

HOUSE BILL 324

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

Rebecca Dow

AN ACT

RELATING TO EDUCATIONAL RETIREMENT; EXEMPTING SUBSTITUTE  
TEACHERS ENGAGED ON A DAY-TO-DAY BASIS, CONTRACTORS AND POLICE  
OFFICERS FROM CERTAIN RETURN TO EMPLOYMENT PROVISIONS OF THE  
EDUCATIONAL RETIREMENT ACT; REPEALING A PROVISION SUBJECTING  
SUBSTITUTE TEACHERS TO THE REQUIREMENTS OF THE EDUCATIONAL  
RETIREMENT ACT AS A REGULAR MEMBER.

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--  
CONTRIBUTIONS.--

A. Except as otherwise provided in Subsections B  
[and], F and H of this section, until January 1, 2022, a  
retired member who begins employment with a local

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1 administrative unit at a level greater than one-quarter full-  
2 time employee, regardless of salary level, is required to  
3 suspend the member's retirement benefits until the end of that  
4 employment unless the member has not rendered service to a  
5 local administrative unit for at least twelve consecutive  
6 months after the date of retirement.

7 B. Until January 1, 2022, a retired member who  
8 retired on or before January 1, 2001, has not suspended or been  
9 required to suspend retirement benefits pursuant to the  
10 Educational Retirement Act and returns to employment with a  
11 local administrative unit is not required to suspend the  
12 member's retirement benefits.

13 C. A retired member who returns to employment with  
14 a local administrative unit in accordance with this section is  
15 entitled to receive retirement benefits during that employment  
16 but is not entitled to acquire or purchase service credit for  
17 that employment.

18 D. A retired member may return to employment with a  
19 local administrative unit only if the member submits an  
20 application to return to work, on a form prescribed by the  
21 board, the board approves the application and the applicant  
22 complies with other application rules promulgated by the board.

23 E. A retired member who returns to employment  
24 pursuant to Subsection A, B or F of this section shall make  
25 nonrefundable contributions to the fund as would be required by

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1 Section 22-11-21 NMSA 1978 if the retired member were a non-  
2 retired employee. The local administrative unit employing the  
3 retired member shall likewise make contributions as would be  
4 required by that section. In addition, on and after July 1,  
5 2020, a retired member, other than a substitute teacher engaged  
6 on a day-to-day basis, contractor or police officer, who has  
7 returned to employment at a level of one-fourth or less  
8 full-time employee, regardless of salary level, shall make  
9 nonrefundable contributions to the fund as would be required by  
10 Section 22-11-21 NMSA 1978 if the retired member were a  
11 non-retired employee. The local administrative unit employing  
12 the retired member shall likewise make contributions as would  
13 be required by that section.

14 F. Until January 1, 2022, a retired member who  
15 retired on or before January 1, 2001, who suspended or was  
16 required to suspend retirement benefits under the Educational  
17 Retirement Act is not required to suspend the member's  
18 retirement benefits if the retired member has not rendered  
19 service to a local administrative unit for an additional twelve  
20 or more consecutive months, not including any part of a summer  
21 or other scheduled break or vacation period, after the initial  
22 date of retirement.

23 G. A retired member who returns to employment with  
24 a local administrative unit shall make contributions to the  
25 retiree health care fund during the period of that employment

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1 and in the amount specified in Section 10-7C-15 NMSA 1978. The  
2 local administrative unit employing the retired member shall  
3 likewise make contributions during the period of that  
4 employment and in the amount specified in that section.

5 H. A retired member may return to employment with a  
6 local administrative unit as a substitute teacher engaged on a  
7 day-to-day basis, contractor or police officer and shall not be  
8 required to suspend the member's retirement benefits if the  
9 member:

10 (1) has not rendered service to a local  
11 administrative unit for at least twelve consecutive months  
12 after the date of retirement; or

13 (2) returns to employment at a level of  
14 one-fourth or less full-time employee, regardless of salary  
15 level.

16 [~~H.~~] I. As used in this section:

17 (1) "rendered service" includes employment,  
18 whether full or part time; substitute teaching; voluntarily  
19 performing duties that would otherwise be, or in the past have  
20 been, performed by a paid employee or independent contractor;  
21 and performing duties as an independent contractor or an  
22 employee of an independent contractor; and

23 (2) "local administrative unit" includes any  
24 entity incorporated, formed or otherwise organized by, or  
25 subject to the control of, a local administrative unit,

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1 regardless of whether the entity is created for profit or  
2 nonprofit purposes."

3 SECTION 2. Section 22-11-25.2 NMSA 1978 (being Laws 2003,  
4 Chapter 248, Section 1, as amended) is amended to read:

5 "22-11-25.2. PERSONS RECEIVING RETIREMENT BENEFITS  
6 PURSUANT TO THE PUBLIC EMPLOYEES RETIREMENT ACT.--

7 A. Except as provided in Subsection B, an employee  
8 who is retired pursuant to the Public Employees Retirement Act  
9 and who has not suspended retirement benefits received pursuant  
10 to that act shall make contributions to the fund as required by  
11 the Educational Retirement Act. A local administrative unit  
12 that employs such a retiree likewise shall make contributions  
13 to the fund as required by that act.

14 B. An employee hired [~~prior to July 1, 2019~~] by a  
15 local administrative unit as a substitute teacher engaged on a  
16 day-to-day basis, contractor or police officer certified  
17 pursuant to the Law Enforcement Training Act, who is retired  
18 pursuant to the Public Employees Retirement Act and who has not  
19 suspended retirement benefits received pursuant to that act,  
20 shall not make contributions to the fund so long as the  
21 employee remains working as a substitute teacher engaged on a  
22 day-to-day basis, contractor or certified police officer. The  
23 local administrative unit that hired the substitute teacher  
24 engaged on a day-to-day basis, contractor or certified police  
25 officer shall make contributions to the fund pursuant to the

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Educational Retirement Act.

C. An employee who receives retirement benefits pursuant to the Public Employees Retirement Act is not entitled to acquire or purchase service credit for the period of employment with a local administrative unit."

SECTION 3. REPEAL.--Section 22-11-16.2 NMSA 1978 (being Laws 2019, Chapter 258, Section 7) is repealed.