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HOUSE BILL 344

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

Dennis J. Roch

AN ACT

RELATING TO PUBLIC EMPLOYEES; AMENDING THE PUBLIC EMPLOYEES
RETIREMENT ACT TO PROVIDE THAT RETIRED LAW ENFORCEMENT OFFICERS
MAY RETURN TO LAW ENFORCEMENT EMPLOYMENT WITHOUT SUSPENDING
THEIR PENSIONS DURING REEMPLOYMENT; PROVIDING EXCEPTIONS FOR
CERTAIN REEMPLOYED LAW ENFORCEMENT OFFICERS AND THEIR
AFFILIATED PUBLIC EMPLOYERS REGARDING THE PAYMENT OF MEMBER AND
EMPLOYER CONTRIBUTIONS.

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) 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

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1 retirement:

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

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

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

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

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

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

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

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1 an affiliated public employer;

2 (2) the [~~previously~~] retired member's pension
3 shall be suspended upon commencement of the subsequent
4 employment;

5 (3) except as provided in Subsection [~~G~~] H of
6 this section, during the subsequent employment, the
7 [~~previously~~] retired member shall not become a member and thus
8 the [~~previously~~] retired member shall not accrue service
9 credit, and the [~~previously~~] retired member and that person's
10 affiliated public employer shall not make contributions under
11 any coverage plan pursuant to the Public Employees Retirement
12 Act; and

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

17 D. Notwithstanding the provisions of Subsection B
18 of Section 10-11-118 NMSA 1978, on and after July 1, 2013, if a
19 retired member becomes employed with an employer pursuant to
20 the Educational 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 and [H] I of
4 this 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 county undersheriff;

11 (4) a retired law enforcement officer who is
12 subsequently employed as an instructor at the New Mexico law
13 enforcement academy or a state, local or municipal police
14 academy or sheriff's law enforcement academy and who is paid a
15 salary for that employment in an amount less than or equal to
16 thirty thousand dollars (\$30,000) in any fiscal year; or

17 [~~(3)~~] (5) a retired member who is elected to
18 serve a term as an elected official; provided that:

19 (a) the retired member files an
20 irrevocable exemption from membership with the association
21 within thirty days of taking office; and

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

24 F. A retired member who returns to employment
25 during retirement pursuant to Subsection E of this section:

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1 (1) is entitled to receive retirement benefits
2 but is not entitled to accrue service credit or to [~~acquire or~~]
3 purchase service credit in the future for the period of the
4 [~~previously~~] retired member's [~~reemployment~~] subsequent
5 employment with an affiliated public employer; and

6 (2) shall not pay the member contributions,
7 and the retired member's affiliated public employer shall not
8 pay the employer contributions, under the applicable member
9 coverage plan pursuant to the Public Employees Retirement Act
10 during the period of subsequent employment.

11 G. On and after July 1, 2014, a retired law
12 enforcement officer may return to employment with an affiliated
13 public employer as a law enforcement employee without
14 suspension of the employee's pension if:

15 (1) the retired law enforcement officer has
16 not been employed by an affiliated public employer or retained
17 as an independent contractor by the affiliated public employer
18 from which the law enforcement officer retired for at least
19 twelve consecutive months from the date of retirement to the
20 commencement of the subsequent employment with an affiliated
21 public employer;

22 (2) during the subsequent employment, the
23 employee is paid by the affiliated public employer a salary in
24 an amount not to exceed sixty thousand dollars (\$60,000) in any
25 fiscal year; and

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1 (3) during the subsequent employment, the law
2 enforcement officer shall not accrue service credit and is not
3 entitled to purchase service credit and the employee and the
4 employee's affiliated public employer shall pay the
5 contributions required under the applicable member coverage
6 plan.

7 H. Member contributions paid, during the period of
8 subsequent employment, on behalf of a retired law enforcement
9 officer who returns to employment pursuant to the provisions of
10 Subsection G of this section shall not be refundable.

11 [~~G.~~] I. At any time during a [~~previously~~] retired
12 member's subsequent employment pursuant to Subsection C of this
13 section, the [~~previously~~] retired member may elect to become a
14 member and, upon membership, the following conditions shall
15 apply:

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

21 (2) when the [~~previously retired~~] member
22 terminates the subsequent employment with an affiliated public
23 employer, the [~~previously retired~~] member shall retire
24 according to the provisions of the Public Employees Retirement
25 Act, subject to the following conditions:

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

4 (b) unless the [~~previously retired~~]
5 member accrued at least three years of service credit on
6 account of the subsequent employment, the recalculation of
7 pension shall: 1) employ the form of payment selected by the
8 [~~previously retired~~] member at the time of the first
9 retirement; and 2) use the provisions of the coverage plan
10 applicable to the member on the date of the first retirement;
11 and

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

14 [H.] J. A [~~previously~~] retired member who returned
15 to work with an affiliated public employer prior to July 1,
16 2010 shall be subject to the provisions of this section in
17 effect on the date the [~~previously~~] retired member returned to
18 work; provided that:

19 (1) on and after July 1, 2010, the
20 [~~previously~~] retired member shall pay the employee contribution
21 in an amount specified in the Public Employees Retirement Act
22 for the position in which the [~~previously~~] retired member is
23 subsequently employed;

24 (2) notwithstanding the provisions of
25 Subsection B of Section 10-11-118 NMSA 1978, on and after July

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1 1, 2013, the ~~[previously]~~ retired member's cost-of-living
2 pension adjustment shall be suspended; and

3 (3) upon termination of the subsequent
4 employment with an affiliated public employer, the ~~[previously]~~
5 retired member's cost-of-living pension adjustment shall be
6 reinstated as provided in Subsection B of Section 10-11-118
7 NMSA 1978.

8 ~~[F.]~~ K. The pension of a member who has earned
9 service credit under more than one coverage plan shall be
10 determined as follows:

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

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

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1 application of a coverage plan with a greater pension, the
2 greater pension shall be paid a member retiring from the
3 affiliated public employer under which the change in coverage
4 plan took place regardless of the amount of service credit
5 under the coverage plan producing the greater pension; provided
6 that the member has three or more years of continuous
7 employment with that affiliated public employer immediately
8 preceding or immediately preceding and immediately following
9 the date the coverage plan changed;

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

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

18 (b) the pension attributable to the
19 service credit earned under each coverage plan on or after July
20 1, 2013;

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

25 (5) the provisions of each coverage plan for

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1 the purpose of this subsection shall be those in effect at the
2 time the member ceased to be covered by the coverage plan.
3 "Service credit", for the purposes of this subsection, shall be
4 only personal service rendered an affiliated public employer
5 and credited to the member under the provisions of Subsection A
6 of Section 10-11-4 NMSA 1978. Service credited under any other
7 provision of the Public Employees Retirement Act shall not be
8 used to satisfy the three-year service credit requirement of
9 this subsection."

10 SECTION 2. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2014.