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SENATE BILL 211

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,  
2000**

INTRODUCED BY

Richard M. Romero

AN ACT

RELATING TO EDUCATIONAL RETIREMENT; AMENDING AND REPEALING  
CERTAIN SECTIONS OF THE EDUCATIONAL RETIREMENT ACT.

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

Section 1. Section 22-11-2 NMSA 1978 (being Laws 1967,  
Chapter 16, Section 126, as amended) is amended to read:

"22-11-2. DEFINITIONS.--As used in the Educational  
Retirement Act:

A. "member" means [~~any~~] an employee, except for a  
participant coming within the provisions of the Educational  
Retirement Act;

B. "regular member" means:

(1) a person regularly employed as a  
teaching, nursing or administrative employee of a state  
educational institution, except for:

(a) a participant; or

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(b) all employees of a general hospital or outpatient clinics thereof operated by a state educational institution named in Article 12, Section 11 of the constitution of New Mexico;

(2) a person regularly employed as a teaching, nursing or administrative employee of a junior college or community college created pursuant to Chapter 21, Article 13 NMSA 1978, except for a participant;

(3) a person regularly employed as a teaching, nursing or administrative employee of a technical and vocational institute created pursuant to the Technical and Vocational Institute Act, except for a participant;

(4) a person regularly employed as a teaching, nursing or administrative employee of the New Mexico boys' school, the New Mexico girls' school, the Los Lunas medical center or a school district or as a certified school instructor of a state institution or agency providing an educational program and holding a standard or substandard certificate issued by the state board, except for a participant;

(5) a person regularly employed by the department of education or the board holding a standard or substandard certificate issued by the state board at the time of commencement of such employment;

(6) a member classified as a regular member in accordance with the ~~[regulations]~~ rules of the board;

(7) a person regularly employed by the New

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1 Mexico activities association holding a standard certificate  
2 issued by the state board at the time of commencement of such  
3 employment; or

4 (8) a person regularly employed by a  
5 regional education cooperative holding a standard certificate  
6 issued by the state board at the time of commencement of such  
7 employment;

8 C. "provisional member" means a person not  
9 eligible to be a regular member but who is employed by a  
10 local administrative unit designated in Subsection B of this  
11 section; provided, however, that employees of a general  
12 hospital or outpatient clinics thereof operated by a state  
13 educational institution named in Article 12, Section 11 of  
14 the constitution of New Mexico are not provisional members;

15 D. "local administrative unit" means an employing  
16 agency however constituted that is directly responsible for  
17 the payment of compensation for the employment of members or  
18 participants;

19 E. "beneficiary" means a person having an  
20 insurable interest in the life of a member or a participant  
21 designated by written instrument duly executed by the member  
22 or participant and filed with the director to receive a  
23 benefit pursuant to the Educational Retirement Act that may  
24 be received by someone other than the member or participant;

25 F. "employment" means employment by a local  
administrative unit that qualifies a person to be a member or  
participant;

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- 1                   G. "service employment" means employment that
- 2 qualifies a person to be a regular member;
- 3                   H. "provisional service employment" means
- 4 employment that qualifies a person to be a provisional
- 5 member;
- 6                   I. "prior employment" means employment performed
- 7 prior to the effective date of the Educational Retirement Act
- 8 that would be service employment or provisional service
- 9 employment if performed thereafter;
- 10                  J. "service credit" means that period of time with
- 11 which a member is accredited for the purpose of determining
- 12 his eligibility for and computation of retirement or
- 13 disability benefits;
- 14                  K. "earned service credit" means that period of
- 15 time during which a member was engaged in employment or prior
- 16 employment with which he is accredited for the purpose of
- 17 determining his eligibility for retirement or disability
- 18 benefits;
- 19                  L. "allowed service credit" means that period of
- 20 time during which a member has performed certain nonservice
- 21 employment with which he may be accredited, as provided in
- 22 the Educational Retirement Act, for the purpose of computing
- 23 retirement or disability benefits;
- 24                  M. "retirement benefit" means an annuity paid
- 25 monthly to members whose employment has been terminated by
- reason of their age;
- N. "disability benefit" means an annuity paid

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1 monthly to members whose employment has been terminated by  
2 reason of a disability;

3 O. "board" means the educational retirement board;

4 P. "fund" means the educational retirement fund;

5 Q. "director" means the educational retirement  
6 director;

7 R. "medical authority" means a medical doctor  
8 within the state or as provided in Subsection D of Section  
9 22-11-36 NMSA 1978 either designated or employed by the board  
10 to examine and report on the physical condition of applicants  
11 for or recipients of disability benefits;

12 S. "actuary" means a person trained and regularly  
13 engaged in the occupation of calculating present and  
14 projected monetary assets and liabilities under annuity or  
15 insurance programs;

16 T. "actuarial equivalent" means a sum paid as a  
17 current or deferred benefit that is equal in value to a  
18 regular benefit, computed upon the basis of interest rates  
19 and mortality tables;

20 U. "contributory employment" means employment for  
21 which contributions have been made by both a member and a  
22 local administrative unit pursuant to the Educational  
23 Retirement Act;

24 V. "qualifying state educational institution"  
25 means the university of New Mexico, New Mexico state  
university, New Mexico institute of mining and technology,  
New Mexico highlands university, eastern New Mexico

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1 university, western New Mexico university, Albuquerque  
2 technical-vocational institute, Clovis community college,  
3 Luna vocational-technical institute, Mesa technical college,  
4 New Mexico junior college, northern New Mexico state school,  
5 San Juan college and Santa Fe community college;

6 W. "participant" means:

7 (1) a person regularly employed as a faculty  
8 or professional employee of the university of New Mexico, New  
9 Mexico state university, New Mexico institute of mining and  
10 technology, New Mexico highlands university, eastern New  
11 Mexico university or western New Mexico university who first  
12 becomes employed with such an educational institution on or  
13 after July 1, 1991, or a person regularly employed as a  
14 faculty or professional employee of the Albuquerque  
15 technical-vocational institute, Clovis community college,  
16 Luna vocational-technical institute, Mesa technical college,  
17 New Mexico junior college, northern New Mexico state school,  
18 San Juan college or Santa Fe community college who is first  
19 employed by the institution on or after July 1, 1999 and who  
20 elects, pursuant to Section 22-11-47 NMSA 1978, to  
21 participate in the alternative retirement plan; and

22 (2) a person regularly employed who performs  
23 research or other services pursuant to a contract between a  
24 qualifying state educational institution and the United  
25 States government or any of its agencies who elects, pursuant  
to Section 22-11-47 NMSA 1978, to participate in the  
alternative retirement plan, provided that the research or

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1 other services are performed outside the state;

2 X. "salary" means the compensation or wages paid  
3 to a member or participant by any local administrative unit  
4 for services rendered. "Salary" includes payments made for  
5 annual or sick leave and payments for additional service  
6 provided or related activities, but does not include payments  
7 for sick leave not taken unless the payment for the unused  
8 sick leave is made through continuation of the member on the  
9 regular payroll for the period represented by that payment  
10 and does not include allowances or reimbursements for travel,  
11 housing, food, equipment or similar items; and

12 Y. "alternative retirement plan" means the  
13 retirement plan provided for in Sections 22-11-47 through  
14 22-11-52 NMSA 1978."

15 Section 2. Section 22-11-4 NMSA 1978 (being Laws 1967,  
16 Chapter 16, Section 128) is amended to read:

17 "22-11-4. BOARD--REGULAR AND SPECIAL MEETINGS.--

18 A. The board shall hold regular meetings four  
19 times each year and may, by its ~~[by-laws]~~ rules, provide for  
20 additional regular meetings. Prior to each regular meeting,  
21 written notice shall be given to each member of the board  
22 specifying the time and place of the regular meeting.

23 B. Special meetings of the board may be called by  
24 the chairman or by any three members of the board. Written  
25 notice of the special meeting shall be sent to each member of  
the board at least three days in advance of the special  
meeting.

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1                   C. If not in violation of Subsection A or B of  
2 this section, the rules of the board or the Open Meetings  
3 Act, the chairman or any three members of the board may  
4 cancel or reschedule a meeting."

5                   Section 3. Section 22-11-9 NMSA 1978 (being Laws 1967,  
6 Chapter 16, Section 133) is amended to read:

7                   "22-11-9. ACTUARY--FEES.--

8                   A. The board shall employ the services of an  
9 actuary. The actuary shall prepare a table of actuarial  
10 equivalents for use of the board and the director in  
11 computing the value of advanced, deferred or optional payment  
12 of benefits pursuant to the Educational Retirement Act. The  
13 actuary shall also study the financial operations of the  
14 Educational Retirement Act and shall make written reports  
15 thereon to the board.

16                   B. The board shall pay the actuary a reasonable  
17 fee for his professional services.

18                   C. Unless otherwise required by the governmental  
19 accounting standards board of the American institute of  
20 certified public accountants, an actuarial report shall be  
21 conducted at least once every five years."

22                   Section 4. Section 22-11-15 NMSA 1978 (being Laws 1967,  
23 Chapter 16, Section 139, as amended) is amended to read:

24                   "22-11-15. FUND--REFUNDS--PAYMENTS.--

25                   A. After filing written demand with the director,  
a member is entitled to a refund of the total amount of the  
member's contributions plus interest at a rate [~~equal to~~

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1 ~~seventy five percent of the average rate earned by the fund~~  
2 ~~during the five fiscal years preceding the fiscal year of~~  
3 ~~refund] set by the board~~ reduced by the sum of any disability  
4 benefits previously received by the member, if:

- 5 (1) the member terminates employment for  
6 reasons other than by retirement, disability or death;  
7 (2) the member has exempted himself from the  
8 Educational Retirement Act; or  
9 (3) the member was not reemployed following  
10 a period of disability during which he received disability  
11 benefits.

12 B. The director may, at the request of a member,  
13 make payment on behalf of the member for any or all of the  
14 refund to an individual retirement account or a qualified  
15 retirement plan that accepts rollovers.

16 C. If the amount of a deceased member's  
17 contribution or residual contribution does not exceed the sum  
18 of one thousand dollars (\$1,000) and no written claim is made  
19 to the board for it within one year from the date of the  
20 member's death, by his surviving beneficiary or the member's  
21 estate, payment thereof may be made to the named beneficiary  
22 or, if none is named, to the person the board determines to  
23 be entitled to the contribution under the laws of New Mexico.  
24 Any payment made by the board pursuant to this subsection  
25 shall be a bar to a claim by any other person.

D. The interest provided for in Subsection A of  
this section shall apply only to contributions paid to the

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1 fund after July 1, 1971 and on deposit in the fund for a  
2 period of at least one fiscal year; provided that no such  
3 interest shall be allowed on refunds of contributions that  
4 were paid into the fund prior to July 1, 1971."

5 Section 5. Section 22-11-26 NMSA 1978 (being Laws 1967,  
6 Chapter 16, Section 149, as amended) is amended to read:

7 "22-11-26. DEATH DURING REEMPLOYMENT.--If a member dies  
8 during a period of reemployment following retirement pursuant  
9 to the Educational Retirement Act, the benefits to be paid  
10 shall be determined according to the following:

11 A. if the member did not elect to exercise Option  
12 B or C pursuant to Section 22-11-29 NMSA 1978 at the time of  
13 first retirement, the member's beneficiary or estate shall  
14 receive an amount equal to the sum of the member's  
15 contributions, including contributions made by the member  
16 during the period of last reemployment, plus accumulated  
17 interest at the ~~[average rate earned by the fund during the~~  
18 ~~preceding five fiscal years]~~ rate set by the board, less the  
19 total benefits received prior to the last reemployment; or

20 B. if a retirement benefit has been paid to the  
21 member pursuant to either Option B or ~~[Option]~~ C of Section  
22 22-11-29 NMSA 1978 prior to reemployment, the reemployed  
23 member shall be considered as retiring on the day preceding  
24 the date of death, and the benefits due the surviving  
25 beneficiary, computed as of that date, shall be commenced  
effective on the date of death in accordance with the terms  
of the option elected."

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1           Section 6. Section 22-11-27 NMSA 1978 (being Laws 1967,  
2 Chapter 16, Section 150, as amended) is amended to read:

3           "22-11-27. DEFERRED RETIREMENT--RESTRICTION.--

4           A. A member eligible for retirement may continue  
5 in employment and shall continue to pay contributions as  
6 provided by the Educational Retirement Act.

7           B. A member may terminate his employment and  
8 retire at any time after his age and his earned service  
9 credit equal the sum of seventy-five if the contributions he  
10 has made are left in the fund.

11           C. A member having five years or more of earned  
12 service credit may terminate his employment and retire at any  
13 time after reaching the age of sixty-five years if the  
14 contributions he has made are left in the fund.

15           D. No member shall be on a retirement status while  
16 engaged in employment, unless the employment falls within  
17 exceptions established by rule of the board."

18           Section 7. Section 22-11-29 NMSA 1978 (being Laws 1967,  
19 Chapter 16, Section 152, as amended) is amended to read:

20           "22-11-29. RETIREMENT BENEFIT OPTIONS.--

21           A. Upon retirement pursuant to the Educational  
22 Retirement Act, a member may elect, and such election shall  
23 be irrevocable unless changed by a court order issued  
24 pursuant to Subsection B of Section 22-11-42 NMSA 1978, to  
25 receive the actuarial equivalent of his retirement benefit,  
as provided in Section 22-11-30 NMSA 1978, to be effective on  
his retirement in any one of the following optional forms:

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1                   (1) OPTION B. A reduced annuity payable  
2 during the member's life with provision that upon the  
3 member's death the same annuity shall be continued during the  
4 life of and paid to the beneficiary designated by the member  
5 in writing at the time of electing this option; or

6                   (2) OPTION C. A reduced annuity payable  
7 during the member's life with provision that upon the  
8 member's death one-half of this same annuity shall be  
9 continued during the life of and paid to the beneficiary  
10 designated by the member in writing at the time of electing  
11 this option.

12                   B. In the case of Options B and C of Subsection A  
13 of this section, the actuarial equivalent of the member's  
14 retirement benefit shall be computed on the basis of the  
15 lives of both the member and the beneficiary.

16                   C. In the event that the named beneficiary of a  
17 retired member who elected Option B or C at the time of  
18 retirement predeceases the retired member, the annuity of the  
19 retired member shall be adjusted by adding an amount equal to  
20 the amount by which the annuity of the retired member was  
21 reduced at retirement as a result of the election of Option B  
22 or C. The adjustment authorized in this subsection shall be  
23 made as follows:

24                   (1) beginning on the first month following  
25 the month in which the named beneficiary of a retiree dies  
applicable to an annuity received by a retiree who retires  
after June 30, 1987; or

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(2) beginning on July 1, 1987 applicable to an annuity received by a retiree who retired prior to July 1, 1987 and otherwise qualifies for the adjustment; provided, however, no adjustment shall be made retroactively.

D. In the event of the death of the member who has not retired and who has completed at least five years' earned service credit, the member shall be considered as retiring on the first day of the month following the date of death, and the benefits due the surviving beneficiary, computed as of that date, shall, except as provided in Subsection G of this section, be commenced effective on the first day of such month in accordance with the terms of Option B. In lieu of the provisions of Option B, the surviving beneficiary may elect to receive payment of all the contributions made by the member, plus interest at the rate ~~[earned by the fund during the preceding fiscal year]~~ set by the board reduced by the sum of any disability benefits previously received by the member, or the surviving beneficiary may choose to defer receipt of the survivor's benefit to whatever age the beneficiary chooses up to the time the member would have attained age sixty. If the benefit is thus deferred, it shall be calculated as though the member had retired on the first day of the month in which the beneficiary elects to receive the benefit. In the event of the death of the beneficiary after the death of the member and prior to the date on which the beneficiary has elected to receive the beneficiary's benefit, the estate of the beneficiary shall be

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1 entitled to a refund of the member's contributions plus  
2 interest at the rate ~~[earned by the fund during the preceding~~  
3 ~~fiscal year]~~ set by the board reduced by the sum of any  
4 disability benefits previously received by the member.

5 E. In the case of death of a retired member who  
6 did not elect either Option B or C and before the benefits  
7 paid to him have equaled the sum of his accumulated  
8 contributions to the fund plus accumulated interest at the  
9 ~~[average rate earned by the fund during the preceding five~~  
10 ~~fiscal years]~~ rate set by the board, the balance shall be  
11 paid to the beneficiary designated in writing to the director  
12 by the member or, if no beneficiary was designated, to the  
13 estate of the member.

14 F. No benefit shall be paid pursuant to this  
15 section if the member's contributions have been refunded  
16 pursuant to Section 22-11-15 NMSA 1978.

17 G. In the case of death of a member with less than  
18 five years' earned service credit or death of a member who  
19 has filed with the director a notice rejecting the provisions  
20 of Subsection C of this section, which notice shall be  
21 revocable by the member at any time prior to retirement, the  
22 member's contributions to the fund plus interest at the rate  
23 ~~[earned by the fund during the preceding fiscal year]~~ set by  
24 the board shall be paid to the beneficiary designated in  
25 writing to the director by the member or, if no beneficiary  
was designated or the named beneficiary predeceased the  
member by at least one hundred twenty hours, to the estate of

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1 the member.

2 H. Any elections of either Option B or C of  
3 Subsection A of this section on file with the director by  
4 members who have not retired prior to June 30, 1984 are  
5 void." Section 8. Section 22-11-30 NMSA 1978 (being Laws  
6 1967, Chapter 16, Section 153, as amended) is amended to  
7 read:

8 "22-11-30. RETIREMENT BENEFITS.--

9 A. Retirement benefits for a member retired  
10 pursuant to the Educational Retirement Act on or before June  
11 30, 1967 shall be paid monthly and shall be one-twelfth of a  
12 sum equal to one and one-half percent of the first four  
13 thousand dollars (\$4,000) of the member's average annual  
14 salary and one percent of the remainder of the member's  
15 average annual salary multiplied by the number of years of  
16 the member's total service credit.

17 B. Retirement benefits for a member retired  
18 pursuant to the Educational Retirement Act on or after July  
19 1, 1967 but on or before June 30, 1971 shall be paid monthly  
20 and shall be one-twelfth of a sum equal to one and one-half  
21 percent of the first six thousand six hundred dollars  
22 (\$6,600) of the member's average annual salary and one  
23 percent of the remainder of the member's average annual  
24 salary multiplied by the number of years of the member's  
25 total service credit.

C. Retirement benefits for a member retired  
pursuant to the Educational Retirement Act on or after July

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1 1, 1971 but on or before June 30, 1974 shall be paid monthly  
2 and shall be one-twelfth of a sum equal to one and one-half  
3 percent of the member's average annual salary multiplied by  
4 the number of years of the member's total service credit.

5 D. Retirement benefits for a member retired  
6 pursuant to the Educational Retirement Act on or before June  
7 30, 1974 but returning to employment on or after July 1, 1974  
8 for a cumulation of one or more years shall be computed  
9 pursuant to Subsection E of this section. Retirement  
10 benefits for a member retired pursuant to the Educational  
11 Retirement Act on or before June 30, 1974 but returning to  
12 employment on or after July 1, 1974 for a cumulation of less  
13 than one year shall be computed pursuant to Subsection A of  
14 this section if his date of last retirement was on or before  
15 June 30, 1967 or pursuant to Subsection B of this section if  
16 his date of last retirement was on or after July 1, 1967 but  
17 not later than June 30, 1971 or pursuant to Subsection C of  
18 this section if his date of last retirement was on or after  
19 July 1, 1971 but not later than June 30, 1974.

20 E. Retirement benefits for a member age sixty or  
21 over, retired pursuant to the Educational Retirement Act on  
22 or after July 1, 1974 but not later than June 30, 1987, shall  
23 be paid monthly and shall be one-twelfth of a sum equal to:

24 (1) one and one-half percent of the member's  
25 average annual salary multiplied by the number of years of  
service credit for:

(a) prior employment; and



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1 (b) allowed service credit for service  
2 performed prior to July 1, 1957, except United States  
3 military service credit purchased pursuant to Paragraph (3)  
4 of Subsection A of Section 22-11-34 NMSA 1978; plus

5 (2) two percent of the member's average  
6 annual salary multiplied by the number of years of service  
7 credit for:

8 (a) contributory employment;

9 (b) allowed service credit for service  
10 performed after July 1, 1957; and

11 (c) United States military service  
12 credit for service performed prior to July 1, 1957 and  
13 purchased pursuant to Paragraph (3) of Subsection A of  
14 Section 22-11-34 NMSA 1978.

15 F. Retirement benefits for a member age sixty or  
16 over, retired pursuant to the Educational Retirement Act on  
17 or after July 1, 1987 but not later than June 30, 1991, shall  
18 be paid monthly and shall be one-twelfth of a sum equal to  
19 two and fifteen hundredths percent of the member's average  
20 annual salary multiplied by the number of years of the  
21 member's total service credit; provided that this subsection  
22 shall not apply to any member who was retired in any of the  
23 four quarters ending on June 30, 1987 without having  
24 accumulated not less than 1.0 years earned service credit  
25 after June 30, 1987.

G. Retirement benefits for a member age sixty or  
over, retired pursuant to the Educational Retirement Act on

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1 or after July 1, 1991, shall be paid monthly and shall be  
2 one-twelfth of a sum equal to two and thirty-five hundredths  
3 percent of the member's final average ~~[annual]~~ salary  
4 multiplied by the number of years of the member's total  
5 service credit; provided that this subsection shall not apply  
6 to any member who was retired in any of the four consecutive  
7 quarters ending on June 30, 1991 without having accumulated  
8 at least one year earned service credit beginning on or after  
9 July 1, 1991.

10 H. A member's average annual salary, ~~[pursuant to]~~  
11 for purposes of Subsection A through F of this section, shall  
12 be computed on the basis of the last five years for which  
13 contribution was made or upon the basis of any consecutive  
14 five years for which contribution was made by the member,  
15 whichever is higher.

16 I. As used in Subsection G of this section, "final  
17 average salary" means the average annual salary computed on  
18 the basis of the last five years for which contribution was  
19 made or upon the basis of any consecutive five years for  
20 which contribution was made by the member, whichever is  
21 higher.

22 J. Unless otherwise required by the provisions of  
23 the Internal Revenue Code of 1986, as amended, members shall  
24 begin receiving retirement benefits by age seventy and six  
25 months, or upon termination of employment, whichever occurs  
later."

Section 9. Section 22-11-33 NMSA 1978 (being Laws 1967,

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1 Chapter 16, Section 156) is amended to read:

2 "22-11-33. EARNED SERVICE CREDIT.--

3 A. Upon a member filing an application for  
4 retirement or disability benefits, earned service credit for  
5 the time of contributory employment shall be certified by the  
6 director and subject to the review of the board.

7 B. A member shall be certified to have earned  
8 service credit for that period of time when he was engaged in  
9 prior employment. Earned service credit shall not be  
10 certified for that period of employment for which the  
11 contributions have been withdrawn from the fund by the  
12 member.

13 C. Earned service credit shall be certified for  
14 periods of employment interrupted for some cause other than  
15 retirement or disability. This shall be done if a member  
16 withdrawing contributions from the fund for this period  
17 returns to the fund, for each year of earned service credit  
18 desired, a sum equal to the member's contribution to the fund  
19 during this period and an additional sum as interest  
20 compounded annually from the date the contributions were  
21 withdrawn to the date of payment of the amount of returned  
22 contributions at the rate of interest [~~earned by the fund~~  
23 ~~during the five year period immediately preceding the~~  
24 ~~application for the earned service credit~~] set by the board.  
25 These payments may be made in installments, and, if the  
payments made to the fund are insufficient for the  
restoration of any full year of earned service credit, the

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1 member shall be certified to have acquired earned service  
2 credit for that period of time, which is proportionate to the  
3 payments made."

4 Section 10. Section 22-11-34 NMSA 1978 (being Laws  
5 1967, Chapter 16, Section 157, as amended) is amended to  
6 read:

7 "22-11-34. ALLOWED SERVICE CREDIT.--

8 A. A member shall be certified to have acquired  
9 allowed service credit pursuant to the Internal Revenue Code  
10 of 1986 for those periods of time when he was:

11 (1) employed prior to ~~[the effective date of~~  
12 ~~the Educational Retirement Act]~~ July 1, 1967 in a federal  
13 educational program within New Mexico, including United  
14 States Indian schools and civilian conservation corps camps.  
15 This service credit shall be allowed without contribution;

16 (2) engaged in military service that  
17 interrupted his employment in New Mexico if he returned to  
18 his employment within eighteen months following honorable  
19 discharge. This service credit shall be allowed without  
20 contribution;

21 (3) engaged in United States military  
22 service or the commissioned corps of the public health  
23 service from which he was honorably discharged if he  
24 contributes to the fund a sum equal to ten and one-half  
25 percent of his average annual salary for that period of time  
for which he has acquired earned service credit pursuant to  
the Educational Retirement Act and subject to the federal

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1 Uniformed Services Employment and Reemployment Rights Act of  
2 1994 for each year of service credit he desires to purchase.  
3 Average annual salary shall be determined in accordance with  
4 rules promulgated by the board but shall always be based on  
5 actual salaries earned by the member where the actual  
6 salaries can be ascertained by the board. The employer's  
7 contributions for service credit shall not be paid by the  
8 employer. The purchase of service credit provided in this  
9 section shall be carried out by the member within three years  
10 after the date of the member's employment following service;  
11 or

12 (4) employed:

13 (a) in a public school or public  
14 institution of higher learning in another state, territory or  
15 possession of the United States;

16 (b) in a United States military  
17 dependents' school operated by a branch of the armed forces  
18 of the United States;

19 (c) as provided in Paragraph (1) of  
20 this subsection after ~~[the effective date of the Educational~~  
21 ~~Retirement Act]~~ July 1, 1967; or

22 (d) in a private school or institution  
23 of higher learning in New Mexico whose education program is  
24 accredited or approved by the state board at the time of  
25 employment.

B. The member or employer under Paragraph (4) of  
Subsection A of this section shall contribute to the fund for

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1 each year of allowed service credit desired an amount equal  
2 to twelve percent of the member's annual salary at the time  
3 payment is made [~~if the member is employed or twelve percent~~  
4 ~~times the member's annual salary during the member's last~~  
5 ~~year of employment if the member is not employed at the time~~  
6 ~~of payment. Contributions paid for the member who is not~~  
7 ~~employed shall bear interest at the average rate earned by~~  
8 ~~the fund during the five fiscal year period immediately~~  
9 ~~preceding the date of payment. Such interest shall run from~~  
10 ~~the date the member last terminated employment to the date of~~  
11 ~~payment]. Effective July 1, 2001, the member or employer~~  
12 under Paragraph (4) of Subsection A of this section shall  
13 contribute to the fund for each year of allowed service  
14 credit desired an amount equal to the actuarial value of the  
15 service purchased as defined by the board. Payment pursuant  
16 to Paragraph (4) of Subsection A of this section may be made  
17 in installments, at the discretion of the board, over a  
18 period not to exceed one year and, if the sum paid does not  
19 equal the amount required for any full year of allowed  
20 service credit, the member shall acquire allowed service  
21 credit for that period of time that is proportionate to the  
22 payment made. Half credit may be allowed without  
23 contribution for not more than ten years of the educational  
24 service described by Subparagraph (a) of Paragraph (4) of  
25 Subsection A of this section if that service was prior to  
June 13, 1953 and if the member was employed in New Mexico  
prior to June 13, 1953 in a position covered by the

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1 Educational Retirement Act or a law repealed thereby. No  
2 allowed service credit shall be purchased pursuant to  
3 Paragraph (4) of Subsection A of this section unless the  
4 member is currently employed by a local administrative unit.

5 C. No member shall be certified to have acquired  
6 allowed service credit:

7 (1) under any single paragraph or the  
8 combination of only Paragraphs (1) and (4) or only Paragraphs  
9 (2) and (3) of Subsection A of this section in excess of five  
10 years; or

11 (2) in excess of ten years for any other  
12 combination of Paragraphs (1) through (4) of Subsection A of  
13 this section.

14 D. The provisions of this section are made  
15 applicable to the services described prior to as well as  
16 after ~~[the effective date of the Educational Retirement Act]~~  
17 July 1, 1967."

18 Section 11. Section 22-11-36 NMSA 1978 (being Laws  
19 1967, Chapter 16, Section 159) is amended to read:

20 "22-11-36. DISABILITY BENEFIT--CONTINUED ELIGIBILITY--  
21 RE-EXAMINATIONS.--

22 A. Unless designated by the medical authority as  
23 being permanently disabled, to continue to receive disability  
24 benefits, a member shall, on the anniversary date in each  
25 year of his being placed on a disability status, present  
himself to the medical authority for a medical re-  
examination. The medical authority shall certify to the

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1 director after each medical examination whether there is [~~or~~  
2 ~~is not~~] a substantial betterment of the member's disability.  
3 In the event a substantial betterment of the disability is  
4 reported, the board shall determine whether the member is  
5 totally disabled for employment and unable to obtain and  
6 retain other gainful employment commensurate with his  
7 background, education and experience. If the board  
8 determines that the member is no longer disabled, the payment  
9 of the disability benefits shall cease.

10 B. Payment [~~to a member~~] of disability benefits to  
11 a member shall be suspended if a certificate of medical re-  
12 examination by the medical authority is not filed with the  
13 director within thirty days after the date upon which the  
14 member should have been re-examined where the failure to file  
15 the certificate was due to the unexcused failure or the  
16 refusal of the member to report for the medical re-  
17 examination. Payment of disability benefits shall be resumed  
18 only after the member has complied with the requirements of  
19 the Educational Retirement Act. A member shall have no right  
20 or claim for benefits withheld during a period of suspension.

21 C. The board may, in its discretion, require  
22 further or more frequent medical examinations of members  
23 having a disability status.

24 D. A member receiving disability benefits who is  
25 unable to report for a medical re-examination because of his  
physical condition or because he resides outside the state  
shall notify the director of this fact not later than fifteen



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1 days in advance of the date for the medical re-examination.  
2 The board shall designate a medical doctor [~~or doctors~~] in  
3 the vicinity of the residence of the member to make the  
4 medical re-examination and to report the findings to the  
5 board.

6 E. Upon a determination by the board, a member's  
7 status may be changed from permanently disabled to  
8 temporarily disabled or no longer disabled."

9 Section 12. Section 22-11-42 NMSA 1978 (being Laws  
10 1967, Chapter 16, Section 165, as amended) is amended to  
11 read:

12 "22-11-42. NONASSIGNABILITY--DIVISION OF FUNDS AS  
13 COMMUNITY PROPERTY--CHILD SUPPORT OBLIGATIONS.--

14 A. Except as specifically provided in the  
15 Educational Retirement Act and the provisions of Subsections  
16 B and C of this section, contributions or benefits mentioned  
17 in the Educational Retirement Act shall not be assignable  
18 either in law or in equity or be subject to execution, levy,  
19 attachment, garnishment, guarantee fund or similar assessment  
20 or any other legal process.

21 B. A court of competent jurisdiction, solely for  
22 the purposes of effecting a division of community property,  
23 may provide by appropriate order for a determination and  
24 division of a community interest in the pensions or other  
25 benefits provided for in the Educational Retirement Act. In  
so doing, the court shall fix the manner in which the  
warrants shall be issued, may order direct payments by the

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1 board to a person with a community interest in the pensions  
2 or benefits and may restrain the refund of member or  
3 participant contributions. If the court finds that there  
4 will be no adverse actuarial impact to the fund, in order to  
5 remove a former spouse as the survivor beneficiary, the court  
6 may order a change in a retired member's designation from  
7 either Option B or C of Section 22-11-29 NMSA 1978 to the  
8 normal retirement benefits provided in Section 22-11-30 NMSA  
9 1978. Otherwise, the court shall not alter the manner in  
10 which the amount of pensions or other benefits is calculated  
11 by the board or a carrier or contractor for the alternative  
12 retirement plan, nor shall the court cause any increase in  
13 the actuarial present value of the pensions or other benefits  
14 to be paid by the board or a carrier or contractor for the  
15 alternative retirement plan.

16 C. If the court finds that its order will be  
17 administratively feasible to the board, a court of competent  
18 jurisdiction, solely for the purposes of enforcing current or  
19 delinquent child support obligations, may provide by  
20 appropriate order for withholding amounts due in satisfaction  
21 of current or delinquent child support obligations from the  
22 pensions or other benefits provided for in the Educational  
23 Retirement Act and for payment of such amounts to third  
24 parties. The court shall not alter the manner in which the  
25 amount of pensions or other benefits is calculated by the  
board or a carrier or contractor for the alternative  
retirement plan. The court shall not cause any increase in

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the actuarial present value of the pensions or other benefits to be paid by the board or a carrier or contractor for the alternative retirement plan. Payments made pursuant to such orders shall only be made when the member or participant terminates employment and requests a refund of contributions or when the member or participant retires; in no case shall more money be paid out, either in a lump sum or in monthly benefits, of the fund or alternative retirement plan in enforcement of current or delinquent child support obligations than would otherwise be payable."

Section 13. REPEAL.--Section 22-11-19.1 NMSA 1978 (being Laws 1979, Chapter 316, Section 1) is repealed.