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HOUSE BILL 170

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Richard D. Vigil

AN ACT

RELATING TO EDUCATIONAL RETIREMENT; ALLOWING EDUCATIONAL  
RETIREMENT ACT RETIREES TO RETURN TO EMPLOYMENT WITHOUT  
AFFECTING THEIR RETIREMENT BENEFITS.

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

Section 1. A new section of the Educational Retirement  
Act is enacted to read:

"~~[NEW MATERIAL]~~ RETURN TO WORK. --A retired member pursuant  
to the Educational Retirement Act may return to employment,  
including as a substitute, without affecting his retirement  
benefits."

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

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

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1           A. "member" means an employee, except for a  
2 participant or a retired member, coming within the provisions  
3 of the Educational Retirement Act;

4           B. "regular member" means:

5                 (1) a person regularly employed as a teaching,  
6 nursing or administrative employee of a state educational  
7 institution, except for:

8                         (a) a participant; or

9                         (b) ~~all~~ employees of a general  
10 hospital or its outpatient clinics ~~thereof~~ operated by a  
11 state educational institution named in Article 12, Section 11  
12 of the constitution of New Mexico;

13                 (2) a person regularly employed as a teaching,  
14 nursing or administrative employee of a junior college or  
15 community college created pursuant to Chapter 21, Article 13  
16 NMSA 1978, except for a participant;

17                 (3) a person regularly employed as a teaching,  
18 nursing or administrative employee of a technical and  
19 vocational institute created pursuant to the Technical and  
20 Vocational Institute Act, except for a participant;

21                 (4) a person regularly employed as a teaching,  
22 nursing or administrative employee of the New Mexico boys'  
23 school, the New Mexico girls' school, the Los Lunas medical  
24 center or a school district or as a certified school instructor  
25 of a state institution or agency providing an educational

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1 program and holding a standard or substandard certificate  
2 issued by the ~~[state board]~~ public education department, except  
3 for a participant;

4 (5) a person regularly employed by the public  
5 education department ~~[of education]~~ or the board holding a  
6 standard or substandard certificate issued by the ~~[state board]~~  
7 public education department at the time of commencement of  
8 ~~[such]~~ employment;

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

11 (7) a person regularly employed by the New  
12 Mexico activities association holding a standard certificate  
13 issued by the ~~[state board]~~ public education department at the  
14 time of commencement of ~~[such]~~ employment; or

15 (8) a person regularly employed by a regional  
16 education cooperative holding a standard certificate issued by  
17 the ~~[state board]~~ public education department at the time of  
18 commencement of ~~[such]~~ employment;

19 C. "provisional member" means a person not eligible  
20 to be a regular member but who is employed by a local  
21 administrative unit designated in Subsection B of this section;  
22 provided ~~[however]~~ that employees of a general hospital or its  
23 outpatient clinics ~~[thereof]~~ operated by a state educational  
24 institution named in Article 12, Section 11 of the constitution  
25 of New Mexico are not provisional members;

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

5           E. "beneficiary" means a person having an insurable  
6 interest in the life of a member or a participant designated by  
7 written instrument [~~duly~~] executed by the member or participant  
8 and filed with the director to receive a benefit pursuant to  
9 the Educational Retirement Act that may be received by someone  
10 other than the member or participant;

11           F. "employment" means employment by a local  
12 administrative unit that qualifies a person to be a member or  
13 participant;

14           G. "service employment" means employment that  
15 qualifies a person to be a regular member;

16           H. "provisional service employment" means  
17 employment that qualifies a person to be a provisional member;

18           I. "prior employment" means employment performed  
19 prior to the effective date of the Educational Retirement Act  
20 that would be service employment or provisional service  
21 employment if performed [~~thereafter~~] after the effective date;

22           J. "service credit" means that period of time with  
23 which a member is accredited for the purpose of determining his  
24 eligibility for and computation of retirement or disability  
25 benefits;

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1           K. "earned service credit" means that period of  
2 time during which a member was engaged in employment or prior  
3 employment with which he is accredited for the purpose of  
4 determining his eligibility for retirement or disability  
5 benefits;

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

11           M. "retirement benefit" means an annuity paid  
12 monthly to members whose employment has been terminated by  
13 reason of their age;

14           N. "disability benefit" means an annuity paid  
15 monthly to members whose employment has been terminated by  
16 reason of a disability;

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

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

19           Q. "director" means the educational retirement  
20 director;

21           R. "medical authority" means a medical doctor  
22 within the state or as provided in Subsection D of Section  
23 22-11-36 NMSA 1978 either designated or employed by the board  
24 to examine and report on the physical condition of applicants  
25 for or recipients of disability benefits;

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

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

9           U. "contributory employment" means employment for  
10 which contributions have been made by both a member and a local  
11 administrative unit pursuant to the Educational Retirement Act;

12           V. "qualifying state educational institution" means  
13 the university of New Mexico, New Mexico state university, New  
14 Mexico institute of mining and technology, New Mexico highlands  
15 university, eastern New Mexico university, western New Mexico  
16 university, Albuquerque technical-vocational institute, Clovis  
17 community college, Luna vocational-technical institute, Mesa  
18 technical college, New Mexico junior college, northern New  
19 Mexico state school, San Juan college and Santa Fe community  
20 college;

21           W. "participant" means:

22                 (1) a person regularly employed as a faculty  
23 or professional employee of the university of New Mexico, New  
24 Mexico state university, New Mexico institute of mining and  
25 technology, New Mexico highlands university, eastern New Mexico

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

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

19 X. "salary" means the compensation or wages paid to  
20 a member or participant by ~~any~~ a local administrative unit  
21 for services rendered. "Salary" includes payments made for  
22 annual or sick leave and payments for additional service  
23 provided to related activities, but does not include payments  
24 for sick leave not taken unless the payment for the unused sick  
25 leave is made through continuation of the member on the regular

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1 payroll for the period represented by that payment and does not  
2 include allowances or reimbursements for travel, housing, food,  
3 equipment or similar items;

4 Y. "alternative retirement plan" means the  
5 retirement plan provided for in Sections 22-11-47 through  
6 22-11-52 NMSA 1978; [~~and~~]

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

10 AA. "substitute" means an employee engaged on a  
11 day-to-day basis to replace another employee who is temporarily  
12 absent. "

13 Section 3. EFFECTIVE DATE. --The effective date of the  
14 provisions of this act is July 1, 2004.