

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 28

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

Gay G. Kernan

ENDORSED BY THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

AN ACT

RELATING TO EDUCATIONAL RETIREMENT; AMENDING THE EDUCATIONAL
RETIREMENT ACT TO CLARIFY REQUIREMENTS FOR PROVISIONAL
MEMBERSHIP, TO ESTABLISH REQUIREMENTS FOR USE OF A MEDICAL
AUTHORITY TO DETERMINE DISABILITY STATUS AND TO MAKE CLARIFYING
AND TECHNICAL CHANGES; REPEALING SECTIONS OF THE EDUCATIONAL
RETIREMENT ACT.

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

SECTION 1. Section 22-11-2 NMSA 1978 (being Laws 1967,
Chapter 16, Section 126, as amended) is amended to read:

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

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

.204848.2SA

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

underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

B. "regular member" means:

(1) a person regularly employed [~~as a~~
~~teaching, nursing or administrative employee of~~] by a state
educational institution, except for:

(a) a participant; or

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

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

(3) a person regularly employed [~~as a~~
~~teaching, nursing or administrative employee of~~] by a technical
and vocational institute created pursuant to the Technical and
Vocational Institute Act, except for a participant;

(4) a person regularly employed [~~as a~~
~~teaching, nursing or administrative employee of~~] by the New
Mexico boys' school, the [~~New Mexico~~] girls' [~~school~~] welfare
home, the Los Lunas medical center or a school district or as a
licensed school employee of a state institution or agency
providing an educational program and holding a license issued
by the department, except for a participant;

(5) a person regularly employed by the

underscored material = new
[bracketed material] = delete

1 department holding a license issued by the department at the
2 time of commencement of such employment;

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

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

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

11 C. "provisional member" means a person [~~not~~
12 ~~eligible to be a regular member but who is employed by a local~~
13 ~~administrative unit designated in Subsection B of this section;~~
14 ~~provided, however, that employees of a general hospital or~~
15 ~~outpatient clinics thereof operated by a state educational~~
16 ~~institution named in Article 12, Section 11 of the constitution~~
17 ~~of New Mexico are not provisional members]~~ described in Section
18 22-11-17 NMSA 1978;

19 D. "local administrative unit" means an employing
20 agency however constituted that is directly responsible for the
21 payment of compensation for the employment of members or
22 participants;

23 E. "beneficiary" means a person having an insurable
24 interest in the life of a member or a participant designated by
25 written instrument duly executed by the member or participant

.204848.2SA

underscored material = new
[bracketed material] = delete

1 and filed with the director to receive a benefit pursuant to
2 the Educational Retirement Act that may be received by someone
3 other than the member or participant;

4 F. "employment" means employment by a local
5 administrative unit that qualifies a person to be a member or
6 participant;

7 G. "service employment" means employment that
8 qualifies a person to be a regular member;

9 H. "provisional service employment" means
10 employment that qualifies a person to be a provisional member;

11 I. "prior employment" means employment performed
12 prior to the effective date of the Educational Retirement Act
13 that would be service employment or provisional service
14 employment if performed thereafter;

15 J. "service credit" means that period of time with
16 which a member is accredited for the purpose of determining
17 [~~his~~] the member's eligibility for and computation of
18 retirement or disability benefits;

19 K. "earned service credit" means that period of
20 time during which a member was engaged in employment or prior
21 employment with which [~~he~~] the member is accredited for the
22 purpose of determining [~~his~~] the member's eligibility for
23 retirement or disability benefits;

24 L. "allowed service credit" means that period of
25 time during which a member has performed certain nonservice

.204848.2SA

underscored material = new
[bracketed material] = delete

1 employment with which ~~he~~ the member may be accredited, as
2 provided in the Educational Retirement Act, for the purpose of
3 computing retirement or disability benefits;

4 M. "retirement benefit" means an annuity paid
5 monthly to members whose employment has been terminated by
6 reason of their age;

7 N. "disability benefit" means an annuity paid
8 monthly to members whose employment has been terminated by
9 reason of a disability;

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

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

12 Q. "director" means the educational retirement
13 director;

14 R. "medical authority" means a medical doctor
15 ~~[within the state or as provided in Subsection D of Section~~
16 ~~22-11-36 NMSA 1978 either]~~ or medical review panel designated
17 or employed by the board to examine medical records and report
18 on the ~~[physical]~~ medical condition of applicants for or
19 recipients of disability benefits;

20 S. "actuary" means a person trained and regularly
21 engaged in the occupation of calculating present and projected
22 monetary assets and liabilities under annuity or insurance
23 programs;

24 T. "actuarial equivalent" means a sum paid as a
25 current or deferred benefit that is equal in value to a regular

.204848.2SA

underscored material = new
[bracketed material] = delete

1 benefit, computed upon the basis of interest rates and
2 mortality tables;

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

6 V. "qualifying state educational institution" means
7 the university of New Mexico, New Mexico state university, New
8 Mexico institute of mining and technology, New Mexico highlands
9 university, eastern New Mexico university, western New Mexico
10 university, [~~Albuquerque technical-vocational institute~~]
11 central New Mexico community college, Clovis community college,
12 Luna [~~vocational-technical institute, Mesa technical~~] community
13 college, Mesalands community college, New Mexico junior
14 college, northern New Mexico state school, San Juan college and
15 Santa Fe community college;

16 W. "participant" means:

17 (1) a person regularly employed as a faculty
18 or professional employee of the university of New Mexico, New
19 Mexico state university, New Mexico institute of mining and
20 technology, New Mexico highlands university, eastern New Mexico
21 university or western New Mexico university who first becomes
22 employed with such an educational institution on or after July
23 1, 1991, or a person regularly employed as a faculty or
24 professional employee of the [~~Albuquerque technical-vocational~~
25 ~~institute~~] central New Mexico community college, Clovis

.204848.2SA

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

1 community college, Luna [~~vocational-technical institute, Mesa~~
2 ~~technical~~] community college, Mesalands community college, New
3 Mexico junior college, northern New Mexico state school, San
4 Juan college or Santa Fe community college who is first
5 employed by the institution on or after July 1, 1999 and who
6 elects, pursuant to Section 22-11-47 NMSA 1978, to participate
7 in the alternative retirement plan; and

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

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

25 Y. "alternative retirement plan" means the

.204848.2SA

underscored material = new
[bracketed material] = delete

1 retirement plan provided for in Sections 22-11-47 through
2 22-11-52 NMSA 1978; and

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

6 SECTION 2. Section 22-11-4 NMSA 1978 (being Laws 1967,
7 Chapter 16, Section 128, as amended) is amended to read:

8 "22-11-4. BOARD--REGULAR AND SPECIAL MEETINGS.--

9 A. The board shall hold regular meetings four times
10 each year and may [~~by its bylaws~~] provide for additional
11 regular meetings. Prior to each regular meeting, written
12 notice shall be given to each member of the board specifying
13 the time and place of the regular meeting.

14 B. Special meetings of the board may be called by
15 the [~~chairman~~] chair or by any three members of the board.
16 Written notice of the special meeting shall be sent to each
17 member of the board at least three days in advance of the
18 special meeting.

19 C. If not in violation of Subsection A or B of this
20 section, the rules of the board or the Open Meetings Act, the
21 [~~chairman~~] chair or any of three members of the board may
22 cancel or reschedule a meeting."

23 SECTION 3. Section 22-11-5.1 NMSA 1978 (being Laws 1999,
24 Chapter 153, Section 2) is amended to read:

25 "22-11-5.1. RESTRICTIONS ON RECEIPT OF GIFTS [~~RESTRICTION~~

.204848.2SA

underscored material = new
[bracketed material] = delete

1 ~~ON CAMPAIGN CONTRIBUTIONS--REQUIRED REPORTING].--~~[A.] Except
2 for gifts of food or beverage given in a place of public
3 accommodation, consumed at the time of receipt, not exceeding
4 fifty dollars (\$50.00) for a single gift and the aggregate
5 value of which gifts may not exceed one hundred fifty dollars
6 (\$150) in a calendar year, neither a board member nor an
7 employee of the board shall receive or accept anything of value
8 directly or indirectly from a person who:

9 ~~(1)~~ A. has a current contract with the
10 [~~retirement~~] board; [~~or association~~;

11 ~~(2)~~ B. is a potential bidder, offeror or
12 contractor for the provision of services or personal property
13 to the [~~retirement~~] board; [~~or association~~;

14 ~~(3)~~ C. is authorized to invest public funds
15 pursuant to state or federal law or is an employee or agent of
16 such a person; or

17 ~~(4)~~ D. is an organization, association or other
18 entity having a membership that includes persons described in
19 [~~Paragraphs (1) through (3) of this subsection~~] Subsections A
20 through C of this section."

21 SECTION 4. Section 22-11-6 NMSA 1978 (being Laws 1967,
22 Chapter 16, Section 130, as amended) is amended to read:

23 "22-11-6. BOARD--POWERS--DUTIES.--

24 A. The board shall:

25 (1) properly and uniformly enforce the

.204848.2SA

underscored material = new
[bracketed material] = delete

1 Educational Retirement Act;

2 (2) hire employees and delegate administrative
3 authority to these employees;

4 (3) make an actuarial report on the financial
5 operation of the Educational Retirement Act to the legislature
6 at each regular session every odd-numbered year;

7 (4) accept donations, gifts or bequests to the
8 fund; and

9 (5) adopt regulations pursuant to the
10 Educational Retirement Act.

11 B. The board may:

12 (1) select and contract for the services of
13 one or more custodial banks. For purposes of this subsection,
14 "custodial bank" means a financial institution with the general
15 fiduciary duties to manage, control and collect the assets of
16 an investment fund, including receiving all deposits and paying
17 all disbursements as directed by staff, safekeeping of assets,
18 coordination of asset transfers, timely settlement of
19 securities transactions and accurate and timely reporting by
20 individual account and in total; and

21 (2) contract for legal services for litigation
22 matters on a contingent fee basis, subject to the provisions of
23 the Procurement Code; provided that:

24 (a) the board shall submit each proposed
25 contract to the attorney general for review of the contingency

.204848.2SA

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

1 fee. The attorney general shall review a proposed contract
2 within thirty days after receiving the contract. The review
3 shall take into account the complexity of the factual and legal
4 issues presented by the claims to be pursued under the
5 contract. If the attorney general advises the board that the
6 proposed contingency fee is not reasonable, the board may
7 nevertheless approve the contract and the contingency fee if no
8 fewer than four members vote for approval;

9 (b) each prospective contractor seeking
10 to represent the board on a contingency fee basis shall file
11 with the board the disclosure required by Section 13-1-191.1
12 NMSA 1978 disclosing all campaign contributions made to the
13 governor, attorney general, state treasurer or any member of
14 the board, or to a political committee that is intended to aid
15 or promote the nomination or election of any candidate to a
16 state office if the committee is: 1) established by any of the
17 foregoing persons or their agents; 2) established in
18 consultation with or at the request of any of the foregoing
19 persons or their agents; or 3) controlled by one of the
20 foregoing persons or their agents; and

21 (c) nothing in this paragraph shall
22 prejudice or impair the rights of a qui tam plaintiff pursuant
23 to the Fraud Against Taxpayers Act."

24 SECTION 5. Section 22-11-7 NMSA 1978 (being Laws 1967,
25 Chapter 16, Section 131) is amended to read:

.204848.2SA

1 "22-11-7. EDUCATIONAL RETIREMENT DIRECTOR--BOND.--

2 A. The board shall employ an educational retirement
3 director. The director shall be the administrative officer for
4 the board in carrying out the provisions of the Educational
5 Retirement Act and shall have those additional duties provided
6 in the [~~regulations~~] rules of the board.

7 B. Before assuming the duties of office, the
8 director shall obtain an official bond payable to the fund and
9 conditioned upon the faithful performance of [~~his~~] the
10 director's duties during [~~his~~] the director's term of office.
11 The bond shall be executed by a corporate surety company
12 authorized to do business in this state. The amount of the
13 bond shall be not less than twenty-five thousand dollars
14 (\$25,000). The board may elect to obtain a schedule or blanket
15 corporate surety bond covering the director and employees of
16 the [~~division~~] board for any period not exceeding four years.
17 The cost of a bond obtained pursuant to this section shall be
18 paid from the fund. Any bond obtained shall be approved by the
19 board and filed with the secretary of state."

20 SECTION 6. Section 22-11-8 NMSA 1978 (being Laws 1967,
21 Chapter 16, Section 132) is amended to read:

22 "22-11-8. MEDICAL AUTHORITY--FEES.--

23 A. The board shall employ the services of a medical
24 authority. The medical authority [~~shall~~] may examine, make
25 reports of and certify the [~~physical~~] medical condition of

.204848.2SA

underscoring material = new
[bracketed material] = delete

1 applicants for and recipients of disability benefits pursuant
2 to the Educational Retirement Act.

3 B. The board shall pay the medical authority a
4 reasonable fee for ~~[his]~~ professional services."

5 SECTION 7. Section 22-11-9 NMSA 1978 (being Laws 1967,
6 Chapter 16, Section 133, as amended) is amended to read:

7 "22-11-9. ACTUARY--FEES.--

8 A. The board shall employ the services of an
9 actuary. The actuary shall prepare a table of actuarial
10 equivalents for use of the board and the director in computing
11 the value of advanced, deferred or optional payment of benefits
12 pursuant to the Educational Retirement Act. The actuary shall
13 also study the financial operations of the Educational
14 Retirement Act and shall make written reports thereon to the
15 board.

16 B. The board shall pay the actuary a reasonable fee
17 for ~~[his]~~ professional services.

18 C. Unless otherwise required by the governmental
19 accounting standards board of the American institute of
20 certified public accountants, an actuarial report shall be
21 conducted at least once every three years."

22 SECTION 8. Section 22-11-17 NMSA 1978 (being Laws 1967,
23 Chapter 16, Section 141, as amended) is amended to read:

24 "22-11-17. PROVISIONAL MEMBERSHIP.--

25 ~~[A. A provisional member shall be covered by the~~

.204848.2SA

underscored material = new
[bracketed material] = delete

1 ~~provisions of the Educational Retirement Act but shall have the~~
2 ~~option to exempt himself from its coverage. A provisional~~
3 ~~member exempting himself from the provisions of the Educational~~
4 ~~Retirement Act shall not be entitled to the benefits or~~
5 ~~coverage under any other state retirement program except as~~
6 ~~otherwise provided in this section. This section shall not~~
7 ~~affect any rights a provisional member may have under the~~
8 ~~provisions of the federal Social Security Act. This option to~~
9 ~~exempt must be exercised within one year of employment~~
10 ~~according to the regulations adopted by the board. Any~~
11 ~~provisional member exempting himself pursuant to this section~~
12 ~~shall be entitled to a refund of any contributions made~~
13 ~~pursuant to the Educational Retirement Act prior to the~~
14 ~~exercise of the exemption.~~

15 ~~B. A provisional member not exempt from the~~
16 ~~coverage of the Educational Retirement Act shall have the right~~
17 ~~to earned service credit for periods of employment subsequent~~
18 ~~to July 1, 1957 and prior to July 1, 1961, provided that all~~
19 ~~contributions at the rates in effect during that period of~~
20 ~~employment are paid. If a provisional member chooses to make~~
21 ~~the contributions for that period, the local administrative~~
22 ~~unit employing a member during that period shall pay the~~
23 ~~employer's contribution at the rate in effect during that~~
24 ~~period of employment. Contributions prior to July 1, 1961 by~~
25 ~~both the provisional member and the local administrative unit~~

.204848.2SA

underscored material = new
[bracketed material] = delete

1 shall bear interest at the rate of three percent a year from
2 July 1, 1961 until paid.

3 G. A provisional member exempt from the coverage of
4 the provisions of the Educational Retirement Act shall have the
5 right to revoke the exemption at any time; however, within the
6 first two weeks following the beginning of each school year,
7 such provisional member shall be informed by the local
8 administrative unit in writing of his right to revoke the
9 exemption and shall sign a statement to the effect that he does
10 or does not wish to revoke the exemption. A copy of such
11 statement shall be kept in the personnel file of the
12 provisional member.

13 D. A provisional member who revokes the exemption
14 from coverage may, at any time before June 30, 2006, acquire
15 earned service credit for periods of employment during which
16 the exemption or exemptions were in force if both the member
17 contributions and the local administrative unit contributions,
18 at the rates in effect during the periods of employment and
19 applied to the earnings of the member during those periods, are
20 paid to the fund, together with interest at the actuarial rate
21 set by the board. The contributions shall be paid in the
22 following manner:

23 (1) both the member contributions and the
24 local administrative unit contributions, together with
25 interest, shall be paid by the member; or

.204848.2SA

1 ~~(2) if the member tenders payment of the~~
2 ~~member contributions, with interest, the local administrative~~
3 ~~unit by whom the member was employed may, but shall not be~~
4 ~~obligated to, pay the local administrative unit contributions,~~
5 ~~with interest.~~

6 E.] A provisional member is a person who is employed
7 by the board, the department [~~of education~~], the New Mexico
8 school for the deaf, the northern New Mexico state school, the
9 New Mexico school for the blind and visually [~~handicapped~~
10 impaired, the [~~New Mexico~~] girls' [~~school~~] welfare home, the
11 New Mexico boys' school or the Los Lunas medical center [~~shall~~
12 ~~have~~] and who has the option of qualifying for coverage under
13 either the Educational Retirement Act or the public employees
14 retirement association [~~of New Mexico~~]. This option shall be
15 exercised by filing a written election with both the
16 [~~educational retirement~~] director and the executive secretary
17 of the public employees retirement association [~~of New Mexico~~].
18 This election shall be made within six months after employment
19 and shall be irrevocable regardless of subsequent employment or
20 reemployment in any administrative unit enumerated in this
21 [~~subsection~~] section. Until this election is made, the
22 provisional member shall be covered and shall be required to
23 make contributions under the Educational Retirement Act."

24 **SECTION 9.** Section 22-11-21.3 NMSA 1978 (being Laws 1998,
25 Chapter 38, Section 1, as amended) is amended to read:

.204848.2SA

1 "22-11-21.3. PICK UP--ROLLOVER.--

2 A. Commencing on July 1, 1998, each local
3 administrative unit may, solely for the purpose of compliance
4 with Section 414(h) of the Internal Revenue Code of 1986, pick
5 up, for the purposes specified in that section, member
6 contributions permitted by [~~Subsection D of~~] Section 22-11-17
7 NMSA 1978; Subsection C of Section 22-11-33 NMSA 1978; or
8 Paragraph (4) of Subsection A of Section 22-11-34 NMSA 1978.
9 Member contributions picked up under the provisions of this
10 subsection shall be treated as local administrative unit
11 contributions for purposes of determining income tax
12 obligations under the Internal Revenue Code of 1986; however,
13 such picked-up member contributions shall be included in the
14 determination of the member's gross annual salary for all other
15 purposes under federal and state laws. Member contributions
16 picked up under this section shall continue to be designated
17 member contributions for all purposes of the Educational
18 Retirement Act and shall be considered as part of the member's
19 annual salary for purposes of determining the amount of the
20 member's contribution. The provisions of this section are
21 voluntary, and the member shall have no option concerning the
22 pick up to receive the contributed amounts directly instead of
23 having them paid by the local administrative unit to the fund.
24 The contribution may be paid through the local administrative
25 unit's payroll deduction.

.204848.2SA

underscored material = new
[bracketed material] = delete

1 B. Commencing July 1, 1998, the board may accept
2 rollover contributions from other retirement funds solely for
3 and subject to the restrictions set forth in Section 22-11-17
4 NMSA 1978 and Subsection B of Section 22-11-34 NMSA 1978 and
5 the applicable restrictions set forth in the Internal Revenue
6 Code of 1986 for pension plan qualification."

7 **SECTION 10.** Section 22-11-25 NMSA 1978 (being Laws 1967,
8 Chapter 16, Section 148) is amended to read:

9 "22-11-25. RETIREMENT--REEMPLOYMENT.--

10 A. A member retired pursuant to the provisions of
11 the Educational Retirement Act may [~~remove himself~~] be removed
12 from retirement status by returning to employment. A
13 reemployed member shall make regular contributions pursuant to
14 the Educational Retirement Act. Upon termination of
15 reemployment, the member shall be eligible for retirement
16 benefits again based upon all [~~service credit~~] service credit
17 acquired. In no case shall the retirement benefits be less
18 than the member was receiving prior to [~~his~~] the member's
19 reemployment. [~~Except as provided in Subsection B of this~~
20 ~~section, the member shall not receive greater retirement~~
21 ~~benefits than he was receiving prior to his reemployment unless~~
22 ~~he has not less than five years of employment subsequent to~~
23 ~~July 1, 1957 with all contributions required by the Educational~~
24 ~~Retirement Act having been paid on the earnings derived through~~
25 ~~this employment.~~

.204848.2SA

underscored material = new
[bracketed material] = delete

1 ~~B. A member retired pursuant to the provisions of~~
2 ~~the Educational Retirement Act returning to employment for not~~
3 ~~less than one year after July 1, 1957 and prior to July 1, 1963~~
4 ~~shall be eligible for retirement benefits pursuant to this~~
5 ~~section if the following conditions occur:~~

6 ~~(1) the member's contributions on the salary~~
7 ~~earned during that period of reemployment must be paid at the~~
8 ~~rate which was in effect at that time. If this contribution is~~
9 ~~made, the local administrative unit employing the member during~~
10 ~~that period shall pay the local administrative units~~
11 ~~contribution at the rate in effect at that time; and~~

12 ~~(2) the member shall have fulfilled the five-~~
13 ~~year contributory employment requirement specified in Section~~
14 ~~77-9-23 New Mexico Statutes Annotated, 1953 Compilation.~~

15 ~~G.] B.~~ At the time of retirement following a period
16 of reemployment, the member's retirement benefits shall be paid
17 in accordance with the terms of the option selected at the time
18 of the first retirement. [~~A member qualified to retire~~
19 ~~pursuant to this section after having reentered employment~~
20 ~~after retiring prior to July 1, 1957 shall be eligible to~~
21 ~~retire under the options specified in Section 77-9-28 New~~
22 ~~Mexico Statutes Annotated, 1953 Compilation.]"~~

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

25 "22-11-29. RETIREMENT BENEFIT OPTIONS.--

.204848.2SA

underscored material = new
[bracketed material] = delete

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

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

10 ~~(1)~~ (2) OPTION B. A reduced annuity payable
11 during the member's life with provision that upon the member's
12 death the same annuity shall be continued during the life of
13 and paid to the beneficiary designated by the member in writing
14 at the time of electing this option; or

15 ~~(2)~~ (3) OPTION C. A reduced annuity payable
16 during the member's life with provision that upon the member's
17 death one-half of this same annuity shall be continued during
18 the life of and paid to the beneficiary designated by the
19 member in writing at the time of electing this option.

20 B. In the case of Options B and C of Subsection A
21 of this section, the actuarial equivalent of the member's
22 retirement benefit shall be computed on the basis of the lives
23 of both the member and the beneficiary.

24 C. In the event that the named beneficiary of a
25 retired member who elected Option B or C of Subsection A of

.204848.2SA

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

1 this section at the time of retirement predeceases the retired
2 member, the annuity of the retired member shall be adjusted by
3 adding an amount equal to the amount by which the annuity of
4 the retired member was reduced at retirement as a result of the
5 election of Option B or C. The adjustment authorized in this
6 subsection shall be made as follows:

7 (1) beginning on the first month following the
8 month in which the named beneficiary of a retiree dies
9 applicable to an annuity received by a retiree who retires
10 after June 30, 1987; or

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

15 D. A retired member who is being paid an adjusted
16 annuity pursuant to Subsection C of this section because of the
17 death of the named beneficiary may exercise a one-time
18 irrevocable option to designate another individual as the
19 beneficiary and may select either Option B or Option C of
20 Subsection A of this section; provided that:

21 (1) the amount of the annuity under the option
22 selected shall be recalculated and have the same actuarial
23 present value, computed on the effective date of the
24 designation, as the annuity being paid to the retired member
25 prior to the designation;

.204848.2SA

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

1 (2) the designation and the amount of the
2 annuity shall be subject to a court order as provided for in
3 Subsection B of Section 22-11-42 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 annuity amount.

7 E. A retired member who is being paid an annuity
8 under Option B or C of Subsection A of this section with a
9 living designated beneficiary other than the retired member's
10 spouse or former spouse may exercise a one-time irrevocable
11 option to deselect the designated beneficiary and elect to:

12 (1) designate another beneficiary; provided
13 that:

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

16 (b) the amount of the annuity under the
17 form of payment shall be recalculated and shall have the same
18 actuarial present value, computed as of the effective date of
19 the designation, as the amount of annuity paid prior to the
20 designation; and

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

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

.204848.2SA

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

1 F. In the event of the death of the member who has
2 not retired and who has completed at least five years' earned
3 service credit, the member shall be considered as retiring on
4 the first day of the month following the date of death, and the
5 benefits due the surviving beneficiary, computed as of that
6 date, shall, except as provided in Subsection I of this
7 section, be commenced effective on the first day of such month
8 in accordance with the terms of Option B of Subsection A of
9 this section. In lieu of the provisions of Option B, the
10 surviving beneficiary may elect to receive payment of all the
11 contributions made by the member, plus interest at the rate set
12 by the board reduced by the sum of any disability benefits
13 previously received by the member, or the surviving beneficiary
14 may choose to defer receipt of the survivor's benefit to
15 whatever age the beneficiary chooses up to the time the member
16 would have attained age sixty. If the benefit is thus
17 deferred, it shall be calculated as though the member had
18 retired on the first day of the month in which the beneficiary
19 elects to receive the benefit. In the event of the death of
20 the beneficiary after the death of the member and prior to the
21 date on which the beneficiary has elected to receive the
22 beneficiary's benefit, the estate of the beneficiary shall be
23 entitled to a refund of the member's contributions plus
24 interest at the rate earned by the fund during the preceding
25 fiscal year, reduced by the sum of any disability benefits

.204848.2SA

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

1 previously received by the member.

2 G. In the case of death of a retired member who did
3 not elect either Option B or C of Subsection A of this section
4 and before the benefits paid to the member have equaled the sum
5 of the member's accumulated contributions to the fund plus
6 accumulated interest at the rate set by the board, the balance
7 shall be paid to the beneficiary designated in writing to the
8 director by the member or, if no beneficiary was designated, to
9 the estate of the member.

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

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

22 ~~[J. Any elections of either Option B or C of~~
23 ~~Subsection A of this section on file with the director on June~~
24 ~~30, 1984 by members who have not retired prior to June 30, 1984~~
25 ~~are void.]"~~

.204848.2SA

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

1 SECTION 12. Section 22-11-31 NMSA 1978 (being Laws 1979,
2 Chapter 333, Section 2, as amended) is amended to read:

3 "22-11-31. COST-OF-LIVING ADJUSTMENT--ELIGIBILITY--BASED
4 ON FUNDED RATIO--ADDITIONAL CONTRIBUTIONS.--

5 A. For the purposes of this section:

6 (1) "adjustment factor" means a multiplicative
7 factor computed to provide an annuity adjustment pursuant to
8 the provisions of Subsection B of this section;

9 (2) "annuity" means any benefit payable under
10 the Educational Retirement Act or the Public Employees
11 Retirement Reciprocity Act as a retirement benefit, disability
12 benefit or survivor benefit;

13 (3) "calendar year" means the full twelve
14 months beginning January 1 and ending December 31;

15 (4) "consumer price index" means the average
16 of the monthly consumer price indexes for a calendar year for
17 the entire United States for all items as published by the
18 United States department of labor;

19 (5) "funded ratio" means the ratio of the
20 actuarial value of the assets of the fund to the actuarial
21 accrued liability of the educational retirement system;

22 (6) "median adjusted annuity" means the median
23 value of all annuities and retirement benefits paid pursuant to
24 Section 22-11-29 or 22-11-30 NMSA 1978, as calculated each
25 fiscal year; provided, however, that the benefits paid to a

.204848.2SA

1 member pursuant to Section 22-11-38 NMSA 1978 shall not be
2 included in the median adjusted annuity calculation;

3 (7) "next preceding calendar year" means the
4 full calendar year immediately prior to the preceding calendar
5 year; and

6 (8) "preceding calendar year" means the full
7 calendar year preceding the July 1 on which a benefit is to be
8 adjusted.

9 B. On or after July 1, 1984:

10 (1) the annuity of a member who retires
11 pursuant to Subsection A of Section 22-11-23 NMSA 1978 or
12 Subsection A of Section 22-11-23.1 NMSA 1978 shall be adjusted
13 annually and cumulatively commencing on July 1 of the year in
14 which a member attains the age of sixty-five years or on July 1
15 following the year a member retires, whichever is later; and

16 (2) the annuity of a member who retires
17 pursuant to Subsection A of Section 22-11-23.2 NMSA 1978 shall
18 be adjusted annually and cumulatively commencing on July 1 of
19 the year in which the member attains the age of sixty-seven
20 years or on July 1 following the year the member retires,
21 whichever is later.

22 C. Beginning on July 1, 2013 and on each July 1
23 thereafter:

24 (1) if the funded ratio of the fund as
25 reported by the board's actuary in the actuarial valuation

.204848.2SA

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

1 report for the next preceding fiscal year is one hundred
2 percent or greater, the annuity adjustments provided for under
3 Subsection B of this section shall be adjusted by applying an
4 adjustment factor based on the percentage increase of the
5 consumer price index between the next preceding calendar year
6 and the preceding calendar year. The adjustment factor shall
7 be applied as follows:

8 (a) if the percentage increase of the
9 consumer price index is less than two percent in absolute
10 value, the adjustment factor shall be the same amount as the
11 percentage increase of the consumer price index; and

12 (b) if the percentage increase of the
13 consumer price index is two percent or greater in absolute
14 value, the adjustment factor shall be one-half of the
15 percentage increase; except that the adjustment shall not
16 exceed four percent in absolute value nor be less than two
17 percent in absolute value;

18 (2) if the funded ratio of the fund as
19 reported by the board's actuary in the actuarial report for the
20 next preceding fiscal year is greater than ninety percent but
21 less than one hundred percent, except for a member who is on
22 disability status in accordance with Section 22-11-35 NMSA 1978
23 and whose benefit is adjusted as provided in Subsection G of
24 this section or a member who is retired pursuant to Section
25 22-11-38 NMSA 1978, the adjustment factor provided for in

.204848.2SA

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

1 Subsection B of this section shall be applied as follows:

2 (a) if the percentage increase in the
3 consumer price index is less than two percent in absolute
4 value, for a member who has twenty-five or more years of
5 service credit at retirement and whose annuity is less than or
6 equal to the median adjusted annuity for the fiscal year next
7 preceding the adjustment date, the adjustment factor shall be
8 ninety-five percent of the adjustment factor determined
9 pursuant to Subparagraph (a) of Paragraph (1) of this
10 subsection;

11 (b) if the percentage increase in the
12 consumer price index is less than two percent in absolute
13 value, for a member who has less than twenty-five years of
14 service credit at retirement and whose annuity is less than or
15 equal to the median adjusted annuity for the fiscal year next
16 preceding the adjustment date, and for a member whose annuity
17 is greater than the median adjusted annuity for the fiscal year
18 next preceding the adjustment date, the adjustment factor shall
19 be ninety percent of the adjustment factor determined pursuant
20 to Subparagraph (a) of Paragraph (1) of this subsection;

21 (c) if the percentage increase in the
22 consumer price index is greater than or equal to two percent in
23 absolute value for a member who has twenty-five or more years
24 of service credit at retirement and whose annuity is less than
25 or equal to the median adjusted annuity for the fiscal year

.204848.2SA

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

1 next preceding the adjustment date, the adjustment factor shall
2 be ninety-five percent of the adjustment factor determined
3 under Subparagraph (b) of Paragraph (1) of this subsection; and

4 (d) if the percentage increase in the
5 consumer price index is greater than or equal to two percent in
6 absolute value, for a member who has less than twenty-five
7 years of service credit at retirement and whose annuity is less
8 than or equal to the median adjusted annuity for the fiscal
9 year next preceding the adjustment date, and for a member whose
10 annuity is greater than the median adjusted annuity for the
11 fiscal year next preceding the adjustment date, the adjustment
12 factor shall be ninety percent of the adjustment factor
13 determined under Subparagraph (b) of Paragraph (1) of this
14 subsection;

15 (3) if the funded ratio of the fund as
16 reported by the board's actuary in the actuarial valuation
17 report for the next preceding fiscal year is ninety percent or
18 less, except for a member who is on disability status in
19 accordance with Section 22-11-35 NMSA 1978 and whose benefit is
20 adjusted as provided in Subsection G of this section or a
21 member who is retired pursuant to Section 22-11-38 NMSA 1978,
22 the adjustment factor provided for in Subsection B of this
23 section shall be applied as follows:

24 (a) if the percentage increase in the
25 consumer price index is less than two percent in absolute

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

1 value, for a member who has twenty-five or more years of
2 service credit at retirement and whose annuity is less than or
3 equal to the median adjusted annuity for the fiscal year next
4 preceding the adjustment date, the adjustment factor shall be
5 ninety percent of the adjustment factor determined pursuant to
6 Subparagraph (a) of Paragraph (1) of this subsection;

7 (b) if the percentage increase in the
8 consumer price index is less than two percent in absolute
9 value, for a member who has less than twenty-five years of
10 service credit at retirement and whose annuity is less than or
11 equal to the median adjusted annuity for the fiscal year next
12 preceding the adjustment date, and for a member whose annuity
13 is greater than the median adjusted annuity for the fiscal year
14 next preceding the adjustment date, the adjustment factor shall
15 be eighty percent of the adjustment factor determined pursuant
16 to Subparagraph (a) of Paragraph (1) of this subsection;

17 (c) if the percentage increase in the
18 consumer price index is greater than or equal to two percent in
19 absolute value for a member who has twenty-five or more years
20 of service credit at retirement and whose annuity is less than
21 or equal to the median adjusted annuity for the fiscal year
22 next preceding the adjustment date, the adjustment factor shall
23 be ninety percent of the adjustment factor determined under
24 Subparagraph (b) of Paragraph (1) of this subsection; and

25 (d) if the percentage increase in the

underscored material = new
[bracketed material] = delete

1 consumer price index is greater than or equal to two percent in
2 absolute value, for a member who has less than twenty-five
3 years of service credit at retirement and whose annuity is less
4 than or equal to the median adjusted annuity for the fiscal
5 year next preceding the adjustment date, and for a member whose
6 annuity is greater than the median adjusted annuity for the
7 fiscal year next preceding the adjustment date, the adjustment
8 factor shall be eighty percent of the adjustment factor
9 determined under Subparagraph (b) of Paragraph (1) of this
10 subsection; and

11 (4) an annuity shall not be decreased if there
12 is a decrease in the consumer price index between the next
13 preceding calendar year and the preceding calendar year.

14 D. A retired member whose benefit is subject to
15 adjustment under the provisions of the Educational Retirement
16 Act in effect prior to July 1, 1984 shall have the member's
17 annuity readjusted annually and cumulatively under the
18 provisions of that act in effect prior to July 1, 1984 until
19 July 1 of the year in which the member attains the age of
20 sixty-five years, when the member shall have the annuity
21 readjusted annually and cumulatively under the provisions of
22 this section.

23 E. A member who:

24 (1) retires pursuant to Subsection A of
25 Section 22-11-23 NMSA 1978 or Subsection A of Section

.204848.2SA

underscored material = new
[bracketed material] = delete

1 22-11-23.1 NMSA 1978 after attaining the age of sixty-five
2 years shall have the member's annuity adjusted as provided in
3 Subsections B and C of this section commencing on July 1 of the
4 year following the member's retirement; ~~and~~ or

5 (2) retires pursuant to Subsection A of
6 Section 22-11-23.2 NMSA 1978 after attaining the age of
7 sixty-seven years shall have the member's annuity adjusted as
8 provided in Subsections B and C of this section commencing on
9 July 1 of the year following the member's retirement.

10 F. A retired member who returns to work and suspends
11 retirement shall be subject to the provisions of this section as
12 they exist at the time of the member's ~~final~~ latest
13 retirement.

14 G. Benefits of a member who is on a disability
15 status in accordance with Section 22-11-35 NMSA 1978 or a member
16 who is certified by the board as disabled at regular retirement
17 shall be adjusted in accordance with Subsections B and C of this
18 section, except that the benefits shall be adjusted annually and
19 cumulatively commencing on July 1 of the third full year
20 following the year in which the member was approved by the board
21 for disability or retirement.

22 ~~[H. The board shall adjust the benefits of each~~
23 ~~person receiving an annuity as of June 30, 1999. The adjustment~~
24 ~~shall be made on July 1, 1999 on the basis of an increase of two~~
25 ~~dollars (\$2.00) per month for each year since the member's last~~

.204848.2SA

1 ~~retirement plus an increase of one dollar (\$1.00) per month for~~
2 ~~each year of credited service at the time of the last~~
3 ~~retirement.]"~~

4 SECTION 13. Section 22-11-33 NMSA 1978 (being Laws 1967,
5 Chapter 16, Section 156, as amended) is amended to read:

6 "22-11-33. EARNED SERVICE CREDIT.--

7 A. Upon a member filing an application for
8 retirement or disability benefits, earned service credit for the
9 time of contributory employment shall be certified by the
10 director and subject to the review of the board.

11 B. A member shall be certified to have earned
12 service credit for that period of time when ~~[he]~~ the member was
13 engaged in prior employment. Earned service credit shall not be
14 certified for that period of employment for which the
15 contributions have been withdrawn from the fund by the member.

16 C. Earned service credit shall be certified for
17 periods of employment interrupted for some cause other than
18 retirement or disability. This shall be done if a member
19 withdrawing contributions from the fund for this period returns
20 to the fund, for each year of earned service credit desired, a
21 sum equal to the member's contribution to the fund during this
22 period and an additional sum as interest compounded annually
23 from the date the contributions were withdrawn to the date of
24 payment of the amount of returned contributions at the rate of
25 interest set by the board. ~~[These payments may be made in~~

.204848.2SA

underscored material = new
[bracketed material] = delete

1 ~~installments, and, if the payments made to the fund are~~
2 ~~insufficient for the restoration of any full year of earned~~
3 ~~service credit, the member shall be certified to have acquired~~
4 ~~earned service credit for that period of time which is~~
5 ~~proportionate to the payments made.]"~~

6 SECTION 14. Section 22-11-34 NMSA 1978 (being Laws 1967,
7 Chapter 16, Section 157, as amended) is amended to read:

8 "22-11-34. ALLOWED SERVICE CREDIT.--

9 A. A member shall be certified to have acquired
10 allowed service credit pursuant to the Internal Revenue Code of
11 1986 for those periods of time when the member was:

12 (1) employed prior to July 1, 1967 in a
13 federal educational program within New Mexico, including United
14 States Indian schools and civilian conservation corps camps.
15 This service credit shall be allowed without contribution;

16 (2) engaged in military service that
17 interrupted the member's employment in New Mexico if the member
18 returned to employment within eighteen months following
19 honorable discharge. This service credit shall be allowed
20 without contribution;

21 (3) engaged in United States military service
22 or the commissioned corps of the public health service from
23 which the member was honorably discharged; provided that:

24 (a) the member shall have five years or
25 more of contributory employment to be eligible to purchase

.204848.2SA

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

1 allowed service credit pursuant to this paragraph;

2 (b) the member shall contribute to the
3 fund, for each year of service credit the member elects to
4 purchase, a sum equal to the member's average annual actual
5 salary for the five years preceding the date of the
6 contribution multiplied by the sum of the member contribution
7 rate and the employer contribution rate in effect at the time
8 of the member's written election to purchase, subject to the
9 federal Uniformed Services Employment and Reemployment Rights
10 Act of 1994;

11 (c) full payment shall be made in a
12 single lump sum within sixty days of the date that the member
13 is informed of the amount of the payment; and

14 (d) the portion of the purchase cost
15 derived from the employer's contribution rate shall be credited
16 to the fund and, in the event that a member requests a refund
17 of contributions pursuant to Section 22-11-15 NMSA 1978, the
18 member shall not be entitled to a refund of that portion of the
19 purchase cost derived from the employer contribution rate; or

20 (4) employed:

21 (a) in a public school or public
22 institution of higher learning in another state, territory or
23 possession of the United States;

24 (b) in a United States military
25 dependents' school operated by a branch of the armed forces of

underscored material = new
[bracketed material] = delete

1 the United States;

2 (c) as provided in Paragraph (1) of this
3 subsection after July 1, 1967; or

4 (d) in a private school or institution
5 of higher learning in New Mexico whose education program is
6 accredited or approved by the department at the time of
7 employment.

8 B. Effective July 1, 2001, the member or employer
9 under Paragraph (4) of Subsection A of this section shall
10 contribute to the fund for each year of allowed service credit
11 desired an amount equal to the actuarial value of the service
12 purchased as defined by the board. [~~Payment pursuant to~~
13 ~~Paragraph (4) of Subsection A of this section may be made in~~
14 ~~installments, at the discretion of the board, over a period not~~
15 ~~to exceed one year and, if the sum paid does not equal the~~
16 ~~amount required for any full year of allowed service credit,~~
17 ~~the member shall acquire allowed service credit for that period~~
18 ~~of time that is proportionate to the payment made. Half credit~~
19 ~~may be allowed without contribution for not more than ten years~~
20 ~~of the educational service described by Subparagraph (a) of~~
21 ~~Paragraph (4) of Subsection A of this section if that service~~
22 ~~was prior to June 13, 1953 and if the member was employed in~~
23 ~~New Mexico prior to June 13, 1953 in a position covered by the~~
24 ~~Educational Retirement Act or a law repealed by that act.] No
25 allowed service credit shall be purchased pursuant to Paragraph~~

.204848.2SA

underscoring material = new
[bracketed material] = delete

1 (4) of Subsection A of this section unless the member is
2 currently employed by a local administrative unit.

3 C. No member shall be certified to have acquired
4 allowed service credit:

5 (1) under any single paragraph or the
6 combination of only Paragraphs (1) and (4) or only Paragraphs
7 (2) and (3) of Subsection A of this section in excess of five
8 years; or

9 (2) in excess of ten years for any other
10 combination of Paragraphs (1) through (4) of Subsection A of
11 this section.

12 D. A member receiving service credit under
13 Paragraph (3) or (4) of Subsection A of this section who
14 enrolls in the retiree health care authority shall make
15 contributions pursuant to Subsection C of Section 10-7C-15 NMSA
16 1978.

17 ~~[E. The provisions of this section are made~~
18 ~~applicable to the services described prior to as well as after~~
19 ~~the effective date of the Educational Retirement Act.]"~~

20 SECTION 15. Section 22-11-35 NMSA 1978 (being Laws 1967,
21 Chapter 16, Section 158) is amended to read:

22 "22-11-35. DISABILITY BENEFIT--ELIGIBILITY--MEDICAL
23 EXAMINATION.--

24 A. A member shall be eligible for disability
25 benefits if ~~[he]~~ the member has acquired ten years or more of

.204848.2SA

underscored material = new
[bracketed material] = delete

1 earned [~~service-credit~~] service credit and if the board
2 certifies the member to be totally disabled to continue [~~his~~]
3 the member's employment and unable to obtain and retain other
4 gainful employment commensurate with [~~his~~] the member's
5 background, education and experience.

6 B. Prior to any certification of disability by the
7 board, the board shall require each applicant for disability
8 benefits to submit [~~himself to a medical examination by the~~
9 ~~medical authority~~] medical records as required by the board in
10 support of the applicant's disability claim."

11 SECTION 16. Section 22-11-36 NMSA 1978 (being Laws 1967,
12 Chapter 16, Section 159, as amended) is amended to read:

13 "22-11-36. DISABILITY BENEFIT--CONTINUED ELIGIBILITY--
14 RE-EXAMINATIONS.--

15 A. Unless designated by the [~~medical authority~~]
16 board as being permanently disabled, to continue to receive
17 disability benefits, a member shall, on the anniversary date in
18 each year of [~~his~~] the member's being placed on a disability
19 status, present [~~himself~~] current medical records to the
20 medical authority [~~for a medical re-examination~~] in support of
21 the applicant's continuing disability claim. The medical
22 authority shall [~~certify to the director after each medical~~
23 ~~examination whether there is a substantial betterment of the~~
24 ~~member's disability~~] recommend to the board that the member
25 either be placed on continuing annual disability or permanent

.204848.2SA

underscored material = new
[bracketed material] = delete

1 disability or removed from disability status due to a
2 substantial betterment of the member's condition. In the event
3 a substantial betterment of the disability is reported, the
4 board shall determine whether the member is totally disabled
5 for employment and unable to obtain and retain other gainful
6 employment commensurate with ~~[his]~~ the member's background,
7 education and experience. If the board determines that the
8 member is no longer disabled, the payment of the disability
9 benefits shall cease.

10 B. Payment of disability benefits to a member shall
11 be suspended if ~~[a certificate of medical re-examination by the~~
12 ~~medical authority is not filed with the director]~~ the member
13 fails to submit medical records to the medical authority within
14 thirty days after the date upon which the member should have
15 ~~[been re-examined]~~ submitted the medical records and where the
16 failure to ~~[file the certificate]~~ submit the medical records
17 was due to the unexcused failure or the refusal of the member
18 to ~~[report for the medical re-examination]~~ do so. Payment of
19 disability benefits shall be resumed only after the member has
20 ~~[complied with the requirements of the Educational Retirement~~
21 ~~Act]~~ submitted current medical records to the board and the
22 board has determined that the member is totally disabled. A
23 member shall have no right or claim for benefits withheld
24 during a period of suspension.

25 C. The board may, in its discretion, require

.204848.2SA

underscored material = new
[bracketed material] = delete

1 ~~[further or more frequent medical examinations of members~~
2 ~~having a disability status.~~

3 ~~D. A member receiving disability benefits who is~~
4 ~~unable to report for a medical re-examination because of his~~
5 ~~physical condition or because he resides outside the state~~
6 ~~shall notify the director of this fact not later than fifteen~~
7 ~~days in advance of the date for the medical re-examination.~~
8 ~~The board shall designate a medical doctor in the vicinity of~~
9 ~~the residence of the member to make the medical re-examination~~
10 ~~and to report the findings to the board] that the member obtain~~
11 ~~an independent medical examination; provided that the~~
12 ~~examination is performed at the board's expense.~~

13 ~~[E.]~~ D. Upon a determination by the board, a
14 member's status may be changed from permanently disabled to
15 temporarily disabled or no longer disabled."

16 SECTION 17. Section 22-11-39 NMSA 1978 (being Laws 1967,
17 Chapter 16, Section 162) is amended to read:

18 "22-11-39. REPORT OF IMPROVED HEALTH--PENALTY.--

19 A. A member receiving disability benefits shall
20 report to the director in writing any substantial improvement
21 in ~~[his]~~ the member's disability within thirty days after ~~[he]~~
22 the member has or reasonably should have knowledge of the
23 improvement.

24 B. A member failing to report to the director as
25 required by this section is guilty of a petty ~~[misdemeanor]~~

.204848.2SA

underscored material = new
[bracketed material] = delete

1 misdemeanor."

2 SECTION 18. Section 22-11-40 NMSA 1978 (being Laws 1967,
3 Chapter 16, Section 163) is amended to read:

4 "22-11-40. [REPORTS] RESTORATION TO FUND.--

5 [A. ~~The payment of disability benefits shall be~~
6 ~~suspended by the director upon notification by the board that~~
7 ~~the member has failed or refused to make any report required by~~
8 ~~the board to be made by him. Payment of disability benefits~~
9 ~~shall be resumed only after the required report is made. The~~
10 ~~member shall have no right or claim for benefits withheld~~
11 ~~during a period of suspension.~~

12 B.] If a member is obligated to restore any sum of
13 money to the fund and fails or refuses to do so for a period of
14 three months after written demand is made by the director, [he]
15 the member shall forfeit [his] membership and receive no
16 further benefits pursuant to the Educational Retirement Act.
17 The director shall determine whether the former member's
18 contributions to the fund exceed the total amount of disability
19 or retirement benefits [he] the member has received and shall
20 withdraw from any such balance of contributions the amount of
21 money the member is obligated to restore to the fund. Any
22 balance of the contribution remaining in the fund shall be paid
23 to the former member or [his] the former member's beneficiary.
24 In the event the money the former member is obligated to
25 restore to the fund is not restored to the fund, the former

.204848.2SA

underscoring material = new
[bracketed material] = delete

1 member shall be subject to civil action by the board for its
2 recovery."

3 SECTION 19. Section 22-11-44 NMSA 1978 (being Laws 1967,
4 Chapter 16, Section 167) is amended to read:

5 "22-11-44. SAVING CLAUSE--RETIREMENT BENEFITS--DISABILITY
6 BENEFITS.--

7 A. Any person retired pursuant to the provisions of
8 any laws repealed by the Educational Retirement Act shall be
9 considered to have retired pursuant to the Educational
10 Retirement Act and shall continue to receive retirement
11 benefits in the same amount as received prior to the enactment
12 of the Educational Retirement Act.

13 B. Any person receiving disability benefits
14 pursuant to any laws repealed by the Educational Retirement Act
15 shall continue to receive disability benefits in the same
16 amount as received prior to the enactment of the Educational
17 Retirement Act and shall be considered to have been granted
18 disability benefits pursuant to and be subject to the
19 provisions of the Educational Retirement Act.

20 C. Nothing in the Educational Retirement Act shall
21 be construed to adversely affect any benefits being paid
22 pursuant to any laws repealed by the Educational Retirement Act
23 or any laws establishing the public employees retirement
24 association [~~of New Mexico~~].

25 D. No person who was [~~heretofore~~] covered under the

.204848.2SA

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

1 provisions of any statute repealed by the Educational
2 Retirement Act shall be retired at a monthly benefit [~~which~~
3 that is less than [~~he~~] the person would have received had [~~his~~]
4 the person's employment continued to be performed under such
5 repealed provisions."

6 SECTION 20. REPEAL.--Sections 22-11-18 and 22-11-45 NMSA
7 1978 (being Laws 1971, Chapter 73, Section 1 and Laws 1967,
8 Chapter 16, Section 168) are repealed.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25