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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; EXEMPTING RETIREES UNDER THE PUBLIC EMPLOYEES RETIREMENT ACT FROM CONTRIBUTION REQUIREMENTS UNDER THE EDUCATIONAL RETIREMENT ACT IF THEY HAVE NOT SUSPENDED RETIREMENT BENEFITS.

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, 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

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

3 B. Until January 1, 2022, a retired member who  
4 retired on or before January 1, 2001, has not suspended or  
5 been 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  
11 is entitled to receive retirement benefits during that  
12 employment but is not entitled to acquire or purchase service  
13 credit for that employment.

14 D. A retired member may return to employment with  
15 a 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  
19 board.

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

1 contributions as would be required by that section.

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

11 G. A retired member who returns to employment with  
12 a local administrative unit shall make contributions to the  
13 retiree health care fund during the period of that employment  
14 and in the amount specified in Section 10-7C-15 NMSA 1978.  
15 The local administrative unit employing the retired member  
16 shall likewise make contributions during the period of that  
17 employment and in the amount specified in that section.

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

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

24 (2) prior to the date of retirement, or  
25 within ninety days after the date of retirement, the retired

1 member did not enter into any formal or informal agreement  
2 with a local administrative unit or with any contractor  
3 providing services to a local administrative unit to return  
4 to employment; and

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

7 I. As used in this section:

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

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

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

22 "22-11-16.2. SUBSTITUTES--MEMBERSHIP STATUS.--An  
23 employee engaged on a day-to-day basis to replace another  
24 employee who is temporarily absent shall be considered a  
25 substitute and shall not be covered under the Educational

1 Retirement Act. An employee engaged to fill a vacant  
2 position, including a position vacated by a leave of absence  
3 of at least ninety days, shall not be considered a substitute  
4 and is subject to the requirements of the Educational  
5 Retirement Act."

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

9 "22-11-25.2. PERSONS RECEIVING RETIREMENT BENEFITS  
10 PURSUANT TO THE PUBLIC EMPLOYEES RETIREMENT ACT.--

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

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