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SENATE BILL 109

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Richard M. Romero

AN ACT

RELATING TO EDUCATION 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:

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(a) a participant; or

(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;

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

3 (7) a person regularly employed by the New
4 Mexico activities association holding a standard certificate
5 issued by the state board at the time of commencement of such
6 employment; or

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

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

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

22 E. "beneficiary" means a person having an
23 insurable interest in the life of a member or a participant
24 designated by written instrument duly executed by the member
25 or participant and filed with the director to receive a

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1 benefit pursuant to the Educational Retirement Act that may be
2 received by someone other than the member or participant;

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

6 G. "service employment" means employment that
7 qualifies a person to be a regular member;

8 H. "provisional service employment" means
9 employment that qualifies a person to be a provisional member;

10 I. "prior employment" means employment performed
11 prior to the effective date of the Educational Retirement Act
12 that would be service employment or provisional service
13 employment if performed thereafter;

14 J. "service credit" means that period of time with
15 which a member is accredited for the purpose of determining
16 his eligibility for and computation of retirement or
17 disability benefits;

18 K. "earned service credit" means that period of
19 time during which a member was engaged in employment or prior
20 employment with which he is accredited for the purpose of
21 determining his eligibility for retirement or disability
22 benefits;

23 L. "allowed service credit" means that period of
24 time during which a member has performed certain nonservice
25 employment with which he may be accredited, as provided in the

1 Educational Retirement Act, for the purpose of computing
2 retirement or disability benefits;

3 M. "retirement benefit" means an annuity paid
4 monthly to members whose employment has been terminated by
5 reason of their age;

6 N. "disability benefit" means an annuity paid
7 monthly to members whose employment has been terminated by
8 reason of a disability;

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

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

11 Q. "director" means the educational retirement
12 director;

13 R. "medical authority" means a medical doctor
14 within the state or as provided in Subsection D of Section
15 22-11-36 NMSA 1978 either designated or employed by the board
16 to examine and report on the physical condition of applicants
17 for or recipients of disability benefits;

18 S. "actuary" means a person trained and regularly
19 engaged in the occupation of calculating present and projected
20 monetary assets and liabilities under annuity or insurance
21 programs;

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

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1 U. "contributory employment" means employment for
2 which contributions have been made by both a member and a
3 local administrative unit pursuant to the Educational
4 Retirement Act;

5 V. "qualifying state educational institution"
6 means the university of New Mexico, New Mexico state
7 university, New Mexico institute of mining and technology, New
8 Mexico highlands university, eastern New Mexico university,
9 western New Mexico university, Albuquerque technical-
10 vocational institute, Clovis community college, Luna
11 vocational-technical institute, Mesa technical college, New
12 Mexico junior college, northern New Mexico state school, San
13 Juan college and Santa Fe community college;

14 W. "participant" means:

15 (1) a person regularly employed as a faculty
16 or professional employee of the university of New Mexico, New
17 Mexico state university, New Mexico institute of mining and
18 technology, New Mexico highlands university, eastern New
19 Mexico university or western New Mexico university who first
20 becomes employed with such an educational institution on or
21 after July 1, 1991, or a person regularly employed as a
22 faculty or professional employee of the Albuquerque technical-
23 vocational institute, Clovis community college, Luna
24 vocational-technical institute, Mesa technical college, New
25 Mexico junior college, northern New Mexico state school, San

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1 Juan college or Santa Fe community college who is first
2 employed by the institution on or after July 1, 1999 and who
3 elects, pursuant to Section 22-11-47 NMSA 1978, to participate
4 in the alternative retirement plan; and

5 (2) a person regularly employed who performs
6 research or other services pursuant to a contract between a
7 qualifying state educational institution and the United States
8 government or any of its agencies who elects, pursuant to
9 Section 22-11-47 NMSA 1978, to participate in the alternative
10 retirement plan, provided that the research or other services
11 are performed outside the state;

12 X. "salary" means the compensation or wages paid
13 to a member or participant by any local administrative unit
14 for services rendered. "Salary" includes payments made for
15 annual or sick leave and payments for additional service
16 provided to related activities, but does not include payments
17 for sick leave not taken unless the payment for the unused
18 sick leave is made through continuation of the member on the
19 regular payroll for the period represented by that payment and
20 does not include allowances or reimbursements for travel,
21 housing, food, equipment or similar items; and

22 Y. "alternative retirement plan" means the
23 retirement plan provided for in Sections 22-11-47 through
24 22-11-52 NMSA 1978. "

25 Section 2. Section 22-11-3 NMSA 1978 (being Laws 1967,

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1 Chapter 16, Section 127, as amended) is amended to read:

2 "22-11-3. EDUCATIONAL RETIREMENT BOARD- - MEMBERS- - TERMS- -
3 VACANCIES. - -

4 A. The "educational retirement board" is created.

5 B. The board shall be composed of seven members,
6 consisting of the following:

7 (1) the superintendent of public instruction;

8 (2) the state treasurer or the treasurer's
9 designee;

10 (3) one member to be elected for a term of
11 four years by members of the New Mexico association of
12 educational retirees;

13 (4) one member to be elected for a term of
14 four years by the members of the New Mexico education
15 association;

16 (5) one member to be elected for a term of
17 four years by the New Mexico members of the American
18 association of university professors; and

19 (6) two members to be appointed by the
20 governor for terms of four years each.

21 C. In the initial composition of the board, the
22 member elected by the members of the American association of
23 university professors shall serve for a term of three years;
24 one member appointed by the governor shall serve for a term of
25 two years; and the other member appointed by the governor

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1 shall serve for a term of one year.

2 D. Vacancies occurring in the [~~term~~] terms of
3 office of those members appointed by the governor or elected
4 by an association shall be filled either by the governor
5 appointing or the association electing a new member to fill
6 the unexpired term."

7 Section 3. Section 22-11-4 NMSA 1978 (being Laws 1967,
8 Chapter 16, Section 128) is amended to read:

9 "22-11-4. BOARD--REGULAR AND SPECIAL MEETINGS. --

10 A. The board shall hold regular meetings four
11 times each year and may, by its [~~bylaws~~] rules, provide for
12 additional regular meetings. Prior to each regular meeting,
13 written notice shall be given to each member of the board
14 specifying the time and place of the regular meeting.

15 B. Special meetings of the board may be called by
16 the chairman or by any three members of the board. Written
17 notice of the special meeting shall be sent to each member of
18 the board at least three days in advance of the special
19 meeting.

20 C. If not in violation of Subsection A or B of
21 this section, the rules of the board or the Open Meetings Act,
22 the chairman or any of three members of the board may cancel
23 or reschedule a meeting."

24 Section 4. Section 22-11-9 NMSA 1978 (being Laws 1967,
25 Chapter 16, Section 133) is amended to read:

1 "22-11-9. ACTUARY--FEES.--

2 A. The board shall employ the services of an
3 actuary. The actuary shall prepare a table of actuarial
4 equivalents for use of the board and the director in computing
5 the value of advanced, deferred or optional payment of
6 benefits pursuant to the Educational Retirement Act. The
7 actuary shall also study the financial operations of the
8 Educational Retirement Act and shall make written reports
9 thereon to the board.

10 B. The board shall pay the actuary a reasonable
11 fee for his professional services.

12 C. Unless otherwise required by the governmental
13 accounting standards board of the American institute of
14 certified public accountants, an actuarial report shall be
15 conducted at least once every five years. "

16 Section 5. Section 22-11-15 NMSA 1978 (being Laws 1967,
17 Chapter 16, Section 139, as amended) is amended to read:

18 "22-11-15. FUND--REFUNDS--PAYMENTS.--

19 A. After filing written demand with the director,
20 a member is entitled to a refund of the total amount of the
21 member's contributions plus interest at a rate ~~[equal to~~
22 ~~seventy-five percent of the average rate earned by the fund~~
23 ~~during the five fiscal years preceding the fiscal year of~~
24 ~~refund]~~ set by the board reduced by the sum of any disability
25 benefits previously received by the member, if:

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1 (1) the member terminates employment for
2 reasons other than by retirement, disability or death;

3 (2) the member has exempted himself from the
4 Educational Retirement Act; or

5 (3) the member was not reemployed following a
6 period of disability during which he received disability
7 benefits.

8 B. The director may, at the request of a member,
9 make payment on behalf of the member for any or all of the
10 refund to an individual retirement account or a qualified
11 retirement plan that accepts rollovers.

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

22 D. The interest provided for in Subsection A of
23 this section shall apply only to contributions paid to the
24 fund after July 1, 1971 and on deposit in the fund for a
25 period of at least one fiscal year; provided that no such

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1 interest shall be allowed on refunds of contributions that
2 were paid into the fund prior to July 1, 1971."

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

5 "22-11-26. DEATH DURING REEMPLOYMENT.--If a member dies
6 during a period of reemployment following retirement pursuant
7 to the Educational Retirement Act, the benefits to be paid
8 shall be determined according to the following:

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

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

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1 Section 7. 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 credit
9 equal the sum of seventy-five if the contributions he has made
10 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 8. 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 be
23 irrevocable, unless changed by a court order issued pursuant
24 to Subsection B of Section 22-11-42 NMSA 1978, to receive the
25 actuarial equivalent of his retirement benefit, as provided in

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1 Section 22-11-30 NMSA 1978, to be effective on his retirement
2 in any one of the following optional forms:

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

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

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

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

25 (1) beginning on the first month following

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1 the month in which the named beneficiary of a retiree dies
2 applicable to an annuity received by a retiree who retires
3 after June 30, 1987; or

4 (2) beginning on July 1, 1987 applicable to
5 an annuity received by a retiree who retired prior to July 1,
6 1987 and otherwise qualifies for the adjustment; provided,
7 however, no adjustment shall be made retroactively.

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

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1 retired on the first day of the month in which the beneficiary
2 elects to receive the benefit. In the event of the death of
3 the beneficiary after the death of the member and prior to the
4 date on which the beneficiary has elected to receive the
5 beneficiary's benefit, the estate of the beneficiary shall be
6 entitled to a refund of the member's contributions plus
7 interest at the rate [~~earned by the fund during the preceding~~
8 ~~fiscal year~~] set by the board reduced by the sum of any
9 disability benefits previously received by the member.

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

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

22 G. In the case of death of a member with less than
23 five years' earned service credit or death of a member who has
24 filed with the director a notice rejecting the provisions of
25 Subsection [E] D of this section, which notice shall be

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1 revocable by the member at any time prior to retirement, the
2 member's contributions to the fund plus interest at the rate
3 ~~[earned by the fund during the preceding fiscal year]~~ set by
4 the board shall be paid to the beneficiary designated in
5 writing to the director by the member or, if no beneficiary
6 was designated or the named beneficiary did not survive the
7 member by at least one hundred twenty hours, to the estate of
8 the member.

9 H. Any elections of either Option B or C of
10 Subsection A of this section on file with the director by
11 members who have not retired prior to June 30, 1984 are void."

12 Section 9. Section 22-11-30 NMSA 1978 (being Laws 1967,
13 Chapter 16, Section 153, as amended) is amended to read:

14 "22-11-30. RETIREMENT BENEFITS. --

15 A. Retirement benefits for a member retired
16 pursuant to the Educational Retirement Act on or before June
17 30, 1967 shall be paid monthly and shall be one-twelfth of a
18 sum equal to one and one-half percent of the first four
19 thousand dollars (\$4,000) of the member's average annual
20 salary and one percent of the remainder of the member's
21 average annual salary multiplied by the number of years of the
22 member's total service credit.

23 B. Retirement benefits for a member retired
24 pursuant to the Educational Retirement Act on or after July 1,
25 1967 but on or before June 30, 1971 shall be paid monthly and

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1 shall be one-twelfth of a sum equal to one and one-half
2 percent of the first six thousand six hundred dollars (\$6,600)
3 of the member's average annual salary and one percent of the
4 remainder of the member's average annual salary multiplied by
5 the number of years of the member's total service credit.

6 C. Retirement benefits for a member retired
7 pursuant to the Educational Retirement Act on or after July 1,
8 1971 but on or before June 30, 1974 shall be paid monthly and
9 shall be one-twelfth of a sum equal to one and one-half
10 percent of the member's average annual salary multiplied by
11 the number of years of the member's total service credit.

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

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1 not later than June 30, 1974.

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

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

9 (a) prior employment; and

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

14 (2) two percent of the member's average
15 annual salary multiplied by the number of years of service
16 credit for:

17 (a) contributory employment;

18 (b) allowed service credit for service
19 performed after July 1, 1957; and

20 (c) United States military service
21 credit for service performed prior to July 1, 1957 and
22 purchased pursuant to Paragraph (3) of Subsection A of Section
23 22-11-34 NMSA 1978.

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

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1 after July 1, 1987 but not later than June 30, 1991, shall be
2 paid monthly and shall be one-twelfth of a sum equal to two
3 and fifteen hundredths percent of the member's average annual
4 salary 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 quarters
7 ending on June 30, 1987 without having accumulated not less
8 than 1.0 years earned service credit after June 30, 1987.

9 G. Retirement benefits for a member age sixty or
10 over, retired pursuant to the Educational Retirement Act on or
11 after July 1, 1991, shall be paid monthly and shall be one-
12 twelfth of a sum equal to two and thirty-five hundredths
13 percent of the member's average annual salary multiplied by
14 the number of years of the member's total service credit;
15 provided that this subsection shall not apply to any member
16 who was retired in any of the four consecutive quarters ending
17 on June 30, 1991 without having accumulated at least one year
18 earned service credit beginning on or after July 1, 1991.

19 H. A member's average annual salary, pursuant to
20 this section, shall be computed on the basis of the last five
21 years for which contribution was made or upon the basis of any
22 consecutive five years for which contribution was made by the
23 member, whichever is higher. Unless otherwise required by the
24 provisions of the Internal Revenue Code of 1986, members shall
25 begin receiving retirement benefits by age seventy and six

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1 months, or upon termination of employment, whichever occurs
2 later. "

3 Section 10. Section 22-11-33 NMSA 1978 (being Laws 1967,
4 Chapter 16, Section 156) is amended to read:

5 "22-11-33. EARNED SERVICE CREDIT. --

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

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

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

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1 ~~application for the earned service credit]~~ set by the board.

2 These payments may be made in installments, and, if the
3 payments made to the fund are insufficient for the restoration
4 of any full year of earned service credit, the member shall be
5 certified to have acquired earned service credit for that
6 period of time which is proportionate to the payments made. "

7 Section 11. Section 22-11-34 NMSA 1978 (being Laws 1967,
8 Chapter 16, Section 157, as amended) is amended to read:

9 "22-11-34. ALLOWED SERVICE CREDIT. --

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

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

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

23 (3) engaged in United States military service
24 or the commissioned corps of the public health service from
25 which he was honorably discharged if he contributes to the

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1 fund a sum equal to ten and one-half percent of his average
2 annual salary for that period of time for which he has
3 acquired earned service credit pursuant to the Educational
4 Retirement Act and subject to the federal Uniformed Services
5 Employment and Reemployment Rights Act of 1994 for each year
6 of service credit he desires to purchase. Average annual
7 salary shall be determined in accordance with rules
8 promulgated by the board but shall always be based on actual
9 salaries earned by the member where the actual salaries can be
10 ascertained by the board. The employer's contributions for
11 service credit shall not be paid by the employer. The
12 purchase of service credit provided in this section shall be
13 carried out by the member within three years after the date of
14 the member's employment following service; or

15 (4) employed:

16 (a) in a public school or public
17 institution of higher learning in another state, territory or
18 possession of the United States;

19 (b) in a United States military dependents'
20 school operated by a branch of the armed forces of the United
21 States;

22 (c) as provided in Paragraph (1) of this
23 subsection after the effective date of the Educational
24 Retirement Act; or

25 (d) in a private school or institution of

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1 higher learning in New Mexico whose education program is
2 accredited or approved by the state board at the time of
3 employment.

4 B. The member or employer under Paragraph (4) of
5 Subsection A of this section shall contribute to the fund for
6 each year of allowed service credit desired an amount equal to
7 twelve percent of the member's annual salary at the time
8 payment is made [~~if the member is employed or twelve percent~~
9 ~~times the member's annual salary during the member's last year~~
10 ~~of employment if the member is not employed at the time of~~
11 ~~payment. Contributions paid for the member who is not~~
12 ~~employed shall bear interest at the average rate earned by the~~
13 ~~fund during the five fiscal year period immediately preceding~~
14 ~~the date of payment. Such interest shall run from the date~~
15 ~~the member last terminated employment to the date of payment].~~

16 Effective July 1, 2001, the member or employer under Paragraph
17 (4) of Subsection A of this section shall contribute to the
18 fund for each year of allowed service credit desired an amount
19 equal to the actuarial value of the service purchased as
20 defined by the board. Payment pursuant to Paragraph (4) of
21 Subsection A of this section may be made in installments, at
22 the discretion of the board, over a period not to exceed one
23 year and, if the sum paid does not equal the amount required
24 for any full year of allowed service credit, the member shall
25 acquire allowed service credit for that period of time that is

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1 proportionate to the payment made. Half credit may be allowed
2 without contribution for not more than ten years of the
3 educational service described by Subparagraph (a) of Paragraph
4 (4) of Subsection A of this section if that service was prior
5 to June 13, 1953 and if the member was employed in New Mexico
6 prior to June 13, 1953 in a position covered by the
7 Educational Retirement Act or a law repealed thereby. No
8 allowed service credit shall be purchased pursuant to
9 Paragraph (4) of Subsection A of this section unless the
10 member is currently employed by a local administrative unit.

11 C. No member shall be certified to have acquired
12 allowed service credit:

13 (1) under any single paragraph or the
14 combination of only Paragraphs (1) and (4) or only Paragraphs
15 (2) and (3) of Subsection A of this section in excess of five
16 years; or

17 (2) in excess of ten years for any other
18 combination of Paragraphs (1) through (4) of Subsection A of
19 this section.

20 D. The provisions of this section are made
21 applicable to the services described prior to as well as after
22 the effective date of the Educational Retirement Act. "

23 Section 12. Section 22-11-36 NMSA 1978 (being Laws 1967,
24 Chapter 16, Section 159) is amended to read:

25 "22-11-36. DISABILITY BENEFIT--CONTINUED ELIGIBILITY--

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1 RE- EXAMINATIONS. --

2 A. Unless designated by the medical authority as
3 being permanently disabled, to continue to receive disability
4 benefits, a member shall, on the anniversary date in each year
5 of his being placed on a disability status, present himself to
6 the medical authority for a medical re-examination. The
7 medical authority shall certify to the director after each
8 medical examination whether there is ~~[or is not]~~ a substantial
9 betterment of the member's disability. In the event a
10 substantial betterment of the disability is reported, the
11 board shall determine whether the member is totally disabled
12 for employment and unable to obtain and retain other gainful
13 employment commensurate with his background, education and
14 experience. If the board determines that the member is no
15 longer disabled, the payment of the disability benefits shall
16 cease.

17 B. Payment ~~[to a member]~~ of disability benefits to a
18 member shall be suspended if a certificate of medical re-
19 examination by the medical authority is not filed with the
20 director within thirty days after the date upon which the
21 member should have been re-examined where the failure to file
22 the certificate was due to the unexcused failure or the
23 refusal of the member to report for the medical re-
24 examination. Payment of disability benefits shall be resumed
25 only after the member has complied with the requirements of

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1 the Educational Retirement Act. A member shall have no right
2 or claim for benefits withheld during a period of suspension.

3 C. The board may, in its discretion, require further
4 or more frequent medical examinations of members having a
5 disability status.

6 D. A member receiving disability benefits who is
7 unable to report for a medical re-examination because of his
8 physical condition or because he resides outside the state
9 shall notify the director of this fact not later than fifteen
10 days in advance of the date for the medical re-examination.
11 The board shall designate a medical doctor [~~or doctors~~] in the
12 vicinity of the residence of the member to make the medical
13 re-examination and to report the findings to the board.

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

17 Section 13. Section 22-11-42 NMSA 1978 (being Laws 1967,
18 Chapter 16, Section 165, as amended) is amended to read:

19 "22-11-42. NONASSIGNABILITY--DIVISION OF FUNDS AS
20 COMMUNITY PROPERTY--CHILD SUPPORT OBLIGATIONS.--

21 A. Except as specifically provided in the
22 Educational Retirement Act and the provisions of Subsections B
23 and C of this section, contributions or benefits mentioned in
24 the Educational Retirement Act shall not be assignable either
25 in law or in equity or be subject to execution, levy,

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1 attachment, garnishment, guarantee fund or similar assessment
2 or any other legal process.

3 B. If the court finds that its order will be
4 administratively feasible to the board, a court of competent
5 jurisdiction, solely for the purposes of effecting a division
6 of community property, may provide by appropriate order for a
7 determination and division of a community interest in the
8 pensions or other benefits provided for in the Educational
9 Retirement Act. In so doing, the court shall fix the manner
10 in which the warrants shall be issued, may order direct
11 payments by the board to a person with a community interest in
12 the pensions or benefits and may restrain the refund of member
13 or participant contributions. If the court finds that there
14 will be no adverse actuarial impact to the fund, in order to
15 remove a former spouse as the survivor beneficiary, the court
16 may order a change in a retired member's designation from
17 either Option B or C of Subsection A of Section 22-11-29 NMSA
18 1978 to the normal retirement benefits provided in Section
19 22-11-30 NMSA 1978. Otherwise, the court shall not alter the
20 manner in which the amount of pensions or other benefits is
21 calculated by the board or a carrier or contractor for the
22 alternative retirement plan, nor shall the court cause any
23 increase in the actuarial present value of the pensions or
24 other benefits to be paid by the board or a carrier or
25 contractor for the alternative retirement plan. A payment,

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1 ordered by a court pursuant to this subsection, shall only be
2 made when the member or participant terminates employment and
3 requests a refund or when the member or participant retires or
4 is otherwise entitled to receive benefits pursuant to the
5 Educational Retirement Act. In no case shall a court order
6 pursuant to this subsection result in more money being paid
7 from the fund or from an alternative retirement plan, whether
8 in a lump sum or in monthly benefits, than would otherwise be
9 payable.

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

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1 terminates employment and requests a refund of contributions
2 or when the member or participant retires; in no case shall
3 more money be paid out, either in a lump sum or in monthly
4 benefits, of the fund or alternative retirement plan in
5 enforcement of current or delinquent child support obligations
6 than would otherwise be payable. "

7 Section 14. REPEAL. -- Section 22-11-19.1 NMSA 1978 (being
8 Laws 1979, Chapter 316, Section 1) is repealed.

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