

TITLE 1: GOVERNMENT
DIVISION 8: PUBLIC EMPLOYMENT

§ 8356. Benefits: Refund on Separation.

(a) Effective January 1, 2008, upon complete separation from service before a class I member shall have completed 15 years of contributing member service, the class I member may elect to receive a refund of his or her total contributions, including regular interest. Except as provided in other sections of this part, no refund of any contributions shall be permitted for class I members after completion of 15 years of contributing member service, provided that, notwithstanding any other provision of law, any class I member electing to receive a refund of contributions, upon reemployment by the Commonwealth Government, its agencies or instrumentalities shall become a member of the Defined Contribution Plan, pursuant to 1 CMC §§ 8454 and 8456, as enacted by Public Law 15-13.

(b) Refund of contributions shall be permitted for class II members as follows:

(1) Upon complete separation from service before a member shall have completed at least three years membership service, the member shall receive a refund of his or her total contributions, including regular interest, subject to an early withdrawal penalty of 10% of the total contributions, excluding interest earned. The penalty shall be withheld and retained upon issuance of the contributions by the fund. Total contributions shall include all contributions made by the member to obtain various types of credit authorized by this part.

(2) If the member has less than 20 years of membership service, the member may elect to receive his or her contributions, with regular interest, as provided above, in lieu of the service retirement annuity. If the member has more than 20 years of membership service, the member may not receive a refund but shall be entitled to retirement benefits under the terms of this part.

(3) Any member receiving a refund of contributions shall, by that fact, forfeit, waive, and relinquish all accrued rights and benefits in the system, including all membership and creditable service. The board may, in its discretion, regardless of cause, withhold payment of a refund for a period not to exceed three months after receipt of an application from a member.

(4) Any member who has received a refund shall be considered a new member upon subsequent reemployment if the person qualifies for membership under provisions of this part. The member shall have the right to make repayments to the system of the amount or amounts previously received as a refund, including regular interest from the date of refund to the date of repayment. Upon the restoration of the refunds, as herein provided, the member shall have reinstated to his or her account all credited service represented by the refunds of which repayment has been made. Repayments of refunds by any member shall include all refunds received by a member prior to the date of his or her last withdrawal from service, and shall be made in a single sum; provided, however, that the board may, in its discretion, provide by uniform regulation for repayments to be made in installments and/or by a reduction in any annuity payments.

(c) Regardless of class membership, a member shall be restricted from government reemployment for a period of six months after receiving a refund of his or her contributions, unless the member returns the full amount to the fund within six months of receiving the refund.

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Notwithstanding any other provision of law, no refund of contributions shall be made to a Class I or Class II member upon complete separation from service following both (i) the first pay period fifteen years from the effective date of this act and (ii) 180 days following the date on which the member is eligible to receive a refund of the member's contributions by electing to participate in the defined contribution plan under Public Law 15-13.

Source: PL 7-39, § 4 (reenacting PL 6-17, ch. 3, § 83316, modified, and repealing PL 6-41, § 11); amended by PL 9-45, § 1; (a) amended, (b)(1), (2), and (3) amended, and (c) created by PL 13-60, §§ 6(e), 4, and 6(e), respectively; last paragraph added by PL 15-70, § 4(a); (a) amended by PL 15-98, § 1.

Commission Comment: PL 6-41, § 11 provided, in part: "No refund of contributions shall be permitted for Class I members upon complete separation from government service." According to PL 7-39, § 4 (effective October 11, 1991):

Section 4. Repealer and Reenactment. 1 CMC [§] 8356 (Public Law 6-41, Section 11) is repealed in its entirety. All class I members whose entitlement to a refund of contributions was extinguished by the enactment of Section 11 of Public Law 6-41 are entitled to a refund in accordance with the provisions of PL 6-17, Section 83316. Section 83316 of PL 6-17 is hereby reenacted. This section shall be retroactive to the effective date of Public Law 6-41 [January 19, 1990].

PL 13-60 was enacted on December 5, 2003 and contained, in addition to other enactments, a short title, findings and purpose, severability, and savings clause provisions. See the comment to 1 CMC § 8253 regarding PL 13-60.

Public Law 15-70, which was entitled "The Defined Benefit Plan Reform Act [DBPRA] of 2007," was enacted on June 14, 2007, and contained the following pertinent sections, in addition to other enactments, and severability and savings provisions:

Section 2. Findings and Purpose. The Legislature finds that the actuary of the Northern Mariana Islands Retirement Fund most recently has reported that the Fund's defined benefit plan is only 46% funded and that the Commonwealth Government has not fully funded the plan for more than ten years, if ever. Although the Fund counts assets of approximately \$450 million, the actuary reports that it is saddled with an unfunded liability that is approaching one-half billion dollars (approximately \$470 million as of October 1, 2004). Stated another way, the Commonwealth Government faces an unfunded obligation whose present value is, on average, \$58,537.80 for each of the 8,029 participants in the Commonwealth's defined benefit plan.

This unfunded obligation was created principally because of (1) prior service credits granted to fund participants, (2) amendments to the Retirement Fund Act that have granted early retirement concessions and new and increased benefits to participants, and (3) the government's financial inability to remit the actuarially required employer contributions to the Fund because of the size of the obligation that has been incurred. Additionally, the ratio of active participants who are funding the plan has

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reached an all time low relative to retirees and other participants who are drawing benefits.

This current fiscal situation has created an unsustainable economic emergency. The Commonwealth Government faces an unfunded governmental obligation to Fund participants of more than one-half billion dollars, although Article X, Section 4 of the Commonwealth Constitution limits bonds and other obligations of the government that constitute public indebtedness to 10% or less of the aggregate assessed valuation of the real property within the Commonwealth. Moreover, for several years now the Commonwealth Government has been unable to constitutionally balance its budget and follow a fiscally sound deficit reduction program, as mandated in Article X, Section 6 of the Commonwealth Constitution. The Legislature recognizes that the Commonwealth lacks the financial resources to pay off a \$500,000,000 unfunded government liability to the Retirement Fund, and that a rescue and reform plan is necessary to restore the Fund to a more sound financial footing.

The adversity created by a nearly \$500,000,000 unfunded liability precludes the Commonwealth from entering the bond market at other than an exorbitant rate of interest. The bond rating agencies may treat the government's unfunded liability as public indebtedness. Until this issue is addressed, the Commonwealth may be unable to secure additional credit at reasonable rates from private sources.

This Act makes economically required prospective changes to the structure of the Commonwealth's defined benefit plan to rescue it from an inevitable fiscal meltdown and move it closer to a more fully funded and less publicly indebted, state. It also moves the Commonwealth closer to the possibility of enacting a constitutionally mandated balanced budget and a realistic deficit reduction program. It will assist the Commonwealth in the restoration of healthy public finances and a future date when the Commonwealth can enter the bond market to obtain financing for public improvements at reasonable rates of interest. Through these fiscal reforms, this legislation provides the citizens, public employees, and retirees of the Commonwealth with a greater assurance that the Government will be able to meet its future financial obligations to the Fund and other creditors.

Enactment of these fiscal reforms is necessary at the earliest possible date. These reforms are consistent with the legislature's consideration of a defined contribution plan for new public employees and for those current public employees made eligible to participate in the plan.

The principal purposes of this Act are:

(a) To enhance the retirement security of public employees and the continued payment of benefits to retirees of the defined benefit plan of the Northern Mariana Islands Retirement Fund by amending the plan to improve its fiscal solvency and to improve the fiscal solvency of the Commonwealth Government, thereby assuring the future payment of timely employer contributions to the Fund; and

(b) To subject to referendum any changes that by law increase benefits offered under the defined benefit plan of the Northern Mariana Islands Retirement Fund.

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Section 4. Amendments to Improve the Fiscal Solvency of the Commonwealth Government and the Northern Mariana Islands Retirement Fund.

...

(c)(2) Transition Provision. Class I members who have elected early retirement prior to the effective date of this act shall not be affected by this change in law and shall maintain the same rights and obligations as was provided under § 8342(a) prior to this amendment. Class I members who were eligible to elect early retirement prior to the effective date of this act shall have five years from the effective date of this act to elect early retirement under § 8342(a) as it was enacted under Public Law 13-60; provided that any such electing members shall pay a lump sum contribution to be set by the Fund based on an actuarial study but no more than the contribution required of Class II members under § 8361(b) of this act.

Section 5. Conformance with N.M.I. Const. Art. III, § 20(a). The provisions of this Act are the result of an economic emergency arising from a \$470 million unfunded liability, as actuarially determined as of October 1, 2004. The legislature finds that each provision of this act is necessary to improve the depleted public finances of the Commonwealth and allow it to move closer to a constitutionally mandated balanced budget, deficit reduction plan, and limited public indebtedness. This act is subject to N.M.I. Const. Art. III, § 20(a). No provision of this Act, including amendments and repealers, shall be construed to diminish or impair financial benefits accrued as of the date of this act or otherwise be in violation of this constitutional mandate.

PL 15-98 was enacted into law by override on October 4, 2007, and did not contain any findings or purpose, but did include severability and savings provisions.