

HOUSE BILL 171

**52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

INTRODUCED BY

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AN ACT

RELATING TO PUBLIC EMPLOYEES RETIREMENT; ALLOWING CERTAIN  
RETIRED LAW ENFORCEMENT OFFICERS TO RETURN TO WORK FOR  
AFFILIATED PUBLIC EMPLOYERS UNDER CERTAIN CONDITIONS; DECLARING  
AN EMERGENCY.

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

**SECTION 1.** Section 10-11-8 NMSA 1978 (being Laws 1987,  
Chapter 253, Section 8, as amended by Laws 2014, Chapter 35,  
Section 1 and by Laws 2014, Chapter 39, Section 1 and also by  
Laws 2014, Chapter 43, Section 1) is amended to read:

"10-11-8. NORMAL RETIREMENT--RETURN TO EMPLOYMENT--  
BENEFITS CONTINUED--CONTRIBUTIONS.--

A. A member may retire upon fulfilling the  
following requirements prior to the selected date of  
retirement:

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1 (1) a written application for normal  
2 retirement, in the form prescribed by the association, is filed  
3 with the association;

4 (2) employment is terminated with all  
5 employers covered by any state system or the educational  
6 retirement system;

7 (3) the member selects an effective date of  
8 retirement that is the first day of a calendar month; and

9 (4) the member meets the age and service  
10 credit requirement for normal retirement specified in the  
11 coverage plan applicable to the member.

12 B. The amount of normal retirement pension is  
13 determined in accordance with the coverage plan applicable to  
14 the member.

15 C. Except as provided in [~~Subsection~~] Subsections E  
16 and K of this section, on or after July 1, 2010, a retired  
17 member may be subsequently employed by an affiliated public  
18 employer only pursuant to the following provisions:

19 (1) the retired member has not been employed  
20 as an employee of an affiliated public employer or retained as  
21 an independent contractor by the affiliated public employer  
22 from which the retired member retired for at least twelve  
23 consecutive months from the date of retirement to the  
24 commencement of subsequent employment or reemployment with an  
25 affiliated public employer;

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1 (2) the retired member's pension shall be  
2 suspended upon commencement of the subsequent employment;

3 (3) except as provided in Subsection G of this  
4 section, the retired member shall not become a member and shall  
5 not accrue service credit, and the retired member and that  
6 person's subsequent affiliated public employer shall not make  
7 contributions under any coverage plan pursuant to the Public  
8 Employees Retirement Act; and

9 (4) upon termination of the subsequent  
10 employment, the retired member's pension shall resume in  
11 accordance with the provisions of Subsection A of this section.

12 D. Notwithstanding the provisions of Subsection B  
13 of Section 10-11-118 NMSA 1978, on and after July 1, 2013, if a  
14 retired member becomes employed with an employer pursuant to  
15 the Educational Retirement Act, and effective July 1, 2014, if  
16 a retired member who, subsequent to retirement, is employed and  
17 covered pursuant to the Judicial Retirement Act, and, effective  
18 July 1, 2014, if a retired member who, subsequent to  
19 retirement, is employed and covered pursuant to the Magistrate  
20 Retirement Act:

21 (1) the retired member's cost-of-living  
22 pension adjustment shall be suspended upon commencement of the  
23 employment; and

24 (2) upon termination of the employment, the  
25 retired member's suspended cost-of-living pension adjustment

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1 shall be reinstated as provided under Subsection B of Section  
2 10-11-118 NMSA 1978.

3 E. The provisions of Subsections C, H and I of this  
4 section do not apply to:

5 (1) a retired member employed by the  
6 legislature for legislative session work;

7 (2) a retired member employed temporarily as a  
8 precinct board member for a municipal election or an election  
9 covered by the Election Code; or

10 (3) a retired member who is elected to serve a  
11 term as an elected official in an office covered pursuant to  
12 the Public Employees Retirement Act; provided that:

13 (a) the retired member files an  
14 irrevocable exemption from membership with the association  
15 within thirty days of taking office; and

16 (b) the irrevocable exemption shall be  
17 for the elected official's term of office.

18 F. A retired member who returns to employment  
19 during retirement pursuant to Subsection E of this section is  
20 entitled to receive retirement benefits but is not entitled to  
21 accrue service credit or to acquire or purchase service credit  
22 in the future for the period of the retired member's subsequent  
23 employment with an affiliated public employer.

24 G. At any time during a retired member's subsequent  
25 employment pursuant to Subsection C of this section, the

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1 retired member may elect to become a member and the following  
2 conditions shall apply:

3 (1) the previously retired member and the  
4 subsequent affiliated public employer shall make the required  
5 employee and employer contributions, and the previously retired  
6 member shall accrue service credit for the period of subsequent  
7 employment; and

8 (2) when the previously retired member  
9 terminates the subsequent employment with an affiliated public  
10 employer, the previously retired member shall retire according  
11 to the provisions of the Public Employees Retirement Act,  
12 subject to the following conditions:

13 (a) payment of the pension shall resume  
14 in accordance with the provisions of Subsection A of this  
15 section;

16 (b) unless the previously retired member  
17 accrued at least three years of service credit on account of  
18 the subsequent employment, the recalculation of pension shall:  
19 1) employ the form of payment selected by the previously  
20 retired member at the time of the first retirement; and 2) use  
21 the provisions of the coverage plan applicable to the member on  
22 the date of the first retirement; and

23 (c) the recalculated pension shall not  
24 be less than the amount of the suspended pension.

25 H. A retired member who returned to work with an

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1 affiliated public employer prior to July 1, 2010 shall be  
2 subject to the provisions of this section in effect on the date  
3 the retired member returned to work; provided that:

4 (1) on and after July 1, 2010, the retired  
5 member shall pay the employee contribution in an amount  
6 specified in the Public Employees Retirement Act for the  
7 position in which the retired member is subsequently employed;

8 (2) notwithstanding the provisions of  
9 Subsection B of Section 10-11-118 NMSA 1978, on and after July  
10 1, 2013, the retired member's cost-of-living pension adjustment  
11 shall be suspended; and

12 (3) upon termination of the subsequent  
13 employment with the affiliated public employer, the retired  
14 member's cost-of-living pension adjustment shall be reinstated  
15 as provided in Subsection B of Section 10-11-118 NMSA 1978.

16 I. Effective July 1, 2014, if a retired member who,  
17 subsequent to retirement, is employed and covered pursuant to  
18 the provisions of the Magistrate Retirement Act or Judicial  
19 Retirement Act, during the period of subsequent employment:

20 (1) the member shall be entitled to receive  
21 retirement benefits;

22 (2) the retired member's cost-of-living  
23 pension adjustment shall be suspended upon commencement of the  
24 employment; and

25 (3) upon termination of the employment, the

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1 retired member's suspended cost-of-living pension adjustment  
2 shall be reinstated as provided under Subsection B of Section  
3 10-11-118 NMSA 1978.

4 J. The pension of a member who has earned service  
5 credit under more than one coverage plan shall be determined as  
6 follows:

7 (1) the pension of a member who has three or  
8 more years of service credit earned on or before June 30, 2013  
9 under each of two or more coverage plans shall be determined in  
10 accordance with the coverage plan that produces the highest  
11 pension;

12 (2) the pension of a member who has service  
13 credit earned on or before June 30, 2013 under two or more  
14 coverage plans but who has three or more years of service  
15 credit under only one of those coverage plans shall be  
16 determined in accordance with the coverage plan in which the  
17 member has three or more years of service credit. If the  
18 service credit is acquired under two different coverage plans  
19 applied to the same affiliated public employer as a consequence  
20 of an election by the members, adoption by the affiliated  
21 public employer or a change in the law that results in the  
22 application of a coverage plan with a greater pension, the  
23 greater pension shall be paid a member retiring from the  
24 affiliated public employer under which the change in coverage  
25 plan took place regardless of the amount of service credit

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1 under the coverage plan producing the greater pension; provided  
2 that the member has three or more years of continuous  
3 employment with that affiliated public employer immediately  
4 preceding or immediately preceding and immediately following  
5 the date the coverage plan changed;

6 (3) the pension of a member who has service  
7 credit earned on or before June 30, 2013 under each of two or  
8 more coverage plans and who has service credit earned under any  
9 coverage plan on or after July 1, 2013 shall be equal to the  
10 sum of:

11 (a) the pension attributable to the  
12 service credit earned on or before June 30, 2013 determined  
13 pursuant to Paragraph (1) or (2) of this subsection; and

14 (b) the pension attributable to the  
15 service credit earned under each coverage plan on or after July  
16 1, 2013;

17 (4) the pension of a member who has service  
18 credit earned only on and after July 1, 2013 shall be equal to  
19 the sum of the pension attributable to the service credit the  
20 member has accrued under each coverage plan; and

21 (5) the provisions of each coverage plan for  
22 the purpose of this subsection shall be those in effect at the  
23 time the member ceased to be covered by the coverage plan.

24 "Service credit", for the purposes of this subsection, shall be  
25 only personal service rendered an affiliated public employer

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1 and credited to the member under the provisions of Subsection A  
2 of Section 10-11-4 NMSA 1978. Service credited under any other  
3 provision of the Public Employees Retirement Act shall not be  
4 used to satisfy the three-year service credit requirement of  
5 this subsection.

6 K. Notwithstanding the provisions of any other  
7 subsection of this section, certified law enforcement officers  
8 who have retired on or before December 31, 2015 under any  
9 municipal police member coverage plan or as a certified law  
10 enforcement officer covered under state police member and adult  
11 correctional officer member coverage plan l may be subsequently  
12 employed as certified law enforcement officers by an affiliated  
13 public employer if the retired member has not been employed as  
14 an employee of an affiliated public employer or retained as an  
15 independent contractor by the affiliated public employer from  
16 which the retired member retired for at least ninety  
17 consecutive days from the date of retirement to the  
18 commencement of subsequent employment or reemployment with an  
19 affiliated public employer; provided that:

20 (1) the retired member's pension, including  
21 any cost-of-living adjustment, shall continue to be paid during  
22 the period of subsequent employment;

23 (2) the retired member shall not become a  
24 member during the period of subsequent employment;

25 (3) the retired member shall not accrue

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1 service credit for any portion of the period of subsequent  
2 employment;

3 (4) the retired member and the retired  
4 member's subsequent affiliated public employer shall make the  
5 contributions that would be required for members and employers  
6 under the applicable coverage plan during the entire period of  
7 subsequent employment;

8 (5) the contributions paid by the retired  
9 member during the term of subsequent employment shall not be  
10 refundable at the termination of the subsequent employment;

11 (6) the period of subsequent employment of a  
12 retired member pursuant to this subsection shall be no more  
13 than a total of five years from the date of hire with any  
14 affiliated public employer;

15 (7) the chief of police, the sheriff or the  
16 equivalent senior-most-ranking law enforcement officer of the  
17 affiliated public employer has the sole discretion to select  
18 retired members for subsequent employment or reemployment  
19 pursuant to this subsection;

20 (8) an affiliated public employer that is a  
21 class A county or is a municipality located within a class A  
22 county may not employ a number of retired members pursuant to  
23 this subsection that exceeds ten percent of the affiliated  
24 public employer's authorized police force; provided that  
25 retired members who were reemployed prior to the effective date

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1 of this 2016 act shall not be counted toward the maximum number  
2 allowed in this paragraph; and

3 (9) an affiliated public employer that is a  
4 class A county or is a municipality located within a class A  
5 county shall employ retired members only at ranks below  
6 sergeant and shall not promote subsequently employed retired  
7 members above the rank of sergeant at any time during the  
8 subsequent employment."

9 SECTION 2. EMERGENCY.--It is necessary for the public  
10 peace, health and safety that this act take effect immediately.