

1 HOUSE BILL 226

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO EDUCATIONAL RETIREMENT; ALLOWING CERTAIN RETIRED  
12 MEMBERS TO RETURN TO EMPLOYMENT AS SUBSTITUTE TEACHERS.  
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14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. Section 22-11-25.1 NMSA 1978 (being Laws 2001,  
16 Chapter 283, Section 2, as amended) is amended to read:

17 "22-11-25.1. RETURN TO EMPLOYMENT--BENEFITS--  
18 CONTRIBUTIONS.--

19 A. Except as otherwise provided in Subsections B,  
20 [~~and~~] F and H of this section, until January 1, 2022, a retired  
21 member who begins employment with a local administrative unit  
22 at a level greater than one-quarter full-time employee,  
23 regardless of salary level, is required to suspend the member's  
24 retirement benefits until the end of that employment unless the  
25 member has not rendered service to a local administrative unit

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1 for at least twelve consecutive months after the date of  
2 retirement.

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

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

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

19 E. Except as provided in Subsection H of this  
20 section, a retired member who returns to employment pursuant to  
21 Subsection A, B or F of this section shall make nonrefundable  
22 contributions to the fund as would be required by Section  
23 22-11-21 NMSA 1978 if the retired member were a non-retired  
24 employee. The local administrative unit employing the retired  
25 member shall likewise make contributions as would be required

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1 by that section. In addition, on and after July 1, 2020, a  
2 retired member who has returned to employment at a level of  
3 one-fourth or less full-time employee, regardless of salary  
4 level, shall make nonrefundable contributions to the fund as  
5 would be required by Section 22-11-21 NMSA 1978 if the retired  
6 member were a non-retired employee. The local administrative  
7 unit employing the retired member shall likewise make  
8 contributions as would be required by that section.

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

18 G. A retired member who returns to employment with  
19 a local administrative unit shall make contributions to the  
20 retiree health care fund during the period of that employment  
21 and in the amount specified in Section 10-7C-15 NMSA 1978. The  
22 local administrative unit employing the retired member shall  
23 likewise make contributions during the period of that  
24 employment and in the amount specified in that section.

25 H. Until June 30, 2025, a retired member may return

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1 to employment with a local administrative unit up to a level of  
2 a full-time employee, without a suspension of a member's  
3 retirement benefit; provided that the:

4 (1) retired member returns to employment as a  
5 substitute teacher;

6 (2) local administrative unit and the retired  
7 member did not intend, at the time of retirement, for the  
8 retiree to immediately return to employment;

9 (3) retired member is not entitled to acquire  
10 or purchase service credit for that employment; and

11 (4) local administrative unit employing the  
12 retired member and the retired member shall not be required to  
13 make contributions as would otherwise be required by this  
14 section.

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

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

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

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nonprofit purposes."