

HOUSE APPROPRIATIONS AND FINANCE COMMITTEE SUBSTITUTE FOR
HOUSE BILL 360

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO EDUCATIONAL RETIREMENT; RAISING THE SALARY THRESHOLD FOR CONTRIBUTION AMOUNTS; CHANGING THE TERMS OF RETIREMENT ELIGIBILITY AND THE CALCULATION OF BENEFITS FOR CERTAIN MEMBERS; CHANGING THE TERMS GOVERNING RETIRED MEMBERS WHO RETURN TO EMPLOYMENT WITH AN EDUCATIONAL RETIREMENT BOARD EMPLOYER; INCREASING THE CONTRIBUTIONS OF EDUCATIONAL RETIREMENT BOARD-COVERED EMPLOYERS; CLARIFYING THAT SUBSTITUTE TEACHERS ARE EDUCATIONAL RETIREMENT BOARD-COVERED MEMBERS.

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

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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 D of this section, for a member whose annual salary is greater than ~~[twenty thousand dollars (\$20,000)]~~ twenty-four thousand dollars (\$24,000), the member shall make contributions to the fund ~~[according to the following schedule:~~

~~(1) from July 1, 2013 through June 30, 2014, the member contribution rate shall be ten and one-tenth percent of the member's annual salary; and~~

~~(2) on and after July 1, 2014]~~ at the [member contribution] rate [shall be] of ten and seven-tenths percent of the member's annual salary.

B. ~~[On and after July 1, 2008]~~ For a member whose annual salary is ~~[twenty thousand dollars (\$20,000)]~~ twenty-four thousand dollars (\$24,000) or less, the member ~~[contribution]~~ shall make contributions to the fund at the rate [shall be] of seven and nine-tenths percent of the member's annual salary.

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

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~~[(1) from July 1, 2013 through June 30, 2014, a sum equal to thirteen and fifteen-hundredths percent of the annual salary of each member employed by the local administrative unit; and~~

~~(2) on and after July 1, 2014, a sum equal to thirteen and nine-tenths percent of the annual salary of each member employed by the local administrative unit;]~~

SFC→~~(1) from July 1, 2019 through June 30, 2020~~←SFC SFC→on and after July 1, 2019←SFC, at the rate of fourteen and SFC→~~four-tenths~~←SFC SFC→~~fifteen-hundredths~~←SFC percent of the annual salary of each member employed by the local administrative unit SFC→;

~~(2) from July 1, 2020 through June 30, 2021, at the rate of fifteen and nine-tenths percent of the annual salary of each member employed by the local administrative unit; and~~

~~(3) on and after July 1, 2021, at the rate of sixteen and nine-tenths percent of the annual salary of each member employed by the local administrative unit~~←SFC.

D. 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

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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. A new section of the Educational Retirement Act, Section 22-11-23.3 NMSA 1978, is enacted to read:

"22-11-23.3. [NEW MATERIAL] RETIREMENT ELIGIBILITY-- INITIAL MEMBERSHIP ON OR AFTER JULY 1, 2019.--A member who initially became a member on or after July 1, 2019 or a member who was a member before July 1, 2019 and had, before that date, been refunded all member contributions in accordance with Subsection A of Section 22-11-15 NMSA 1978 and had not restored all refunded contributions and interest before July 1, 2019, is eligible for retirement benefits when:

A. the member is any age and has thirty or more years of earned service credit;

B. the member is at least sixty-seven years of age and has five or more years of earned service credit; or

C. the sum of the member's age and years of earned service credit equals at least eighty."

SECTION 3. Section 22-11-25.1 NMSA 1978 (being Laws 2001, .214621.3

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Chapter 283, Section 2, as amended) is amended to read:

"22-11-25.1. RETURN TO EMPLOYMENT--BENEFITS [CONTINUED]--
[ADMINISTRATIVE UNIT] CONTRIBUTIONS.--

A. Except as otherwise provided in Subsections B and F of this section, [~~beginning January 1, 2002 and continuing~~] until January 1, 2022, a retired member [~~may begin~~] who begins employment [~~at~~] with a local administrative unit [~~and shall not be~~] at a level greater than one-quarter full-time employee, regardless of salary level, is required to suspend the member's retirement benefits [~~if~~] until the end of that employment unless the member has not rendered service to a local administrative unit for at least twelve consecutive months after the date of retirement. [~~If the retired member returns to employment without first completing twelve consecutive months of retirement, the retired member shall remove himself or herself from retirement.~~]

B. Until January 1, 2022, a retired member who [~~was~~] retired on or before January 1, 2001, [~~and~~] has not [~~since~~] suspended or been required to suspend retirement benefits pursuant to the Educational Retirement Act [~~may, at any time prior to January 1, 2022, return~~] and returns to employment [~~for~~] with a local administrative unit [~~and shall not be~~] is not required to suspend the member's retirement benefits.

C. A retired member who returns to employment [~~during retirement pursuant to Subsection A, B or F of~~] with a local administrative unit in accordance with this section is entitled [~~to continue~~] to receive retirement benefits during

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that employment but is not entitled to acquire or purchase service credit [~~or to acquire or purchase service credit in the future for the period of the retired member's reemployment with a local administrative unit~~] for that employment.

D. A retired member [~~shall not be eligible to~~] may return to employment [~~pursuant to Subsection A, B or F of this section unless~~] with a local administrative unit only if the member submits an application to return to work, on a form prescribed by the board, [has been submitted to, and approved by] the board approves the application and the applicant [has complied] complies with [such] other application rules [as] promulgated by the board.

E. A retired member who returns to employment [~~pursuant to Subsection A, B or F of this section~~] SFC→pursuant to Subsection A, B or F of this section←SFC SFC→in any capacity with a local administrative unit←SFC shall [pay] make nonrefundable contributions to the fund [~~an amount equal to the member contributions that~~] as would be required [~~pursuant to~~] by Section 22-11-21 NMSA 1978 if the retired member [~~was~~] were a non-retired employee. [~~and~~] The local administrative unit employing the retired member shall [~~pay to the fund an amount equal to the local administrative unit~~] likewise make contributions [that] as would be required [~~pursuant to~~] by that section. [~~Payments made by a retired member pursuant to this subsection shall not be refunded.~~] SFC→In addition, on and

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after July 1, 2020, a retired member who has returned to employment at a level of one-fourth or less full-time employee, regardless of salary level, shall make nonrefundable contributions to the fund as would be required by Section 22-11-21 NMSA 1978 if the retired member were a non-retired employee. The local administrative unit employing the retired member shall likewise make contributions as would be required by that section. ←SFC

F. [~~Beginning July 1, 2003 and continuing~~] Until January 1, 2022, a retired member who retired on or before January 1, 2001, who [~~subsequently voluntarily~~] suspended or was required to suspend retirement benefits [~~and who has not rendered service to a local administrative unit for at least ninety days, may begin employment at a local administrative unit without suspending~~] under the Educational Retirement Act is not required to suspend the member's retirement benefits if the retired member [~~was not employed by~~] has not rendered service to a local administrative unit for an additional twelve or more consecutive months, not including any part of a summer or other scheduled break or vacation period, after the initial date of [~~the~~] retirement [~~provided that the ninety-day period shall not include any part of a summer or other scheduled break or vacation period~~].

G. [~~Both the~~] A retired member who returns to employment [~~and the~~] with a local administrative unit [~~that employs the retired member~~] shall make contributions to the retiree health care fund during the period of that employment and in the amount specified in [~~Subsections A and B of~~] Section

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10-7C-15 NMSA 1978. The local administrative unit employing the retired member shall likewise make contributions during the period of that employment and in the amount specified in that section.

H. As used in [~~Subsections A and F of~~] this section:

(1) "rendered service" [~~to a local administrative unit~~] includes employment [~~by a local administrative unit~~], whether full or part time; substitute teaching; voluntarily performing duties [~~for a local administrative unit~~] that would otherwise be, or in the past have been, performed by a paid employee or independent contractor; [~~or~~] and performing duties [~~for a local administrative unit~~] as an independent contractor or an employee of an independent contractor; and

(2) "local administrative unit" includes any entity incorporated, formed or otherwise organized by, or subject to the control of, a local administrative unit, regardless of whether [~~or not~~] the entity is created for profit or nonprofit purposes."

SECTION 4. Section 22-11-25.2 NMSA 1978 (being Laws 2003, Chapter 248, Section 1) is amended to read:

"22-11-25.2. PERSONS RECEIVING RETIREMENT BENEFITS PURSUANT TO THE PUBLIC EMPLOYEES RETIREMENT ACT.--

A. An employee who is retired pursuant to the

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Public Employees Retirement Act and who has not suspended retirement benefits received pursuant to that act shall ~~[not]~~ make contributions to the fund as ~~[otherwise]~~ required ~~[in]~~ by the Educational Retirement Act. A local administrative unit that employs such a retiree likewise shall make contributions to the fund as required by that act.

B. An employee hired prior to July 1, 2019 by a local administrative unit SFC→~~that is a public post-secondary educational institution and who is hired~~←SFC as a police officer certified pursuant to the Law Enforcement Training Act, who is retired pursuant to the Public Employees Retirement Act and who has not suspended retirement benefits received pursuant to that act, shall not make contributions to the fund so long as the employee remains working as a certified police officer. The local administrative unit that hired the certified police officer shall make contributions to the fund pursuant to the Educational Retirement Act.

~~[B.]~~ C. An employee who ~~[continues to receive]~~ receives retirement benefits pursuant to the Public Employees Retirement Act ~~[and who does not make contributions to the fund]~~ is not entitled to acquire or purchase service credit ~~[or to acquire or purchase service credit in the future]~~ for the period of employment with a local administrative unit.

~~[C. Nothing in this section shall affect the obligation of a local administrative unit to make contributions to the fund as required in the Educational Retirement Act.]"~~

SECTION 5. Section 22-11-30 NMSA 1978 (being Laws 1967, Chapter 16, Section 153, as amended) is amended to read:

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"22-11-30. RETIREMENT BENEFITS--REDUCTIONS.--

A. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or before June 30, 1967 shall be paid monthly and shall be one-twelfth of a sum equal to one and one-half percent of the first four thousand dollars (\$4,000) of the member's average annual salary and one percent of the remainder of the member's average annual salary multiplied by the number of years of the member's total service credit.

B. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or after July 1, 1967 but on or before June 30, 1971 shall be paid monthly and shall be one-twelfth of a sum equal to one and one-half percent of the first six thousand six hundred dollars (\$6,600) of the member's average annual salary and one percent of the remainder of the member's average annual salary multiplied by the number of years of the member's total service credit.

C. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or after July 1, 1971 but on or before June 30, 1974 shall be paid monthly and shall be one-twelfth of a sum equal to one and one-half percent of the member's average annual salary multiplied by the number of years of the member's total service credit.

D. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or before

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June 30, 1974 but returning to employment on or after July 1, 1974 for a cumulation of one or more years shall be computed pursuant to Subsection E of this section. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or before June 30, 1974 but returning to employment on or after July 1, 1974 for a cumulation of less than one year shall be computed pursuant to Subsection A of this section if the member's date of last retirement was on or before June 30, 1967 or pursuant to Subsection B of this section if the member's date of last retirement was on or after July 1, 1967 but not later than June 30, 1971 or pursuant to Subsection C of this section if the member's date of last retirement was on or after July 1, 1971 but not later than June 30, 1974.

E. Retirement benefits for a member age sixty or over, retired pursuant to the Educational Retirement Act on or after July 1, 1974 but not later than June 30, 1987, shall be paid monthly and shall be one-twelfth of a sum equal to:

(1) one and one-half percent of the member's average annual salary multiplied by the number of years of service credit for:

(a) prior employment; and
(b) allowed service credit for service performed prior to July 1, 1957, except United States military service credit purchased pursuant to Paragraph (3) of Subsection A of Section 22-11-34 NMSA 1978; plus

(2) two percent of the member's average annual salary multiplied by the number of years of service credit for:

(a) contributory employment;

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(b) allowed service credit for service performed after July 1, 1957; and

(c) United States military service credit for service performed prior to July 1, 1957 and purchased pursuant to Paragraph (3) of Subsection A of Section 22-11-34 NMSA 1978.

F. Retirement benefits for a member age sixty or over, retired pursuant to the Educational Retirement Act on or after July 1, 1987 but not later than June 30, 1991, shall be paid monthly and shall be one-twelfth of a sum equal to two and fifteen-hundredths percent of the member's average annual salary multiplied by the number of years of the member's total service credit; provided that this subsection shall not apply to any member who was retired in any of the four quarters ending on June 30, 1987 without having accumulated not less than 1.0 years earned service credit after June 30, 1987.

G. Retirement benefits for a member who retires pursuant to Section 22-11-23 NMSA 1978 on or after July 1, 1991 shall be paid monthly and shall be one-twelfth of a sum equal to two and thirty-five hundredths percent of the member's average annual salary multiplied by the number of years of the member's total service credit; provided that:

(1) the benefit for a member who retires pursuant to Paragraph (3) of Subsection A of Section 22-11-23 NMSA 1978 shall be reduced by:

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(a) six-tenths percent for each one-fourth, or portion thereof, year that retirement occurs prior to the member attaining the age of sixty years but after the member attains the age of fifty-five years; and

(b) one and eight-tenths percent for each one-fourth, or portion thereof, year that retirement occurs prior to the member attaining the age of fifty-five years;

(2) the benefit formula provided in this subsection shall not apply to any member who was retired in any of the four consecutive quarters ending on June 30, 1991 without having accumulated at least one year of earned service credit beginning on or after July 1, 1991; and

(3) a member shall be subject to the provisions of Paragraph (1) of this subsection as they existed at the beginning of the member's last cumulated four quarters of earned service credit, regardless of later amendment.

H. Retirement benefits for a member who retires pursuant to Section 22-11-23.1 NMSA 1978 shall be paid monthly and shall be one-twelfth of a sum equal to two and thirty-five hundredths percent of the member's average annual salary multiplied by the number of years of the member's total service credit; provided that:

(1) the benefit for a member who retires pursuant to Paragraph (3) of Subsection A of Section 22-11-23.1 NMSA 1978 shall be reduced by:

(a) six-tenths percent for each one-fourth, or portion thereof, year that retirement occurs prior

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to the member attaining the age of sixty-five years but after the member attains the age of sixty years; and

(b) one and eight-tenths percent for each one-fourth, or portion thereof, year that retirement occurs prior to the member attaining the age of sixty years; and

(2) a member shall be subject to the provisions of Paragraph (1) of this subsection as they existed at the beginning of the member's last cumulated four quarters of earned service credit, regardless of later amendment.

I. Retirement benefits for a member who retires pursuant to Section 22-11-23.2 NMSA 1978 shall be paid monthly and shall be one-twelfth of a sum equal to two and thirty-five hundredths percent of the member's average annual salary multiplied by the number of years of the member's total service credit; provided that:

(1) the benefit for a member retiring pursuant to Paragraph (3) of Subsection A of Section 22-11-23.2 NMSA 1978 shall be reduced by:

(a) six-tenths percent for each one-fourth, or portion thereof, year that retirement occurs prior to the member attaining the age of sixty-five years but after the member attains the age of sixty years; and

(b) one and eight-tenths percent for each one-fourth, or portion thereof, year that retirement

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occurs prior to the member attaining the age of sixty years;
and

(2) a member shall be subject to the provisions of Paragraph (1) of this subsection as they existed at the beginning of the member's last cumulated four quarters of earned service credit, regardless of later amendment.

J. Retirement benefits for a member who retires in accordance with Section 22-11-23.3 NMSA 1978 shall be paid monthly and:

(1) in an amount equal to one-twelfth of the sum of the following:

(a) for the first ten years of the member's service credit, one and thirty-five hundredths percent of the member's average annual salary multiplied by the member's years of service credit between one-fourth of a year and ten years;

(b) for that portion of the member's service credit earned after ten years of service credit and through twenty years of service credit, two and thirty-five hundredths percent of the member's average annual salary multiplied by the member's years of service credit between ten and twenty years;

(c) for that portion of the member's service credit earned after twenty years of service credit and through thirty years of service credit, three and thirty-five hundredths percent of the members's average annual salary multiplied by the member's years of service credit between twenty and thirty years; and

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(d) for that portion of the member's service credit earned after thirty years of service credit, two and four-tenths percent of the member's average annual salary multiplied by the member's years of service credit over thirty years; or

(2) if the member retires in accordance with:

(a) Subsection A of Section 22-11-23.3 NMSA 1978 and is under fifty-eight years of age, in an amount equal to the result determined under Paragraph (1) of this subsection, but reduced to the actuarial equivalent, based on what is at the time of the member's retirement the most current set of actuarial factors determined by the board, of the benefit the member would receive if the member had retired at fifty-eight years of age;

(b) Subsection C of Section 22-11-23.3 NMSA 1978 and is sixty years of age or older and under sixty-five, in an amount equal to the result determined under Paragraph (1) of this subsection, but reduced by six-tenths percent for each one-fourth, or portion thereof, year before the member reaches age sixty-five; or

(c) Subsection C of Section 22-11-23.3 NMSA 1978 and is younger than sixty years of age, in an amount equal to one and eight-tenths percent for each one-fourth, or portion thereof, year before the member reaches sixty years of age.

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[J.] K. In determining a member's average annual salary [pursuant to] for purposes of this section:

(1) the data set shall [be computed on the basis] consist of the annual salary of each of the last five years, [for which contribution was made] or [upon the basis of] any consecutive five years, for which contribution was made by the member, whichever [is] produces a higher [provided, however, that] result; and

(2) lump-sum payments made after July 1, 2010 of accrued sick leave or annual leave shall be excluded from the calculation [of salary].

L. On and after July 1, 2019, if the member's average annual salary is greater than sixty thousand dollars (\$60,000):

(1) the salary in a first twelve-month interval that occurs beginning July 1, 2019 or thereafter of the five-year period used to determine the average annual salary shall be adjusted to exclude any increase in salary in excess of thirty percent of the salary in the twelve consecutive months of service credit preceding the five-year period; and

(2) the salary in each of the four succeeding twelve-month intervals that occur beginning July 1, 2019 or thereafter of the five-year period, as adjusted to exclude any increase in salary in the twelve months preceding each such succeeding twelve-month interval that is in excess of the thirty-percent limitation provided in this subsection, shall be used to determine if the salary in that succeeding twelve-month

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interval exceeds the thirty-percent limitation and to adjust the salary to exclude any increase in excess of that limitation in determining the average annual salary.

M. On July 1, 2020 and on each July 1 thereafter, the salary threshold for applying the thirty-percent limitation provided for in Subsection L of this section shall be adjusted by applying an adjustment factor equal to the change in the consumer price index between the next preceding calendar year and the preceding calendar year if there is an increase in the consumer price index between the next preceding calendar year and the preceding calendar year.

~~K.]~~ N. Unless otherwise required by the [~~provisions of the~~] Internal Revenue Code of 1986, [~~members~~] a member shall begin receiving retirement benefits by age seventy years and six months, or upon termination of employment, whichever occurs later."

SECTION 6. Section 22-11-49 NMSA 1978 (being Laws 1991, Chapter 118, Section 7, as amended) is amended to read:

"22-11-49. ALTERNATIVE RETIREMENT PLAN--CONTRIBUTIONS.--

A. [~~Each~~] A participant shall contribute an amount equal to the [~~percent~~] percentage of the participant's salary that the participant would [~~have been~~] be required to contribute [~~as~~] if the participant were, instead, a regular member. The contribution shall be made [~~in the manner~~] as provided [~~for~~] by the board.

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B. [Each] A qualifying state educational institution shall contribute on behalf of each participant an amount of the participant's salary equal to the contribution that would [~~have been~~] be required of the employer if the participant [~~was~~] were, instead, a regular member. Of [~~the~~] that contribution [~~made by a qualifying state educational institution on behalf of a participant beginning October 1, 1991, or October 1, 1999, whichever is applicable~~], a sum equal to [~~three percent~~] SFC→the following percentage←SFC SFC→three and one-fourth percent←SFC of the annual salary of each participant shall be [~~contributed~~] paid to the fund, and the remainder of the contribution shall be paid to the alternative retirement plan as provided by the board SFC→;←SFC [~~provided, however, that~~] SFC→provided, however, that←SFC:

SFC→(1) for fiscal year:

(a) 2020, three and one-half percent;

(b) 2021, five percent; and

(c) 2022 and subsequent fiscal years,

six percent; or

(2) if,←SFC on July 1 following any report by

the actuary to the board that concludes that less than [~~three percent of the contributions made by a qualifying state educational institution on behalf of its participants~~] SFC→that

percentage←SFC SFC→three and one-fourth percent←SFC is

required to satisfy the unfunded actuarial liability attributable to the participation of the participants in the alternative retirement plan, [~~the three percent shall be reduced to~~] then the percentage [~~determined by~~] the actuary

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determines is the minimum required to satisfy that liability.

C. Contributions required by [~~the provisions of~~] this section may be made by a reduction in salary or by a public employer pick-up [~~pursuant to any applicable provision of~~] as provided in the Internal Revenue Code of 1986, as amended."

SECTION 7. A new section of the Educational Retirement Act is enacted to read:

"[NEW MATERIAL] SUBSTITUTE TEACHERS--MEMBERSHIP STATUS.--A substitute teacher who works at a level SFC→~~equivalent to~~←SFC SFC→~~greater than~~←SFC one-quarter full-time employee SFC→~~or higher~~←SFC and who otherwise meets the requirements of membership under the Educational Retirement Act is subject to that act as a regular member."

SFC→~~SECTION 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2019.~~←SFC

SFC→SECTION 8. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 1 through 6 of this act is July 1, 2019.

B. The effective date of the provisions of Section 7 of this act is July 1, 2020.←SFC

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