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HOUSE BILL 469

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Don Tripp

AN ACT

**RELATING TO EDUCATIONAL RETIREMENT; AMENDING THE EDUCATIONAL
RETIREMENT ACT TO ALLOW PROVISIONAL MEMBERS TO ACQUIRE EARNED
SERVICE CREDIT FOR CERTAIN PERIODS OF EMPLOYMENT.**

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

**Section 1. Section 22-11-17 NMSA 1978 (being Laws 1967,
Chapter 16, Section 141, as amended) is amended to read:**

"22-11-17. PROVISIONAL MEMBERSHIP. --

**A. A provisional member shall be covered by the
provisions of the Educational Retirement Act but shall have
the option to exempt himself from its coverage. A provisional
member exempting himself from the provisions of the
Educational Retirement Act shall not be entitled to the
benefits or coverage under any other state retirement program
except as otherwise provided in this section. This section**

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1 shall not affect any rights a provisional member may have
2 under the provisions of the federal Social Security Act.
3 [~~This~~] The option to exempt must be exercised within one year
4 of employment according to the [~~regulations~~] rules adopted by
5 the board. Any provisional member exempting himself pursuant
6 to this section shall be entitled to a refund of any
7 contributions made pursuant to the Educational Retirement Act
8 prior to the exercise of the exemption.

9 B. A provisional member not exempt from the
10 coverage of the Educational Retirement Act shall have the
11 right to earned service credit for periods of employment
12 subsequent to July 1, 1957 and prior to July 1, 1961, provided
13 that all contributions at the rates in effect during that
14 period of employment are paid. If a provisional member
15 chooses to make the contributions for that period, the local
16 administrative unit employing a member during that period
17 shall pay the employer's contribution at the rate in effect
18 during that period of employment. Contributions prior to July
19 1, 1961 by both the provisional member and the local
20 administrative unit shall bear interest at the rate of three
21 percent a year from July 1, 1961 until paid.

22 C. A provisional member exempt from the coverage
23 of the provisions of the Educational Retirement Act shall have
24 the right to revoke the exemption at any time; however, within
25 the first two weeks following the beginning of each school

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1 year, such provisional member shall be informed by the local
2 administrative unit in writing of his right to revoke the
3 exemption and shall sign a statement to the effect that he
4 does or does not wish to revoke the exemption. A copy of such
5 statement shall be kept in the personnel file of the
6 provisional member.

7 D. A provisional member who revokes the exemption
8 from coverage may, at any time before June 30, 2004, acquire
9 earned service credit for periods of employment during which
10 the exemption or exemptions were in force if both the member
11 contributions and the local administrative unit contributions,
12 at the rates in effect during the periods of employment and
13 applied to the earnings of the member during those periods,
14 are paid to the fund, together with interest at the actuarial
15 rate set by the board. The contributions shall be paid in the
16 following manner:

17 (1) both the member contributions and the
18 local administrative unit contributions, together with
19 interest, shall be paid by the member; or

20 (2) if the member tenders payment of the
21 member contributions, with interest, the local administrative
22 unit by whom the member was employed may, but shall not be
23 obligated to, pay the local administrative unit contributions,
24 with interest.

25 [~~D.~~] E. A provisional member employed by the

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1 board, the department of education, the New Mexico school for
2 the deaf, the northern New Mexico state school, the New Mexico
3 school for the visually handicapped, the New Mexico girls'
4 school, the New Mexico boys' school or the Los Lunas [~~mental~~
5 ~~hospital~~] medical center shall have the option of qualifying
6 for coverage under either the Educational Retirement Act or
7 the public employees retirement association of New Mexico.
8 This option shall be exercised by filing a written election
9 with both the educational retirement director and the
10 [~~director~~] executive secretary of the public employees
11 retirement association of New Mexico. This election shall be
12 made within six months after employment and shall be
13 irrevocable regardless of subsequent employment or
14 reemployment in any administrative unit enumerated in this
15 subsection. Until this election is made, the provisional
16 member shall be covered and shall be required to make
17 contributions under the Educational Retirement Act. "

18 Section 2. Section 22-11-21.3 NMSA 1978 (being Laws
19 1998, Chapter 38, Section 1) is amended to read:

20 "22-11-21.3. PICK UP--ROLLOVER. --

21 A. Commencing on July 1, 1998, each local
22 administrative unit may, solely for the purpose of compliance
23 with Section 414(h) of the Internal Revenue Code of 1986, pick
24 up, for the purposes specified in that section, member
25 contributions permitted by Paragraph (4) of Subsection A of
. 134850. 1

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1 Section 22-11-34 NMSA 1978; Subsection C of Section 22-11-33
2 NMSA 1978; or Subsection D of Section 22-11-17 NMSA 1978.
3 Member contributions picked up under the provisions of this
4 subsection shall be treated as local administrative unit
5 contributions for purposes of determining income tax
6 obligations under the Internal Revenue Code of 1986; however,
7 such picked-up member contributions shall be included in the
8 determination of the member's gross annual salary for all
9 other purposes under federal and state laws. Member
10 contributions picked up under this section shall continue to
11 be designated member contributions for all purposes of the
12 Educational Retirement Act and shall be considered as part of
13 the member's annual salary for purposes of determining the
14 amount of the member's contribution. The provisions of this
15 section are voluntary, and the member shall have no option
16 concerning the pick up to receive the contributed amounts
17 directly instead of having them paid by the local
18 administrative unit to the fund. The contribution may be paid
19 through the local administrative unit's payroll deduction.

20 B. Commencing July 1, 1998, the [~~educational~~
21 ~~retirement~~] board may accept rollover contributions from other
22 retirement funds solely for and subject to the restrictions
23 set forth in Subsection B of Section 22-11-34 NMSA 1978 and
24 Section 22-11-17 NMSA 1978 and the applicable restrictions set
25 forth in the Internal Revenue Code of 1986 for pension plan

. 134850. 1

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