

1 SENATE BILL 111

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

3 INTRODUCED BY

4 Mimi Stewart

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7  
8 FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

9  
10 AN ACT

11 RELATING TO EDUCATIONAL RETIREMENT; REMOVING THE REQUIREMENT  
12 FOR EMPLOYEES AND EMPLOYERS TO MAKE NONREFUNDABLE CONTRIBUTIONS  
13 FOR EMPLOYEES AT A LEVEL OF ONE-FOURTH OR LESS FULL-TIME  
14 EMPLOYEE; ALLOWING CERTAIN RETIREES TO RETURN TO WORK WITHOUT A  
15 SUSPENSION OF RETIREMENT BENEFITS; EXEMPTING EMPLOYEES  
16 CONSIDERED TO BE SUBSTITUTES FROM THE REQUIREMENTS OF THE  
17 EDUCATIONAL RETIREMENT ACT.

18  
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

20 SECTION 1. Section 22-11-25.1 NMSA 1978 (being Laws 2001,  
21 Chapter 283, Section 2, as amended) is amended to read:

22 "22-11-25.1. RETURN TO EMPLOYMENT--BENEFITS--  
23 CONTRIBUTIONS.--

24 A. Except as otherwise provided in Subsections B,  
25 [~~and~~] F and H of this section, until January 1, 2022, a retired

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1 member who begins employment with a local administrative unit  
2 at a level greater than one-quarter full-time employee,  
3 regardless of salary level, is required to suspend the member's  
4 retirement benefits until the end of that employment unless the  
5 member has not rendered service to a local administrative unit  
6 for at least twelve consecutive months after the date of  
7 retirement.

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

14 C. A retired member who returns to employment with  
15 a local administrative unit in accordance with this section is  
16 entitled to receive retirement benefits during that employment  
17 but is not entitled to acquire or purchase service credit for  
18 that employment.

19 D. A retired member may return to employment with a  
20 local administrative unit only if the member submits an  
21 application to return to work, on a form prescribed by the  
22 board, the board approves the application and the applicant  
23 complies with other application rules promulgated by the board.

24 E. A retired member who returns to employment  
25 pursuant to Subsection A, B or F of this section shall make

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

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

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

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1 local administrative unit employing the retired member shall  
2 likewise make contributions during the period of that  
3 employment and in the amount specified in that section.

4 H. A retired member may return to employment with a  
5 local administrative unit without a suspension of the member's  
6 retirement benefits; provided that:

7 (1) the retired member has not rendered  
8 service to a local administrative unit for at least ninety days  
9 after the date of retirement;

10 (2) prior to the date of retirement, or within  
11 ninety days after the date of retirement, the retired member  
12 did not enter into any formal or informal agreement with a  
13 local administrative unit or with any contractor providing  
14 services to a local administrative unit to return to  
15 employment; and

16 (3) the retired member earns a salary of less  
17 than fifteen thousand dollars (\$15,000) per year.

18 [~~H.~~] I. As used in this section:

19 (1) "rendered service" includes employment,  
20 whether full or part time; substitute teaching; voluntarily  
21 performing duties that would otherwise be, or in the past have  
22 been, performed by a paid employee or independent contractor;  
23 and performing duties as an independent contractor or an  
24 employee of an independent contractor; and

25 (2) "local administrative unit" includes any

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1 entity incorporated, formed or otherwise organized by, or  
2 subject to the control of, a local administrative unit,  
3 regardless of whether the entity is created for profit or  
4 nonprofit purposes."

5 SECTION 2. Section 22-11-16.2 NMSA 1978 (being Laws 2019,  
6 Chapter 258, Section 7) is repealed and a new Section  
7 22-11-16.2 NMSA 1978 is enacted to read:

8 "22-11-16.2. [NEW MATERIAL] ~~SUBSTITUTES--MEMBERSHIP~~  
9 STATUS.--An employee engaged on a day-to-day basis to replace  
10 another employee who is temporarily absent shall be considered  
11 a substitute and shall not be covered under the Educational  
12 Retirement Act. An employee engaged to fill a vacant position,  
13 including a position vacated by a leave of absence of at least  
14 ninety days, shall not be considered a substitute and is  
15 subject to the requirements of the Educational Retirement Act."