SENATE BILL 115

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Stuart Ingle

ENDORSED BY THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

AN ACT

RELATING TO PENSIONS; AMENDING THE EDUCATIONAL RETIREMENT ACT; INCREASING CERTAIN MEMBERS' CONTRIBUTION RATES; CHANGING THE BENEFITS FOR NEW MEMBERS BY IMPOSING A MINIMUM RETIREMENT AGE, DELAYING THE COST-OF-LIVING ADJUSTMENT ELIGIBILITY AND INCREASING THE AGE AND SERVICE RETIREMENT REQUIREMENTS.

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

SECTION 1. Section 22-11-21 NMSA 1978 (being Laws 1967, Chapter 16, Section 144, as amended) is amended to read:

"22-11-21. CONTRIBUTIONS--MEMBERS--LOCAL ADMINISTRATIVE UNITS.--

A. Except as provided in Subsection [G] D of this section, [each] for a member whose annual salary is greater than twenty thousand dollars ($20,000), the member shall make contributions to the fund according to the following schedule: .190404.5SA
[(1) through June 30, 2005, an amount equal to seven and six-tenths percent of the member's annual salary;

(2) from July 1, 2005 through June 30, 2006, an amount equal to seven and six hundred seventy-five thousandths percent of the member's annual salary;

(3) from July 1, 2006 through June 30, 2007, an amount equal to seven and seventy-five hundredths percent of the member's annual salary;

(4) from July 1, 2007 through June 30, 2008, an amount equal to seven and eight hundred twenty-five thousandths percent of the member's annual salary; and

(5) on and after July 1, 2008, an amount equal to seven and nine-tenths percent of the member's annual salary, except that for members whose annual salary is greater than twenty thousand dollars ($20,000):

   (a) from July 1, 2009 through June 30, 2011, the member contribution rate shall be nine and four-tenths percent of the member's annual salary;

   (b) from July 1, 2011 through June 30, 2012, the member contribution rate shall be eleven and fifteen-hundredths percent of the member's annual salary; and

   (c) from July 1, 2012 through June 30, 2013, the member contribution rate shall be nine and four-tenths of the member's annual salary;

(1) from July 1, 2013 through June 30, 2014,
the member contribution rate shall be ten and one-tenth percent
of the member's annual salary; and

(2) on and after July 1, 2014, the member
contribution rate shall be ten and seven-tenths percent of the
member's annual salary.

B. On and after July 1, 2008, for a member whose
annual salary is twenty thousand dollars ($20,000) or less, the
member contribution rate shall be seven and nine-tenths percent
of the member's annual salary.

[C.] C. Except as provided in Subsection [C] D of
this section, each local administrative unit shall make an
annual contribution to the fund according to the following
schedule:

[(1) through June 30, 2005, a sum equal to
eight and sixty-five hundredths percent of the annual salary of
each member employed by the local administrative unit;
(2) from July 1, 2005 through June 30, 2006, a
sum equal to nine and forty-hundredths percent of the annual
salary of each member employed by the local administrative
unit;
(3) from July 1, 2006 through June 30, 2007, a
sum equal to ten and fifteen-hundredths percent of the annual
salary of each member employed by the local administrative
unit;
(4) from July 1, 2007 through June 30, 2008, a
...sum equal to ten and ninety-hundredths percent of the annual salary of each member employed by the local administrative unit;

(5) from July 1, 2008 through June 30, 2009, a sum equal to eleven and sixty-five hundredths percent of the annual salary of each member employed by the local administrative unit;

(6) from July 1, 2009 through June 30, 2011, a sum equal to ten and nine tenths percent of the annual salary of each member employed by the local administrative unit, except that for members whose annual salary is twenty thousand dollars ($20,000) or less, the local administrative unit shall contribute twelve and four tenths percent of the member's annual salary;

(7) from July 1, 2011 through June 30, 2012, a sum equal to nine and fifteen hundredths percent of the annual salary of each member employed by the local administrative unit, except that for members whose annual salary is twenty thousand dollars ($20,000) or less, the local administrative unit shall contribute twelve and four tenths percent of the member's annual salary;

(8) from July 1, 2012 through June 30, 2013, a sum equal to ten and nine tenths percent of the annual salary of each member employed by the local administrative unit, except that for members whose annual salary is twenty thousand dollars ($20,000) or less, the local administrative unit shall contribute twelve and four tenths percent of the member's annual salary.
dollars ($20,000) or less, the local administrative unit shall contribute twelve and four-tenths percent of the member's annual salary;

(9) from July 1, 2013 through June 30, 2014, a sum equal to thirteen and fifteen-hundredths percent of the annual salary of each member employed by the local administrative unit; and

(10) on and after July 1, 2014, a sum equal to thirteen and nine-tenths percent of the annual salary of each member employed by the local administrative unit.

D. If, in a calendar year, the salary of a member, initially employed by a local administrative unit on or after July 1, 1996, equals the annual compensation limit set pursuant to Section 401(a)(17) of the Internal Revenue Code of 1986, as amended, then:

(1) for the remainder of that calendar year, no additional member contributions or local administrative unit contributions for that member shall be made pursuant to this section; provided that no member shall be denied service credit solely because contributions are not made by the member or on behalf of the member pursuant to the provisions of this subsection; and

(2) the amount of the annual compensation limit shall be divided into four equal portions, and, for purposes of attributing contributory employment and crediting...
service credit, each portion shall be attributable to one of
the four quarters of the calendar year."

**SECTION 2.** Section 22-11-23 NMSA 1978 (being Laws 1981,
Chapter 293, Section 2, as amended by Laws 2009, Chapter 286,
Section 1 and by Laws 2009, Chapter 288, Section 14) is amended
to read:

"22-11-23. RETIREMENT ELIGIBILITY--INITIAL MEMBERSHIP
PRIOR TO JULY 1, 2010.--

A. [The retirement eligibility for] A member who
[either] was a member on June 30, 2010, or was a member at any
time prior to that date and had not, on that date, been
refunded all member contributions pursuant to Subsection A of
Section 22-11-15 NMSA 1978, [is as follows:]

(1) a member shall be eligible for retirement
benefits pursuant to the Educational Retirement Act when either
of the following conditions occurs:

(a) the sum of the member's age and
years of earned service credit equals seventy-five; or

(b) upon completion of five years of
earned service credit and upon becoming sixty-five years of
age;

(2) a member under sixty years of age eligible
to retire under Paragraph (1) of this subsection may retire and
receive retirement benefits pursuant to the Educational
Retirement Act that the member would be eligible to receive if

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the member were to retire at the age of sixty years reduced by
six-tenths of one percent for each one-fourth, or portion
thereof, year that retirement occurs prior to the member's
sixtieth birthday but after the fifty-fifth birthday, and one
and eight tenths percent for each one-fourth, or portion
thereof, year that retirement occurs prior to age fifty-five;

or

(3) a member under sixty years of age
acquiring twenty-five or more years of earned and allowed
service credit may retire and receive retirement benefits
pursuant to the Educational Retirement Act computed on the same
basis as if the member were sixty years of age] shall be
eligible for retirement benefits when:

(1) the member is any age and has twenty-five
or more years of earned and allowed service credit;

(2) the member is at least sixty-five years of
age and has five or more years of earned service credit; or

(3) the sum of the member's age and years of
earned service credit equals at least seventy-five; provided
that a member who retires pursuant to this paragraph shall be
subject to the benefit reductions provided in Subsection G of
Section 22-11-30 NMSA 1978.

B. A member shall be subject to the provisions of
Paragraphs (2) and (3) of Subsection A of this section as
they existed at the beginning of the member's last cumulated
four quarters of earned service credit, regardless of later amendment."

SECTION 3. Section 22-11-23.1 NMSA 1978 (being Laws 2009, Chapter 286, Section 2 and Laws 2009, Chapter 288, Section 15) is amended to read:

"22-11-23.1. RETIREMENT ELIGIBILITY--INITIAL MEMBERSHIP ON OR AFTER JULY 1, 2010.--

A. A member who initially became a member on or after July 1, 2010, or a member who was a member at any time prior to that date and had, before that date, been refunded all member contributions pursuant to Subsection A of Section 22-11-15 NMSA 1978, shall be eligible for retirement benefits pursuant to the Educational Retirement Act when [one of the following conditions occurs]:

(1) the member is any age and has thirty or more years of earned service credit;

(2) the member is at least sixty-seven years of age and has five or more years of earned service credit; or

(3) the sum of the member's age and years of earned service credit equals at least eighty; provided that a member who retires pursuant to this paragraph shall be subject to the benefit reductions provided in [Paragraphs (1) and (2) of] Subsection H of Section 22-11-30 NMSA 1978.

B. A member shall be subject to the provisions of this section as they existed at the beginning of the member's

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last cumulated four quarters of earned service credit,
regardless of later amendment."

**SECTION 4.** A new section of the Educational Retirement
Act, Section 22-11-23.2 NMSA 1978, is enacted to read:

"22-11-23.2. [NEW MATERIAL] RETIREMENT ELIGIBILITY

MEMBERSHIP ON OR AFTER JULY 1, 2013.--

A. A member who initially became a member on or
after July 1, 2013 or a member who was a member at any time
prior to July 1, 2013 and had, before that date, been refunded
all member contributions pursuant to Subsection A of Section
22-11-15 NMSA 1978, and had not restored all refunded
contributions and interest before July 1, 2013, shall be
eligible for retirement benefits when:

(1) the member is any age and has thirty or
more years of earned service credit; provided that the benefits
of a member who retires pursuant to this paragraph prior to
attaining the age of fifty-five years shall be reduced to an
amount equal to the actuarial equivalent of the benefit the
member would receive if the member had retired at the age of
fifty-five years. The board shall recalculate the actuarial
factors on which benefits are reduced no less frequently than
every ten years beginning July 1, 2013. The benefits of a
retired member that have been reduced at the time of retirement
pursuant to this paragraph shall not be subject to further
change based upon the board's recalculation of the actuarial
factors;

(2) the member is at least sixty-seven years of age and has five or more years of earned service credit; or

(3) the sum of the member's age and years of earned service credit equals at least eighty; provided that a member who retires pursuant to this paragraph shall be subject to the benefit reductions provided in Subsection I of Section 22-11-30 NMSA 1978.

B. A member shall be subject to the provisions of this section as they existed at the beginning of the member's last cumulated four quarters of earned service credit, regardless of later amendment."

SECTION 5. Section 22-11-27 NMSA 1978 (being Laws 1967, Chapter 16, Section 150, as amended) is amended to read:

"22-11-27. DEFERRED RETIREMENT--RESTRICTION.--

A. A member who is eligible for retirement may continue in employment and shall continue to pay contributions as provided by the Educational Retirement Act.

B. [A member] Provided that the contributions that the member has made are left in the fund, a member eligible for retirement benefits pursuant to the provisions of Section 22-11-23, 22-11-23.1 or 22-11-23.2 NMSA 1978 may terminate [his] employment and retire at any time [after his age and his earned service credit equal the sum of seventy-five if the contributions he has made are left in the fund.
C. A member having five years or more of earned service credit may terminate his employment and retire at any time after reaching the age of sixty-five years if the contributions he has made are left in the fund upon satisfying the applicable age and earned service requirements for retirement.

[D. No] C. A member shall not be on a retirement status while engaged in employment unless the employment falls within [exceptions] an exception established by statute or rule of the board."

SECTION 6. Section 22-11-30 NMSA 1978 (being Laws 1967, Chapter 16, Section 153, as amended by Laws 2009, Chapter 286, Section 3 and by Laws 2009, Chapter 288, Section 17) is amended to read:

"22-11-30. RETIREMENT BENEFITS--REDUCTIONS.--

A. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or before June 30, 1967 shall be paid monthly and shall be one-twelfth of a sum equal to one and one-half percent of the first four thousand dollars ($4,000) of the member's average annual salary and one percent of the remainder of the member's average annual salary multiplied by the number of years of the member's total service credit.

B. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or after July 1, 1967...
1967 but on or before June 30, 1971 shall be paid monthly and
shall be one-twelfth of a sum equal to one and one-half percent
of the first six thousand six hundred dollars ($6,600) of the
member's average annual salary and one percent of the remainder
of the member's average annual salary multiplied by the number
of years of the member's total service credit.

C. Retirement benefits for a member retired
pursuant to the Educational Retirement Act on or after July 1,
1971 but on or before June 30, 1974 shall be paid monthly and
shall be one-twelfth of a sum equal to one and one-half percent
of the member's average annual salary multiplied by the number
of years of the member's total service credit.

D. Retirement benefits for a member retired
pursuant to the Educational Retirement Act on or before
June 30, 1974 but returning to employment on or after July 1,
1974 for a cumulation of one or more years shall be computed
pursuant to Subsection E of this section. Retirement benefits
for a member retired pursuant to the Educational Retirement Act
on or before June 30, 1974 but returning to employment on or
after July 1, 1974 for a cumulation of less than one year shall
be computed pursuant to Subsection A of this section if the
member's date of last retirement was on or before June 30, 1967
or pursuant to Subsection B of this section if the member's
date of last retirement was on or after July 1, 1967 but not
later than June 30, 1971 or pursuant to Subsection C of this

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section if the member's date of last retirement was on or after
July 1, 1971 but not later than June 30, 1974.

E. Retirement benefits for a member age sixty or
over, retired pursuant to the Educational Retirement Act on or
after July 1, 1974 but not later than June 30, 1987, shall be
paid monthly and shall be one-twelfth of a sum equal to:

(1) one and one-half percent of the member's
average annual salary multiplied by the number of years of
service credit for:

(a) prior employment; and

(b) allowed service credit for service
performed prior to July 1, 1957, except United States military
service credit purchased pursuant to Paragraph (3) of
Subsection A of Section 22-11-34 NMSA 1978; plus

(2) two percent of the member's average annual
salary multiplied by the number of years of service credit for:

(a) contributory employment;

(b) allowed service credit for service
performed after July 1, 1957; and

(c) United States military service
credit for service performed prior to July 1, 1957 and
purchased pursuant to Paragraph (3) of Subsection A of Section
22-11-34 NMSA 1978.

F. Retirement benefits for a member age sixty or
over, retired pursuant to the Educational Retirement Act on or
after July 1, 1987 but not later than June 30, 1991, shall be paid monthly and shall be one-twelfth of a sum equal to two and fifteen hundredths percent of the member's average annual salary multiplied by the number of years of the member's total service credit; provided that this subsection shall not apply to any member who was retired in any of the four quarters ending on June 30, 1987 without having accumulated not less than 1.0 years earned service credit after June 30, 1987.

G. Retirement benefits for a member [age sixty or over, retired] who retires pursuant to Section 22-11-23 NMSA 1978 on or after July 1, 1991 shall be paid monthly and shall be one-twelfth of a sum equal to two and thirty-five hundredths percent of the member's average annual salary multiplied by the number of years of the member's total service credit; provided that:

(1) the benefit for a member who retires pursuant to Paragraph (3) of Subsection A of Section 22-11-23 NMSA 1978 shall be reduced by:

(a) six-tenths percent for each one-fourth, or portion thereof, year that retirement occurs prior to the member attaining the age of sixty years but after the member attains the age of fifty-five years; and

(b) one and eight-tenths percent for each one-fourth, or portion thereof, year that retirement occurs prior to the member attaining the age of fifty-five
years;

(2) the benefit formula provided in this
subsection shall not apply to any member who was retired in any
of the four consecutive quarters ending on June 30, 1991
without having accumulated at least one year earned service
credit beginning on or after July 1, 1991; and

(3) a member shall be subject to the
provisions of Paragraph (1) of this subsection as they existed
at the beginning of the member's last cumulated four quarters
of earned service credit, regardless of later amendment.

H. Retirement benefits for a member [retired] who
retires pursuant to Section 22-11-23.1 NMSA 1978 shall be paid
monthly and shall be one-twelfth of a sum equal to two and
thirty-five hundredths percent of the member's average annual
salary multiplied by the number of years of the member's total
service credit; provided that:

(1) the benefit for a member [retiring] who
retires pursuant to Paragraph (3) of Subsection A of Section
22-11-23.1 NMSA 1978 shall be reduced by:

[(1)] (a) six-tenths [of one] percent
for each one-fourth, or portion thereof, year that retirement
occurs prior to the [member's sixty fifth birthday] member
attaining the age of sixty-five years but after the [sixtieth
birthday] member attains the age of sixty years; and

[(2)] (b) one and eight-tenths percent
for each one-fourth, or portion thereof, year that retirement
occurs prior to the member's sixtieth birthday; and
attaining the age of sixty years; and

(2) a member shall be subject to the
provisions of Paragraph (1) of this subsection as they existed
at the beginning of the member's last cumulated four quarters
of earned service credit, regardless of later amendment.

I. Retirement benefits for a member who retires
pursuant to Section 22-11-23.2 NMSA 1978 shall be paid monthly
and shall be one-twelfth of a sum equal to two and thirty-five
hundredths percent of the member's average annual salary
multiplied by the number of years of the member's total service
credit; provided that:

(1) the benefit for a member retiring pursuant
to Paragraph (3) of Subsection A of Section 22-11-23.2 NMSA
1978 shall be reduced by:

(a) six-tenths percent for each
one-fourth, or portion thereof, year that retirement occurs
prior to the member attaining the age of sixty-five years but
after the member attains the age of sixty years; and

(b) one and eight-tenths percent for
each one-fourth, or portion thereof, year that retirement
occurs prior to the member attaining the age of sixty years;
and

(2) a member shall be subject to the
provisions of Paragraph (1) of this subsection as they existed
at the beginning of the member's last cumulated four quarters
of earned service credit, regardless of later amendment.

[It] J. A member's average annual salary, pursuant
to this section, shall be computed on the basis of the last
five years for which contribution was made or upon the basis of
any consecutive five years for which contribution was made by
the member, whichever is higher; provided, however, that lump-
sum payments made after July 1, 2010 of accrued sick leave or
annual leave shall be excluded from the calculation of salary.

[It] K. Unless otherwise required by the provisions
of the Internal Revenue Code of 1986, members shall begin
receiving retirement benefits by age seventy years and six
months, or upon termination of employment, whichever occurs
later."

SECTION 7. Section 22-11-31 NMSA 1978 (being Laws 1979,
Chapter 333, Section 2, as amended) is amended to read:

"22-11-31. COST-OF-LIVING ADJUSTMENT--ELIGIBILITY--
ADDITIONAL CONTRIBUTIONS.--

A. For the purposes of this section:

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

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

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

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

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

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

B. On or after July 1, 1984 [each annuity shall]:

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

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

C. The annuity adjustments provided for under Subsection B of this section shall be adjusted by applying an adjustment factor that results in an adjustment equal to one-half of the percentage increase of the consumer price index between the next preceding calendar year and the preceding calendar year, except that the adjustment shall not exceed four percent, in absolute value, nor be less than two percent, in absolute value. In the event that the percentage increase of the consumer price index is less than two percent, in absolute value, the adjustment factor shall be the same as the percentage increase of the consumer price index. Annuities shall not be decreased in the event that there is a decrease in the consumer price index between the next preceding calendar year and the preceding calendar year. The adjustment factor shall be applied as follows:

(1) if the percentage increase of the consumer price index is less than two percent in absolute value, the adjustment factor shall be the same amount as the percentage increase of the consumer price index;

(2) if the percentage increase of the consumer price index is two percent or greater in absolute value, the
adjustment factor shall be one-half of the percentage increase; except that the adjustment shall not exceed four percent in absolute value nor be less than two percent in absolute value; and

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

[D.] A retired member whose benefit is subject to adjustment under the provisions of the Educational Retirement Act in effect prior to July 1, 1984 shall have the member's annuity readjusted annually and cumulatively under the provisions of that act in effect prior to July 1, 1984 until July 1 of the year in which the member attains the age of sixty-five, when the member shall have the annuity readjusted annually and cumulatively under the provisions of this section.

E. A member who retires:

(1) retires pursuant to Subsection A of Section 22-11-23 NMSA 1978 or Subsection A of Section 22-11-23.1 NMSA 1978 after attaining the age of sixty-five years shall have the member's annuity adjusted annually and cumulatively commencing on July 1 of the year following the member's retirement; and

(2) retires pursuant to Subsection A of Section 22-11-23.2 NMSA 1978 after attaining the age of sixty-seven years shall have the member's annuity adjusted...
annually and cumulatively commencing on July 1 of the year following the member's retirement.

[B] [F] A retired member who returns to work shall be subject to the provisions of this section as they exist at the time of the member's final retirement.

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

[F] [H] The board shall adjust the benefits of each person receiving an annuity as of June 30, 1999. The adjustment shall be made on July 1, 1999 on the basis of an increase of two dollars ($2.00) per month for each year since the member's last retirement plus an increase of one dollar ($1.00) per month for each year of credited service at the time of the last retirement."

SECTION 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2013.