 terminates employment with an affiliated public employer and
17 either withdraws the member's accumulated member contributions
18 or obtains a transfer of the amount in the member's individual
19 portable retirement plan account.

20 F. A member or former member who is a member of
21 another state system or the educational retirement system and
22 who has forfeited service credit by withdrawal of member
23 contributions may reinstate the forfeited service credit by
24 repaying the amount withdrawn plus compound interest from the
25 date of withdrawal to the date of repayment at the rate set by

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1 the retirement board. Withdrawn member contributions may be
2 repaid in increments of one year in accordance with the
3 procedures established by the retirement board. Full payment
4 of each one-year increment shall be made in a single lump-sum
5 amount in accordance with procedures established by the
6 retirement board. "

7 Section 11. Section 10-11-127 NMSA 1978 (being Laws
8 1987, Chapter 253, Section 127) is amended to read:

9 "10-11-127. RETIREMENT RESERVE FUND. -- Except for
10 pensions or other benefits obtained pursuant to a portable
11 retirement plan, the retirement reserve fund is the fund from
12 which shall be paid all pensions to retired members and
13 survivor pension beneficiaries and all residual refunds to
14 refund beneficiaries of retired members and survivor pension
15 beneficiaries. "

16 Section 12. EFFECTIVE DATE. -- The effective date of the
17 provisions of this act is July 1, 1999.

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998
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6 January 28, 1998
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9 Mr. Speaker:
10

11 Your RULES AND ORDER OF BUSINESS COMMITTEE, to
12 whom has been referred
13

14
15 HOUSE BILL 191
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17 has had it under consideration and finds same to be GERMANE
18 in accordance with constitutional provisions.
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21 Respectfully submitted,
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R. David Pederson, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 10 For 0 Against

Yes: 10

Excused: Lujan, Picraux, Sanchez, Taylor, James G., Williams,

S. M

Absent: None

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