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HOUSE BILL 227

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Pamelya Herndon

AN ACT

RELATING TO LAW ENFORCEMENT; ADDING TO THE LAW ENFORCEMENT
RETENTION FUND AN ANNUAL RETENTION DISBURSEMENT FOR EVERY YEAR
OF SERVICE AFTER TWENTY YEARS; ALLOWING LAW ENFORCEMENT
OFFICERS TO EARN ONE YEAR OF CREDIT FOR HEALTH CARE PREMIUMS
FOR EVERY YEAR OF SERVICE AFTER RETIREMENT ELIGIBILITY;
ALLOWING LAW ENFORCEMENT OFFICERS TO RETURN TO WORK FOR
AFFILIATED PUBLIC EMPLOYERS UNDER CERTAIN CONDITIONS; ALLOWING
LAW ENFORCEMENT OFFICERS TO EARN UP TO ONE HUNDRED PERCENT OF
THE RETIREMENT BENEFIT PURSUANT TO THE PUBLIC EMPLOYEES
RETIREMENT ACT.

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

SECTION 1. Section 9-19-14 NMSA 1978 (being Laws 2022,
Chapter 56, Section 36) is amended to read:

"9-19-14. LAW ENFORCEMENT RETENTION FUND--CREATED--

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1 RETENTION DIFFERENTIAL DISBURSEMENT--REPORTING.--

2 A. The "law enforcement retention fund" is created
3 in the state treasury. The fund consists of money appropriated
4 by the legislature, federal money granted to the state for the
5 purposes of the fund, income from investment of the fund and
6 money otherwise accruing to the fund. Money in the fund shall
7 not revert to any other fund at the end of a fiscal year. The
8 department shall administer the fund to provide:

9 (1) retention differential disbursements for
10 law enforcement officers meeting certain levels of tenure; and

11 (2) support for disbursement administration
12 processes and reporting compliance.

13 B. Money in the fund shall be disbursed on warrants
14 signed by the secretary of finance and administration pursuant
15 to vouchers signed by the secretary of public safety.

16 C. Contingent on the completion of reporting
17 requirements provided in Subsection G of this section, the
18 department shall determine and distribute annually the amount
19 necessary to provide to a law enforcement agency for the
20 purpose of providing a retention differential disbursement to
21 law enforcement officers employed by that law enforcement
22 agency. A law enforcement agency shall expend funding received
23 for no other purpose than that permitted by this section, and
24 any unexpended balance received by a law enforcement agency
25 pursuant to this section at the end of a fiscal year shall

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1 revert to the law enforcement retention fund. The department
2 shall monitor the use of funding and ensure the proper
3 reversions to the law enforcement retention fund.

4 D. A law enforcement officer shall receive a
5 retention differential disbursement in the amount of five
6 percent of the law enforcement officer's salary upon reaching
7 four, nine, fourteen and nineteen years of service from the
8 anniversary of the law enforcement officer's date of hire with
9 that law enforcement agency and annually for every year of
10 service after twenty years; provided that:

11 (1) the law enforcement officer remains
12 employed as a law enforcement officer with that same law
13 enforcement agency for one additional year; and

14 (2) the retention differential disbursement
15 shall be calculated based on the salary of the law enforcement
16 officer on those dates.

17 E. After the calculations for retention
18 differential disbursements are made in accordance with
19 Subsection D of this section, if the balance in the fund is
20 insufficient to permit the total disbursements provided by
21 Subsection D of this section, the department shall reduce that
22 allocation to the maximum amount permitted by available money
23 in the fund.

24 F. The amount provided for a retention differential
25 disbursement shall include the amount of employer tax

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1 liabilities, which shall be paid by the employer at the time
2 the retention differential disbursement is provided to the law
3 enforcement officer.

4 G. To receive funding pursuant to Subsection C of
5 this section, a law enforcement agency shall make that request
6 to the department prior to June 1 of each fiscal year, and in
7 that request, the agency shall report the following:

8 (1) the number of officers that are projected
9 to become eligible for a retention differential disbursement in
10 the upcoming fiscal year and the projected amount of the
11 retention differential disbursement, including any employer tax
12 liabilities;

13 (2) the number of law enforcement officers
14 employed by the law enforcement agency for the last five years;

15 (3) the number of years of service of each law
16 enforcement officer employed by the law enforcement agency;

17 (4) the number of law enforcement officers
18 that left the employ of the law enforcement agency in the last
19 year and the stated reasons why each law enforcement officer
20 left the employ of the law enforcement agency;

21 (5) the number of years of service of each law
22 enforcement officer that left the employ of the law enforcement
23 agency in the last year;

24 (6) the number of applicants to the law
25 enforcement agency in the last year;

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1 (7) the number of applicants to the law
2 enforcement agency in the last year that attended a law
3 enforcement academy;

4 (8) the number of law enforcement officers
5 that received one or more certifications in the last year;

6 (9) the number of law enforcement officers
7 added to the law enforcement agency via lateral transfer and
8 the years of service of each law enforcement officer at each
9 previous law enforcement agency;

10 (10) any changes to compensation, recruiting,
11 retention or benefits implemented by the law enforcement agency
12 in the last year; and

13 (11) any other information that is used for
14 determining retention rates unless disclosure of such
15 information is otherwise prohibited by law.

16 H. The department shall:

17 (1) provide forms, standards and procedures
18 and related training to law enforcement agencies as necessary
19 for the agencies to report retention information;

20 (2) maintain the privacy and security of
21 information in accordance with applicable state and federal
22 laws; and

23 (3) adopt and promulgate rules as necessary to
24 implement the provisions of this section.

25 I. The annual report and other statistical data

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1 reports generated by the department shall include an evaluation
2 of a program's efficacy in law enforcement retention and shall
3 be made available to law enforcement agencies and the public.

4 J. The department shall provide monthly reports to
5 the department of finance and administration and the
6 legislative finance committee about expenditures from the law
7 enforcement retention fund, including an itemized list of
8 expenditures and the balance remaining in the fund.

9 K. The department may waive reporting information
10 required by a law enforcement agency pursuant to Subsection G
11 of this section; provided that the department shall provide an
12 explanation of its decision in writing.

13 L. The department shall submit an annual report
14 providing information collected pursuant to Subsection G of
15 this section to the governor and the legislature no later than
16 December 15 of each year.

17 M. As used in this section:

18 (1) "law enforcement agency" means an agency
19 of the state or local political subdivision of the state that
20 employs certified law enforcement officers or the police
21 department of a tribe that has entered into an agreement with
22 the department pursuant to Section 29-1-11 NMSA 1978;

23 (2) "law enforcement officer" means a full-
24 time salaried public employee of a law enforcement agency, or a
25 certified part-time salaried police officer employed by a law

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1 enforcement agency, whose principal duties under law are to
2 hold in custody any person accused of a criminal offense, to
3 maintain public order or to make arrests for crimes; and

4 (3) "retention differential disbursement"
5 means the amount disbursed from the law enforcement retention
6 fund based on a law enforcement officer's service at a law
7 enforcement agency but is not considered salary for the purpose
8 of calculating retirement benefits."

9 SECTION 2. Section 10-7C-13 NMSA 1978 (being Laws 1990,
10 Chapter 6, Section 13, as amended) is amended to read:

11 "10-7C-13. PAYMENT OF PREMIUMS ON HEALTH CARE PLANS.--

12 A. Except as otherwise provided in this section,
13 each eligible retiree shall pay a monthly premium for the basic
14 plan in an amount set by the board not to exceed fifty dollars
15 (\$50.00) plus the amount, if any, of the compounded annual
16 increases authorized by the board, which increases shall not
17 exceed nine percent until fiscal year 2008 after which the
18 increases shall not exceed the authority's group health care
19 trend. In addition to the monthly premium for the basic plan,
20 each current retiree and nonsalaried eligible participating
21 entity governing authority member who becomes an eligible
22 retiree shall also pay monthly an additional participation fee
23 set by the board. That fee shall be five dollars (\$5.00) plus
24 the amount, if any, of the compounded annual increases
25 authorized by the board, which increases shall not exceed nine

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1 percent until fiscal year 2008 after which the increases shall
2 not exceed the authority's group health care trend. The
3 additional monthly participation fee paid by the current
4 retirees and nonsalaried eligible participating entity
5 governing authority members who become eligible retirees shall
6 be a consideration and a condition for being permitted to
7 participate in the Retiree Health Care Act. A legislative
8 member or a former participating employer governing authority
9 member shall pay a monthly premium for any selected plan equal
10 to one-twelfth of the annual cost of the claims and
11 administrative costs of that plan allocated to the member by
12 the board. In addition, a legislative member or a former
13 participating employer governing authority member shall pay the
14 additional monthly participation fee set by the board pursuant
15 to this subsection as a consideration and condition for
16 participation in the Retiree Health Care Act. Eligible
17 dependents shall pay monthly premiums in amounts that with
18 other money appropriated to the fund shall cover the cost of
19 the basic plan for the eligible dependents.

20 B. Eligible retirees and eligible dependents shall
21 pay monthly premiums to cover the cost of the optional plans
22 that they elect to receive, and the board shall adopt rules for
23 the collection of additional premiums from eligible retirees
24 and eligible dependents participating in the optional plans.
25 An eligible retiree or eligible dependent may authorize the

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1 authority in writing to deduct the amount of these premiums
2 from the monthly annuity payments, if applicable.

3 C. The participating employers, active employees
4 and retirees are responsible for the financial viability of the
5 program. The overall financial viability is not an additional
6 financial obligation of the state.

7 D. For eligible retirees who become eligible for
8 participation on or after July 1, 2001, the board may determine
9 monthly premiums based on the retirees' years of credited
10 service with participating employers.

11 E. For every year a law enforcement officer serves
12 beyond full retirement eligibility, the law enforcement officer
13 shall earn one year of credit for health care premiums in an
14 amount equal to the cost of premiums for the basic plan to be
15 paid by the law enforcement agency that employed the officer.
16 The credit may be earned up to but not beyond the law
17 enforcement officer's medicare eligibility age.

18 F. As used in this section, "law enforcement
19 officer" means a full-time salaried public employee of a law
20 enforcement agency or a certified part-time salaried police
21 officer employed by a law enforcement agency whose principal
22 duties under law are to hold in custody any person accused of a
23 criminal offense, to maintain public order or to make arrests
24 for crimes."

25 SECTION 3. Section 10-11-8 NMSA 1978 (being Laws 1987,

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1 Chapter 253, Section 8, as amended) is amended to read:

2 "10-11-8. NORMAL RETIREMENT--RETURN TO EMPLOYMENT--
3 BENEFITS CONTINUED--CONTRIBUTIONS.--

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

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

10 (2) employment is terminated with all
11 employers covered by any state system or the educational
12 retirement system;

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

15 (4) the member meets the age and service
16 credit requirement for normal retirement specified in the
17 coverage plan applicable to the member.

18 B. The amount of normal retirement pension is
19 determined in accordance with the coverage plan applicable to
20 the member.

21 C. Except as provided in [~~Subsection~~] Subsections D
22 and J of this section, on or after July 1, 2010, a retired
23 member may be subsequently employed by an affiliated public
24 employer only pursuant to the following provisions:

25 (1) the retired member has not been employed

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1 as an employee of an affiliated public employer or retained as
2 an independent contractor by the affiliated public employer
3 from which the retired member retired for at least twelve
4 consecutive months from the date of retirement to the
5 commencement of subsequent employment or reemployment with an
6 affiliated public employer;

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

9 (3) except as provided in Subsection F of this
10 section, the retired member shall not become a member and shall
11 not accrue service credit, and the retired member and that
12 person's subsequent affiliated public employer shall not make
13 contributions under any coverage plan pursuant to the Public
14 Employees Retirement Act; and

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

18 D. The provisions of Subsections C, G, ~~[and]~~ H and
19 J of this section do not apply to:

20 (1) a retired member employed by the
21 legislature for legislative session work;

22 (2) a retired member employed temporarily as a
23 precinct board member for a municipal election or an election
24 covered by the Election Code; or

25 (3) a retired member who is elected to serve a

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1 term as an elected official in an office covered pursuant to
2 the Public Employees Retirement Act; provided that:

3 (a) the retired member files an
4 irrevocable exemption from membership with the association
5 within thirty days of taking office; and

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

8 E. A retired member who returns to employment
9 during retirement pursuant to Subsection D of this section is
10 entitled to receive retirement benefits but is not entitled to
11 accrue service credit or to acquire or purchase service credit
12 in the future for the period of the retired member's subsequent
13 employment with an affiliated public employer.

14 F. At any time during a retired member's subsequent
15 employment pursuant to Subsection C of this section, the
16 retired member may elect to become a member and the following
17 conditions shall apply:

18 (1) the previously retired member and the
19 subsequent affiliated public employer shall make the required
20 employee and employer contributions, and the previously retired
21 member shall accrue service credit for the period of subsequent
22 employment; and

23 (2) when the previously retired member
24 terminates the subsequent employment with an affiliated public
25 employer, the previously retired member shall retire according

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1 to the provisions of the Public Employees Retirement Act,
2 subject to the following conditions:

3 (a) payment of the pension shall resume
4 in accordance with the provisions of Subsection A of this
5 section;

6 (b) unless the previously retired member
7 accrued at least three years of service credit on account of
8 the subsequent employment, the recalculation of pension shall:

9 1) employ the form of payment selected by the previously
10 retired member at the time of the first retirement; and 2) use
11 the provisions of the coverage plan applicable to the member on
12 the date of the first retirement; and

13 (c) the recalculated pension shall not
14 be less than the amount of the suspended pension.

15 G. A retired member who returned to work with an
16 affiliated public employer prior to July 1, 2010 shall be
17 subject to the provisions of this section in effect on the date
18 the retired member returned to work; provided that on and after
19 July 1, 2010, the retired member shall pay the employee
20 contribution in an amount specified in the Public Employees
21 Retirement Act for the position in which the retired member is
22 subsequently employed.

23 H. Effective July 1, 2014, if a retired member who,
24 subsequent to retirement, is employed and covered pursuant to
25 the provisions of the Magistrate Retirement Act or Judicial

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1 Retirement Act, during the period of subsequent employment:

2 (1) the member shall be entitled to receive
3 retirement benefits;

4 (2) the retired member's cost-of-living
5 pension adjustment shall be suspended upon commencement of the
6 employment; and

7 (3) upon termination of the employment, the
8 retired member's suspended cost-of-living pension adjustment
9 shall be reinstated as provided under Section 10-11-118 NMSA
10 1978.

11 I. The pension of a member who has earned service
12 credit under more than one coverage plan shall be determined as
13 follows:

14 (1) the pension of a member who has three or
15 more years of service credit earned on or before June 30, 2013
16 under each of two or more coverage plans shall be determined in
17 accordance with the coverage plan that produces the highest
18 pension;

19 (2) the pension of a member who has service
20 credit earned on or before June 30, 2013 under two or more
21 coverage plans but who has three or more years of service
22 credit under only one of those coverage plans shall be
23 determined in accordance with the coverage plan in which the
24 member has three or more years of service credit. If the
25 service credit is acquired under two different coverage plans

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1 applied to the same affiliated public employer as a consequence
2 of an election by the members, adoption by the affiliated
3 public employer or a change in the law that results in the
4 application of a coverage plan with a greater pension, the
5 greater pension shall be paid a member retiring from the
6 affiliated public employer under which the change in coverage
7 plan took place regardless of the amount of service credit
8 under the coverage plan producing the greater pension; provided
9 that the member has three or more years of continuous
10 employment with that affiliated public employer immediately
11 preceding or immediately preceding and immediately following
12 the date the coverage plan changed;

13 (3) the pension of a member who has service
14 credit earned on or before June 30, 2013 under each of two or
15 more coverage plans and who has service credit earned under any
16 coverage plan on or after July 1, 2013 shall be equal to the
17 sum of:

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

21 (b) the pension attributable to the
22 service credit earned under each coverage plan on or after July
23 1, 2013;

24 (4) the pension of a member who has service
25 credit earned only on and after July 1, 2013 shall be equal to

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1 the sum of the pension attributable to the service credit the
2 member has accrued under each coverage plan; and

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

6 "Service credit", for the purposes of this subsection, shall be
7 only personal service rendered an affiliated public employer
8 and credited to the member under the provisions of Subsection A
9 of Section 10-11-4 NMSA 1978. Service credited under any other
10 provision of the Public Employees Retirement Act shall not be
11 used to satisfy the three-year service credit requirement of
12 this subsection.

13 J. Notwithstanding any other provision of this
14 section, a certified law enforcement officer who has retired on
15 or before December 31, 2022 under any municipal police member
16 coverage plan or under the state police member, correctional
17 officer member and probation and parole officer member coverage
18 plan 1 may be subsequently employed as a certified law
19 enforcement officer by an affiliated public employer; provided
20 that the:

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

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

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1 (3) retired member shall not accrue service
2 credit for any portion of the period of subsequent employment;

3 (4) retired member and the retired member's
4 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) contributions paid by or on behalf of the
9 retired member during the term of subsequent employment shall
10 not be refundable at the termination of the subsequent
11 employment;

12 (6) retired member is subsequently employed
13 by:

14 (a) the affiliated public employer in an
15 entry-level or civilian position, as certified by the
16 affiliated public employer to the association; or

17 (b) an affiliated public employer in a
18 municipality with a population of less than sixty thousand,
19 without regard to the level of position; and

20 (7) subsequent employment occurs prior to July
21 1, 2028."

22 SECTION 4. Section 10-11-29 NMSA 1978 (being Laws 1987,
23 Chapter 253, Section 29, as amended) is amended to read:

24 "10-11-29. STATE POLICE MEMBER, CORRECTIONAL OFFICER
25 MEMBER AND PROBATION AND PAROLE OFFICER MEMBER COVERAGE PLAN

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1 1--AMOUNT OF PENSION--FORM OF PAYMENT A.--Under state police
2 member, correctional officer member and probation and parole
3 officer member coverage plan 1, the amount of pension under
4 form of payment A is equal to three percent of final average
5 salary multiplied by credited service. The amount shall not
6 exceed [~~ninety~~] one hundred percent of the final average
7 salary."

8 SECTION 5. Section 10-11-58 NMSA 1978 (being Laws 1987,
9 Chapter 253, Section 58, as amended) is amended to read:

10 "10-11-58. MUNICIPAL POLICE MEMBER COVERAGE PLAN 1--
11 AMOUNT OF PENSION--FORM OF PAYMENT A.--Under municipal police
12 member coverage plan 1, the amount of pension under form of
13 payment A is equal to two percent of the final average salary
14 multiplied by credited service. The amount shall not exceed
15 [~~ninety~~] one hundred percent of the final average salary."

16 SECTION 6. Section 10-11-64 NMSA 1978 (being Laws 1987,
17 Chapter 253, Section 64, as amended) is amended to read:

18 "10-11-64. MUNICIPAL POLICE MEMBER COVERAGE PLAN 2--
19 AMOUNT OF PENSION--FORM OF PAYMENT A.--Under municipal police
20 member coverage plan 2:

21 A. for a member with age and service requirements
22 provided under Subsection A of Section 10-11-63 NMSA 1978, the
23 amount of pension under form of payment A is equal to two and
24 one-half percent of the final average salary multiplied by
25 credited service. The amount shall not exceed [~~ninety~~] one

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1 hundred percent of the final average salary; and

2 B. for a member with age and service requirements
3 provided under Subsection B of Section 10-11-63 NMSA 1978, the
4 amount of pension under form of payment A is equal to two
5 percent of the final average salary multiplied by credited
6 service. The amount shall not exceed [~~ninety~~] one hundred
7 percent of the final average salary."

8 SECTION 7. Section 10-11-70 NMSA 1978 (being Laws 1987,
9 Chapter 253, Section 70, as amended) is amended to read:

10 "10-11-70. MUNICIPAL POLICE MEMBER COVERAGE PLAN 3--
11 AMOUNT OF PENSION--FORM OF PAYMENT A.--Under municipal police
12 member coverage plan 3:

13 A. for a member with age and service requirements
14 provided under Subsection A of Section 10-11-69 NMSA 1978, the
15 amount of pension under form of payment A is equal to two and
16 one-half percent of the final average salary multiplied by
17 credited service. The amount shall not exceed [~~ninety~~] one
18 hundred percent of the final average salary; and

19 B. for a member with age and service requirements
20 provided under Subsection B of Section 10-11-69 NMSA 1978, the
21 amount of pension under form of payment A is equal to two
22 percent of the final average salary multiplied by credited
23 service. The amount shall not exceed [~~ninety~~] one hundred
24 percent of the final average salary."

25 SECTION 8. Section 10-11-76 NMSA 1978 (being Laws 1987,

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1 Chapter 253, Section 76, as amended) is amended to read:

2 "10-11-76. MUNICIPAL POLICE MEMBER COVERAGE PLAN 4--
3 AMOUNT OF PENSION--FORM OF [~~PENSION~~] PAYMENT A.--Under
4 municipal police member coverage plan 4:

5 A. for a member with age and service requirements
6 provided under Subsection A of Section 10-11-75 NMSA 1978, the
7 amount of pension under form of payment A is equal to three
8 percent of the final average salary multiplied by credited
9 service. The amount shall not exceed [~~ninety~~] one hundred
10 percent of the final average salary; and

11 B. for a member with age and service requirements
12 provided under Subsection B of Section 10-11-75 NMSA 1978, the
13 amount of pension under form of payment A is equal to two and
14 one-half percent of the final average salary multiplied by
15 credited service. The amount shall not exceed [~~ninety~~] one
16 hundred percent of the final average salary."

17 SECTION 9. Section 10-11-82 NMSA 1978 (being Laws 1987,
18 Chapter 253, Section 82, as amended) is amended to read:

19 "10-11-82. MUNICIPAL POLICE MEMBER COVERAGE PLAN 5--
20 AMOUNT OF PENSION--FORM OF PAYMENT A.--Under municipal police
21 member coverage plan 5:

22 A. for a member with age and service requirements
23 provided under Subsection A of Section 10-11-81 NMSA 1978, the
24 amount of pension under form of payment A is equal to three and
25 one-half percent of the final average salary multiplied by

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1 credited service. The amount shall not exceed [~~ninety~~] one
2 hundred percent of the final average salary; and

3 B. for a member with age and service requirements
4 provided under Subsection B of Section 10-11-81 NMSA 1978, the
5 amount of pension under form of payment A is equal to three
6 percent of the final average salary multiplied by credited
7 service. The amount shall not exceed [~~ninety~~] one hundred
8 percent of the final average salary."

9 SECTION 10. APPLICABILITY.--The provisions of Sections 4
10 through 9 of this act apply to credited service performed on or
11 after the effective date of this act. Any credited service
12 performed or amount of pension earned prior to the effective
13 date of this act shall not be calculated or adjusted to conform
14 to the provisions of this act.

15 SECTION 11. EFFECTIVE DATE.--The effective date of the
16 provisions of this act is July 1, 2023.