

HOUSE BILL 304

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

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AN ACT

RELATING TO PUBLIC PENSIONS; ALLOWING A SUPPLEMENTAL NEEDS
TRUST TO BE NAMED AS A SURVIVOR OR REFUND BENEFICIARY PURSUANT
TO THE PUBLIC EMPLOYEES RETIREMENT ACT, THE JUDICIAL RETIREMENT
ACT, THE MAGISTRATE RETIREMENT ACT AND THE EDUCATIONAL
RETIREMENT ACT; CLARIFYING CERTAIN DATES OF PAYMENT IN THE
EVENT OF THE DEATH OR TERMINATION OF A SURVIVOR BENEFICIARY.

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

SECTION 1. Section 10-11-2 NMSA 1978 (being Laws 1987,
Chapter 253, Section 2, as amended by Laws 2021, Chapter 36,
Section 1 and by Laws 2021, Chapter 38, Section 1) is amended
to read:

"10-11-2. DEFINITIONS.--As used in the Public Employees
Retirement Act:

A. "accumulated member contributions" means the

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1 amounts deducted from the salary of a member and credited to
2 the member's individual account, together with interest, if
3 any, credited to that account;

4 B. "affiliated public employer" means the state and
5 any public employer affiliated with the association as provided
6 in the Public Employees Retirement Act, but does not include an
7 employer pursuant to the Magistrate Retirement Act, the
8 Judicial Retirement Act or the Educational Retirement Act;

9 C. "association" means the public employees
10 retirement association established under the Public Employees
11 Retirement Act;

12 D. "coverage plan funded ratio" means the ratio of
13 the actuarial value of the assets of a coverage plan to the
14 actuarial accrued liability of the association for payments
15 from the coverage plan, as determined by the association's
16 actuaries;

17 E. "disability retired member" means a retired
18 member who is receiving a pension pursuant to the disability
19 retirement provisions of the Public Employees Retirement Act;

20 F. "disability retirement pension" means the
21 pension paid pursuant to the disability retirement provisions
22 of the Public Employees Retirement Act;

23 G. "educational retirement system" means that
24 retirement system provided for in the Educational Retirement
25 Act;

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1 H. "employee" means any employee of an affiliated
2 public employer;

3 I. "federal social security program" means that
4 program or those programs created and administered pursuant to
5 the act of congress approved August 14, 1935, Chapter 531, 49
6 Stat. 620, as that act may be amended;

7 J. "final average salary" means the final average
8 salary calculated in accordance with the provisions of the
9 applicable coverage plan;

10 K. "form of payment" means the applicable form of
11 payment of a pension provided for in Section 10-11-117 NMSA
12 1978;

13 L. "former member" means a person who was
14 previously employed by an affiliated public employer, who has
15 terminated that employment and who has received a refund of
16 member contributions;

17 M. "fund" means the funds included under the Public
18 Employees Retirement Act;

19 N. "member" means a currently employed,
20 contributing employee of an affiliated public employer, or a
21 person who has been but is not currently employed by an
22 affiliated public employer, who has not retired and who has not
23 received a refund of member contributions; "member" also
24 includes the following:

25 (1) "adult correctional officer member" means

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1 a member who is employed as an adult correctional officer or an
2 adult correctional officer specialist by a state correctional
3 facility of the corrections department or its successor agency;

4 (2) "adult probation and parole officer
5 member" means a member who is employed as a probation and
6 parole officer by the corrections department or its successor
7 agency;

8 (3) "juvenile correctional officer member"
9 means a member who is employed as a juvenile correctional
10 officer by the children, youth and families department or its
11 successor agency;

12 (4) "juvenile probation and parole officer
13 member" means a member who is employed as a probation and
14 parole officer by the children, youth and families department
15 or its successor agency;

16 (5) "municipal detention officer member" means
17 a member who is employed by an affiliated public employer other
18 than the state and who has inmate custodial responsibilities at
19 a facility used for the confinement of persons charged with or
20 convicted of a violation of a law or ordinance;

21 (6) "municipal fire member" means any member
22 who is employed as a full-time nonvolunteer firefighter by an
23 affiliated public employer and who has taken the oath
24 prescribed for firefighters;

25 (7) "municipal police member" means any member

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1 who is employed as a police officer by an affiliated public
2 employer, other than the state, and who has taken the oath
3 prescribed for police officers; and

4 (8) "state police member" means a member who
5 is an officer of the New Mexico state police division and who
6 has taken the oath prescribed for such officers and shall
7 include a member who is an officer of the New Mexico state
8 police division and who was certified and commissioned in the
9 former motor transportation division or the former special
10 investigations division of the department of public safety;

11 O. "membership" means membership in the
12 association;

13 P. "pension" means a series of monthly payments to
14 a retired member or survivor beneficiary as provided in the
15 Public Employees Retirement Act;

16 Q. "public employer" means the state, any
17 municipality, city, county, metropolitan arroyo flood control
18 authority, economic development district, regional housing
19 authority, soil and water conservation district, entity created
20 pursuant to a joint powers agreement, council of government,
21 conservancy district, irrigation district, water and sanitation
22 district, water district and metropolitan water board,
23 including the boards, departments, bureaus and agencies of a
24 public employer, so long as these entities fall within the
25 meaning of governmental plan as that term is used in Section

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1 414(d) of the Internal Revenue Code of 1986, as amended;

2 R. "refund beneficiary" means a supplemental needs
3 trust or a natural person designated by the member, in writing,
4 in the form prescribed by the association, as the trust or
5 person ~~[who]~~ that would be refunded the member's accumulated
6 member contributions payable if the member dies and no survivor
7 pension is payable or ~~[who]~~ that would receive the difference
8 between pension paid and accumulated member contributions if
9 the retired member dies before receiving in pension payments
10 the amount of the accumulated member contributions;

11 S. "retire" means to:

12 (1) terminate employment with all employers
13 covered by any state system or the educational retirement
14 system; and

15 (2) receive a pension from a state system or
16 the educational retirement system;

17 T. "retired member" means a person who has met all
18 requirements for retirement and who is receiving a pension from
19 the fund;

20 U. "retirement board" means the retirement board
21 provided for in the Public Employees Retirement Act;

22 V. "salary" means the base salary or wages paid a
23 member, including longevity pay, for personal services rendered
24 an affiliated public employer. "Salary" shall not include
25 overtime pay, unless the overtime payment is required for a

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1 regular scheduled tour of duty as set forth in Section 207(k)
2 of Title 29 of the United States Code and is made on the
3 regular payroll for the period represented by that payment,
4 allowances for housing, clothing, equipment or travel, payments
5 for unused sick leave, unless the unused sick leave payment is
6 made through continuation of the member on the regular payroll
7 for the period represented by that payment, and any other form
8 of remuneration not specifically designated by law as included
9 in salary for Public Employees Retirement Act purposes. Salary
10 in excess of the limitations set forth in Section 401(a)(17) of
11 the Internal Revenue Code of 1986, as amended, shall be
12 disregarded. The limitation on compensation for eligible
13 employees shall not be less than the amount that was allowed to
14 be taken into account under the state retirement system acts in
15 effect on July 1, 1993. For purposes of this subsection,
16 "eligible employee" means an individual who was a member of a
17 state system before the first plan year beginning after
18 December 31, 1995;

19 W. "state system" means the retirement programs
20 provided for in the Public Employees Retirement Act, the
21 Magistrate Retirement Act and the Judicial Retirement Act;

22 X. "state retirement system acts" means
23 collectively the Public Employees Retirement Act, the
24 Magistrate Retirement Act, the Judicial Retirement Act and the
25 Volunteer Firefighters Retirement Act; ~~[and]~~

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1 Y. "supplemental needs trust" means a valid third-
2 party irrevocable trust that is authorized by the federal
3 Social Security Act, as amended, for the sole benefit and
4 lifetime of a trust beneficiary who is disabled and is created
5 for the purpose of providing, accounting for or receiving
6 supplemental assets that do not supplant, impair or diminish
7 any benefits or assistance of any federal, state or other
8 government entity for which the beneficiary would otherwise be
9 eligible; and

10 [~~Y.~~] Z. "survivor beneficiary" means a supplemental
11 needs trust or a natural person [who] that receives a pension
12 or [who] that has been designated to be paid a pension as a
13 result of the death of a member or retired member."

14 SECTION 2. Section 10-11-116 NMSA 1978 (being Laws 1987,
15 Chapter 253, Section 116, as amended) is amended to read:

16 "10-11-116. ELECTION OF FORM OF PAYMENT OF A PENSION.--

17 A. Except as otherwise provided in Section
18 10-11-136 NMSA 1978, a member may elect to have pension
19 payments made under any one of the forms of payment provided in
20 Section 10-11-117 NMSA 1978. The election of form of payment
21 and naming of survivor beneficiary shall be made on a form
22 furnished by and filed with the association prior to the date
23 the first pension payment is made. An election of form of
24 payment may not be changed after the date the first pension
25 payment is made. If the member is married, the association

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1 shall obtain the consent of the member's spouse to the election
2 of the form of payment and any designation of survivor
3 beneficiary before the election or designation is effective.
4 Except as provided in Subsection C, D or E of this section, a
5 named survivor beneficiary may not be changed after the date
6 the first pension payment is made if form of payment B or C is
7 elected. Except as otherwise provided in Section 10-11-136
8 NMSA 1978, payment shall be made:

9 (1) under form of payment A if the member is
10 not married at the time of retirement and if there is not a
11 timely election of another form of payment; or

12 (2) under form of payment C with the member's
13 spouse as survivor beneficiary if the member is married at the
14 time of retirement and there is not a timely election of
15 another form of payment.

16 B. The amount of pension under forms of payment B,
17 C and D shall have the same actuarial present value, computed
18 as of the effective date of the pension, as the amount of
19 pension under form of payment A.

20 C. A retired member who is being paid a pension
21 under form of payment B or C with the member's spouse as the
22 designated survivor beneficiary may:

23 (1) exercise a one-time irrevocable option to
24 designate another ~~[individual as the]~~ survivor beneficiary and
25 may select either form of payment B or form of payment C;

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1 provided that:

2 (a) the amount of the pension under the
3 form of payment selected shall be recalculated and have the
4 same actuarial present value, computed on the effective date of
5 the designation, as the amount of pension under form of payment
6 A;

7 (b) the member's spouse provides a
8 notarized, written statement expressing the spouse's consent to
9 relinquish the designation as a survivor beneficiary; and

10 (c) the retired member shall pay one
11 hundred dollars (\$100) to the retirement board to defray the
12 cost of determining the new pension amount;

13 (2) upon becoming divorced from the named
14 spouse and subject to an order of a court as provided for in
15 Section 10-11-136 NMSA 1978, elect to have future payments made
16 under form of payment A; or

17 (3) upon becoming divorced from the named
18 spouse, exercise a one-time irrevocable option to designate
19 another ~~[individual as the]~~ survivor beneficiary and may select
20 either form of payment B or form of payment C; provided that:

21 (a) the amount of the pension under the
22 form of payment selected shall be recalculated and have the
23 same actuarial present value, computed on the effective date of
24 the designation, as the amount of pension under form of payment
25 A;

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1 (b) the designation and the amount of
2 the pension shall be subject to a court order as provided for
3 in Section 10-11-136 NMSA 1978; and

4 (c) the retired member shall pay one
5 hundred dollars (\$100) to the retirement board to defray the
6 cost of determining the new pension amount.

7 D. A retired member who was previously being paid a
8 pension under form of payment B or C but, because of the death
9 of or divorce from the designated survivor beneficiary or in
10 the event that a supplemental needs trust is the designated
11 survivor beneficiary, the termination of that trust or the
12 death of or divorce from the beneficiary of that trust, is
13 currently receiving a pension under form of payment A may
14 exercise a one-time irrevocable option to designate another
15 [~~individual as the~~] survivor beneficiary and may select either
16 form of payment B or form of payment C; provided that:

17 (1) the amount of the pension under the form
18 of payment selected shall be recalculated and have the same
19 actuarial present value, computed on the effective date of the
20 designation, as the amount of pension under form of payment A;

21 (2) the designation and the amount of the
22 pension shall be subject to a court order as provided for in
23 Section 10-11-136 NMSA 1978; and

24 (3) the retired member shall pay one hundred
25 dollars (\$100) to the retirement board to defray the cost of

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1 determining the new pension amount.

2 E. A retired member who is being paid a pension
3 under form of payment B or C with a living or operating
4 designated survivor beneficiary other than the retired member's
5 spouse or former spouse or the supplemental needs trust of the
6 retired member's spouse or former spouse may exercise a one-
7 time irrevocable option to deselect the designated beneficiary
8 and elect to:

9 (1) designate another survivor beneficiary and
10 may select either form of payment B or form of payment C;
11 provided that:

12 (a) the amount of the pension under the
13 form of payment shall be recalculated and shall have the same
14 actuarial present value, computed as of the effective date of
15 the designation, as the amount of pension under form of payment
16 A; and

17 (b) the retired member shall pay one
18 hundred dollars (\$100) to the retirement board to defray the
19 cost of determining the new pension amount; or

20 (2) have future payments made under form of
21 payment A."

22 SECTION 3. Section 10-11-117 NMSA 1978 (being Laws 1987,
23 Chapter 253, Section 117, as amended) is amended to read:

24 "10-11-117. FORMS OF PAYMENT OF A PENSION.--

25 A. Straight life pension is form of payment A. The

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1 retired member is paid the pension for life under form of
2 payment A. All payments stop upon the death of the retired
3 member, except as provided by Subsection E of this section.
4 The amount of pension is determined in accordance with the
5 coverage plan applicable to the retired member.

6 B. Life payments with full continuation to one
7 survivor beneficiary is form of payment B. The retired member
8 is paid a reduced pension for life under form of payment B.
9 When the retired member dies, the designated survivor
10 beneficiary is paid the full amount of the reduced pension
11 until the death [~~Upon the association's receipt of proof of~~
12 ~~death of the designated survivor beneficiary~~] of the survivor
13 beneficiary or the death of the beneficiary of a supplemental
14 needs trust or the termination of that trust. If the
15 designated survivor beneficiary or the beneficiary of a
16 supplemental needs trust predeceases the retired member or if
17 the supplemental needs trust terminates while the retired
18 member is living, the amount of pension shall be changed to the
19 amount that would have been payable had the retired member
20 elected form of payment A.

21 C. Life payment with one-half continuation to one
22 survivor beneficiary is form of payment C. The retired member
23 is paid a reduced pension for life under form of payment C.
24 When the retired member dies, the designated survivor
25 beneficiary is paid one-half the amount of the reduced pension

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1 until the death of the survivor beneficiary or the death of the
2 beneficiary of a supplemental needs trust. If the designated
3 survivor beneficiary or the beneficiary of a supplemental needs
4 trust predeceases the retired member or the supplemental needs
5 trust terminates while the retired member is living, the amount
6 of pension shall be changed to the amount that would have been
7 payable had the retired member elected form of payment A.

8 D. Life payments with temporary survivor benefits
9 for children is form of payment D. The retired member is paid
10 a reduced pension for life under form of payment D. When the
11 retired member dies, each declared eligible child is paid a
12 share of the reduced pension until death or age twenty-five
13 years, whichever occurs first. The share is the share
14 specified in writing and filed with the association by the
15 retired member. If shares are not specified in writing and
16 filed with the association, each declared eligible child is
17 paid an equal share of the reduced pension. A redetermination
18 of shares shall be made when the pension of any child
19 terminates. An eligible child is a natural or adopted child of
20 the retired member who is under age twenty-five years. A
21 declared eligible child is an eligible child whose name has
22 been declared in writing and filed with the association by the
23 retired member at the time of election of form of payment D.
24 The amount of pension shall be changed to the amount of pension
25 that would have been payable had the retired member elected

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1 form of payment A upon there ceasing to be a declared eligible
2 child during the lifetime of the retired member.

3 E. If all pension payments permanently terminate
4 before there is paid an aggregate amount equal to the retired
5 member's accumulated member contributions at the time of
6 retirement, the difference between the amount of accumulated
7 member contributions and the aggregate amount of pension paid
8 shall be paid to the retired member's refund beneficiary. If
9 no refund beneficiary survives the retired member, the
10 difference shall be paid to the estate of the retired member."

11 SECTION 4. Section 10-11-124 NMSA 1978 (being Laws 1987,
12 Chapter 253, Section 124, as amended) is amended to read:

13 "10-11-124. MEMBER CONTRIBUTION FUND.--

14 A. The member contribution fund is the accounting
15 fund in which shall be accumulated contributions of members and
16 from which shall be made refunds and transfers of accumulated
17 member contributions as provided in the Public Employees
18 Retirement Act. Each affiliated public employer shall cause
19 the member contributions specified by the coverage plan
20 applicable to each of that affiliated public employer's members
21 to be deducted from the salary of each member. Each affiliated
22 public employer shall remit the deducted member contributions
23 to the association in accordance with the procedures and
24 schedules established by the association. The association may
25 assess an interest charge and a penalty charge on any

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1 remittance not made by its due date. Each member shall be
2 deemed to consent and agree to the deductions made and provided
3 for in this section by continuing employment with the
4 affiliated public employer. Contributions by members shall be
5 credited to the members' individual accounts in the member
6 contribution fund.

7 B. A member's accumulated contributions shall be
8 transferred to the retirement reserve fund if a pension becomes
9 payable upon the retirement or death of the member. If a
10 disability retirement pension is terminated for a reason other
11 than the death of the disability retired member before an
12 amount equal to the disability retired member's accumulated
13 member contributions has been paid, the unexpended balance of
14 the accumulated member contributions shall be transferred from
15 the retirement reserve fund to the former disability retired
16 member's individual account in the member contribution fund.

17 C. If a member terminates affiliated public
18 employment or is on leave of absence from an affiliated public
19 employer as a consequence of the entry into active duty with
20 the armed forces of the United States, the member may, with the
21 written consent of the member's spouse, if any, withdraw the
22 member's accumulated member contributions, upon making written
23 request in a form prescribed by the association. Upon written
24 request of the member in the form prescribed by the
25 association, a refund of member contributions may be made by a

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1 trustee-to-trustee transfer of the contributions from the
2 member contribution fund directly to another qualified plan as
3 allowed by the Internal Revenue Code of 1986. Withdrawal of
4 member contributions shall result in forfeiture of the service
5 credit accrued for the period during which the contributions
6 were made.

7 D. A member shall, upon commencement of membership,
8 designate a refund beneficiary who shall receive the refund of
9 the member contributions, plus interest if any, if the member
10 dies and no survivor pension is payable. If the member is
11 married at the time of designation, written spousal consent
12 shall be required if the designated refund beneficiary is other
13 than the spouse or a supplemental needs trust to which the
14 spouse is a beneficiary. Marriage subsequent to the
15 designation shall automatically revoke a previous designation,
16 and the spouse shall become the refund beneficiary unless or
17 until another designation is filed with the association.
18 Divorce subsequent to the designation shall automatically
19 revoke designation of the former spouse as refund beneficiary,
20 or the right of the former spouse to be refund beneficiary if
21 no designation has been filed, and the refund shall be paid to
22 the deceased member's estate unless the member filed a
23 designation of refund beneficiary subsequent to the divorce.
24 The refund shall be paid to the refund beneficiary named in the
25 most recent designation of refund beneficiary on file with the

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1 association unless that beneficiary is deceased or otherwise
2 terminated. If there is not a living or operating refund
3 beneficiary named in the most recent designation of refund
4 beneficiary on file with the association, the deceased member's
5 accumulated member contributions shall be paid to the estate of
6 the deceased member."

7 SECTION 5. Section 10-12B-2 NMSA 1978 (being Laws 1992,
8 Chapter 111, Section 2, as amended) is amended to read:

9 "10-12B-2. DEFINITIONS.--As used in the Judicial
10 Retirement Act:

11 A. "association" means the public employees
12 retirement association provided for in the Public Employees
13 Retirement Act;

14 B. "board" means the retirement board provided for
15 in the Public Employees Retirement Act;

16 C. "dependent child" means a natural or adopted
17 child who is physically or mentally incapable of financial
18 self-support, regardless of age;

19 D. "educational retirement system" means the
20 retirement system provided for in the Educational Retirement
21 Act;

22 E. "effective date of retirement" means the first
23 day of the month following the month in which the member met
24 all requirements for retirement;

25 F. "final average salary" means the amount that is
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1 one-sixtieth of the greatest aggregate amount of salary paid a
2 member for sixty consecutive, but not necessarily continuous,
3 months of service credit;

4 G. "former member" means a person no longer in
5 office who was previously covered pursuant to the provisions of
6 Sections 10-12-1 through 10-12-18 NMSA 1978, but who has not
7 retired pursuant to the provisions of the Judicial Retirement
8 Act and who has received a refund of member contributions
9 pursuant to the provisions of Sections 10-12B-1 through
10 10-12B-19 NMSA 1978;

11 H. "fund" means the judicial retirement fund;

12 I. "judge" means a judge of the metropolitan court,
13 district court or court of appeals of New Mexico;

14 J. "justice" means a justice of the supreme court
15 of New Mexico;

16 K. "member" means any judge or justice who is in
17 office and covered pursuant to the provisions of the Judicial
18 Retirement Act, or any person no longer in office who was
19 previously a judge or justice covered pursuant to the
20 provisions of the Judicial Retirement Act, who has not retired
21 and who has not received a refund of member contributions from
22 the fund;

23 L. "member contributions" means the amounts
24 deducted from the salary of a member and credited to the
25 member's individual account, together with interest, if any,

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1 credited thereto;

2 M. "minor child" means a natural or adopted child
3 who has not reached his eighteenth birthday and who has not
4 been emancipated by marriage or otherwise;

5 N. "pension" means a series of monthly payments to
6 a retired member or survivor beneficiary pursuant to the
7 provisions of the Judicial Retirement Act;

8 O. "refund beneficiary" means a supplemental needs
9 trust or a natural person designated by the member, in writing
10 in the form prescribed by the association, as the trust or
11 person [~~who~~] that would be refunded the member's accumulated
12 member contributions payable if the member dies and no survivor
13 pension is payable, or [~~who~~] that would receive the difference
14 between pension paid and accumulated member contributions if
15 the retired member dies before receiving in pension payments
16 the amount of the accumulated member contributions;

17 P. "retire" means to:

18 (1) terminate employment with all employers
19 covered by any state system or the educational retirement
20 system; and

21 (2) receive a pension from one state system or
22 the educational retirement system;

23 Q. "retired member" means a person who has met all
24 requirements for retirement and who is receiving a pension from
25 the fund;

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1 R. "salary" means the base salary or wages paid a
2 member, including longevity pay, for personal services
3 rendered; provided that salary does not include overtime pay;
4 allowances for housing, clothing, equipment or travel; payments
5 for unused sick leave, unless the unused sick leave payment is
6 made through continuation of the member on the regular payroll
7 for the period represented by that payment; and any other form
8 of remuneration not specifically designated by law as included
9 in salary pursuant to the provisions of the Judicial Retirement
10 Act;

11 S. "state system" means the retirement programs
12 provided pursuant to the provisions of the Public Employees
13 Retirement Act, the Magistrate Retirement Act and the Judicial
14 Retirement Act;

15 T. "supplemental needs trust" means a valid third-
16 party irrevocable trust that is authorized by the federal
17 Social Security Act, as amended, for the sole benefit and the
18 lifetime of a trust beneficiary who is disabled and is created
19 for the purpose of providing, accounting for or receiving
20 supplemental assets that do not supplant, impair or diminish
21 any benefits or assistance of any federal, state or other
22 government entity for which the beneficiary would otherwise be
23 eligible;

24 [~~T.~~] U. "surviving spouse" means the spouse to whom
25 the member was married at the time of the member's death;

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1 [~~U-~~] V. "survivor beneficiary" means a supplemental
2 needs trust or a natural person [~~who~~] that receives a pension
3 or [~~who~~] that has been designated to be paid a pension as a
4 result of the death of a member or retired member; and

5 [~~V-~~] W. "years of service" means a period of time
6 beginning on the date a person commences to hold office as a
7 judge or justice because of appointment or election and ending
8 on the date a person ceases to hold office as a judge or
9 justice because of expiration of the judge's or justice's term,
10 voluntary resignation, death or disability and shall include
11 any fractions of years of service."

12 SECTION 6. Section 10-12B-6 NMSA 1978 (being Laws 1992,
13 Chapter 111, Section 6, as amended) is amended to read:

14 "10-12B-6. REFUND OF CONTRIBUTIONS.--

15 A. If a member leaves office, the member may, with
16 the written consent of the member's spouse, if any, withdraw
17 the member's accumulated member contributions upon making
18 written request in a form prescribed by the association. Upon
19 written request of the member in the form prescribed by the
20 association, a refund of member contributions may be made by a
21 trustee-to-trustee transfer of the contributions from the
22 member contribution fund directly to another qualified plan as
23 allowed by the Internal Revenue Code of 1986. Withdrawal of
24 member contributions shall result in forfeiture of the service
25 credit accrued for the period during which the contributions

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1 were made.

2 B. A member shall, upon commencement of membership,
3 designate a refund beneficiary who shall receive the refund of
4 the member contributions, plus interest, if the member dies and
5 no survivor pension is payable. If the member is married at
6 the time of designation, written spousal consent shall be
7 required if the designated refund beneficiary is a person other
8 than the spouse or a supplemental needs trust to which the
9 spouse is a beneficiary. Marriage subsequent to the
10 designation shall automatically revoke a previous designation,
11 and the spouse shall become the refund beneficiary unless or
12 until another designation is filed with the association.
13 Divorce subsequent to the designation shall automatically
14 revoke designation of the former spouse as refund beneficiary
15 if no designation has been filed, and the refund shall be paid
16 to the deceased member's estate unless the member filed a
17 designation of refund beneficiary subsequent to the divorce.
18 The refund shall be paid to the refund beneficiary named in the
19 most recent designation of refund beneficiary on file with the
20 association unless that beneficiary is deceased or otherwise
21 terminated. If there is not a living or operating refund
22 beneficiary named in the most recent designation of refund
23 beneficiary on file with the association, the deceased member's
24 accumulated member contributions shall be paid to the estate of
25 the deceased member."

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underscoring material = new
~~[bracketed material]~~ = delete

1 SECTION 7. Section 10-12B-14 NMSA 1978 (being Laws 1992,
2 Chapter 111, Section 14, as amended) is amended to read:

3 "10-12B-14. SURVIVOR'S PENSION.--For a member whose
4 initial term of office began prior to July 1, 2014:

5 A. unless that member has designated a survivor
6 beneficiary in accordance with Subsection B of this section, a
7 survivor pension shall be paid for life to a member's or
8 retired member's surviving spouse;

9 B. the member may designate, in writing in a form
10 prescribed by the association, a survivor beneficiary to
11 receive the survivor's pension described in this section. If
12 the member is married, a designation of survivor beneficiary
13 other than the member's spouse or a supplemental needs trust to
14 which the spouse is a beneficiary may only be made with the
15 written consent of the member's spouse. Marriage subsequent to
16 a designation of survivor beneficiary shall automatically
17 revoke the designation of survivor beneficiary. A designation
18 of survivor beneficiary made pursuant to a court order issued
19 under Section 10-12B-7 NMSA 1978 shall not require the consent
20 of the member's spouse, if any, and shall not be revoked by the
21 subsequent remarriage of the member. A designation of survivor
22 beneficiary may be revoked by the member at any time prior to
23 the member's retirement. If the member is married, a
24 revocation of designation of survivor beneficiary may only be
25 made with the written consent of the member's spouse;

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underscoring material = new
~~[bracketed material]~~ = delete

1 C. if there is no surviving spouse and no
2 designated survivor beneficiary or if the surviving spouse dies
3 while there are still minor and dependent children of the
4 member, the survivor's pension shall be paid to all minor and
5 dependent children, if any, of the member, in equal shares, so
6 long as each child remains a minor or dependent child. As each
7 child ceases to be a minor or dependent child, the number of
8 shares shall be reduced and the amount payable to each
9 remaining child increased proportionately so that the total
10 survivor's pension remains unchanged as long as there is any
11 such child;

12 D. the survivor's pension is equal to seventy-five
13 percent of the member's pension;

14 E. survivor beneficiaries shall be eligible for
15 other benefits provided pursuant to the provisions of the
16 Judicial Retirement Act, including cost-of-living adjustments
17 and continuation of group insurance benefits; and

18 F. if the member dies while receiving a disability
19 retirement pension, the survivor beneficiary shall receive the
20 survivor pension provided pursuant to the provisions of the
21 Judicial Retirement Act."

22 SECTION 8. Section 10-12B-14.1 NMSA 1978 (being Laws
23 2014, Chapter 35, Section 11) is amended to read:

24 "10-12B-14.1. ELECTION FORM OF PENSION.--For a member
25 whose initial term in office begins on or after July 1, 2014,
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underscored material = new
~~[bracketed material]~~ = delete

1 except as otherwise provided in Section 10-12B-7 NMSA 1978:

2 A. the member may elect to have pension payments
3 made under any one of the forms of payment provided in Section
4 10-12B-14.2 NMSA 1978. The election of form of payment and
5 naming of survivor pension beneficiary shall be made on a form
6 furnished by and filed with the association prior to the date
7 the first pension payment is made. An election of form of
8 payment may not be changed after the date the first pension
9 payment is made. If the member is married, the association
10 shall require the consent of the member's spouse to the
11 election of the form of payment and any designation of survivor
12 pension beneficiary before the election or designation is
13 effective. Except as provided in Subsection C, D or E of this
14 section, a named survivor pension beneficiary may not be
15 changed after the date the first pension payment is made if
16 form of payment B or C is elected. Except as otherwise
17 provided in Section 10-12B-7 NMSA 1978, payment shall be made:

18 (1) under form of payment A if the member is
19 not married at the time of retirement and if there is not a
20 timely election of another form of payment; or

21 (2) under form of payment C with the member's
22 spouse as survivor pension beneficiary if the member is married
23 at the time of retirement and there is not a timely election of
24 another form of payment;

25 B. the amount of pension under forms of payment B,

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underscoring material = new
~~[bracketed material]~~ = delete

1 C and D shall have the same actuarial present value, computed
2 as of the effective date of the pension, as the amount of
3 pension under form of payment A;

4 C. if the member is a retired member who is being
5 paid a pension under form of payment B or C with the member's
6 spouse or a supplemental needs trust to which the spouse is a
7 beneficiary as the designated survivor pension beneficiary, the
8 retired member may, upon becoming divorced from the named
9 spouse and subject to an order of a court as provided for in
10 Section 10-12B-7 NMSA 1978, elect to have future payments made
11 under form of payment A;

12 D. if the member is retired and was previously
13 being paid a pension under form of payment B or C but, because
14 of the death of the designated survivor pension beneficiary or
15 the death of the beneficiary of a supplemental needs trust or
16 the termination of that trust, is currently receiving a pension
17 under form of payment A, the retired member may exercise a one-
18 time irrevocable option to designate another [~~individual as~~
19 ~~the~~] survivor pension beneficiary and may select either form of
20 payment B or form of payment C; provided that:

21 (1) the amount of the pension under the form
22 of payment selected shall be recalculated and have the same
23 actuarial present value, computed on the effective date of the
24 designation, as the amount of pension under form of payment A;

25 (2) the designation and the amount of the

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underscoring material = new
~~[bracketed material] = delete~~

1 pension shall be subject to a court order as provided for in
2 Section 10-12B-7 NMSA 1978; and

3 (3) the retired member shall pay one hundred
4 dollars (\$100) to the board to defray the cost of determining
5 the new pension amount; and

6 E. if the member is a retired member who is being
7 paid a pension under form of payment B or C with a living or
8 operating designated survivor pension beneficiary other than
9 the retired member's spouse or former spouse or the
10 supplemental needs trust of the retired member's spouse or
11 former spouse, the retired member may exercise a one-time
12 irrevocable option to deselect the designated beneficiary and
13 elect to:

14 (1) designate another survivor pension
15 beneficiary; provided that:

16 (a) the retired member shall not have an
17 option to change from the current form of payment;

18 (b) the amount of the pension under the
19 form of payment shall be recalculated and shall have the same
20 actuarial present value, computed as of the effective date of
21 the designation, as the amount of pension under form of payment
22 A; and

23 (c) the retired member shall pay one
24 hundred dollars (\$100) to the board to defray the cost of
25 determining the new pension amount; or

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underscoring material = new
[bracketed material] = delete

1 (2) have future payments made under form of
2 payment A."

3 SECTION 9. Section 10-12B-14.2 NMSA 1978 (being Laws
4 2014, Chapter 35, Section 12) is amended to read:

5 "10-12B-14.2. FORM OF PENSION PAYMENT.--

6 A. Straight life pension is form of payment A. The
7 retired member is paid the pension for life under form of
8 payment A. All payments stop upon the death of the retired
9 member, except as provided in Subsection E of this section.
10 The amount of pension is determined in accordance with the
11 Judicial Retirement Act.

12 B. Life payments with full continuation to one
13 survivor beneficiary is form of payment B. The retired member
14 is paid a reduced pension for life under form of payment B.
15 When the retired member dies, the designated survivor
16 beneficiary is paid the full amount of the reduced pension
17 until death or in the event that supplemental needs trust is
18 the designated survivor beneficiary, the termination of that
19 trust or the death of the beneficiary of that trust. If the
20 designated survivor beneficiary or the beneficiary of a
21 supplemental needs trust predeceases the retired member or if
22 the supplemental needs trust terminates while the retired
23 member is living, the amount of pension shall be changed to the
24 amount that would have been payable had the retired member
25 elected form of payment A.

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underscoring material = new
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1 C. Life payment with one-half continuation to one
2 survivor beneficiary is form of payment C. The retired member
3 is paid a reduced pension for life under form of payment C.
4 When the retired member dies, the designated survivor
5 beneficiary is paid one-half the amount of the reduced pension
6 until death or in the event that a supplemental needs trust is
7 the designated survivor beneficiary, the termination of that
8 trust or the death of the beneficiary of that trust. If the
9 designated survivor beneficiary or if the beneficiary of a
10 supplemental needs trust predeceases the retired member or if
11 the supplemental needs trust terminates while the retired
12 member is living, the amount of pension shall be changed to the
13 amount that would have been payable had the retired member
14 elected form of payment A.

15 D. Life payments with temporary survivor benefits
16 for children is form of payment D. The retired member is paid
17 a reduced pension for life under form of payment D. When the
18 retired member dies, each declared eligible child is paid a
19 share of the reduced pension until death or age twenty-five
20 years, whichever occurs first. The share is the share
21 specified in writing and filed with the association by the
22 retired member. If shares are not specified in writing and
23 filed with the association, each declared eligible child is
24 paid an equal share of the reduced pension. A redetermination
25 of shares shall be made when the pension of any child

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1 terminates. An eligible child is a natural or adopted child of
2 the retired member who is under age twenty-five years. A
3 declared eligible child is an eligible child whose name has
4 been declared in writing and filed with the association by the
5 retired member at the time of election of form of payment D.
6 The amount of pension shall be changed to the amount of pension
7 that would have been payable had the retired member elected
8 form of payment A upon there ceasing to be a declared eligible
9 child during the lifetime of the retired member.

10 E. If all pension payments permanently terminate
11 before there is paid an aggregate amount equal to the retired
12 member's accumulated member contributions at the time of
13 retirement, the difference between the amount of accumulated
14 member contributions and the aggregate amount of pension paid
15 shall be paid to the retired member's refund beneficiary. If
16 no refund beneficiary survives the retired member, the
17 difference shall be paid to the estate of the retired member."

18 SECTION 10. Section 10-12B-14.3 NMSA 1978 (being Laws
19 2014, Chapter 35, Section 13) is amended to read:

20 "10-12B-14.3. DEATH BEFORE RETIREMENT--SURVIVOR
21 PENSION.--For a member whose initial term in office begins on
22 or after July 1, 2014:

23 A. a survivor pension may be paid to certain
24 persons related to or designated by a member who dies before
25 normal or disability retirement if a written application for

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underscoring material = new
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1 the pension, in the form prescribed by the association, is
2 filed with the association by the potential survivor
3 beneficiary or beneficiaries within one year of the death of
4 the member. Applications may be filed on behalf of the
5 potential survivor beneficiary or beneficiaries or by a person
6 legally authorized to represent them;

7 B. if there is no designated survivor beneficiary
8 and the board finds the death to have been the natural and
9 proximate result of causes arising solely and exclusively out
10 of and in the course of the member's performance of duty while
11 in office, a survivor pension shall be payable to the eligible
12 surviving spouse. The amount of the survivor pension shall be
13 the greater of:

14 (1) the amount as calculated pursuant to the
15 Judicial Retirement Act and applicable to the deceased member
16 at the time of death as though the deceased member had retired
17 the day preceding death under form of payment B using the
18 actual amount of service credit attributable to the deceased
19 member at the time of death; or

20 (2) fifty percent of the deceased member's
21 final average salary;

22 C. a survivor pension shall also be payable to
23 eligible surviving children if there is no designated survivor
24 beneficiary and the retirement board finds the death to have
25 been the natural and proximate result of causes arising solely

.224205.4SA

1 and exclusively out of and in the course of the member's
2 performance of duty while in office. The total amount of
3 survivor pension payable for all eligible surviving children
4 shall be either:

5 (1) fifty percent of the deceased member's
6 final average salary if an eligible surviving spouse is not
7 paid a pension; or

8 (2) twenty-five percent of the deceased
9 member's final average salary if an eligible surviving spouse
10 is paid a pension.

11 The total amount of survivor pension shall be divided
12 equally among all eligible surviving children. If there is
13 only one eligible child, the amount of pension shall be twenty-
14 five percent of the deceased member's final average salary;

15 D. if the member had the applicable minimum number
16 of years of service credit required for normal retirement, but
17 the retirement board did not find the death to have been the
18 natural and proximate result of causes arising solely and
19 exclusively out of and in the course of the member's
20 performance of duty while in office and there is no designated
21 survivor beneficiary, a survivor pension shall be payable to
22 the eligible surviving spouse. The amount of the survivor
23 pension shall be the greater of:

24 (1) the amount as calculated under the
25 Judicial Retirement Act applicable to the deceased member at

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1 the time of death as though the deceased member had retired the
2 day preceding death under form of payment B using the total
3 amount of actual service credit attributable to the deceased
4 member at the time of death; or

5 (2) thirty percent of the deceased member's
6 final average salary;

7 E. if the member had the applicable minimum number
8 of years of service credit required for normal retirement, but
9 the retirement board did not find the death to have been the
10 natural and proximate result of causes arising solely and
11 exclusively out of and in the course of the member's
12 performance of duty while in office and there is no designated
13 survivor beneficiary, and if there is no eligible surviving
14 spouse at the time of death, a survivor pension shall be
15 payable to and divided equally among all eligible surviving
16 children, if any. The total amount of survivor pension payable
17 for all eligible surviving children shall be the greater of:

18 (1) the amount as calculated under the
19 Judicial Retirement Act applicable to the deceased member at
20 the time of death as though the deceased member had retired the
21 day preceding death under form of payment B with the oldest
22 eligible surviving child as the survivor beneficiary using the
23 total amount of actual service credit attributable to the
24 deceased member at the time of death; or

25 (2) thirty percent of the deceased member's

.224205.4SA

1 final average salary;

2 F. an eligible surviving spouse is the spouse to
3 whom the deceased member was married at the time of death. An
4 eligible surviving child is a child under the age of eighteen
5 years and who is an unmarried, natural or adopted child of the
6 deceased member;

7 G. an eligible surviving spouse's pension shall
8 terminate upon death. An eligible surviving child's pension
9 shall terminate upon death or marriage or reaching age eighteen
10 years, whichever comes first;

11 H. if there is no designated survivor beneficiary
12 and there is no eligible surviving child, the eligible
13 surviving spouse may elect to be refunded the deceased member's
14 accumulated member contributions instead of receiving a
15 survivor pension;

16 I. a member may designate a survivor beneficiary to
17 receive a pre-retirement survivor pension, subject to the
18 following conditions:

19 (1) a written designation, in the form
20 prescribed by the association, is filed by the member with the
21 association;

22 (2) if the member is married at the time of
23 designation, the designation shall only be made with the
24 consent of the member's spouse, in the form prescribed by the
25 association;

underscoring material = new
[bracketed material] = delete

1 (3) if the member is married subsequent to the
2 time of designation, any prior designations shall automatically
3 be revoked upon the date of the marriage;

4 (4) if the member is divorced subsequent to
5 the time of designation, any prior designation of the former
6 spouse or a supplemental needs trust to which the spouse is a
7 beneficiary as survivor beneficiary shall automatically be
8 revoked upon the date of divorce; and

9 (5) a designation of survivor beneficiary may
10 be changed, with the member's spouse's consent if the member is
11 married, by the member at any time prior to the member's death;

12 J. if there is a designated survivor beneficiary
13 and the board finds the death to have been the natural and
14 proximate result of causes arising solely and exclusively out
15 of and in the course of the member's performance of duty while
16 in office, a survivor pension shall be payable to the
17 designated survivor beneficiary. The amount of the survivor
18 pension shall be the greater of:

19 (1) the amount as calculated under the
20 Judicial Retirement Act applicable to the deceased member at
21 the time of death as though the deceased member had retired the
22 day preceding death under form of payment B using the actual
23 amount of service credit attributable to the member at the time
24 of death; or

25 (2) fifty percent of the deceased member's

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underscored material = new
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1 final average salary;

2 K. if there is a designated survivor beneficiary,
3 if the member had the applicable minimum number of years of
4 service credit required for normal retirement and if the
5 retirement board did not find the death to have been the
6 natural and proximate result of causes arising solely and
7 exclusively out of and in the course of the member's
8 performance of duty while in office, a survivor pension shall
9 be payable to the designated survivor beneficiary. The amount
10 of the survivor pension shall be the greater of:

11 (1) the amount as calculated under the
12 Judicial Retirement Act applicable to the deceased member at
13 the time of death as though the deceased member had retired the
14 day preceding death under form of payment B using the actual
15 amount of service credit attributable to the member at the time
16 of death; or

17 (2) thirty percent of the deceased member's
18 final average salary;

19 L. if all pension payments permanently terminate
20 before there is paid an aggregate amount equal to the deceased
21 member's accumulated member contributions at time of death, the
22 difference between the amount of accumulated member
23 contributions and the aggregate amount of pension paid shall be
24 paid to the deceased member's refund beneficiary. If no refund
25 beneficiary survives the survivor beneficiary, the difference

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1 shall be paid to the estate of the deceased member; and

2 M. for purposes of this section, "service credit"
3 means only the service credit earned by a member during periods
4 in office as a judge or justice."

5 SECTION 11. Section 10-12C-2 NMSA 1978 (being Laws 1992,
6 Chapter 118, Section 2, as amended by Laws 2014, Chapter 39,
7 Section 2 and by Laws 2014, Chapter 43, Section 2) is amended
8 to read:

9 "10-12C-2. DEFINITIONS.--As used in the Magistrate
10 Retirement Act:

11 A. "association" means the public employees
12 retirement association provided for in the Public Employees
13 Retirement Act;

14 B. "board" means the retirement board provided for
15 in the Public Employees Retirement Act;

16 C. "dependent child" means a natural or adopted
17 child who is physically or mentally incapable of financial
18 self-support, regardless of age;

19 D. "educational retirement system" means the
20 retirement system provided for in the Educational Retirement
21 Act;

22 E. "effective date of retirement" means the first
23 day of the month following the month in which the member met
24 all requirements for retirement;

25 F. "final average salary" means the amount that is

.224205.4SA

1 one-sixtieth of the greatest aggregate amount of salary paid a
2 member for sixty consecutive, but not necessarily continuous,
3 months of service credit;

4 G. "former member" means a person no longer in
5 office who was previously covered pursuant to the provisions of
6 Sections 10-12A-1 through 10-12A-13 NMSA 1978, but who has not
7 retired pursuant to the provisions of the Magistrate Retirement
8 Act and who has received a refund of member contributions
9 pursuant to the provisions of Sections 10-12C-1 through
10 10-12C-18 NMSA 1978;

11 H. "fund" means the magistrate retirement fund;

12 I. "magistrate" means a magistrate judge;

13 J. "member" means any magistrate who is in office
14 and covered pursuant to the provisions of the Magistrate
15 Retirement Act, or any person no longer in office who was
16 previously a magistrate covered pursuant to the provisions of
17 the Magistrate Retirement Act, who has not retired and who has
18 not received a refund of member contributions from the fund;

19 K. "member contributions" means the amounts
20 deducted from the salary of a member and credited to the
21 member's individual account, together with interest, if any,
22 credited thereto;

23 L. "minor child" means a natural or adopted child
24 who has not reached [~~his~~] the child's eighteenth birthday and
25 who has not been emancipated by marriage or otherwise;

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underscoring material = new
~~[bracketed material] = delete~~

1 M. "pension" means a series of monthly payments to
2 a retired member or survivor beneficiary pursuant to the
3 provisions of the Magistrate Retirement Act;

4 N. "refund beneficiary" means a supplemental needs
5 trust or a natural person designated by the member, in writing
6 in the form prescribed by the association, as the trust or
7 person [~~who~~] that would be refunded the member's accumulated
8 member contributions payable if the member dies and no survivor
9 pension is payable, or as the trust or person [~~who~~] that would
10 receive the difference between pension paid and accumulated
11 member contributions if the retired member dies before
12 receiving in pension payments the amount of the accumulated
13 member contributions;

14 O. "retire" means to:

15 (1) terminate employment with all employers
16 covered by any state system or the educational retirement
17 system; and

18 (2) receive a pension from one state system or
19 the educational retirement system;

20 P. "retired member" means a person who has met all
21 requirements for retirement and who is receiving a pension from
22 the fund;

23 Q. "salary" means the base salary or wages paid a
24 member, including longevity pay, for personal services
25 rendered; provided that salary does not include overtime pay;

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underscoring material = new
~~[bracketed material] = delete~~

1 allowances for housing, clothing, equipment or travel; payments
2 for unused sick leave, unless the unused sick leave payment is
3 made through continuation of the member on the regular payroll
4 for the period represented by that payment; and any other form
5 of remuneration not specifically designated by law as included
6 in salary pursuant to the provisions of the Magistrate
7 Retirement Act;

8 R. "state system" means the retirement programs
9 provided pursuant to the provisions of the Public Employees
10 Retirement Act, the Magistrate Retirement Act and the Judicial
11 Retirement Act;

12 S. "supplemental needs trust" means a valid third-
13 party irrevocable trust that is authorized by the federal
14 Social Security Act, as amended, for the sole benefit and the
15 lifetime of a trust beneficiary who is disabled and is created
16 for the purpose of providing, accounting for or receiving
17 supplemental assets that do not supplant, impair or diminish
18 any benefits or assistance of any federal, state or other
19 government entity for which the beneficiary would otherwise be
20 eligible;

21 ~~[S.]~~ T. "surviving spouse" means the spouse to whom
22 the member was married at the time of the member's death;

23 ~~[T.]~~ U. "survivor beneficiary" means a supplemental
24 needs trust or a natural person ~~[who]~~ that receives a pension
25 or ~~[who]~~ that has been designated to be paid a pension as a

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underscoring material = new
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1 result of the death of a member or retired member; and

2 ~~[U-]~~ V. "years of service" means a period of time
3 beginning on the date a person commences to hold office as a
4 magistrate because of appointment or election and ending on the
5 date a person ceases to hold office as a magistrate because of
6 expiration of the magistrate's term, voluntary resignation,
7 death or disability and shall include any fractions of years of
8 service."

9 **SECTION 12.** Section 10-12C-6 NMSA 1978 (being Laws 1992,
10 Chapter 118, Section 6, as amended) is amended to read:

11 "10-12C-6. REFUND OF CONTRIBUTIONS.--

12 A. If a member leaves office, the member may, with
13 the written consent of the member's spouse, if any, withdraw
14 the member's accumulated member contributions, upon making
15 written request in a form prescribed by the association. Upon
16 written request of the member in the form prescribed by the
17 association, a refund of member contributions may be made by a
18 trustee-to-trustee transfer of the contributions from the
19 member contribution fund directly to another qualified plan as
20 allowed by the Internal Revenue Code of 1986. Withdrawal of
21 member contributions shall result in forfeiture of the service
22 credit accrued for the period during which the contributions
23 were made.

24 B. A member shall, upon commencement of membership,
25 designate a refund beneficiary who shall receive the refund of

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underscoring material = new
~~[bracketed material]~~ = delete

1 the member contributions, plus interest if any, if the member
2 dies and no survivor pension is payable. If the member is
3 married at the time of designation, written spousal consent
4 shall be required if the designated refund beneficiary is a
5 person other than the spouse or a supplemental needs trust to
6 which the spouse is a beneficiary. Marriage subsequent to the
7 designation shall automatically revoke a previous designation,
8 and the spouse shall become the refund beneficiary unless or
9 until another designation is filed with the association.
10 Divorce subsequent to the designation shall automatically
11 revoke designation of the former spouse as refund beneficiary,
12 or the right of the former spouse to be refund beneficiary if
13 no designation has been filed, and the refund shall be paid to
14 the deceased member's estate unless the member filed a
15 designation of refund beneficiary subsequent to the divorce.
16 The refund shall be paid to the refund beneficiary named in the
17 most recent designation of refund beneficiary on file with the
18 association unless that beneficiary is deceased or otherwise
19 terminated. If there is not a living or operating refund
20 beneficiary named in the most recent designation of refund
21 beneficiary on file with the association, the deceased member's
22 accumulated member contributions shall be paid to the estate of
23 the deceased member."

24 SECTION 13. Section 10-12C-13 NMSA 1978 (being Laws 1992,
25 Chapter 118, Section 13, as amended by Laws 2014, Chapter 39,
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underscored material = new
~~[bracketed material]~~ = delete

1 Section 10 and by Laws 2014, Chapter 43, Section 10) is amended
2 to read:

3 "10-12C-13. SURVIVOR'S PENSION.--For a member whose
4 initial term in office began prior to July 1, 2014:

5 A. unless the member has designated a survivor
6 beneficiary in accordance with Subsection B of this section, a
7 survivor pension shall be paid for life to a member's or
8 retired member's surviving spouse;

9 B. the member may designate, in writing in a form
10 prescribed by the association, a survivor beneficiary to
11 receive the survivor's pension described in this section. If
12 the member is married, a designation of survivor beneficiary
13 other than the member's spouse or a supplemental needs trust to
14 which the spouse is a beneficiary may only be made with the
15 written consent of the member's spouse. Marriage subsequent to
16 a designation of survivor beneficiary shall automatically
17 revoke the designation of survivor beneficiary. A designation
18 of survivor beneficiary made pursuant to a court order issued
19 under Section 10-12C-7 NMSA 1978 shall not require the consent
20 of the member's spouse, if any, and shall not be revoked by the
21 subsequent remarriage of the member. A designation of survivor
22 beneficiary may be revoked by the member at any time prior to
23 the member's retirement. If the member is married, a
24 revocation of designation of survivor beneficiary may only be
25 made with the written consent of the member's spouse;

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underscored material = new
~~[bracketed material] = delete~~

1 C. if there is no surviving spouse and no
2 designated survivor beneficiary or if the surviving spouse dies
3 while there are still minor and dependent children of the
4 member, the survivor's pension shall be paid to all minor and
5 dependent children, if any, of the member, in equal shares, so
6 long as each child remains a minor or dependent child. As each
7 child ceases to be a minor or dependent child, the number of
8 shares shall be reduced and the amount payable to each
9 remaining child increased proportionately so that the total
10 survivor's pension remains unchanged as long as there is any
11 such child;

12 D. the survivor's pension is equal to seventy-five
13 percent of the member's pension;

14 E. survivor beneficiaries shall be eligible for
15 other benefits provided pursuant to the provisions of the
16 Magistrate Retirement Act, including cost-of-living adjustments
17 and continuation of group insurance benefits; and

18 F. if a member dies while receiving a disability
19 retirement pension, the survivor beneficiary shall receive the
20 survivor pension provided pursuant to the provisions of the
21 Magistrate Retirement Act."

22 SECTION 14. Section 10-12C-13.1 NMSA 1978 (being Laws
23 2014, Chapter 39, Section 11 and Laws 2014, Chapter 43, Section
24 11) is amended to read:

25 "10-12C-13.1. ELECTION FORM OF PENSION.--For a member
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1 whose initial term in office begins on or after July 1, 2014,
2 except as otherwise provided in Section 10-12C-7 NMSA 1978:

3 A. the member may elect to have pension payments
4 made under any one of the forms of payment provided in Section
5 10-12C-13.2 NMSA 1978. The election of form of payment and
6 naming of survivor pension beneficiary shall be made on a form
7 furnished by and filed with the association prior to the date
8 the first pension payment is made. An election of form of
9 payment may not be changed after the date the first pension
10 payment is made. If the member is married, the association
11 shall require the consent of the member's spouse to the
12 election of the form of payment and any designation of survivor
13 pension beneficiary before the election or designation is
14 effective. Except as provided in Subsection C, D or E of this
15 section, a named survivor pension beneficiary may not be
16 changed after the date the first pension payment is made if
17 form of payment B or C is elected. Except as otherwise
18 provided in Section 10-12C-7 NMSA 1978, payment shall be made:

19 (1) under form of payment A if the member is
20 not married at the time of retirement and if there is not a
21 timely election of another form of payment; or

22 (2) under form of payment C with the member's
23 spouse as survivor pension beneficiary if the member is married
24 at the time of retirement and there is not a timely election of
25 another form of payment;

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1 B. the amount of pension under forms of payment B,
2 C and D shall have the same actuarial present value, computed
3 as of the effective date of the pension, as the amount of
4 pension under form of payment A;

5 C. if the member is a retired member who is being
6 paid a pension under form of payment B or C with the member's
7 spouse or a supplemental needs trust to which the spouse is a
8 beneficiary as the designated survivor pension beneficiary, the
9 retired member may, upon becoming divorced from the named
10 spouse and subject to an order of a court as provided for in
11 Section 10-12C-7 NMSA 1978, elect to have future payments made
12 under form of payment A;

13 D. if the member is retired and was previously
14 being paid a pension under form of payment B or C but, because
15 of the death of the designated survivor pension beneficiary or
16 the death of the beneficiary of a supplemental needs trust or
17 the termination of that trust, is currently receiving a pension
18 under form of payment A, the retired member may exercise a one-
19 time irrevocable option to designate another [~~individual as~~
20 ~~the~~] survivor pension beneficiary and may select either form of
21 payment B or form of payment C; provided that:

22 (1) the amount of the pension under the form
23 of payment selected shall be recalculated and have the same
24 actuarial present value, computed on the effective date of the
25 designation, as the amount of pension under form of payment A;

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1 (2) the designation and the amount of the
2 pension shall be subject to a court order as provided for in
3 Section 10-12C-7 NMSA 1978; and

4 (3) the retired member shall pay one hundred
5 dollars (\$100) to the board to defray the cost of determining
6 the new pension amount; and

7 E. if the member is a retired member who is being
8 paid a pension under form of payment B or C with a living or
9 operating designated survivor pension beneficiary other than
10 the retired member's spouse or former spouse or the
11 supplemental needs trust of the retired member's spouse or
12 former spouse, the retired member may exercise a one-time
13 irrevocable option to deselect the designated beneficiary and
14 elect to:

15 (1) designate another survivor pension
16 beneficiary; provided that:

17 (a) the retired member shall not have an
18 option to change from the current form of payment;

19 (b) the amount of the pension under the
20 form of payment shall be recalculated and shall have the same
21 actuarial present value, computed as of the effective date of
22 the designation, as the amount of pension under form of payment
23 A; and

24 (c) the retired member shall pay one
25 hundred dollars (\$100) to the board to defray the cost of

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1 determining the new pension amount; or

2 (2) have future payments made under form of
3 payment A."

4 SECTION 15. Section 10-12C-13.2 NMSA 1978 (being Laws
5 2014, Chapter 39, Section 12 and Laws 2014, Chapter 43, Section
6 12) is amended to read:

7 "10-12C-13.2. FORM OF PENSION PAYMENT.--

8 A. Straight life pension is form of payment A. The
9 retired member is paid the pension for life under form of
10 payment A. All payments stop upon the death of the retired
11 member, except as provided by Subsection E of this section.
12 The amount of pension is determined in accordance with the
13 coverage plan applicable to the retired member.

14 B. Life payments with full continuation to one
15 survivor beneficiary is form of payment B. The retired member
16 is paid a reduced pension for life under form of payment B.
17 When the retired member dies, the designated survivor
18 beneficiary is paid the full amount of the reduced pension
19 until death or in the event that a supplemental needs trust is
20 the designated survivor beneficiary, the termination of that
21 trust or the death of the beneficiary of that trust. If the
22 designated survivor beneficiary or the beneficiary of a
23 supplemental needs trust predeceases the retired member or if
24 the supplemental needs trust terminates while the retired
25 member is living, the amount of pension shall be changed to the

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1 amount that would have been payable had the retired member
2 elected form of payment A.

3 C. Life payment with one-half continuation to one
4 survivor beneficiary is form of payment C. The retired member
5 is paid a reduced pension for life under form of payment C.
6 When the retired member dies, the designated survivor
7 beneficiary is paid one-half the amount of the reduced pension
8 until death or in the event that a supplemental needs trust is
9 the designated survivor beneficiary, the termination of that
10 trust or the death of the beneficiary of that trust. If the
11 designated survivor beneficiary or the beneficiary of a
12 supplemental needs trust predeceases the retired member or if
13 the supplemental needs trust terminates while the retired
14 member is living, the amount of pension shall be changed to the
15 amount that would have been payable had the retired member
16 elected form of payment A.

17 D. Life payments with temporary survivor benefits
18 for children is form of payment D. The retired member is paid
19 a reduced pension for life under form of payment D. When the
20 retired member dies, each declared eligible child is paid a
21 share of the reduced pension until death or age twenty-five
22 years, whichever occurs first. The share is the share
23 specified in writing and filed with the association by the
24 retired member. If shares are not specified in writing and
25 filed with the association, each declared eligible child is

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1 paid an equal share of the reduced pension. A redetermination
2 of shares shall be made when the pension of any child
3 terminates. An eligible child is a natural or adopted child of
4 the retired member who is under age twenty-five years. A
5 declared eligible child is an eligible child whose name has
6 been declared in writing and filed with the association by the
7 retired member at the time of election of form of payment D.
8 The amount of pension shall be changed to the amount of pension
9 that would have been payable had the retired member elected
10 form of payment A upon there ceasing to be a declared eligible
11 child during the lifetime of the retired member.

12 E. If all pension payments permanently terminate
13 before there is paid an aggregate amount equal to the retired
14 member's accumulated member contributions at the time of
15 retirement, the difference between the amount of accumulated
16 member contributions and the aggregate amount of pension paid
17 shall be paid to the retired member's refund beneficiary. If
18 no refund beneficiary survives the retired member, the
19 difference shall be paid to the estate of the retired member."

20 SECTION 16. Section 10-12C-13.3 NMSA 1978 (being Laws
21 2014, Chapter 39, Section 13 and Laws 2014, Chapter 43, Section
22 13) is amended to read:

23 "10-12C-13.3. DEATH BEFORE RETIREMENT--SURVIVOR
24 PENSION.--For a member whose initial term in office begins on or
25 after July 1, 2014:

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1 A. a survivor pension may be paid to certain
2 persons related to or designated by a member who dies before
3 normal or disability retirement if a written application for
4 the pension, in the form prescribed by the association, is
5 filed with the association by the potential survivor
6 beneficiary or beneficiaries within one year of the death of
7 the member. Applications may be filed on behalf of the
8 potential survivor beneficiary or beneficiaries or by a person
9 legally authorized to represent them;

10 B. if there is no designated survivor beneficiary
11 and the board finds the death to have been the natural and
12 proximate result of causes arising solely and exclusively out
13 of and in the course of the member's performance of duty while
14 in office, a survivor pension shall be payable to the eligible
15 surviving spouse. The amount of the survivor pension shall be
16 the greater of:

17 (1) the amount as calculated pursuant to the
18 Magistrate Retirement Act and applicable to the deceased member
19 at the time of death as though the deceased member had retired
20 the day preceding death under form of payment B using the
21 actual amount of service credit attributable to the deceased
22 member at the time of death; or

23 (2) fifty percent of the deceased member's
24 final average salary;

25 C. a survivor pension shall also be payable to

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1 eligible surviving children if there is no designated survivor
2 beneficiary and the board finds the death to have been the
3 natural and proximate result of causes arising solely and
4 exclusively out of and in the course of the member's
5 performance of duty while in office. The total amount of
6 survivor pension payable for all eligible surviving children
7 shall be either:

8 (1) fifty percent of the deceased member's
9 final average salary if an eligible surviving spouse is not
10 paid a pension; or

11 (2) twenty-five percent of the deceased
12 member's final average salary if an eligible surviving spouse
13 is paid a pension.

14 The total amount of survivor pension shall be divided
15 equally among all eligible surviving children. If there is
16 only one eligible child, the amount of pension shall be
17 twenty-five percent of the deceased member's final average
18 salary;

19 D. if the member had the applicable minimum number
20 of years of service credit required for normal retirement but
21 the board did not find the death to have been the natural and
22 proximate result of causes arising solely and exclusively out
23 of and in the course of the member's performance of duty while
24 in office and there is no designated survivor beneficiary, a
25 survivor pension shall be payable to the eligible surviving

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1 spouse. The amount of the survivor pension shall be the
2 greater of:

3 (1) the amount as calculated under the
4 coverage plan applicable to the deceased member at the time of
5 death as though the deceased member had retired the day
6 preceding death under form of payment B using the total amount
7 of actual service credit attributable to the deceased member at
8 the time of death; or

9 (2) thirty percent of the deceased member's
10 final average salary;

11 E. if the member had the applicable minimum number
12 of years of service credit required for normal retirement but
13 the board did not find the death to have been the natural and
14 proximate result of causes arising solely and exclusively out
15 of and in the course of the member's performance of duty while
16 in office and there is no designated survivor beneficiary, and
17 if there is no eligible surviving spouse at the time of death,
18 a survivor pension shall be payable to and divided equally
19 among all eligible surviving children, if any. The total
20 amount of survivor pension payable for all eligible surviving
21 children shall be the greater of:

22 (1) the amount as calculated under the
23 coverage plan applicable to the deceased member at the time of
24 death as though the deceased member had retired the day
25 preceding death under form of payment B with the oldest

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1 eligible surviving child as the survivor beneficiary using the
2 total amount of actual service credit attributable to the
3 deceased member at the time of death; or

4 (2) thirty percent of the deceased member's
5 final average salary;

6 F. an eligible surviving spouse is the spouse to
7 whom the deceased member was married at the time of death. An
8 eligible surviving child is a child under the age of eighteen
9 years and who is an unmarried, natural or adopted child of the
10 deceased member;

11 G. an eligible surviving spouse's pension shall
12 terminate upon death. An eligible surviving child's pension
13 shall terminate upon death or marriage or reaching age eighteen
14 years, whichever comes first;

15 H. if there is no designated survivor beneficiary
16 and there is no eligible surviving child, the eligible
17 surviving spouse may elect to be refunded the deceased member's
18 accumulated member contributions instead of receiving a
19 survivor pension;

20 I. a member may designate a survivor beneficiary to
21 receive a pre-retirement survivor pension, subject to the
22 following conditions:

23 (1) a written designation, in the form
24 prescribed by the association, is filed by the member with the
25 association;

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1 (2) if the member is married at the time of
2 designation, the designation shall only be made with the
3 consent of the member's spouse, in the form prescribed by the
4 association;

5 (3) if the member is married subsequent to the
6 time of designation, any prior designations shall automatically
7 be revoked upon the date of the marriage;

8 (4) if the member is divorced subsequent to
9 the time of designation, any prior designation of the former
10 spouse or a supplemental needs trust to which the spouse is a
11 beneficiary as survivor beneficiary shall automatically be
12 revoked upon the date of divorce; and

13 (5) a designation of survivor beneficiary may
14 be changed, with the member's spouse's consent if the member is
15 married, by the member at any time prior to the member's death;

16 J. if there is a designated survivor beneficiary
17 and the board finds the death to have been the natural and
18 proximate result of causes arising solely and exclusively out
19 of and in the course of the member's performance of duty while
20 in office, a survivor pension shall be payable to the
21 designated survivor beneficiary. The amount of the survivor
22 pension shall be the greater of:

23 (1) the amount as calculated under the
24 coverage plan applicable to the deceased member at the time of
25 death as though the deceased member had retired the day

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1 preceding death under form of payment B using the actual amount
2 of service credit attributable to the member at the time of
3 death; or

4 (2) fifty percent of the deceased member's
5 final average salary;

6 K. if there is a designated survivor beneficiary,
7 if the member had the applicable minimum number of years of
8 service credit required for normal retirement and if the board
9 did not find the death to have been the natural and proximate
10 result of causes arising solely and exclusively out of and in
11 the course of the member's performance of duty while in office,
12 a survivor pension shall be payable to the designated survivor
13 beneficiary. The amount of the survivor pension shall be the
14 greater of:

15 (1) the amount as calculated under the
16 coverage plan applicable to the deceased member at the time of
17 death as though the deceased member had retired the day
18 preceding death under form of payment B using the actual amount
19 of service credit attributable to the member at the time of
20 death; or

21 (2) thirty percent of the deceased member's
22 final average salary;

23 L. if all pension payments permanently terminate
24 before there is paid an aggregate amount equal to the deceased
25 member's accumulated member contributions at time of death, the

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1 difference between the amount of accumulated member
2 contributions and the aggregate amount of pension paid shall be
3 paid to the deceased member's refund beneficiary. If no refund
4 beneficiary survives the survivor beneficiary, the difference
5 shall be paid to the estate of the deceased member; and

6 M. ~~and~~ for purposes of this section, "service
7 credit" means only the service credit earned by a member during
8 periods in office as a magistrate."

9 SECTION 17. Section 22-11-2 NMSA 1978 (being Laws 1967,
10 Chapter 16, Section 126, as amended) is amended to read:

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

13 A. "member" means an employee, except for a
14 participant or a retired member, coming within the provisions
15 of the Educational Retirement Act;

16 B. "regular member" means:

17 (1) a person regularly employed by a state
18 educational institution, except for:

19 (a) a participant; or

20 (b) all employees of a general hospital
21 or outpatient clinics thereof operated by a state educational
22 institution named in Article 12, Section 11 of the constitution
23 of New Mexico;

24 (2) a person regularly employed by a junior
25 college or community college created pursuant to Chapter 21,

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1 Article 13 NMSA 1978, except for a participant;

2 (3) a person regularly employed by a technical
3 and vocational institute created pursuant to the Technical and
4 Vocational Institute Act, except for a participant;

5 (4) a person regularly employed by the
6 New Mexico boys' school, the girls' welfare home, the Los Lunas
7 medical center or a school district or as a licensed school
8 employee of a state institution or agency providing an
9 educational program and holding a license issued by the
10 department, except for a participant;

11 (5) a person regularly employed by the
12 department holding a license issued by the department at the
13 time of commencement of such employment;

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

16 (7) a person regularly employed by the New
17 Mexico activities association holding a license issued by the
18 department at the time of commencement of such employment; or

19 (8) a person regularly employed by a regional
20 education cooperative holding a license issued by the
21 department at the time of commencement of such employment;

22 C. "provisional member" means a person described in
23 Section 22-11-17 NMSA 1978;

24 D. "local administrative unit" means an employing
25 agency however constituted that is directly responsible for the

.224205.4SA

1 payment of compensation for the employment of members or
2 participants;

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

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

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

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

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

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

25 K. "earned service credit" means that period of

1 time during which a member was engaged in employment or prior
2 employment with which the member is accredited for the purpose
3 of determining the member's eligibility for retirement or
4 disability benefits;

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

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

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

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

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

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

20 R. "medical authority" means a medical doctor or
21 medical review panel designated or employed by the board to
22 examine medical records and report on the medical condition of
23 applicants for or recipients of disability benefits;

24 S. "actuary" means a person trained and regularly
25 engaged in the occupation of calculating present and projected

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1 monetary assets and liabilities under annuity or insurance
2 programs;

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

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

10 V. "qualifying state educational institution" means
11 the university of New Mexico, New Mexico state university, New
12 Mexico institute of mining and technology, New Mexico highlands
13 university, eastern New Mexico university, western New Mexico
14 university, central New Mexico community college, Clovis
15 community college, Luna community college, Mesalands community
16 college, New Mexico junior college, northern New Mexico state
17 school, San Juan college and Santa Fe community college;

18 W. "participant" means:

19 (1) a person regularly employed as a faculty
20 or professional employee of the university of New Mexico, New
21 Mexico state university, New Mexico institute of mining and
22 technology, New Mexico highlands university, eastern New Mexico
23 university or western New Mexico university who first becomes
24 employed with such an educational institution on or after July
25 1, 1991, or a person regularly employed as a faculty or

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1 professional employee of the central New Mexico community
2 college, Clovis community college, Luna community college,
3 Mesalands community college, New Mexico junior college,
4 northern New Mexico state school, San Juan college or Santa Fe
5 community college who is first employed by the institution on
6 or after July 1, 1999 and who elects, pursuant to Section
7 22-11-47 NMSA 1978, to participate in the alternative
8 retirement plan; and

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

16 X. "salary" means the compensation or wages paid to
17 a member or participant by any local administrative unit for
18 services rendered. "Salary" includes payments made for annual
19 or sick leave and payments for additional service provided to
20 related activities, but does not include payments for sick
21 leave not taken unless the payment for the unused sick leave is
22 made through continuation of the member on the regular payroll
23 for the period represented by that payment and does not include
24 allowances or reimbursements for travel, housing, food,
25 equipment or similar items;

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1 Y. "alternative retirement plan" means the
2 retirement plan provided for in Sections 22-11-47 through
3 22-11-52 NMSA 1978; [~~and~~]

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

7 AA. "supplemental needs trust" means a valid third-
8 party irrevocable trust that is authorized by the federal
9 Social Security Act, as amended, for the sole benefit and
10 lifetime of a trust beneficiary who is disabled and is created
11 for the purpose of providing, accounting for or receiving
12 supplemental assets that do not supplant, impair or diminish
13 any benefits or assistance of any federal, state or other
14 government entity for which the beneficiary would otherwise be
15 eligible."

16 SECTION 18. Section 22-11-15 NMSA 1978 (being Laws 1967,
17 Chapter 16, Section 139, as amended) is amended to read:

18 "22-11-15. FUND--REFUNDS--PAYMENTS.--

19 A. After filing written demand with the director, a
20 member is entitled to a refund of the total amount of the
21 member's contributions plus interest at a rate set by the
22 board, reduced by the sum of any disability benefits previously
23 received by the member, if:

24 (1) the member terminates employment for
25 reasons other than by retirement, disability or death;

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1 (2) the member has been exempted [~~himself~~]
2 from the Educational Retirement Act; or

3 (3) the member was not reemployed following a
4 period of disability during which [~~he~~] the member received
5 disability benefits.

6 B. The director may, at the request of a member,
7 make payment on behalf of the member for any or all of the
8 refund to an individual retirement account or a qualified
9 retirement plan that accepts rollovers.

10 C. If the amount of a deceased member's
11 contribution or residual contribution does not exceed the sum
12 of one thousand dollars (\$1,000) and no written claim is made
13 to the board for it within one year from the date of the
14 member's death, by [~~his~~] the member's surviving beneficiary or
15 the member's estate, payment thereof may be made to the named
16 beneficiary or, if none is named, to the person the board
17 determines to be entitled to the contribution under the laws of
18 New Mexico. Any payment made by the board pursuant to this
19 subsection shall be a bar to a claim by any other person or
20 entity.

21 D. The interest provided for in Subsection A of
22 this section shall apply only to contributions paid to the fund
23 after July 1, 1971 and on deposit in the fund for a period of
24 at least one fiscal year; provided that no such interest shall
25 be allowed on refunds of contributions that were paid into the

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1 fund prior to July 1, 1971."

2 SECTION 19. Section 22-11-29 NMSA 1978 (being Laws 1967,
3 Chapter 16, Section 152, as amended) is amended to read:

4 "22-11-29. RETIREMENT BENEFIT OPTIONS.--

5 A. Upon retirement pursuant to the Educational
6 Retirement Act, a member may elect, and, except as provided in
7 Subsection D or E of this section, such election shall be
8 irrevocable, to receive the actuarial equivalent of the
9 member's retirement benefit, as provided in Section 22-11-30
10 NMSA 1978, to be effective on the member's retirement in any
11 one of the following optional forms:

12 (1) OPTION A. An unreduced retirement benefit
13 pursuant to Section 22-11-30 NMSA 1978;

14 (2) OPTION B. A reduced annuity payable
15 during the member's life with provision that upon the member's
16 death the same annuity shall be continued during the life of
17 and paid to the beneficiary designated by the member in writing
18 at the time of electing this option; or

19 (3) OPTION C. A reduced annuity payable
20 during the member's life with provision that upon the member's
21 death one-half of this same annuity shall be continued during
22 the life of and paid to the beneficiary designated by the
23 member in writing at the time of electing this option.

24 B. In the case of Options B and C of Subsection A
25 of this section, the actuarial equivalent of the member's

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1 retirement benefit shall be computed on the basis of the lives
2 of both the member and the beneficiary or in the event that a
3 supplemental needs trust is the designated beneficiary, the
4 life of the member and the beneficiary of that trust.

5 C. In the event that the named beneficiary of a
6 retired member who elected Option B or C of Subsection A of
7 this section at the time of retirement predeceases the retired
8 member or the supplemental needs trust terminates while the
9 retired member is living, the annuity of the retired member
10 shall be adjusted by adding an amount equal to the amount by
11 which the annuity of the retired member was reduced at
12 retirement as a result of the election of Option B or C. The
13 adjustment authorized in this subsection shall be made as
14 follows:

15 (1) beginning on the first month following the
16 month in which the named beneficiary of a retiree dies or the
17 beneficiary of a supplemental needs trust that is the named
18 beneficiary dies or that trust otherwise terminates applicable
19 to an annuity received by a retiree who retires after June 30,
20 1987; or

21 (2) beginning on July 1, 1987 applicable to an
22 annuity received by a retiree who retired prior to July 1, 1987
23 and otherwise qualifies for the adjustment; provided, however,
24 no adjustment shall be made retroactively.

25 D. A retired member who is being paid an adjusted

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1 annuity pursuant to Subsection C of this section because of the
2 death of the named beneficiary or the death of the beneficiary
3 of a supplemental needs trust or the termination of that trust
4 may exercise a one-time irrevocable option to designate another
5 [~~individual as the~~] beneficiary and may select either Option B
6 or Option C of Subsection A of this section; provided that:

7 (1) the amount of the annuity under the option
8 selected shall be recalculated and have the same actuarial
9 present value, computed on the effective date of the
10 designation, as the annuity being paid to the retired member
11 prior to the designation;

12 (2) the designation and the amount of the
13 annuity shall be subject to a court order as provided for in
14 Subsection B of Section 22-11-42 NMSA 1978; and

15 (3) the retired member shall pay one hundred
16 dollars (\$100) to the board to defray the cost of determining
17 the new annuity amount.

18 E. A retired member who is being paid an annuity
19 under Option B or C of Subsection A of this section with a
20 living or operating designated beneficiary other than the
21 retired member's spouse or former spouse or the supplemental
22 needs trust of the retired member's spouse or former spouse may
23 exercise a one-time irrevocable option to deselect the
24 designated beneficiary and elect to:

25 (1) designate another beneficiary; provided

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underscoring material = new
~~[bracketed material] = delete~~

1 that:

2 (a) the retired member shall not have an
3 option to change from the current form of payment;

4 (b) the amount of the annuity under the
5 form of payment shall be recalculated and shall have the same
6 actuarial present value, computed as of the effective date of
7 the designation, as the amount of annuity paid prior to the
8 designation; and

9 (c) the retired member shall pay one
10 hundred dollars (\$100) to the board to defray the cost of
11 determining the new annuity amount; or

12 (2) have future annuity payments made without
13 a reduction as a result of Option B or C.

14 F. In the event of the death of the member who has
15 not retired and who has completed at least five years' earned
16 service credit, the member shall be considered as retiring on
17 the first day of the month following the date of death, and the
18 benefits due the surviving beneficiary, computed as of that
19 date, shall, except as provided in Subsection J of this
20 section, be commenced effective on the first day of such month
21 in accordance with the terms of Option B of Subsection A of
22 this section. In lieu of the provisions of Option B, the
23 surviving beneficiary may elect to receive payment of all the
24 contributions made by the member, plus interest at the rate set
25 by the board reduced by the sum of any disability benefits

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underscoring material = new
~~[bracketed material]~~ = delete

1 previously received by the member, or the surviving beneficiary
2 may choose to defer receipt of the survivor's benefit to
3 whatever age the beneficiary chooses up to the time the member
4 would have attained age sixty. If the benefit is thus
5 deferred, it shall be calculated as though the member had
6 retired on the first day of the month in which the beneficiary
7 elects to receive the benefit. In the event of the death of
8 the beneficiary or in the event that a supplemental needs trust
9 is the designated survivor beneficiary, the termination of that
10 trust or the death of the beneficiary of that trust after the
11 death of the member and prior to the date on which the
12 beneficiary has elected to receive the beneficiary's benefit,
13 the estate of the beneficiary shall be entitled to a refund of
14 the member's contributions plus interest at the rate earned by
15 the fund during the preceding fiscal year, reduced by the sum
16 of any disability benefits previously received by the member.

17 G. In the event of the death of a member who has
18 not retired and who has completed at least five years' earned
19 service credit, but who has not designated a beneficiary in
20 writing pursuant to the Educational Retirement Act, the
21 eligible surviving spouse or surviving domestic partner shall
22 be the surviving beneficiary eligible for benefits in
23 accordance with the provisions of Subsection F of this section.

24 H. In the case of death of a retired member who did
25 not elect either Option B or C of Subsection A of this section

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underscoring material = new
~~[bracketed material]~~ = delete

1 and before the benefits paid to the member have equaled the sum
2 of the member's accumulated contributions to the fund plus
3 accumulated interest at the rate set by the board, the balance
4 shall be paid to the beneficiary designated in writing to the
5 director by the member or, if no beneficiary was designated, to
6 the eligible surviving spouse or surviving domestic partner of
7 the member or, if there is no eligible surviving spouse or
8 domestic partner of the member, to the estate of the member.

9 I. No benefit shall be paid pursuant to this
10 section if the member's contributions have been refunded
11 pursuant to Section 22-11-15 NMSA 1978.

12 J. In the case of death of a member with less than
13 five years' earned service credit or death of a member who has
14 filed with the director a notice rejecting the provisions of
15 Subsection F of this section, which notice shall be revocable
16 by the member at any time prior to retirement, the member's
17 contributions to the fund plus interest at the rate set by the
18 board shall be paid to the beneficiary designated in writing to
19 the director by the member or, if no beneficiary was
20 designated, to the eligible surviving spouse or surviving
21 domestic partner of the member or, if there is no eligible
22 surviving spouse or domestic partner of the member, to the
23 estate of the member."

24 **SECTION 20.** Section 22-11-53 NMSA 1978 (being Laws 1998,
25 Chapter 38, Section 2) is amended to read:

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underscored material = new
[bracketed material] = delete

1 "22-11-53. CORRECTION OF ERRORS AND OMISSIONS--

2 ESTOPPEL.--

3 A. If an error or omission in an application for
4 retirement or its supporting documents results in an
5 overpayment to a member or the beneficiary of a member, the
6 board shall correct the error or omission and adjust all future
7 payments accordingly. The board shall recover all overpayments
8 that are made.

9 B. A member or the beneficiary of a member who is
10 paid more than the amount [~~he is~~] owed because [~~he~~] that member
11 or beneficiary provided fraudulent information on [~~his~~] the
12 application for retirement shall be liable for the repayment of
13 that amount to the fund, interest on that amount at the rate
14 set by the board and costs of collection, including attorney
15 fees. Recovery of overpayments shall extend back to the date
16 of the first payment that was made based on fraudulent
17 information.

18 C. The board shall not be estopped from acting in
19 accordance with applicable statutes because of statements of
20 fact or law made by the board or its employees."