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AN ACT
RELATING TO EDUCATIONAL RETIREMENT; MAKING CHANGES TO THE
EDUCATIONAL RETIREMENT ACT; PROVIDING FOR UNCLAIMED MEMBER
CONTRIBUTIONS TO BE DEPOSITED INTO THE EDUCATIONAL RETIREMENT
FUND; CLARIFYING CERTAIN TERMS; ALLOWING FOR A MEMBER ON
DISABILITY STATUS WHO IS OVER SIXTY AND WHO RECEIVES AN
ANNUITY ADJUSTMENT TO CONTINUE RECEIVING THE ANNUITY
ADJUSTMENT; REQUIRING PAYMENT OF ALLOWED SERVICE WITHIN
NINETY DAYS; ALLOWING FOR DISCLOSURE OF MEMBER OR RETIRED
MEMBER INFORMATION TO THE PUBLIC EMPLOYEES RETIREMENT BOARD
TO ADMINISTER; REPEALING SECTION 22-11-5.1 NMSA 1978 (BEING
LAWS 1999, CHAPTER 153, SECTION 2, AS AMENDED).

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

SECTION 1. Section 22-11-11 NMSA 1978 (being Laws 1967,
Chapter 16, Section 135, as amended) is amended to read:

"22-11-11. EDUCATIONAL RETIREMENT FUND--SUSPENSE
FUND.--

A. The "educational retirement fund" and the
"educational retirement suspense fund" are created.

B. The state treasurer shall be the custodian of
the funds, and the board shall be the trustee of the funds.

C. All membership fees, contributions from members
and local administrative units, securities evidencing the
investment of money from the fund, unclaimed member

1 contributions, interest, gifts, grants or bequests shall be
2 deposited in the educational retirement fund.

3 D. All amounts received in satisfaction of a claim
4 brought by private attorneys on behalf of the board shall be
5 deposited into the educational retirement suspense fund. The
6 board shall disburse the compensation due the private
7 attorneys, together with reimbursement for reasonable costs
8 and expenses, in accordance with the terms of the contract
9 with the attorneys. After the disbursements have been made,
10 the balance of each deposit shall be distributed to the
11 educational retirement fund."

12 SECTION 2. Section 22-11-24 NMSA 1978 (being Laws 1967,
13 Chapter 16, Section 147) is amended to read:

14 "22-11-24. RETIREMENT BENEFITS--MINIMUM CONTRIBUTORY
15 EMPLOYMENT.--

16 A. A member shall have acquired not less than five
17 years of contributory employment to be eligible for
18 retirement benefits pursuant to the Educational Retirement
19 Act.

20 B. A member desiring to retire before having
21 completed five years of contributory employment shall be
22 limited to the maximum benefit the member would have been
23 entitled to receive under any statute repealed by the
24 Educational Retirement Act. A member may acquire five years
25 or less of contributory employment by contributing to the

1 fund, for each year of contributory employment desired, a sum
2 equal to the prevailing combined contributions of the member
3 and the local administrative unit in effect at the time the
4 contributory employment is acquired. This contribution shall
5 be computed on the member's average annual salary for the
6 last five years of employment plus an additional sum as
7 interest from the effective date of the Educational
8 Retirement Act as fixed by the board, but not to exceed three
9 percent a year.

10 C. Years of contributory employment purchased
11 pursuant to this section shall not be considered as an
12 addition to service actually performed in computing the sum
13 of the member's retirement benefit.

14 D. The retirement benefits of members retired
15 pursuant to the Educational Retirement Act prior to
16 July 1, 1959 and who have acquired contributory employment
17 years by purchase shall be computed upon the basis of the
18 amount paid therefor.

19 E. As used only in this section, "five years of
20 contributory employment" means the member and employer have
21 made contributions through the last business day of the
22 sixtieth month of contributory employment, or if the member
23 is under contract, the member and employer have made
24 contributions for five years through the last business day
25 that the member can provide services under the contract."

1 SECTION 3. Section 22-11-31 NMSA 1978 (being Laws 1979,
2 Chapter 333, Section 2, as amended) is amended to read:

3 "22-11-31. COST-OF-LIVING ADJUSTMENT--ELIGIBILITY--
4 BASED ON FUNDED RATIO--ADDITIONAL CONTRIBUTIONS.--

5 A. For the purposes of this section:

6 (1) "adjustment factor" means a
7 multiplicative factor computed to provide an annuity
8 adjustment pursuant to the provisions of Subsection B of this
9 section;

10 (2) "annuity" means any benefit payable
11 under the Educational Retirement Act or the Public Employees
12 Retirement Reciprocity Act as a retirement benefit,
13 disability benefit or survivor benefit;

14 (3) "calendar year" means the full twelve
15 months beginning January 1 and ending December 31;

16 (4) "consumer price index" means the average
17 of the monthly consumer price indexes for a calendar year for
18 the entire United States for all items as published by the
19 United States department of labor;

20 (5) "funded ratio" means the ratio of the
21 actuarial value of the assets of the fund to the actuarial
22 accrued liability of the educational retirement system;

23 (6) "median adjusted annuity" means the
24 median value of all annuities and retirement benefits paid
25 pursuant to Section 22-11-29 or 22-11-30 NMSA 1978, as

1 calculated each fiscal year; provided, however, that the
2 benefits paid to a member pursuant to Section 22-11-38 NMSA
3 1978 shall not be included in the median adjusted annuity
4 calculation;

5 (7) "next preceding calendar year" means the
6 full calendar year immediately prior to the preceding
7 calendar year; and

8 (8) "preceding calendar year" means the full
9 calendar year preceding the July 1 on which a benefit is to
10 be adjusted.

11 B. On or after July 1, 1984:

12 (1) the annuity of a member who retires
13 pursuant to Subsection A of Section 22-11-23 NMSA 1978 or
14 Subsection A of Section 22-11-23.1 NMSA 1978 shall be
15 adjusted annually and cumulatively commencing on July 1 of
16 the year in which a member attains the age of sixty-five
17 years or on July 1 following the year a member retires,
18 whichever is later; and

19 (2) the annuity of a member who retires
20 pursuant to Subsection A of Section 22-11-23.2 NMSA 1978
21 shall be adjusted annually and cumulatively commencing on
22 July 1 of the year in which the member attains the age of
23 sixty-seven years or on July 1 following the year the member
24 retires, whichever is later.

25 C. Beginning on July 1, 2013 and on each July 1

1 thereafter:

2 (1) if the funded ratio of the fund as
3 reported by the board's actuary in the actuarial valuation
4 report for the next preceding fiscal year is one hundred
5 percent or greater, the annuity adjustments provided for
6 under Subsection B of this section shall be adjusted by
7 applying an adjustment factor based on the percentage
8 increase of the consumer price index between the next
9 preceding calendar year and the preceding calendar year. The
10 adjustment factor shall be applied as follows:

11 (a) if the percentage increase of the
12 consumer price index is less than two percent in absolute
13 value, the adjustment factor shall be the same amount as the
14 percentage increase of the consumer price index; and

15 (b) if the percentage increase of the
16 consumer price index is two percent or greater in absolute
17 value, the adjustment factor shall be one-half of the
18 percentage increase; except that the adjustment shall not
19 exceed four percent in absolute value nor be less than two
20 percent in absolute value;

21 (2) if the funded ratio of the fund as
22 reported by the board's actuary in the actuarial report for
23 the next preceding fiscal year is greater than ninety percent
24 but less than one hundred percent, except for a member who is
25 on disability status in accordance with Section 22-11-35 NMSA

1 1978 and whose benefit is adjusted as provided in Subsection
2 G of this section or a member who is retired pursuant to
3 Section 22-11-38 NMSA 1978, the adjustment factor provided
4 for in Subsection B of this section shall be applied as
5 follows:

6 (a) if the percentage increase in the
7 consumer price index is less than two percent in absolute
8 value, for a member who has twenty-five or more years of
9 service credit at retirement and whose annuity is less than
10 or equal to the median adjusted annuity for the fiscal year
11 next preceding the adjustment date, the adjustment factor
12 shall be ninety-five percent of the adjustment factor
13 determined pursuant to Subparagraph (a) of Paragraph (1) of
14 this subsection;

15 (b) if the percentage increase in the
16 consumer price index is less than two percent in absolute
17 value, for a member who has less than twenty-five years of
18 service credit at retirement and whose annuity is less than
19 or equal to the median adjusted annuity for the fiscal year
20 next preceding the adjustment date, and for a member whose
21 annuity is greater than the median adjusted annuity for the
22 fiscal year next preceding the adjustment date, the
23 adjustment factor shall be ninety percent of the adjustment
24 factor determined pursuant to Subparagraph (a) of Paragraph
25 (1) of this subsection;

1 (c) if the percentage increase in the
2 consumer price index is greater than or equal to two percent
3 in absolute value for a member who has twenty-five or more
4 years of service credit at retirement and whose annuity is
5 less than or equal to the median adjusted annuity for the
6 fiscal year next preceding the adjustment date, the
7 adjustment factor shall be ninety-five percent of the
8 adjustment factor determined under Subparagraph (b) of
9 Paragraph (1) of this subsection; and

10 (d) if the percentage increase in the
11 consumer price index is greater than or equal to two percent
12 in absolute value, for a member who has less than twenty-five
13 years of service credit at retirement and whose annuity is
14 less than or equal to the median adjusted annuity for the
15 fiscal year next preceding the adjustment date, and for a
16 member whose annuity is greater than the median adjusted
17 annuity for the fiscal year next preceding the adjustment
18 date, the adjustment factor shall be ninety percent of the
19 adjustment factor determined under Subparagraph (b) of
20 Paragraph (1) of this subsection;

21 (3) if the funded ratio of the fund as
22 reported by the board's actuary in the actuarial valuation
23 report for the next preceding fiscal year is ninety percent
24 or less, except for a member who is on disability status in
25 accordance with Section 22-11-35 NMSA 1978 and whose benefit

1 is adjusted as provided in Subsection G of this section or a
2 member who is retired pursuant to Section 22-11-38 NMSA 1978,
3 the adjustment factor provided for in Subsection B of this
4 section shall be applied as follows:

5 (a) if the percentage increase in the
6 consumer price index is less than two percent in absolute
7 value, for a member who has twenty-five or more years of
8 service credit at retirement and whose annuity is less than
9 or equal to the median adjusted annuity for the fiscal year
10 next preceding the adjustment date, the adjustment factor
11 shall be ninety percent of the adjustment factor determined
12 pursuant to Subparagraph (a) of Paragraph (1) of this
13 subsection;

14 (b) if the percentage increase in the
15 consumer price index is less than two percent in absolute
16 value, for a member who has less than twenty-five years of
17 service credit at retirement and whose annuity is less than
18 or equal to the median adjusted annuity for the fiscal year
19 next preceding the adjustment date, and for a member whose
20 annuity is greater than the median adjusted annuity for the
21 fiscal year next preceding the adjustment date, the
22 adjustment factor shall be eighty percent of the adjustment
23 factor determined pursuant to Subparagraph (a) of Paragraph
24 (1) of this subsection;

25 (c) if the percentage increase in the

1 consumer price index is greater than or equal to two percent
2 in absolute value for a member who has twenty-five or more
3 years of service credit at retirement and whose annuity is
4 less than or equal to the median adjusted annuity for the
5 fiscal year next preceding the adjustment date, the
6 adjustment factor shall be ninety percent of the adjustment
7 factor determined under Subparagraph (b) of Paragraph (1) of
8 this subsection; and

9 (d) if the percentage increase in the
10 consumer price index is greater than or equal to two percent
11 in absolute value, for a member who has less than twenty-five
12 years of service credit at retirement and whose annuity is
13 less than or equal to the median adjusted annuity for the
14 fiscal year next preceding the adjustment date, and for a
15 member whose annuity is greater than the median adjusted
16 annuity for the fiscal year next preceding the adjustment
17 date, the adjustment factor shall be eighty percent of the
18 adjustment factor determined under Subparagraph (b) of
19 Paragraph (1) of this subsection; and

20 (4) an annuity shall not be decreased if
21 there is a decrease in the consumer price index between the
22 next preceding calendar year and the preceding calendar year.

23 D. A retired member whose benefit is subject to
24 adjustment under the provisions of the Educational Retirement
25 Act in effect prior to July 1, 1984 shall have the member's

1 annuity readjusted annually and cumulatively under the
2 provisions of that act in effect prior to July 1, 1984 until
3 July 1 of the year in which the member attains the age of
4 sixty-five years, when the member shall have the annuity
5 readjusted annually and cumulatively under the provisions of
6 this section.

7 E. A member who:

8 (1) retires pursuant to Subsection A of
9 Section 22-11-23 NMSA 1978 or Subsection A of Section
10 22-11-23.1 NMSA 1978 after attaining the age of sixty-five
11 years shall have the member's annuity adjusted as provided in
12 Subsections B and C of this section commencing on July 1 of
13 the year following the member's retirement; or

14 (2) retires pursuant to Subsection A of
15 Section 22-11-23.2 NMSA 1978 after attaining the age of
16 sixty-seven years shall have the member's annuity adjusted as
17 provided in Subsections B and C of this section commencing on
18 July 1 of the year following the member's retirement.

19 F. A retired member who returns to work and
20 suspends retirement shall be subject to the provisions of
21 this section as they exist at the time of the member's latest
22 retirement.

23 G. Benefits of a member who is on a disability
24 status in accordance with Section 22-11-35 NMSA 1978 or a
25 member who is certified by the board as disabled at regular

1 retirement shall be adjusted in accordance with Subsections B
2 and C of this section; provided that:

3 (1) the benefits shall be adjusted annually
4 and cumulatively commencing on July 1 of the third full year
5 following the year in which the member was approved by the
6 board for disability or retirement; and

7 (2) upon attaining the age of sixty years, a
8 member on a disability status who is receiving an annuity
9 adjustment pursuant to this section shall continue to receive
10 the annuity adjustment at the rate of benefits received for
11 the disability."

12 SECTION 4. Section 22-11-34 NMSA 1978 (being Laws 1967,
13 Chapter 16, Section 157, as amended) is amended to read:

14 "22-11-34. ALLOWED SERVICE CREDIT.--

15 A. A member shall be certified to have acquired
16 allowed service credit pursuant to the Internal Revenue Code
17 of 1986 for those periods of time when the member was:

18 (1) employed prior to July 1, 1967 in a
19 federal educational program within New Mexico, including
20 United States Indian schools and civilian conservation corps
21 camps. This service credit shall be allowed without
22 contribution;

23 (2) engaged in military service that
24 interrupted the member's employment in New Mexico if the
25 member returned to employment within eighteen months

1 following honorable discharge. This service credit shall be
2 allowed without contribution;

3 (3) engaged in United States military
4 service or the commissioned corps of the public health
5 service from which the member was honorably discharged;
6 provided that:

7 (a) the member shall have five years or
8 more of contributory employment to be eligible to purchase
9 allowed service credit pursuant to this paragraph;

10 (b) the member shall contribute to the
11 fund, for each year of service credit the member elects to
12 purchase, a sum equal to the member's average annual actual
13 salary for the five years preceding the date of the
14 contribution multiplied by the sum of the member contribution
15 rate and the employer contribution rate in effect at the time
16 of the member's written election to purchase, subject to the
17 federal Uniformed Services Employment and Reemployment Rights
18 Act of 1994;

19 (c) full payment shall be made within
20 ninety days of the date that the member is informed of the
21 amount of the payment; and

22 (d) the portion of the purchase cost
23 derived from the employer's contribution rate shall be
24 credited to the fund and, in the event that a member requests
25 a refund of contributions pursuant to Section 22-11-15 NMSA

1 1978, the member shall not be entitled to a refund of that
2 portion of the purchase cost derived from the employer
3 contribution rate; or

4 (4) employed:

5 (a) in a public school or public
6 institution of higher learning in another state, territory or
7 possession of the United States;

8 (b) in a United States military
9 dependents' school operated by a branch of the armed forces
10 of the United States;

11 (c) as provided in Paragraph (1) of
12 this subsection after July 1, 1967; or

13 (d) in a private school or institution
14 of higher learning in New Mexico whose education program is
15 accredited or approved by the department at the time of
16 employment.

17 B. Effective July 1, 2001, the member or employer
18 under Paragraph (4) of Subsection A of this section shall
19 contribute to the fund for each year of allowed service
20 credit desired an amount equal to the actuarial value of the
21 service purchased as defined by the board. No allowed
22 service credit shall be purchased pursuant to Paragraph (4)
23 of Subsection A of this section unless the member is
24 currently employed by a local administrative unit.

25 C. No member shall be certified to have acquired

1 allowed service credit:

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

6 (2) in excess of ten years for any other
7 combination of Paragraphs (1) through (4) of Subsection A of
8 this section.

9 D. A member receiving service credit under
10 Paragraph (3) or (4) of Subsection A of this section who
11 enrolls in the retiree health care authority shall make
12 contributions pursuant to Subsection C of Section 10-7C-15
13 NMSA 1978."

14 SECTION 5. Section 22-11-55 NMSA 1978 (being Laws 2009,
15 Chapter 240, Section 1 and Laws 2009, Chapter 248, Section 1,
16 as amended) is amended to read:

17 "22-11-55. DISCLOSURE OF MEMBER OR RETIRED MEMBER
18 INFORMATION--PENALTY.--

19 A. Other than names of members and local
20 administrative units by which a member was employed; dates of
21 employment, retirement and reported death; service credit;
22 reported salary; retirement and disability benefits; and
23 amounts of contributions made by members and local
24 administrative units, neither the board nor its employees or
25 contractors shall allow public inspection or disclosure of

1 any information regarding a member or retired member to
2 anyone except:

3 (1) the member, retired member or the spouse
4 or authorized representative of the member or retired member;

5 (2) other persons specifically identified in
6 a prior release and consent, in the form prescribed by the
7 board, executed by the member, retired member, spouse or
8 authorized representative;

9 (3) the attorney general, appropriate law
10 enforcement agencies, the state auditor or the public
11 education department or higher education department, if the
12 information provided relates to contributions, payments or
13 management of money received by, or the financial controls or
14 procedures of, a local administrative unit; or

15 (4) the public employees retirement board
16 for the purpose of administering the Public Employees
17 Retirement Reciprocity Act.

18 B. No person receiving information disclosed by a
19 violation of Subsection A of this section shall disclose that
20 information to any other person unless authorized by an
21 applicable confidentiality agreement, board rule or state
22 law.

23 C. Whoever knowingly violates a provision of
24 Subsection A or B of this section is guilty of a petty
25 misdemeanor and shall be sentenced in accordance with Section

1 31-19-1 NMSA 1978.

2 SECTION 6. REPEAL.--Section 22-11-5.1 NMSA 1978 (being
3 Laws 1999, Chapter 153, Section 2, as amended) is repealed.==

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