

AN ACT

RELATING TO EDUCATIONAL RETIREMENT; AMENDING THE EDUCATIONAL RETIREMENT ACT TO LIMIT CONTRIBUTIONS FOR MEMBERS WHOSE SALARIES EXCEED A CERTAIN FEDERAL LIMIT; ENSURING THAT SERVICE CREDIT WILL NOT BE AND HAS NOT BEEN DIMINISHED BY FEDERALLY IMPOSED CONTRIBUTION LIMITS; AUTHORIZING DEPOSITS INTO THE EDUCATIONAL RETIREMENT FUND NECESSARY TO HOLD THE FUND HARMLESS; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 1999.

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

Section 1. Section 22-11-21 NMSA 1978 (being Laws 1967, Chapter 16, Section 144, as amended) is amended to read:

"22-11-21. CONTRIBUTIONS--MEMBERS--LOCAL ADMINISTRATIVE UNITS.--

A. Except as provided in Subsection C of this section, each member shall make contributions to the fund according to the following schedule:

(1) through June 30, 2005, an amount equal to seven and six-tenths percent of the member's annual salary;

(2) from July 1, 2005 through June 30, 2006, an amount equal to seven and six hundred seventy-five thousandths percent of the member's annual salary;

(3) from July 1, 2006 through June 30, 2007, an amount equal to seven and seventy-five hundredths percent

of the member's annual salary;

(4) from July 1, 2007 through June 30, 2008, an amount equal to seven and eight hundred twenty-five thousandths percent of the member's annual salary; and

(5) on and after July 1, 2008, an amount equal to seven and nine-tenths percent of the member's annual salary.

B. Except as provided in Subsection C of this section, each local administrative unit shall make an annual contribution to the fund according to the following schedule:

(1) through June 30, 2005, a sum equal to eight and sixty-five hundredths percent of the annual salary of each member employed by the local administrative unit;

(2) from July 1, 2005 through June 30, 2006, a sum equal to nine and forty-hundredths percent of the annual salary of each member employed by the local administrative unit;

(3) from July 1, 2006 through June 30, 2007, a sum equal to ten and fifteen-hundredths percent of the annual salary of each member employed by the local administrative unit;

(4) from July 1, 2007 through June 30, 2008, a sum equal to ten and ninety-hundredths percent of the annual salary of each member employed by the local administrative unit;

(5) from July 1, 2008 through June 30, 2009, a sum equal to eleven and sixty-five hundredths percent of the annual salary of each member employed by the local administrative unit;

(6) from July 1, 2009 through June 30, 2010, a sum equal to twelve and four-tenths percent of the annual salary of each member employed by the local administrative unit;

(7) from July 1, 2010 through June 30, 2011, a sum equal to thirteen and fifteen-hundredths percent of the annual salary of each member employed by the local administrative unit; and

(8) on and after July 1, 2011, a sum equal to thirteen and nine-tenths percent of the annual salary of each member employed by the local administrative unit.

C. If, in a calendar year, the salary of a member, initially employed by a local administrative unit on or after July 1, 1996, equals the annual compensation limit set pursuant to Section 401(a)(17) of the Internal Revenue Code of 1986, as amended, then:

(1) for the remainder of that calendar year, no additional member contributions or local administrative unit contributions for that member shall be made pursuant to this section; provided that no member shall be denied service credit solely because contributions are not made by the member

or on behalf of the member pursuant to the provisions of this subsection; and

(2) the amount of the annual compensation limit shall be divided into four equal portions and, for purposes of attributing contributory employment and crediting service credit, each portion shall be attributable to one of the four quarters of the calendar year."

Section 2. Section 22-11-47 NMSA 1978 (being Laws 1991, Chapter 118, Section 5, as amended by Laws 1999, Chapter 261, Section 2 and also by Laws 1999, Chapter 274, Section 3) is amended to read:

"22-11-47. ALTERNATIVE RETIREMENT PLAN--ELECTION OF COVERAGE.--

A. Beginning October 1, 1991, any employee of the university of New Mexico, New Mexico state university, New Mexico institute of mining and technology, New Mexico highlands university, eastern New Mexico university or western New Mexico university who is eligible to become a participant may make within ninety days of that date an irrevocable election to participate in the alternative retirement plan. Beginning October 1, 1999, an employee of central New Mexico community college, Clovis community college, Luna community college, Mesalands community college, New Mexico junior college, northern New Mexico college, San Juan college or Santa Fe community college who is eligible to become a

participant may make an irrevocable election to participate in the alternative retirement plan within ninety days of the initial date. Thereafter, any employee who is eligible to become a participant may make within the first ninety days of employment with a qualifying state educational institution an irrevocable election to participate in the alternative retirement plan. Any employee who makes the irrevocable election shall become a participant the first day of the first pay period following the election. Any employee who fails to make the irrevocable election within ninety days of October 1, 1991 or October 1, 1999, whichever is applicable, or within the first ninety days of employment with a qualifying state educational institution shall become or remain a regular member if that employee is eligible to be a regular member.

B. Until the time an employee who is eligible to become a participant elects to participate in the alternative retirement plan, that employee shall be a regular member.

C. When an employee elects to become a participant, any employer and employee contributions made as a regular member shall be withdrawn from the fund and applied instead toward the alternative retirement plan as if the participant had been participating in the alternative retirement plan from the commencement of employment with the qualifying state educational institution.

CONTRIBUTIONS TO THE EDUCATIONAL RETIREMENT FUND--RESTORATION OF SERVICE CREDIT.--For each employee whose member contributions and local administrative unit contributions were incorrectly capped prior to July 1, 2008 because the employee's salary exceeded the annual compensation limit set pursuant to Section 401(a)(17) of the Internal Revenue Code of 1986, as amended:

A. the educational retirement board and the applicable local administrative unit shall jointly determine the amount of member contributions and local administrative unit contributions owed but not paid;

B. the local administrative unit shall deposit into the educational retirement fund the total amount determined pursuant to Subsection A of this section; and

C. upon the deposit pursuant to Subsection B of this section, the educational retirement board shall restore to the member all of the service credit otherwise earned by the member, but not previously credited because of the failure to make contributions, for service during the calendar years in which the contributions were incorrectly capped.

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2008. _____