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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;

B. "regular member" means:

(1) a person regularly employed 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 by a junior

1 college or community college created pursuant to Chapter 21,
2 Article 13 NMSA 1978, except for a participant;

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

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

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

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

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

22 (8) a person regularly employed by a
23 regional education cooperative holding a license issued by
24 the department at the time of commencement of such
25 employment;

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

3 D. "local administrative unit" means an employing
4 agency however constituted that is directly responsible for
5 the payment of compensation for the employment of members or
6 participants;

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

13 F. "employment" means employment by a local
14 administrative unit that qualifies a person to be a member or
15 participant;

16 G. "service employment" means employment that
17 qualifies a person to be a regular member;

18 H. "provisional service employment" means
19 employment that qualifies a person to be a provisional
20 member;

21 I. "prior employment" means employment performed
22 prior to the effective date of the Educational Retirement Act
23 that would be service employment or provisional service
24 employment if performed thereafter;

25 J. "service credit" means that period of time with SB 28
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1 which a member is accredited for the purpose of determining
2 the member's eligibility for and computation of retirement or
3 disability benefits;

4 K. "earned service credit" means that period of
5 time during which a member was engaged in employment or prior
6 employment with which the member is accredited for the
7 purpose of determining the member's eligibility for
8 retirement or disability benefits;

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

14 M. "retirement benefit" means an annuity paid
15 monthly to members whose employment has been terminated by
16 reason of their age;

17 N. "disability benefit" means an annuity paid
18 monthly to members whose employment has been terminated by
19 reason of a disability;

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

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

22 Q. "director" means the educational retirement
23 director;

24 R. "medical authority" means a medical doctor or
25 medical review panel designated or employed by the board to

1 examine medical records and report on the medical condition
2 of applicants for or recipients of disability benefits;

3 S. "actuary" means a person trained and regularly
4 engaged in the occupation of calculating present and
5 projected monetary assets and liabilities under annuity or
6 insurance programs;

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

11 U. "contributory employment" means employment for
12 which contributions have been made by both a member and a
13 local administrative unit pursuant to the Educational
14 Retirement Act;

15 V. "qualifying state educational institution"
16 means the university of New Mexico, New Mexico state
17 university, New Mexico institute of mining and technology,
18 New Mexico highlands university, eastern New Mexico
19 university, western New Mexico university, central New Mexico
20 community college, Clovis community college, Luna community
21 college, Mesalands community college, New Mexico junior
22 college, northern New Mexico state school, San Juan college
23 and Santa Fe community college;

24 W. "participant" means:

25 (1) a person regularly employed as a faculty

1 or professional employee of the university of New Mexico,
2 New Mexico state university, New Mexico institute of mining
3 and technology, New Mexico highlands university, eastern
4 New Mexico university or western New Mexico university who
5 first becomes employed with such an educational institution
6 on or after July 1, 1991, or a person regularly employed as a
7 faculty or professional employee of the central New Mexico
8 community college, Clovis community college, Luna community
9 college, Mesalands community college, New Mexico junior
10 college, northern New Mexico state school, San Juan college
11 or Santa Fe community college who is first employed by the
12 institution on or after July 1, 1999 and who elects, pursuant
13 to Section 22-11-47 NMSA 1978, to participate in the
14 alternative retirement plan; and

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

22 X. "salary" means the compensation or wages paid
23 to a member or participant by any local administrative unit
24 for services rendered. "Salary" includes payments made for
25 annual or sick leave and payments for additional service

1 provided to related activities, but does not include payments
2 for sick leave not taken unless the payment for the unused
3 sick leave is made through continuation of the member on the
4 regular payroll for the period represented by that payment
5 and does not include allowances or reimbursements for travel,
6 housing, food, equipment or similar items;

7 Y. "alternative retirement plan" means the
8 retirement plan provided for in Sections 22-11-47 through
9 22-11-52 NMSA 1978; and

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

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

15 "22-11-4. BOARD--REGULAR AND SPECIAL MEETINGS.--

16 A. The board shall hold regular meetings four
17 times each year and may provide for additional regular
18 meetings. Prior to each regular meeting, written notice
19 shall be given to each member of the board specifying the
20 time and place of the regular meeting.

21 B. Special meetings of the board may be called by
22 the chair or by any three members of the board. Written
23 notice of the special meeting shall be sent to each member of
24 the board at least three days in advance of the special
25 meeting.

1 C. If not in violation of Subsection A or B of
2 this section, the rules of the board or the Open Meetings
3 Act, the chair or any of three members of the board may
4 cancel or reschedule a meeting."

5 SECTION 3. Section 22-11-5.1 NMSA 1978 (being Laws
6 1999, Chapter 153, Section 2) is amended to read:

7 "22-11-5.1. RESTRICTIONS ON RECEIPT OF GIFTS .--Except
8 for gifts of food or beverage given in a place of public
9 accommodation, consumed at the time of receipt, not exceeding
10 fifty dollars (\$50.00) for a single gift and the aggregate
11 value of which gifts may not exceed one hundred fifty dollars
12 (\$150) in a calendar year, neither a board member nor an
13 employee of the board shall receive or accept anything of
14 value directly or indirectly from a person who:

15 A. has a current contract with the board;

16 B. is a potential bidder, offeror or contractor
17 for the provision of services or personal property to the
18 board;

19 C. is authorized to invest public funds pursuant
20 to state or federal law or is an employee or agent of such a
21 person; or

22 D. is an organization, association or other entity
23 having a membership that includes persons described in
24 Subsections A through C of this section."

25 SECTION 4. Section 22-11-6 NMSA 1978 (being Laws 1967,

1 Chapter 16, Section 130, as amended) is amended to read:

2 "22-11-6. BOARD--POWERS--DUTIES.--

3 A. The board shall:

4 (1) properly and uniformly enforce the
5 Educational Retirement Act;

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

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

11 (4) accept donations, gifts or bequests to
12 the fund; and

13 (5) adopt regulations pursuant to the
14 Educational Retirement Act.

15 B. The board may:

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

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

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

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

1 foregoing persons or their agents; and

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

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

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

8 A. The board shall employ an educational
9 retirement director. The director shall be the
10 administrative officer for the board in carrying out the
11 provisions of the Educational Retirement Act and shall have
12 those additional duties provided in the rules of the board.

13 B. Before assuming the duties of office, the
14 director shall obtain an official bond payable to the fund
15 and conditioned upon the faithful performance of the
16 director's duties during the director's term of office. The
17 bond shall be executed by a corporate surety company
18 authorized to do business in this state. The amount of the
19 bond shall be not less than twenty-five thousand dollars
20 (\$25,000). The board may elect to obtain a schedule or
21 blanket corporate surety bond covering the director and
22 employees of the board for any period not exceeding four
23 years. The cost of a bond obtained pursuant to this section
24 shall be paid from the fund. Any bond obtained shall be
25 approved by the board and filed with the secretary of state."

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

3 "22-11-8. MEDICAL AUTHORITY--FEES.--

4 A. The board shall employ the services of a
5 medical authority. The medical authority may examine, make
6 reports of and certify the medical condition of applicants
7 for and recipients of disability benefits pursuant to the
8 Educational Retirement Act.

9 B. The board shall pay the medical authority a
10 reasonable fee for professional services."

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

13 "22-11-9. ACTUARY--FEES.--

14 A. The board shall employ the services of an
15 actuary. The actuary shall prepare a table of actuarial
16 equivalents for use of the board and the director in
17 computing the value of advanced, deferred or optional payment
18 of benefits pursuant to the Educational Retirement Act. The
19 actuary shall also study the financial operations of the
20 Educational Retirement Act and shall make written reports
21 thereon to the board.

22 B. The board shall pay the actuary a reasonable
23 fee for professional services.

24 C. Unless otherwise required by the governmental
25 accounting standards board of the American institute of

1 certified public accountants, an actuarial report shall be
2 conducted at least once every three years."

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

5 "22-11-17. PROVISIONAL MEMBERSHIP.--

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

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

25 "22-11-21.3. PICK UP--ROLLOVER.--

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

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
8 1967, 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 be removed from retirement
12 status by returning to employment. A reemployed member shall
13 make regular contributions pursuant to the Educational
14 Retirement Act. Upon termination of reemployment, the member
15 shall be eligible for retirement benefits again based upon
16 all service credit acquired. In no case shall the retirement
17 benefits be less than the member was receiving prior to the
18 member's reemployment.

19 B. At the time of retirement following a period of
20 reemployment, the member's retirement benefits shall be paid
21 in accordance with the terms of the option selected at the
22 time of the first retirement."

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

1 "22-11-29. RETIREMENT BENEFIT OPTIONS.--

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

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

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

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

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

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

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

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

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

23 (1) the amount of the annuity under the
24 option selected shall be recalculated and have the same
25 actuarial present value, computed on the effective date of

1 the designation, as the annuity being paid to the retired
2 member prior to the designation;

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

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

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

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

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

18 (b) the amount of the annuity 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 annuity paid prior to the
22 designation; 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 annuity amount; or

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

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

1 contributions plus interest at the rate earned by the fund
2 during the preceding fiscal year, reduced by the sum of any
3 disability benefits previously received by the member.

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

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

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

24 SECTION 12. Section 22-11-31 NMSA 1978 (being Laws
25 1979, Chapter 333, Section 2, as amended) is amended to read:

1 "22-11-31. COST-OF-LIVING ADJUSTMENT--ELIGIBILITY--
2 BASED ON FUNDED RATIO--ADDITIONAL CONTRIBUTIONS.--

3 A. For the purposes of this section:

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

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

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

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

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

21 (6) "median adjusted annuity" means the
22 median value of all annuities and retirement benefits paid
23 pursuant to Section 22-11-29 or 22-11-30 NMSA 1978, as
24 calculated each fiscal year; provided, however, that the
25 benefits paid to a member pursuant to Section 22-11-38 NMSA

1 1978 shall not be included in the median adjusted annuity
2 calculation;

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

6 (8) "preceding calendar year" means the full
7 calendar year preceding the July 1 on which a benefit is to
8 be 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
13 adjusted annually and cumulatively commencing on July 1 of
14 the year in which a member attains the age of sixty-five
15 years or on July 1 following the year a member retires,
16 whichever is later; and

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

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

25 (1) if the funded ratio of the fund as

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

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

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

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

1 Section 22-11-38 NMSA 1978, the adjustment factor provided
2 for in Subsection B of this section shall be applied as
3 follows:

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

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

24 (c) if the percentage increase in the
25 consumer price index is greater than or equal to two percent

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

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

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

1 the adjustment factor provided for in Subsection B of this
2 section shall be applied as follows:

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

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

23 (c) if the percentage increase in the
24 consumer price index is greater than or equal to two percent
25 in absolute value for a member who has twenty-five or more

1 years of service credit at retirement and whose annuity is
2 less than or equal to the median adjusted annuity for the
3 fiscal year next preceding the adjustment date, the
4 adjustment factor shall be ninety percent of the adjustment
5 factor determined under Subparagraph (b) of Paragraph (1) of
6 this subsection; and

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

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

21 D. A retired member whose benefit is subject to
22 adjustment under the provisions of the Educational Retirement
23 Act in effect prior to July 1, 1984 shall have the member's
24 annuity readjusted annually and cumulatively under the
25 provisions of that act in effect prior to July 1, 1984 until

1 July 1 of the year in which the member attains the age of
2 sixty-five years, when the member shall have the annuity
3 readjusted annually and cumulatively under the provisions of
4 this section.

5 E. A member who:

6 (1) retires pursuant to Subsection A of
7 Section 22-11-23 NMSA 1978 or Subsection A of Section
8 22-11-23.1 NMSA 1978 after attaining the age of sixty-five
9 years shall have the member's annuity adjusted as provided in
10 Subsections B and C of this section commencing on July 1 of
11 the year following the member's retirement; or

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

17 F. A retired member who returns to work and
18 suspends retirement shall be subject to the provisions of this
19 section as they exist at the time of the member's latest
20 retirement.

21 G. Benefits of a member who is on a disability
22 status in accordance with Section 22-11-35 NMSA 1978 or a
23 member who is certified by the board as disabled at regular
24 retirement shall be adjusted in accordance with Subsections B
25 and C of this section, except that the benefits shall be

1 adjusted annually and cumulatively commencing on July 1 of the
2 third full year following the year in which the member was
3 approved by the board for disability or retirement."

4 SECTION 13. Section 22-11-33 NMSA 1978 (being Laws
5 1967, 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
9 the 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 the member was
13 engaged in prior employment. Earned service credit shall not
14 be 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
20 returns to the fund, for each year of earned service credit
21 desired, a sum equal to the member's contribution to the fund
22 during this period and an additional sum as interest
23 compounded annually from the date the contributions were
24 withdrawn to the date of payment of the amount of returned
25 contributions at the rate of interest set by the board."

1 SECTION 14. Section 22-11-34 NMSA 1978 (being Laws
2 1967, Chapter 16, Section 157, as amended) is amended to read:

3 "22-11-34. ALLOWED SERVICE CREDIT.--

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

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

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

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

20 (a) the member shall have five years or
21 more of contributory employment to be eligible to purchase
22 allowed service credit pursuant to this paragraph;

23 (b) the member shall contribute to the
24 fund, for each year of service credit the member elects to
25 purchase, a sum equal to the member's average annual actual

1 salary for the five years preceding the date of the
2 contribution multiplied by the sum of the member contribution
3 rate and the employer contribution rate in effect at the time
4 of the member's written election to purchase, subject to the
5 federal Uniformed Services Employment and Reemployment Rights
6 Act of 1994;

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

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

17 (4) employed:

18 (a) in a public school or public
19 institution of higher learning in another state, territory or
20 possession of the United States;

21 (b) in a United States military
22 dependents' school operated by a branch of the armed forces of
23 the United States;

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

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

5 B. Effective July 1, 2001, the member or employer
6 under Paragraph (4) of Subsection A of this section shall
7 contribute to the fund for each year of allowed service credit
8 desired an amount equal to the actuarial value of the service
9 purchased as defined by the board. No allowed service credit
10 shall be purchased pursuant to Paragraph (4) of Subsection A
11 of this section unless the member is currently employed by a
12 local administrative unit.

13 C. No member shall be certified to have acquired
14 allowed service credit:

15 (1) under any single paragraph or the
16 combination of only Paragraphs (1) and (4) or only Paragraphs
17 (2) and (3) of Subsection A of this section in excess of five
18 years; or

19 (2) in excess of ten years for any other
20 combination of Paragraphs (1) through (4) of Subsection A of
21 this section.

22 D. A member receiving service credit under
23 Paragraph (3) or (4) of Subsection A of this section who
24 enrolls in the retiree health care authority shall make
25 contributions pursuant to Subsection C of Section 10-7C-15

1 NMSA 1978."

2 SECTION 15. Section 22-11-35 NMSA 1978 (being Laws
3 1967, Chapter 16, Section 158) is amended to read:

4 "22-11-35. DISABILITY BENEFIT--ELIGIBILITY--MEDICAL
5 EXAMINATION.--

6 A. A member shall be eligible for disability
7 benefits if the member has acquired ten years or more of
8 earned service credit and if the board certifies the member to
9 be totally disabled to continue the member's employment and
10 unable to obtain and retain other gainful employment
11 commensurate with the member's background, education and
12 experience.

13 B. Prior to any certification of disability by the
14 board, the board shall require each applicant for disability
15 benefits to submit medical records as required by the board in
16 support of the applicant's disability claim."

17 SECTION 16. Section 22-11-36 NMSA 1978 (being Laws
18 1967, Chapter 16, Section 159, as amended) is amended to read:

19 "22-11-36. DISABILITY BENEFIT--CONTINUED ELIGIBILITY--
20 RE-EXAMINATIONS.--

21 A. Unless designated by the board as being
22 permanently disabled, to continue to receive disability
23 benefits, a member shall, on the anniversary date in each year
24 of the member's being placed on a disability status, present
25 current medical records to the medical authority in support of

1 the applicant's continuing disability claim. The medical
2 authority shall recommend to the board that the member either
3 be placed on continuing annual disability or permanent
4 disability or removed from disability status due to a
5 substantial betterment of the member's condition. In the
6 event a substantial betterment of the disability is reported,
7 the board shall determine whether the member is totally
8 disabled for employment and unable to obtain and retain other
9 gainful employment commensurate with the member's background,
10 education and experience. If the board determines that the
11 member is no longer disabled, the payment of the disability
12 benefits shall cease.

13 B. Payment of disability benefits to a member
14 shall be suspended if the member fails to submit medical
15 records to the medical authority within thirty days after the
16 date upon which the member should have submitted the medical
17 records and where the failure to submit the medical records
18 was due to the unexcused failure or the refusal of the member
19 to do so. Payment of disability benefits shall be resumed
20 only after the member has submitted current medical records to
21 the board and the board has determined that the member is
22 totally disabled. A member shall have no right or claim for
23 benefits withheld during a period of suspension.

24 C. The board may, in its discretion, require that
25 the member obtain an independent medical examination; provided

1 that the examination is performed at the board's expense.

2 D. Upon a determination by the board, a member's
3 status may be changed from permanently disabled to temporarily
4 disabled or no longer disabled."

5 SECTION 17. Section 22-11-39 NMSA 1978 (being Laws
6 1967, Chapter 16, Section 162) is amended to read:

7 "22-11-39. REPORT OF IMPROVED HEALTH--PENALTY.--

8 A. A member receiving disability benefits shall
9 report to the director in writing any substantial improvement
10 in the member's disability within thirty days after the member
11 has or reasonably should have knowledge of the improvement.

12 B. A member failing to report to the director as
13 required by this section is guilty of a petty misdemeanor."

14 SECTION 18. Section 22-11-40 NMSA 1978 (being Laws
15 1967, Chapter 16, Section 163) is amended to read:

16 "22-11-40. RESTORATION TO FUND.--

17 If a member is obligated to restore any sum of
18 money to the fund and fails or refuses to do so for a period
19 of three months after written demand is made by the director,
20 the member shall forfeit membership and receive no further
21 benefits pursuant to the Educational Retirement Act. The
22 director shall determine whether the former member's
23 contributions to the fund exceed the total amount of
24 disability or retirement benefits the member has received and
25 shall withdraw from any such balance of contributions the

1 amount of money the member is obligated to restore to the
2 fund. Any balance of the contribution remaining in the fund
3 shall be paid to the former member or the former member's
4 beneficiary. In the event the money the former member is
5 obligated to restore to the fund is not restored to the fund,
6 the former member shall be subject to civil action by the
7 board for its recovery."

8 SECTION 19. Section 22-11-44 NMSA 1978 (being Laws
9 1967, Chapter 16, Section 167) is amended to read:

10 "22-11-44. SAVING CLAUSE--RETIREMENT BENEFITS--
11 DISABILITY BENEFITS.--

12 A. Any person retired pursuant to the provisions
13 of any laws repealed by the Educational Retirement Act shall
14 be considered to have retired pursuant to the Educational
15 Retirement Act and shall continue to receive retirement
16 benefits in the same amount as received prior to the enactment
17 of the Educational Retirement Act.

18 B. Any person receiving disability benefits
19 pursuant to any laws repealed by the Educational Retirement
20 Act shall continue to receive disability benefits in the same
21 amount as received prior to the enactment of the Educational
22 Retirement Act and shall be considered to have been granted
23 disability benefits pursuant to and be subject to the
24 provisions of the Educational Retirement Act.

25 C. Nothing in the Educational Retirement Act shall

1 be construed to adversely affect any benefits being paid
2 pursuant to any laws repealed by the Educational Retirement
3 Act or any laws establishing the public employees retirement
4 association.

5 D. No person who was covered under the provisions
6 of any statute repealed by the Educational Retirement Act
7 shall be retired at a monthly benefit that is less than the
8 person would have received had the person's employment
9 continued to be performed under such repealed provisions."

10 SECTION 20. REPEAL.--Sections 22-11-18 and 22-11-45
11 NMSA 1978 (being Laws 1971, Chapter 73, Section 1 and Laws
12 1967, Chapter 16, Section 168) are repealed. _____

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