

SENATE BILL 42

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Mimi Stewart

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE AND THE  
INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

AN ACT

RELATING TO EDUCATIONAL RETIREMENT; INCREASING CERTAIN  
CONTRIBUTIONS TO THE EDUCATIONAL RETIREMENT FUND ~~H AFC~~;  
~~REQUIRING A REPORT~~ ~~H AFC~~ ; ~~SFC~~ ~~EXTENDING CERTAIN RETURN-TO-WORK~~  
~~PROVISIONS~~; ~~SFC~~ REPEALING LAWS 2019, CHAPTER 237, SECTION 18 TO  
CORRECT A TECHNICAL STATUTORY CONFLICT.

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 by Laws 2019, Chapter 237,

.218420.2AIC March 16, 2021 (3:20pm)

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Section 18 and by Laws 2019, Chapter 258, Section 1) 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-four thousand dollars (\$24,000), the member shall make contributions to the fund at the rate of ten and seven-tenths percent of the member's annual salary.

B. For a member whose annual salary is twenty-four thousand dollars (\$24,000) or less, the member shall make contributions to the fund at the rate 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 [~~on and after July 1, 2019, at the rate of fourteen and fifteen-hundredths percent of the annual salary of each member employed by the local administrative unit~~] according to the following schedule:

(1) from July 1, 2021 through June 30, 2022, at the rate of fifteen and fifteen-hundredths percent of the annual salary of each member employed by the local administrative unit; HAFc→and←HAFc

(2) HAFc→~~from July 1, 2022 through June 30, 2023~~←HAFc HAFc→on and after July 1, 2022←HAFc , at the rate of

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sixteen and fifteen-hundredths percent of the annual salary of each member employed by the local administrative unit

HAFC→;←HAFC HAFC→.←HAFC

~~HAFC→(3)← from July 1, 2023 through June 30, 2024, at the rate of seventeen and fifteen-hundredths percent of the annual salary of each member employed by the local administrative unit; and~~

~~(4)← on and after July 1, 2024, at the rate of eighteen and fifteen-hundredths percent of the annual salary of each member employed by the local administrative unit.←HAFC~~

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 solely because contributions are not made by the member or on behalf of the member pursuant to 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

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the four quarters of the calendar year."

SFC→SECTION 2. Section 22-11-25.1 NMSA 1978 (being Laws 2001, Chapter 283, Section 2, as amended) is amended to read:

"22-11-25.1. RETURN TO EMPLOYMENT--BENEFITS-- CONTRIBUTIONS.--

A. Except as otherwise provided in Subsections B, F and H of this section, until January 1, [2022] 2024, a retired member who begins employment with a local administrative unit at a level greater than one-quarter full-time employee, regardless of salary level, is required to suspend the member's retirement benefits 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.

B. Until January 1, [2022] 2024, a retired member who retired on or before January 1, 2001, has not suspended or been required to suspend retirement benefits pursuant to the Educational Retirement Act and returns to employment with a local administrative unit is not required to suspend the member's retirement benefits.

C. A retired member who returns to employment with a local administrative unit in accordance with this section is entitled to receive retirement benefits during that employment but is not entitled to acquire or purchase service credit for

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that employment.

D. A retired member may return to employment with a local administrative unit only if the member submits an application to return to work, on a form prescribed by the board, the board approves the application and the applicant complies with other application rules promulgated by the board.

E. A retired member who returns to employment pursuant to Subsection A, B or F of this section 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.

F. Until January 1, [2022] 2024, a retired member who retired on or before January 1, 2001, who suspended or was required to suspend retirement benefits under the Educational Retirement Act is not required to suspend the member's retirement benefits if the retired member 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 retirement.

G. A retired member who returns to employment with a local administrative unit shall make contributions to the

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retiree health care fund during the period of that employment and in the amount specified in Section 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. A retired member may return to employment with a local administrative unit without a suspension of the member's retirement benefits; provided that:

(1) the retired member has not rendered service to a local administrative unit for at least ninety days after the date of retirement;

(2) prior to the date of retirement, or within ninety days after the date of retirement, the retired member did not enter into any formal or informal agreement with a local administrative unit or with any contractor providing services to a local administrative unit to return to employment; and

(3) the retired member earns a salary of less than fifteen thousand dollars (\$15,000) per year.

I. As used in this section:

(1) "rendered service" includes employment, whether full or part time; substitute teaching; voluntarily performing duties that would otherwise be, or in the past have been, performed by a paid employee or independent contractor;

and performing duties 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 the entity is created for profit or nonprofit purposes."←SFC

SECTION SFC→2.←SFC SFC→3.←SFC 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. A participant shall contribute an amount equal to the percentage of the participant's salary that the participant would be required to contribute if the participant were, instead, a regular member. The contribution shall be made as provided by the board.

B. 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 be required of the employer if the participant were, instead, a regular member. Of that contribution, a sum equal to [~~three and one-fourth percent~~] the following percentage of the annual salary of each participant shall be paid to the fund, and the remainder of the contribution shall be paid to the alternative retirement plan as provided by the board [~~provided, however,~~

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that]:

(1) from July 1, 2021 through June 30, 2022,  
four and one-fourth percent; HAFC→and←HAFC

(2) HAFC→~~from July 1, 2022 through June 30,~~  
~~2023~~←HAFC HAFC→on and after July 1, 2022←HAFC , five and one-  
fourth percent; HAFC→or←HAFC

HAFC→~~(3) from July 1, 2023 through June 30,~~  
~~2024, six and one-fourth percent; and~~

~~(4) on and after July 1, 2024, seven and one-~~  
~~fourth percent; or~~←HAFC

HAFC→~~(5)~~←HAFC HAFC→~~(3)~~←HAFC if, on July 1  
following any report by the actuary to the board that concludes  
that less than [~~three and one-fourth percent~~] that percentage  
is required to satisfy the unfunded actuarial liability  
attributable to the participation of the participants in the  
alternative retirement plan, then the percentage the actuary  
determines is the minimum required to satisfy that liability.

C. Contributions required by this section may be  
made by a reduction in salary or by a public employer pick-up  
as provided in the Internal Revenue Code of 1986, as amended."

HAFC→**SECTION 4. TEMPORARY PROVISION--SOLVENCY REPORT.--**  
**Before July 1, 2022, the educational retirement board shall**  
**report to the department of finance and administration, any**  
**other affected agency, the legislative finance**  
**committee, legislative education study committee and any other**

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appropriate interim legislative committees on fund status and options to improve pension plan solvency without additional contributions from public employers. ←H AFC

SECTION SFC → 3. ← SFC H AFC → SFC → 4. ← SFC ← H AFC H AFC → 5. ← H AFC  
REPEAL.--Laws 2019, Chapter 237, Section 18 is repealed.

SECTION SFC → 4. ← SFC H AFC → SFC → 5. ← SFC ← H AFC H AFC → 6. ← H AFC  
EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2021.