

1 AN ACT
2 RELATING TO PUBLIC PENSIONS; ALLOWING A SUPPLEMENTAL NEEDS
3 TRUST TO BE NAMED AS A SURVIVOR OR REFUND BENEFICIARY
4 PURSUANT TO THE PUBLIC EMPLOYEES RETIREMENT ACT, THE JUDICIAL
5 RETIREMENT ACT, THE MAGISTRATE RETIREMENT ACT AND THE
6 EDUCATIONAL RETIREMENT ACT; CLARIFYING CERTAIN DATES OF
7 PAYMENT IN THE EVENT OF THE DEATH OR TERMINATION OF A
8 SURVIVOR BENEFICIARY.

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

11 SECTION 1. Section 10-11-2 NMSA 1978 (being Laws 1987,
12 Chapter 253, Section 2, as amended by Laws 2021, Chapter 36,
13 Section 1 and by Laws 2021, Chapter 38, Section 1) is amended
14 to read:

15 "10-11-2. DEFINITIONS.--As used in the Public Employees
16 Retirement Act:

17 A. "accumulated member contributions" means the
18 amounts deducted from the salary of a member and credited to
19 the member's individual account, together with interest, if
20 any, credited to that account;

21 B. "affiliated public employer" means the state
22 and any public employer affiliated with the association as
23 provided in the Public Employees Retirement Act, but does not
24 include an employer pursuant to the Magistrate Retirement
25 Act, the Judicial Retirement Act or the Educational

1 Retirement Act;

2 C. "association" means the public employees
3 retirement association established under the Public Employees
4 Retirement Act;

5 D. "coverage plan funded ratio" means the ratio of
6 the actuarial value of the assets of a coverage plan to the
7 actuarial accrued liability of the association for payments
8 from the coverage plan, as determined by the association's
9 actuaries;

10 E. "disability retired member" means a retired
11 member who is receiving a pension pursuant to the disability
12 retirement provisions of the Public Employees Retirement Act;

13 F. "disability retirement pension" means the
14 pension paid pursuant to the disability retirement provisions
15 of the Public Employees Retirement Act;

16 G. "educational retirement system" means that
17 retirement system provided for in the Educational Retirement
18 Act;

19 H. "employee" means any employee of an affiliated
20 public employer;

21 I. "federal social security program" means that
22 program or those programs created and administered pursuant
23 to the act of congress approved August 14, 1935, Chapter 531,
24 49 Stat. 620, as that act may be amended;

25 J. "final average salary" means the final average

1 salary calculated in accordance with the provisions of the
2 applicable coverage plan;

3 K. "form of payment" means the applicable form of
4 payment of a pension provided for in Section 10-11-117 NMSA
5 1978;

6 L. "former member" means a person who was
7 previously employed by an affiliated public employer, who has
8 terminated that employment and who has received a refund of
9 member contributions;

10 M. "fund" means the funds included under the
11 Public Employees Retirement Act;

12 N. "member" means a currently employed,
13 contributing employee of an affiliated public employer, or a
14 person who has been but is not currently employed by an
15 affiliated public employer, who has not retired and who has
16 not received a refund of member contributions; "member" also
17 includes the following:

18 (1) "adult correctional officer member"
19 means a member who is employed as an adult correctional
20 officer or an adult correctional officer specialist by a
21 state correctional facility of the corrections department or
22 its successor agency;

23 (2) "adult probation and parole officer
24 member" means a member who is employed as a probation and
25 parole officer by the corrections department or its successor

1 agency;

2 (3) "juvenile correctional officer member"
3 means a member who is employed as a juvenile correctional
4 officer by the children, youth and families department or its
5 successor agency;

6 (4) "juvenile probation and parole officer
7 member" means a member who is employed as a probation and
8 parole officer by the children, youth and families department
9 or its successor agency;

10 (5) "municipal detention officer member"
11 means a member who is employed by an affiliated public
12 employer other than the state and who has inmate custodial
13 responsibilities at a facility used for the confinement of
14 persons charged with or convicted of a violation of a law or
15 ordinance;

16 (6) "municipal fire member" means any member
17 who is employed as a full-time nonvolunteer firefighter by an
18 affiliated public employer and who has taken the oath
19 prescribed for firefighters;

20 (7) "municipal police member" means any
21 member who is employed as a police officer by an affiliated
22 public employer, other than the state, and who has taken the
23 oath prescribed for police officers; and

24 (8) "state police member" means a member who
25 is an officer of the New Mexico state police division and who

1 has taken the oath prescribed for such officers and shall
2 include a member who is an officer of the New Mexico state
3 police division and who was certified and commissioned in the
4 former motor transportation division or the former special
5 investigations division of the department of public safety;

6 O. "membership" means membership in the
7 association;

8 P. "pension" means a series of monthly payments to
9 a retired member or survivor beneficiary as provided in the
10 Public Employees Retirement Act;

11 Q. "public employer" means the state, any
12 municipality, city, county, metropolitan arroyo flood control
13 authority, economic development district, regional housing
14 authority, soil and water conservation district, entity
15 created pursuant to a joint powers agreement, council of
16 government, conservancy district, irrigation district, water
17 and sanitation district, water district and metropolitan
18 water board, including the boards, departments, bureaus and
19 agencies of a public employer, so long as these entities fall
20 within the meaning of governmental plan as that term is used
21 in Section 414(d) of the Internal Revenue Code of 1986, as
22 amended;

23 R. "refund beneficiary" means a supplemental needs
24 trust or a natural person designated by the member, in
25 writing, in the form prescribed by the association, as the

1 trust or person that would be refunded the member's
2 accumulated member contributions payable if the member dies
3 and no survivor pension is payable or that would receive the
4 difference between pension paid and accumulated member
5 contributions if the retired member dies before receiving in
6 pension payments the amount of the accumulated member
7 contributions;

8 S. "retire" means to:

9 (1) terminate employment with all employers
10 covered by any state system or the educational retirement
11 system; and

12 (2) receive a pension from a state system or
13 the educational retirement system;

14 T. "retired member" means a person who has met all
15 requirements for retirement and who is receiving a pension
16 from the fund;

17 U. "retirement board" means the retirement board
18 provided for in the Public Employees Retirement Act;

19 V. "salary" means the base salary or wages paid a
20 member, including longevity pay, for personal services
21 rendered an affiliated public employer. "Salary" shall not
22 include overtime pay, unless the overtime payment is required
23 for a regular scheduled tour of duty as set forth in Section
24 207(k) of Title 29 of the United States Code and is made on
25 the regular payroll for the period represented by that

1 payment, allowances for housing, clothing, equipment or
2 travel, payments for unused sick leave, unless the unused
3 sick leave payment is made through continuation of the member
4 on the regular payroll for the period represented by that
5 payment, and any other form of remuneration not specifically
6 designated by law as included in salary for Public Employees
7 Retirement Act purposes. Salary in excess of the limitations
8 set forth in Section 401(a)(17) of the Internal Revenue Code
9 of 1986, as amended, shall be disregarded. The limitation on
10 compensation for eligible employees shall not be less than
11 the amount that was allowed to be taken into account under
12 the state retirement system acts in effect on July 1, 1993.
13 For purposes of this subsection, "eligible employee" means an
14 individual who was a member of a state system before the
15 first plan year beginning after December 31, 1995;

16 W. "state system" means the retirement programs
17 provided for in the Public Employees Retirement Act, the
18 Magistrate Retirement Act and the Judicial Retirement Act;

19 X. "state retirement system acts" means
20 collectively the Public Employees Retirement Act, the
21 Magistrate Retirement Act, the Judicial Retirement Act and
22 the Volunteer Firefighters Retirement Act;

23 Y. "supplemental needs trust" means a valid third-
24 party irrevocable trust that is authorized by the federal
25 Social Security Act, as amended, for the sole benefit and

1 lifetime of a trust beneficiary who is disabled and is
2 created for the purpose of providing, accounting for or
3 receiving supplemental assets that do not supplant, impair or
4 diminish any benefits or assistance of any federal, state or
5 other government entity for which the beneficiary would
6 otherwise be eligible; and

7 Z. "survivor beneficiary" means a supplemental
8 needs trust or a natural person that receives a pension or
9 that has been designated to be paid a pension as a result of
10 the death of a member or retired member."

11 SECTION 2. Section 10-11-116 NMSA 1978 (being Laws
12 1987, Chapter 253, Section 116, as amended) is amended to
13 read:

14 "10-11-116. ELECTION OF FORM OF PAYMENT OF A PENSION.--

15 A. Except as otherwise provided in Section
16 10-11-136 NMSA 1978, a member may elect to have pension
17 payments made under any one of the forms of payment provided
18 in Section 10-11-117 NMSA 1978. The election of form of
19 payment and naming of survivor beneficiary shall be made on a
20 form furnished by and filed with the association prior to the
21 date the first pension payment is made. An election of form
22 of payment may not be changed after the date the first
23 pension payment is made. If the member is married, the
24 association shall obtain the consent of the member's spouse
25 to the election of the form of payment and any designation of

1 survivor beneficiary before the election or designation is
2 effective. Except as provided in Subsection C, D or E of
3 this section, a named survivor beneficiary may not be changed
4 after the date the first pension payment is made if form of
5 payment B or C is elected. Except as otherwise provided in
6 Section 10-11-136 NMSA 1978, payment shall be made:

7 (1) under form of payment A if the member is
8 not married at the time of retirement and if there is not a
9 timely election of another form of payment; or

10 (2) under form of payment C with the
11 member's spouse as survivor beneficiary if the member is
12 married at the time of retirement and there is not a timely
13 election of another form of payment.

14 B. The amount of pension under forms of payment B,
15 C and D shall have the same actuarial present value, computed
16 as of the effective date of the pension, as the amount of
17 pension under form of payment A.

18 C. A retired member who is being paid a pension
19 under form of payment B or C with the member's spouse as the
20 designated survivor beneficiary may:

21 (1) exercise a one-time irrevocable option
22 to designate another survivor beneficiary and may select
23 either form of payment B or form of payment C; provided that:

24 (a) the amount of the pension under the
25 form of payment selected shall be recalculated and have the

1 same actuarial present value, computed on the effective date
2 of the designation, as the amount of pension under form of
3 payment A;

4 (b) the member's spouse provides a
5 notarized, written statement expressing the spouse's consent
6 to relinquish the designation as a survivor beneficiary; and

7 (c) the retired member shall pay one
8 hundred dollars (\$100) to the retirement board to defray the
9 cost of determining the new pension amount;

10 (2) upon becoming divorced from the named
11 spouse and subject to an order of a court as provided for in
12 Section 10-11-136 NMSA 1978, elect to have future payments
13 made under form of payment A; or

14 (3) upon becoming divorced from the named
15 spouse, exercise a one-time irrevocable option to designate
16 another survivor beneficiary and may select either form of
17 payment B or form of payment C; provided that:

18 (a) the amount of the pension under the
19 form of payment selected shall be recalculated and have the
20 same actuarial present value, computed on the effective date
21 of the designation, as the amount of pension under form of
22 payment A;

23 (b) the designation and the amount of
24 the pension shall be subject to a court order as provided for
25 in Section 10-11-136 NMSA 1978; and

1 (c) the retired member shall pay one
2 hundred dollars (\$100) to the retirement board to defray the
3 cost of determining the new pension amount.

4 D. A retired member who was previously being paid
5 a pension under form of payment B or C but, because of the
6 death of or divorce from the designated survivor beneficiary
7 or in the event that a supplemental needs trust is the
8 designated survivor beneficiary, the termination of that
9 trust or the death of or divorce from the beneficiary of that
10 trust, is currently receiving a pension under form of payment
11 A may exercise a one-time irrevocable option to designate
12 another survivor beneficiary and may select either form of
13 payment B or form of payment C; provided that:

14 (1) the amount of the pension under the form
15 of payment selected shall be recalculated and have the same
16 actuarial present value, computed on the effective date of
17 the designation, as the amount of pension under form of
18 payment A;

19 (2) the designation and the amount of the
20 pension shall be subject to a court order as provided for in
21 Section 10-11-136 NMSA 1978; and

22 (3) the retired member shall pay one hundred
23 dollars (\$100) to the retirement board to defray the cost of
24 determining the new pension amount.

25 E. A retired member who is being paid a pension

1 under form of payment B or C with a living or operating
2 designated survivor beneficiary other than the retired
3 member's spouse or former spouse or the supplemental needs
4 trust of the retired member's spouse or former spouse may
5 exercise a one-time irrevocable option to deselect the
6 designated beneficiary and elect to:

7 (1) designate another survivor beneficiary
8 and may select either form of payment B or form of payment C;
9 provided that:

10 (a) the amount of the pension under the
11 form of payment shall be recalculated and shall have the same
12 actuarial present value, computed as of the effective date of
13 the designation, as the amount of pension under form of
14 payment A; and

15 (b) the retired member shall pay one
16 hundred dollars (\$100) to the retirement board to defray the
17 cost of determining the new pension amount; or

18 (2) have future payments made under form of
19 payment A."

20 SECTION 3. Section 10-11-117 NMSA 1978 (being Laws
21 1987, Chapter 253, Section 117, as amended) is amended to
22 read:

23 "10-11-117. FORMS OF PAYMENT OF A PENSION.--

24 A. Straight life pension is form of payment A.

25 The retired member is paid the pension for life under form of

1 payment A. All payments stop upon the death of the retired
2 member, except as provided by Subsection E of this section.
3 The amount of pension is determined in accordance with the
4 coverage plan applicable to the retired member.

5 B. Life payments with full continuation to one
6 survivor beneficiary is form of payment B. The retired
7 member is paid a reduced pension for life under form of
8 payment B. When the retired member dies, the designated
9 survivor beneficiary is paid the full amount of the reduced
10 pension until the death of the survivor beneficiary or the
11 death of the beneficiary of a supplemental needs trust or the
12 termination of that trust. If the designated survivor
13 beneficiary or the beneficiary of a supplemental needs trust
14 predeceases the retired member or if the supplemental needs
15 trust terminates while the retired member is living, the
16 amount of pension shall be changed to the amount that would
17 have been payable had the retired member elected form of
18 payment A.

19 C. Life payment with one-half continuation to one
20 survivor beneficiary is form of payment C. The retired
21 member is paid a reduced pension for life under form of
22 payment C. When the retired member dies, the designated
23 survivor beneficiary is paid one-half the amount of the
24 reduced pension until the death of the survivor beneficiary
25 or the death of the beneficiary of a supplemental needs

1 trust. If the designated survivor beneficiary or the
2 beneficiary of a supplemental needs trust predeceases the
3 retired member or the supplemental needs trust terminates
4 while the retired member is living, the amount of pension
5 shall be changed to the amount that would have been payable
6 had the retired member elected form of payment A.

7 D. Life payments with temporary survivor benefits
8 for children is form of payment D. The retired member is
9 paid a reduced pension for life under form of payment D.
10 When the retired member dies, each declared eligible child is
11 paid a share of the reduced pension until death or age
12 twenty-five years, whichever occurs first. The share is the
13 share specified in writing and filed with the association by
14 the retired member. If shares are not specified in writing
15 and filed with the association, each declared eligible child
16 is paid an equal share of the reduced pension. A
17 redetermination of shares shall be made when the pension of
18 any child terminates. An eligible child is a natural or
19 adopted child of the retired member who is under age twenty-
20 five years. A declared eligible child is an eligible child
21 whose name has been declared in writing and filed with the
22 association by the retired member at the time of election of
23 form of payment D. The amount of pension shall be changed to
24 the amount of pension that would have been payable had the
25 retired member elected form of payment A upon there ceasing

1 to be a declared eligible child during the lifetime of the
2 retired member.

3 E. If all pension payments permanently terminate
4 before there is paid an aggregate amount equal to the retired
5 member's accumulated member contributions at the time of
6 retirement, the difference between the amount of accumulated
7 member contributions and the aggregate amount of pension paid
8 shall be paid to the retired member's refund beneficiary. If
9 no refund beneficiary survives the retired member, the
10 difference shall be paid to the estate of the retired
11 member."

12 SECTION 4. Section 10-11-124 NMSA 1978 (being Laws
13 1987, Chapter 253, Section 124, as amended) is amended to
14 read:

15 "10-11-124. MEMBER CONTRIBUTION FUND.--

16 A. The member contribution fund is the accounting
17 fund in which shall be accumulated contributions of members
18 and from which shall be made refunds and transfers of
19 accumulated member contributions as provided in the Public
20 Employees Retirement Act. Each affiliated public employer
21 shall cause the member contributions specified by the
22 coverage plan applicable to each of that affiliated public
23 employer's members to be deducted from the salary of each
24 member. Each affiliated public employer shall remit the
25 deducted member contributions to the association in

1 accordance with the procedures and schedules established by
2 the association. The association may assess an interest
3 charge and a penalty charge on any remittance not made by its
4 due date. Each member shall be deemed to consent and agree
5 to the deductions made and provided for in this section by
6 continuing employment with the affiliated public employer.
7 Contributions by members shall be credited to the members'
8 individual accounts in the member contribution fund.

9 B. A member's accumulated contributions shall be
10 transferred to the retirement reserve fund if a pension
11 becomes payable upon the retirement or death of the member.
12 If a disability retirement pension is terminated for a reason
13 other than the death of the disability retired member before
14 an amount equal to the disability retired member's
15 accumulated member contributions has been paid, the
16 unexpended balance of the accumulated member contributions
17 shall be transferred from the retirement reserve fund to the
18 former disability retired member's individual account in the
19 member contribution fund.

20 C. If a member terminates affiliated public
21 employment or is on leave of absence from an affiliated
22 public employer as a consequence of the entry into active
23 duty with the armed forces of the United States, the member
24 may, with the written consent of the member's spouse, if any,
25 withdraw the member's accumulated member contributions, upon

1 making written request in a form prescribed by the
2 association. Upon written request of the member in the form
3 prescribed by the association, a refund of member
4 contributions may be made by a trustee-to-trustee transfer of
5 the contributions from the member contribution fund directly
6 to another qualified plan as allowed by the Internal Revenue
7 Code of 1986. Withdrawal of member contributions shall
8 result in forfeiture of the service credit accrued for the
9 period during which the contributions were made.

10 D. A member shall, upon commencement of
11 membership, designate a refund beneficiary who shall receive
12 the refund of the member contributions, plus interest if any,
13 if the member dies and no survivor pension is payable. If
14 the member is married at the time of designation, written
15 spousal consent shall be required if the designated refund
16 beneficiary is other than the spouse or a supplemental needs
17 trust to which the spouse is a beneficiary. Marriage
18 subsequent to the designation shall automatically revoke a
19 previous designation, and the spouse shall become the refund
20 beneficiary unless or until another designation is filed with
21 the association. Divorce subsequent to the designation shall
22 automatically revoke designation of the former spouse as
23 refund beneficiary, or the right of the former spouse to be
24 refund beneficiary if no designation has been filed, and the
25 refund shall be paid to the deceased member's estate unless

1 the member filed a designation of refund beneficiary
2 subsequent to the divorce. The refund shall be paid to the
3 refund beneficiary named in the most recent designation of
4 refund beneficiary on file with the association unless that
5 beneficiary is deceased or otherwise terminated. If there is
6 not a living or operating refund beneficiary named in the
7 most recent designation of refund beneficiary on file with
8 the association, the deceased member's accumulated member
9 contributions shall be paid to the estate of the deceased
10 member."

11 SECTION 5. Section 10-12B-2 NMSA 1978 (being Laws 1992,
12 Chapter 111, Section 2, as amended) is amended to read:

13 "10-12B-2. DEFINITIONS.--As used in the Judicial
14 Retirement Act:

15 A. "association" means the public employees
16 retirement association provided for in the Public Employees
17 Retirement Act;

18 B. "board" means the retirement board provided for
19 in the Public Employees Retirement Act;

20 C. "dependent child" means a natural or adopted
21 child who is physically or mentally incapable of financial
22 self-support, regardless of age;

23 D. "educational retirement system" means the
24 retirement system provided for in the Educational Retirement
25 Act;

1 E. "effective date of retirement" means the first
2 day of the month following the month in which the member met
3 all requirements for retirement;

4 F. "final average salary" means the amount that is
5 one-sixtieth of the greatest aggregate amount of salary paid
6 a member for sixty consecutive, but not necessarily
7 continuous, months of service credit;

8 G. "former member" means a person no longer in
9 office who was previously covered pursuant to the provisions
10 of Sections 10-12-1 through 10-12-18 NMSA 1978, but who has
11 not retired pursuant to the provisions of the Judicial
12 Retirement Act and who has received a refund of member
13 contributions pursuant to the provisions of Sections 10-12B-1
14 through 10-12B-19 NMSA 1978;

15 H. "fund" means the judicial retirement fund;

16 I. "judge" means a judge of the metropolitan
17 court, district court or court of appeals of New Mexico;

18 J. "justice" means a justice of the supreme court
19 of New Mexico;

20 K. "member" means any judge or justice who is in
21 office and covered pursuant to the provisions of the Judicial
22 Retirement Act, or any person no longer in office who was
23 previously a judge or justice covered pursuant to the
24 provisions of the Judicial Retirement Act, who has not
25 retired and who has not received a refund of member

1 contributions from the fund;

2 L. "member contributions" means the amounts
3 deducted from the salary of a member and credited to the
4 member's individual account, together with interest, if any,
5 credited thereto;

6 M. "minor child" means a natural or adopted child
7 who has not reached his eighteenth birthday and who has not
8 been emancipated by marriage or otherwise;

9 N. "pension" means a series of monthly payments to
10 a retired member or survivor beneficiary pursuant to the
11 provisions of the Judicial Retirement Act;

12 O. "refund beneficiary" means a supplemental needs
13 trust or a natural person designated by the member, in
14 writing in the form prescribed by the association, as the
15 trust or person that would be refunded the member's
16 accumulated member contributions payable if the member dies
17 and no survivor pension is payable, or that would receive the
18 difference between pension paid and accumulated member
19 contributions if the retired member dies before receiving in
20 pension payments the amount of the accumulated member
21 contributions;

22 P. "retire" means to:

23 (1) terminate employment with all employers
24 covered by any state system or the educational retirement
25 system; and

1 (2) receive a pension from one state system
2 or the educational retirement system;

3 Q. "retired member" means a person who has met all
4 requirements for retirement and who is receiving a pension
5 from the fund;

6 R. "salary" means the base salary or wages paid a
7 member, including longevity pay, for personal services
8 rendered; provided that salary does not include overtime pay;
9 allowances for housing, clothing, equipment or travel;
10 payments for unused sick leave, unless the unused sick leave
11 payment is made through continuation of the member on the
12 regular payroll for the period represented by that payment;
13 and any other form of remuneration not specifically
14 designated by law as included in salary pursuant to the
15 provisions of the Judicial Retirement Act;

16 S. "state system" means the retirement programs
17 provided pursuant to the provisions of the Public Employees
18 Retirement Act, the Magistrate Retirement Act and the
19 Judicial Retirement Act;

20 T. "supplemental needs trust" means a valid third-
21 party irrevocable trust that is authorized by the federal
22 Social Security Act, as amended, for the sole benefit and the
23 lifetime of a trust beneficiary who is disabled and is
24 created for the purpose of providing, accounting for or
25 receiving supplemental assets that do not supplant, impair or

1 diminish any benefits or assistance of any federal, state or
2 other government entity for which the beneficiary would
3 otherwise be eligible;

4 U. "surviving spouse" means the spouse to whom the
5 member was married at the time of the member's death;

6 V. "survivor beneficiary" means a supplemental
7 needs trust or a natural person that receives a pension or
8 that has been designated to be paid a pension as a result of
9 the death of a member or retired member; and

10 W. "years of service" means a period of time
11 beginning on the date a person commences to hold office as a
12 judge or justice because of appointment or election and
13 ending on the date a person ceases to hold office as a judge
14 or justice because of expiration of the judge's or justice's
15 term, voluntary resignation, death or disability and shall
16 include any fractions of years of service."

17 SECTION 6. Section 10-12B-6 NMSA 1978 (being Laws 1992,
18 Chapter 111, Section 6, as amended) is amended to read:

19 "10-12B-6. REFUND OF CONTRIBUTIONS.--

20 A. If a member leaves office, the member may, with
21 the written consent of the member's spouse, if any, withdraw
22 the member's accumulated member contributions upon making
23 written request in a form prescribed by the association.
24 Upon written request of the member in the form prescribed by
25 the association, a refund of member contributions may be made

1 by a trustee-to-trustee transfer of the contributions from
2 the member contribution fund directly to another qualified
3 plan as allowed by the Internal Revenue Code of 1986.

4 Withdrawal of member contributions shall result in forfeiture
5 of the service credit accrued for the period during which the
6 contributions were made.

7 B. A member shall, upon commencement of
8 membership, designate a refund beneficiary who shall receive
9 the refund of the member contributions, plus interest, if the
10 member dies and no survivor pension is payable. If the
11 member is married at the time of designation, written spousal
12 consent shall be required if the designated refund
13 beneficiary is a person other than the spouse or a
14 supplemental needs trust to which the spouse is a
15 beneficiary. Marriage subsequent to the designation shall
16 automatically revoke a previous designation, and the spouse
17 shall become the refund beneficiary unless or until another
18 designation is filed with the association. Divorce
19 subsequent to the designation shall automatically revoke
20 designation of the former spouse as refund beneficiary if no
21 designation has been filed, and the refund shall be paid to
22 the deceased member's estate unless the member filed a
23 designation of refund beneficiary subsequent to the divorce.
24 The refund shall be paid to the refund beneficiary named in
25 the most recent designation of refund beneficiary on file

1 with the association unless that beneficiary is deceased or
2 otherwise terminated. If there is not a living or operating
3 refund beneficiary named in the most recent designation of
4 refund beneficiary on file with the association, the deceased
5 member's accumulated member contributions shall be paid to
6 the estate of the deceased member."

7 SECTION 7. Section 10-12B-14 NMSA 1978 (being Laws
8 1992, Chapter 111, Section 14, as amended) is amended to
9 read:

10 "10-12B-14. SURVIVOR'S PENSION.--For a member whose
11 initial term of office began prior to July 1, 2014:

12 A. unless that member has designated a survivor
13 beneficiary in accordance with Subsection B of this section,
14 a survivor pension shall be paid for life to a member's or
15 retired member's surviving spouse;

16 B. the member may designate, in writing in a form
17 prescribed by the association, a survivor beneficiary to
18 receive the survivor's pension described in this section. If
19 the member is married, a designation of survivor beneficiary
20 other than the member's spouse or a supplemental needs trust
21 to which the spouse is a beneficiary may only be made with
22 the written consent of the member's spouse. Marriage
23 subsequent to a designation of survivor beneficiary shall
24 automatically revoke the designation of survivor beneficiary.

25 A designation of survivor beneficiary made pursuant to a

1 court order issued under Section 10-12B-7 NMSA 1978 shall not
2 require the consent of the member's spouse, if any, and shall
3 not be revoked by the subsequent remarriage of the member. A
4 designation of survivor beneficiary may be revoked by the
5 member at any time prior to the member's retirement. If the
6 member is married, a revocation of designation of survivor
7 beneficiary may only be made with the written consent of the
8 member's spouse;

9 C. if there is no surviving spouse and no
10 designated survivor beneficiary or if the surviving spouse
11 dies while there are still minor and dependent children of
12 the member, the survivor's pension shall be paid to all minor
13 and dependent children, if any, of the member, in equal
14 shares, so long as each child remains a minor or dependent
15 child. As each child ceases to be a minor or dependent
16 child, the number of shares shall be reduced and the amount
17 payable to each remaining child increased proportionately so
18 that the total survivor's pension remains unchanged as long
19 as there is any such child;

20 D. the survivor's pension is equal to seventy-five
21 percent of the member's pension;

22 E. survivor beneficiaries shall be eligible for
23 other benefits provided pursuant to the provisions of the
24 Judicial Retirement Act, including cost-of-living adjustments
25 and continuation of group insurance benefits; and

1 F. if the member dies while receiving a disability
2 retirement pension, the survivor beneficiary shall receive
3 the survivor pension provided pursuant to the provisions of
4 the Judicial Retirement Act."

5 SECTION 8. Section 10-12B-14.1 NMSA 1978 (being Laws
6 2014, Chapter 35, Section 11) is amended to read:

7 "10-12B-14.1. ELECTION FORM OF PENSION.--For a member
8 whose initial term in office begins on or after July 1, 2014,
9 except as otherwise provided in Section 10-12B-7 NMSA 1978:

10 A. the member may elect to have pension payments
11 made under any one of the forms of payment provided in
12 Section 10-12B-14.2 NMSA 1978. The election of form of
13 payment and naming of survivor pension beneficiary shall be
14 made on a form furnished by and filed with the association
15 prior to the date the first pension payment is made. An
16 election of form of payment may not be changed after the date
17 the first pension payment is made. If the member is married,
18 the association shall require the consent of the member's
19 spouse to the election of the form of payment and any
20 designation of survivor pension beneficiary before the
21 election or designation is effective. Except as provided in
22 Subsection C, D or E of this section, a named survivor
23 pension beneficiary may not be changed after the date the
24 first pension payment is made if form of payment B or C is
25 elected. Except as otherwise provided in Section 10-12B-7

1 NMSA 1978, payment shall be made:

2 (1) under form of payment A if the member is
3 not married at the time of retirement and if there is not a
4 timely election of another form of payment; or

5 (2) under form of payment C with the
6 member's spouse as survivor pension beneficiary if the member
7 is married at the time of retirement and there is not a
8 timely election of another form of payment;

9 B. the amount of pension under forms of payment B,
10 C and D shall have the same actuarial present value, computed
11 as of the effective date of the pension, as the amount of
12 pension under form of payment A;

13 C. if the member is a retired member who is being
14 paid a pension under form of payment B or C with the member's
15 spouse or a supplemental needs trust to which the spouse is a
16 beneficiary as the designated survivor pension beneficiary,
17 the retired member may, upon becoming divorced from the named
18 spouse and subject to an order of a court as provided for in
19 Section 10-12B-7 NMSA 1978, elect to have future payments
20 made under form of payment A;

21 D. if the member is retired and was previously
22 being paid a pension under form of payment B or C but,
23 because of the death of the designated survivor pension
24 beneficiary or the death of the beneficiary of a supplemental
25 needs trust or the termination of that trust, is currently

1 receiving a pension under form of payment A, the retired
2 member may exercise a one-time irrevocable option to
3 designate another survivor pension beneficiary and may select
4 either form of payment B or form of payment C; provided that:

5 (1) the amount of the pension under the form
6 of payment selected shall be recalculated and have the same
7 actuarial present value, computed on the effective date of
8 the designation, as the amount of pension under form of
9 payment A;

10 (2) the designation and the amount of the
11 pension shall be subject to a court order as provided for in
12 Section 10-12B-7 NMSA 1978; and

13 (3) the retired member shall pay one hundred
14 dollars (\$100) to the board to defray the cost of determining
15 the new pension amount; and

16 E. if the member is a retired member who is being
17 paid a pension under form of payment B or C with a living or
18 operating designated survivor pension beneficiary other than
19 the retired member's spouse or former spouse or the
20 supplemental needs trust of the retired member's spouse or
21 former spouse, the retired member may exercise a one-time
22 irrevocable option to deselect the designated beneficiary and
23 elect to:

24 (1) designate another survivor pension
25 beneficiary; provided that:

1 (a) the retired member shall not have
2 an option to change from the current form of payment;

3 (b) the amount of the pension under the
4 form of payment shall be recalculated and shall have the same
5 actuarial present value, computed as of the effective date of
6 the designation, as the amount of pension under form of
7 payment A; and

8 (c) the retired member shall pay one
9 hundred dollars (\$100) to the board to defray the cost of
10 determining the new pension amount; or

11 (2) have future payments made under form of
12 payment A."

13 SECTION 9. Section 10-12B-14.2 NMSA 1978 (being Laws
14 2014, Chapter 35, Section 12) is amended to read:

15 "10-12B-14.2. FORM OF PENSION PAYMENT.--

16 A. Straight life pension is form of payment A.
17 The retired member is paid the pension for life under form of
18 payment A. All payments stop upon the death of the retired
19 member, except as provided in Subsection E of this section.
20 The amount of pension is determined in accordance with the
21 Judicial Retirement Act.

22 B. Life payments with full continuation to one
23 survivor beneficiary is form of payment B. The retired
24 member is paid a reduced pension for life under form of
25 payment B. When the retired member dies, the designated

1 survivor beneficiary is paid the full amount of the reduced
2 pension until death or in the event that supplemental needs
3 trust is the designated survivor beneficiary, the termination
4 of that trust or the death of the beneficiary of that trust.
5 If the designated survivor beneficiary or the beneficiary of
6 a supplemental needs trust predeceases the retired member or
7 if the supplemental needs trust terminates while the retired
8 member is living, the amount of pension shall be changed to
9 the amount that would have been payable had the retired
10 member elected form of payment A.

11 C. Life payment with one-half continuation to one
12 survivor beneficiary is form of payment C. The retired
13 member is paid a reduced pension for life under form of
14 payment C. When the retired member dies, the designated
15 survivor beneficiary is paid one-half the amount of the
16 reduced pension until death or in the event that a
17 supplemental needs trust is the designated survivor
18 beneficiary, the termination of that trust or the death of
19 the beneficiary of that trust. If the designated survivor
20 beneficiary or if the beneficiary of a supplemental needs
21 trust predeceases the retired member or if the supplemental
22 needs trust terminates while the retired member is living,
23 the amount of pension shall be changed to the amount that
24 would have been payable had the retired member elected form
25 of payment A.

1 D. Life payments with temporary survivor benefits
2 for children is form of payment D. The retired member is
3 paid a reduced pension for life under form of payment D.
4 When the retired member dies, each declared eligible child is
5 paid a share of the reduced pension until death or age
6 twenty-five years, whichever occurs first. The share is the
7 share specified in writing and filed with the association by
8 the retired member. If shares are not specified in writing
9 and filed with the association, each declared eligible child
10 is paid an equal share of the reduced pension. A
11 redetermination of shares shall be made when the pension of
12 any child terminates. An eligible child is a natural or
13 adopted child of the retired member who is under age twenty-
14 five years. A declared eligible child is an eligible child
15 whose name has been declared in writing and filed with the
16 association by the retired member at the time of election of
17 form of payment D. The amount of pension shall be changed to
18 the amount of pension that would have been payable had the
19 retired member elected form of payment A upon there ceasing
20 to be a declared eligible child during the lifetime of the
21 retired member.

22 E. If all pension payments permanently terminate
23 before there is paid an aggregate amount equal to the retired
24 member's accumulated member contributions at the time of
25 retirement, the difference between the amount of accumulated

1 member contributions and the aggregate amount of pension paid
2 shall be paid to the retired member's refund beneficiary. If
3 no refund beneficiary survives the retired member, the
4 difference shall be paid to the estate of the retired
5 member."

6 SECTION 10. Section 10-12B-14.3 NMSA 1978 (being Laws
7 2014, Chapter 35, Section 13) is amended to read:

8 "10-12B-14.3. DEATH BEFORE RETIREMENT--SURVIVOR
9 PENSION.--For a member whose initial term in office begins on
10 or after July 1, 2014:

11 A. a survivor pension may be paid to certain
12 persons related to or designated by a member who dies before
13 normal or disability retirement if a written application for
14 the pension, in the form prescribed by the association, is
15 filed with the association by the potential survivor
16 beneficiary or beneficiaries within one year of the death of
17 the member. Applications may be filed on behalf of the
18 potential survivor beneficiary or beneficiaries or by a
19 person legally authorized to represent them;

20 B. if there is no designated survivor beneficiary
21 and the board finds the death to have been the natural and
22 proximate result of causes arising solely and exclusively out
23 of and in the course of the member's performance of duty
24 while in office, a survivor pension shall be payable to the
25 eligible surviving spouse. The amount of the survivor

1 pension shall be the greater of:

2 (1) the amount as calculated pursuant to the
3 Judicial Retirement Act and applicable to the deceased member
4 at the time of death as though the deceased member had
5 retired the day preceding death under form of payment B using
6 the actual amount of service credit attributable to the
7 deceased member at the time of death; or

8 (2) fifty percent of the deceased member's
9 final average salary;

10 C. a survivor pension shall also be payable to
11 eligible surviving children if there is no designated
12 survivor beneficiary and the retirement board finds the death
13 to have been the natural and proximate result of causes
14 arising solely and exclusively out of and in the course of
15 the member's performance of duty while in office. The total
16 amount of survivor pension payable for all eligible surviving
17 children shall be either:

18 (1) fifty percent of the deceased member's
19 final average salary if an eligible surviving spouse is not
20 paid a pension; or

21 (2) twenty-five percent of the deceased
22 member's final average salary if an eligible surviving spouse
23 is paid a pension.

24 The total amount of survivor pension shall be divided
25 equally among all eligible surviving children. If there is

1 only one eligible child, the amount of pension shall be
2 twenty-five percent of the deceased member's final average
3 salary;

4 D. if the member had the applicable minimum number
5 of years of service credit required for normal retirement,
6 but the retirement board did not find the death to have been
7 the natural and proximate result of causes arising solely and
8 exclusively out of and in the course of the member's
9 performance of duty while in office and there is no
10 designated survivor beneficiary, a survivor pension shall be
11 payable to the eligible surviving spouse. The amount of the
12 survivor pension shall be the greater of:

13 (1) the amount as calculated under the
14 Judicial Retirement Act applicable to the deceased member at
15 the time of death as though the deceased member had retired
16 the day preceding death under form of payment B using the
17 total amount of actual service credit attributable to the
18 deceased member at the time of death; or

19 (2) thirty percent of the deceased member's
20 final average salary;

21 E. if the member had the applicable minimum number
22 of years of service credit required for normal retirement,
23 but the retirement board did not find the death to have been
24 the natural and proximate result of causes arising solely and
25 exclusively out of and in the course of the member's

1 performance of duty while in office and there is no
2 designated survivor beneficiary, and if there is no eligible
3 surviving spouse at the time of death, a survivor pension
4 shall be payable to and divided equally among all eligible
5 surviving children, if any. The total amount of survivor
6 pension payable for all eligible surviving children shall be
7 the greater of:

8 (1) the amount as calculated under the
9 Judicial Retirement Act applicable to the deceased member at
10 the time of death as though the deceased member had retired
11 the day preceding death under form of payment B with the
12 oldest eligible surviving child as the survivor beneficiary
13 using the total amount of actual service credit attributable
14 to the deceased member at the time of death; or

15 (2) thirty percent of the deceased member's
16 final average salary;

17 F. an eligible surviving spouse is the spouse to
18 whom the deceased member was married at the time of death.

19 An eligible surviving child is a child under the age of
20 eighteen years and who is an unmarried, natural or adopted
21 child of the deceased member;

22 G. an eligible surviving spouse's pension shall
23 terminate upon death. An eligible surviving child's pension
24 shall terminate upon death or marriage or reaching age
25 eighteen years, whichever comes first;

1 H. if there is no designated survivor beneficiary
2 and there is no eligible surviving child, the eligible
3 surviving spouse may elect to be refunded the deceased
4 member's accumulated member contributions instead of
5 receiving a survivor pension;

6 I. a member may designate a survivor beneficiary
7 to receive a pre-retirement survivor pension, subject to the
8 following conditions:

9 (1) a written designation, in the form
10 prescribed by the association, is filed by the member with
11 the association;

12 (2) if the member is married at the time of
13 designation, the designation shall only be made with the
14 consent of the member's spouse, in the form prescribed by the
15 association;

16 (3) if the member is married subsequent to
17 the time of designation, any prior designations shall
18 automatically be revoked upon the date of the marriage;

19 (4) if the member is divorced subsequent to
20 the time of designation, any prior designation of the former
21 spouse or a supplemental needs trust to which the spouse is a
22 beneficiary as survivor beneficiary shall automatically be
23 revoked upon the date of divorce; and

24 (5) a designation of survivor beneficiary
25 may be changed, with the member's spouse's consent if the

1 member is married, by the member at any time prior to the
2 member's death;

3 J. if there is a designated survivor beneficiary
4 and the board finds the death to have been the natural and
5 proximate result of causes arising solely and exclusively out
6 of and in the course of the member's performance of duty
7 while in office, a survivor pension shall be payable to the
8 designated survivor beneficiary. The amount of the survivor
9 pension shall be the greater of:

10 (1) the amount as calculated under the
11 Judicial Retirement Act applicable to the deceased member at
12 the time of death as though the deceased member had retired
13 the day preceding death under form of payment B using the
14 actual amount of service credit attributable to the member at
15 the time of death; or

16 (2) fifty percent of the deceased member's
17 final average salary;

18 K. if there is a designated survivor beneficiary,
19 if the member had the applicable minimum number of years of
20 service credit required for normal retirement and if the
21 retirement board did not find the death to have been the
22 natural and proximate result of causes arising solely and
23 exclusively out of and in the course of the member's
24 performance of duty while in office, a survivor pension shall
25 be payable to the designated survivor beneficiary. The

1 amount of the survivor pension shall be the greater of:

2 (1) the amount as calculated under the
3 Judicial Retirement Act applicable to the deceased member at
4 the time of death as though the deceased member had retired
5 the day preceding death under form of payment B using the
6 actual amount of service credit attributable to the member at
7 the time of death; or

8 (2) thirty percent of the deceased member's
9 final average salary;

10 L. if all pension payments permanently terminate
11 before there is paid an aggregate amount equal to the
12 deceased member's accumulated member contributions at time of
13 death, the difference between the amount of accumulated
14 member contributions and the aggregate amount of pension paid
15 shall be paid to the deceased member's refund beneficiary.
16 If no refund beneficiary survives the survivor beneficiary,
17 the difference shall be paid to the estate of the deceased
18 member; and

19 M. for purposes of this section, "service credit"
20 means only the service credit earned by a member during
21 periods in office as a judge or justice."

22 SECTION 11. Section 10-12C-2 NMSA 1978 (being Laws
23 1992, Chapter 118, Section 2, as amended by Laws 2014,
24 Chapter 39, Section 2 and by Laws 2014, Chapter 43, Section
25 2) is amended to read:

1 "10-12C-2. DEFINITIONS.--As used in the Magistrate
2 Retirement Act:

3 A. "association" means the public employees
4 retirement association provided for in the Public Employees
5 Retirement Act;

6 B. "board" means the retirement board provided for
7 in the Public Employees Retirement Act;

8 C. "dependent child" means a natural or adopted
9 child who is physically or mentally incapable of financial
10 self-support, regardless of age;

11 D. "educational retirement system" means the
12 retirement system provided for in the Educational Retirement
13 Act;

14 E. "effective date of retirement" means the first
15 day of the month following the month in which the member met
16 all requirements for retirement;

17 F. "final average salary" means the amount that is
18 one-sixtieth of the greatest aggregate amount of salary paid
19 a member for sixty consecutive, but not necessarily
20 continuous, months of service credit;

21 G. "former member" means a person no longer in
22 office who was previously covered pursuant to the provisions
23 of Sections 10-12A-1 through 10-12A-13 NMSA 1978, but who has
24 not retired pursuant to the provisions of the Magistrate
25 Retirement Act and who has received a refund of member

1 contributions pursuant to the provisions of Sections 10-12C-1
2 through 10-12C-18 NMSA 1978;

3 H. "fund" means the magistrate retirement fund;

4 I. "magistrate" means a magistrate judge;

5 J. "member" means any magistrate who is in office
6 and covered pursuant to the provisions of the Magistrate
7 Retirement Act, or any person no longer in office who was
8 previously a magistrate covered pursuant to the provisions of
9 the Magistrate Retirement Act, who has not retired and who
10 has not received a refund of member contributions from the
11 fund;

12 K. "member contributions" means the amounts
13 deducted from the salary of a member and credited to the
14 member's individual account, together with interest, if any,
15 credited thereto;

16 L. "minor child" means a natural or adopted child
17 who has not reached the child's eighteenth birthday and who
18 has not been emancipated by marriage or otherwise;

19 M. "pension" means a series of monthly payments to
20 a retired member or survivor beneficiary pursuant to the
21 provisions of the Magistrate Retirement Act;

22 N. "refund beneficiary" means a supplemental needs
23 trust or a natural person designated by the member, in
24 writing in the form prescribed by the association, as the
25 trust or person that would be refunded the member's

1 accumulated member contributions payable if the member dies
2 and no survivor pension is payable, or as the trust or person
3 that would receive the difference between pension paid and
4 accumulated member contributions if the retired member dies
5 before receiving in pension payments the amount of the
6 accumulated member contributions;

7 O. "retire" means to:

8 (1) terminate employment with all employers
9 covered by any state system or the educational retirement
10 system; and

11 (2) receive a pension from one state system
12 or the educational retirement system;

13 P. "retired member" means a person who has met all
14 requirements for retirement and who is receiving a pension
15 from the fund;

16 Q. "salary" means the base salary or wages paid a
17 member, including longevity pay, for personal services
18 rendered; provided that salary does not include overtime pay;
19 allowances for housing, clothing, equipment or travel;
20 payments for unused sick leave, unless the unused sick leave
21 payment is made through continuation of the member on the
22 regular payroll for the period represented by that payment;
23 and any other form of remuneration not specifically
24 designated by law as included in salary pursuant to the
25 provisions of the Magistrate Retirement Act;

1 R. "state system" means the retirement programs
2 provided pursuant to the provisions of the Public Employees
3 Retirement Act, the Magistrate Retirement Act and the
4 Judicial Retirement Act;

5 S. "supplemental needs trust" means a valid third-
6 party irrevocable trust that is authorized by the federal
7 Social Security Act, as amended, for the sole benefit and the
8 lifetime of a trust beneficiary who is disabled and is
9 created for the purpose of providing, accounting for or
10 receiving supplemental assets that do not supplant, impair or
11 diminish any benefits or assistance of any federal, state or
12 other government entity for which the beneficiary would
13 otherwise be eligible;

14 T. "surviving spouse" means the spouse to whom the
15 member was married at the time of the member's death;

16 U. "survivor beneficiary" means a supplemental
17 needs trust or a natural person that receives a pension or
18 that has been designated to be paid a pension as a result of
19 the death of a member or retired member; and

20 V. "years of service" means a period of time
21 beginning on the date a person commences to hold office as a
22 magistrate because of appointment or election and ending on
23 the date a person ceases to hold office as a magistrate
24 because of expiration of the magistrate's term, voluntary
25 resignation, death or disability and shall include any

1 fractions of years of service."

2 SECTION 12. Section 10-12C-6 NMSA 1978 (being Laws
3 1992, Chapter 118, Section 6, as amended) is amended to read:

4 "10-12C-6. REFUND OF CONTRIBUTIONS.--

5 A. If a member leaves office, the member may, with
6 the written consent of the member's spouse, if any, withdraw
7 the member's accumulated member contributions, upon making
8 written request in a form prescribed by the association.

9 Upon written request of the member in the form prescribed by
10 the association, a refund of member contributions may be made
11 by a trustee-to-trustee transfer of the contributions from
12 the member contribution fund directly to another qualified
13 plan as allowed by the Internal Revenue Code of 1986.

14 Withdrawal of member contributions shall result in forfeiture
15 of the service credit accrued for the period during which the
16 contributions were made.

17 B. A member shall, upon commencement of
18 membership, designate a refund beneficiary who shall receive
19 the refund of the member contributions, plus interest if any,
20 if the member dies and no survivor pension is payable. If
21 the member is married at the time of designation, written
22 spousal consent shall be required if the designated refund
23 beneficiary is a person other than the spouse or a
24 supplemental needs trust to which the spouse is a
25 beneficiary. Marriage subsequent to the designation shall

1 automatically revoke a previous designation, and the spouse
2 shall become the refund beneficiary unless or until another
3 designation is filed with the association. Divorce
4 subsequent to the designation shall automatically revoke
5 designation of the former spouse as refund beneficiary, or
6 the right of the former spouse to be refund beneficiary if no
7 designation has been filed, and the refund shall be paid to
8 the deceased member's estate unless the member filed a
9 designation of refund beneficiary subsequent to the divorce.
10 The refund shall be paid to the refund beneficiary named in
11 the most recent designation of refund beneficiary on file
12 with the association unless that beneficiary is deceased or
13 otherwise terminated. If there is not a living or operating
14 refund beneficiary named in the most recent designation of
15 refund beneficiary on file with the association, the deceased
16 member's accumulated member contributions shall be paid to
17 the estate of the deceased member."

18 **SECTION 13.** Section 10-12C-13 NMSA 1978 (being Laws
19 1992, Chapter 118, Section 13, as amended by Laws 2014,
20 Chapter 39, Section 10 and by Laws 2014, Chapter 43, Section
21 10) is amended to read:

22 "10-12C-13. SURVIVOR'S PENSION.--For a member whose
23 initial term in office began prior to July 1, 2014:

24 A. unless the member has designated a survivor
25 beneficiary in accordance with Subsection B of this section,

1 a survivor pension shall be paid for life to a member's or
2 retired member's surviving spouse;

3 B. the member may designate, in writing in a form
4 prescribed by the association, a survivor beneficiary to
5 receive the survivor's pension described in this section. If
6 the member is married, a designation of survivor beneficiary
7 other than the member's spouse or a supplemental needs trust
8 to which the spouse is a beneficiary may only be made with
9 the written consent of the member's spouse. Marriage
10 subsequent to a designation of survivor beneficiary shall
11 automatically revoke the designation of survivor beneficiary.
12 A designation of survivor beneficiary made pursuant to a
13 court order issued under Section 10-12C-7 NMSA 1978 shall not
14 require the consent of the member's spouse, if any, and shall
15 not be revoked by the subsequent remarriage of the member. A
16 designation of survivor beneficiary may be revoked by the
17 member at any time prior to the member's retirement. If the
18 member is married, a revocation of designation of survivor
19 beneficiary may only be made with the written consent of the
20 member's spouse;

21 C. if there is no surviving spouse and no
22 designated survivor beneficiary or if the surviving spouse
23 dies while there are still minor and dependent children of
24 the member, the survivor's pension shall be paid to all minor
25 and dependent children, if any, of the member, in equal

1 shares, so long as each child remains a minor or dependent
2 child. As each child ceases to be a minor or dependent
3 child, the number of shares shall be reduced and the amount
4 payable to each remaining child increased proportionately so
5 that the total survivor's pension remains unchanged as long
6 as there is any such child;

7 D. the survivor's pension is equal to seventy-five
8 percent of the member's pension;

9 E. survivor beneficiaries shall be eligible for
10 other benefits provided pursuant to the provisions of the
11 Magistrate Retirement Act, including cost-of-living
12 adjustments and continuation of group insurance benefits; and

13 F. if a member dies while receiving a disability
14 retirement pension, the survivor beneficiary shall receive
15 the survivor pension provided pursuant to the provisions of
16 the Magistrate Retirement Act."

17 SECTION 14. Section 10-12C-13.1 NMSA 1978 (being Laws
18 2014, Chapter 39, Section 11 and Laws 2014, Chapter 43,
19 Section 11) is amended to read:

20 "10-12C-13.1. ELECTION FORM OF PENSION.--For a member
21 whose initial term in office begins on or after July 1, 2014,
22 except as otherwise provided in Section 10-12C-7 NMSA 1978:

23 A. the member may elect to have pension payments
24 made under any one of the forms of payment provided in
25 Section 10-12C-13.2 NMSA 1978. The election of form of

1 payment and naming of survivor pension beneficiary shall be
2 made on a form furnished by and filed with the association
3 prior to the date the first pension payment is made. An
4 election of form of payment may not be changed after the date
5 the first pension payment is made. If the member is married,
6 the association shall require the consent of the member's
7 spouse to the election of the form of payment and any
8 designation of survivor pension beneficiary before the
9 election or designation is effective. Except as provided in
10 Subsection C, D or E of this section, a named survivor
11 pension beneficiary may not be changed after the date the
12 first pension payment is made if form of payment B or C is
13 elected. Except as otherwise provided in Section 10-12C-7
14 NMSA 1978, payment shall be made:

15 (1) under form of payment A if the member is
16 not married at the time of retirement and if there is not a
17 timely election of another form of payment; or

18 (2) under form of payment C with the
19 member's spouse as survivor pension beneficiary if the member
20 is married at the time of retirement and there is not a
21 timely election of another form of payment;

22 B. the amount of pension under forms of payment B,
23 C and D shall have the same actuarial present value, computed
24 as of the effective date of the pension, as the amount of
25 pension under form of payment A;

1 C. if the member is a retired member who is being
2 paid a pension under form of payment B or C with the member's
3 spouse or a supplemental needs trust to which the spouse is a
4 beneficiary as the designated survivor pension beneficiary,
5 the retired member may, upon becoming divorced from the named
6 spouse and subject to an order of a court as provided for in
7 Section 10-12C-7 NMSA 1978, elect to have future payments
8 made under form of payment A;

9 D. if the member is retired and was previously
10 being paid a pension under form of payment B or C but,
11 because of the death of the designated survivor pension
12 beneficiary or the death of the beneficiary of a supplemental
13 needs trust or the termination of that trust, is currently
14 receiving a pension under form of payment A, the retired
15 member may exercise a one-time irrevocable option to
16 designate another survivor pension beneficiary and may select
17 either form of payment B or form of payment C; provided that:

18 (1) the amount of the pension under the form
19 of payment selected shall be recalculated and have the same
20 actuarial present value, computed on the effective date of
21 the designation, as the amount of pension under form of
22 payment A;

23 (2) the designation and the amount of the
24 pension shall be subject to a court order as provided for in
25 Section 10-12C-7 NMSA 1978; and

1 (3) the retired member shall pay one hundred
2 dollars (\$100) to the board to defray the cost of determining
3 the new pension amount; and

4 E. if the member is a retired member who is being
5 paid a pension under form of payment B or C with a living or
6 operating designated survivor pension beneficiary other than
7 the retired member's spouse or former spouse or the
8 supplemental needs trust of the retired member's spouse or
9 former spouse, the retired member may exercise a one-time
10 irrevocable option to deselect the designated beneficiary and
11 elect to:

12 (1) designate another survivor pension
13 beneficiary; provided that:

14 (a) the retired member shall not have
15 an option to change from the current form of payment;

16 (b) the amount of the pension under the
17 form of payment shall be recalculated and shall have the same
18 actuarial present value, computed as of the effective date of
19 the designation, as the amount of pension under form of
20 payment A; and

21 (c) the retired member shall pay one
22 hundred dollars (\$100) to the board to defray the cost of
23 determining the new pension amount; or

24 (2) have future payments made under form of
25 payment A."

1 SECTION 15. Section 10-12C-13.2 NMSA 1978 (being Laws
2 2014, Chapter 39, Section 12 and Laws 2014, Chapter 43,
3 Section 12) is amended to read:

4 "10-12C-13.2. FORM OF PENSION PAYMENT.--

5 A. Straight life pension is form of payment A.
6 The retired member is paid the pension for life under form of
7 payment A. All payments stop upon the death of the retired
8 member, except as provided by Subsection E of this section.
9 The amount of pension is determined in accordance with the
10 coverage plan applicable to the retired member.

11 B. Life payments with full continuation to one
12 survivor beneficiary is form of payment B. The retired
13 member is paid a reduced pension for life under form of
14 payment B. When the retired member dies, the designated
15 survivor beneficiary is paid the full amount of the reduced
16 pension until death or in the event that a supplemental needs
17 trust is the designated survivor beneficiary, the termination
18 of that trust or the death of the beneficiary of that trust.
19 If the designated survivor beneficiary or the beneficiary of
20 a supplemental needs trust predeceases the retired member or
21 if the supplemental needs trust terminates while the retired
22 member is living, the amount of pension shall be changed to
23 the amount that would have been payable had the retired
24 member elected form of payment A.

25 C. Life payment with one-half continuation to one

1 survivor beneficiary is form of payment C. The retired
2 member is paid a reduced pension for life under form of
3 payment C. When the retired member dies, the designated
4 survivor beneficiary is paid one-half the amount of the
5 reduced pension until death or in the event that a
6 supplemental needs trust is the designated survivor
7 beneficiary, the termination of that trust or the death of
8 the beneficiary of that trust. If the designated survivor
9 beneficiary or the beneficiary of a supplemental needs trust
10 predeceases the retired member or if the supplemental needs
11 trust terminates while the retired member is living, the
12 amount of pension shall be changed to the amount that would
13 have been payable had the retired member elected form of
14 payment A.

15 D. Life payments with temporary survivor benefits
16 for children is form of payment D. The retired member is
17 paid a reduced pension for life under form of payment D.
18 When the retired member dies, each declared eligible child is
19 paid a share of the reduced pension until death or age
20 twenty-five years, whichever occurs first. The share is the
21 share specified in writing and filed with the association by
22 the retired member. If shares are not specified in writing
23 and filed with the association, each declared eligible child
24 is paid an equal share of the reduced pension. A
25 redetermination of shares shall be made when the pension of

1 any child terminates. An eligible child is a natural or
2 adopted child of the retired member who is under age twenty-
3 five years. A declared eligible child is an eligible child
4 whose name has been declared in writing and filed with the
5 association by the retired member at the time of election of
6 form of payment D. The amount of pension shall be changed to
7 the amount of pension that would have been payable had the
8 retired member elected form of payment A upon there ceasing
9 to be a declared eligible child during the lifetime of the
10 retired member.

11 E. If all pension payments permanently terminate
12 before there is paid an aggregate amount equal to the retired
13 member's accumulated member contributions at the time of
14 retirement, the difference between the amount of accumulated
15 member contributions and the aggregate amount of pension paid
16 shall be paid to the retired member's refund beneficiary. If
17 no refund beneficiary survives the retired member, the
18 difference shall be paid to the estate of the retired
19 member."

20 SECTION 16. Section 10-12C-13.3 NMSA 1978 (being Laws
21 2014, Chapter 39, Section 13 and Laws 2014, Chapter 43,
22 Section 13) is amended to read:

23 "10-12C-13.3. DEATH BEFORE RETIREMENT--SURVIVOR
24 PENSION.--For a member whose initial term in office begins on or
25 after July 1, 2014:

1 A. a survivor pension may be paid to certain
2 persons related to or designated by a member who dies before
3 normal or disability retirement if a written application for
4 the pension, in the form prescribed by the association, is
5 filed with the association by the potential survivor
6 beneficiary or beneficiaries within one year of the death of
7 the member. Applications may be filed on behalf of the
8 potential survivor beneficiary or beneficiaries or by a
9 person legally authorized to represent them;

10 B. if there is no designated survivor beneficiary
11 and the board finds the death to have been the natural and
12 proximate result of causes arising solely and exclusively out
13 of and in the course of the member's performance of duty
14 while in office, a survivor pension shall be payable to the
15 eligible surviving spouse. The amount of the survivor
16 pension shall be the greater of:

17 (1) the amount as calculated pursuant to the
18 Magistrate Retirement Act and applicable to the deceased
19 member at the time of death as though the deceased member had
20 retired the day preceding death under form of payment B using
21 the actual amount of service credit attributable to the
22 deceased member at the time of death; or

23 (2) fifty percent of the deceased member's
24 final average salary;

25 C. a survivor pension shall also be payable to

1 eligible surviving children if there is no designated
2 survivor beneficiary and the board finds the death to have
3 been the natural and proximate result of causes arising
4 solely and exclusively out of and in the course of the
5 member's performance of duty while in office. The total
6 amount of survivor pension payable for all eligible surviving
7 children shall be either:

8 (1) fifty percent of the deceased member's
9 final average salary if an eligible surviving spouse is not
10 paid a pension; or

11 (2) twenty-five percent of the deceased
12 member's final average salary if an eligible surviving spouse
13 is paid a pension.

14 The total amount of survivor pension shall be divided
15 equally among all eligible surviving children. If there is
16 only one eligible child, the amount of pension shall be
17 twenty-five percent of the deceased member's final average
18 salary;

19 D. if the member had the applicable minimum number
20 of years of service credit required for normal retirement but
21 the board did not find the death to have been the natural and
22 proximate result of causes arising solely and exclusively out
23 of and in the course of the member's performance of duty
24 while in office and there is no designated survivor
25 beneficiary, a survivor pension shall be payable to the

1 eligible surviving spouse. The amount of the survivor
2 pension shall be the greater of:

3 (1) the amount as calculated under the
4 coverage plan applicable to the deceased member at the time
5 of death as though the deceased member had retired the day
6 preceding death under form of payment B using the total
7 amount of actual service credit attributable to the deceased
8 member at the time of death; or

9 (2) thirty percent of the deceased member's
10 final average salary;

11 E. if the member had the applicable minimum number
12 of years of service credit required for normal retirement but
13 the board did not find the death to have been the natural and
14 proximate result of causes arising solely and exclusively out
15 of and in the course of the member's performance of duty
16 while in office and there is no designated survivor
17 beneficiary, and if there is no eligible surviving spouse at
18 the time of death, a survivor pension shall be payable to and
19 divided equally among all eligible surviving children, if
20 any. The total amount of survivor pension payable for all
21 eligible surviving children shall be the greater of:

22 (1) the amount as calculated under the
23 coverage plan applicable to the deceased member at the time
24 of death as though the deceased member had retired the day
25 preceding death under form of payment B with the oldest

1 eligible surviving child as the survivor beneficiary using
2 the total amount of actual service credit attributable to the
3 deceased member at the time of death; or

4 (2) thirty percent of the deceased member's
5 final average salary;

6 F. an eligible surviving spouse is the spouse to
7 whom the deceased member was married at the time of death.

8 An eligible surviving child is a child under the age of
9 eighteen years and who is an unmarried, natural or adopted
10 child of the deceased member;

11 G. an eligible surviving spouse's pension shall
12 terminate upon death. An eligible surviving child's pension
13 shall terminate upon death or marriage or reaching age
14 eighteen years, whichever comes first;

15 H. if there is no designated survivor beneficiary
16 and there is no eligible surviving child, the eligible
17 surviving spouse may elect to be refunded the deceased
18 member's accumulated member contributions instead of
19 receiving a survivor pension;

20 I. a member may designate a survivor beneficiary
21 to receive a pre-retirement survivor pension, subject to the
22 following conditions:

23 (1) a written designation, in the form
24 prescribed by the association, is filed by the member with
25 the association;

1 (2) if the member is married at the time of
2 designation, the designation shall only be made with the
3 consent of the member's spouse, in the form prescribed by the
4 association;

5 (3) if the member is married subsequent to
6 the time of designation, any prior designations shall
7 automatically be revoked upon the date of the marriage;

8 (4) if the member is divorced subsequent to
9 the time of designation, any prior designation of the former
10 spouse or a supplemental needs trust to which the spouse is a
11 beneficiary as survivor beneficiary shall automatically be
12 revoked upon the date of divorce; and

13 (5) a designation of survivor beneficiary
14 may be changed, with the member's spouse's consent if the
15 member is married, by the member at any time prior to the
16 member's death;

17 J. if there is a designated survivor beneficiary
18 and the board finds the death to have been the natural and
19 proximate result of causes arising solely and exclusively out
20 of and in the course of the member's performance of duty
21 while in office, a survivor pension shall be payable to the
22 designated survivor beneficiary. The amount of the survivor
23 pension shall be the greater of:

24 (1) the amount as calculated under the
25 coverage plan applicable to the deceased member at the time

1 of death as though the deceased member had retired the day
2 preceding death under form of payment B using the actual
3 amount of service credit attributable to the member at the
4 time of death; or

5 (2) fifty percent of the deceased member's
6 final average salary;

7 K. if there is a designated survivor beneficiary,
8 if the member had the applicable minimum number of years of
9 service credit required for normal retirement and if the
10 board did not find the death to have been the natural and
11 proximate result of causes arising solely and exclusively out
12 of and in the course of the member's performance of duty
13 while in office, a survivor pension shall be payable to the
14 designated survivor beneficiary. The amount of the survivor
15 pension shall be the greater of:

16 (1) the amount as calculated under the
17 coverage plan applicable to the deceased member at the time
18 of death as though the deceased member had retired the day
19 preceding death under form of payment B using the actual
20 amount of service credit attributable to the member at the
21 time of death; or

22 (2) thirty percent of the deceased member's
23 final average salary;

24 L. if all pension payments permanently terminate
25 before there is paid an aggregate amount equal to the

1 deceased member's accumulated member contributions at time of
2 death, the difference between the amount of accumulated
3 member contributions and the aggregate amount of pension paid
4 shall be paid to the deceased member's refund beneficiary.
5 If no refund beneficiary survives the survivor beneficiary,
6 the difference shall be paid to the estate of the deceased
7 member; and

8 M. for purposes of this section, "service credit"
9 means only the service credit earned by a member during
10 periods in office as a magistrate."

11 SECTION 17. Section 22-11-2 NMSA 1978 (being Laws 1967,
12 Chapter 16, Section 126, as amended) is amended to read:

13 "22-11-2. DEFINITIONS.--As used in the Educational
14 Retirement Act:

15 A. "member" means an employee, except for a
16 participant or a retired member, coming within the provisions
17 of the Educational Retirement Act;

18 B. "regular member" means:

19 (1) a person regularly employed by a state
20 educational institution, except for:

21 (a) a participant; or

22 (b) all employees of a general hospital
23 or outpatient clinics thereof operated by a state educational
24 institution named in Article 12, Section 11 of the
25 constitution of New Mexico;

1 (2) a person regularly employed by a junior
2 college or community college created pursuant to Chapter 21,
3 Article 13 NMSA 1978, except for a participant;

4 (3) a person regularly employed by a
5 technical and vocational institute created pursuant to the
6 Technical and Vocational Institute Act, except for a
7 participant;

8 (4) a person regularly employed by the
9 New Mexico boys' school, the girls' welfare home, the Los
10 Lunas medical center or a school district or as a licensed
11 school employee of a state institution or agency providing an
12 educational program and holding a license issued by the
13 department, except for a participant;

14 (5) a person regularly employed by the
15 department holding a license issued by the department at the
16 time of commencement of such employment;

17 (6) a member classified as a regular member
18 in accordance with the rules of the board;

19 (7) a person regularly employed by the New
20 Mexico activities association holding a license issued by the
21 department at the time of commencement of such employment; or

22 (8) a person regularly employed by a
23 regional education cooperative holding a license issued by
24 the department at the time of commencement of such
25 employment;

1 C. "provisional member" means a person described
2 in Section 22-11-17 NMSA 1978;

3 D. "local administrative unit" means an employing
4 agency however constituted that is directly responsible for
5 the payment of compensation for the employment of members or
6 participants;

7 E. "beneficiary" means a supplemental needs trust
8 or a natural person having an insurable interest in the life
9 of a member or a participant designated by written instrument
10 duly executed by the member or participant and filed with the
11 director to receive a benefit pursuant to the Educational
12 Retirement Act that may be received by someone other than the
13 member or participant;

14 F. "employment" means employment by a local
15 administrative unit that qualifies a person to be a member or
16 participant;

17 G. "service employment" means employment that
18 qualifies a person to be a regular member;

19 H. "provisional service employment" means
20 employment that qualifies a person to be a provisional
21 member;

22 I. "prior employment" means employment performed
23 prior to the effective date of the Educational Retirement Act
24 that would be service employment or provisional service
25 employment if performed thereafter;

1 J. "service credit" means that period of time with
2 which a member is accredited for the purpose of determining
3 the member's eligibility for and computation of retirement or
4 disability benefits;

5 K. "earned service credit" means that period of
6 time during which a member was engaged in employment or prior
7 employment with which the member is accredited for the
8 purpose of determining the member's eligibility for
9 retirement or disability benefits;

10 L. "allowed service credit" means that period of
11 time during which a member has performed certain nonservice
12 employment with which the member may be accredited, as
13 provided in the Educational Retirement Act, for the purpose
14 of computing retirement or disability benefits;

15 M. "retirement benefit" means an annuity paid
16 monthly to members whose employment has been terminated by
17 reason of their age;

18 N. "disability benefit" means an annuity paid
19 monthly to members whose employment has been terminated by
20 reason of a disability;

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

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

23 Q. "director" means the educational retirement
24 director;

25 R. "medical authority" means a medical doctor or

1 medical review panel designated or employed by the board to
2 examine medical records and report on the medical condition
3 of applicants for or recipients of disability benefits;

4 S. "actuary" means a person trained and regularly
5 engaged in the occupation of calculating present and
6 projected monetary assets and liabilities under annuity or
7 insurance programs;

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

12 U. "contributory employment" means employment for
13 which contributions have been made by both a member and a
14 local administrative unit pursuant to the Educational
15 Retirement Act;

16 V. "qualifying state educational institution"
17 means the university of New Mexico, New Mexico state
18 university, New Mexico institute of mining and technology,
19 New Mexico highlands university, eastern New Mexico
20 university, western New Mexico university, central New Mexico
21 community college, Clovis community college, Luna community
22 college, Mesalands community college, New Mexico junior
23 college, northern New Mexico state school, San Juan college
24 and Santa Fe community college;

25 W. "participant" means:

1 (1) a person regularly employed as a faculty
2 or professional employee of the university of New Mexico, New
3 Mexico state university, New Mexico institute of mining and
4 technology, New Mexico highlands university, eastern New
5 Mexico university or western New Mexico university who first
6 becomes employed with such an educational institution on or
7 after July 1, 1991, or a person regularly employed as a
8 faculty or professional employee of the central New Mexico
9 community college, Clovis community college, Luna community
10 college, Mesalands community college, New Mexico junior
11 college, northern New Mexico state school, San Juan college
12 or Santa Fe community college who is first employed by the
13 institution on or after July 1, 1999 and who elects, pursuant
14 to Section 22-11-47 NMSA 1978, to participate in the
15 alternative retirement plan; and

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

23 X. "salary" means the compensation or wages paid
24 to a member or participant by any local administrative unit
25 for services rendered. "Salary" includes payments made for

1 annual or sick leave and payments for additional service
2 provided to related activities, but does not include payments
3 for sick leave not taken unless the payment for the unused
4 sick leave is made through continuation of the member on the
5 regular payroll for the period represented by that payment
6 and does not include allowances or reimbursements for travel,
7 housing, food, equipment or similar items;

8 Y. "alternative retirement plan" means the
9 retirement plan provided for in Sections 22-11-47 through
10 22-11-52 NMSA 1978;

11 Z. "retired member" means a person whose
12 employment has been terminated by reason of age and who is
13 receiving or is eligible to receive retirement benefits; and

14 AA. "supplemental needs trust" means a valid
15 third-party irrevocable trust that is authorized by the
16 federal Social Security Act, as amended, for the sole benefit
17 and lifetime of a trust beneficiary who is disabled and is
18 created for the purpose of providing, accounting for or
19 receiving supplemental assets that do not supplant, impair or
20 diminish any benefits or assistance of any federal, state or
21 other government entity for which the beneficiary would
22 otherwise be eligible."

23 **SECTION 18.** Section 22-11-15 NMSA 1978 (being Laws
24 1967, Chapter 16, Section 139, as amended) is amended to
25 read:

1 "22-11-15. FUND--REFUNDS--PAYMENTS.--

2 A. After filing written demand with the director,
3 a member is entitled to a refund of the total amount of the
4 member's contributions plus interest at a rate set by the
5 board, reduced by the sum of any disability benefits
6 previously received by the member, if:

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

9 (2) the member has been exempted from the
10 Educational Retirement Act; or

11 (3) the member was not reemployed following
12 a period of disability during which the member received
13 disability benefits.

14 B. The director may, at the request of a member,
15 make payment on behalf of the member for any or all of the
16 refund to an individual retirement account or a qualified
17 retirement plan that accepts rollovers.

18 C. If the amount of a deceased member's
19 contribution or residual contribution does not exceed the sum
20 of one thousand dollars (\$1,000) and no written claim is made
21 to the board for it within one year from the date of the
22 member's death, by the member's surviving beneficiary or the
23 member's estate, payment thereof may be made to the named
24 beneficiary or, if none is named, to the person the board
25 determines to be entitled to the contribution under the laws

1 of New Mexico. Any payment made by the board pursuant to
2 this subsection shall be a bar to a claim by any other person
3 or entity.

4 D. The interest provided for in Subsection A of
5 this section shall apply only to contributions paid to the
6 fund after July 1, 1971 and on deposit in the fund for a
7 period of at least one fiscal year; provided that no such
8 interest shall be allowed on refunds of contributions that
9 were paid into the fund prior to July 1, 1971."

10 SECTION 19. Section 22-11-29 NMSA 1978 (being Laws
11 1967, Chapter 16, Section 152, as amended) is amended to
12 read:

13 "22-11-29. RETIREMENT BENEFIT OPTIONS.--

14 A. Upon retirement pursuant to the Educational
15 Retirement Act, a member may elect, and, except as provided
16 in Subsection D or E of this section, such election shall be
17 irrevocable, to receive the actuarial equivalent of the
18 member's retirement benefit, as provided in Section 22-11-30
19 NMSA 1978, to be effective on the member's retirement in any
20 one of the following optional forms:

21 (1) OPTION A. An unreduced retirement
22 benefit pursuant to Section 22-11-30 NMSA 1978;

23 (2) OPTION B. A reduced annuity payable
24 during the member's life with provision that upon the
25 member's death the same annuity shall be continued during the

1 life of and paid to the beneficiary designated by the member
2 in writing at the time of electing this option; or

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

9 B. In the case of Options B and C of Subsection A
10 of this section, the actuarial equivalent of the member's
11 retirement benefit shall be computed on the basis of the
12 lives of both the member and the beneficiary or in the event
13 that a supplemental needs trust is the designated
14 beneficiary, the life of the member and the beneficiary of
15 that trust.

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

1 (1) beginning on the first month following
2 the month in which the named beneficiary of a retiree dies or
3 the beneficiary of a supplemental needs trust that is the
4 named beneficiary dies or that trust otherwise terminates
5 applicable to an annuity received by a retiree who retires
6 after June 30, 1987; or

7 (2) beginning on July 1, 1987 applicable to
8 an annuity received by a retiree who retired prior to July 1,
9 1987 and otherwise qualifies for the adjustment; provided,
10 however, no adjustment shall be made retroactively.

11 D. A retired member who is being paid an adjusted
12 annuity pursuant to Subsection C of this section because of
13 the death of the named beneficiary or the death of the
14 beneficiary of a supplemental needs trust or the termination
15 of that trust may exercise a one-time irrevocable option to
16 designate another beneficiary and may select either Option B
17 or Option C of Subsection A of this section; provided that:

18 (1) the amount of the annuity under the
19 option selected shall be recalculated and have the same
20 actuarial present value, computed on the effective date of
21 the designation, as the annuity being paid to the retired
22 member prior to the designation;

23 (2) the designation and the amount of the
24 annuity shall be subject to a court order as provided for in
25 Subsection B of Section 22-11-42 NMSA 1978; and

1 (3) the retired member shall pay one hundred
2 dollars (\$100) to the board to defray the cost of determining
3 the new annuity amount.

4 E. A retired member who is being paid an annuity
5 under Option B or C of Subsection A of this section with a
6 living or operating designated beneficiary other than the
7 retired member's spouse or former spouse or the supplemental
8 needs trust of the retired member's spouse or former spouse
9 may exercise a one-time irrevocable option to deselect the
10 designated beneficiary and elect to:

11 (1) designate another beneficiary; provided
12 that:

13 (a) the retired member shall not have
14 an option to change from the current form of payment;

15 (b) the amount of the annuity under the
16 form of payment shall be recalculated and shall have the same
17 actuarial present value, computed as of the effective date of
18 the designation, as the amount of annuity paid prior to the
19 designation; and

20 (c) the retired member shall pay one
21 hundred dollars (\$100) to the board to defray the cost of
22 determining the new annuity amount; or

23 (2) have future annuity payments made
24 without a reduction as a result of Option B or C.

25 F. In the event of the death of the member who has

1 not retired and who has completed at least five years' earned
2 service credit, the member shall be considered as retiring on
3 the first day of the month following the date of death, and
4 the benefits due the surviving beneficiary, computed as of
5 that date, shall, except as provided in Subsection J of this
6 section, be commenced effective on the first day of such
7 month in accordance with the terms of Option B of Subsection
8 A of this section. In lieu of the provisions of Option B,
9 the surviving beneficiary may elect to receive payment of all
10 the contributions made by the member, plus interest at the
11 rate set by the board reduced by the sum of any disability
12 benefits previously received by the member, or the surviving
13 beneficiary may choose to defer receipt of the survivor's
14 benefit to whatever age the beneficiary chooses up to the
15 time the member would have attained age sixty. If the
16 benefit is thus deferred, it shall be calculated as though
17 the member had retired on the first day of the month in which
18 the beneficiary elects to receive the benefit. In the event
19 of the death of the beneficiary or in the event that a
20 supplemental needs trust is the designated survivor
21 beneficiary, the termination of that trust or the death of
22 the beneficiary of that trust after the death of the member
23 and prior to the date on which the beneficiary has elected to
24 receive the beneficiary's benefit, the estate of the
25 beneficiary shall be entitled to a refund of the member's

1 contributions plus interest at the rate earned by the fund
2 during the preceding fiscal year, reduced by the sum of any
3 disability benefits previously received by the member.

4 G. In the event of the death of a member who has
5 not retired and who has completed at least five years' earned
6 service credit, but who has not designated a beneficiary in
7 writing pursuant to the Educational Retirement Act, the
8 eligible surviving spouse or surviving domestic partner shall
9 be the surviving beneficiary eligible for benefits in
10 accordance with the provisions of Subsection F of this
11 section.

12 H. In the case of death of a retired member who
13 did not elect either Option B or C of Subsection A of this
14 section and before the benefits paid to the member have
15 equaled the sum of the member's accumulated contributions to
16 the fund plus accumulated interest at the rate set by the
17 board, the balance shall be paid to the beneficiary
18 designated in writing to the director by the member or, if no
19 beneficiary was designated, to the eligible surviving spouse
20 or surviving domestic partner of the member or, if there is
21 no eligible surviving spouse or domestic partner of the
22 member, to the estate of the member.

23 I. No benefit shall be paid pursuant to this
24 section if the member's contributions have been refunded
25 pursuant to Section 22-11-15 NMSA 1978.

1 J. In the case of death of a member with less than
2 five years' earned service credit or death of a member who
3 has filed with the director a notice rejecting the provisions
4 of Subsection F of this section, which notice shall be
5 revocable by the member at any time prior to retirement, the
6 member's contributions to the fund plus interest at the rate
7 set by the board shall be paid to the beneficiary designated
8 in writing to the director by the member or, if no
9 beneficiary was designated, to the eligible surviving spouse
10 or surviving domestic partner of the member or, if there is
11 no eligible surviving spouse or domestic partner of the
12 member, to the estate of the member."

13 **SECTION 20.** Section 22-11-53 NMSA 1978 (being Laws
14 1998, Chapter 38, Section 2) is amended to read:

15 "22-11-53. CORRECTION OF ERRORS AND OMISSIONS--
16 ESTOPPEL.--

17 A. If an error or omission in an application for
18 retirement or its supporting documents results in an
19 overpayment to a member or the beneficiary of a member, the
20 board shall correct the error or omission and adjust all
21 future payments accordingly. The board shall recover all
22 overpayments that are made.

23 B. A member or the beneficiary of a member who is
24 paid more than the amount owed because that member or
25 beneficiary provided fraudulent information on the

