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SENATE BILL 34

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

Craig W. Brandt

AN ACT

RELATING TO RETIREMENT; ALLOWING COST-OF-LIVING ADJUSTMENT
INCREASES TO RETIRED LAW ENFORCEMENT OFFICERS HIRED AS SCHOOL
SECURITY PERSONNEL.

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:

- (1) a written application for normal

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1 retirement, in the form prescribed by the association, is filed
2 with the association;

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

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

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

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

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

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

25 (2) the retired member's pension shall be

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1 suspended upon commencement of the subsequent employment;

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

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

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

20 (1) the retired member's cost-of-living
21 pension adjustment shall be suspended upon commencement of the
22 employment, unless that retired member is a retired law
23 enforcement officer who is employed as school security
24 personnel; and

25 (2) 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, unless that retired member is a retired
4 law enforcement officer who is employed as school security
5 personnel.

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

8 (1) a retired member employed by the
9 legislature for legislative session work;

10 (2) a retired member employed temporarily as a
11 precinct board member for a municipal election or an election
12 covered by the Election Code; or

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

16 (a) the retired member files an
17 irrevocable exemption from membership with the association
18 within thirty days of taking office; and

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

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

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1 employment with an affiliated public employer.

2 G. At any time during a retired member's subsequent
3 employment pursuant to Subsection C of this section, the
4 retired member may elect to become a member and the following
5 conditions shall apply:

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

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

16 (a) payment of the pension shall resume
17 in accordance with the provisions of Subsection A of this
18 section;

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

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1 (c) the recalculated pension shall not
2 be less than the amount of the suspended pension.

3 H. A retired member who returned to work with an
4 affiliated public employer prior to July 1, 2010 shall be
5 subject to the provisions of this section in effect on the date
6 the retired member returned to work; provided that:

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

11 (2) notwithstanding the provisions of
12 Subsection B of Section 10-11-118 NMSA 1978, on and after July
13 1, 2013, the retired member's cost-of-living pension adjustment
14 shall be suspended, unless that retired member is a retired law
15 enforcement officer who is employed as school security
16 personnel; and

17 (3) upon termination of the subsequent
18 employment with the affiliated public employer, the retired
19 member's cost-of-living pension adjustment shall be reinstated
20 as provided in Subsection B of Section 10-11-118 NMSA 1978,
21 unless that retired member is a retired law enforcement officer
22 who is employed as school security personnel.

23 I. 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 Subsection B of Section
10 10-11-118 NMSA 1978.

11 J. 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."