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SENATE BILL 164

**49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010**

INTRODUCED BY

Howie C. Morales

AN ACT

RELATING TO EDUCATIONAL RETIREMENT; LIMITING THE SALARY OF  
MEMBERS WHO RETURN TO WORK.

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

Section 1. Section 22-11-25.1 NMSA 1978 (being Laws 2001,  
Chapter 283, Section 2, as amended) is amended to read:

"22-11-25.1. RETURN TO EMPLOYMENT--BENEFITS CONTINUED--  
ADMINISTRATIVE UNIT CONTRIBUTIONS.--

A. Except as provided in Subsections B and F of  
this section, beginning January 1, 2002 and continuing until  
January 1, 2022, a retired member may begin employment at a  
local administrative unit and shall not be required to suspend  
retirement benefits if the member has not rendered service to a  
local administrative unit for at least twelve consecutive  
months after the date of retirement. If the retired member

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1 returns to employment without first completing twelve  
2 consecutive months of retirement, the retired member shall  
3 remove himself or herself from retirement.

4 B. A retired member who was retired on or before  
5 January 1, 2001 and has not since suspended or been required to  
6 suspend retirement benefits pursuant to the Educational  
7 Retirement Act may, at any time prior to January 1, 2022,  
8 return to employment for a local administrative unit and shall  
9 not be required to suspend retirement benefits.

10 C. A retired member who returns to employment  
11 during retirement pursuant to Subsection A, B or F of this  
12 section is entitled to continue to receive retirement benefits  
13 but is not entitled to acquire service credit or to acquire or  
14 purchase service credit in the future for the period of the  
15 retired member's reemployment with a local administrative unit.

16 D. A retired member shall not be eligible to return  
17 to employment pursuant to Subsection A, B or F of this section  
18 unless an application to return to work, on a form prescribed  
19 by the board, has been submitted to, and approved by, the board  
20 and the applicant has complied with such other rules as  
21 promulgated by the board.

22 E. A retired member who returns to employment  
23 pursuant to Subsection A, B or F of this section shall not make  
24 contributions to the fund as specified in the Educational  
25 Retirement Act; however, the local administrative unit

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1 employing the retired member shall pay to the fund an amount  
2 equal to the total of the member contributions and the local  
3 administrative unit contributions that would be required  
4 pursuant to Section 22-11-21 NMSA 1978 if the retired member  
5 was a non-retired employee.

6 F. Beginning July 1, 2003 and continuing until  
7 January 1, 2022, a retired member who retired on or before  
8 January 1, 2001, who subsequently voluntarily suspended or was  
9 required to suspend retirement benefits and who has not  
10 rendered service to a local administrative unit for at least  
11 ninety days may begin employment at a local administrative unit  
12 without suspending retirement benefits if the retired member  
13 was not employed by a local administrative unit for an  
14 additional twelve or more consecutive months after the initial  
15 date of the retirement; provided that the ninety-day period  
16 shall not include any part of a summer or other scheduled break  
17 or vacation period.

18 G. Both the retired member who returns to  
19 employment and the local administrative unit that employs the  
20 retired member shall make contributions to the retiree health  
21 care fund in the amount specified in Subsections A and B of  
22 Section 10-7C-15 NMSA 1978.

23 H. As used in Subsections A and F of this section:

24 (1) "rendered service to a local  
25 administrative unit" includes employment by a local

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1 administrative unit, whether full or part time; substitute  
2 teaching; voluntarily performing duties for a local  
3 administrative unit that would otherwise be, or in the past  
4 have been, performed by a paid employee or independent  
5 contractor; or performing duties for a local administrative  
6 unit as an independent contractor or an employee of an  
7 independent contractor; and

8 (2) "local administrative unit" includes any  
9 entity incorporated, formed or otherwise organized by, or  
10 subject to the control of a local administrative unit, whether  
11 or not the entity is created for profit or nonprofit purposes.

12 I. The salary of a retired member who returns to  
13 work for a local administrative unit without suspending  
14 retirement benefits shall be limited to no more than ninety  
15 percent of the salary paid to a non-return-to-work employee in  
16 the same position with the same education and experience,  
17 except as otherwise limited by this subsection. If the local  
18 administrative unit uses a salary schedule based on education  
19 and experience, the maximum experience that may be used to  
20 calculate the retired member's salary shall not exceed twenty-  
21 five years. If the local administrative unit uses a salary  
22 schedule based on ranges, the retired member shall be paid no  
23 more than ninety percent of the mid-range for the position."