

SENATE BILL 111

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

Mimi Stewart

This document incorporates amendments that have been adopted during the current legislative session. The document is a tool to show the amendments in context and is not to be used for the purpose of amendments.

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO EDUCATIONAL RETIREMENT; REMOVING THE REQUIREMENT FOR EMPLOYEES AND EMPLOYERS TO MAKE NONREFUNDABLE CONTRIBUTIONS FOR EMPLOYEES AT A LEVEL OF ONE-FOURTH OR LESS FULL-TIME EMPLOYEE; ALLOWING CERTAIN RETIREES TO RETURN TO WORK WITHOUT A SUSPENSION OF RETIREMENT BENEFITS; EXEMPTING EMPLOYEES CONSIDERED TO BE SUBSTITUTES FROM THE REQUIREMENTS OF THE EDUCATIONAL RETIREMENT ACT ~~SEC~~→; **EXEMPTING RETIREES UNDER THE PUBLIC EMPLOYEES RETIREMENT ACT FROM CONTRIBUTION REQUIREMENTS UNDER THE EDUCATIONAL RETIREMENT ACT IF THEY HAVE NOT SUSPENDED RETIREMENT BENEFITS**←SEC.

.216216.1AIC February 5, 2020 (9:18am)

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

SECTION 1. 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 and H 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.

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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

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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. A retired member may return to employment with a local administrative unit without a suspension of the member's retirement benefits; provided that:

(1) the retired member has not rendered service to a local administrative unit for at least ninety days after the date of retirement;

(2) prior to the date of retirement, or within ninety days after the date of retirement, the retired member did not enter into any formal or informal agreement with a local administrative unit or with any contractor providing services to a local administrative unit to return to employment; and

(3) the retired member earns a salary of less than fifteen thousand dollars (\$15,000) per year.

[H.] I. As used in this section:

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(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 2. Section 22-11-16.2 NMSA 1978 (being Laws 2019, Chapter 258, Section 7) is repealed and a new Section 22-11-16.2 NMSA 1978 is enacted to read:

"22-11-16.2. [NEW MATERIAL] SUBSTITUTES--MEMBERSHIP STATUS.--An employee engaged on a day-to-day basis to replace another employee who is temporarily absent shall be considered a substitute and shall not be covered under the Educational Retirement Act. An employee engaged to fill a vacant position, including a position vacated by a leave of absence of at least ninety days, shall not be considered a substitute and is subject to the requirements of the Educational Retirement Act."

SEC→SECTION 3. Section 22-11-25.2 NMSA 1978 (being Laws 2003, Chapter 248, Section 1, as amended) is amended to read:

"22-11-25.2. PERSONS RECEIVING RETIREMENT BENEFITS

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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 not make contributions to the fund as otherwise 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.~~

G.] B. 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."←SEC