

AN ACT
RELATING TO EDUCATIONAL RETIREMENT; AMENDING THE EDUCATIONAL
RETIREMENT ACT TO ALLOW PROVISIONAL MEMBERS TO ACQUIRE EARNED
SERVICE CREDIT FOR CERTAIN PERIODS OF EMPLOYMENT.

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

Section 1. Section 22-11-17 NMSA 1978 (being Laws 1967, Chapter 16, Section 141, as amended) is amended to read:

"22- 11- 17. PROVISIONAL MEMBERSHIP. --

A. A provisional member shall be covered by the provisions of the Educational Retirement Act but shall have the option to exempt himself from its coverage. A provisional member exempting himself from the provisions of the Educational Retirement Act shall not be entitled to the benefits or coverage under any other state retirement program except as otherwise provided in this section. This section shall not affect any rights a provisional member may have under the provisions of the federal Social Security Act. The option to exempt must be exercised within one year of employment according to the rules adopted by the board. Any provisional member exempting himself pursuant to this section shall be entitled to a refund of any contributions made pursuant to the Educational Retirement Act prior to the exercise of the exemption.

B. A provisional member not exempt from the coverage of the Educational Retirement Act shall have the right to earned service credit for periods of employment subsequent to July 1, 1957 and prior to July 1, 1961, provided that all contributions at the rates in effect during that period of employment are paid. If a provisional member chooses to make the contributions for that period, the local administrative unit employing a member during that period shall pay the employer's contribution at the rate in effect during that period of employment. Contributions prior to July 1, 1961 by both the provisional member and the local administrative unit shall bear interest at the rate of three percent a year from July 1, 1961 until paid.

C. A provisional member exempt from the coverage of the provisions of the Educational Retirement Act shall have the right to revoke the exemption at any time; however, within the first two weeks following the beginning of each school year, such provisional member shall be informed by the local administrative unit in writing of his right to revoke the exemption and shall sign a statement to the effect that he does or does not wish to revoke the exemption. A copy of such statement shall be kept in the personnel file of the provisional member.

D. A provisional member who revokes the exemption from coverage may, at any time before June 30, 2004, acquire

earned service credit for periods of employment during which the exemption or exemptions were in force if both the member contributions and the local administrative unit contributions, at the rates in effect during the periods of employment and applied to the earnings of the member during those periods, are paid to the fund, together with interest at the actuarial rate set by the board. The contributions shall be paid in the following manner:

(1) both the member contributions and the local administrative unit contributions, together with interest, shall be paid by the member; or

(2) if the member tenders payment of the member contributions, with interest, the local administrative unit by whom the member was employed may, but shall not be obligated to, pay the local administrative unit contributions, with interest.

E. A provisional member employed by the board, the department of education, the New Mexico school for the deaf, the northern New Mexico state school, the New Mexico school for the visually handicapped, the New Mexico girls' school, the New Mexico boys' school or the Los Lunas medical center shall have the option of qualifying for coverage under either the Educational Retirement Act or the public employees retirement association of New Mexico. This option shall be exercised by filing a written election with both the

educational retirement director and the executive secretary of the public employees retirement association of New Mexico. This election shall be made within six months after employment and shall be irrevocable regardless of subsequent employment or reemployment in any administrative unit enumerated in this subsection. Until this election is made, the provisional member shall be covered and shall be required to make contributions under the Educational Retirement Act."

Section 2. Section 22-11-21.3 NMSA 1978 (being Laws 1998, Chapter 38, Section 1) is amended to read:

"22-11-21.3. PICK UP--ROLLOVER. --

A. Commencing on July 1, 1998, each local administrative unit may, solely for the purpose of compliance with Section 414(h) of the Internal Revenue Code of 1986, pick up, for the purposes specified in that section, member contributions permitted by Paragraph (4) of Subsection A of Section 22-11-34 NMSA 1978; Subsection C of Section 22-11-33 NMSA 1978; or Subsection D of Section 22-11-17 NMSA 1978. Member contributions picked up under the provisions of this subsection shall be treated as local administrative unit contributions for purposes of determining income tax obligations under the Internal Revenue Code of 1986; however, such picked-up member contributions shall be included in the determination of the member's gross annual salary for all other purposes under federal and state laws. Member

contributions picked up under this section shall continue to be designated member contributions for all purposes of the Educational Retirement Act and shall be considered as part of the member's annual salary for purposes of determining the amount of the member's contribution. The provisions of this section are voluntary, and the member shall have no option concerning the pick up to receive the contributed amounts directly instead of having them paid by the local administrative unit to the fund. The contribution may be paid through the local administrative unit's payroll deduction.

B. Commencing July 1, 1998, the board may accept rollover contributions from other retirement funds solely for and subject to the restrictions set forth in Subsection B of Section 22-11-34 NMSA 1978 and Section 22-11-17 NMSA 1978 and the applicable restrictions set forth in the Internal Revenue Code of 1986 for pension plan qualification. " _____