

Sec. 22. [Public employees and educational retirement systems trust funds; expenditures and encumbrances prohibited; administration; vesting of property rights.]

A. All funds, assets, proceeds, income, contributions, gifts and payments from any source whatsoever paid into or held by a public employees retirement system or an educational retirement system created by the laws of this state shall be held by each respective system in a trust fund to be administered and invested by each respective system for the sole and exclusive benefit of the members, retirees and other beneficiaries of that system. Expenditures from a system trust fund shall only be made for the benefit of the trust beneficiaries and for expenses of administering the system. A system trust fund shall never be used, diverted, loaned, assigned, pledged, invested, encumbered or appropriated for any other purpose. To the extent consistent with the provisions of this section, each trust fund shall be invested and the systems administered as provided by law.

B. The retirement board of the public employees retirement system and the board of the educational retirement system shall be the trustees for their respective systems and have the sole and exclusive fiduciary duty and responsibility for administration and investment of the trust fund held by their respective systems.

C. A retirement board shall have the sole and exclusive power and authority to adopt actuarial assumptions for its system based upon the recommendations made by an independent actuary with whom it contracts. The legislature shall not enact any law that increases the benefits paid by the system in any manner or changes the funding formula for a retirement plan unless adequate funding is provided.

D. Upon meeting the minimum service requirements of an applicable retirement plan created by law for employees of the state or any of its political subdivisions or institutions, a member of a plan shall acquire a vested property right with due process protections under the applicable provisions of the New Mexico and United States constitutions.

E. Nothing in this section shall be construed to prohibit modifications to retirement plans that enhance or preserve the actuarial soundness of an affected trust fund or individual retirement plan. (As added November 3, 1998.)

ANNOTATIONS

The 1998 amendment to Article XX, which was proposed by S.J.R. No. 6, § 1 (Laws 1998) and adopted at the general election held on November 3, 1998 by a vote of 336,043 for and 97,716 against, added this section.

Compiler's notes. — Section 2 of H.J.R. No. 11 (Laws 1993) proposed to amend the constitution by adding a new section providing for a statewide lottery and video machines. This amendment was submitted to the people at the general election held on November 8, 1994, but the New Mexico Supreme Court entered an order prohibiting the certification of the amendment as unconstitutional.

New Mexico educational retirement board has exclusive authority to set salaries and make all administrative decisions for the educational retirement system. — The New Mexico educational retirement board, as the trustee of the New Mexico educational retirement fund, has the sole and exclusive authority to set salaries and make personnel decisions related to its administration of its funds under its constitutional and statutory authority, and therefore the New Mexico department of finance and

administration does not have the authority to either reject salary increases for employees of the New Mexico educational retirement board or seek the governor's approval before implementing such approved salary increases. *N.M. Educ. Ret. Bd. v. Romero*, [2024-NMCA-013](#).

Property right in cost-of-living adjustments. — Any future cost-of-living adjustment to a retirement benefit is merely a year-to-year expectation that, until paid, does not, under the New Mexico constitution, create a vested property right in an annual cost-of-living adjustment calculated according to the statutory formula in effect on the date of the retiree's eligibility for retirement. Once paid, the cost-of-living adjustment becomes a part of the retirement benefit and a property right subject to constitutional protections. *Bartlett v. Cameron*, [2014-NMSC-002](#).

Where the legislature amended [22-11-31 NMSA 1978](#) in 2013 to reduce future amounts educational retirees might receive as a cost-of-living adjustment; and retirees sought to compel the education retirement board to pay them an annual cost-of-living adjustment for the entirety of their retirement, calculated according to the cost-of-living adjustment formula in effect on the date of their retirement on the grounds that under [Article XX, Section 22 of the constitution of New Mexico](#), the retirees had a vested property interest in future cost-of-living adjustments based on the formula in effect on the date of their retirement, a cost-of-living adjustment to a retirement benefit is provided independently from the obligation and payment of a retirement benefit and retirees do not have a vested property interest in an annual cost-of-living adjustment calculated in accordance with the formula in effect at the time they were eligible for retirement. *Bartlett v. Cameron*, [2014-NMSC-002](#).

The Public Employee Retirement Association possesses the legal authority to deduct union dues, and the administrative costs of such deductions, from pension benefits. — The Public Employees Retirement Association of New Mexico (PERA) is constitutionally required to manage its trust fund to benefit its beneficiaries while also covering operational expenses, and further, this section imposes a fiduciary duty and responsibility on PERA for the administration and investment of the trust fund held by it for all contributing and retired members, and therefore, where a subsection of PERA's beneficiaries sought dues deductions from their respective benefit amounts for union membership, PERA had a duty, barring any legal hurdles, to fulfill the beneficiaries' requests, and PERA may reasonably assert that, in making such deductions for the benefit of PERA members who are also union members, it is managing its fund properly as required by this section. Furthermore, if this subsection of beneficiaries consent to absorbing the administrative costs that accompany the deductions and subsequent remittances to the unions, the subject beneficiaries are knowingly and willingly accepting those administrative costs, which would also appear to comply with this section. *PERA Deduction of Dues from PERA Retirement Benefits for RPENM and AFSCME Members and Reimbursement of PERA's Administrative Costs for the Dues Deduction (8/25/21)*, [Att'y Gen. Adv. Ltr. 2021-09](#) [↗](#).