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HOUSE BILL 875

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

LUCIANO "LUCKY" VARELA

AN ACT

RELATING TO PUBLIC RETIREMENT; AMENDING AND ENACTING 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. A new section of the Public Employees Retirement Act is enacted to read:

"10-11-2.1. [NEW MATERIAL] DEFINITIONS. -- As used in Chapter 10, Article 11 NMSA 1978, with reference to the public employees retirement association, "executive secretary" means "executive director".

Section 2. Section 10-11-4 NMSA 1978 (being Laws 1987, Chapter 253, Section 4, as amended) is amended to read:

"10-11-4. SERVICE CREDIT-- REQUIREMENTS FOR-- FORFEITURE-- REINSTATEMENT. --

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1           A. Personal service rendered an affiliated public  
2 employer by a member shall be credited to the member's service  
3 credit account in accordance with retirement board rules and  
4 regulations. Service shall be credited to the nearest month.  
5 In no case shall any member be credited with a year of service  
6 for less than twelve months of service in any calendar year or  
7 more than a month of service for all service in any calendar  
8 month or more than a year of service for all service in any  
9 calendar year. In no case shall any member be allowed to  
10 purchase service credit unless the purchase is authorized in the  
11 Public Employees Retirement Act.

12           B. Personal service rendered an affiliated public  
13 employer prior to August 1, 1947 shall be credited to a member  
14 if the member acquires one year of service credit for personal  
15 service rendered an affiliated public employer.

16           C. Personal service rendered an affiliated public  
17 employer after July 31, 1947 but prior to the date the public  
18 employer became an affiliated public employer is prior service  
19 and shall be credited to a member if:

20                   (1) the member acquires five years of service  
21 credit for personal service rendered an affiliated public  
22 employer; and

23                   (2) the member pays the association the amount  
24 determined in accordance with Subsection D of this section.

25           D. The purchase cost for each month of service

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1 credit purchased under the provisions of this section is equal  
2 to the member's final average salary multiplied by the sum of  
3 the member contribution rate and employer contribution rate  
4 determined in accordance with the coverage plan applicable to  
5 the member at the time of the written election to purchase.  
6 Full payment shall be made in a single lump-sum amount in  
7 accordance with the procedures established by the retirement  
8 board. The portion of the purchase cost derived from the  
9 employer contribution rate shall be credited to the employer  
10 accumulation fund and shall not be refunded to the member in the  
11 event of cessation of membership. In no case shall any member  
12 be credited with a month of service for less than the purchase  
13 cost as defined in this section.

14 E. Service credit shall be forfeited if a member  
15 terminates employment with an affiliated public employer and  
16 withdraws the member's accumulated member contributions.

17 F. A member or former member who is a member of  
18 another state system or the educational retirement system and  
19 who has forfeited service credit by withdrawal of member  
20 contributions may reinstate the forfeited service credit by  
21 repaying the amount withdrawn plus compound interest from the  
22 date of withdrawal to the date of repayment at the rate set by  
23 the retirement board. Withdrawn member contributions may be  
24 repaid in increments of one year in accordance with the  
25 procedures established by the retirement board. Full payment of

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

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

6 "10-11-4.2. CORRECTION OF ERRORS AND OMISSIONS--  
7 ESTOPPEL. --

8 A. If an error or omission [~~in an application or its~~  
9 ~~supporting documents~~] results in an overpayment to a member or  
10 beneficiary of a member, the association shall correct the error  
11 or omission and adjust all future payments accordingly. The  
12 association shall recover all overpayments made for a period of  
13 up to one year prior to the date the error or omission was  
14 discovered.

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

23 C. Statements of fact or law made by retirement  
24 board members or employees of the retirement board or the  
25 association shall not estop the retirement board or the

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1 association from acting in accordance with the applicable  
2 statutes. "

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

5 "10-11-6. CREDITED SERVICE--CREDIT FOR INTERVENING  
6 MILITARY AND UNITED STATES GOVERNMENT SERVICE. --

7 A. A member who leaves the employ of an affiliated  
8 public employer to enter [~~an armed~~] a uniformed service of the  
9 United States shall be given [~~credited~~] service credit for  
10 periods of [~~active-duty~~] service in the uniformed services  
11 subject to the following conditions:

12 (1) the member is reemployed by an affiliated  
13 public employer within ninety days following termination of the  
14 period of [~~active-duty~~] intervening serving in the uniformed  
15 services or the affiliated employer certifies in writing to the  
16 association that the member is entitled to reemployment rights  
17 under the Uniformed Services Employment and Reemployment Rights  
18 Act of 1994;

19 (2) the member [~~reinstates any forfeited~~  
20 ~~credited service~~] retains membership in the association during  
21 the period of service in the uniformed services

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

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

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

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

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

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

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

3 (a) the member has fifteen or more years  
4 of credited service;

5 (b) employment by the government of the  
6 United States commences within ninety days of termination of  
7 employment with the last affiliated public employer;

8 (c) the member files with the association  
9 a written application for continued membership within ninety  
10 days of termination of employment with the last affiliated  
11 public employer; and

12 (d) the member remits to the association,  
13 at the times and in the manner prescribed by the association,  
14 the member contributions and the employer contributions that  
15 would have been made had the member continued in the employ of  
16 the last affiliated public employer;

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

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

24 (4) the employer contributions remitted by the  
25 member shall be credited to the employer accumulation fund and

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1 shall not be paid out of the association in the event of  
2 subsequent cessation of membership. "

3 Section 5. Section 10-11-7 NMSA 1978 (being Laws 1987,  
4 Chapter 253, Section 7, as amended) is amended to read:

5 "10-11-7. CREDITED SERVICE--PURCHASE OF SERVICE. --

6 A. A member who entered [~~an armed~~] a uniformed  
7 service of the United States may purchase [~~credited~~] service  
8 credit for periods of active duty in the uniformed services,  
9 subject to the following conditions:

10 (1) the member pays the association the  
11 purchase cost determined according to Subsection D of this  
12 section;

13 (2) the member has five or more years of  
14 [~~credited~~] service credit acquired as a result of personal  
15 service rendered in the employ of an affiliated public employer;

16 (3) the aggregate amount of [~~credited~~] service  
17 credit purchased under this subsection does not exceed five  
18 years reduced by any period of [~~credited~~] service credit  
19 acquired for military service under any other provision of the  
20 Public Employees Retirement Act; [~~and~~]

21 (4) [~~credited~~] service credit may not be  
22 purchased for periods of [~~active-duty~~] service in the uniformed  
23 services that are used to obtain or increase a benefit from  
24 another retirement program; and

25 (5) the member must not have received a

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1 discharge or separation from uniformed service under other than  
2 honorable conditions.

3 B. A member who was employed by a utility company,  
4 library, museum, transit company or by a nonprofit organization  
5 administering federally funded public service programs, which  
6 utility company, library, museum, transit company or nonprofit  
7 organization administering federally funded public service  
8 programs or federally funded public service programs  
9 administered by a nonprofit organization are subsequently taken  
10 over by an affiliated public employer, or a member who was  
11 employed by an entity created pursuant to a joint powers  
12 agreement between two or more affiliated public employers for  
13 the purpose of administering or providing drug or alcohol  
14 addiction treatment services irrespective of whether the entity  
15 is subsequently taken over by an affiliated public employer, may  
16 purchase credited service for the period of employment subject  
17 to the following conditions:

18 (1) the member pays the association the  
19 purchase cost determined according to Subsection D of this  
20 section;

21 (2) the member has five or more years of  
22 credited service acquired as a result of personal service  
23 rendered in the employ of an affiliated public employer; and

24 (3) the aggregate amount of credited service  
25 purchased under this subsection does not exceed five years.

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1           C. A member who was appointed to participate in a  
2 cooperative work study training program established jointly by  
3 the state highway and transportation department and the  
4 university of New Mexico or New Mexico state university may  
5 purchase credited service for the period of participation  
6 subject to the following conditions:

7                   (1) the member pays the association the  
8 purchase cost determined according to Subsection D of this  
9 section;

10                   (2) the member has five or more years of  
11 credited service acquired as a result of personal service  
12 rendered in the employ of an affiliated public employer; and

13                   (3) the aggregate amount of credited service  
14 purchased under this subsection does not exceed five years.

15           D. Except for service to be used under a state  
16 legislator coverage plan, the purchase cost for each month of  
17 credited service purchased under the provisions of this section  
18 is equal to the member's final average salary multiplied by the  
19 sum of the member contribution rate and employer contribution  
20 rate, determined in accordance with the coverage plan applicable  
21 to the member at the time of the written election to purchase.  
22 The purchase cost for each year of credited service to be used  
23 under a state legislator coverage plan is equal to the sum of  
24 the member contribution and an employer contribution of ten  
25 times the annual amount of pension per year of credited service

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1 under the state legislator coverage plan applicable to the  
2 member. Full payment shall be made in a single lump sum within  
3 sixty days of the date the member is informed of the amount of  
4 the payment. The portion of the purchase cost derived from the  
5 employer contribution rate shall be credited to the employer  
6 accumulation fund and shall not be paid out of the association  
7 in the event of cessation of membership. In no case shall any  
8 member be credited with a month of service for less than the  
9 purchase cost as defined in this section.

10 E. A member shall be refunded, upon written request  
11 filed with the association, the portion of the purchase cost of  
12 credited service purchased under this section that the  
13 association determines to have been unnecessary to provide the  
14 member with the maximum pension applicable to the member. The  
15 association shall not pay interest on the portion of the  
16 purchase cost refunded to the member.

17 F. A member of the magistrate retirement system who  
18 during his service as a magistrate was eligible to become a  
19 member of the public employees retirement system and elected not  
20 to become a member of that system may ~~upon the effective date~~  
21 ~~of this subsection~~ purchase service credit under the public  
22 employees retirement system for the period for which the  
23 magistrate elected not to become a public employees retirement  
24 system member, by paying the amount of the increase in the  
25 actuarial present value of the magistrate pension as a

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1 consequence of the purchase as determined by the association.  
2 Full payment shall be made in a single lump-sum amount in  
3 accordance with procedures established by the board. Except as  
4 provided in Subsection E of this section, seventy-five percent  
5 of the purchase cost shall be considered to be employer  
6 contributions and shall not be refunded to the member in the  
7 event of cessation of membership. "

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

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

12 A. A survivor pension [~~shall~~] may be paid to certain  
13 persons related to or designated by a member who dies before  
14 normal or disability retirement if a written application for the  
15 pension, in the form prescribed by the association, is filed  
16 with the association by the potential survivor beneficiary or  
17 beneficiaries within one year of the death of the member.  
18 Applications may be filed on behalf of the potential survivor  
19 beneficiary or by a person legally authorized to represent them.

20 B. If there is no designated survivor beneficiary  
21 and the retirement board finds the death to have been the  
22 natural and proximate result of causes arising solely and  
23 exclusively out of and in the course of the member's performance  
24 of duty with an affiliated public employer, a survivor pension  
25 shall be payable to the eligible surviving spouse. The amount

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1 of the survivor pension shall be the greater of:

2 (1) ~~[eighty percent of the amount of pension~~  
3 ~~calculated in the same manner as a normal retirement pension~~  
4 ~~under form of payment A]~~ the amount as calculated under the  
5 coverage plan applicable to the deceased member at the time of  
6 death as though the deceased member had retired the day  
7 preceding death under form of payment B using the actual amount  
8 of service credit attributable to the deceased member at the  
9 time of death; or

10 (2) fifty percent of the deceased member's  
11 final average salary.

12 C. A survivor pension shall also be payable to  
13 eligible surviving children if there is no designated survivor  
14 beneficiary and the retirement board finds the death to have  
15 been the natural and proximate result of causes arising solely  
16 and exclusively out of and in the course of the member's  
17 performance of duty with an affiliated public employer. The  
18 total amount of survivor pension payable for all eligible  
19 surviving children shall be either:

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

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

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1           The total amount of survivor pension shall be divided  
2 equally ~~[between]~~ among all eligible surviving children. If  
3 there is only one eligible child, the amount of pension shall be  
4 twenty-five percent of the deceased member's final average  
5 salary.

6           D. If the member had five or more years of service  
7 credit, but the retirement board did not find the death to have  
8 been the natural and proximate result of causes arising solely  
9 and exclusively out of and in the course of the member's  
10 performance of duty with an affiliated public employer and there  
11 is no designated survivor beneficiary, a survivor pension shall  
12 be payable to the eligible surviving spouse. The amount of the  
13 survivor pension shall be the greater of:

14                   (1) ~~[eighty percent of the amount of pension~~  
15 ~~calculated in the same manner as a normal retirement pension~~  
16 ~~under form of payment A]~~ the amount as calculated under the  
17 coverage plan applicable to the deceased member at the time of  
18 death as though the deceased member had retired the day  
19 preceding death under form of payment B using the total amount  
20 of actual service credit attributable to the deceased member at  
21 the time of death; or

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

24           E. If the member had five or more years of service  
25 credit, but the retirement board did not find the death to have

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1 been the natural and proximate result of causes arising solely  
2 and exclusively out of and in the course of the member's  
3 performance of duty with an affiliated public employer and there  
4 is no designated survivor beneficiary, and if there is ~~[not an]~~  
5 no eligible surviving spouse ~~[or the eligible surviving spouse~~  
6 ~~subsequently dies]~~ at the time of death, a survivor pension  
7 shall be payable to and divided equally ~~[between]~~ among all  
8 eligible surviving children, if any. The total amount of  
9 survivor pension payable for all eligible surviving children  
10 shall be the greater of:

11 (1) ~~[fifty percent of an amount calculated in~~  
12 ~~the same manner as a normal retirement pension under form of~~  
13 ~~payment A]~~ the amount as calculated under the coverage plan  
14 applicable to the deceased member at the time of death as though  
15 the deceased member had retired the day preceding death under  
16 form of payment B with the oldest eligible surviving child as  
17 the survivor beneficiary using the total amount of actual  
18 service credit attributable to the deceased member at the time  
19 of death; or

20 (2) ~~[twenty-five]~~ thirty percent of the  
21 deceased member's final average salary.

22 F. An eligible surviving spouse is the spouse to  
23 whom the deceased member was married at the time of death. An  
24 eligible surviving child is a child under the age of eighteen  
25 years and who is an unmarried, natural or adopted child of the

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1 deceased member.

2 G. An eligible surviving spouse's pension shall  
3 terminate upon death. An eligible surviving child's pension  
4 shall terminate upon death or marriage or reaching age eighteen  
5 years, whichever comes first.

6 H. If there is no designated survivor beneficiary  
7 and there is no eligible surviving child, the eligible surviving  
8 spouse may elect to be refunded the deceased member's  
9 accumulated member contributions instead of receiving a survivor  
10 pension.

11 I. A member [~~who has five or more years of service~~  
12 ~~credit~~] may designate [~~one or more survivor beneficiaries~~] a  
13 survivor beneficiary to receive a pre-retirement survivor  
14 pension, subject to the following conditions:

15 (1) a written designation, in the form  
16 prescribed by the association, is filed by the member with the  
17 association;

18 (2) if the member is married at the time of  
19 designation, the designation shall only be made with the consent  
20 of the member's spouse, in the form prescribed by the  
21 association;

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

25 (4) if the member is divorced subsequent to the

1 time of designation, any prior designation of the former spouse  
2 as survivor beneficiary shall automatically be revoked upon the  
3 date of divorce; and

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

7 ~~[(6) if more than one survivor beneficiary is~~  
8 ~~designated, only those designated survivor beneficiaries who are~~  
9 ~~under the age of twenty-five years at the time of the deceased~~  
10 ~~member's death shall be eligible to receive a survivor pension;~~

11 ~~(7) each designated survivor beneficiary who is~~  
12 ~~under the age of twenty five years shall be paid a pension until~~  
13 ~~reaching the age of twenty-five years or until death before the~~  
14 ~~age of twenty five years;~~

15 ~~(8) if there is more than one designated~~  
16 ~~survivor beneficiary, the amount of pension to be paid each~~  
17 ~~designated survivor beneficiary for a month is equal to the~~  
18 ~~amount as calculated under the coverage plan applicable to the~~  
19 ~~deceased member at the time of death as though the deceased~~  
20 ~~member had retired the day preceding death under form of payment~~  
21 ~~B with the oldest designated survivor beneficiary as the~~  
22 ~~survivor beneficiary, divided by the number of designated~~  
23 ~~survivor beneficiaries who will be paid for the month; and~~

24 ~~(9) if there is only one designated survivor~~  
25 ~~beneficiary, the amount of pension shall be calculated under the~~

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1 ~~coverage plan applicable to the member at the time of death as~~  
2 ~~though the deceased member had retired the day preceding death~~  
3 ~~under form of payment B with the designated survivor beneficiary~~  
4 ~~as survivor beneficiary.~~

5 ~~J. A member who has less than five years of service~~  
6 ~~credit may designate one or more survivor beneficiaries to~~  
7 ~~receive a survivor pension if the member dies prior to the~~  
8 ~~retirement and the retirement board finds the member's death to~~  
9 ~~be the natural and proximate result of causes arising solely and~~  
10 ~~exclusively out of and in the course of the member's performance~~  
11 ~~of duty with an affiliated public employer. If more than one~~  
12 ~~survivor beneficiary is designated, the survivor pension shall~~  
13 ~~be calculated according to the provisions of Subsection C of~~  
14 ~~this section, subject to the same conditions listed in~~  
15 ~~Subsection I of this section. If one survivor beneficiary is~~  
16 ~~designated, the survivor pension shall be calculated according~~  
17 ~~to the provisions of Subsection B of this section, subject to~~  
18 ~~the same conditions listed in Paragraphs (1) through (5) of~~  
19 ~~Subsection I of this section.~~

20 ~~K. Designation of one or more survivor beneficiaries~~  
21 ~~pursuant to the provisions of Subsection I or J of this section~~  
22 ~~shall preclude payment of a survivor beneficiary pursuant to the~~  
23 ~~provisions of Subsections B through E of this section.]~~

24 J. If there is a designated survivor beneficiary and  
25 the retirement board finds the death to have been the natural

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1 and proximate result of causes arising solely and exclusively  
2 out of and in the course of the member's performance of duty  
3 with an affiliated public employer, a survivor pension shall be  
4 payable to the designated survivor beneficiary. The amount of  
5 the survivor pension shall be the greater of:

6 (1) the amount as calculated under the coverage  
7 plan applicable to the deceased member at the time of death as  
8 though the deceased member had retired the day preceding death  
9 under form of payment B using the actual amount of service  
10 credit attributable to the member at the time of death; or

11 (2) fifty percent of the deceased member's  
12 final average salary.

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

21 (1) the amount as calculated under the coverage  
22 plan applicable to the deceased member at the time of death as  
23 though the deceased member had retired the day preceding death  
24 under form of payment B using the actual amount of service  
25 credit attributable to the member at the time of death; or

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

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

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

13                   "10-11-117. FORMS OF PAYMENT OF A PENSION. --

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

20                   B. Life payments with full continuation to one  
21 survivor beneficiary is form of payment B. The retired member  
22 is paid a reduced pension for life under form of payment B.  
23 When the retired member dies, the designated survivor  
24 beneficiary is paid the full amount of the reduced pension until  
25 death. ~~[If the designated survivor beneficiary predeceases the~~

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1 ~~retired member~~] Upon the association's receipt of proof of death  
2 of the designated survivor beneficiary, the amount of pension  
3 shall be changed to the amount that would have been payable had  
4 the retired member elected form of payment A.

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

14 D. Life payments with temporary survivor benefits  
15 for children is form of payment D. The retired member is paid a  
16 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 specified  
20 in writing and filed with the association by the retired member.  
21 If shares are not specified in writing and filed with the  
22 association, each declared eligible child is paid an equal share  
23 of the reduced pension. A redetermination of shares shall be  
24 made when the pension of any child terminates. An eligible  
25 child is a natural or adopted child of the retired member who is

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

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

17 Section 8. Section 10-11-120 NMSA 1978 (being Laws 1987,  
18 Chapter 253, Section 120) is amended to read:

19 "10-11-120. DENIAL OF BENEFIT CLAIM - APPEALS. --

20 A. A benefit claimant shall be notified in writing  
21 [~~within thirty days~~] of a denial of a claim for benefits within  
22 thirty days of the denial. The notification shall give the  
23 reason for the denial. A claimant may appeal the denial and  
24 request a hearing. The appeal shall be in writing filed with  
25 the association within ninety days of the denial. The appeal

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1 shall contain a statement of the claimant's reason for claiming  
2 the denial to be improper. The retirement board shall schedule  
3 a de novo hearing of the appeal before the retirement board or,  
4 at the discretion of the retirement board, a designated hearing  
5 officer or committee of the retirement board, within sixty days  
6 of receipt of the appeal. A final decision on the matter being  
7 appealed shall be made by the retirement board.

8 B. Appeals from a final decision of the retirement  
9 board shall be made to the first judicial district court and  
10 initiated by filing a notice of appeal with the district court  
11 within thirty days after the retirement board has issued its  
12 final decision. The review of the district court shall be  
13 restricted to the record made before the retirement board, and  
14 the district court shall not permit the introduction of new  
15 evidence on any of the issues presented before the retirement  
16 board. The decision of the retirement board shall be upheld by  
17 the district court unless the district court finds the decision  
18 of the retirement board to be unlawful, arbitrary or capricious  
19 or not supported by substantial evidence on the entire record as  
20 submitted by the retirement board. "

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

23 "10-11-130. RETIREMENT BOARD- - AUTHORITY- - MEMBERSHIP. - -

24 A. The "retirement board" is hereby created and  
25 shall be the trustee of the association and the funds created by

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1 the state retirement system acts and shall have all the powers  
2 necessary or convenient to carry out and effectuate the purposes  
3 and provisions of the state retirement system acts, including,  
4 in addition to any specific powers provided for in the Public  
5 Employees Retirement Act but without limiting the generality of  
6 the foregoing, the power:

7 (1) to administer the state retirement system  
8 acts, including the management of the association and making  
9 effective the provisions of those acts, as well as to administer  
10 and manage any other employee benefit acts as provided by law;

11 (2) in addition to utilizing services of the  
12 attorney general and notwithstanding any other provision of law  
13 to employ or contract with and compensate competent legal  
14 counsel to handle the legal matters and litigation of the  
15 retirement board and the association and to give advice and  
16 counsel in regard to any matter connected with the duties of the  
17 retirement board;

18 (3) to administer oaths;

19 (4) to adopt and use a seal for authentication  
20 of records, processes and proceedings;

21 (5) to create and maintain records relating to  
22 all members, affiliated public employers and all activities and  
23 duties required of the retirement board;

24 (6) to issue subpoenas and compel the  
25 production of evidence and attendance of witnesses in connection

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1 with any hearings or proceedings of the retirement board;  
2 (7) to make and execute contracts;  
3 (8) to purchase, acquire or hold land adjacent  
4 to the state capitol grounds or other suitable location and  
5 build thereon a building to house the association and its  
6 employees and, in the event additional office space is available  
7 in the building after the retirement board and its employees  
8 have been housed, to rent or lease the additional space to any  
9 public agency or private person; provided that first priority  
10 for the rental or leasing shall be to public agencies and  
11 further provided that for the purpose of purchasing, acquiring  
12 or holding the land and the building thereon, the retirement  
13 board may use funds from the income fund and any other funds  
14 controlled by the retirement board the use of which for such  
15 purposes is not prohibited by law;  
16 (9) to make and adopt such reasonable rules and  
17 regulations as may be necessary or convenient to carry out the  
18 duties of the retirement board and activities of the  
19 association, including any rules and regulations necessary to  
20 preserve the status of the association as a qualified pension  
21 plan under the provisions of the Internal Revenue Code of 1986,  
22 as amended, or under successor or related provisions of law; and  
23 (10) to designate committees and to designate  
24 committee members, including individuals who may not be members  
25 of the association.

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- 1           B. The retirement board shall consist of:
- 2                 (1) the secretary of state;
- 3                 (2) the state treasurer;
- 4                 (3) four members under a state coverage plan to
- 5 be elected by the members under state coverage plans;
- 6                 (4) four members under a municipal coverage
- 7 plan to be elected by the members under municipal coverage
- 8 plans, provided one member shall be a municipal member employed
- 9 by a county; and
- 10                (5) two retired members to be elected by the
- 11 retired members of the association.

12           C. The results of elections of elected members of

13 the retirement board shall be ~~held~~ certified at the ~~[time of~~

14 ~~the]~~ annual meeting of the association ~~[and]~~. Elections shall

15 be conducted according to rules and regulations the retirement

16 board shall from time to time adopt.

17           D. The regular term of office of the elected members

18 of the retirement board shall be four years. The term of one

19 retirement board member under a state coverage plan shall expire

20 annually on December 31. The terms of retirement board members

21 under a municipal coverage plan shall expire on December 31 of

22 noncoinciding years in the pattern set by the retirement board.

23 Members of the retirement board shall serve until their

24 successors have qualified.

25           E. A member elected to the retirement board who

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1 fails to attend four consecutively scheduled meetings of the  
2 retirement board, unless in each case excused for cause by the  
3 retirement board members in attendance, shall be considered to  
4 have resigned from the retirement board, and the retirement  
5 board shall by resolution declare the office vacated as of the  
6 date of adoption of the resolution. A vacancy occurring on the  
7 retirement board, except in the case of an elected official,  
8 shall be filled by the remaining retirement board members,  
9 without requirement that a quorum be present ~~[until the next~~  
10 ~~election of the association, at which time a successor shall be~~  
11 ~~elected]~~. The member appointed to fill the vacancy shall serve  
12 for the remainder of the vacated term.

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

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

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

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

25 I. Neither the retirement board nor the association

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1 shall allow public inspection of, or disclosure of, information  
2 from any member or retiree file unless a prior release and  
3 consent, in the form prescribed by the association, has been  
4 executed by the member or retiree; except that applicable  
5 coverage plans, amounts of retirement plan contributions made by  
6 members and affiliated public employers, pension amounts paid,  
7 and the names and addresses of public employees retirement  
8 association members or retirees requested for election purposes  
9 by candidates for election to the retirement board may be  
10 produced or disclosed without release or consent."

11 Section 10. Section 10-11-131 NMSA 1978 (being Laws 1987,  
12 Chapter 253, Section 131) is amended to read:

13 "10-11-131. RETIREMENT BOARD-- OFFICERS-- EMPLOYMENT OF  
14 SERVICES. --

15 A. The retirement board shall elect from its own  
16 number a chairman and a vice chairman.

17 B. The retirement board shall appoint an executive  
18 [secretary] director who shall be the chief administrative  
19 officer for the retirement board and the association.

20 C. The retirement board shall employ professional,  
21 technical, clerical and other services as required for the  
22 operation of the association. The compensation for employed  
23 services shall be fixed by the retirement board.

24 D. The state treasurer shall be the treasurer of the  
25 association and the custodian of its funds. The treasurer's

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1 general bond to the state shall cover all liability for acts as  
2 treasurer of the association. The treasurer shall credit all  
3 receipts of money and assets of the association to the  
4 association. The treasurer shall make disbursements from  
5 association assets only upon warrants issued by the secretary of  
6 finance and administration [~~based upon vouchers signed by the~~  
7 ~~executive secretary or vouchers signed by the state treasurer~~  
8 ~~for purposes of investment~~] or the executive director."

9 Section 11. Section 10-11-132 NMSA 1978 (being Laws 1987,  
10 Chapter 253, Section 132, as amended) is amended to read:

11 "10-11-132. INVESTMENT OF FUNDS--TYPES OF INVESTMENTS--  
12 INDEMNIFICATION OF BOARD MEMBERS.--The funds created by the  
13 state retirement system acts are trust funds of which the  
14 retirement board is trustee. Members of the retirement board  
15 jointly and individually shall be indemnified from the funds by  
16 the state from all claims, demands, suits, actions, damages,  
17 judgments, costs, charges and expenses, including court costs  
18 and [~~attorneys'~~] attorney fees, and against all liability losses  
19 and damages of any nature whatsoever that members shall or may  
20 at any time sustain by reason of any decision made in the  
21 performance of their duties pursuant to the state retirement  
22 system acts. The retirement board may invest and reinvest the  
23 funds in the following classes of securities and investments:

24 A. bonds, notes or other obligations of the United  
25 States treasury or those guaranteed by or for which the credit

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[bracketed material] = delete

1 of the United States government is pledged for the payment of  
2 the principal and interest;

3 B. bonds, notes or other obligations of a  
4 municipality or other political subdivision of this state that  
5 are registered by the United States securities and exchange  
6 commission, are publicly traded and are issued pursuant to a law  
7 of this state if the issuer, within ten years prior to making  
8 the investment, has not been in default in payment of any part  
9 of the principal or interest on any debt evidenced by its bonds,  
10 notes or other obligations. If any bonds are municipal or  
11 county utility revenue bonds or utility district revenue bonds,  
12 the revenues of the utility, except for operation and  
13 maintenance expenses, shall be pledged wholly to the payment of  
14 the interest and principal of the indebtedness and the utility  
15 project shall have been completely self-supporting for a period  
16 of five years next preceding the date of investment;

17 C. stocks, bonds, debentures or other obligations  
18 issued by any agency or corporation of the United States  
19 government under the authority of acts of the United States  
20 congress;

21 D. collateralized obligations held in trust that:

22 (1) are publicly traded and are registered with  
23 the United States securities and exchange commission; and

24 (2) have underlying collateral that is either  
25 an obligation of the United States government or else ~~have~~ has

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1 a credit rating above or equal to BBB according to the Standard  
2 and Poor's rating system or Baa according to the Moody's  
3 investors rating system;

4 E. bonds, notes, commercial paper or other  
5 obligations of any corporation organized and operating within  
6 the United States or preferred stock, common stock, any security  
7 convertible to common stock or American depository receipts that  
8 are registered by the United States securities and exchange  
9 commission of any corporations whose securities are listed on at  
10 least one stock exchange that has been approved by or is  
11 controlled by the United States securities and exchange  
12 commission or on the national association of securities dealers  
13 national market; provided that the corporations shall have  
14 minimum net assets of twenty-five million dollars (\$25,000,000);  
15 or provided that the securities shall have a minimum credit  
16 rating of BBB according to the Standard and Poor's rating system  
17 or Baa according to the Moody's investors rating system or their  
18 equivalents; provided that the funds for which the retirement  
19 board is trustee shall not at any one time own more than ten  
20 percent of the voting stock of a company;

21 ~~[F. securities of non-United States governmental,~~  
22 ~~quasi-governmental or corporate entities; provided:~~

23 ~~(1) aggregate non-United States investments~~  
24 ~~shall not exceed ten percent of total assets of the funds;~~

25 ~~(2) for non-United States stocks, issues~~

Underscored material = new  
[bracketed material] = delete

1 ~~permitted for purchase shall be limited to those issues included~~  
2 ~~in a commonly used and internationally recognized index;~~

3 ~~(3) for non-United States bonds and notes,~~  
4 ~~issues permitted for investment shall be limited to sovereign~~  
5 ~~debt issued by those governmental or quasi-governmental entities~~  
6 ~~whose issues are included in a commonly used and internationally~~  
7 ~~recognized index; and~~

8 ~~(4) forward currency contracts shall be~~  
9 ~~permitted solely for use of hedging foreign currency exposure;]~~

10 F. obligations of non-United States governmental or  
11 quasi-governmental entities, and these may be denominated in  
12 foreign currencies; obligations, including but not limited to  
13 bonds, notes or commercial paper of any corporation organized  
14 outside of the United States, and these may be denominated in  
15 foreign currencies; or preferred stock or common stock of any  
16 corporation organized outside of the United States whose  
17 securities are listed on at least one national or foreign stock  
18 exchange or are traded in an over-the-counter market, and these  
19 may be denominated in foreign currencies. Currency  
20 transactions, including spot or cash basis currency  
21 transactions, forward contracts and buying or selling options or  
22 futures on foreign currencies, shall be permitted but only for  
23 the purposes of hedging foreign currency risk and not for  
24 speculation;

25 G. stocks or shares of a diversified investment

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1 company registered under the federal Investment Company Act of  
2 1940 [~~which invests primarily in United States or non-United~~  
3 ~~States fixed income securities, equity securities or short-term~~  
4 ~~debt instruments pursuant to Subsections A, B, C, E and F of~~  
5 ~~this section~~], provided that the investment company has total  
6 assets under management of at least one hundred million dollars  
7 (\$100,000,000); individual, common or collective trust funds of  
8 banks or trust companies [~~which invest primarily in United~~  
9 ~~States or non-United States fixed income securities, equity~~  
10 ~~securities or short term debt instruments pursuant to~~  
11 ~~Subsections A, B, C, E and F of this section~~], provided that the  
12 investment manager has assets under management of at least one  
13 hundred million dollars (\$100,000,000); provided that the board  
14 may allow reasonable administrative and investment expenses to  
15 be paid directly from the income or assets of these investments;  
16 ~~H. insured savings deposits or insured savings~~  
17 ~~accounts of banks or savings and loan associations domiciled in~~  
18 ~~this state, the deposits and accounts of which are insured by an~~  
19 ~~agency or corporation of the United States government;~~  
20 ~~I. industrial revenue bonds issued pursuant to the~~  
21 ~~Industrial Revenue Bond Act where both the principal and~~  
22 ~~interest of the bonds are fully and unconditionally guaranteed~~  
23 ~~by a lease agreement executed by a corporation organized and~~  
24 ~~operating within the United States; provided that none of the~~  
25 ~~funds for which the retirement board is trustee shall at any one~~

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1 ~~time be invested in more than ten percent of the voting stock of~~  
2 ~~a single corporation, and:~~

3 ~~(1) each corporation shall have minimum~~  
4 ~~net assets of twenty-five million dollars (\$25,000,000); and~~

5 ~~(2) the securities of each corporation~~  
6 ~~shall have a minimum credit rating of BBB according to the~~  
7 ~~Standard and Poor's rating system or Baa according to the~~  
8 ~~Moody's investors rating system;~~

9 ~~J. notes or obligations securing loans to New Mexico~~  
10 ~~businesses made by banks and savings and loan associations~~  
11 ~~pursuant to the act of congress of July 30, 1953, known as the~~  
12 ~~Small Business Act of 1953, as amended, only to the extent that~~  
13 ~~both principal and interest are guaranteed by the United States~~  
14 ~~government. The applicant bank or savings and loan association~~  
15 ~~shall be required to enter into an indemnity agreement that~~  
16 ~~meets the approval of the retirement board and to pay off the~~  
17 ~~investments, together with interest and any unpaid costs and~~  
18 ~~expenses in connection therewith, in the event the United States~~  
19 ~~government refuses to honor its guarantee. The retirement board~~  
20 ~~may enter into conventional agreements for the servicing of the~~  
21 ~~loans and the administration of the receipts therefrom. Any~~  
22 ~~servicing agreement may contain such reasonable and customary~~  
23 ~~provisions as the retirement board may deem advisable and as may~~  
24 ~~be agreed upon;~~

25 ~~K. notes or obligations securing loans or~~

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Underscored material = new  
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1 ~~participation in loans to business concerns or other~~  
2 ~~organizations that are obligated to use the loan proceeds within~~  
3 ~~New Mexico, to the extent the loans are secured by first~~  
4 ~~mortgages on real estate located in New Mexico and are further~~  
5 ~~secured by an assignment of rentals, the payment of which is~~  
6 ~~fully guaranteed by the United States government in an amount~~  
7 ~~sufficient to pay all principal and interest of the mortgages;~~

8           L.] H. contracts, including contracts through its  
9 designated agent, for the temporary exchange of securities for  
10 the use by broker-dealers, banks or other recognized  
11 institutional investors, for periods not to exceed one year, for  
12 a specified fee or consideration; provided no such contracts  
13 shall be entered into unless the contracts are fully secured by  
14 a collateralized, irrevocable letter of credit running to the  
15 retirement board, cash or equivalent collateral of at least one  
16 hundred two percent of the market value of the securities plus  
17 accrued interest temporarily exchanged, which collateral shall  
18 be delivered to the state fiscal agent or its designee  
19 contemporaneously with the transfer of funds or delivery of the  
20 securities; and further provided that such contracts may  
21 authorize the retirement board to invest cash collateral in  
22 instruments or securities that are authorized investments for  
23 the funds and may authorize payment of a fee from the funds or  
24 from income generated by the investment of cash collateral to  
25 the borrower of securities providing cash as collateral, and the

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1 retirement board may apportion income derived from the  
2 investment of cash collateral to pay its agent in securities  
3 lending transactions; and

4 [M-] I. contracts for the present purchase and  
5 resale at a specified time in the future, not to exceed one  
6 year, of specific securities at specified prices at a price  
7 differential representing the interest income to be earned by  
8 the retirement board. No such contract shall be entered into  
9 unless the contract is fully secured by obligations of the  
10 United States, or other securities backed by the United States,  
11 having a market value of at least one hundred two percent of the  
12 amount of the contract. The collateral required in this section  
13 shall be delivered to the state fiscal agent or his designee  
14 contemporaneously with the transfer of funds or delivery of the  
15 securities, at the earliest time industry practice permits, but  
16 in all cases settlement shall be on a same day basis. No such  
17 contract shall be entered into unless the contracting bank,  
18 brokerage firm or recognized institutional investor has a net  
19 worth in excess of five hundred million dollars (\$500,000,000). "

20 Section 12. Section 10-12B-5 NMSA 1978 (being Laws 1992,  
21 Chapter 111, Section 5) is amended to read:

22 "10-12B-5. SERVICE CREDIT--REINSTATEMENT OF FORFEITED  
23 SERVICE--PRIOR SERVICE--MILITARY SERVICE. --

24 A. Personal service rendered by a member shall be  
25 credited to the member's service credit account in accordance

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1 with board rules and regulations. Service shall be credited to  
2 the nearest month. In no case shall any member be credited with  
3 a year of service for less than twelve months of service in any  
4 calendar year or more than a month of service for all service in  
5 any calendar month or more than a year of service for all  
6 service in any calendar year.

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

20 C. Service credit that a member would have earned if  
21 the member had not elected to be excluded from membership may be  
22 purchased if the member pays the purchase cost determined  
23 pursuant to the provisions of Subsection F of this section.

24 D. A member who during a term of office enters [~~an~~  
25 ~~armed~~] a uniformed service of the United States shall be given

Underscored material = new  
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1 service credit for periods of ~~[active-duty]~~ service in the  
2 uniformed services subject to the following conditions:

3 (1) the member returns to office within ninety  
4 days following termination of the period of ~~[active-duty]~~  
5 intervening service in the uniformed services or the affiliated  
6 employer certifies in writing to the association that the member  
7 is entitled to reemployment rights under the Uniformed Services  
8 Employment and Reemployment Rights Act of 1994

9 (2) the member ~~[reinstates any forfeited~~  
10 service credit] retains membership in the association during the  
11 period of service in the uniformed services;

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

24 (4) service credit shall not be given for  
25 periods of ~~[active-duty]~~ intervening service in the uniformed

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1 services that are used to obtain or increase a benefit from  
2 another state system or the [~~educational retirement system~~]  
3 retirement program provided under the Educational Retirement  
4 Act; and

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

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

12 E. A member who entered [~~an armed~~] uniformed service  
13 of the United States may purchase service credit for periods of  
14 active duty in the uniformed services, subject to the following  
15 conditions:

16 (1) the member pays the purchase cost  
17 determined pursuant to the provisions of Subsection F of this  
18 section;

19 (2) the member has five or more years of  
20 service credit accrued according to the provisions of the  
21 Judicial Retirement Act;

22 (3) the aggregate amount of service credit  
23 purchased pursuant to the provisions of this subsection does not  
24 exceed five years, reduced by any period of service credit  
25 acquired for military service under any other provision of the

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1 Judicial Retirement Act; ~~[and]~~

2 (4) service credit may not be purchased for  
3 periods of ~~[active-duty]~~ service in the uniformed services that  
4 are used to obtain or increase a benefit from another ~~[state~~  
5 ~~system or the educational retirement system]~~ retirement program  
6 and

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

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

21 G. A member shall be refunded, after retirement and  
22 upon written request filed with the association, the portion of  
23 the purchase cost of service credit purchased pursuant to the  
24 provisions of this section that the association determines to  
25 have been unnecessary to provide the member with the maximum

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1 pension applicable to the member. The association shall not pay  
2 interest on the portion of the purchase cost refunded to the  
3 member. "

4 Section 13. Section 10-12B-18 NMSA 1978 (being Laws 1995,  
5 Chapter 115, Section 4) is amended to read:

6 "10-12B-18. ADJUSTMENT OF PENSION. --

7 A. If payment of a pension or other retirement  
8 benefit causes a decrease in the amount of monetary payments or  
9 other needs-based benefits due to a payee from any other  
10 governmental agency, the pension or other retirement benefit  
11 shall be reduced for the period during which the pension or  
12 other retirement benefit prevents payment of another needs-based  
13 benefit to result in payment of the maximum amount possible by  
14 the association and the other governmental agency to the payee.  
15 Any amounts that would otherwise be paid out that are not paid  
16 in accordance with the provisions of this section shall not be  
17 recoverable by a payee at any later date.

18 B. If there is a change in the effect of pension or  
19 other retirement benefit on any monetary payments or other  
20 needs-based benefits due to a payee from any other governmental  
21 agency, the pension or other retirement benefits shall be  
22 adjusted to result in the maximum total benefit to the payee.  
23 In no event shall any pension be increased in an amount greater  
24 than that authorized by the Judicial Retirement Act.

25 C. The provisions of this section are mandatory and

1 shall not be waived or declined by a payee. Each payee shall  
2 provide the association with all information necessary for the  
3 association to carry out the requirements imposed by this  
4 section.

5 D. If the payee fails to provide all the facts  
6 necessary to comply with the requirements imposed by this  
7 section, and payment of a pension or other retirement benefit is  
8 made without making the adjustment required by this section,  
9 neither the [retirement] board, the executive [secretary]  
10 director nor any officer or employee of the association or the  
11 [retirement] board shall be liable to any third party because  
12 the adjustment was not made as required.

13 E. As used in this section:

14 (1) "pension" means a normal retirement,  
15 survivor or disability retirement pension payable to a retired  
16 member or survivor beneficiary pursuant to the Judicial  
17 Retirement Act;

18 (2) "governmental agency" means the federal  
19 government, any department or agency of the federal government,  
20 any state and any department, agency or political subdivision of  
21 a state;

22 (3) "total benefits" means pensions plus any  
23 other monetary payments or other needs-based benefits due to the  
24 payee from any governmental agency;

25 (4) "needs-based benefit" means monetary or

1 3other benefits for which a determination of eligibility is  
2 based upon the recipient's level of income and resources; and

3 (5) "payee" means a retired member or the  
4 refund beneficiary or survivor beneficiary of a retired member. "

5 Section 14. Section 10-12B-19 NMSA 1978 (being Laws 1995,  
6 Chapter 115, Section 5) is amended to read:

7 "10-12B-19. CORRECTIONS OF ERRORS AND OMISSIONS--  
8 ESTOPPEL. --

9 A. If an error or omission [~~in an application or its~~  
10 ~~supporting documents~~] results in overpayment to a member or  
11 beneficiary of a member, the association shall correct the error  
12 or omission and adjust all future payments accordingly. The  
13 association shall recover all overpayments made for a period of  
14 up to one year prior to the date the error or omission was  
15 discovered.

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

24 C. Statements of fact or law made by board members  
25 or employees of the board or the association shall not estop the

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Underscored material = new  
[bracketed material] = delete

1 board or the association from acting in accordance with the  
2 applicable statutes. "

3 Section 15. Section 10-12C-5 NMSA 1978 (being Laws 1992,  
4 Chapter 118, Section 5) is amended to read:

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

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

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

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1 made in a single lump-sum amount in accordance with procedures  
2 established by the board.

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

7 D. A member who during a term of office enters [~~an~~  
8 ~~armed~~] a uniformed service of the United States shall be given  
9 service credit for periods of [~~active-duty~~] service in the  
10 uniformed services subject to the following conditions:

11 (1) the member returns to office within ninety  
12 days following termination of the period of [~~active-duty~~]  
13 intervening service in the uniformed services or the affiliated  
14 employer certifies in writing to the association that the member  
15 is entitled to reemployment rights under the Uniformed Services  
16 Employment and Reemployment Rights Act of 1994

17 (2) the member [~~reinstates any forfeited~~  
18 ~~service credit~~] retains membership in the association during the  
19 period of service in the uniformed services

20 (3) free service credit shall not be given for  
21 periods of [~~active-duty~~] intervening service in the uniformed  
22 services following voluntary reenlistment [~~and~~]. Service credit  
23 for such periods shall only be given after the member pays the  
24 association the sum of the contributions that the person would  
25 have been required to contribute had the person remained

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1 continuously employed throughout the period of intervening  
2 service following voluntary reenlistment, which payment shall be  
3 made during the period beginning with the date of reemployment  
4 and whose duration is three times the period of the person's  
5 intervening service in the uniformed services following  
6 voluntary reenlistment, not to exceed five years

7 (4) service credit shall not be given for  
8 periods of [~~active duty~~] intervening service in the uniformed  
9 services that are used to obtain or increase a benefit from  
10 another state system or the [~~educational retirement system~~]  
11 retirement program provided under the Educational Retirement  
12 Act; and

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

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

20 E. A member who entered [~~an armed~~] a uniformed  
21 service of the United States may purchase service credit for  
22 periods of active duty in the uniformed services, subject to the  
23 following conditions:

24 (1) the member pays the purchase cost  
25 determined pursuant to the provisions of Subsection F of this

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1 section;

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

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

10 (4) service credit may not be purchased for  
11 periods of [~~active duty~~] service in the uniformed services that  
12 are used to obtain or increase a benefit from another [~~state~~  
13 ~~system or the educational retirement system~~] retirement program  
14 and

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

18 F. The purchase cost for each year of service credit  
19 purchased pursuant to the provisions of this section shall be  
20 the increase in the actuarial present value of the pension of  
21 the member under the Magistrate Retirement Act as a consequence  
22 of the purchase, as determined by the association. Full payment  
23 shall be made in a single lump-sum amount in accordance with  
24 procedures established by the board. Except as provided in  
25 Subsection G of this section, seventy-five percent of the

Underscored material = new  
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1 purchase cost shall be considered to be employer contributions  
2 and shall not be refunded to the member in the event of  
3 cessation of membership.

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

12 Section 16. Section 10-12C-17 NMSA 1978 (being Laws 1995,  
13 Chapter 115, Section 9) is amended to read:

14 "10-12C-17. ADJUSTMENT OF PENSION. --

15 A. If payment of a pension or other retirement  
16 benefit causes a decrease in the amount of monetary payments or  
17 other needs-based benefits due to a payee from any other  
18 governmental agency, the pension or other retirement benefit  
19 shall be reduced for the period during which the pension or  
20 other retirement benefit prevents payment of another needs-based  
21 benefit to result in payment of the maximum amount possible by  
22 the association and the other governmental agency to the payee.  
23 Any amounts that would otherwise be paid out that are not paid  
24 in accordance with the provisions of this section shall not be  
25 recoverable by a payee at any later date.

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Underscored material = new  
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1           B. If there is a change in the effect of a pension  
2 or other retirement benefit on any monetary payments or other  
3 needs-based benefits due to a payee from any other governmental  
4 agency, the pension or other retirement benefits shall be  
5 adjusted to result in the maximum total benefit to the payee.  
6 In no event shall any pension be increased in an amount greater  
7 than that authorized by the Magistrate Retirement Act.

8           C. The provisions of this section are mandatory and  
9 shall not be waived or declined by a payee. Each payee shall  
10 provide the association with all information necessary for the  
11 association to carry out the requirements imposed by this  
12 section.

13           D. If the payee fails to provide all the facts  
14 necessary to comply with the requirements imposed by this  
15 section, and payment of a pension or other retirement benefit is  
16 made without making the adjustment required by this section,  
17 neither the [~~retirement~~] board, the executive [~~secretary~~]  
18 director nor any officer or employee of the association or the  
19 [~~retirement~~] board shall be liable to any third party because  
20 the adjustment was not made as required.

21           E. As used in this section:

22                   (1) "pension" means a normal retirement,  
23 survivor or disability retirement pension payable to a retired  
24 member or survivor beneficiary pursuant to the Magistrate  
25 Retirement Act;

Underscored material = new  
[bracketed material] = delete

1 (2) "governmental agency" means the federal  
2 government, any department or agency of the federal government,  
3 any state and any department, agency or political subdivision of  
4 a state;

5 (3) "total benefits" means pensions plus any  
6 other monetary payments or other needs-based benefits due to the  
7 payee from any governmental agency;

8 (4) "needs-based benefit" means monetary or  
9 other benefits for which a determination of eligibility is based  
10 upon the recipient's level of income and resources; and

11 (5) "payee" means a retired member or the  
12 refund beneficiary or survivor beneficiary of a retired member."

13 Section 17. Section 10-12C-18 NMSA 1978 (being Laws 1995,  
14 Chapter 115, Section 10) is amended to read:

15 "10-12C-18. CORRECTION OF ERRORS AND OMISSIONS--  
16 ESTOPPEL. --

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

24 B. A person who is paid more than the amount that is  
25 lawfully due him as a result of fraudulent information provided

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1 by the member or beneficiary shall be liable for the repayment  
2 of that amount to the association plus interest on that amount  
3 at the rate set by the board plus all costs of collection,  
4 including [~~attorneys'~~] attorney fees if necessary. Recovery of  
5 such overpayment shall extend back to the date the first payment  
6 was made based on the fraudulent information.

7 C. Statements of fact or law made by board members  
8 or employees of the board or the association shall not estop the  
9 board or the association from acting in accordance with the  
10 applicable statutes."

11 Section 18. Section 10-11-118.1 NMSA 1978 (being Laws  
12 1992, Chapter 116, Section 9, as amended) is amended to read:

13 "10-11-118.1. ADJUSTMENT OF BENEFITS. --

14 A. If payment of a pension or other retirement  
15 benefit causes a decrease in the amount of monetary payments or  
16 other needs-based benefits due to a payee from any other  
17 governmental agency, the pension or other retirement benefit  
18 shall be reduced for the period during which the pension or  
19 other retirement benefit prevents payment of another needs-based  
20 benefit to result in payment of the maximum amount possible by  
21 the association and the other governmental agency to the payee.  
22 Any amounts which would otherwise be paid out which are not paid  
23 in accordance with the provisions of this section shall not be  
24 recoverable by a payee at any later date.

25 B. If there is a change in the effect of a pension

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1 or other retirement benefit on any monetary payments or other  
2 needs-based benefits due to a payee from any other governmental  
3 agency, the pension or other retirement benefits shall be  
4 adjusted to result in the maximum total benefit to the payee.

5 In no event shall any pension be increased in an amount greater  
6 than that authorized by the Public Employees Retirement Act.

7 C. The provisions of this section are mandatory and  
8 may not be waived or declined by a payee. Each payee shall  
9 provide the association with all information necessary for the  
10 association to carry out the requirements imposed by this  
11 section.

12 D. If the payee fails to provide all the facts  
13 necessary to comply with the requirements imposed by this  
14 section and payment of a pension or other retirement benefit is  
15 made without making the adjustment required by this section,  
16 neither the [~~retirement~~] board, the executive [~~secretary~~]  
17 director nor any officer or employee of the association or the  
18 [~~retirement~~] board shall be liable to any third party because  
19 the adjustment was not made as required.

20 E. As used in this section:

21 (1) "pension" means a normal retirement,  
22 survivor or disability retirement pension payable to a retired  
23 member or survivor beneficiary pursuant to the Public Employees  
24 Retirement Act;

25 (2) "governmental agency" means the federal

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1 government, any department or agency of the federal government,  
2 any state and any department, agency or political subdivision of  
3 a state;

4 (3) "total benefits" means pensions plus any  
5 other monetary payments or other needs-based benefits due to the  
6 payee from any governmental agency;

7 (4) "needs-based benefit" means monetary or  
8 other benefits for which a determination of eligibility is based  
9 upon the recipient's level of income and resources; and

10 (5) "payee" means a retired member or the  
11 refund beneficiary or survivor beneficiary of a retired member."

**State of New Mexico**  
**House of Representatives**

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3 FORTY-THIRD LEGISLATURE  
4  
5 FIRST SESSION, 1997  
6  
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8 February 24, 1997  
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10  
11 Mr. Speaker:  
12

13 Your JUDICIARY COMMITTEE, to whom has been referred  
14

15 HOUSE BILL 875  
16

17 has had it under consideration and reports same with  
18 recommendation that it DO PASS, amended as follows:

19 1. On page 12, line 19, after "beneficiary" insert "or  
20 beneficiaries".

21  
22 2. On page 30, lines 6 through 8, remove the brackets and  
23 line through and on line 8, strike "or the executive director".,

24 and thence referred to the APPROPRIATIONS AND FINANCE  
25 COMMITTEE.

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

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Respectfully submitted,

\_\_\_\_\_  
Thomas P. Foy, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 10 For 0 Against

Yes: 10

Excused: Pederson, Rios, Sanchez

Absent: None

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Underscored material = new  
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# State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

March 6, 1997

Mr. Speaker:

Your APPROPRIATIONS AND FINANCE COMMITTEE, to  
whom has been referred

HOUSE BILL 875, as amended

has had it under consideration and reports same with  
recommendation that it DO PASS, amended as follows:

1. On page 5, line 15, strike "services" and insert in lieu  
thereof "service".

Respectfully submitted,

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Max Coll, Chairman

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

HAFC/HB 875, AA

Page 58

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 9 For 0 Against

Yes: 9

Excused: Buffett, Coll, Marquardt, Pearce, Picraux, Saavedra,  
Taylor, JP, Watchman

Absent: None

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

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March 16, 1997

Mr. President:

Your PUBLIC AFFAIRS COMMITTEE, to whom has been referred

HOUSE BILL 875, as amended

has had it under consideration and reports same with recommendation that it DO PASS, and thence referred to the JUDICIARY COMMITTEE.

Respectfully submitted,

\_\_\_\_\_  
Shannon Robinson, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

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The roll call vote was 4 For 1 Against

Yes: 4

No: Adair

Excused: Boitano, Garcia, Ingle, Vernon

Absent: None

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

March 20, 1997

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 875, as amended

has had it under consideration and reports same with  
recommendation that it DO PASS, and thence referred to the  
FINANCE COMMITTEE.

Respectfully submitted,

\_\_\_\_\_  
Fernando R. Macias, Chairman

Adopted \_\_\_\_\_

Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

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Date \_\_\_\_\_

The roll call vote was 6 For 0 Against

Yes: 6

No: 0

Excused: Tsosie, Vernon

Absent: None

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

March 21, 1997

Mr. President:

Your FINANCE COMMITTEE, to whom has been referred

HOUSE BILL 875, as amended

has had it under consideration and reports same with  
recommendation that it DO PASS.

Respectfully submitted,

\_\_\_\_\_  
Ben D. Altamirano, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

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Date \_\_\_\_\_

The roll call vote was 6 For 0 Against

Yes: 6

No: None

Excused: Aragon, Eisenstadt, Ingle, Lyons, McKibben

Absent: None

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Underscored material = new  
[bracketed material] = delete