

AN ACT  
RELATING TO EDUCATIONAL RETIREMENT; ALLOWING FOR THE PICK UP  
AND ROLLOVER OF CERTAIN CONTRIBUTIONS.

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

Section 1. A new section of the Educational Retirement Act is enacted to read:

"PICK UP--ROLLOVER. --

A. Commencing on July 1, 1998, each local administrative unit may, solely for the purpose of compliance with Section 414(h) of the Internal Revenue Code, pick up, for the purposes specified in that section, member contributions permitted by Paragraph 4 of Subsection A of Section 22-11-34 NMSA 1978. Member contributions picked up under the provisions of this subsection shall be treated as local administrative unit contributions for purposes of determining income tax obligations under the Internal Revenue Code; however, such picked-up member contributions shall be included in the determination of the member's gross annual salary for all other purposes under federal and state laws. Member contributions picked up under this section shall continue to be designated member contributions for all purposes of the Educational Retirement Act and shall be considered as part of the member's annual salary for purposes of determining the amount of the member's

contribution. The provisions of this section are voluntary, and the member shall have no option concerning the pick up to receive the contributed amounts directly instead of having them paid by the local administrative unit to the fund.

B. Commencing July 1, 1998, the educational retirement board may accept rollover contributions from other retirement funds solely for and subject to the restrictions set forth in Subsection B of Section 22-11-34 NMSA 1978 and applicable restrictions set forth in the Internal Revenue Code for pension plan qualification."

Section 2. A new section of the Educational Retirement Act is enacted to read:

"CORRECTION OF ERRORS AND OMISSIONS--ESTOPPEL.--"

A. If an error or omission in an application for retirement or its supporting documents results in an overpayment to a member or the beneficiary of a member, the board shall correct the error or omission and adjust all future payments accordingly. The board shall recover all overpayments that are made.

B. A member or the beneficiary of a member who is paid more than the amount he is owed because he provided fraudulent information on his application for retirement shall be liable for the repayment of that amount to the fund, interest on that amount at the rate set by the board

and costs of collection, including attorney fees. Recovery of overpayments shall extend back to the date of the first payment that was made based on fraudulent information.

C. The board shall not be estopped from acting in accordance with applicable statutes because of statements of fact or law made by the board or its employees."

Section 3. Section 22-11-34 NMSA 1978 (being Laws 1967, Chapter 16, Section 157, as amended) is amended to read:

"22-11-34. ALLOWED SERVICE CREDIT. --

A. A member shall be certified to have acquired allowed service credit pursuant to the Internal Revenue Code of 1986 for those periods of time when he was:

(1) employed prior to the effective date of the Educational Retirement Act in a federal educational program within New Mexico, including United States Indian schools and civilian conservation corps camps. This service credit shall be allowed without contribution;

(2) engaged in military service that interrupted his employment in New Mexico if he returned to his employment within eighteen months following honorable discharge. This service credit shall be allowed without contribution;

(3) engaged in United States military service or the commissioned corps of the public health

service from which he was honorably discharged if he contributes to the fund a sum equal to ten and one-half percent of his average annual salary for that period of time for which he has acquired earned service credit pursuant to the Educational Retirement Act and subject to the federal Uniformed Services Employment and Reemployment Rights Act of 1994 for each year of service credit he desires to purchase. Average annual salary shall be determined in accordance with rules promulgated by the board but shall always be based on actual salaries earned by the member where the actual salaries can be ascertained by the board. The employer's contributions for service credit shall not be paid by the employer. The purchase of service credit provided in this section shall be carried out by the member within three years after the date of the member's employment following service; or

(4) employed:

(a) in a public school or public institution of higher learning in another state, territory or possession of the United States;

(b) in a United States military dependents' school operated by a branch of the armed forces of the United States;

(c) as provided in Paragraph (1) of this subsection after the effective date of the Educational

Retirement Act; or

(d) in a private school or institution of higher learning in New Mexico whose education program is accredited or approved by the state board at the time of employment.

B. The member or employer under Paragraph (4) of Subsection A of this section shall contribute to the fund for each year of allowed service credit desired an amount equal to twelve percent of the member's annual salary at the time payment is made if the member is employed or twelve percent times the member's annual salary during the member's last year of employment if the member is not employed at the time of payment. Contributions paid for the member who is not employed shall bear interest at the average rate earned by the fund during the five-fiscal-year period immediately preceding the date of payment. Such interest shall run from the date the member last terminated employment to the date of payment. Effective July 1, 2001, the member or employer under Paragraph (4) of Subsection A of this section shall contribute to the fund for each year of allowed service credit desired an amount equal to the actuarial value of the service purchased as defined by the board. Payment pursuant to Paragraph (4) of Subsection A of this section may be made in installments, at the discretion of the board, over a period not to exceed one year and, if the sum paid does not

equal the amount required for any full year of allowed service credit, the member shall acquire allowed service credit for that period of time that is proportionate to the payment made. Half credit may be allowed without contribution for not more than ten years of the educational service described by Subparagraph (a) of Paragraph (4) of Subsection A of this section if that service was prior to June 13, 1953 and if the member was employed in New Mexico prior to June 13, 1953 in a position covered by the Educational Retirement Act or a law repealed thereby.

C. No member shall be certified to have acquired allowed service credit:

(1) under any single paragraph or the combination of only Paragraphs (1) and (4) or only Paragraphs (2) and (3) of Subsection A of this section in excess of five years; or

(2) in excess of ten years for any other combination of Paragraphs (1) through (4) of Subsection A of this section.

D. The provisions of this section are made applicable to the services described prior to as well as after the effective date of the Educational Retirement Act." =