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AN ACT

RELATING TO EDUCATIONAL RETIREMENT; INCREASING CERTAIN CONTRIBUTIONS TO THE EDUCATIONAL RETIREMENT FUND; REQUIRING A REPORT; EXTENDING CERTAIN RETURN-TO-WORK PROVISIONS; REPEALING LAWS 2019, CHAPTER 237, SECTION 18 TO CORRECT A TECHNICAL STATUTORY CONFLICT.

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 by Laws 2019, Chapter 237, Section 18 and by Laws 2019, Chapter 258, Section 1) 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

1 contribution to the fund according to the following schedule:

2 (1) from July 1, 2021 through June 30, 2022,
3 at the rate of fifteen and fifteen-hundredths percent of
4 the annual salary of each member employed by the local
5 administrative unit; and

6 (2) on and after July 1, 2022, at the rate
7 of sixteen and fifteen-hundredths percent of the annual
8 salary of each member employed by the local administrative
9 unit.

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

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

22 (2) the amount of the annual compensation
23 limit shall be divided into four equal portions, and, for
24 purposes of attributing contributory employment and crediting
25 service credit, each portion shall be attributable to one of

1 the four quarters of the calendar year."

2 SECTION 2. Section 22-11-25.1 NMSA 1978 (being Laws
3 2001, Chapter 283, Section 2, as amended) is amended to read:

4 "22-11-25.1. RETURN TO EMPLOYMENT--BENEFITS--
5 CONTRIBUTIONS.--

6 A. Except as otherwise provided in Subsections B,
7 F and H of this section, until January 1, 2024, a retired
8 member who begins employment with a local administrative unit
9 at a level greater than one-quarter full-time employee,
10 regardless of salary level, is required to suspend the
11 member's retirement benefits until the end of that employment
12 unless the member has not rendered service to a local
13 administrative unit for at least twelve consecutive months
14 after the date of retirement.

15 B. Until January 1, 2024, a retired member who
16 retired on or before January 1, 2001, has not suspended or
17 been required to suspend retirement benefits pursuant to the
18 Educational Retirement Act and returns to employment with a
19 local administrative unit is not required to suspend the
20 member's retirement benefits.

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

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

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

14 F. Until January 1, 2024, a retired member who
15 retired on or before January 1, 2001, who suspended or was
16 required to suspend retirement benefits under the Educational
17 Retirement Act is not required to suspend the member's
18 retirement benefits if the retired member has not rendered
19 service to a local administrative unit for an additional
20 twelve or more consecutive months, not including any part of
21 a summer or other scheduled break or vacation period, after
22 the initial date of retirement.

23 G. A retired member who returns to employment with
24 a local administrative unit shall make contributions to the
25 retiree health care fund during the period of that employment

1 and in the amount specified in Section 10-7C-15 NMSA 1978.

2 The local administrative unit employing the retired member
3 shall likewise make contributions during the period of that
4 employment and in the amount specified in that section.

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

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

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

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

19 I. As used in this section:

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

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

6 SECTION 3. Section 22-11-49 NMSA 1978 (being Laws 1991,
7 Chapter 118, Section 7, as amended) is amended to read:

8 "22-11-49. ALTERNATIVE RETIREMENT PLAN--
9 CONTRIBUTIONS.--

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

15 B. A qualifying state educational institution
16 shall contribute on behalf of each participant an amount of
17 the participant's salary equal to the contribution that would
18 be required of the employer if the participant were, instead,
19 a regular member. Of that contribution, a sum equal to the
20 following percentage of the annual salary of each participant
21 shall be paid to the fund, and the remainder of the
22 contribution shall be paid to the alternative retirement plan
23 as provided by the board:

24 (1) from July 1, 2021 through June 30, 2022,
25 four and one-fourth percent; and

1 (2) on and after July 1, 2022, five and
2 one-fourth percent; or

3 (3) if, on July 1 following any report by
4 the actuary to the board that concludes that less than that
5 percentage is required to satisfy the unfunded actuarial
6 liability attributable to the participation of the
7 participants in the alternative retirement plan, then the
8 percentage the actuary determines is the minimum required to
9 satisfy that liability.

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

14 SECTION 4. TEMPORARY PROVISION--SOLVENCY REPORT.--

15 Before July 1, 2022, the educational retirement board shall
16 report to the department of finance and administration, any
17 other affected agency, the legislative finance committee,
18 legislative education study committee and any other
19 appropriate interim legislative committees on fund status and
20 options to improve pension plan solvency without additional
21 contributions from public employers.

22 SECTION 5. REPEAL.--Laws 2019, Chapter 237, Section 18
23 is repealed.

24 SECTION 6. EFFECTIVE DATE.--The effective date of the
25 provisions of this act is July 1, 2021. _____