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SENATE BILL 355

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Howie Morales

AN ACT

RELATING TO PUBLIC EMPLOYEES RETIREMENT; AMENDING THE
EDUCATIONAL RETIREMENT ACT TO DELETE THE REQUIREMENT THAT
CERTAIN EMPLOYEES OF THE PUBLIC EDUCATION DEPARTMENT BE REGULAR
MEMBERS UNDER THE ACT; PROVIDING A LIMITED PERIOD FOR CERTAIN
EXISTING EMPLOYEES OF THE DEPARTMENT TO ELECT TO BE COVERED
UNDER THE PUBLIC EMPLOYEES 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;

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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 licensed school employee of a state institution or agency providing an educational program and holding a license issued by the department, except for a participant;

~~[(5) a person regularly employed by the~~

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1 ~~department holding a license issued by the department at the~~
2 ~~time of commencement of such employment;~~

3 ~~(6)]~~ (5) a member classified as a regular
4 member in accordance with the rules of the board;

5 [~~(7)]~~ (6) a person regularly employed by the
6 New Mexico activities association holding a license issued by
7 the department at the time of commencement of such employment;
8 or

9 [~~(8)]~~ (7) a person regularly employed by a
10 regional education cooperative holding a license issued by the
11 department at the time of commencement of such employment;

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

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

23 E. "beneficiary" means a person having an insurable
24 interest in the life of a member or a participant designated by
25 written instrument duly executed by the member or participant

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1 and filed with the director to receive a benefit pursuant to
2 the Educational Retirement Act that may be received by someone
3 other than the member or participant;

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

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

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

11 I. "prior employment" means employment performed
12 prior to the effective date of the Educational Retirement Act
13 that would be service employment or provisional service
14 employment if performed thereafter;

15 J. "service credit" means that period of time with
16 which a member is accredited for the purpose of determining
17 [~~his~~] the member's eligibility for and computation of
18 retirement or disability benefits;

19 K. "earned service credit" means that period of
20 time during which a member was engaged in employment or prior
21 employment with which [~~he~~] the member is accredited for the
22 purpose of determining [~~his~~] the member's eligibility for
23 retirement or disability benefits;

24 L. "allowed service credit" means that period of
25 time during which a member has performed certain nonservice

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1 employment with which ~~he~~ the member may be accredited, as
2 provided in the Educational Retirement Act, for the purpose of
3 computing retirement or disability benefits;

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

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

10 O. "board" means the educational retirement board;

11 P. "fund" means the educational retirement fund;

12 Q. "director" means the educational retirement
13 director;

14 R. "medical authority" means a medical doctor
15 within the state or as provided in Subsection D of Section
16 22-11-36 NMSA 1978 either designated or employed by the board
17 to examine and report on the physical condition of applicants
18 for or recipients of disability benefits;

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

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

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1 mortality tables;

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

5 V. "qualifying state educational institution" means
6 the university of New Mexico, New Mexico state university, New
7 Mexico institute of mining and technology, New Mexico highlands
8 university, eastern New Mexico university, western New Mexico
9 university, [~~Albuquerque technical-vocational institute~~]
10 central New Mexico community college, Clovis community college,
11 Luna [~~vocational technical institute, Mesa technical~~] community
12 college, Mesa community college, New Mexico junior college,
13 northern New Mexico state school, San Juan college and Santa Fe
14 community college;

15 W. "participant" means:

16 (1) a person regularly employed as a faculty
17 or professional employee of the university of New Mexico, New
18 Mexico state university, New Mexico institute of mining and
19 technology, New Mexico highlands university, eastern New Mexico
20 university or western New Mexico university who first becomes
21 employed with such an educational institution on or after July
22 1, 1991, or a person regularly employed as a faculty or
23 professional employee of [~~the Albuquerque technical-vocational~~
24 ~~institute~~] central New Mexico community college, Clovis
25 community college, Luna [~~vocational-technical institute, Mesa~~

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1 ~~technical~~] community college, Mesalands community college, New
2 Mexico junior college, northern New Mexico state school, San
3 Juan college or Santa Fe community college who is first
4 employed by the institution on or after July 1, 1999 and who
5 elects, pursuant to Section 22-11-47 NMSA 1978, to participate
6 in the alternative retirement plan; and

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

14 X. "salary" means the compensation or wages paid to
15 a member or participant by any local administrative unit for
16 services rendered. "Salary" includes payments made for annual
17 or sick leave and payments for additional service provided to
18 related activities but does not include payments for sick leave
19 not taken unless the payment for the unused sick leave is made
20 through continuation of the member on the regular payroll for
21 the period represented by that payment and does not include
22 allowances or reimbursements for travel, housing, food,
23 equipment or similar items;

24 Y. "alternative retirement plan" means the
25 retirement plan provided for in Sections 22-11-47 through

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1 22-11-52 NMSA 1978; and

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

5 SECTION 2. Section 22-11-17 NMSA 1978 (being Laws 1967,
6 Chapter 16, Section 141, as amended) is amended to read:

7 "22-11-17. PROVISIONAL MEMBERSHIP.--

8 A. A provisional member shall be covered by the
9 provisions of the Educational Retirement Act but shall have the
10 option to exempt ~~[himself]~~ that member's self from its
11 coverage. A provisional member exempting ~~[himself]~~ that
12 member's self from the provisions of the Educational Retirement
13 Act shall not be entitled to the benefits or coverage under any
14 other state retirement program except as otherwise provided in
15 this section. This section shall not affect any rights a
16 provisional member may have under the provisions of the federal
17 Social Security Act. This option to exempt must be exercised
18 within one year of employment according to the regulations
19 adopted by the board. Any provisional member exempting
20 ~~[himself]~~ that member's self pursuant to this section shall be
21 entitled to a refund of any contributions made pursuant to the
22 Educational Retirement Act prior to the exercise of the
23 exemption.

24 B. A provisional member not exempt from the
25 coverage of the Educational Retirement Act shall have the right

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1 to earned service-credit for periods of employment subsequent
2 to July 1, 1957 and prior to July 1, 1961, provided that all
3 contributions at the rates in effect during that period of
4 employment are paid. If a provisional member chooses to make
5 the contributions for that period, the local administrative
6 unit employing a member during that period shall pay the
7 employer's contribution at the rate in effect during that
8 period of employment. Contributions prior to July 1, 1961 by
9 both the provisional member and the local administrative unit
10 shall bear interest at the rate of three percent a year from
11 July 1, 1961 until paid.

12 C. A provisional member exempt from the coverage of
13 the provisions of the Educational Retirement Act shall have the
14 right to revoke the exemption at any time; however, within the
15 first two weeks following the beginning of each school year,
16 [~~such~~] the provisional member shall be informed by the local
17 administrative unit in writing of [~~his~~] that member's right to
18 revoke the exemption and shall sign a statement to the effect
19 that [~~he~~] the member does or does not wish to revoke the
20 exemption. A copy of [~~such~~] the statement shall be kept in the
21 personnel file of the provisional member.

22 D. A provisional member who revokes the exemption
23 from coverage may, at any time before June 30, 2006, acquire
24 earned service credit for periods of employment during which
25 the exemption or exemptions were in force if both the member

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1 contributions and the local administrative unit contributions,
2 at the rates in effect during the periods of employment and
3 applied to the earnings of the member during those periods, are
4 paid to the fund, together with interest at the actuarial rate
5 set by the board. The contributions shall be paid in the
6 following manner:

7 (1) both the member contributions and the
8 local administrative unit contributions, together with
9 interest, shall be paid by the member; or

10 (2) if the member tenders payment of the
11 member contributions, with interest, the local administrative
12 unit by whom the member was employed may, but shall not be
13 obligated to, pay the local administrative unit contributions,
14 with interest.

15 E. A provisional member employed by the board, the
16 department [~~of education~~], the New Mexico school for the deaf,
17 the northern New Mexico state school, the New Mexico school for
18 the blind and visually [~~handicapped~~] impaired, the New Mexico
19 girls' school, the New Mexico boys' school or the Los Lunas
20 medical center shall have the option of qualifying for coverage
21 under either the Educational Retirement Act or the public
22 employees retirement association of New Mexico. This option
23 shall be exercised by filing a written election with both the
24 educational retirement director and the executive secretary of
25 the public employees retirement association of New Mexico.

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1 This election shall be made within six months after employment
2 and shall be irrevocable regardless of subsequent employment or
3 reemployment in any administrative unit enumerated in this
4 subsection. Until this election is made, the provisional
5 member shall be covered and shall be required to make
6 contributions under the Educational Retirement Act.

7 F. A person who, on June 30, 2011, was a regular
8 member as a person regularly employed on that date by the
9 department and holding a license issued by the department at
10 the time of commencement of such employment may elect to be
11 covered under the public employees retirement association of
12 New Mexico by filing, no later than December 31, 2011, the
13 election with both the educational retirement director and the
14 executive secretary of the public employees retirement
15 association of New Mexico. The election shall be irrevocable
16 regardless of subsequent employment or reemployment in any
17 administrative unit enumerated in Subsection E of this section.
18 Until the election is made, or if no election is made, the
19 person shall continue to be covered by and make contributions
20 under the Educational Retirement Act."

21 **SECTION 3. EFFECTIVE DATE.**--The effective date of the
22 provisions of this act is July 1, 2011.