AN ACT

RELATING TO EDUCATIONAL RETIREMENT; RAISING THE SALARY THRESHOLD FOR CONTRIBUTION AMOUNTS; CHANGING THE TERMS OF RETIREMENT ELIGIBILITY AND THE CALCULATION OF BENEFITS FOR CERTAIN MEMBERS; CHANGING THE TERMS GOVERNING RETIRED MEMBERS WHO RETURN TO EMPLOYMENT WITH AN EDUCATIONAL RETIREMENT BOARD EMPLOYER; INCREASING THE CONTRIBUTIONS OF EDUCATIONAL RETIREMENT BOARD-COVERED EMPLOYERS; CLARIFYING THAT SUBSTITUTE TEACHERS ARE EDUCATIONAL RETIREMENT BOARD-COVERED MEMBERS.

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 D of this section, for a member whose annual salary is greater than twenty-four thousand dollars ($24,000), the member shall make contributions to the fund at the rate of ten and seven-tenths percent of the member's annual salary.

B. For a member whose annual salary is twenty-four thousand dollars ($24,000) or less, the member shall make contributions to the fund at the rate of seven and nine-tenths percent of the member's annual salary."
C. Except as provided in Subsection D of this section, each local administrative unit shall make an annual contribution to the fund on and after July 1, 2019, at the rate of fourteen and fifteen-hundredths 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 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. A new section of the Educational Retirement Act, Section 22-11-23.3 NMSA 1978, is enacted to read:
"22-11-23.3. RETIREMENT ELIGIBILITY--INITIAL MEMBERSHIP
ON OR AFTER JULY 1, 2019.--A member who initially became a
member on or after July 1, 2019 or a member who was a member
before July 1, 2019 and had, before that date, been refunded
all member contributions in accordance with Subsection A of
Section 22-11-15 NMSA 1978 and had not restored all refunded
contributions and interest before July 1, 2019, is eligible
for retirement benefits when:
   A. the member is any age and has thirty or more
      years of earned service credit;
   B. the member is at least sixty-seven years of age
      and has five or more years of earned service credit; or
   C. the sum of the member's age and years of earned
      service credit equals at least eighty."

SECTION 3. Section 22-11-25.1 NMSA 1978 (being Laws
2001, Chapter 283, Section 2, as amended) is amended to read:
"22-11-25.1. RETURN TO EMPLOYMENT--BENEFITS--
CONTRIBUTIONS.--
   A. Except as otherwise provided in Subsections B
and F of this section, until January 1, 2022, a retired
member who begins employment with a local administrative unit
at a level greater than one-quarter full-time employee,
regardless of salary level, is required to suspend the
member's retirement benefits until the end of that employment
unless the member has not rendered service to a local
administrative unit for at least twelve consecutive months
after the date of retirement.

B. Until January 1, 2022, a retired member who
retired on or before January 1, 2001, has not suspended or
been required to suspend retirement benefits pursuant to the
Educational Retirement Act and returns to employment with a
local administrative unit is not required to suspend the
member's retirement benefits.

C. A retired member who returns to employment with
a local administrative unit in accordance with this section
is entitled to receive retirement benefits during that
employment but is not entitled to acquire or purchase service
credit for that employment.

D. A retired member may return to employment with
a local administrative unit only if the member submits an
application to return to work, on a form prescribed by the
board, the board approves the application and the applicant
complies with other application rules promulgated by the
board.

E. A retired member who returns to employment
pursuant to Subsection A, B or F of this section shall make
nonrefundable contributions to the fund as would be required
by Section 22-11-21 NMSA 1978 if the retired member were a
non-retired employee. The local administrative unit
employing the retired member shall likewise make
contributions as would be required by that section. In addition, on and after July 1, 2020, a retired member who has returned to employment at a level of one-fourth or less full-time employee, regardless of salary level, shall make nonrefundable contributions to the fund as would be required by Section 22-11-21 NMSA 1978 if the retired member were a non-retired employee. The local administrative unit employing the retired member shall likewise make contributions as would be required by that section.

F. Until January 1, 2022, a retired member who retired on or before January 1, 2001, who suspended or was required to suspend retirement benefits under the Educational Retirement Act is not required to suspend the member's retirement benefits if the retired member has not rendered service to a local administrative unit for an additional twelve or more consecutive months, not including any part of a summer or other scheduled break or vacation period, after the initial date of retirement.

G. A retired member who returns to employment with a local administrative unit shall make contributions to the retiree health care fund during the period of that employment and in the amount specified in Section 10-7C-15 NMSA 1978. The local administrative unit employing the retired member shall likewise make contributions during the period of that employment and in the amount specified in that section.
H. As used in this section:

   (1) "rendered service" includes employment, whether full or part time; substitute teaching; voluntarily performing duties that would otherwise be, or in the past have been, performed by a paid employee or independent contractor; and performing duties as an independent contractor or an employee of an independent contractor; and

   (2) "local administrative unit" includes any entity incorporated, formed or otherwise organized by, or subject to the control of, a local administrative unit, regardless of whether the entity is created for profit or nonprofit purposes."

SECTION 4. Section 22-11-25.2 NMSA 1978 (being Laws 2003, Chapter 248, Section 1) is amended to read:

"22-11-25.2. PERSONS RECEIVING RETIREMENT BENEFITS PURSUANT TO THE PUBLIC EMPLOYEES RETIREMENT ACT.--

   A. An employee who is retired pursuant to the Public Employees Retirement Act and who has not suspended retirement benefits received pursuant to that act shall make contributions to the fund as required by the Educational Retirement Act. A local administrative unit that employs such a retiree likewise shall make contributions to the fund as required by that act.

   B. An employee hired prior to July 1, 2019 by a local administrative unit as a police officer certified
pursuant to the Law Enforcement Training Act, who is retired pursuant to the Public Employees Retirement Act and who has not suspended retirement benefits received pursuant to that act, shall not make contributions to the fund so long as the employee remains working as a certified police officer. The local administrative unit that hired the certified police officer shall make contributions to the fund pursuant to the Educational Retirement Act.

C. An employee who receives retirement benefits pursuant to the Public Employees Retirement Act is not entitled to acquire or purchase service credit for the period of employment with a local administrative unit."

SECTION 5. Section 22-11-30 NMSA 1978 (being Laws 1967, Chapter 16, Section 153, as amended) 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 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.
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 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 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 of 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 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 who retires pursuant to Paragraph (3) of Subsection A of Section 22-11-23.1 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.

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.

J. Retirement benefits for a member who retires in accordance with Section 22-11-23.3 NMSA 1978 shall be paid monthly and:

(1) in an amount equal to one-twelfth of the sum of the following:

(a) for the first ten years of the member's service credit, one and thirty-five hundredths percent of the member's average annual salary multiplied by the member's years of service credit between one-fourth of a year and ten years;

(b) for that portion of the member's service credit earned after ten years of service credit and through twenty years of service credit, two and thirty-five hundredths percent of the member's average annual salary multiplied by the member's years of service credit between ten and twenty years;
(c) for that portion of the member's service credit earned after twenty years of service credit and through thirty years of service credit, three and thirty-five hundredths percent of the member's average annual salary multiplied by the member's years of service credit between twenty and thirty years; and

(d) for that portion of the member's service credit earned after thirty years of service credit, two and four-tenths percent of the member's average annual salary multiplied by the member's years of service credit over thirty years; or

(2) if the member retires in accordance with:

(a) Subsection A of Section 22-11-23.3 NMSA 1978 and is under fifty-eight years of age, in an amount equal to the result determined under Paragraph (1) of this subsection, but reduced to the actuarial equivalent, based on what is at the time of the member's retirement the most current set of actuarial factors determined by the board, of the benefit the member would receive if the member had retired at fifty-eight years of age;

(b) Subsection C of Section 22-11-23.3 NMSA 1978 and is sixty years of age or older and under sixty-five, in an amount equal to the result determined
under Paragraph (1) of this subsection, but reduced by six-
tenths percent for each one-fourth, or portion thereof, year
before the member reaches age sixty-five; or

(c) Subsection C of Section
22-11-23.3 NMSA 1978 and is younger than sixty years of age,
in an amount equal to one and eight-tenths percent for each
one-fourth, or portion thereof, year before the member
reaches sixty years of age.

K. In determining a member's average annual salary
for purposes of this section:

(1) the data set shall consist of the annual
salary of each of the last five years, or any consecutive
five years, for which contribution was made by the member,
whichever produces a higher result; and

(2) lump-sum payments made after July 1,
2010 of accrued sick leave or annual leave shall be excluded
from the calculation.

L. On and after July 1, 2019, if the member's
average annual salary is greater than sixty thousand dollars
($60,000):

(1) the salary in a first twelve-month
interval that occurs beginning July 1, 2019 or thereafter of
the five-year period used to determine the average annual
salary shall be adjusted to exclude any increase in salary in
excess of thirty percent of the salary in the twelve
consecutive months of service credit preceding the five-year period; and

(2) the salary in each of the four succeeding twelve-month intervals that occur beginning July 1, 2019 or thereafter of the five-year period, as adjusted to exclude any increase in salary in the twelve months preceding each such succeeding twelve-month interval that is in excess of the thirty-percent limitation provided in this subsection, shall be used to determine if the salary in that succeeding twelve-month interval exceeds the thirty-percent limitation and to adjust the salary to exclude any increase in excess of that limitation in determining the average annual salary.

M. On July 1, 2020 and on each July 1 thereafter, the salary threshold for applying the thirty-percent limitation provided for in Subsection L of this section shall be adjusted by applying an adjustment factor equal to the change in the consumer price index between the next preceding calendar year and the preceding calendar year if there is an increase in the consumer price index between the next preceding calendar year and the preceding calendar year.

N. Unless otherwise required by the Internal Revenue Code of 1986, a member shall begin receiving retirement benefits by age seventy years and six months, or upon termination of employment, whichever occurs later."

SECTION 6. Section 22-11-49 NMSA 1978 (being Laws 1991,
Chapter 118, Section 7, as amended) is amended to read:

"22-11-49. ALTERNATIVE RETIREMENT PLAN--

CONTRIBUTIONS.--

A. A participant shall contribute an amount equal to the percentage of the participant's salary that the participant would be required to contribute if the participant were, instead, a regular member. The contribution shall be made as provided by the board.

B. A qualifying state educational institution shall contribute on behalf of each participant an amount of the participant's salary equal to the contribution that would be required of the employer if the participant were, instead, a regular member. Of that contribution, a sum equal to three and one-fourth percent of the annual salary of each participant shall be paid to the fund, and the remainder of the contribution shall be paid to the alternative retirement plan as provided by the board; provided, however, that on July 1 following any report by the actuary to the board that concludes that less than three and one-fourth percent is required to satisfy the unfunded actuarial liability attributable to the participation of the participants in the alternative retirement plan, then the percentage the actuary determines is the minimum required to satisfy that liability.

C. Contributions required by this section may be made by a reduction in salary or by a public employer pick-up
as provided in the Internal Revenue Code of 1986, as amended."

SECTION 7. A new section of the Educational Retirement Act is enacted to read:

"SUBSTITUTE TEACHERS--MEMBERSHIP STATUS.--A substitute teacher who works at a level greater than one-quarter full-time employee and who otherwise meets the requirements of membership under the Educational Retirement Act is subject to that act as a regular member."

SECTION 8. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 1 through 6 of this act is July 1, 2019.

B. The effective date of the provisions of Section 7 of this act is July 1, 2020."