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AN ACT

RELATING TO EDUCATIONAL RETIREMENT; RAISING THE SALARY
THRESHOLD FOR CONTRIBUTION AMOUNTS; 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.

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

SECTION 1. Section 22-11-21 NMSA 1978 (being Laws 1967,
Chapter 16, Section 144, as amended) is amended to read:

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

A. Except as provided in Subsection D of this
section, for a member whose annual salary is greater than
twenty-four thousand dollars (\$24,000), the member shall make
contributions to the fund at the rate of ten and seven-tenths
percent of the member's annual salary.

B. For a member whose annual salary is twenty-four
thousand dollars (\$24,000) or less, the member shall make
contributions to the fund at the rate of seven and
nine-tenths percent of the member's annual salary.

1 C. Except as provided in Subsection D of this
2 section, each local administrative unit shall make an annual
3 contribution to the fund on and after July 1, 2019, at the
4 rate of fourteen and fifteen-hundredths percent of the annual
5 salary of each member employed by the local administrative
6 unit.

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

12 (1) for the remainder of that calendar year,
13 no additional member contributions or local administrative
14 unit contributions for that member shall be made pursuant to
15 this section; provided that no member shall be denied service
16 credit solely because contributions are not made by the
17 member or on behalf of the member pursuant to this
18 subsection; and

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

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

1 "22-11-23.3. RETIREMENT ELIGIBILITY--INITIAL MEMBERSHIP
2 ON OR AFTER JULY 1, 2019.--A member who initially became a
3 member on or after July 1, 2019 or a member who was a member
4 before July 1, 2019 and had, before that date, been refunded
5 all member contributions in accordance with Subsection A of
6 Section 22-11-15 NMSA 1978 and had not restored all refunded
7 contributions and interest before July 1, 2019, is eligible
8 for retirement benefits when:

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

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

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

15 SECTION 3. Section 22-11-25.1 NMSA 1978 (being Laws
16 2001, Chapter 283, Section 2, as amended) is amended to read:

17 "22-11-25.1. RETURN TO EMPLOYMENT--BENEFITS--
18 CONTRIBUTIONS.--

19 A. Except as otherwise provided in Subsections B
20 and F of this section, until January 1, 2022, a retired
21 member who begins employment with a local administrative unit
22 at a level greater than one-quarter full-time employee,
23 regardless of salary level, is required to suspend the
24 member's retirement benefits until the end of that employment
25 unless the member has not rendered service to a local

1 administrative unit for at least twelve consecutive months
2 after the date of retirement.

3 B. Until January 1, 2022, a retired member who
4 retired on or before January 1, 2001, has not suspended or
5 been required to suspend retirement benefits pursuant to the
6 Educational Retirement Act and returns to employment with a
7 local administrative unit is not required to suspend the
8 member's retirement benefits.

9 C. A retired member who returns to employment with
10 a local administrative unit in accordance with this section
11 is entitled to receive retirement benefits during that
12 employment but is not entitled to acquire or purchase service
13 credit for that employment.

14 D. A retired member may return to employment with
15 a local administrative unit only if the member submits an
16 application to return to work, on a form prescribed by the
17 board, the board approves the application and the applicant
18 complies with other application rules promulgated by the
19 board.

20 E. A retired member who returns to employment
21 pursuant to Subsection A, B or F of this section shall make
22 nonrefundable contributions to the fund as would be required
23 by Section 22-11-21 NMSA 1978 if the retired member were a
24 non-retired employee. The local administrative unit
25 employing the retired member shall likewise make

1 contributions as would be required by that section. In
2 addition, on and after July 1, 2020, a retired member who has
3 returned to employment at a level of one-fourth or less
4 full-time employee, regardless of salary level, shall make
5 nonrefundable contributions to the fund as would be required
6 by Section 22-11-21 NMSA 1978 if the retired member were a
7 non-retired employee. The local administrative unit
8 employing the retired member shall likewise make
9 contributions as would be required by that section.

10 F. Until January 1, 2022, a retired member who
11 retired on or before January 1, 2001, who suspended or was
12 required to suspend retirement benefits under the Educational
13 Retirement Act is not required to suspend the member's
14 retirement benefits if the retired member has not rendered
15 service to a local administrative unit for an additional
16 twelve or more consecutive months, not including any part of
17 a summer or other scheduled break or vacation period, after
18 the initial date of retirement.

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

1 H. As used in this section:

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

8 (2) "local administrative unit" includes any
9 entity incorporated, formed or otherwise organized by, or
10 subject to the control of, a local administrative unit,
11 regardless of whether the entity is created for profit or
12 nonprofit purposes."

13 SECTION 4. Section 22-11-25.2 NMSA 1978 (being Laws
14 2003, Chapter 248, Section 1) is amended to read:

15 "22-11-25.2. PERSONS RECEIVING RETIREMENT BENEFITS
16 PURSUANT TO THE PUBLIC EMPLOYEES RETIREMENT ACT.--

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

24 B. An employee hired prior to July 1, 2019 by a
25 local administrative unit as a police officer certified

1 pursuant to the Law Enforcement Training Act, who is retired
2 pursuant to the Public Employees Retirement Act and who has
3 not suspended retirement benefits received pursuant to that
4 act, shall not make contributions to the fund so long as the
5 employee remains working as a certified police officer. The
6 local administrative unit that hired the certified police
7 officer shall make contributions to the fund pursuant to the
8 Educational Retirement Act.

9 C. An employee who receives retirement benefits
10 pursuant to the Public Employees Retirement Act is not
11 entitled to acquire or purchase service credit for the period
12 of employment with a local administrative unit."

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

15 "22-11-30. RETIREMENT BENEFITS--REDUCTIONS.--

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

24 B. Retirement benefits for a member retired
25 pursuant to the Educational Retirement Act on or after

1 July 1, 1967 but on or before June 30, 1971 shall be paid
2 monthly and shall be one-twelfth of a sum equal to one and
3 one-half percent of the first six thousand six hundred
4 dollars (\$6,600) of the member's average annual salary and
5 one percent of the remainder of the member's average annual
6 salary multiplied by the number of years of the member's
7 total service credit.

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

15 D. Retirement benefits for a member retired
16 pursuant to the Educational Retirement Act on or before
17 June 30, 1974 but returning to employment on or after July 1,
18 1974 for a cumulation of one or more years shall be computed
19 pursuant to Subsection E of this section. Retirement
20 benefits for a member retired pursuant to the Educational
21 Retirement Act on or before June 30, 1974 but returning to
22 employment on or after July 1, 1974 for a cumulation of less
23 than one year shall be computed pursuant to Subsection A of
24 this section if the member's date of last retirement was on
25 or before June 30, 1967 or pursuant to Subsection B of this

1 section if the member's date of last retirement was on or
2 after July 1, 1967 but not later than June 30, 1971 or
3 pursuant to Subsection C of this section if the member's date
4 of last retirement was on or after July 1, 1971 but not later
5 than June 30, 1974.

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

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

13 (a) prior employment; and

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

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

21 (a) contributory employment;

22 (b) allowed service credit for service
23 performed after July 1, 1957; and

24 (c) United States military service
25 credit for service performed prior to July 1, 1957 and

1 purchased pursuant to Paragraph (3) of Subsection A of
2 Section 22-11-34 NMSA 1978.

3 F. Retirement benefits for a member age sixty or
4 over, retired pursuant to the Educational Retirement Act on
5 or after July 1, 1987 but not later than June 30, 1991, shall
6 be paid monthly and shall be one-twelfth of a sum equal to
7 two and fifteen-hundredths percent of the member's average
8 annual salary multiplied by the number of years of the
9 member's total service credit; provided that this subsection
10 shall not apply to any member who was retired in any of the
11 four quarters ending on June 30, 1987 without having
12 accumulated not less than 1.0 years earned service credit
13 after June 30, 1987.

14 G. Retirement benefits for a member who retires
15 pursuant to Section 22-11-23 NMSA 1978 on or after July 1,
16 1991 shall be paid monthly and shall be one-twelfth of a sum
17 equal to two and thirty-five hundredths percent of the
18 member's average annual salary multiplied by the number of
19 years of the member's total service credit; provided that:

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

23 (a) six-tenths percent for each one-
24 fourth, or portion thereof, year that retirement occurs prior
25 to the member attaining the age of sixty years but after the

1 member attains the age of fifty-five years; and

2 (b) one and eight-tenths percent for
3 each one-fourth, or portion thereof, year that retirement
4 occurs prior to the member attaining the age of fifty-five
5 years;

6 (2) the benefit formula provided in this
7 subsection shall not apply to any member who was retired in
8 any of the four consecutive quarters ending on June 30, 1991
9 without having accumulated at least one year of earned
10 service credit beginning on or after July 1, 1991; and

11 (3) a member shall be subject to the
12 provisions of Paragraph (1) of this subsection as they
13 existed at the beginning of the member's last cumulated four
14 quarters of earned service credit, regardless of later
15 amendment.

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

22 (1) the benefit for a member who retires
23 pursuant to Paragraph (3) of Subsection A of Section
24 22-11-23.1 NMSA 1978 shall be reduced by:

25 (a) six-tenths percent for each one-

1 fourth, or portion thereof, year that retirement occurs prior
2 to the member attaining the age of sixty-five years but after
3 the member attains the age of sixty years; and

4 (b) one and eight-tenths percent for
5 each one-fourth, or portion thereof, year that retirement
6 occurs prior to the member attaining the age of sixty years;
7 and

8 (2) a member shall be subject to the
9 provisions of Paragraph (1) of this subsection as they
10 existed at the beginning of the member's last cumulated four
11 quarters of earned service credit, regardless of later
12 amendment.

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

19 (1) the benefit for a member retiring
20 pursuant to Paragraph (3) of Subsection A of Section
21 22-11-23.2 NMSA 1978 shall be reduced by:

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

1 (b) one and eight-tenths percent for
2 each one-fourth, or portion thereof, year that retirement
3 occurs prior to the member attaining the age of sixty years;
4 and

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

10 J. Retirement benefits for a member who retires in
11 accordance with Section 22-11-23.3 NMSA 1978 shall be paid
12 monthly and:

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

15 (a) for the first ten years of the
16 member's service credit, one and thirty-five hundredths
17 percent of the member's average annual salary multiplied by
18 the member's years of service credit between one-fourth of a
19 year and ten years;

20 (b) for that portion of the member's
21 service credit earned after ten years of service credit and
22 through twenty years of service credit, two and thirty-five
23 hundredths percent of the member's average annual salary
24 multiplied by the member's years of service credit between
25 ten and twenty years;

1 (c) for that portion of the member's
2 service credit earned after twenty years of service credit
3 and through thirty years of service credit, three and thirty-
4 five hundredths percent of the member's average annual salary
5 multiplied by the member's years of service credit between
6 twenty and thirty years; and

7 (d) for that portion of the member's
8 service credit earned after thirty years of service credit,
9 two and four-tenths percent of the member's average annual
10 salary multiplied by the member's years of service credit
11 over thirty years; or

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

14 (a) Subsection A of Section
15 22-11-23.3 NMSA 1978 and is under fifty-eight years of age,
16 in an amount equal to the result determined under Paragraph
17 (1) of this subsection, but reduced to the actuarial
18 equivalent, based on what is at the time of the member's
19 retirement the most current set of actuarial factors
20 determined by the board, of the benefit the member would
21 receive if the member had retired at fifty-eight years of
22 age;

23 (b) Subsection C of Section
24 22-11-23.3 NMSA 1978 and is sixty years of age or older and
25 under sixty-five, in an amount equal to the result determined

1 under Paragraph (1) of this subsection, but reduced by six-
2 tenths percent for each one-fourth, or portion thereof, year
3 before the member reaches age sixty-five; or

4 (c) Subsection C of Section
5 22-11-23.3 NMSA 1978 and is younger than sixty years of age,
6 in an amount equal to one and eight-tenths percent for each
7 one-fourth, or portion thereof, year before the member
8 reaches sixty years of age.

9 K. In determining a member's average annual salary
10 for purposes of this section:

11 (1) the data set shall consist of the annual
12 salary of each of the last five years, or any consecutive
13 five years, for which contribution was made by the member,
14 whichever produces a higher result; and

15 (2) lump-sum payments made after July 1,
16 2010 of accrued sick leave or annual leave shall be excluded
17 from the calculation.

18 L. On and after July 1, 2019, if the member's
19 average annual salary is greater than sixty thousand dollars
20 (\$60,000):

21 (1) the salary in a first twelve-month
22 interval that occurs beginning July 1, 2019 or thereafter of
23 the five-year period used to determine the average annual
24 salary shall be adjusted to exclude any increase in salary in
25 excess of thirty percent of the salary in the twelve

1 consecutive months of service credit preceding the five-year
2 period; and

3 (2) the salary in each of the four
4 succeeding twelve-month intervals that occur beginning July
5 1, 2019 or thereafter of the five-year period, as adjusted to
6 exclude any increase in salary in the twelve months preceding
7 each such succeeding twelve-month interval that is in excess
8 of the thirty-percent limitation provided in this subsection,
9 shall be used to determine if the salary in that succeeding
10 twelve-month interval exceeds the thirty-percent limitation
11 and to adjust the salary to exclude any increase in excess of
12 that limitation in determining the average annual salary.

13 M. On July 1, 2020 and on each July 1 thereafter,
14 the salary threshold for applying the thirty-percent
15 limitation provided for in Subsection L of this section shall
16 be adjusted by applying an adjustment factor equal to the
17 change in the consumer price index between the next preceding
18 calendar year and the preceding calendar year if there is an
19 increase in the consumer price index between the next
20 preceding calendar year and the preceding calendar year.

21 N. Unless otherwise required by the Internal
22 Revenue Code of 1986, a member shall begin receiving
23 retirement benefits by age seventy years and six months, or
24 upon termination of employment, whichever occurs later."

25 SECTION 6. Section 22-11-49 NMSA 1978 (being Laws 1991,

1 Chapter 118, Section 7, as amended) is amended to read:

2 "22-11-49. ALTERNATIVE RETIREMENT PLAN--
3 CONTRIBUTIONS.--

4 A. A participant shall contribute an amount equal
5 to the percentage of the participant's salary that the
6 participant would be required to contribute if the
7 participant were, instead, a regular member. The
8 contribution shall be made as provided by the board.

9 B. A qualifying state educational institution
10 shall contribute on behalf of each participant an amount of
11 the participant's salary equal to the contribution that would
12 be required of the employer if the participant were, instead,
13 a regular member. Of that contribution, a sum equal to three
14 and one-fourth percent of the annual salary of each
15 participant shall be paid to the fund, and the remainder of
16 the contribution shall be paid to the alternative retirement
17 plan as provided by the board; provided, however, that on
18 July 1 following any report by the actuary to the board that
19 concludes that less than three and one-fourth percent is
20 required to satisfy the unfunded actuarial liability
21 attributable to the participation of the participants in the
22 alternative retirement plan, then the percentage the actuary
23 determines is the minimum required to satisfy that liability.

24 C. Contributions required by this section may be
25 made by a reduction in salary or by a public employer pick-up

1 as provided in the Internal Revenue Code of 1986, as
2 amended."

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

5 "SUBSTITUTE TEACHERS--MEMBERSHIP STATUS.--A substitute
6 teacher who works at a level greater than one-quarter full-
7 time employee and who otherwise meets the requirements of
8 membership under the Educational Retirement Act is subject to
9 that act as a regular member."

10 SECTION 8. EFFECTIVE DATE.--

11 A. The effective date of the provisions of
12 Sections 1 through 6 of this act is July 1, 2019.

13 B. The effective date of the provisions of Section
14 7 of this act is July 1, 2020. _____

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