

AN ACT
RELATING TO EDUCATION RETIREMENT; AMENDING AND REPEALING
CERTAIN SECTIONS OF THE EDUCATIONAL RETIREMENT ACT.

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

Section 1. Section 22-11-2 NMSA 1978 (being Laws 1967, Chapter 16, Section 126, as amended) is amended to read:

"22-11-2. DEFINITIONS. --As used in the Educational Retirement Act:

A. "member" means an employee, except for a participant or a retired member coming within the provisions of the Educational Retirement Act;

B. "regular member" means:

(1) a person regularly employed as a teaching, nursing or administrative employee of a state educational institution, except for:

(a) a participant; or

(b) all employees of a general hospital or outpatient clinics thereof operated by a state educational institution named in Article 12, Section 11 of the constitution of New Mexico;

(2) a person regularly employed as a teaching, nursing or administrative employee of a junior college or community college created pursuant to Chapter 21, Article 13 NMSA 1978, except for a participant;

(3) a person regularly employed as a

teaching, nursing or administrative employee of a technical and vocational institute created pursuant to the Technical and Vocational Institute Act, except for a participant;

(4) a person regularly employed as a teaching, nursing or administrative employee of the New Mexico boys' school, the New Mexico girls' school, the Los Lunas medical center or a school district or as a certified school instructor of a state institution or agency providing an educational program and holding a standard or substandard certificate issued by the state board, except for a participant;

(5) a person regularly employed by the department of education or the board holding a standard or substandard certificate issued by the state board at the time of commencement of such employment;

(6) a member classified as a regular member in accordance with the rules of the board;

(7) a person regularly employed by the New Mexico activities association holding a standard certificate issued by the state board at the time of commencement of such employment; or

(8) a person regularly employed by a regional education cooperative holding a standard certificate issued by the state board at the time of commencement of such employment;

C. "provisional member" means a person not

eligible to be a regular member but who is employed by a local administrative unit designated in Subsection B of this section; provided, however, that employees of a general hospital or outpatient clinics thereof operated by a state educational institution named in Article 12, Section 11 of the constitution of New Mexico are not provisional members;

D. "local administrative unit" means an employing agency however constituted that is directly responsible for the payment of compensation for the employment of members or participants;

E. "beneficiary" means a person having an insurable interest in the life of a member or a participant designated by written instrument duly executed by the member or participant and filed with the director to receive a benefit pursuant to the Educational Retirement Act that may be received by someone other than the member or participant;

F. "employment" means employment by a local administrative unit that qualifies a person to be a member or participant;

G. "service employment" means employment that qualifies a person to be a regular member;

H. "provisional service employment" means employment that qualifies a person to be a provisional member;

I. "prior employment" means employment performed prior to the effective date of the Educational Retirement

Act that would be service employment or provisional service employment if performed thereafter;

J. "service credit" means that period of time with which a member is accredited for the purpose of determining his eligibility for and computation of retirement or disability benefits;

K. "earned service credit" means that period of time during which a member was engaged in employment or prior employment with which he is accredited for the purpose of determining his eligibility for retirement or disability benefits;

L. "allowed service credit" means that period of time during which a member has performed certain nonservice employment with which he may be accredited, as provided in the Educational Retirement Act, for the purpose of computing retirement or disability benefits;

M. "retirement benefit" means an annuity paid monthly to members whose employment has been terminated by reason of their age;

N. "disability benefit" means an annuity paid monthly to members whose employment has been terminated by reason of a disability;

O. "board" means the educational retirement board;

P. "fund" means the educational retirement fund;

Q. "director" means the educational retirement

director;

R. "medical authority" means a medical doctor within the state or as provided in Subsection D of Section 22-11-36 NMSA 1978 either designated or employed by the board to examine and report on the physical condition of applicants for or recipients of disability benefits;

S. "actuary" means a person trained and regularly engaged in the occupation of calculating present and projected monetary assets and liabilities under annuity or insurance programs;

T. "actuarial equivalent" means a sum paid as a current or deferred benefit that is equal in value to a regular benefit, computed upon the basis of interest rates and mortality tables;

U. "contributory employment" means employment for which contributions have been made by both a member and a local administrative unit pursuant to the Educational Retirement Act;

V. "qualifying state educational institution" means the university of New Mexico, New Mexico state university, New Mexico institute of mining and technology, New Mexico highlands university, eastern New Mexico university, western New Mexico university, Albuquerque technical-vocational institute, Clovis community college, Luna vocational-technical institute, Mesa technical college, New Mexico junior college, northern New Mexico state school,

San Juan college and Santa Fe community college;

W. "participant" means:

(1) a person regularly employed as a faculty or professional employee of the university of New Mexico, New Mexico state university, New Mexico institute of mining and technology, New Mexico highlands university, eastern New Mexico university or western New Mexico university who first becomes employed with such an educational institution on or after July 1, 1991, or a person regularly employed as a faculty or professional employee of the Albuquerque technical-vocational institute, Clovis community college, Luna vocational-technical institute, Mesa technical college, New Mexico junior college, northern New Mexico state school, San Juan college or Santa Fe community college who is first employed by the institution on or after July 1, 1999 and who elects, pursuant to Section 22-11-47 NMSA 1978, to participate in the alternative retirement plan; and

(2) a person regularly employed who performs research or other services pursuant to a contract between a qualifying state educational institution and the United States government or any of its agencies who elects, pursuant to Section 22-11-47 NMSA 1978, to participate in the alternative retirement plan, provided that the research or other services are performed outside the state;

X. "salary" means the compensation or wages paid

to a member or participant by any local administrative unit for services rendered. "Salary" includes payments made for annual or sick leave and payments for additional service provided to related activities, but does not include payments for sick leave not taken unless the payment for the unused sick leave is made through continuation of the member on the regular payroll for the period represented by that payment and does not include allowances or reimbursements for travel, housing, food, equipment or similar items; and

Y. "alternative retirement plan" means the retirement plan provided for in Sections 22-11-47 through 22-11-52 NMSA 1978; and

Z. "retired member" means a regular member whose employment has been terminated by reason of age and who is receiving or is eligible to receive retirement benefits."

Section 2. Section 22-11-3 NMSA 1978 (being Laws 1967, Chapter 16, Section 127, as amended) is amended to read:

"22-11-3. EDUCATIONAL RETIREMENT BOARD-- MEMBERS-- TERMS-- VACANCIES. --

A. The "educational retirement board" is created.

B. The board shall be composed of seven members, consisting of the following:

(1) the superintendent of public instruction;

(2) the state treasurer or the treasurer's designee;

(3) one member to be elected for a term of four years by members of the New Mexico association of educational retirees;

(4) one member to be elected for a term of four years by the members of the New Mexico education association;

(5) one member to be elected for a term of four years by the New Mexico members of the American association of university professors; and

(6) two members to be appointed by the governor for terms of four years each.

C. In the initial composition of the board, the member elected by the members of the American association of university professors shall serve for a term of three years; one member appointed by the governor shall serve for a term of two years; and the other member appointed by the governor shall serve for a term of one year.

D. Vacancies occurring in the terms of office of those members appointed by the governor or elected by an association shall be filled either by the governor appointing or the association electing a new member to fill the unexpired term."

Section 3. Section 22-11-4 NMSA 1978 (being Laws 1967, Chapter 16, Section 128) is amended to read:

"22-11-4. BOARD--REGULAR AND SPECIAL MEETINGS. --

A. The board shall hold regular meetings four

times each year and may, by its rules, provide for additional regular meetings. Prior to each regular meeting, written notice shall be given to each member of the board specifying the time and place of the regular meeting.

B. Special meetings of the board may be called by the chairman or by any three members of the board. Written notice of the special meeting shall be sent to each member of the board at least three days in advance of the special meeting.

C. If not in violation of Subsection A or B of this section, the rules of the board or the Open Meetings Act, the chairman or any of three members of the board may cancel or reschedule a meeting."

Section 4. Section 22-11-9 NMSA 1978 (being Laws 1967, Chapter 16, Section 133) is amended to read:

"22-11-9. ACTUARY--FEES.--

A. The board shall employ the services of an actuary. The actuary shall prepare a table of actuarial equivalents for use of the board and the director in computing the value of advanced, deferred or optional payment of benefits pursuant to the Educational Retirement Act. The actuary shall also study the financial operations of the Educational Retirement Act and shall make written reports thereon to the board.

B. The board shall pay the actuary a reasonable fee for his professional services.

C. Unless otherwise required by the governmental accounting standards board of the American institute of certified public accountants, an actuarial report shall be conducted at least once every five years. "

Section 5. Section 22-11-15 NMSA 1978 (being Laws 1967, Chapter 16, Section 139, as amended) is amended to read:

"22-11-15. FUND--REFUNDS--PAYMENTS.--

A. After filing written demand with the director, a member is entitled to a refund of the total amount of the member's contributions plus interest at a rate set by the board reduced by the sum of any disability benefits previously received by the member, if:

(1) the member terminates employment for reasons other than by retirement, disability or death;

(2) the member has exempted himself from the Educational Retirement Act; or

(3) the member was not reemployed following a period of disability during which he received disability benefits.

B. The director may, at the request of a member, make payment on behalf of the member for any or all of the refund to an individual retirement account or a qualified retirement plan that accepts rollovers.

C. If the amount of a deceased member's contribution or residual contribution does not exceed the

sum of one thousand dollars (\$1,000) and no written claim is made to the board for it within one year from the date of the member's death, by his surviving beneficiary or the member's estate, payment thereof may be made to the named beneficiary or, if none is named, to the person the board determines to be entitled to the contribution under the laws of New Mexico. Any payment made by the board pursuant to this subsection shall be a bar to a claim by any other person.

D. The interest provided for in Subsection A of this section shall apply only to contributions paid to the fund after July 1, 1971 and on deposit in the fund for a period of at least one fiscal year; provided that no such interest shall be allowed on refunds of contributions that were paid into the fund prior to July 1, 1971."

Section 6. Section 22-11-26 NMSA 1978 (being Laws 1967, Chapter 16, Section 149, as amended) is amended to read:

"22-11-26. DEATH DURING REEMPLOYMENT.--If a member dies during a period of reemployment following retirement pursuant to the Educational Retirement Act, the benefits to be paid shall be determined according to the following:

A. if the member did not elect to exercise Option B or C pursuant to Section 22-11-29 NMSA 1978 at the time of first retirement, the member's beneficiary or estate shall receive an amount equal to the sum of the member's

contributions, including contributions made by the member during the period of last reemployment, plus accumulated interest at the rate set by the board, less the total benefits received prior to the last reemployment; or

B. if a retirement benefit has been paid to the member pursuant to either Option B or C of Subsection A of Section 22-11-29 NMSA 1978 prior to reemployment, the reemployed member shall be considered as retiring on the day preceding the date of death, and the benefits due the surviving beneficiary, computed as of that date, shall be commenced effective on the date of death in accordance with the terms of the option elected."

Section 7. Section 22-11-27 NMSA 1978 (being Laws 1967, Chapter 16, Section 150, as amended) is amended to read:

"22-11-27. DEFERRED RETIREMENT--RESTRICTION.--

A. A member eligible for retirement may continue in employment and shall continue to pay contributions as provided by the Educational Retirement Act.

B. A member may terminate his employment and retire at any time after his age and his earned service credit equal the sum of seventy-five if the contributions he has made are left in the fund.

C. A member having five years or more of earned service credit may terminate his employment and retire at any time after reaching the age of sixty-five years if the

contributions he has made are left in the fund.

D. No member shall be on a retirement status while engaged in employment, unless otherwise provided by law or unless the employment falls within exceptions established by rule of the board. "

Section 8. Section 22-11-29 NMSA 1978 (being Laws 1967, Chapter 16, Section 152, as amended) is amended to read:

"22-11-29. RETIREMENT BENEFIT OPTIONS. --

A. Upon retirement pursuant to the Educational Retirement Act, a member may elect, and such election shall be irrevocable, unless changed by a court order issued pursuant to Subsection B of Section 22-11-42 NMSA 1978, to receive the actuarial equivalent of his retirement benefit, as provided in Section 22-11-30 NMSA 1978, to be effective on his retirement in any one of the following optional forms:

(1) OPTION B. A reduced annuity payable during the member's life with provision that upon the member's death the same annuity shall be continued during the life of and paid to the beneficiary designated by the member in writing at the time of electing this option; or

(2) OPTION C. A reduced annuity payable during the member's life with provision that upon the member's death one-half of this same annuity shall be continued during the life of and paid to the beneficiary

designated by the member in writing at the time of electing this option.

B. In the case of Options B and C of Subsection A of this section, the actuarial equivalent of the member's retirement benefit shall be computed on the basis of the lives of both the member and the beneficiary.

C. In the event that the named beneficiary of a retired member who elected Option B or C of Subsection A of this section at the time of retirement predeceases the retired member, the annuity of the retired member shall be adjusted by adding an amount equal to the amount by which the annuity of the retired member was reduced at retirement as a result of the election of Option B or C. The adjustment authorized in this subsection shall be made as follows:

(1) beginning on the first month following the month in which the named beneficiary of a retiree dies applicable to an annuity received by a retiree who retires after June 30, 1987; or

(2) beginning on July 1, 1987 applicable to an annuity received by a retiree who retired prior to July 1, 1987 and otherwise qualifies for the adjustment; provided, however, no adjustment shall be made retroactively.

D. In the event of the death of the member who has not retired and who has completed at least five years'

earned service credit, the member shall be considered as retiring on the first day of the month following the date of death, and the benefits due the surviving beneficiary, computed as of that date, shall, except as provided in Subsection G of this section, be commenced effective on the first day of such month in accordance with the terms of Option B of Subsection A of this section. In lieu of the provisions of Option B, the surviving beneficiary may elect to receive payment of all the contributions made by the member, plus interest at the rate set by the board reduced by the sum of any disability benefits previously received by the member, or the surviving beneficiary may choose to defer receipt of the survivor's benefit to whatever age the beneficiary chooses up to the time the member would have attained age sixty. If the benefit is thus deferred, it shall be calculated as though the member had retired on the first day of the month in which the beneficiary elects to receive the benefit. In the event of the death of the beneficiary after the death of the member and prior to the date on which the beneficiary has elected to receive the beneficiary's benefit, the estate of the beneficiary shall be entitled to a refund of the member's contributions plus interest at the rate set by the board reduced by the sum of any disability benefits previously received by the member.

E. In the case of death of a retired member who did not elect either Option B or C of Subsection A of this

section and before the benefits paid to him have equaled the sum of his accumulated contributions to the fund plus accumulated interest at the rate set by the board, the balance shall be paid to the beneficiary designated in writing to the director by the member or, if no beneficiary was designated, to the estate of the member.

F. No benefit shall be paid pursuant to this section if the member's contributions have been refunded pursuant to Section 22-11-15 NMSA 1978.

G. In the case of death of a member with less than five years' earned service credit or death of a member who has filed with the director a notice rejecting the provisions of Subsection D of this section, which notice shall be revocable by the member at any time prior to retirement, the member's contributions to the fund plus interest at the rate set by the board shall be paid to the beneficiary designated in writing to the director by the member or, if no beneficiary was designated or the named beneficiary did not survive the member by at least one hundred twenty hours, to the estate of the member.

H. Any elections of either Option B or C of Subsection A of this section on file with the director by members who have not retired prior to June 30, 1984 are void. "

Section 9. Section 22-11-30 NMSA 1978 (being Laws 1967, Chapter 16, Section 153, as amended) is amended to

read:

"22- 11- 30. RETIREMENT BENEFITS. --

A. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or before June 30, 1967 shall be paid monthly and shall be one-twelfth of a sum equal to one and one-half percent of the first four thousand dollars (\$4,000) of the member's average annual salary and one percent of the remainder of the member's average annual salary multiplied by the number of years of the member's total service credit.

B. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or after July 1, 1967 but on or before June 30, 1971 shall be paid monthly and shall be one-twelfth of a sum equal to one and one-half percent of the first six thousand six hundred dollars (\$6,600) of the member's average annual salary and one percent of the remainder of the member's average annual salary multiplied by the number of years of the member's total service credit.

C. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or after July 1, 1971 but on or before June 30, 1974 shall be paid monthly and shall be one-twelfth of a sum equal to one and one-half percent of the member's average annual salary multiplied by the number of years of the member's total service credit.

D. Retirement benefits for a member retired

pursuant to the Educational Retirement Act on or before June 30, 1974 but returning to employment on or after July 1, 1974 for a cumulation of one or more years shall be computed pursuant to Subsection E of this section. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or before June 30, 1974 but returning to employment on or after July 1, 1974 for a cumulation of less than one year shall be computed pursuant to Subsection A of this section if his date of last retirement was on or before June 30, 1967 or pursuant to Subsection B of this section if his date of last retirement was on or after July 1, 1967 but not later than June 30, 1971 or pursuant to Subsection C of this section if his date of last retirement was on or after July 1, 1971 but not later than June 30, 1974.

E. Retirement benefits for a member age sixty or over, retired pursuant to the Educational Retirement Act on or after July 1, 1974 but not later than June 30, 1987, shall be paid monthly and shall be one-twelfth of a sum equal to:

(1) one and one-half percent of the member's average annual salary multiplied by the number of years of service credit for:

(a) prior employment; and

(b) allowed service credit for service performed prior to July 1, 1957, except United States military service credit purchased pursuant to Paragraph (3)

of Subsection A of Section 22-11-34 NMSA 1978; plus

(2) two percent of the member's average annual salary multiplied by the number of years of service credit for:

(a) contributory employment;

(b) allowed service credit for service performed after July 1, 1957; and

(c) United States military service credit for service performed prior to July 1, 1957 and purchased pursuant to Paragraph (3) of Subsection A of Section 22-11-34 NMSA 1978.

F. Retirement benefits for a member age sixty or over, retired pursuant to the Educational Retirement Act on or after July 1, 1987 but not later than June 30, 1991, shall be paid monthly and shall be one-twelfth of a sum equal to two and fifteen hundredths percent of the member's average annual salary multiplied by the number of years of the member's total service credit; provided that this subsection shall not apply to any member who was retired in any of the four quarters ending on June 30, 1987 without having accumulated not less than 1.0 years earned service credit after June 30, 1987.

G. Except as provided in Subsection H of this section, retirement benefits for a member age sixty or over, retired pursuant to the Educational Retirement Act on or after July 1, 1991, shall be paid monthly and shall be one-

twelfth of a sum equal to two and thirty-five hundredths percent of the member's average annual salary multiplied by the number of years of the member's total service credit; provided that this subsection shall not apply to any member who was retired in any of the four consecutive quarters ending on June 30, 1991 without having accumulated at least one year earned service credit beginning on or after July 1, 1991.

H. Retirement benefits for a member age sixty or over, retired pursuant to the Educational Retirement Act on or after July 1, 2004, shall be paid monthly and shall be:

(1) for a member whose total service credit is equal to or greater than twenty-six years but less than twenty-seven years, one-twelfth of a sum equal to two and thirty-eight hundredths percent of the member's average annual salary multiplied by the number of years of the member's total service credit; provided that this subsection shall not apply to any member who was retired in any of the four consecutive quarters ending on June 30, 2004 without having accumulated at least one year earned service credit beginning on or after July 1, 2003;

(2) for a member whose total service credit is equal to or greater than twenty-seven years but less than twenty-eight years, one-twelfth of a sum equal to two and forty-one hundredths percent of the member's average annual salary multiplied by the number of years of the member's

total service credit; provided that this subsection shall not apply to any member who was retired in any of the four consecutive quarters ending on June 30, 2004 without having accumulated at least one year earned service credit beginning on or after July 1, 2003;

(3) for a member whose total service credit is equal to or greater than twenty-eight years but less than twenty-nine years, one-twelfth of a sum equal to two and forty-four hundredths percent of the member's average annual salary multiplied by the number of years of the member's total service credit; provided that this subsection shall not apply to any member who was retired in any of the four consecutive quarters ending on June 30, 2004 without having accumulated at least one year earned service credit beginning on or after July 1, 2003;

(4) for a member whose total service credit is equal to or greater than twenty-nine years but less than thirty years, one-twelfth of a sum equal to two and forty-seven hundredths percent of the member's average annual salary multiplied by the number of years of the member's total service credit; provided that this subsection shall not apply to any member who was retired in any of the four consecutive quarters ending on June 30, 2004 without having accumulated at least one year earned service credit beginning on or after July 1, 2003; or

(5) for a member whose total service credit

is thirty years or greater, one-twelfth of a sum equal to two and one-half percent of the member's average annual salary multiplied by the number of years of the member's total service credit; provided that this subsection shall not apply to any member who was retired in any of the four consecutive quarters ending on June 30, 2004 without having accumulated at least one year earned service credit beginning on or after July 1, 2003.

I. A member's average annual salary, pursuant to this section, shall be computed on the basis of the last five years for which contribution was made or upon the basis of any consecutive five years for which contribution was made by the member, whichever is higher. Unless otherwise required by the provisions of the Internal Revenue Code of 1986, members shall begin receiving retirement benefits by age seventy and six months, or upon termination of employment, whichever occurs later."

Section 10. Section 22-11-33 NMSA 1978 (being Laws 1967, Chapter 16, Section 156) is amended to read:

"22-11-33. EARNED SERVICE CREDIT. --

A. Upon a member filing an application for retirement or disability benefits, earned service credit for the time of contributory employment shall be certified by the director and subject to the review of the board.

B. A member shall be certified to have earned service credit for that period of time when he was engaged

in prior employment. Earned service credit shall not be certified for that period of employment for which the contributions have been withdrawn from the fund by the member.

C. Earned service credit shall be certified for periods of employment interrupted for some cause other than retirement or disability. This shall be done if a member withdrawing contributions from the fund for this period returns to the fund, for each year of earned service credit desired, a sum equal to the member's contribution to the fund during this period and an additional sum as interest compounded annually from the date the contributions were withdrawn to the date of payment of the amount of returned contributions at the rate of interest set by the board. These payments may be made in installments, and, if the payments made to the fund are insufficient for the restoration of any full year of earned service credit, the member shall be certified to have acquired earned service credit for that period of time which is proportionate to the payments made. "

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

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

A. A member shall be certified to have acquired allowed service credit pursuant to the Internal Revenue Code

of 1986 for those periods of time when he was:

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

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

(3) engaged in United States military service or the commissioned corps of the public health service from which he was honorably discharged if he contributes to the fund a sum equal to ten and one-half percent of his average annual salary for that period of time for which he has acquired earned service credit pursuant to the Educational Retirement Act and subject to the federal Uniformed Services Employment and Reemployment Rights Act of 1994 for each year of service credit he desires to purchase. Average annual salary shall be determined in accordance with rules promulgated by the board but shall always be based on actual salaries earned by the member where the actual salaries can be ascertained by the board. The employer's contributions for service credit shall not be paid by the employer. The purchase of service credit provided in this paragraph shall

be carried out by the member within three years after the date of the member's employment following service; or

(4) employed:

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

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

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

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

(5) engaged in United States military service or the commission corps of the public health service from which he was honorably discharged if he contributes to the fund a sum equal to twenty-five percent of his current annual salary at the time of purchase pursuant to the Educational Retirement Act and subject to the federal Uniformed Services Employment and Reemployment Rights Act of 1994 for each year of service credit he desires to purchase. The purchase of service credit provided in this paragraph shall be carried out by the member after three or more years

from the date of the member's employment following service.

B. The member or employer under Paragraph (4) of Subsection A of this section shall contribute to the fund for each year of allowed service credit desired an amount equal to twelve percent of the member's annual salary at the time payment is made. Effective July 1, 2002, the member or employer under Paragraph (4) of Subsection A of this section shall contribute to the fund for each year of allowed service credit desired an amount equal to the actuarial value of the service purchased as defined by the board. Payment pursuant to Paragraph (4) of Subsection A of this section may be made in installments, at the discretion of the board, over a period not to exceed one year and, if the sum paid does not equal the amount required for any full year of allowed service credit, the member shall acquire allowed service credit for that period of time that is proportionate to the payment made. Half credit may be allowed without contribution for not more than ten years of the educational service described by Subparagraph (a) of Paragraph (4) of Subsection A of this section if that service was prior to June 13, 1953 and if the member was employed in New Mexico prior to June 13, 1953 in a position covered by the Educational Retirement Act or a law repealed thereby. No allowed service credit shall be purchased pursuant to Paragraph (4) of Subsection A of this section unless the member is currently employed by a local

administrative unit.

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

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

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

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

Section 12. Section 22-11-36 NMSA 1978 (being Laws 1967, Chapter 16, Section 159) is amended to read:

"22-11-36. DISABILITY BENEFIT--CONTINUED ELIGIBILITY--RE-EXAMINATIONS.--

A. Unless designated by the medical authority as being permanently disabled, to continue to receive disability benefits, a member shall, on the anniversary date in each year of his being placed on a disability status, present himself to the medical authority for a medical re-examination. The medical authority shall certify to the director after each medical examination whether there is a substantial betterment of the member's disability. In the event a substantial betterment of the disability is

reported, the board shall determine whether the member is totally disabled for employment and unable to obtain and retain other gainful employment commensurate with his background, education and experience. If the board determines that the member is no longer disabled, the payment of the disability benefits shall cease.

B. Payment of disability benefits to a member shall be suspended if a certificate of medical re-examination by the medical authority is not filed with the director within thirty days after the date upon which the member should have been re-examined where the failure to file the certificate was due to the unexcused failure or the refusal of the member to report for the medical re-examination. Payment of disability benefits shall be resumed only after the member has complied with the requirements of the Educational Retirement Act. A member shall have no right or claim for benefits withheld during a period of suspension.

C. The board may, in its discretion, require further or more frequent medical examinations of members having a disability status.

D. A member receiving disability benefits who is unable to report for a medical re-examination because of his physical condition or because he resides outside the state shall notify the director of this fact not later than fifteen days in advance of the date for the medical re-

examination. The board shall designate a medical doctor in the vicinity of the residence of the member to make the medical re-examination and to report the findings to the board.

E. Upon a determination by the board, a member's status may be changed from permanently disabled to temporarily disabled or no longer disabled."

Section 13. Section 22-11-42 NMSA 1978 (being Laws 1967, Chapter 16, Section 165, as amended) is amended to read:

"22-11-42. NONASSIGNABILITY--DIVISION OF FUNDS AS COMMUNITY PROPERTY--CHILD SUPPORT OBLIGATIONS.--

A. Except as specifically provided in the Educational Retirement Act and the provisions of Subsections B and C of this section, contributions or benefits mentioned in the Educational Retirement Act shall not be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment, guarantee fund or similar assessment or any other legal process.

B. If the court finds that its order will be administratively feasible to the board, a court of competent jurisdiction, solely for the purposes of effecting a division of community property, may provide by appropriate order for a determination and division of a community interest in the pensions or other benefits provided for in the Educational Retirement Act. In so doing, the court

shall fix the manner in which the warrants shall be issued, may order direct payments by the board to a person with a community interest in the pensions or benefits and may restrain the refund of member or participant contributions. If the court finds that there will be no adverse actuarial impact to the fund, in order to remove a former spouse as the survivor beneficiary, the court may order a change in a retired member's designation from either Option B or C of Subsection A of Section 22-11-29 NMSA 1978 to the normal retirement benefits provided in Section 22-11-30 NMSA 1978. Otherwise, the court shall not alter the manner in which the amount of pensions or other benefits is calculated by the board or a carrier or contractor for the alternative retirement plan, nor shall the court cause any increase in the actuarial present value of the pensions or other benefits to be paid by the board or a carrier or contractor for the alternative retirement plan. A payment, ordered by a court pursuant to this subsection, shall only be made when the member or participant terminates employment and requests a refund or when the member or participant retires or is otherwise entitled to receive benefits pursuant to the Educational Retirement Act. In no case shall a court order pursuant to this subsection result in more money being paid from the fund or from an alternative retirement plan, whether in a lump sum or in monthly benefits, than would otherwise be payable.

C. If the court finds that its order will be administratively feasible to the board, a court of competent jurisdiction, solely for the purposes of enforcing current or delinquent child support obligations, may provide by appropriate order for withholding amounts due in satisfaction of current or delinquent child support obligations from the pensions or other benefits provided for in the Educational Retirement Act and for payment of such amounts to third parties. The court shall not alter the manner in which the amount of pensions or other benefits is calculated by the board or a carrier or contractor for the alternative retirement plan. The court shall not cause any increase in the actuarial present value of the pensions or other benefits to be paid by the board or a carrier or contractor for the alternative retirement plan. Payments made pursuant to such orders shall only be made when the member or participant terminates employment and requests a refund of contributions or when the member or participant retires; in no case shall more money be paid out, either in a lump sum or in monthly benefits, of the fund or alternative retirement plan in enforcement of current or delinquent child support obligations than would otherwise be payable. "

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Section 14. REPEAL. -- Section 22-11-19.1 NMSA 1978
(being Laws 1979, Chapter 316, Section 1) is repealed. _____
