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HOUSE BILL 360

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

Tomás E. Salazar

AN ACT

RELATING TO EDUCATIONAL RETIREMENT; CHANGING THE TERMS OF  
RETIREMENT ELIGIBILITY AND THE CALCULATION OF BENEFITS FOR  
CERTAIN MEMBERS; CHANGING THE TERMS GOVERNING RETIRED MEMBERS  
WHO RETURN TO EMPLOYMENT WITH AN EDUCATIONAL RETIREMENT BOARD  
EMPLOYER; INCREASING THE CONTRIBUTIONS OF EDUCATIONAL  
RETIREMENT BOARD-COVERED EMPLOYERS; CLARIFYING THAT SUBSTITUTE  
TEACHERS ARE EDUCATIONAL RETIREMENT BOARD-COVERED MEMBERS;  
TRANSFERRING MONEY TO THE EDUCATIONAL RETIREMENT FUND TO  
SATISFY A TERM IN THE SETTLEMENT RESULTING FROM *AMERICAN  
FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL  
18, AFL-CIO ET AL. V. STATE OF NEW MEXICO ET AL.*; MAKING AN  
APPROPRIATION.

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

**SECTION 1.** Section 22-11-21 NMSA 1978 (being Laws 1967,

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1 Chapter 16, Section 144, as amended) is amended to read:

2 "22-11-21. CONTRIBUTIONS--MEMBERS--LOCAL ADMINISTRATIVE  
3 UNITS.--

4 A. Except as provided in Subsection D of this  
5 section, for a member whose annual salary is greater than  
6 twenty thousand dollars (\$20,000), the member shall make  
7 contributions to the fund [~~according to the following schedule:~~

8 ~~(1) from July 1, 2013 through June 30, 2014,~~  
9 ~~the member contribution rate shall be ten and one-tenth percent~~  
10 ~~of the member's annual salary; and~~

11 ~~(2) on and after July 1, 2014]~~ at the [member  
12 ~~contribution]~~ rate [~~shall be~~] of ten and seven-tenths percent  
13 of the member's annual salary.

14 B. [~~On and after July 1, 2008]~~ For a member whose  
15 annual salary is twenty thousand dollars (\$20,000) or less, the  
16 member [~~contribution]~~ shall make contributions to the fund at  
17 the rate [~~shall be~~] of seven and nine-tenths percent of the  
18 member's annual salary.

19 C. Except as provided in Subsection D of this  
20 section, each local administrative unit shall make an annual  
21 contribution to the fund according to the following schedule:

22 [~~(1) from July 1, 2013 through June 30, 2014,~~  
23 ~~a sum equal to thirteen and fifteen-hundredths percent of the~~  
24 ~~annual salary of each member employed by the local~~  
25 ~~administrative unit; and~~

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1                   ~~(2) on and after July 1, 2014, a sum equal to~~  
2 ~~thirteen and nine-tenths percent of the annual salary of each~~  
3 ~~member employed by the local administrative unit;]~~

4                   (1) from July 1, 2019 through June 30, 2020,  
5 at the rate of fourteen and nine-tenths percent of the annual  
6 salary of each member employed by the local administrative  
7 unit;

8                   (2) from July 1, 2020 through June 30, 2021,  
9 at the rate of fifteen and nine-tenths percent of the annual  
10 salary of each member employed by the local administrative  
11 unit; and

12                   (3) on and after July 1, 2021, at the rate of  
13 sixteen and nine-tenths percent of the annual salary of each  
14 member employed by the local administrative unit.

15                   D. If, in a calendar year, the salary of a member,  
16 initially employed by a local administrative unit on or after  
17 July 1, 1996, equals the annual compensation limit set pursuant  
18 to Section 401(a)(17) of the Internal Revenue Code of 1986, as  
19 amended, then:

20                   (1) for the remainder of that calendar year,  
21 no additional member contributions or local administrative unit  
22 contributions for that member shall be made pursuant to this  
23 section; provided that no member shall be denied service credit  
24 solely because contributions are not made by the member or on  
25 behalf of the member pursuant to ~~[the provisions of]~~ this

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1 subsection; and

2 (2) the amount of the annual compensation  
3 limit shall be divided into four equal portions, and, for  
4 purposes of attributing contributory employment and crediting  
5 service credit, each portion shall be attributable to one of  
6 the four quarters of the calendar year."

7 SECTION 2. A new section of the Educational Retirement  
8 Act, Section 22-11-23.3 NMSA 1978, is enacted to read:

9 "22-11-23.3. [NEW MATERIAL] RETIREMENT ELIGIBILITY--  
10 INITIAL MEMBERSHIP ON OR AFTER JULY 1, 2019.--A member who  
11 initially became a member on or after July 1, 2019 or a member  
12 who was a member before July 1, 2019 and had, before that date,  
13 been refunded all member contributions in accordance with  
14 Subsection A of Section 22-11-15 NMSA 1978 and had not restored  
15 all refunded contributions and interest before July 1, 2019, is  
16 eligible for retirement benefits when:

17 A. the member is any age and has thirty or more  
18 years of earned service credit;

19 B. the member is at least sixty-seven years of age  
20 and has five or more years of earned service credit; or

21 C. the sum of the member's age and years of earned  
22 service credit equals at least eighty."

23 SECTION 3. Section 22-11-25.1 NMSA 1978 (being Laws 2001,  
24 Chapter 283, Section 2, as amended) is amended to read:

25 "22-11-25.1. RETURN TO EMPLOYMENT--BENEFITS [CONTINUED]--

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1 ~~[ADMINISTRATIVE UNIT]~~ CONTRIBUTIONS.--

2           A. Except as otherwise provided in Subsections B  
3 and F of this section, ~~[beginning January 1, 2002 and~~  
4 ~~continuing]~~ until January 1, 2022, a retired member ~~[may begin]~~  
5 who begins employment ~~[at]~~ with a local administrative unit  
6 ~~[and shall not be]~~ at a level equivalent to one-quarter full-  
7 time employee or higher, regardless of salary level, is  
8 required to suspend the member's retirement benefits ~~[if]~~ until  
9 the end of that employment unless the member has not rendered  
10 service to a local administrative unit for at least ~~[twelve]~~  
11 six consecutive months after the date of retirement. ~~[If the~~  
12 ~~retired member returns to employment without first completing~~  
13 ~~twelve consecutive months of retirement, the retired member~~  
14 ~~shall remove himself or herself from retirement.]~~

15           B. Until January 1, 2022, a retired member who  
16 ~~[was]~~ retired on or before January 1, 2001, ~~[and]~~ has not  
17 ~~[since]~~ suspended or been required to suspend retirement  
18 benefits pursuant to the Educational Retirement Act ~~[may, at~~  
19 ~~any time prior to January 1, 2022, return]~~ and returns to  
20 employment ~~[for]~~ with a local administrative unit ~~[and shall~~  
21 ~~not be]~~ is not required to suspend the member's retirement  
22 benefits.

23           C. A retired member who returns to employment  
24 ~~[during retirement pursuant to Subsection A, B or F of]~~ with a  
25 local administrative unit in accordance with this section is

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1 entitled ~~[to continue]~~ to receive retirement benefits during  
2 that employment but is not entitled to acquire or purchase  
3 service credit ~~[or to acquire or purchase service credit in the~~  
4 ~~future for the period of the retired member's reemployment with~~  
5 ~~a local administrative unit]~~ for that employment.

6 D. A retired member ~~[shall not be eligible to]~~ may  
7 return to employment ~~[pursuant to Subsection A, B or F of this~~  
8 ~~section unless]~~ with a local administrative unit only if the  
9 member submits an application to return to work, on a form  
10 prescribed by the board, ~~[has been submitted to, and approved~~  
11 ~~by]~~ the board approves the application and the applicant ~~[has~~  
12 ~~complied]~~ complies with ~~[such]~~ other application rules ~~[as]~~  
13 promulgated by the board.

14 E. A retired member who returns to employment  
15 ~~[pursuant to Subsection A, B or F of this section]~~ in any  
16 capacity with a local administrative unit shall ~~[pay]~~ make  
17 nonrefundable contributions to the fund ~~[an amount equal to the~~  
18 ~~member contributions that]~~ as would be required ~~[pursuant to]~~  
19 by Section 22-11-21 NMSA 1978 if the retired member ~~[was]~~ were  
20 a non-retired employee. ~~[and]~~ The local administrative unit  
21 employing the retired member shall ~~[pay to the fund an amount~~  
22 ~~equal to the local administrative unit]~~ likewise make  
23 contributions ~~[that]~~ as would be required ~~[pursuant to]~~ by that  
24 section. ~~[Payments made by a retired member pursuant to this~~  
25 ~~subsection shall not be refunded.]~~

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1 F. ~~[Beginning July 1, 2003 and continuing]~~ Until  
2 January 1, 2022, a retired member who retired on or before  
3 January 1, 2001, who ~~[subsequently voluntarily]~~ suspended or  
4 was required to suspend retirement benefits ~~[and who has not~~  
5 ~~rendered service to a local administrative unit for at least~~  
6 ~~ninety days, may begin employment at a local administrative~~  
7 ~~unit without suspending]~~ under the Educational Retirement Act  
8 is not required to suspend the member's retirement benefits if  
9 the retired member ~~[was not employed by]~~ has not rendered  
10 service to a local administrative unit for [an additional  
11 ~~twelve]~~ six or more consecutive months, not including any part  
12 of a summer or other scheduled break or vacation period, after  
13 the initial date of [the] retirement ~~[provided that the ninety-~~  
14 ~~day period shall not include any part of a summer or other~~  
15 ~~scheduled break or vacation period].~~

16 G. ~~[Both the]~~ A retired member who returns to  
17 employment ~~[and the]~~ with a local administrative unit [that  
18 ~~employs the retired member]~~ shall make contributions to the  
19 retiree health care fund during the period of that employment  
20 and in the amount specified in [Subsections A and B of] Section  
21 10-7C-15 NMSA 1978. The local administrative unit employing  
22 the retired member shall likewise make contributions during the  
23 period of that employment and in the amount specified in that  
24 section.

25 H. As used in ~~[Subsections A and F of]~~ this

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1 section:

2 (1) "rendered service" [~~to a local~~  
3 ~~administrative unit~~] includes employment [~~by a local~~  
4 ~~administrative unit~~], whether full or part time; substitute  
5 teaching; voluntarily performing duties [~~for a local~~  
6 ~~administrative unit~~] that would otherwise be, or in the past  
7 have been, performed by a paid employee or independent  
8 contractor; [~~or~~] and performing duties [~~for a local~~  
9 ~~administrative unit~~] as an independent contractor or an  
10 employee of an independent contractor; and

11 (2) "local administrative unit" includes any  
12 entity incorporated, formed or otherwise organized by, or  
13 subject to the control of, a local administrative unit,  
14 regardless of whether [~~or not~~] the entity is created for profit  
15 or nonprofit purposes."

16 SECTION 4. Section 22-11-25.2 NMSA 1978 (being Laws 2003,  
17 Chapter 248, Section 1) is amended to read:

18 "22-11-25.2. PERSONS RECEIVING RETIREMENT BENEFITS  
19 PURSUANT TO THE PUBLIC EMPLOYEES RETIREMENT ACT.--

20 A. An employee who is retired pursuant to the  
21 Public Employees Retirement Act and who has not suspended  
22 retirement benefits received pursuant to that act shall [~~not~~]  
23 make contributions to the fund as [~~otherwise~~] required [~~in~~] by  
24 the Educational Retirement Act. A local administrative unit  
25 that employs such a retiree likewise shall make contributions

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1 to the fund as required by that act.

2 B. An employee who [~~continues to receive~~] receives  
3 retirement benefits pursuant to the Public Employees Retirement  
4 Act [~~and who does not make contributions to the fund~~] is not  
5 entitled to acquire or purchase service credit [~~or to acquire~~  
6 ~~or purchase service credit in the future~~] for the period of  
7 employment with a local administrative unit.

8 [~~G. Nothing in this section shall affect the~~  
9 ~~obligation of a local administrative unit to make contributions~~  
10 ~~to the fund as required in the Educational Retirement Act.]"~~

11 SECTION 5. Section 22-11-30 NMSA 1978 (being Laws 1967,  
12 Chapter 16, Section 153, as amended) is amended to read:

13 "22-11-30. RETIREMENT BENEFITS--REDUCTIONS.--

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

22 B. Retirement benefits for a member retired  
23 pursuant to the Educational Retirement Act on or after July 1,  
24 1967 but on or before June 30, 1971 shall be paid monthly and  
25 shall be one-twelfth of a sum equal to one and one-half percent

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1 of the first six thousand six hundred dollars (\$6,600) of the  
2 member's average annual salary and one percent of the remainder  
3 of the member's average annual salary multiplied by the number  
4 of years of the member's total service credit.

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

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

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

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

8                           (a) prior employment; and

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

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

15                           (a) contributory employment;

16                           (b) allowed service credit for service  
17 performed after July 1, 1957; and

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

22           F. Retirement benefits for a member age sixty or  
23 over, retired pursuant to the Educational Retirement Act on or  
24 after July 1, 1987 but not later than June 30, 1991, shall be  
25 paid monthly and shall be one-twelfth of a sum equal to two and

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1 fifteen-hundredths percent of the member's average annual  
2 salary multiplied by the number of years of the member's total  
3 service credit; provided that this subsection shall not apply  
4 to any member who was retired in any of the four quarters  
5 ending on June 30, 1987 without having accumulated not less  
6 than 1.0 years earned service credit after June 30, 1987.

7 G. Retirement benefits for a member who retires  
8 pursuant to Section 22-11-23 NMSA 1978 on or after July 1, 1991  
9 shall be paid monthly and shall be one-twelfth of a sum equal  
10 to two and thirty-five hundredths percent of the member's  
11 average annual salary multiplied by the number of years of the  
12 member's total service credit; provided that:

13 (1) the benefit for a member who retires  
14 pursuant to Paragraph (3) of Subsection A of Section 22-11-23  
15 NMSA 1978 shall be reduced by:

16 (a) six-tenths percent for each one-  
17 fourth, or portion thereof, year that retirement occurs prior  
18 to the member attaining the age of sixty years but after the  
19 member attains the age of fifty-five years; and

20 (b) one and eight-tenths percent for  
21 each one-fourth, or portion thereof, year that retirement  
22 occurs prior to the member attaining the age of fifty-five  
23 years;

24 (2) the benefit formula provided in this  
25 subsection shall not apply to any member who was retired in any

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1 of the four consecutive quarters ending on June 30, 1991  
2 without having accumulated at least one year of earned service  
3 credit beginning on or after July 1, 1991; and

4 (3) a member shall be subject to the  
5 provisions of Paragraph (1) of this subsection as they existed  
6 at the beginning of the member's last cumulated four quarters  
7 of earned service credit, regardless of later amendment.

8 H. Retirement benefits for a member who retires  
9 pursuant to Section 22-11-23.1 NMSA 1978 shall be paid monthly  
10 and shall be one-twelfth of a sum equal to two and thirty-five  
11 hundredths percent of the member's average annual salary  
12 multiplied by the number of years of the member's total service  
13 credit; provided that:

14 (1) the benefit for a member who retires  
15 pursuant to Paragraph (3) of Subsection A of Section 22-11-23.1  
16 NMSA 1978 shall be reduced by:

17 (a) six-tenths percent for each one-  
18 fourth, or portion thereof, year that retirement occurs prior  
19 to the member attaining the age of sixty-five years but after  
20 the member attains the age of sixty years; and

21 (b) one and eight-tenths percent for  
22 each one-fourth, or portion thereof, year that retirement  
23 occurs prior to the member attaining the age of sixty years;  
24 and

25 (2) a member shall be subject to the

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1 provisions of Paragraph (1) of this subsection as they existed  
2 at the beginning of the member's last cumulated four quarters  
3 of earned service credit, regardless of later amendment.

4 I. Retirement benefits for a member who retires  
5 pursuant to Section 22-11-23.2 NMSA 1978 shall be paid monthly  
6 and shall be one-twelfth of a sum equal to two and thirty-five  
7 hundredths percent of the member's average annual salary  
8 multiplied by the number of years of the member's total service  
9 credit; provided that:

10 (1) the benefit for a member retiring pursuant  
11 to Paragraph (3) of Subsection A of Section 22-11-23.2 NMSA  
12 1978 shall be reduced by:

13 (a) six-tenths percent for each one-  
14 fourth, or portion thereof, year that retirement occurs prior  
15 to the member attaining the age of sixty-five years but after  
16 the member attains the age of sixty years; and

17 (b) one and eight-tenths percent for  
18 each one-fourth, or portion thereof, year that retirement  
19 occurs prior to the member attaining the age of sixty years;  
20 and

21 (2) a member shall be subject to the  
22 provisions of Paragraph (1) of this subsection as they existed  
23 at the beginning of the member's last cumulated four quarters  
24 of earned service credit, regardless of later amendment.

25 J. Retirement benefits for a member who retires in

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1 accordance with Section 22-11-23.3 NMSA 1978 shall be paid  
2 monthly and:

3 (1) in an amount equal to one-twelfth of the  
4 sum of the following:

5 (a) for the first ten years of the  
6 member's service credit, one and thirty-five hundredths percent  
7 of the member's average annual salary multiplied by the  
8 member's years of service credit between one-fourth of a year  
9 and ten years;

10 (b) for that portion of the member's  
11 service credit earned after ten years of service credit and  
12 through twenty years of service credit, two and thirty-five  
13 hundredths percent of the member's average annual salary  
14 multiplied by the member's years of service credit between ten  
15 and twenty years;

16 (c) for that portion of the member's  
17 service credit earned after twenty years of service credit and  
18 through thirty years of service credit, three and thirty-five  
19 hundredths percent of the members's average annual salary  
20 multiplied by the member's years of service credit between  
21 twenty and thirty years; and

22 (d) for that portion of the member's  
23 service credit earned after thirty years of service credit, two  
24 and four-tenths percent of the member's average annual salary  
25 multiplied by the member's years of service credit over thirty

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1 years; or

2 (2) if the member retires in accordance with:

3 (a) Subsection A of Section

4 22-11-23.3 NMSA 1978 and is under fifty-eight years of age, in  
5 an amount equal to one-twelfth of the result determined under  
6 Paragraph (1) of this subsection, but reduced to the actuarial  
7 equivalent, based on what is at the time of the member's  
8 retirement the most current set of actuarial factors determined  
9 by the board, of the benefit the member would receive if the  
10 member had retired at fifty-eight years of age;

11 (b) Subsection C of Section

12 22-11-23.3 NMSA 1978 and is sixty years of age or older and  
13 under sixty-five, in an amount equal to one-twelfth of the  
14 result determined under Paragraph (1) of this subsection, but  
15 reduced by sixth-tenths percent for each one-fourth, or portion  
16 thereof, year before the member reaches age sixty-five; and

17 (c) Subsection C of Section

18 22-11-23.3 NMSA 1978 and is younger than sixty years of age,  
19 one and eight-tenths percent for each one-fourth, or portion  
20 thereof, year before the member reaches sixty years of age.

21 ~~[J.]~~ K. In determining a member's average annual  
22 salary ~~[pursuant to]~~ for purposes of this section:

23 (1) the data set shall ~~[be computed on the~~  
24 ~~basis]~~ consist of the annual salary of each of the last five  
25 years, ~~[for which contribution was made] or [upon the basis of]~~

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1 any consecutive five years, for which contribution was made by  
2 the member, whichever [~~is~~] produces a higher [~~provided,~~  
3 ~~however, that~~] result; and

4 (2) lump-sum payments made after July 1, 2010  
5 of accrued sick leave or annual leave shall be excluded from  
6 the calculation [~~of salary~~].

7 L. On and after July 1, 2019, if the member's  
8 average annual salary is greater than sixty thousand dollars  
9 (\$60,000):

10 (1) the salary in the first twelve months of  
11 the five-year period used to determine the average annual  
12 salary shall be adjusted to exclude any increase in salary in  
13 excess of thirty percent of the salary in the twelve  
14 consecutive months of service credit preceding the five-year  
15 period; and

16 (2) the salary in each of the four succeeding  
17 twelve-month intervals of the five-year period, as adjusted to  
18 exclude any increase in salary in the twelve months preceding  
19 each such succeeding twelve-month interval that is in excess of  
20 the thirty-percent limitation provided in this subsection,  
21 shall be used to determine if the salary in that succeeding  
22 twelve-month interval exceeds the thirty-percent limitation and  
23 to adjust the salary to exclude any increase in excess of that  
24 limitation in determining the average annual salary.

25 M. On July 1, 2020 and on each July 1 thereafter,

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1 the salary threshold for applying the thirty-percent limitation  
2 provided for in Subsection L of this section shall be adjusted  
3 by applying an adjustment factor equal to the change in the  
4 consumer price index between the next preceding calendar year  
5 and the preceding calendar year if there is an increase in the  
6 consumer price index between the next preceding calendar year  
7 and the preceding calendar year.

8 ~~K.]~~ N. Unless otherwise required by the [~~provisions~~  
9 ~~of the~~] Internal Revenue Code of 1986, [~~members~~] a member shall  
10 begin receiving retirement benefits by age seventy years and  
11 six months, or upon termination of employment, whichever occurs  
12 later."

13 SECTION 6. Section 22-11-49 NMSA 1978 (being Laws 1991,  
14 Chapter 118, Section 7, as amended) is amended to read:

15 "22-11-49. ALTERNATIVE RETIREMENT PLAN--CONTRIBUTIONS.--

16 A. [~~Each~~] A participant shall contribute an amount  
17 equal to the [~~percent~~] percentage of the participant's salary  
18 that the participant would [~~have been~~] be required to  
19 contribute [~~as~~] if the participant were, instead, a regular  
20 member. The contribution shall be made [~~in the manner~~] as  
21 provided [~~for~~] by the board.

22 B. [~~Each~~] A qualifying state educational  
23 institution shall contribute on behalf of each participant an  
24 amount of the participant's salary equal to the contribution  
25 that would [~~have been~~] be required of the employer if the

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1 participant ~~[was]~~ were, instead, a regular member. Of ~~[the]~~  
2 that contribution ~~[made by a qualifying state educational~~  
3 ~~institution on behalf of a participant beginning October 1,~~  
4 ~~1991, or October 1, 1999, whichever is applicable]~~, a sum equal  
5 to ~~[three percent]~~ the following percentage of the annual  
6 salary of each participant shall be ~~[contributed]~~ paid to the  
7 fund, and the remainder of the contribution shall be paid to  
8 the alternative retirement plan as provided by the board  
9 ~~[provided, however, that]:~~

10 (1) for fiscal year:

- 11 (a) 2020, four percent;
- 12 (b) 2021, five percent; and
- 13 (c) 2022 and subsequent fiscal years,

14 six percent; or

15 (2) if, on July 1 following any report by the  
16 actuary to the board that concludes that less than ~~[three~~  
17 ~~percent of the contributions made by a qualifying state~~  
18 ~~educational institution on behalf of its participants]~~ that  
19 percentage is required to satisfy the unfunded actuarial  
20 liability attributable to the participation of the participants  
21 in the alternative retirement plan, ~~[the three percent shall be~~  
22 ~~reduced to]~~ then the percentage ~~[determined by]~~ the actuary  
23 determines is the minimum required to satisfy that liability.

24 C. Contributions required by ~~[the provisions of]~~  
25 this section may be made by a reduction in salary or by a

underscoring material = new  
[bracketed material] = delete

1 public employer pick-up [~~pursuant to any applicable provision~~  
2 of] as provided in the Internal Revenue Code of 1986, as  
3 amended."

4 SECTION 7. A new section of the Educational Retirement  
5 Act is enacted to read:

6 "[NEW MATERIAL] SUBSTITUTE TEACHERS--MEMBERSHIP STATUS.--A  
7 substitute teacher who works at a level equivalent to one-  
8 quarter full-time employee or higher and who otherwise meets  
9 the requirements of membership under the Educational Retirement  
10 Act is subject to that act as a regular member."

11 SECTION 8. TRANSFER.--On July 1, 2019, two hundred forty-  
12 eight million three hundred thousand dollars (\$248,300,000) is  
13 transferred from the general fund to the educational retirement  
14 fund to restore the losses to the educational retirement fund  
15 caused by changes in law at issue in the lawsuit *American*  
16 *Federation of State, County and Municipal Employees, Council*  
17 *18, AFL-CIO et al. v. State of New Mexico et al.*, Case No. D-  
18 202-CV-2009-07148.

19 SECTION 9. EFFECTIVE DATE.--The effective date of the  
20 provisions of this act is July 1, 2019.