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SENATE BILL 478

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Ben D. Altamirano

AN ACT

RELATING TO PUBLIC EMPLOYEES RETIREMENT; AMENDING CERTAIN
SECTIONS OF THE PUBLIC EMPLOYEES RETIREMENT ACT, THE JUDICIAL
RETIREMENT ACT AND THE MAGISTRATE RETIREMENT ACT.

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

Section 1. Section 10-11-2 NMSA 1978 (being Laws 1987,
Chapter 253, Section 2, as amended) is amended to read:

"10-11-2. DEFINITIONS. -- As used in the Public Employees
Retirement Act:

A. "accumulated member contributions" means the
amounts deducted from the salary of a member and credited to
the member's individual account, together with interest, if
any, credited to that account;

B. "affiliated public employer" means the state
and any public employer affiliated with the association as

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1 provided in the Public Employees Retirement Act, but does not
2 include an employer pursuant to the Magistrate Retirement Act,
3 the Judicial Retirement Act or the Educational Retirement Act;

4 C. "association" means the public employees
5 retirement association established under the Public Employees
6 Retirement Act;

7 D. "disability retired member" means a retired
8 member who is receiving a pension pursuant to the disability
9 retirement provisions of the Public Employees Retirement Act;

10 E. "disability retirement pension" means the
11 pension paid pursuant to the disability retirement provisions
12 of the Public Employees Retirement Act;

13 F. "educational retirement system" means that
14 retirement system provided for in the Educational Retirement
15 Act;

16 G. "employee" means any employee of an affiliated
17 public employer;

18 H. "federal social security program" means that
19 program or those programs created and administered pursuant to
20 the act of congress approved August 14, 1935, Chapter 531, 49
21 Stat. 620, as that act may be amended;

22 I. "final average salary" means the final average
23 salary calculated in accordance with the provisions of the
24 applicable coverage plan;

25 J. "form of payment" means the applicable form of

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1 payment of a pension provided for in Section 10-11-117 NMSA
2 1978;

3 K. "former member" means a person who was
4 previously employed by an affiliated public employer, who has
5 terminated that employment and who has received a refund of
6 member contributions;

7 L. "fund" means the funds included under the
8 Public Employees Retirement Act;

9 M. "member" means a currently employed,
10 contributing employee of an affiliated public employer, or a
11 person who has been but is not currently employed by an
12 affiliated public employer, who has not retired and who has
13 not received a refund of member contributions; "member" also
14 includes the following:

15 (1) "hazardous duty member" means a state
16 policeman who is a member and who is a juvenile or adult
17 correctional officer employed by a corrections facility of the
18 corrections department or its successor agency;

19 (2) "municipal fire member" means any member
20 who is employed as a full-time nonvolunteer firefighter by an
21 affiliated public employer and who has taken the oath
22 prescribed for firefighters;

23 (3) "municipal police member" means any
24 member who is employed as a police officer by an affiliated
25 public employer, other than the state, and who has taken the

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1 oath prescribed for police officers; and

2 (4) "state police member" means any member
3 who is an officer of the New Mexico state police and who has
4 taken the oath prescribed for such officers;

5 N. "membership" means membership in the
6 association;

7 O. "pension" means a series of monthly payments to
8 a retired member or survivor beneficiary as provided in the
9 Public Employees Retirement Act;

10 P. "public employer" means the state, any
11 municipality, city, county, metropolitan arroyo flood control
12 authority, economic development district, regional housing
13 authority, soil and water conservation district, entity
14 created pursuant to a joint powers agreement, council of
15 government, conservancy district, water and sanitation
16 district, water district and metropolitan water board,
17 including the boards, departments, bureaus and agencies of a
18 public employer, so long as these entities fall within the
19 meaning of governmental plan as that term is used in Section
20 414(d) of the Internal Revenue Code of 1986, as amended;

21 Q. "refund beneficiary" means a person, estate or
22 trust designated by the member, in writing, in the form
23 prescribed by the association, as the person who would be
24 refunded the member's accumulated member contributions payable
25 if the member dies and no survivor pension is payable or who

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1 would receive the difference between pension paid and
2 accumulated member contributions if the retired member dies
3 before receiving in pension payments the amount of the
4 accumulated member contributions;

5 R. "retire" means to:

6 (1) terminate employment with all employers
7 covered by any state system or the educational retirement
8 system; and

9 (2) receive a pension from a state system or
10 the educational retirement system;

11 S. "retired member" means a person who has met all
12 requirements for retirement and who is receiving a pension
13 from the fund;

14 T. "retirement board" means the retirement board
15 provided for in the Public Employees Retirement Act;

16 U. "salary" means the base salary or wages paid a
17 member, including longevity pay, for personal services
18 rendered an affiliated public employer. "Salary" includes a
19 member's fixed, periodical compensation from full- or part-
20 time employment; shift differentials; and wages paid while
21 absent from work because of vacation, holiday, injury or
22 illness while the member continues on the regular payroll.

23 "Salary" shall not include overtime pay, allowances for
24 housing, clothing, equipment or travel, payments for unused
25 sick leave, unless the unused sick leave payment is made

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1 through continuation of the member on the regular payroll for
2 the period represented by that payment, and any other form of
3 remuneration not specifically designated by law as included in
4 salary for Public Employees Retirement Act purposes. "Salary"
5 does not include lump-sum payments, including lump-sum annual
6 or sick leave or occasional payments to elected officials for
7 attending meetings that are not part of the member's fixed
8 periodical compensation. "Salary" also does not include
9 concurrent wages or payments from more than one affiliated
10 public employers, allowances for any purpose, employer
11 contributions to a private retirement program or other fringe
12 benefits, even if they are paid to or for a member on a
13 regular basis. Salary in excess of the limitations set forth
14 in Section 401(a)(17) of the Internal Revenue Code of 1986, as
15 amended, shall be disregarded. The limitation on compensation
16 for eligible employees shall not be less than the amount that
17 was allowed to be taken into account under the state
18 retirement system acts in effect on July 1, 1993. For
19 purposes of this section, "eligible employee" means an
20 individual who was a member of a state system before the first
21 plan year beginning after December 31, 1995;

22 V. "state system" means the retirement programs
23 provided for in the Public Employees Retirement Act, the
24 Magistrate Retirement Act and the Judicial Retirement Act;

25 W. "state retirement system acts" means

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1 collectively the Public Employees Retirement Act, the
2 Magistrate Retirement Act, the Judicial Retirement Act and the
3 Volunteer Firefighters Retirement Act; and

4 X. "survivor beneficiary" means a person who
5 receives a pension or who has been designated to be paid a
6 pension as a result of the death of a member or retired
7 member. "

8 Section 2. Section 10-11-3 NMSA 1978 (being Laws 1987,
9 Chapter 253, Section 3, as amended) is amended to read:

10 "10-11-3. MEMBERSHIP--REQUIREMENTS--EXCLUSIONS--
11 TERMINATION.--

12 A. Except as may be provided for in the Volunteer
13 Firefighters Retirement Act, the Judicial Retirement Act, the
14 Magistrate Retirement Act, the Educational Retirement Act and
15 the provisions of Sections 29-4-1 through 29-4-11 NMSA 1978
16 governing the state police pension fund, each employee and
17 elected official of every affiliated public employer shall be
18 a member of the association, unless excluded from membership
19 in accordance with Subsection B of this section.

20 B. The following employees and elected officials
21 are excluded from membership in the association:

22 (1) elected officials who file with the
23 association a written application for exemption from
24 membership within thirty days of taking office;

25 (2) elected officials who file with the

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1 association a written application for exemption from
2 membership within thirty days of the date the elected
3 official's public employer becomes an affiliated public
4 employer;

5 (3) employees designated by the affiliated
6 public employer as seasonal or student employees;

7 (4) employees who file with the association a
8 written application for exemption from membership within
9 thirty days of the date the employee's public employer becomes
10 an affiliated public employer;

11 (5) ~~employees~~ city or county managers of an
12 affiliated public employer that is making contributions to a
13 private retirement program on behalf of the ~~employee~~ city or
14 county manager as part of a compensation arrangement who file
15 with the association a written application for exemption
16 within thirty days of employment, unless the ~~employee~~ city
17 or county manager has previously retired under the provisions
18 of the Public Employees Retirement Act; and

19 (6) employees of an affiliated public
20 employer who have retired under and are receiving a pension
21 pursuant to the provisions of the Educational Retirement Act.

22 C. Employees designated as seasonal and student
23 employees shall be notified in writing by their affiliated
24 public employer of the designation and the consequences of the
25 designation with respect to membership, service credit and

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1 benefits. A copy of the notification shall be filed with the
2 association within thirty days of the date of employment.

3 D. An exemption from membership by an elected
4 official shall expire at the end of the term of office for
5 which filed.

6 E. Employees and elected officials who have
7 exempted themselves from membership may subsequently withdraw
8 the exemption by filing a membership application. Membership
9 shall commence the first day of the first pay period following
10 the date the application is filed.

11 F. The membership of an employee or elected
12 official shall cease if the employee terminates employment
13 with an affiliated public employer or the elected official
14 leaves office and the employee or elected official requests
15 and receives a refund of member contributions. "

16 Section 3. Section 10-11-4.2 NMSA 1978 (being Laws 1993,
17 Chapter 239, Section 1, as amended) is amended to read:

18 "10-11-4.2. CORRECTION OF ERRORS AND OMISSIONS--
19 ESTOPPEL. --

20 A. If an error or omission results in an
21 overpayment to a member or beneficiary of a member, the
22 association shall correct the error or omission and adjust all
23 future payments accordingly. The association shall recover
24 all overpayments [~~made for a period of up to one year prior to~~
25 ~~the date the error or omission was discovered~~] and may

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1 withhold the cumulative overpayment from future pension
2 payments or refunds of member contributions.

3 B. A person who is paid more than the amount that
4 is lawfully due him as a result of fraudulent information
5 provided by the member or beneficiary shall be liable for the
6 repayment of that amount to the association plus interest on
7 that amount at the rate set by the retirement board plus all
8 costs of collection, including attorney fees if necessary.
9 Recovery of such overpayments shall extend back to the date
10 the first payment was made based on the fraudulent
11 information.

12 C. Statements of fact or law made by retirement
13 board members or employees of the retirement board or the
14 association shall not estop the retirement board or the
15 association from acting in accordance with the applicable
16 statutes. "

17 Section 4. Section 10-11-6 NMSA 1978 (being Laws 1987,
18 Chapter 253, Section 6, as amended) is amended to read:

19 "10-11-6. CREDITED SERVICE--CREDIT FOR INTERVENING
20 MILITARY AND UNITED STATES GOVERNMENT SERVICE. --

21 A. A member who leaves the employ of an affiliated
22 public employer to enter a uniformed service of the United
23 States shall be given service credit for periods of service in
24 the uniformed services subject to the following conditions:

25 (1) the member is reemployed by an affiliated

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1 public employer within ninety days following termination of
2 the period of intervening [~~servi~~ng] service in the uniformed
3 service or the affiliated employer certifies in writing to the
4 association that the member is entitled to reemployment rights
5 under the federal Uniformed Services Employment and
6 Reemployment Rights Act of 1994;

7 (2) the member retains membership in the
8 association during the period of service in the uniformed
9 services;

10 (3) free service credit shall not be given
11 for periods of intervening service in the uniformed services
12 following voluntary [~~reenlistment~~] entry. Service credit for
13 such periods shall be given only after the member pays the
14 association the sum of the contributions that the person would
15 have been required to contribute had the person remained
16 continuously employed throughout the period of intervening
17 service following voluntary [~~reenlistment~~] entry, which
18 payment shall be made during the period beginning with the
19 date of reemployment and whose duration is three times the
20 period of the person's intervening service in the uniformed
21 services following voluntary [~~reenlistment~~] entry, not to
22 exceed five years;

23 (4) service credit shall not be given for
24 periods of intervening service in the uniformed services that
25 are used to obtain or increase a benefit from another state

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1 system or the retirement program provided under the
2 Educational Retirement Act; and

3 (5) the member must not have received a
4 discharge or separation from uniformed service under other
5 than honorable conditions.

6 Notwithstanding any provision of this plan to the
7 contrary, contributions, benefits and service credit with
8 respect to qualified military service will be provided in
9 accordance with Section 414(u) of the Internal Revenue Code of
10 1986, as amended.

11 B. For a member who is subsequently employed by
12 the government of the United States within thirty days of
13 leaving the employ of an affiliated public employer:

14 (1) that member may continue membership in
15 the association subject to the following conditions:

16 (a) the member has fifteen or more
17 years of credited service;

18 (b) employment by the government of the
19 United States commences within ninety days of termination of
20 employment with the last affiliated public employer;

21 (c) the member files with the
22 association a written application for continued membership
23 within ninety days of termination of employment with the last
24 affiliated public employer; and

25 (d) the member remits to the

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1 association, at the times and in the manner prescribed by the
2 association, the member contributions and the employer
3 contributions that would have been made had the member
4 continued in the employ of the last affiliated public
5 employer;

6 (2) the contributions required by Paragraph
7 (1) of this subsection shall be based on a salary equal to the
8 member's monthly salary at time of termination of employment
9 with the last affiliated public employer;

10 (3) credited service will be determined as if
11 the employment by the government of the United States was
12 rendered the last affiliated public employer; and

13 (4) the employer contributions remitted by
14 the member shall be credited to the [~~employer~~] employers
15 accumulation fund and shall not be paid out of the association
16 in the event of subsequent cessation of membership."

17 Section 5. Section 10-11-10.1 NMSA 1978 (being Laws
18 1993, Chapter 160, Section 3) is amended to read:

19 "10-11-10.1. DISABILITY RETIREMENT. --

20 A. There is created a "disability review
21 committee" of the retirement board. The disability review
22 committee shall consist of at least three but not more than
23 five retirement board members and at least one physician
24 licensed in New Mexico appointed by the retirement board. The
25 disability review committee shall review all applications for

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1 disability retirement, review reports required under this
2 section and approve or deny applications for disability
3 retirement.

4 B. The disability review committee may retire a
5 member on account of disability before the time the member
6 would otherwise be eligible for retirement if the following
7 requirements are satisfied:

8 (1) the member applying for disability
9 retirement was a member at the time the disability was
10 incurred;

11 (2) a written application for disability
12 retirement, in the form and containing the information
13 prescribed by the association, has been filed with the
14 association by the member or by the member's affiliated public
15 employer;

16 (3) employment is terminated within forty-
17 five days of the date of approval of the application for
18 disability retirement;

19 (4) if:

20 (a) the member has five or more years
21 of service credit; or

22 (b) the disability review committee
23 finds the disability to have been the natural and proximate
24 result of causes arising solely and exclusively out of and in
25 the course of the member's performance of duty with an

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1 affiliated public employer;

2 (5) the member submits to all medical
3 examinations and tests and furnishes copies of all medical
4 reports requested by the association or disability review
5 committee; provided that if the disability review committee
6 requires independent medical or other examinations, those
7 examinations shall be performed at the association's expense;
8 and

9 (6) the disability review committee makes the
10 determination required under Subsection C of this section.

11 C. The disability review committee shall review
12 applications for disability retirement to determine whether:

13 (1) if the member ~~[is a currently employed,~~
14 ~~contributing employee of an affiliated public employer]~~ was a
15 contributing employee of an affiliated public employer at any
16 time within the twelve months prior to the date the
17 application was filed:

18 (a) the member is mentally or
19 physically totally incapacitated for continued employment with
20 an affiliated public employer; and

21 (b) the incapacity is likely to be
22 permanent; or

23 (2) if the member is not a currently
24 employed, contributing employee of an affiliated public
25 employer:

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1 (a) the member is mentally or
2 physically totally incapacitated for any gainful employment;
3 and

4 (b) the incapacity is likely to be
5 permanent.

6 D. The disability retirement pension shall be paid
7 for a period of one year after approval of the initial
8 application unless the disability review committee for good
9 cause shown grants disability retirement for a longer period
10 of time. After approval, payment shall be effective
11 commencing the first of the month following submission of the
12 initial application and termination of employment.

13 E. At the end of the first year that a disability
14 retirement pension is paid, the disability retired member's
15 condition shall be reevaluated to determine eligibility for
16 continuation of payment of a disability retirement pension.
17 If the disability retired member has applied for disability
18 benefits under the federal social security program, he shall
19 submit copies of his application. The association shall
20 continue payment of the state disability retirement pension if
21 the disability retired member presents a written final
22 determination from the federal social security administration
23 that the disability retired member qualifies, based on the
24 same [condition or] conditions as presented in the application
25 for a state disability retirement pension, for federal

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1 disability benefits.

2 F. If the disability retired member applied for
3 federal disability benefits within thirty days of receiving
4 approval for a state disability retirement pension but the
5 federal social security administration has not made a written
6 final determination of entitlement by the end of the first
7 year that the disability retired member has received a state
8 disability retirement pension, eligibility for continued
9 payment of the state disability retirement pension shall be
10 determined by the disability review committee. The state
11 disability retirement pension shall be discontinued if the
12 disability review committee finds that the disability retired
13 member is capable of any gainful employment.

14 G. The disability retired member shall notify the
15 association of the federal social security administration's
16 final determination within fifteen working days of the date of
17 issuance of the final written determination. If the federal
18 social security administration denies federal disability
19 benefits, the state disability retirement pension shall be
20 discontinued effective the first of the month following the
21 month in which the written final determination of the federal
22 social security administration was issued. If the federal
23 social security administration grants federal disability
24 benefits, the state disability retirement pension shall be
25 continued so long as the disability retired member provides

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1 annually, on or before the anniversary date of commencement of
2 payment of the state disability retirement pension, written
3 evidence of continuation of payment of federal disability
4 benefits. If the disability review committee has denied
5 continuation of payment of a state disability retirement
6 pension and the disability retired member is later granted
7 federal disability benefits, the state disability retirement
8 pension shall be reinstated effective the first of the month
9 following the month in which the state disability retirement
10 pension was discontinued.

11 H. If, at the time of reevaluation under
12 Subsection E of this section, the disability retired member
13 has applied for and has qualified for federal disability
14 benefits, but for a different condition than was reviewed by
15 the disability review committee, the disability review
16 committee shall review the disability retired member's
17 condition as described by the application for federal
18 disability benefits. The process set forth in Subsection I of
19 this section shall be followed to determine whether payment of
20 a state disability retirement pension should be continued.

21 I. If the disability retired member is not
22 eligible to apply for federal disability benefits or is not a
23 member of the federal social security program, the disability
24 review committee annually shall determine eligibility for
25 continuation of payment of a state disability retirement

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1 pension. To make its determination of continued entitlement,
2 the disability review committee shall use the guidelines
3 established by the federal social security administration for
4 determination of eligibility for federal disability benefits.

5 The determination shall be based on:

6 (1) the medical and all other information
7 provided by the disability retired member;

8 (2) at least one independent medical or other
9 examination performed at the association's expense if required
10 by the disability review committee; and

11 (3) any ~~and all~~ medical, vocational or
12 other information related to the disability compiled during
13 the period of disability by any medical or other practitioner
14 consulted by the disability retired member regarding the
15 disability which was not paid for by the association.

16 J. Each disability retired member annually shall
17 submit to the association, prior to July 1, a statement of
18 earnings from gainful employment during the preceding calendar
19 year. The statement of earnings shall be in the form
20 prescribed by the association and may include the federal tax
21 return or other proof of earnings acceptable to the
22 association if a federal tax return does not exist. Payment
23 of the state disability retirement pension shall be
24 discontinued if the amount of earnings from gainful employment
25 is one hundred percent or more of the amount which causes a

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1 decrease or suspension of an old age benefit under the federal
2 social security program, or fifteen thousand dollars
3 (\$15,000), whichever is less. Payment of the state disability
4 retirement pension shall be discontinued starting with the
5 month of July if the statement of earnings is not received by
6 the association prior to July 1.

7 K. Upon prior approval by the association, a
8 disability retired member may return to employment with an
9 affiliated public employer or other employer for a trial
10 period not to exceed one hundred twenty calendar days without
11 becoming a member or causing suspension or discontinuation of
12 payment of a state disability retirement pension. If the
13 trial period of employment is successfully completed, payment
14 of the disability retirement pension shall be discontinued
15 beginning the first of the month following the one hundred
16 twentieth day of the trial period of employment. Trial
17 periods of employment shall be limited to two in any five-year
18 period following disability retirement.

19 L. If the disability retired member meets the
20 minimum age and service credit requirements for normal
21 retirement while receiving a disability retirement pension,
22 the disability retirement pension shall be reclassified by the
23 association as a normal retirement pension and no further
24 determinations of eligibility for continuation of payment of
25 the disability retirement pension shall be made. Upon

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1 reclassification as a normal retirement pension, all the
2 provisions of [~~this~~] the Public Employees Retirement Act
3 regarding normal retirement shall be applicable.

4 M If the disability review committee found the
5 disability to be the natural and proximate result of causes
6 arising solely and exclusively out of and in the course of the
7 member's employment with an affiliated public employer,
8 service credit shall continue to accrue during the disability
9 retirement period as though the disability retired member was
10 actively employed.

11 N. The amount of a disability retirement pension
12 shall be calculated according to the provisions of the
13 coverage plan applicable to the member at the time of
14 application, except that the service credit requirement shall
15 be waived and the actual amount of service credit shall be
16 used instead. If the disability is the natural and proximate
17 result of causes arising solely and exclusively out of and in
18 the course of the member's performance of duty for an
19 affiliated public employer, the amount of disability
20 retirement pension shall be calculated according to the
21 provisions of the coverage plan applicable to the member,
22 imputing the amount of service credit necessary to meet the
23 minimum service credit requirements for normal retirement.

24 O. For the purposes of this section, the following
25 definitions apply:

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1 (1) "continued employment with the affiliated
2 public employer" means the ability of the member to fulfill
3 the required duties of the position in which the member was
4 last employed by his affiliated public employer;

5 (2) "gainful employment" means ~~remunerative~~
6 ~~employment~~ any occupation, job or self-employment ~~[that is~~
7 ~~commensurate with the applicant's]~~ for remuneration or profit,
8 considering the member's background, age, education, skills
9 and experience ~~[and any new skills or training the applicant~~
10 ~~may have acquired after terminating public employment or~~
11 ~~incurring the disability];~~

12 (3) "state disability retirement pension"
13 means the pension paid pursuant to the provisions of this
14 section; and

15 (4) "federal disability benefits" means those
16 benefits paid by the federal social security program "

17 Section 6. Section 10-11-14.5 NMSA 1978 (being Laws
18 1993, Chapter 160, Section 4, as amended) is amended to read:

19 "10-11-14.5. DEATH BEFORE RETIREMENT--SURVIVOR
20 PENSIONS.--

21 A. A survivor pension may be paid to certain
22 persons related to or designated by a member who dies before
23 normal or disability retirement if a written application for
24 the pension, in the form prescribed by the association, is
25 filed with the association by the potential survivor

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1 beneficiary or beneficiaries within one year of the death of
2 the member. Applications may be filed on behalf of the
3 potential survivor beneficiary or beneficiaries or by a person
4 legally authorized to represent them.

5 B. If there is no designated survivor beneficiary
6 and the retirement board finds the death to have been the
7 natural and proximate result of causes arising solely and
8 exclusively out of and in the course of the member's
9 performance of duty with an affiliated public employer, a
10 survivor pension shall be payable to the eligible surviving
11 spouse. The amount of the survivor pension shall be the
12 greater of:

13 (1) the amount as calculated under the
14 coverage plan applicable to the deceased member at the time of
15 death as though the deceased member had retired the day
16 preceding death under form of payment B using the actual
17 amount of service credit attributable to the deceased member
18 at the time of death; or

19 (2) fifty percent of the deceased member's
20 final average salary.

21 C. A survivor pension shall also be payable to
22 eligible surviving children if there is no designated survivor
23 beneficiary and the retirement board finds the death to have
24 been the natural and proximate result of causes arising solely
25 and exclusively out of and in the course of the member's

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1 performance of duty with an affiliated public employer. The
2 total amount of survivor pension shall be divided equally
3 between all eligible surviving children. The total amount of
4 survivor pension payable for all eligible surviving children
5 shall be either:

6 (1) fifty percent of the deceased member's
7 final average salary if an eligible surviving spouse is not
8 paid a pension; or

9 (2) twenty-five percent of the deceased
10 member's final average salary if an eligible surviving spouse
11 is paid a pension.

12 ~~[The total amount of survivor pension shall be divided~~
13 ~~equally among all eligible surviving children. If there is~~
14 ~~only one eligible child, the amount of pension shall be~~
15 ~~twenty-five percent of the deceased member's final average~~
16 ~~salary.]~~

17 D. If the member had five or more years of service
18 credit, but the retirement board did not find the death to
19 have been the natural and proximate result of causes arising
20 solely and exclusively out of and in the course of the
21 member's performance of duty with an affiliated public
22 employer and there is no designated survivor beneficiary, a
23 survivor pension shall be payable to the eligible surviving
24 spouse. The amount of the survivor pension shall be the
25 greater of:

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1 (1) the amount as calculated under the
2 coverage plan applicable to the deceased member at the time of
3 death as though the deceased member had retired the day
4 preceding death under form of payment B using the total amount
5 of actual service credit attributable to the deceased member
6 at the time of death; or

7 (2) thirty percent of the deceased member's
8 final average salary.

9 E. If the member had five or more years of service
10 credit, but the retirement board did not find the death to
11 have been the natural and proximate result of causes arising
12 solely and exclusively out of and in the course of the
13 member's performance of duty with an affiliated public
14 employer and there is no designated survivor beneficiary, and
15 if there is no eligible surviving spouse [~~at the time of~~
16 ~~death~~] or the eligible surviving spouse subsequently dies, a
17 survivor pension shall be payable to and divided equally among
18 all eligible surviving children, if any. The total amount of
19 survivor pension payable for all eligible surviving children
20 shall be the greater of:

21 (1) the amount as calculated under the
22 coverage plan applicable to the deceased member at the time of
23 death as though the deceased member had retired the day
24 preceding death under form of payment B with the oldest
25 eligible surviving child as the survivor beneficiary using the

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1 total amount of actual service credit attributable to the
2 deceased member at the time of death; or

3 (2) thirty percent of the deceased member's
4 final average salary.

5 F. An eligible surviving spouse is the spouse to
6 whom the deceased member was married at the time of death. An
7 eligible surviving child is a child under the age of eighteen
8 years and who is an unmarried, natural or adopted child of the
9 deceased member.

10 G. An eligible surviving spouse's pension shall
11 terminate upon death. An eligible surviving child's pension
12 shall terminate upon death or marriage or reaching age
13 eighteen years, whichever comes first.

14 H. If there is no designated survivor beneficiary
15 and there is no eligible surviving child, the eligible
16 surviving spouse may elect to be refunded the deceased
17 member's accumulated member contributions instead of receiving
18 a survivor pension.

19 I. A member may designate a survivor beneficiary
20 to receive a pre-retirement survivor pension, subject to the
21 following conditions:

22 (1) a written designation, in the form
23 prescribed by the association, is filed by the member with the
24 association;

25 (2) if the member is married at the time of

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1 designation, the designation shall only be made with the
2 consent of the member's spouse, in the form prescribed by the
3 association;

4 (3) if the member is married subsequent to
5 the time of designation, any prior designations shall
6 automatically be revoked upon the date of the marriage;

7 (4) if the member is divorced subsequent to
8 the time of designation, any prior designation of the former
9 spouse as survivor beneficiary shall automatically be revoked
10 upon the date of divorce; and

11 (5) a designation of survivor beneficiary may
12 be changed, with the member's spouse's consent if the member
13 is married, by the member at any time prior to the member's
14 death.

15 J. If there is a designated survivor beneficiary
16 and the retirement board finds the death to have been the
17 natural and proximate result of causes arising solely and
18 exclusively out of and in the course of the member's
19 performance of duty with an affiliated public employer, a
20 survivor pension shall be payable to the designated survivor
21 beneficiary. The amount of the survivor pension shall be the
22 greater of:

23 (1) the amount as calculated under the
24 coverage plan applicable to the deceased member at the time of
25 death as though the deceased member had retired the day

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1 preceding death under form of payment B using the actual
2 amount of service credit attributable to the member at the
3 time of death; or

4 (2) fifty percent of the deceased member's
5 final average salary.

6 K. If there is a designated survivor beneficiary,
7 if the member had five or more years of service credit and if
8 the retirement board did not find the death to have been the
9 natural and proximate result of causes arising solely and
10 exclusively out of and in the course of the member's
11 performance of duty with an affiliated public employer, a
12 survivor pension shall be payable to the designated survivor
13 beneficiary. The amount of the survivor pension shall be the
14 greater of:

15 (1) the amount as calculated under the
16 coverage plan applicable to the deceased member at the time of
17 death as though the deceased member had retired the day
18 preceding death under form of payment B using the actual
19 amount of service credit attributable to the member at the
20 time of death; or

21 (2) thirty percent of the deceased member's
22 final average salary.

23 L. If there is no designated survivor beneficiary,
24 no eligible surviving spouse or no eligible surviving
25 children, the member's accumulated contributions shall be paid

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1 to the deceased member's refund beneficiary. If all pension
2 payments permanently terminate before there is paid an
3 aggregate amount equal to the deceased member's accumulated
4 member contributions at time of death, the difference between
5 the amount of accumulated member contributions and the
6 aggregate amount of pension paid shall be paid to the deceased
7 member's refund beneficiary. If no refund beneficiary
8 survives the survivor beneficiary, the difference shall be
9 paid to the estate of the deceased member."

10 Section 7. Section 10-11-117 NMSA 1978 (being Laws 1987,
11 Chapter 253, Section 117, as amended) is amended to read:

12 "10-11-117. FORMS OF PAYMENT OF A PENSION. --

13 A. Straight life pension is form of payment A.
14 The retired member is paid the pension for life under form of
15 payment A. All payments stop upon the death of the retired
16 member, except as provided by Subsection E of this section.
17 The amount of pension is determined in accordance with the
18 coverage plan applicable to the retired member.

19 B. Life payments with full continuation to one
20 survivor beneficiary is form of payment B. The retired member
21 is paid a reduced pension for life under form of payment B.
22 When the retired member dies, the designated survivor
23 beneficiary is paid the full amount of the reduced pension
24 until death. Upon the association's receipt of proof of death
25 of the designated survivor beneficiary, the amount of pension

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1 shall be changed to the amount that would have been payable
2 had the retired member elected form of payment A.

3 C. Life payment with one-half continuation to one
4 survivor beneficiary is form of payment C. The retired member
5 is paid a reduced pension for life under form of payment C.
6 When the retired member dies, the designated survivor
7 beneficiary is paid one-half the amount of the reduced pension
8 until death. [~~If the designated survivor beneficiary~~
9 ~~predeceases the retired member~~] Upon the association's receipt
10 of proof of death of the designated survivor beneficiary, the
11 amount of pension shall be changed to the amount that would
12 have been payable had the retired member elected form of
13 payment A.

14 D. Life payments with temporary survivor benefits
15 for children is form of payment D. The retired member is paid
16 a reduced pension for life under form of payment D. When the
17 retired member dies, each declared eligible child is paid a
18 share of the reduced pension until death or age twenty-five
19 years, whichever occurs first. The share is the share
20 specified in writing and filed with the association by the
21 retired member. If shares are not specified in writing and
22 filed with the association, each declared eligible child is
23 paid an equal share of the reduced pension. A redetermination
24 of shares shall be made when the pension of any child
25 terminates. An eligible child is a natural or adopted child

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1 of the retired member who is under age twenty-five years. A
2 declared eligible child is an eligible child whose name has
3 been declared in writing and filed with the association by the
4 retired member at the time of election of form of payment D.
5 The amount of pension shall be changed to the amount of
6 pension that would have been payable had the retired member
7 elected form of payment A upon [~~there ceasing~~] the
8 association's receipt of proof that there ceases to be a
9 declared eligible child during the lifetime of the retired
10 member.

11 E. If all pension payments permanently terminate
12 before there is paid an aggregate amount equal to the retired
13 member's accumulated member contributions at the time of
14 retirement, the difference between the amount of accumulated
15 member contributions and the aggregate amount of pension paid
16 shall be paid to the retired member's refund beneficiary. If
17 no refund beneficiary survives the retired member, the
18 difference shall be paid to the estate of the retired member."

19 Section 8. Section 10-11-124 NMSA 1978 (being Laws 1987,
20 Chapter 253, Section 124, as amended) is amended to read:

21 "10-11-124. MEMBER CONTRIBUTION FUND. --

22 A. The member contribution fund is the accounting
23 fund in which shall be accumulated contributions of members
24 and from which shall be made refunds and transfers of
25 accumulated member contributions as provided in the Public

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1 Employees Retirement Act. Each affiliated public employer
2 shall cause the member contributions specified by the coverage
3 plan applicable to each of that affiliated public employer's
4 members to be deducted from the salary of each member. Each
5 affiliated public employer shall remit the deducted member
6 contributions to the association in accordance with the
7 procedures and schedules established by the association. The
8 association may assess an interest charge and a penalty charge
9 on any remittance not made by its due date. Each member shall
10 be deemed to consent and agree to the deductions made and
11 provided for in this section by continuing employment with the
12 affiliated public employer. Contributions by members shall be
13 credited to the members' individual accounts in the member
14 contribution fund.

15 B. A member's accumulated contributions shall be
16 transferred to the retirement reserve fund if a pension
17 becomes payable upon the retirement or death of the member.
18 If a disability retirement pension is terminated for a reason
19 other than the death of the disability retired member before
20 an amount equal to the disability retired member's accumulated
21 member contributions has been paid, the unexpended balance of
22 the accumulated member contributions shall be transferred from
23 the retirement reserve fund to the former disability retired
24 member's individual account in the member contribution fund.

25 C. If a member terminates affiliated public

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1 employment or is on leave of absence from an affiliated public
2 employer as a consequence of the entry into active duty with
3 the armed forces of the United States, the member may, with
4 the written consent of the member's spouse, if any, withdraw
5 the member's accumulated member contributions, upon making
6 written request in a form prescribed by the association. Upon
7 written request of the member in the form prescribed by the
8 association, a refund of member contributions may be made by a
9 trustee-to-trustee transfer of the contributions from the
10 member contribution fund directly to another qualified plan as
11 allowed by the Internal Revenue Code of 1986. Withdrawal of
12 member contributions shall result in forfeiture of the service
13 credit accrued for the period during which the contributions
14 were made.

15 D. A member shall, upon commencement of
16 membership, designate a refund beneficiary [~~who~~] that shall
17 receive the refund of the member contributions, plus interest
18 if any, if the member dies and no survivor pension is payable.
19 If the member is married at the time of designation, written
20 spousal consent shall be required if the designated refund
21 beneficiary is other than the spouse. Marriage subsequent to
22 the designation shall automatically revoke a previous
23 designation, and the spouse shall become the refund
24 beneficiary unless or until another designation is filed with
25 the association. Divorce subsequent to the designation shall

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1 automatically revoke designation of the former spouse as
2 refund beneficiary, or the right of the former spouse to be
3 refund beneficiary if no designation has been filed, and the
4 refund shall be paid to the deceased member's estate unless
5 the member filed a designation of refund beneficiary
6 subsequent to the divorce. The refund shall be paid to the
7 refund beneficiary named in the most recent designation of
8 refund beneficiary on file with the association [~~unless that~~
9 ~~beneficiary is deceased~~]. If there is not a trust or living
10 refund beneficiary named in the most recent designation of
11 refund beneficiary on file with the association, the deceased
12 member's accumulated member contributions shall be paid to the
13 estate of the deceased member. "

14 Section 9. Section 10-11-130 NMSA 1978 (being Laws 1987,
15 Chapter 253, Section 130, as amended) is amended to read:

16 "10-11-130. RETIREMENT BOARD--AUTHORITY--MEMBERSHIP. --

17 A. The "retirement board" is [hereby] created and
18 [~~shall be~~] is the trustee of the association and the funds
19 created by the state retirement system acts and [~~shall have~~]
20 has all the powers necessary or convenient to carry out and
21 effectuate the purposes and provisions of the state retirement
22 system acts, including, in addition to any specific powers
23 provided for in the Public Employees Retirement Act but
24 without limiting the generality of the foregoing, the power
25 to:

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1 (1) [tø] administer the state retirement
2 system acts, including the management of the association and
3 making effective the provisions of those acts, as well as to
4 administer and manage any other employee benefit acts as
5 provided by law;

6 (2) in addition to utilizing services of the
7 attorney general and notwithstanding any other provision of
8 law, [tø] employ or contract with and compensate competent
9 legal counsel to handle the legal matters and litigation of
10 the retirement board and the association and [tø] give advice
11 and counsel in regard to any matter connected with the duties
12 of the retirement board;

13 (3) [tø] administer oaths;

14 (4) [tø] adopt and use a seal for
15 authentication of records, processes and proceedings;

16 (5) [tø] create and maintain records relating
17 to all members, affiliated public employers and all activities
18 and duties required of the retirement board;

19 (6) [tø] issue subpoenas and compel the
20 production of evidence and attendance of witnesses in
21 connection with any hearings or proceedings of the retirement
22 board;

23 (7) [tø] make and execute contracts;

24 (8) [tø] purchase, acquire or hold land
25 adjacent to the state capitol grounds or other suitable

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1 location and build thereon a building to house the association
2 and its employees and, in the event additional office space is
3 available in the building after the retirement board and its
4 employees have been housed, [~~to~~] rent or lease the additional
5 space to any public agency or private person; provided that
6 first priority for the rental or leasing shall be to public
7 agencies and further provided that for the purpose of
8 purchasing, acquiring or holding the land and the building
9 thereon, the retirement board may use funds from the income
10 fund and any other funds controlled by the retirement board
11 the use of which for such purposes is not prohibited by law;

12 (9) [~~to~~] make and adopt such reasonable rules
13 [~~and regulations~~] as may be necessary or convenient to carry
14 out the duties of the retirement board and activities of the
15 association, including any rules [~~and regulations~~] necessary
16 to preserve the status of the association as a qualified
17 pension plan under the provisions of the Internal Revenue Code
18 of 1986, as amended, or under successor or related provisions
19 of law; and

20 (10) [~~to~~] designate committees and [~~to~~]
21 designate committee members, including individuals who may not
22 be members of the association.

23 B. The retirement board [~~shall consist~~] consists
24 of:

25 (1) the secretary of state;

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- (2) the state treasurer;
- (3) four members under a state coverage plan to be elected by the members under state coverage plans;
- (4) four members under a municipal coverage plan to be elected by the members under municipal coverage plans, provided one member shall be a municipal member employed by a county; and
- (5) two retired members to be elected by the retired members of the association.

C. The results of elections of elected members of the retirement board shall be certified at the annual meeting of the association. Elections shall be conducted according to rules ~~[and regulations]~~ the retirement board ~~[shall]~~ adopts from time to time ~~[adopt]~~.

D. The regular term of office of the elected members of the retirement board ~~[shall be]~~ is four years. The term of one retirement board member under a state coverage plan ~~[shall expire]~~ expires annually on December 31. The terms of retirement board members under a municipal coverage plan ~~[shall]~~ expire on December 31 of noncoinciding years in the pattern set by the retirement board. Members of the retirement board ~~[shall]~~ serve until their successors have qualified.

E. A member elected to the retirement board who fails to attend four consecutively scheduled meetings of the

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1 retirement board, unless in each case excused for cause by the
2 retirement board members in attendance, [~~shall be~~] is
3 considered to have resigned from the retirement board, and the
4 retirement board shall by resolution declare the office
5 vacated as of the date of adoption of the resolution. A
6 vacancy occurring on the retirement board, except in the case
7 of an elected official, shall be filled by the remaining
8 retirement board members, without requirement that a quorum be
9 present. The member appointed to fill the vacancy shall serve
10 for the remainder of the vacated term.

11 F. Members of the retirement board [~~shall~~] serve
12 without [~~additional~~] salary for their services as retirement
13 board members, but they shall receive [~~as their sole~~
14 ~~remuneration for services as members of the retirement board~~]
15 those amounts authorized under the Per Diem and Mileage Act.

16 G. The retirement board shall hold four regular
17 meetings each year and shall designate in advance the time and
18 place of the meetings. Special meetings and emergency
19 meetings of the retirement board may be held upon call of the
20 chairman or any three members of the retirement board.
21 Written notice of special meetings shall be sent to each
22 member of the retirement board at least seventy-two hours in
23 advance of the special meeting. Verbal notice of emergency
24 meetings shall be given to as many members as is feasible at
25 least eight hours before the emergency meeting, and the

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1 meeting shall commence with a statement of the nature of the
2 emergency. The retirement board shall adopt its own rules of
3 procedure and shall keep a record of its proceedings. All
4 meetings of the retirement board shall comply with the Open
5 Meetings Act. A majority of retirement board members shall
6 constitute a quorum. Each attending member of the retirement
7 board is entitled to one vote on each question before the
8 retirement board, and at least a majority of a quorum shall be
9 necessary for a decision by the retirement board.

10 H. Annual meetings of the members of the
11 association shall be held in Santa Fe at such time and place
12 as the retirement board shall from time to time determine.
13 Special meetings of the members of the association shall be
14 held in Santa Fe upon call of any seven retirement board
15 members. The retirement board shall send a written notice to
16 the last known residence address of each member currently
17 employed by an affiliated public employer at least ten days
18 prior to any meeting of the members of the association. The
19 notice shall contain the call of the meeting and the principal
20 purpose of the meeting. All meetings of the association shall
21 be public and shall be conducted according to procedures the
22 retirement board shall from time to time adopt. The
23 retirement board shall keep a record of the proceedings of
24 each meeting of the association.

25 I. Neither the retirement board nor the

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1 association shall allow public inspection of, or disclosure
2 of, information from any member or retiree file unless a prior
3 release and consent, in the form prescribed by the
4 association, has been executed by the member or retiree;
5 except that applicable coverage plans, amounts of retirement
6 plan contributions made by members and affiliated public
7 employers and pension amounts paid [and the] may be produced
8 or disclosed without release or consent. The names and
9 addresses of public employees retirement association members
10 or retirees [requested for election purposes by candidates for
11 election to the retirement board] may be produced or disclosed
12 without release or consent of the member or retiree to
13 candidates for election to the retirement board for election
14 purposes or to a nonprofit retirement organization, for the
15 retirement organization's exclusive use if the association is
16 currently withholding a dues deduction for that organization.
17 Information disclosed without the release or consent of the
18 member or retiree pursuant to this subsection shall not be
19 distributed or used for commercial purposes. "

20 Section 10. Section 10-12B-2 NMSA 1978 (being Laws 1992,
21 Chapter 111, Section 2) is amended to read:

22 "10-12B-2. DEFINITIONS. -- As used in the Judicial
23 Retirement Act:

24 A. "association" means the public employees
25 retirement association provided for in the Public Employees

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- 1 Retirement Act;
- 2 B. "board" means the retirement board provided for
- 3 in the Public Employees Retirement Act;
- 4 C. "current judge or justice" means a judge or
- 5 justice who occupied such an office on July 1, 1980 but who
- 6 elected to be covered under the provisions of the retirement
- 7 plan in effect at that time;
- 8 D. "dependent child" means a natural or adopted
- 9 child who is physically or mentally incapable of financial
- 10 self-support, regardless of age;
- 11 E. "educational retirement system" means the
- 12 retirement system provided for in the Educational Retirement
- 13 Act;
- 14 F. "effective date of retirement" means the first
- 15 day of the month following the month in which the member met
- 16 all requirements for retirement;
- 17 G. "former judge or justice" means a judge or
- 18 justice who occupied such an office prior to July 1, 1980, but
- 19 had ceased to hold such an office prior to that date and who
- 20 elected to be excluded from the provisions of the Judicial
- 21 Retirement Act;
- 22 H. "former member" means a person no longer in
- 23 office who was previously [~~a judge or justice~~] covered
- 24 pursuant to the provisions of Sections 10-12-1 through
- 25 10-12-18 NMSA 1978, but who has not retired pursuant to the

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1 provisions of the Judicial Retirement Act and who has received
2 a refund of member contributions pursuant to the provisions of
3 Sections 10-12-1 through 10-12-18 NMSA 1978;

4 I. "fund" means the judicial retirement fund;

5 J. "judge" means a judge of the district court or
6 court of appeals of New Mexico;

7 K. "justice" means a justice of the supreme court
8 of New Mexico;

9 L. "member" means any judge or justice who is in
10 office and covered pursuant to the provisions of the Judicial
11 Retirement Act, or any person no longer in office who was
12 previously a judge or justice covered pursuant to the
13 provisions of the Judicial Retirement Act, who has not retired
14 and who has not received a refund of member contributions from
15 the fund;

16 M "member contributions" means the amounts
17 deducted from the salary of a member and credited to the
18 member's individual account, together with interest, if any,
19 credited thereto;

20 N. "minor child" means a natural or adopted child
21 who has not reached his eighteenth birthday [~~or~~] and who has
22 not been emancipated by marriage or otherwise;

23 O. "new judge or justice" means:

24 (1) a judge or justice who first occupied
25 such an office after July 1, 1980; or

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1 (2) a judge or justice who occupied such an
2 office on or before July 1, 1980 and who has elected to be
3 covered under the provisions of the Judicial Retirement Act;

4 P. "pension" means a series of monthly payments to
5 a retired member or survivor beneficiary pursuant to the
6 provisions of the Judicial Retirement Act;

7 Q. "refund beneficiary" means a person, estate or
8 trust designated by the member, in writing in the form
9 prescribed by the association, as the person who would be
10 refunded the member's accumulated member contributions payable
11 if the member dies and no survivor pension is payable, or [~~to~~]
12 who would receive the difference between pension paid and
13 accumulated member contributions if the retired member dies
14 before receiving in pension payments the amount of the
15 accumulated member contributions;

16 R. "retire" means to:

17 (1) terminate employment with all employers
18 covered by any state system or the educational retirement
19 system; and

20 (2) receive a pension from one state system
21 or the educational retirement system;

22 S. "retired member" means a person who has met all
23 requirements for retirement and who is receiving a pension
24 from the fund;

25 T. "salary" means the base salary or wages paid a

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1 member, including longevity pay, for personal services
2 rendered; provided that salary does not include overtime pay,
3 allowances for housing, clothing, equipment or travel,
4 payments for unused sick leave, unless the unused sick leave
5 payment is made through continuation of the member on the
6 regular payroll for the period represented by that payment,
7 and any other form of remuneration not specifically designated
8 by law as included in salary pursuant to the provisions of the
9 Judicial Retirement Act. "Salary" includes a member's fixed,
10 periodical compensation from full- or part-time employment;
11 shift differentials; and wages paid while absent from work
12 because of vacation, holiday, injury or illness while the
13 member continues on the regular payroll. "Salary" does not
14 include lump-sum payments, including lump-sum annual or sick
15 leave or occasional payments to elected officials for
16 attending meetings that are not part of the member's fixed
17 periodical compensation. "Salary" also does not include
18 concurrent wages or payments from more than one affiliated
19 public employer, allowances for any purpose, employer
20 contributions to a private retirement program or other fringe
21 benefits, even if they are paid to or for a member on a
22 regular basis. Salary in excess of the limitations set forth
23 in Section 401(a)(17) of the Internal Revenue Code of 1986, as
24 amended, shall be disregarded. The limitation on compensation
25 for eligible employees shall not be less than the amount that

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1 was allowed to be taken into account under the state
2 retirement system acts in effect on July 1, 1993. For
3 purposes of this section, "eligible employee" means an
4 individual who was a member of a state system before the first
5 plan year beginning after December 31, 1995;

6 U. "state system" means the retirement programs
7 provided pursuant to the provisions of the Public Employees
8 Retirement Act, the Magistrate Retirement Act and the Judicial
9 Retirement Act;

10 V. "surviving spouse" means the spouse to whom the
11 member was married at the time of the member's death;

12 W. "survivor beneficiary" means a person who
13 receives a pension or who has been designated to be paid a
14 pension as a result of the death of a member or retired
15 member; and

16 X. "years of service" means a period of time
17 beginning on the date a person commences to hold office as a
18 judge or justice because of appointment or election and ending
19 on the date a person ceases to hold office as a judge or
20 justice because of expiration of the judge's or justice's
21 term, voluntary resignation, death or disability and shall
22 include any fractions of years of service."

23 Section 11. Section 10-12B-5 NMSA 1978 (being Laws 1992,
24 Chapter 111, Section 5, as amended) is amended to read:

25 "10-12B-5. SERVICE CREDIT--REINSTATEMENT OF FORFEITED

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1 SERVICE- - PRIOR SERVICE- - MILITARY SERVICE. - -

2 A. Personal service rendered by a member shall be
3 credited to the member's service credit account in accordance
4 with board rules and regulations. Service shall be credited
5 to the nearest month. In no case shall any member be credited
6 with a year of service for less than twelve months of service
7 in any calendar year or more than a month of service for all
8 service in any calendar month or more than a year of service
9 for all service in any calendar year.

10 B. Service credit shall be forfeited if a member
11 leaves office and withdraws the member's accumulated member
12 contributions. A member or former member who is a member of a
13 state system or the educational retirement system who has
14 forfeited service credit by withdrawal of member contributions
15 may reinstate the forfeited service credit by repaying the
16 amount withdrawn plus compound interest from the date of
17 withdrawal to the date of repayment at a rate set by the
18 board. Withdrawn member contributions may be repaid in
19 increments of one year in accordance with procedures
20 established by the board. Full payment of each one-year
21 increment shall be made in a single lump-sum amount in
22 accordance with procedures established by the board.

23 C. Service credit that a member would have earned
24 if the member had not elected to be excluded from membership
25 may be purchased if the member pays the purchase cost

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1 determined pursuant to the provisions of Subsection F of this
2 section.

3 D. A member who during a term of office enters a
4 uniformed service of the United States shall be given service
5 credit for periods of service in the uniformed services
6 subject to the following conditions:

7 (1) the member returns to office within
8 ninety days following termination of the period of intervening
9 service in the uniformed services or the affiliated employer
10 certifies in writing to the association that the member is
11 entitled to reemployment rights under the federal Uniformed
12 Services Employment and Reemployment Rights Act of 1994;

13 (2) the member retains membership in the
14 association during the period of service in the uniformed
15 services;

16 (3) free service credit shall not be given
17 for periods of intervening service in the uniformed services
18 following voluntary [~~reenlistment~~] entry. Service credit for
19 such periods shall only be given after the member pays the
20 association the sum of the contributions that the person would
21 have been required to contribute had the person remained
22 continuously employed throughout the period of intervening
23 service following voluntary [~~reenlistment~~] entry, which
24 payment shall be made during the period beginning with the
25 date of reemployment and whose duration is three times the

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1 period of the person's intervening service in the uniformed
2 services following voluntary [~~reenlistment~~] entry, not to
3 exceed five years;

4 (4) service credit shall not be given for
5 periods of intervening service in the uniformed services that
6 are used to obtain or increase a benefit from another state
7 system or the retirement program provided under the
8 Educational Retirement Act; and

9 (5) the member must not have received a
10 discharge or separation from uniformed service under other
11 than honorable conditions.

12 Notwithstanding any provision of this plan to the
13 contrary, contributions, benefits and service credit with
14 respect to qualified military service will be provided in
15 accordance with Section 414(u) of the Internal Revenue Code of
16 1986, as amended.

17 E. A member who entered uniformed service of the
18 United States may purchase service credit for periods of
19 active duty in the uniformed services, subject to the
20 following conditions:

21 (1) the member pays the purchase cost
22 determined pursuant to the provisions of Subsection F of this
23 section;

24 (2) the member has five or more years of
25 service credit accrued according to the provisions of the

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1 Judicial Retirement Act;

2 (3) the aggregate amount of service credit
3 purchased pursuant to the provisions of this subsection does
4 not exceed five years, reduced by any period of service credit
5 acquired for military service under any other provision of the
6 Judicial Retirement Act;

7 (4) service credit may not be purchased for
8 periods of service in the uniformed services that are used to
9 obtain or increase a benefit from another retirement program;
10 and

11 (5) the member must not have received a
12 discharge or separation from uniformed service under other
13 than honorable conditions.

14 F. The purchase cost for each year of service
15 credit purchased pursuant to the provisions of this section
16 shall be the increase in the actuarial present value of the
17 pension of the member under the Judicial Retirement Act as a
18 consequence of the purchase, as determined by the association.
19 Full payment shall be made in a single lump-sum amount in
20 accordance with procedures established by the board. Except
21 as provided in Subsection G of this section, seventy-five
22 percent of the purchase cost shall be considered to be
23 employer contributions and shall not be refunded to the member
24 in the event of cessation of membership.

25 G. A member shall be refunded, after retirement

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1 and upon written request filed with the association, the
2 portion of the purchase cost of service credit purchased
3 pursuant to the provisions of this section that the
4 association determines to have been unnecessary to provide the
5 member with the maximum pension applicable to the member. The
6 association shall not pay interest on the portion of the
7 purchase cost refunded to the member. "

8 Section 12. Section 10-12B-6 NMSA 1978 (being Laws 1992,
9 Chapter 111, Section 6, as amended) is amended to read:

10 "10-12B-6. REFUND OF CONTRIBUTIONS. --

11 A. If a member leaves office, the member may, with
12 the written consent of the member's spouse, if any, withdraw
13 the member's accumulated member contributions upon making
14 written request in a form prescribed by the association. Upon
15 written request of the member in the form prescribed by the
16 association, a refund of member contributions may be made by a
17 trustee-to-trustee transfer of the contributions from the
18 member contribution fund directly to another qualified plan as
19 allowed by the Internal Revenue Code of 1986. Withdrawal of
20 member contributions shall result in forfeiture of the service
21 credit accrued for the period during which the contributions
22 were made.

23 B. A member shall, upon commencement of
24 membership, designate a refund beneficiary [~~who~~] that shall
25 receive the refund of the member contributions, plus interest,

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1 if the member dies and no survivor pension is payable. If the
2 member is married at the time of designation, written spousal
3 consent shall be required if the designated refund beneficiary
4 is [~~a person~~] other than the spouse. Marriage subsequent to
5 the designation shall automatically revoke a previous
6 designation, and the spouse shall become the refund
7 beneficiary unless or until another designation is filed with
8 the association. Divorce subsequent to the designation shall
9 automatically revoke designation of the former spouse as
10 refund beneficiary if no designation has been filed, and the
11 refund shall be paid to the deceased member's estate unless
12 the member filed a designation of refund beneficiary
13 subsequent to the divorce. The refund shall be paid to the
14 refund beneficiary named in the most recent designation of
15 refund beneficiary on file with the association unless that
16 beneficiary is deceased. If there is not a trust or living
17 refund beneficiary named in the most recent designation of
18 refund beneficiary on file with the association, the deceased
19 member's accumulated member contributions shall be paid to the
20 estate of the deceased member. "

21 Section 13. Section 10-12B-14 NMSA 1978 (being Laws
22 1992, Chapter 111, Section 14) is amended to read:

23 "10-12B-14. SURVIVOR'S PENSION. --

24 A. Unless a member has designated a survivor
25 beneficiary in accordance with Subsection B of this section, a

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1 ~~[survivor]~~ survivor's pension shall be paid for life to a
2 member's or retired member's surviving spouse.

3 B. A member may designate, in writing in a form
4 prescribed by the association, a survivor beneficiary to
5 receive the survivor's pension described in this section. If
6 the member is married, a designation of survivor beneficiary
7 other than the member's spouse may only be made with the
8 written consent of the member's spouse. Marriage subsequent
9 to a designation of survivor beneficiary shall automatically
10 revoke the designation of survivor beneficiary. A designation
11 of survivor beneficiary made pursuant to a court order issued
12 under Section ~~[7 of the Judicial Retirement Act]~~ 10-12B-7 NMSA
13 1978 shall not require the consent of the member's spouse, if
14 any, and shall not be revoked by the subsequent remarriage of
15 the member. A designation of survivor beneficiary may be
16 revoked by the member at any time prior to the member's
17 retirement. If the member is married, a revocation of
18 designation of survivor beneficiary may only be made with the
19 written consent of the member's spouse.

20 C. If there is no surviving spouse and no
21 designated survivor beneficiary or if the surviving spouse
22 dies while there are still minor and dependent children of the
23 member, the survivor's pension shall be paid to all minor and
24 dependent children, if any, of the member, in equal shares, so
25 long as each child remains a minor or dependent child. As

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1 each child ceases to be a minor or dependent child, the number
2 of shares shall be reduced and the amount payable to each
3 remaining child increased proportionately so that the total
4 survivor's pension remains unchanged as long as there is any
5 such child.

6 D. The survivor's pension is equal to seventy-five
7 percent of the member's pension. If the member is not retired
8 at the time of death, "member's pension" means the amount of
9 the pension that would have been applicable if the member had
10 retired the day preceding the death.

11 E. Survivor beneficiaries shall be eligible for
12 other benefits provided pursuant to the provisions of the
13 Judicial Retirement Act, including cost-of-living adjustments
14 and continuation of group insurance benefits.

15 F. If a member dies while receiving a disability
16 retirement pension, the survivor beneficiary shall receive the
17 [~~survivor~~] survivor's pension provided pursuant to the
18 provisions of the Judicial Retirement Act."

19 Section 14. Section 10-12B-17 NMSA 1978 (being Laws
20 1992, Chapter 111, Section 17) is amended to read:

21 "10-12B-17. SUSPENSION OR FORFEITURE OF BENEFITS. --

22 A. Except as provided in Subsection C of this
23 section, if a member retires and is subsequently employed by
24 any employer covered by any state system or the educational
25 retirement system, the retired member's pension shall be

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1 suspended effective the first day of the month following the
2 month in which the subsequent employment begins. The
3 suspended pension of a previously retired member shall resume
4 and be effective the first day of the month following the
5 month in which the member leaves office or terminates the
6 subsequent employment.

7 B. The right to receive a pension pursuant to the
8 provisions of the Judicial Retirement Act shall be forfeited
9 if the member is removed from office pursuant to the
10 provisions of Article 6, Section 32 of the constitution of New
11 Mexico and the member's only entitlement from the fund shall
12 be the refund of the member's own contributions.

13 C. The provisions of Subsection A of this section
14 do not apply to a retired member who is elected to serve a
15 term as an elected official if the retired member files an
16 irrevocable exemption from membership with the association
17 within thirty days of taking office. Filing of an irrevocable
18 exemption irrevocably bars the retired member from acquiring
19 service credit for the period of exemption from membership. "

20 Section 15. Section 10-12B-19 NMSA 1978 (being Laws
21 1995, Chapter 115, Section 5, as amended) is amended to read:

22 "10-12B-19. CORRECTIONS OF ERRORS AND OMISSIONS--
23 ESTOPPEL. --

24 A. If an error or omission results in overpayment
25 to a member or beneficiary of a member, the association shall

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1 correct the error or omission and adjust all future payments
2 accordingly. The association shall recover all overpayments
3 ~~[made for a period of up to one year prior to the date the~~
4 ~~error or omission was discovered]~~ and may withhold the
5 cumulative overpayment from future pension payments or refunds
6 of member contributions.

7 B. A person who is paid more than the amount that
8 is lawfully due him as a result of fraudulent information
9 provided by the member or beneficiary shall be liable for the
10 repayment of that amount to the association plus interest on
11 that amount at the rate set by the board plus all costs of
12 collection, including attorney fees if necessary. Recovery of
13 such overpayment shall extend back to the date the first
14 payment was made based on the fraudulent information.

15 C. Statements of fact or law made by board members
16 or employees of the board or the association shall not estop
17 the board or the association from acting in accordance with
18 the applicable statutes. "

19 Section 16. Section 10-12C-2 NMSA 1978 (being Laws 1992,
20 Chapter 118, Section 2) is amended to read:

21 "10-12C-2. DEFINITIONS. --As used in the Magistrate
22 Retirement Act:

23 A. "association" means the public employees
24 retirement association provided for in the Public Employees
25 Retirement Act;

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1 B. "board" means the retirement board provided for
2 in the Public Employees Retirement Act;

3 C. "dependent child" means a natural or adopted
4 child who is physically or mentally incapable of financial
5 self-support, regardless of age;

6 D. "educational retirement system" means the
7 retirement system provided for in the Educational Retirement
8 Act;

9 E. "effective date of retirement" means the first
10 day of the month following the month in which the member met
11 all requirements for retirement;

12 F. "former member" means a person no longer in
13 office who was previously [~~a magistrate~~] covered pursuant to
14 the provisions of Sections 10-12A-1 through 10-12A-13 NMSA
15 1978, but who has not retired pursuant to the provisions of
16 the Magistrate Retirement Act and who has received a refund of
17 member contributions pursuant to the provisions of Sections
18 10-12A-1 through 10-12A-13 NMSA 1978;

19 G. "fund" means the magistrate retirement fund;

20 H. "magistrate" means a magistrate or a
21 metropolitan court judge;

22 I. "member" means any magistrate who is in office
23 and covered pursuant to the provisions of the Magistrate
24 Retirement Act, or any person no longer in office who was
25 previously a magistrate covered pursuant to the provisions of

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1 the Magistrate Retirement Act, who has not retired and who has
2 not received a refund of member contributions from the fund;

3 J. "member contributions" means the amounts
4 deducted from the salary of a member and credited to the
5 member's individual account, together with interest, if any,
6 credited thereto;

7 K. "minor child" means a natural or adopted child
8 who has not reached his eighteenth birthday [~~or~~] and who has
9 not been emancipated by marriage or otherwise;

10 L. "pension" means a series of monthly payments to
11 a retired member or survivor beneficiary pursuant to the
12 provisions of the Magistrate Retirement Act;

13 M. "refund beneficiary" means a person, estate or
14 trust designated by the member, in writing in the form
15 prescribed by the association, as the person who would be
16 refunded the member's accumulated member contributions payable
17 if the member dies and no survivor pension is payable, or as
18 the person who [~~receives~~] would receive the difference between
19 pension paid and accumulated member contributions if the
20 retired member dies before receiving in pension payments the
21 amount of the accumulated member contributions;

22 N. "retire" means to:
23 (1) terminate employment with all employers
24 covered by any state system or the educational retirement
25 system; and

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1 (2) receive a pension from one state system
2 or the educational retirement system;

3 0. "retired member" means a person who has met all
4 requirements for retirement and who is receiving a pension
5 from the fund;

6 P. "salary" means the base salary or wages paid a
7 member, including longevity pay, for personal services
8 rendered; provided that "salary" does not include overtime
9 pay, allowances for housing, clothing, equipment or travel,
10 payments for unused sick leave, unless the unused sick leave
11 payment is made through continuation of the member on the
12 regular payroll for the period represented by that payment,
13 and any other form of remuneration not specifically designated
14 by law as included in salary pursuant to the provisions of the
15 Magistrate Retirement Act. "Salary" includes a member's
16 fixed, periodical compensation from full- or part-time
17 employment; shift differentials; and wages paid while absent
18 from work because of vacation, holiday, injury or illness
19 while the member continues on the regular payroll. "Salary"
20 does not include lump-sum payments, including lump-sum annual
21 or sick leave or occasional payments to elected officials for
22 attending meetings that are not part of the member's fixed
23 periodical compensation. "Salary" also does not include
24 concurrent wages or payments from more than one affiliated
25 public employer, allowances for any purpose, employer

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1 contributions to a private retirement program or other fringe
2 benefits, even if they are paid to or for a member on a
3 regular basis. Salary in excess of the limitations set forth
4 in Sections 40(a)(17) of the Internal Revenue Code of 1986, as
5 amended, shall be disregarded. The limitation on compensation
6 for eligible employees shall not be less than the amount that
7 was allowed to be taken into account under the state
8 retirement system acts in effect on July 1, 1993. For
9 purposes of this section, "eligible employee" means an
10 individual who was a member of a state system before the first
11 plan year beginning after December 31, 1995;

12 Q. "state system" means the retirement programs
13 provided pursuant to the provisions of the Public Employees
14 Retirement Act, the Magistrate Retirement Act and the Judicial
15 Retirement Act;

16 R. "surviving spouse" means the spouse to whom the
17 member was married at the time of the member's death;

18 S. "survivor beneficiary" means a person who
19 receives a pension or who has been designated to be paid a
20 pension as a result of the death of a member or retired
21 member; and

22 T. "years of service" means a period of time
23 beginning on the date a person commences to hold office as a
24 magistrate because of appointment or election and ending on
25 the date a person ceases to hold office as a magistrate

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1 because of expiration of the magistrate's term, voluntary
2 resignation, death or disability and shall include any
3 fractions of years of service."

4 Section 17. Section 10-12C-5 NMSA 1978 (being Laws 1992,
5 Chapter 118, Section 5, as amended) is amended to read:

6 "10-12C-5. SERVICE CREDIT--REINSTATEMENT OF FORFEITED
7 SERVICE--PRIOR SERVICE--MILITARY SERVICE.--

8 A. Personal service rendered by a member shall be
9 credited to the member's service credit account in accordance
10 with board rules [~~and regulations~~]. Service shall be credited
11 to the nearest month. In no case shall any member be credited
12 with a year of service for less than twelve months of service
13 in any calendar year or more than a month of service for all
14 service in any calendar month or more than a year of service
15 for all service in any calendar year.

16 B. Service credit shall be forfeited if a member
17 leaves office and withdraws the member's accumulated member
18 contributions. A member or former member who is a member of
19 another state system or the educational retirement system who
20 has forfeited service credit by withdrawal of member
21 contributions may reinstate the forfeited service credit by
22 repaying the amount withdrawn plus compound interest from the
23 date of withdrawal to the date of repayment at a rate set by
24 the board. Withdrawn member contributions may be repaid in
25 increments of one year in accordance with procedures

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1 established by the board. Full payment of each one-year
2 increment shall be made in a single lump-sum amount in
3 accordance with procedures established by the board.

4 C. Service credit that a member would have earned
5 if the member had not elected to be excluded from membership
6 may be purchased if the member pays the purchase cost
7 determined pursuant to the provisions of Subsection F of this
8 section.

9 D. A member who during a term of office enters a
10 uniformed service of the United States shall be given service
11 credit for periods of service in the uniformed services
12 subject to the following conditions:

13 (1) the member returns to office within
14 ninety days following termination of the period of intervening
15 service in the uniformed services or the affiliated employer
16 certifies in writing to the association that the member is
17 entitled to reemployment rights under the federal Uniformed
18 Services Employment and Reemployment Rights Act of 1994;

19 (2) the member retains membership in the
20 association during the period of service in the uniformed
21 services;

22 (3) free service credit shall not be given
23 for periods of intervening service in the uniformed services
24 following voluntary [~~reenlistment~~] entry. Service credit for
25 such periods shall only be given after the member pays the

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1 association the sum of the contributions that the person would
2 have been required to contribute had the person remained
3 continuously employed throughout the period of intervening
4 service following voluntary [~~reenlistment~~] entry, which
5 payment shall be made during the period beginning with the
6 date of reemployment and whose duration is three times the
7 period of the person's intervening service in the uniformed
8 services following voluntary [~~reenlistment~~] entry, not to
9 exceed five years;

10 (4) service credit shall not be given for
11 periods of intervening service in the uniformed services that
12 are used to obtain or increase a benefit from another state
13 system or the retirement program provided under the
14 Educational Retirement Act; and

15 (5) the member must not have received a
16 discharge or separation from uniformed service under other
17 than honorable conditions.

18 Notwithstanding any provision of this plan to the
19 contrary, contributions, benefits and service credit with
20 respect to qualified military service will be provided in
21 accordance with Section 414(u) of the Internal Revenue Code of
22 1986, as amended.

23 E. A member who entered a uniformed service of the
24 United States may purchase service credit for periods of
25 active duty in the uniformed services, subject to the

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1 following conditions:

2 (1) the member pays the purchase cost
3 determined pursuant to the provisions of Subsection F of this
4 section;

5 (2) the member has five or more years of
6 service credit accrued according to the provisions of the
7 Magistrate Retirement Act;

8 (3) the aggregate amount of service credit
9 purchased pursuant to the provisions of this subsection does
10 not exceed five years, reduced by any period of service credit
11 acquired for military service under any other provision of the
12 Magistrate Retirement Act;

13 (4) service credit may not be purchased for
14 periods of service in the uniformed services that are used to
15 obtain or increase a benefit from another retirement program;
16 and

17 (5) the member must not have received a
18 discharge or separation from uniformed service under other
19 than honorable conditions.

20 F. The purchase cost for each year of service
21 credit purchased pursuant to the provisions of this section
22 shall be the increase in the actuarial present value of the
23 pension of the member under the Magistrate Retirement Act as a
24 consequence of the purchase, as determined by the association.
25 Full payment shall be made in a single lump-sum amount in

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1 accordance with procedures established by the board. Except
2 as provided in Subsection G of this section, seventy-five
3 percent of the purchase cost shall be considered to be
4 employer contributions and shall not be refunded to the member
5 in the event of cessation of membership.

6 G. A member shall be refunded, after retirement
7 and upon written request filed with the association, the
8 portion of the purchase cost of service credit purchased
9 pursuant to the provisions of this section that the
10 association determines to have been unnecessary to provide the
11 member with the maximum pension applicable to the member. The
12 association shall not pay interest on the portion of the
13 purchase cost refunded to the member. "

14 Section 18. Section 10-12C-6 NMSA 1978 (being Laws 1992,
15 Chapter 118, Section 6, as amended) is amended to read:

16 "10-12C-6. REFUND OF CONTRIBUTIONS. --

17 A. If a member leaves office, the member may, with
18 the written consent of the member's spouse, if any, withdraw
19 the member's accumulated member contributions, upon making
20 written request in a form prescribed by the association. Upon
21 written request of the member in the form prescribed by the
22 association, a refund of member contributions may be made by a
23 trustee-to-trustee transfer of the contributions from the
24 member contribution fund directly to another qualified plan as
25 allowed by the Internal Revenue Code of 1986. Withdrawal of

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1 member contributions shall result in forfeiture of the service
2 credit accrued for the period during which the contributions
3 were made.

4 B. A member shall, upon commencement of
5 membership, designate a refund beneficiary [~~who~~] that shall
6 receive the refund of the member contributions, plus interest
7 if any, if the member dies and no survivor pension is payable.
8 If the member is married at the time of designation, written
9 spousal consent shall be required if the designated refund
10 beneficiary is [~~a person~~] other than the spouse. Marriage
11 subsequent to the designation shall automatically revoke a
12 previous designation, and the spouse shall become the refund
13 beneficiary unless or until another designation is filed with
14 the association. Divorce subsequent to the designation shall
15 automatically revoke designation of the former spouse as
16 refund beneficiary, or the right of the former spouse to be
17 refund beneficiary if no designation has been filed, and the
18 refund shall be paid to the deceased member's estate unless
19 the member filed a designation of refund beneficiary
20 subsequent to the divorce. The refund shall be paid to the
21 refund beneficiary named in the most recent designation of
22 refund beneficiary on file with the association unless that
23 beneficiary is deceased. If there is not a trust or living
24 refund beneficiary named in the most recent designation of
25 refund beneficiary on file with the association, the deceased

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1 member's accumulated member contributions shall be paid to the
2 estate of the deceased member. "

3 Section 19. Section 10-12C-13 NMSA 1978 (being Laws
4 1992, Chapter 118, Section 13) is amended to read:

5 "10-12C-13. SURVIVOR'S PENSION. --

6 A. Unless a member has designated a survivor
7 beneficiary in accordance with Subsection B of this section, a
8 ~~[survivor]~~ survivor's pension shall be paid for life to a
9 member's or retired member's surviving spouse.

10 B. A member may designate, in writing in a form
11 prescribed by the association, a survivor beneficiary to
12 receive the survivor's pension described in this section. If
13 the member is married, a designation of survivor beneficiary
14 other than the member's spouse may only be made with the
15 written consent of the member's spouse. Marriage subsequent
16 to a designation of survivor beneficiary shall automatically
17 revoke the designation of survivor beneficiary. A designation
18 of survivor beneficiary made pursuant to a court order issued
19 under Section ~~[7 of the Magistrate Retirement Act]~~ 10-12C-7
20 NMSA 1978 shall not require the consent of the member's
21 spouse, if any, and shall not be revoked by the subsequent
22 remarriage of the member. A designation of survivor
23 beneficiary may be revoked by the member at any time prior to
24 the member's retirement. If the member is married, a
25 revocation of designation of survivor beneficiary may only be

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1 made with the written consent of the member's spouse.

2 C. If there is no surviving spouse and no
3 designated survivor beneficiary or if the surviving spouse
4 dies while there are still minor and dependent children of the
5 member, the survivor's pension shall be paid to all minor and
6 dependent children, if any, of the member, in equal shares, so
7 long as each child remains a minor or dependent child. As
8 each child ceases to be a minor or dependent child, the number
9 of shares shall be reduced and the amount payable to each
10 remaining child increased proportionately so that the total
11 survivor's pension remains unchanged as long as there is any
12 such child.

13 D. The survivor's pension is equal to seventy-five
14 percent of the member's pension. If the member is not retired
15 at the time of death, "member's pension" means the amount of
16 the pension that would have been applicable if the member had
17 retired the day preceding the death.

18 E. Survivor beneficiaries shall be eligible for
19 other benefits provided pursuant to the provisions of the
20 Magistrate Retirement Act, including cost-of-living
21 adjustments and continuation of group insurance benefits.

22 F. If a member dies while receiving a disability
23 retirement pension, the survivor beneficiary shall receive the
24 [~~survivor~~] survivor's pension provided pursuant to the
25 provisions of the Magistrate Retirement Act. "

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1 Section 20. Section 10-12C-16 NMSA 1978 (being Laws
2 1992, Chapter 118, Section 16) is amended to read:

3 "10-12C-16. SUSPENSION OR FORFEITURE OF BENEFITS. --

4 A. Except as provided in Subsection C of this
5 section, if a member retires and is subsequently employed by
6 any employer covered by any state system or the educational
7 retirement system, the retired member's pension shall be
8 suspended effective the first day of the month following the
9 month in which the subsequent employment begins. The
10 suspended pension of a previously retired member shall resume
11 and be effective the first day of the month following the
12 month in which the member leaves office or terminates the
13 subsequent employment.

14 B. The right to receive a pension pursuant to the
15 provisions of the Magistrate Retirement Act shall be forfeited
16 if the member is removed from office pursuant to the
17 provisions of Article 6, Section 32 of the constitution of New
18 Mexico and the member's only entitlement from the fund shall
19 be the refund of the member's own contributions.

20 C. The provisions of Subsection A of this section
21 do not apply to a retired member who is elected to serve a
22 term as an elected official, if the retired member files an
23 irrevocable exemption from membership with the association
24 within thirty days of taking office. Filing of an irrevocable
25 exemption irrevocably bars the retired member from acquiring

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1 service credit for the period of exemption from membership. "

2 Section 21. Section 10-12C-18 NMSA 1978 (being Laws
3 1995, Chapter 115, Section 10, as amended) is amended to read:

4 "10-12C-18. CORRECTION OF ERRORS AND OMISSIONS--
5 ESTOPPEL. --

6 A. If an error or omission results in an
7 overpayment to a member or beneficiary of a member, the
8 association shall correct the error or omission and adjust all
9 future payments accordingly. The association shall recover
10 all overpayments [~~made for a period of up to one year prior to~~
11 ~~the date the error or omission was discovered~~] and may
12 withhold the cumulative overpayment from future pension
13 payments or refunds of member contributions.

14 B. A person who is paid more than the amount that
15 is lawfully due him as a result of fraudulent information
16 provided by the member or beneficiary shall be liable for the
17 repayment of that amount to the association plus interest on
18 that amount at the rate set by the board plus all costs of
19 collection, including attorney fees if necessary. Recovery of
20 such overpayment shall extend back to the date the first
21 payment was made based on the fraudulent information.

22 C. Statements of fact or law made by board members
23 or employees of the board or the association shall not estop
24 the board or the association from acting in accordance with
25 the applicable statutes. "