

UNANNOTATED

CHAPTER 10

Public Officers and Employees

ARTICLE 1

Qualifications

10-1-1. [Ineligibility for recess appointment after rejection by senate.]

No person, whose nomination or appointment to any office in the state shall have been rejected by the senate, shall be eligible to hold office under recess appointment.

History: Laws 1915, ch. 61, § 1; C.S. 1929, § 96-138; 1941 Comp., § 10-101; 1953 Comp., § 5-1-1.

10-1-2. [Person convicted of crime; ineligibility for office; exception.]

That no person convicted of a felonious or infamous crime, unless such person has been pardoned or restored to political rights, shall be qualified to be elected or appointed to any public office in this state.

History: Laws 1912, ch. 44, § 1; Code 1915, § 3951; C.S. 1929, § 96-102; 1941 Comp., § 10-102; 1953 Comp., § 5-1-2.

10-1-3. [Deputies and assistants convicted of crimes; penalty for appointment or retention.]

It shall be unlawful for any state, county, district, or municipal officer to appoint, employ, or retain as a deputy or assistant any person convicted of a felonious or infamous crime, unless such person has been pardoned or restored to political rights; and any public officer who shall knowingly violate the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be punished by fine of not less than one hundred dollars [(\$100)] nor more than five hundred dollars [(\$500)] and, in addition to such punishment, shall be removed from office in accordance with the provisions of this chapter.

History: Laws 1912, ch. 44, § 2; Code 1915, § 3952; C.S. 1929, § 96-103; 1941 Comp., § 10-103; 1953 Comp., § 5-1-3.

10-1-4. [Women eligible for appointment.]

Women may hold any appointive office in the state of New Mexico.

History: Laws 1913, ch. 60, § 1; Code 1915, § 3953; C.S. 1929, § 96-104; 1941 Comp., § 10-104; 1953 Comp., § 5-1-4.

10-1-5. Repealed.

10-1-6. [Affidavits of residence; prima facie value as evidence.]

Any person whose duty it is to engage or hire employees mentioned in Section 1 of this act may require any person applying for such employment to file an affidavit with such person, stating his name and residence and that he has been a bona fide resident of the state of New Mexico for a period of one year next previous to the date of application for such employment. In all prosecutions against any persons for violation of the provisions of this act [10-1-6 to 10-1-9 NMSA 1978], such affidavits shall be received in evidence as prima facie proof of the truth of the statements therein contained.

History: Laws 1933, ch. 68, § 2; 1941 Comp., § 10-106; 1953 Comp., § 5-1-6.

10-1-7. [Provisions of employment contracts.]

Every written contract entered into by the state of New Mexico and all political subdivisions thereof, including all of the departments, bureaus, boards, commissions or institutions of said state and all of its political subdivisions, involving the employment of persons mentioned in Section 1 of this act shall contain such provisions relating to employment as comply with the provisions of this act.

History: Laws 1933, ch. 68, § 3; 1941 Comp., § 10-107; 1953 Comp., § 5-1-7.

10-1-8. [Failure to employ residents; penalties.]

Any person, firm, corporation or association having charge of or control over the employment of persons mentioned in Section 1 of this act, who shall willfully refuse to comply with the provisions of said Section 1, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$100 nor more than \$300 or by imprisonment in the county jail not to exceed ninety days or both such fine and imprisonment, in the discretion of the court.

History: Laws 1933, ch. 68, § 4; 1941 Comp., § 10-108; 1953 Comp., § 5-1-8.

10-1-9. [False affidavit to obtain employment; penalty.]

Any applicant for employment mentioned in Section 1 thereof, who shall willfully file any false affidavit for the purpose of obtaining employment shall be deemed guilty of a misdemeanor and upon conviction shall be subject to the penalties mentioned in Section 4 [10-1-8 NMSA 1978] hereof.

History: Laws 1933, ch. 68, § 5; 1941 Comp., § 10-109; 1953 Comp., § 5-1-9.

10-1-10. [Nepotism prohibited; exceptions.]

It shall hereafter be unlawful for any person elected or appointed to any public office or position under the laws of this state or by virtue of any ordinance of any municipality thereof, to employ as clerk, deputy or assistant, in such office or position, whose compensation is to be paid out of public funds, any persons related by consanguinity or affinity within the third degree to the person giving such employment, unless such employment shall first be approved by the officer, board, council or commission, whose duty it is to approve the bond of the person giving such employment; provided, that this act [10-1-10, 10-1-11 NMSA 1978] shall not apply where the compensation of such clerk, deputy or assistant shall be at the rate of \$600 or less a year, nor shall it apply to persons employed as teachers in the public schools.

History: Laws 1925, ch. 50, § 1; C.S. 1929, § 96-136; 1941 Comp., § 10-110; 1953 Comp., § 5-1-10.

10-1-11. [Payment of nepotic employees; liability of employer and bondsmen; employment void.]

No person so unlawfully employed shall be paid or receive any compensation from public funds, and such employment shall be null and void, and the person or persons giving such employment, together with his or their bondsmen, shall be liable for any and all monies so unlawfully paid out.

History: Laws 1925, ch. 50, § 2; C.S. 1929, § 96-137; 1941 Comp., § 10-111; 1953 Comp., § 5-1-11.

10-1-12. [Employment of persons advocating sabotage, sedition or treason prohibited; discharge of such persons already employed.]

No person shall be knowingly employed by any state department, office, board, commission or bureau, county, municipality or other political subdivision, board of education or school board, who either directly or indirectly carries on, advocates, teaches, justifies, aids or abets a program of sabotage, force and violence, sedition or treason against the government of the United States or of this state.

When it becomes reasonably apparent to his appointing power that any employee has committed any of the acts hereinabove described it shall be the duty [duty] of such

employer to refer the data and information available to him to the district attorney of the judicial district wherein such employee resides, and it shall thereupon become the mandatory duty of the district attorney to institute a proceeding in the district court to determine whether the employee has violated this act [section]. If such court determines that this act has been violated, such employee shall be immediately discharged and shall not be again employed in any capacity by any state department, office, board, commission, or bureau, county, municipality, or other political subdivision, board of education, or school board.

No part of any money appropriated from the state treasury shall ever be expended to compensate any person whose employment is forbidden by this section.

History: Laws 1949, ch. 45, § 1; 1941 Comp., § 10-112; 1953 Comp., § 5-1-12.

10-1-13. County officers; oath; bond.

A. As used in this section, "county officer" means county commissioner, county assessor, county clerk, county sheriff, county treasurer, probate judge, county flood commissioner and small claims court clerk.

B. Before assuming the duties of office, each county officer shall take and subscribe the oath of office prescribed by the constitution of New Mexico and give an official bond payable to the state and conditioned for the faithful performance of duties, during the county officer's term of office and until a successor is elected or appointed and is qualified, and that the county officer shall pay all money received in the county officer's official capacity to the person entitled to receive it. The bond shall be executed by a corporate surety company authorized to do business in this state. The amount of the bond required shall be fixed by the board of county commissioners in a sum equal to twenty percent of the public money handled by the county officer during the preceding fiscal year but not to exceed:

county commissioner	\$ 5,000
county assessor	5,000
county clerk	10,000
county sheriff	20,000
county treasurer	50,000
probate judge	5,000
county flood commissioner	10,000
small claims court clerk	10,000.

C. Each county officer shall appoint a deputy or clerk, as allowed by law, who shall take the oath of office required of the appointing county officer and shall receive salary as provided by law. In case of the death of the appointing county officer, the deputy shall continue in office and perform the duties of the county officer until a new county officer is appointed and qualified as required by law.

D. The cost of official bonds for county officers shall be paid from the county general fund, and the board of county commissioners may elect to provide a schedule or blanket corporate surety bond covering county officers and employees for any period of time not exceeding four years.

E. If any county officer fails to give bond by January 10 following the county officer's election or within ten days of appointment, the board of county commissioners shall declare the office vacant.

History: 1953 Comp., § 5-1-13, enacted by Laws 1967, ch. 238, § 1; 2011, ch. 56, § 25.

ARTICLE 2

Bonds

10-2-1. [Sureties on bonds; qualifications.]

No bond of any public officer of this state executed by any individual, or firm as surety, shall be accepted or approved unless the persons or firm executing the same shall be the owners of unencumbered real estate or personal property in this state to an amount equal to the amount for which they respectively qualify on such bonds.

History: Laws 1909, ch. 122, § 2; Code 1915, § 511; C.S. 1929, § 17-107; 1941 Comp., § 10-201; 1953 Comp., § 5-2-1.

10-2-2. [County or district officer not to be surety for another official.]

No county or district officer shall be in future surety on the official bond of another county officer, and no such officer who shall be required to give bond shall be considered as qualified, if any other of the officers above mentioned shall give such bond.

History: Laws 1882, ch. 34, § 1; C.L. 1884, § 501; C.L. 1897, § 843; Code 1915, § 512; C.S. 1929, § 17-108; 1941 Comp., § 10-202; 1953 Comp., § 5-2-2.

10-2-3. [State and county officers prohibited from being sureties.]

It shall be unlawful for any state or county officer who is required by law to give official bonds to sign any bond or become surety for any other person or persons during the term for which he is required to give official bonds for himself.

History: Laws 1903, ch. 57, § 1; Code 1915, § 513; C.S. 1929, § 17-109; 1941 Comp., § 10-203; 1953 Comp., § 5-2-3.

10-2-4. [Public officer becoming surety; misdemeanor in office.]

Any violation of the preceding section [10-2-3 NMSA 1978] shall constitute a misdemeanor in office.

History: Laws 1903, ch. 57, § 2; 1905, ch. 85, § 1; Code 1915, § 514; C.S. 1929, § 17-110; 1941 Comp., § 10-204; 1953 Comp., § 5-2-4.

10-2-5. [Recording of bonds required.]

The bonds given by all persons elected or appointed to office in this state shall be recorded.

History: Laws 1893, ch. 56, § 1; C.L. 1897, § 3187; Code 1915, § 515; C.S. 1929, § 17-111; 1941 Comp., § 10-205; 1953 Comp., § 5-2-5.

10-2-6. [Record of official bonds of state and district officers.]

The bonds of all state and district officers shall be recorded in a record book to be provided for that purpose, and known as the record of official bonds, in the office of the secretary of state.

History: Laws 1893, ch. 56, § 2; C.L. 1897, § 3188; Code 1915, § 516; C.S. 1929, § 17-112; 1941 Comp., § 10-206; 1953 Comp., § 5-2-6.

10-2-7. [Filing of bonds by officials of state and state agencies.]

The bonds of all state officials, and of the members of all state boards and institutions, after having been recorded as required by law, shall be filed and kept in the office of the secretary of state; and all state bonds now filed elsewhere shall be transferred to the office of the secretary.

History: Laws 1905, ch. 59, § 1; Code 1915, § 517; C.S. 1929, § 17-113; 1941 Comp., § 10-207; 1953 Comp., § 5-2-7.

10-2-8. County and precinct officers; recording and filing bonds.

The bonds of all county officers and constables shall be recorded in the office of the county clerk in a book designated as the record of official bonds. After having been recorded, the bonds shall be filed and kept in the office of the county clerk.

History: Laws 1893, ch. 56, § 3; C.L. 1897, § 3189; Code 1915, § 518; C.S. 1929, § 17-114; 1941 Comp., § 10-208; 1953 Comp., § 5-2-8; Laws 1967, ch. 238, § 2.

10-2-9. [Recording as prerequisite to discharging duties of office.]

Each and every person who may hereafter be elected or appointed to office in this state, required by law to give bond, shall file the same for record before entering upon the discharge of the duties of the office.

History: Laws 1893, ch. 56, § 5; C.L. 1897, § 3190; Code 1915, § 519; C.S. 1929, § 17-115; 1941 Comp., § 10-209; 1953 Comp., § 5-2-9.

10-2-10. [Action on bond; use of certified copy.]

In all actions at law upon the bond of any officer in this state wherein the original bond of such officer cannot be produced in court, the certified copy thereof, under the seal of the officer making the record, shall be received by any court for the same uses and purposes as the original bond; and any judgment rendered and execution issued against the principal and sureties therein shall be as valid and binding and of as full force and effect as if the original bond had been produced in court in said action at law.

History: Laws 1893, ch. 56, § 6; C.L. 1897, § 3191; Code 1915, § 520; C.S. 1929, § 17-116; 1941 Comp., § 10-210; 1953 Comp., § 5-2-10.

10-2-11. [Recording fees; payment by officer.]

The county clerk of each of the several counties shall be entitled to a fee of two dollars and fifty cents (\$2.50) for filing and recording each bond of a county officer, and one dollar [(\$1.00)] for filing and recording each bond of a precinct officer; the fees for such filing and record to be paid by the officer filing the same, at the time of such filing.

History: Laws 1893, ch. 56, § 7; C.L. 1897, § 3192; Code 1915, § 521; C.S. 1929, § 17-117; 1941 Comp., § 10-211; 1953 Comp., § 5-2-11.

10-2-12. [Insufficient bond of county or precinct officer; new bond required; failure to provide; procedure; decree of vacancy by district court.]

It shall be the duty of the board of county commissioners of each county at each regular meeting thereof on the first day of each meeting to examine and inquire into the sufficiency of all the official bonds given or to be given by any county or precinct officer as required by law, and if it shall appear that any one or more of the securities on the official bond of any county officer has or have removed from the county, died, or become insolvent, or of doubtful solvency, the said board of county commissioners shall cause such county or precinct officer to be summoned to appear before the said board on a day to be named in said summons, to show cause why he should not be required to give a new bond with sufficient security, and if at the appointed time he shall fail to satisfy said board as to the sufficiency of the present security, an order shall be entered of record by said board requiring such county or precinct officer, to file in the office of the county clerk within twenty days, a new bond to be approved as required by law,

unless the number and pecuniary ability of other securities on said bond shall be such as to satisfy the board that the bond is sufficient, notwithstanding one or more of the securities on said bond may have removed, be dead, insolvent or of doubtful solvency, in which case the bond in question may be, in the discretion of the board, held sufficient. In the event any such bond is found insufficient, and a new bond is not filed as ordered, the fact shall be certified by the board of county commissioners to the district court of the county, and shall also be certified to the district attorney of the judicial district wherein such county is located; and it shall thereupon become the duty of the district attorney to cause a hearing to be had in said district court for the purpose of adjudicating and declaring a vacancy in such office, in the event the district court determines, after a hearing, that the bond is in fact insufficient, and such officer fails within five days after the district court has so found to file a new bond with sufficient surety as required by law. Upon the entry of such decree of vacancy it shall thereupon become the duty of the appointing power to fill such office in the manner provided by law.

History: Laws 1876, ch. 1, § 37; C.L. 1884, § 368; C.L. 1897, § 687; Code 1915, § 1213; C.S. 1929, § 33-4227; Laws 1939, ch. 57, § 1; 1941 Comp., § 10-212; 1953 Comp., § 5-2-12.

10-2-13. Short title.

Sections 10-2-13 through 10-2-16 NMSA 1978 may be cited as the "Surety Bond Act".

History: 1953 Comp., § 5-2-13, enacted by Laws 1978, ch. 132, § 1.

10-2-14. Definitions.

As used in the Surety Bond Act [10-2-13 to 10-2-16 NMSA 1978]:

- A. "department" means the general services department;
- B. "director" means the director of the risk management division of the department;
- C. "employee" means any officer or employee of the state, including elected or appointed officials and persons acting on behalf or in service of a state agency in any official capacity whether with or without compensation, but the term does not include an independent contractor;
- D. "secretary" means the secretary of general services;
- E. "state agency" means the state or any of its branches, agencies, departments, boards, instrumentalities or institutions;
- F. "surety bond coverage" means:

(1) a schedule or blanket corporate surety bond payable to the state and conditioned on the faithful performance of the duties of each employee during his employment or term of office or until his successor is elected or appointed and is qualified and on a proper accounting for all money and property in his official capacity as a state employee; or

(2) a certificate of surety bond coverage issued by the director covering all or any part of the risk set forth in Paragraph (1) of this subsection; and

G. "covered educational entity" means a school district as defined in Section 22-1-2 NMSA 1978 or an educational institution established pursuant to Chapter 21, Article 13, 16 or 17 [repealed] NMSA 1978 which requests and is granted surety bond coverage from the risk management division of the general services department, if the coverage is commercially unavailable; except that coverage shall be provided to a school district only through the public school group insurance authority or its successor unless the district has been granted a waiver by the authority or the authority is not offering the coverage for the fiscal year for which the division offers its coverage. A local school district to which the division may provide coverage may provide for marketing and servicing to be done by licensed insurance agents who shall receive reasonable compensation for their services.

History: 1953 Comp., § 5-2-14, enacted by Laws 1978, ch. 132, § 2; 1984, ch. 49, § 1; 1986, ch. 102, § 1.

10-2-15. Surety bond coverage.

A. The department shall provide surety bond coverage for all employees. Whenever an employee is required by another law to post bond or surety as a prerequisite to entering employment or assuming office, the requirement is met when coverage is provided for the office or position under the provisions of the Surety Bond Act [10-2-13 to 10-2-16 NMSA 1978]. Notwithstanding any other provisions of law, no state agency or employee shall purchase any employee surety bond other than pursuant to the provisions of the Surety Bond Act.

B. The secretary shall prescribe the amount of surety bond coverage by class of employee.

C. All or any part of the amount of surety bond coverage prescribed by the secretary may be covered by a schedule or blanket corporate surety bond.

D. The department may provide coverage for employees of covered educational entities through insurance, self-insurance or a combination thereof.

History: 1953 Comp., § 5-2-15, enacted by Laws 1978, ch. 132, § 3; 1986, ch. 102, § 2.

10-2-16. Surety bond fund.

A. There is created in the state treasury a "surety bond fund".

B. Money deposited in the surety bond fund may be expended by the department:

- (1) to provide surety bond coverage;
- (2) to create a retention fund to cover all or any portion of the surety bond risks of state agencies and covered educational entities;
- (3) to pay claims of state agencies and covered educational entities covered by a surety bond certificate of coverage issued by the department; and
- (4) to pay any costs and expenses of carrying out the provisions of this section.

C. Claims against the surety bond fund shall be made in accordance with a certificate of coverage issued by the department to each state agency and covered educational entity. If the secretary has reason to believe that the surety bond fund would be exhausted by the payment of all claims allowed against the fund during a particular state fiscal year, the amounts paid for each claim shall be prorated with each state agency and covered educational entity receiving an amount equal to the percentage that its claims bear to the total of claims outstanding and payable from the fund. Any amounts due and unpaid as a result of such proration shall be paid in the following fiscal years.

D. The department shall collect or transfer funds from each state agency and covered educational entity to cover costs of coverage of employees of the agency as required by this section. Money collected or transferred from a state agency or covered educational entity pursuant to this subsection shall be deposited in the surety bond fund. Income from the surety bond fund shall be credited to the fund.

E. The department may provide individual surety bond coverage protecting employees who are employers or supervisors from personal losses for which they may be responsible, which losses were caused by the lack of honesty or faithful performance of employees under their supervision or control.

F. The department shall have the right to recover from a public employee for any loss under the Surety Bond Act [10-2-13 to 10-2-16 NMSA 1978] for which the public employee was responsible.

G. The risk management advisory board shall review:

- (1) specifications for all surety bond coverage to be purchased by the department;

(2) the form and legal sufficiency of any surety bond coverage to be purchased by the department; and

(3) the form, purpose and content of any surety bond certificate of coverage to be issued by the director.

History: 1953 Comp., § 5-2-16, enacted by Laws 1978, ch. 132, § 4; 1986, ch. 102, § 3; 1989, ch. 324, § 4; 1996 (1st S.S.), ch. 3, § 2; 2000, ch. 27, § 1.

10-2-17. Repealed.

ARTICLE 3

Vacancies in Local Offices

10-3-1. Circumstances causing vacancy in local office.

Any office of a political subdivision of the state subject to election by the qualified electors within the political subdivision becomes vacant under any of the following circumstances:

- A. by resignation or death of the party in office;
- B. removal of the officer as provided by Sections 10-4-1 through 10-4-29 NMSA 1978;
- C. failure of the officer to qualify as provided by law;
- D. expiration of the term of office when no successor has been chosen as provided by law;
- E. when the officer removes from the area from which the officer was elected to represent and, in case of an officer serving pursuant to an appointment, when the officer removes from the area the officer was appointed to represent;
- F. absence from the political subdivision in which the officer serves for six consecutive months; but this provision does not apply to those officers wherein the law provides that the duties may be discharged by a deputy, when such absence is due to illness or other unavoidable cause;
- G. by an officer accepting and undertaking an employment relationship with the political subdivision in which the officer serves in a position subject to election; or
- H. by an officer taking the oath of office or undertaking to discharge the duties of another incompatible office.

History: Laws 1909, ch. 36, § 3; Code 1915, § 3956; C.S. 1929, § 96-107; 1941 Comp., § 10-301; 1953 Comp., § 5-3-1; 2018, ch. 79, § 81; 2019, ch. 212, § 211.

10-3-2. Recompiled.

10-3-3. Vacancy in county office; appointment.

Whenever any vacancy in any county office in any of the counties of this state, other than a vacancy in the office of county commissioner, occurs by reason of death, resignation or otherwise, it is the duty of the board of county commissioners of the county where such vacancy has occurred to fill the vacancy by appointment, and the appointee shall be entitled to hold the office until the end of the unexpired term of office.

History: Laws 1907, ch. 6, § 2; Code 1915, § 1219; C.S. 1929, § 33-4233; 1941 Comp., § 10-302; 1953 Comp., § 5-3-2; 2019, ch. 212, § 212.

ARTICLE 4

Removal of Local Officers

10-4-1. Local officers subject to removal.

Any officer of a political subdivision of the state elected by the people and any officer appointed to fill out the unexpired term of any such officer may be removed from office on any of the grounds mentioned in and according to the provisions of Sections 10-4-1 through 10-4-29 NMSA 1978.

History: Laws 1909, ch. 36, § 1; Code 1915, § 3954; C.S. 1929, § 96-105; 1941 Comp., § 10-303; 1953 Comp., § 5-3-3; 2018, ch. 79, § 82.

10-4-2. [Causes for removal of local officers.]

The following shall be causes for removal of any officer belonging to the class mentioned in the preceding section [10-4-1 NMSA 1978]:

- A. conviction of any felony or of any misdemeanor involving moral turpitude;
- B. failure, neglect or refusal to discharge the duties of the office, or failure, neglect or refusal to discharge any duty devolving upon the officer by virtue of his office;
- C. knowingly demanding or receiving illegal fees as such officer;
- D. failure to account for money coming into his hands as such officer;
- E. gross incompetency or gross negligence in discharging the duties of the office;

F. any other act or acts, which in the opinion of the court or jury amount to corruption in office or gross immorality rendering the incumbent unfit to fill the office.

History: Laws 1909, ch. 36, § 2; Code 1915, § 3955; C.S. 1929, § 96-106; 1941 Comp., § 10-304; 1953 Comp., § 5-3-4.

10-4-3. [Grand jury accusation.]

An accusation in writing against any officer belonging to the class of officers mentioned in Section 10-4-1 NMSA 1978, charging any of the matters mentioned in this chapter as sufficient ground for removal, may be presented by the grand jury to the district court of the county in or for which the officer accused is elected.

History: Laws 1909, ch. 36, § 4; Code 1914, § 3957; C.S. 1929, § 96-108; 1941 Comp., § 10-305; 1953 Comp., § 5-3-5.

10-4-4. [Form of accusation.]

The accusation must state the offense charged in ordinary and concise language without repetition and in such manner as to enable a person of common understanding to know what is intended.

History: Laws 1909, ch. 36, § 5; Code 1915, § 3958; C.S. 1929, § 96-109; 1941 Comp., § 10-306; 1953 Comp., § 5-3-6.

10-4-5. [Presentment of grand jury accusation; service on defendant; return day.]

The accusation must be presented in open court, and the judge, after receiving the same, must forthwith cause it to be transmitted to the district attorney who must cause a copy thereof to be served upon the defendant and require by written notice that such defendant appear before the district court at a date to be named in the notice, which shall be not less than five nor more than ten days after service of a copy of such notice, and answer the accusation.

History: Laws 1909, ch. 36, § 6; Code 1915, § 3959; C.S. 1929, § 96-110; 1941 Comp., § 10-307; 1953 Comp., § 5-3-7.

10-4-6. [Defendant's appearance or default.]

The defendant must appear at the time appointed in the notice and answer the accusation unless for sufficient cause the court has assigned another date for that purpose. If he does not appear, the court may proceed to hear and determine the accusation in his absence.

History: Laws 1909, ch. 36, § 7; Code 1915, § 3960; C.S. 1929, § 96-111; 1941 Comp., § 10-308; 1953 Comp., § 5-3-8.

10-4-7. [Defendant's answer; grounds.]

The defendant may answer the accusation either by objecting to the sufficiency thereof, or any portion thereof, or by denying the truth of the same.

History: Laws 1909, ch. 36, § 8; Code 1915, § 3961; C.S. 1929, § 96-112; 1941 Comp., § 10-309; 1953 Comp., § 5-3-9.

10-4-8. [Objection for insufficiency; form immaterial.]

If he objects to the legal sufficiency of the accusation, the objection must be in writing, but need not be in any specific form, it being sufficient if it represents intelligibly the ground of the objection.

History: Laws 1909, ch. 36, § 9; Code 1915, § 3962; C.S. 1929, § 96-113; 1941 Comp., § 10-310; 1953 Comp., § 5-3-10.

10-4-9. [Criminal procedure made applicable.]

All matters of procedure not otherwise provided for in this chapter shall be governed by the laws governing criminal procedure.

History: Laws 1909, ch. 36, § 10; Code 1915, § 3963; C.S. 1929, § 96-114; 1941 Comp., § 10-311; 1953 Comp., § 5-3-11.

10-4-10. [Guilty plea; judgment; denial or refusal to plead; trial.]

If the defendant pleads guilty, the court must render judgment of conviction against him. If he denied the matters charged or refuses to answer the accusation, the court must immediately, or at such time as it may appoint, proceed to try the accusation.

History: Laws 1909, ch. 36, § 11; Code 1915, § 3964; C.S. 1929, § 96-115; 1941 Comp., § 10-312; 1953 Comp., § 5-3-12.

10-4-11. [Precedence in trial.]

As soon as the case is at issue, it must be immediately set down for trial and shall have precedence over all other cases on the docket.

History: Laws 1909, ch. 36, § 12; Code 1915, § 3965; C.S. 1929, § 96-116; 1941 Comp., § 10-313; 1953 Comp., § 5-3-13.

10-4-12. [Jury trial required; procedure.]

The trial must be by jury and conducted in all respects in the same manner as a trial on an information or indictment for a misdemeanor.

History: Laws 1909, ch. 36, § 13; Code 1915, § 3966; C.S. 1929, § 96-117; 1941 Comp., § 10-314; 1953 Comp., § 5-3-14.

10-4-13. [Verdict; form.]

The form of verdict of the jury in such cases shall be "guilty" or "not guilty".

History: Laws 1909, ch. 36, § 14; Code 1915, § 3967; C.S. 1929, § 96-118; 1941 Comp., § 10-315; 1953 Comp., § 5-3-15.

10-4-14. [Judgment of removal; entry.]

Upon a conviction the court must pronounce judgment that the defendant be removed from office; and the judgment must be entered upon the minutes assigning therein the causes of removal.

History: Laws 1909, ch. 36, § 15; Code 1915, § 3968; C.S. 1929, § 96-119; 1941 Comp., § 10-316; 1953 Comp., § 5-3-16.

10-4-15. [Attendance of witnesses.]

The district attorney and the defendant are respectively entitled to such process as may be necessary to enforce the attendance of witnesses as upon a trial of an information or indictment.

History: Laws 1909, ch. 36, § 16; Code 1915, § 3969; C.S. 1929, § 96-120; 1941 Comp., § 10-317; 1953 Comp., § 5-3-17.

10-4-16. [Appeal; suspension pending reversal; filling vacancy.]

From a judgment of removal, appeal may be taken to the supreme court in the same manner as from a judgment in a civil action, but until such judgment is reversed, the defendant is suspended from his office, and pending the appeal, the office must be filled as in case of vacancy.

History: Laws 1909, ch. 36, § 17; Code 1915, § 3970; C.S. 1929, § 96-121; 1941 Comp., § 10-318; 1953 Comp., § 5-3-18.

10-4-17. [Presentment of accusation by district attorney; vacation; no grand jury in county.]

The accusation provided for in this chapter may be presented by the district attorney to the judge in vacation or term time at any time when, under the provisions of law there will be no grand jury in the county where the same is presented, for a period of at least twenty days after the presentment of such accusation.

History: Laws 1909, ch. 36, § 18; Code 1915, § 3971; C.S. 1929, § 96-122; 1941 Comp., § 10-319; 1953 Comp., § 5-3-19.

10-4-18. [Duty of district attorney on receipt of evidence.]

Whenever sworn evidence is presented to the district attorney showing that any of the officers of the class provided for in this chapter are guilty of any of the matters herein mentioned as causes for removal, he must present the accusation to the court as provided in the next preceding section [10-4-17 NMSA 1978].

History: Laws 1909, ch. 36, § 19; Code 1915, § 3972; C.S. 1929, § 96-123; 1941 Comp., § 10-320; 1953 Comp., § 5-3-20.

10-4-19. [Presentment by district attorney; supporting affidavits; procedure.]

When the accusation is presented by the district attorney as provided in the preceding section [10-4-18 NMSA 1978], the same must be supported by sworn affidavit or affidavits, and the court must forthwith investigate the matter, and if a jury is in attendance at the time such accusation is presented, the court must order a citation to the defendant and thenceforth the case must proceed as provided in this chapter where the accusation is by a grand jury.

History: Laws 1909, ch. 36, § 20; Code 1915, § 3973; C.S. 1929, § 96-124; 1941 Comp., § 10-321; 1953 Comp., § 5-3-21.

10-4-20. [Procedure for suspension from office.]

If the accusation provided in this chapter, to be presented by the district attorney, is presented at a time when there is no jury in attendance or is presented to the court in vacation, the court, if it deems such action necessary, after ordering a citation to the defendant as provided in the next preceding section [10-4-19 NMSA 1978], may, on application of the district attorney, also order the defendant to appear at a time not less than five nor more than fifteen days after service of such order and at such place as may be mentioned in the order, to show cause why he should not be suspended from office until the matters and things alleged in the accusation have been judicially determined under the provisions of this chapter.

History: Laws 1909, ch. 36, § 21; Code 1915, § 3974; C.S. 1929, § 96-125; 1941 Comp., § 10-322; 1953 Comp., § 5-3-22.

10-4-21. [Order of suspension.]

On the date provided in the order, if the defendant appears and offers proof, the court must hear the testimony presented by the district attorney and the defendant, and if in the judgment of the court there is reasonable ground to believe that the matters and things stated in the accusation will be established upon a trial, he may forthwith enter an order suspending the officer until after final hearing.

History: Laws 1909, ch. 36, § 22; Code 1915, § 3975; C.S. 1929, § 96-126; 1941 Comp., § 10-323; 1953 Comp., § 5-3-23.

10-4-22. [Effect of suspension order.]

The order of suspension shall operate to relieve the officer from all the duties of the office until the matter is finally determined, and he must forthwith vacate the office and turn over all moneys, books, papers and property belonging thereto to the party appointed to serve until such suspension is removed.

History: Laws 1909, ch. 36, § 23; Code 1915, § 3976; C.S. 1929, § 96-127; 1941 Comp., § 10-324; 1953 Comp., § 5-3-24.

10-4-23. [Denial of motion to suspend; dismissal of proceedings.]

If the court concludes that there is not sufficient ground for suspending the officer, it may enter an order denying the motion to suspend him and hold the matter in statu quo until final hearing, or the court may, in its discretion, dismiss the proceedings.

History: Laws 1909, ch. 36, § 24; Code 1915, § 3977; C.S. 1929, § 96-128; 1941 Comp., § 10-325; 1953 Comp., § 5-3-25.

10-4-24. [Default of defendant; effect.]

If the defendant fails to appear and answer the order to show cause why he should not be suspended, the court may proceed in his absence as in this chapter provided.

History: Laws 1909, ch. 36, § 25; Code 1915, § 3978; C.S. 1929, § 96-129; 1941 Comp., § 10-326; 1953 Comp., § 5-3-26.

10-4-25. [Continuance; preliminary investigation required; suspension pending final adjudication.]

Nothing in this chapter shall operate to deprive any defendant of the right to a continuance in any case in which such right would attach in any criminal case as provided by law, but before any case shall be continued, upon application of the defendant, beyond the term of court at which the accusation is presented, or if such

accusation is presented in vacation beyond the first term of court after presentment thereof the court may, upon application of the district attorney, make a preliminary investigation as provided in this chapter and suspend the officer, pending a final adjudication of the matters alleged in the accusation.

History: Laws 1909, ch. 36, § 26; Code 1915, § 3979; C.S. 1929, § 96-130; 1941 Comp., § 10-327; 1953 Comp., § 5-3-27.

10-4-26. [Reinstatement of suspended officer.]

If upon final trial the defendant is found not guilty, he must be reinstated and the party serving during the time of his suspension must immediately vacate the office and return to the defendant all moneys, books, papers and other property in his hands as such officer.

History: Laws 1909, ch. 36, § 27; Code 1915, § 3980; C.S. 1929, § 96-131; 1941 Comp., § 10-328; 1953 Comp., § 5-3-28.

10-4-27. [Payment of salary after reinstatement; compensation of interim officer.]

If an officer has been suspended as provided in this chapter and reinstated after final trial, he shall receive pay for the entire time of his suspension, and the court may make an order to pay the officer serving during the time of such suspension, such reasonable compensation as his services warrant, which shall be paid out of a fund to be designated by the court.

History: Laws 1909, ch. 36, § 28; Code 1915, § 3981; C.S. 1929, § 96-132; 1941 Comp., § 10-329; 1953 Comp., § 5-3-29.

10-4-28. [Officer appointed for suspension period; oath and bond; filling vacancy after final removal.]

When any officer is suspended as provided in this act [chapter], the judge of said court shall appoint some qualified person to discharge the duties of such officer during the period of his suspension, which person shall take the oath and give the bond required of incumbents of such office, and in case the final judgment be for the removal of such accused officer before the expiration of his term, his successor shall be appointed in the manner provided by law for filling vacancies in such office.

History: Laws 1909, ch. 36, § 29; Code 1915, § 3982; Laws 1915, ch. 21, § 1; C.S. 1929, § 96-133; 1941 Comp., § 10-330; 1953 Comp., § 5-3-30.

10-4-29. [Exclusive method of removal.]

No officer belonging to the class mentioned in Section 10-4-1 NMSA 1978 can be removed from office in any manner except according to the provisions of this chapter.

History: Laws 1909, ch 36, § 30; Code 1915, § 3983; C.S. 1929, § 96-134; 1941 Comp., § 10-331; 1953 Comp., § 5-3-31.

ARTICLE 5

Suspension of Certain Officials

10-5-1. Definition.

"Official of any local public body" means every officer, deputy or employee of:

- A. every political subdivision of the state of New Mexico;
- B. the agencies, instrumentalities and institutions of every political subdivision of this state; and
- C. charitable institutions for which appropriations are made by the legislature.

History: 1953 Comp., § 5-3-37.1, enacted by Laws 1957, ch. 254, § 1; 1979, ch. 281, § 1.

10-5-2. Power of secretary to suspend certain officials; grounds for suspension; secretary to take charge of office.

The secretary of finance and administration may summarily suspend any official of any local public body in all cases where an audit conducted by the state auditor, or by personnel of his office, or by an independent auditor employed or approved by the state auditor reveals any of the following:

- A. a fraudulent misappropriation or embezzlement of public money;
- B. fiscal management of an office resulting in violation of law or willful violation of the fiscal regulations of the department of finance and administration for every local public body; or
- C. willful failure to perform any duty imposed by any law which the secretary of finance and administration is charged with enforcing.

Upon such suspension, the secretary of finance and administration may take charge of the office of the persons [person] suspended.

History: 1953 Comp., § 5-3-37.2, enacted by Laws 1957, ch. 254, § 2; 1977, ch. 247, § 37; 1979, ch. 281, § 2; 1980, ch. 151, § 7.

10-5-3. Hearing; testimony.

Within five days after such suspension or within such reasonable time as the person suspended may request, the secretary of finance and administration shall conduct a hearing for the person suspended. At such hearing the person suspended may show cause why such suspension should not be continued. The state auditor, and the employees of his office or the auditors employed by the state auditor to conduct the audit upon which suspension was based, shall appear at the hearing and give testimony.

History: 1953 Comp., § 5-3-37.3, enacted by Laws 1957, ch. 254, § 3; 1977, ch. 247, § 38; 1979, ch. 281, § 3.

10-5-4. Oaths; subpoenas.

The secretary of finance and administration is authorized to administer oaths to persons who testify at such hearing. The secretary may compel the attendance of any person whose testimony may be required or needed at such hearing, and to compel the production of books, papers, documents, records and data necessary thereto. The official requesting the hearing shall have the right to make timely request to the secretary that subpoenas for necessary and material witnesses or for the production of documents and papers be issued, and the same shall be issued. The secretary and such employees of the department as may be designated by the secretary are authorized to issue subpoenas for persons whose testimony is required, and subpoenas so issued shall be served by persons authorized by law to make such service in civil actions, and if served by a sheriff or deputy, such service shall be made without cost.

History: 1953 Comp., § 5-3-37.4, enacted by Laws 1957, ch. 254, § 4; 1977, ch. 247, § 39.

10-5-5. Repealed.

10-5-6. Continuance of suspension after hearing; discontinuance of salary.

After such hearing, the secretary of finance and administration shall have discretion to continue such suspension for any of the causes above numbered, and if such suspension is continued no salary shall be received by such official during such suspension unless reinstated by the order of the district court as hereinafter provided.

History: 1953 Comp., § 5-3-37.6, enacted by Laws 1957, ch. 254, § 6; 1977, ch. 247, § 40.

10-5-7. Petition for reinstatement; order to show cause; result.

A. If after hearing before the secretary of finance and administration such suspension is continued, the person suspended shall have the right to appeal to the district court of the county where he was serving as an official within thirty days after entry of the order of suspension.

B. Upon appeal, the court shall set aside an order of suspension only if it is found to be:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence in the record; or
- (3) otherwise not in accordance with the law.

History: 1953 Comp., § 5-3-37.7, enacted by Laws 1957, ch. 254, § 7; 1977, ch. 247, § 41; 1979, ch. 281, § 4.

10-5-8. Control of office; bond of agent in charge; discretionary reinstatement; institution of removal proceedings.

Whenever the secretary of finance and administration assumes control of any office as hereinabove provided, the secretary may assign any employee of the department of finance and administration to perform the duties of the official suspended by the secretary.

The secretary of finance and administration may reinstate a suspended official of any local public body whenever the suspended official has made a proper showing satisfactory to the secretary that he is able and willing to conduct his office as provided by law, and that no loss will be suffered by the local public body.

In all cases where there shall be grounds for removal of such official, the secretary of finance and administration may cause removal proceedings to be instituted and prosecuted by the attorney general or district attorney, in the manner now provided by law for the institution and prosecution of such proceedings by the district attorney.

History: 1953 Comp., § 5-3-37.8, enacted by Laws 1957, ch. 254, § 8; 1977, ch. 247, § 42; 1979, ch. 281, § 5.

10-5-9. Suspended official to deliver money and records to secretary; failure or refusal; criminal penalty.

A. Upon written order of suspension by the secretary of finance and administration, the official suspended shall immediately deliver to the secretary all money, records and other property of the office in his charge, for which the secretary shall give a receipt.

B. If upon order of the secretary a suspended official of any local public body refuses or fails to deliver to the secretary all money, records and other property of the local public body, the secretary may invoke the aid of the court to require delivery of money, records and other property of the local public body.

C. It shall be a petty misdemeanor for an official of any local public body to willfully fail or refuse to deliver all money, records and other property of the local public body to the secretary upon order in accordance with the provisions of this section. Upon conviction, the official shall be sentenced to not more than six months in the county jail and fined not more than five thousand dollars (\$5,000) or both such imprisonment and fine in the discretion of the judge.

History: 1953 Comp., § 5-3-37.9, enacted by Laws 1957, ch. 254, § 9; 1977, ch. 247, § 43; 1979, ch. 281, § 6.

ARTICLE 6

Abandonment of Public Office or Employment

10-6-1. [Effect of public officer or employee entering military service.]

Any incumbent of any public office or employment of the state of New Mexico, or of any of its departments, agencies, counties, municipalities or political subdivisions whatsoever, who shall heretofore have entered or who hereafter shall enter military, naval, United States merchant marine, or other armed service of the United States of America, and who by reason of the duties imposed upon him in such service shall fail to devote his time to the performance in person of the duties of such office or employment shall, by entering or continuing in such service, be deemed to have waived and renounced the salary of, and to have abandoned such office or employment until, but only until, he shall have been relieved from active duty in such service and shall have resumed the personal performance of the duties of such public office or employment.

History: 1941 Comp., § 10-338, enacted by Laws 943, ch. 123, § 1; 1953 Comp., § 5-3-38.

10-6-2. [Temporary appointments.]

The officer, agent, employee, board or other agency of the state of New Mexico, or of its departments, agencies, counties, municipalities or political subdivisions, who is by law authorized to fill ordinary vacancies in the public office or employment so temporarily abandoned as provided in Section 1 [10-6-1 NMSA 1978] hereof is hereby authorized, empowered and directed to appoint to the public office or employment, so abandoned as provided in Section 1 hereof, another person who shall receive the salary and perform the duties thereof until, but only until, the former incumbent shall have been

relieved from active duty in the armed services and shall have resumed the personal discharge of the duties of such public office or employment.

History: 1941 Comp., § 10-339, enacted by Laws 1943, ch. 123, § 2; 1953 Comp., § 5-3-39.

10-6-3. [Permanent abandonment of office, what constitutes.]

Any incumbent of any public office or employment of the state of New Mexico, or of any of its departments, agencies, counties, municipalities or political subdivisions whatsoever, who shall accept any public office or employment, whether within or without the state, other than service in the armed forces of the United States of America, for which a salary or compensation is authorized, or who shall accept private employment for compensation and who by reason of such other public office or employment or private employment shall fail for a period of thirty successive days or more to devote his time to the usual and normal extent during ordinary working hours to the performance of the duties of such public office and employment, shall be deemed to have resigned from and to have permanently abandoned his public office and employment.

History: 1941 Comp., § 10-340, enacted by Laws 1943, ch. 123, § 3; 1953 Comp., § 5-3-40.

10-6-4. [Filling vacancy when office permanently abandoned.]

The officer, agent, employee, board or other agency of the state, or of its departments, agencies, counties, municipalities or political subdivisions, who is by law authorized to fill ordinary vacancies in the public office or employment so permanently abandoned, as provided in Section 3 [10-6-3 NMSA 1978] hereof, is hereby authorized, empowered and directed to appoint to such public office or employment some qualified person who shall thereafter receive the salary and perform the duties thereof until the expiration of the term of the former incumbent or until his successor shall have been elected, appointed or otherwise chosen and qualified or until the former incumbent shall have been relieved from active duty in the armed services and shall have resumed the personal discharge of the duties of such public office or employment.

History: 1941 Comp., § 10-341, enacted by Laws 1943, ch. 123, § 4; 1953 Comp., § 5-3-41.

10-6-5. Definition of incompatible office; service and employment.

Any public office or service, other than service in the armed forces of the United States of America, and any private employment of the nature and extent designated in Section 10-6-3 NMSA 1978 is hereby declared to be incompatible with the tenure of public office or employment.

History: 1941 Comp., § 10-342, enacted by Laws 1943, ch. 123, § 5; 1953 Comp., § 5-3-42; Laws 1977, ch. 56, § 1; 1979, ch. 344, § 1.

10-6-6. [Penalties.]

It shall be unlawful for any person who has temporarily or permanently abandoned his public office or employment, as herein defined and described, to receive compensation from public money on account of services or periods of time in his or her public office or employment accruing after such temporary or permanent abandonment and, in the case of temporary abandonment as herein defined, before the resumption of such office or employment as described in Section 1 [10-6-1 NMSA 1978] hereof. Any person receiving or paying compensation in violation of this section shall be punished by a fine of not less than two hundred fifty dollars (\$250), nor more than one thousand dollars (\$1,000), or by imprisonment for not more than one year, or by both such fine and imprisonment.

History: 1941 Comp., § 10-343, enacted by Laws 1943, ch. 123, § 6; 1953 Comp., § 5-3-43.

ARTICLE 7

Compensation and Working Conditions Generally

10-7-1. [Temporary transfers of employees from one office, department or institution to another.]

The governor is further authorized, subject to the approval of the state board of finance, to transfer, temporarily from one office, department or institution to another office, department or institution, such employees as in his judgment may be necessary or convenient at any time to further the economical and efficient conduct of the state government and without regard to the appropriation out of which such employee may be paid; provided, that the governor shall have the power to designate and employ a personnel director who shall assist him in the performance of the duties imposed upon the governor by the terms of this section.

History: Laws 1935, ch 70, § 3; 1941 Comp., § 10-403; Laws 1943, ch. 10, § 3; 1953 Comp., § 5-4-3.

10-7-2. Salaries and wages; rules; direct deposit.

A. Persons employed by and on behalf of the state, except those employed by institutions of higher education, including all officers, shall receive their salaries or wages for services rendered in accordance with rules issued by the department of finance and administration.

B. The department of finance and administration may require the automatic direct deposit of a state employee's salary or wages into the employee's account, or into an account established by the department on behalf of the employee, in a financial institution authorized by the United States or one of the several states to receive deposits in the United States. The department of finance and administration shall adopt rules governing the automatic direct deposit of salary or wages. Those rules shall provide the circumstances under which a state employee may, with the approval of the department of finance and administration, withdraw from or elect not to participate in automatic direct deposit.

History: Laws 1933, ch. 157, § 1; 1941 Comp., § 10-405; 1953 Comp., § 5-4-5; Laws 1961, ch. 70, § 1; 1975, ch. 128, § 1; 2005, ch. 93, § 1.

10-7-3. [Inapplicability of act.]

Nothing in this act [10-7-2, 10-7-3 NMSA 1978] shall apply to those officials or employees receiving their salaries or wages at a time as fixed by any provision of the constitution of the state of New Mexico.

History: Laws 1933, ch. 157, § 2; 1941 Comp., § 10-406; 1953 Comp., § 5-4-6.

10-7-4. Group insurance; cafeteria plan; contributions from public funds.

A. All state departments and institutions and all political subdivisions of the state, excluding municipalities, counties and political subdivisions of the state with twenty-five employees or fewer, shall cooperate in providing group term life, medical or disability income insurance for the benefit of eligible employees or salaried officers of the respective departments, institutions and political subdivisions.

B. The group insurance contributions of the state or any of its departments or institutions, including institutions of higher education, shall be made as follows:

(1) at least seventy-five percent of the cost of the insurance of an employee whose annual salary is less than fifteen thousand dollars (\$15,000);

(2) at least seventy percent of the cost of the insurance of an employee whose annual salary is fifteen thousand dollars (\$15,000) or more but less than twenty thousand dollars (\$20,000);

(3) at least sixty-five percent of the cost of the insurance of an employee whose annual salary is twenty thousand dollars (\$20,000) or more but less than twenty-five thousand dollars (\$25,000); and

(4) at least sixty percent of the cost of the insurance of an employee whose annual salary is twenty-five thousand dollars (\$25,000) or more.

C. The group insurance contributions of school districts and charter schools shall be made as follows:

(1) at least eighty percent of the cost of the insurance of an employee whose annual salary is less than fifty thousand dollars (\$50,000);

(2) at least seventy percent of the cost of the insurance of an employee whose annual salary is fifty thousand dollars (\$50,000) or more but less than sixty thousand dollars (\$60,000); and

(3) at least sixty percent of the cost of the insurance of an employee whose annual salary is sixty thousand dollars (\$60,000) or more.

D. Effective July 1, 2004, the group insurance contributions of the state or any of its executive, judicial or legislative departments, including agencies, boards or commissions, shall be made as follows; provided that the contribution percentage shall be the same for all affected public employees in a given salary bracket:

(1) up to eighty percent of the cost of the insurance of an employee whose annual salary is less than thirty thousand dollars (\$30,000);

(2) up to seventy percent of the cost of the insurance of an employee whose annual salary is thirty thousand dollars (\$30,000) or more but less than forty thousand dollars (\$40,000); and

(3) up to sixty percent of the cost of the insurance of an employee whose annual salary is forty thousand dollars (\$40,000) or more.

E. Except as provided in Subsection H of this section, effective July 1, 2005, the group insurance contributions of the state or any of its executive, judicial or legislative departments, including agencies, boards or commissions, shall be made as follows; provided that the contribution percentage shall be the same for all affected public employees in a given salary bracket:

(1) up to eighty percent of the cost of the insurance of an employee whose annual salary is less than fifty thousand dollars (\$50,000);

(2) up to seventy percent of the cost of the insurance of an employee whose annual salary is fifty thousand dollars (\$50,000) or more but less than sixty thousand dollars (\$60,000); and

(3) up to sixty percent of the cost of the insurance of an employee whose annual salary is sixty thousand dollars (\$60,000) or more.

F. Effective July 1, 2013, the employer shall pay one hundred percent of basic life insurance premiums for employees, and employees who choose to carry disability insurance shall pay one hundred percent of the premium.

G. The state shall not make any group insurance contributions for legislators. A legislator shall be eligible for group benefits only if the legislator contributes one hundred percent of the cost of the insurance.

H. An employer shall pay one hundred percent of the employee group insurance contributions due and payable on or after July 1, 2016 for an employee who is injured while performing a public safety function or duty and, as a result of the injury, is placed on approved workers' compensation leave.

I. As used in this section, "cost of the insurance" means the premium required to be paid to provide coverages. Any contributions of the political subdivisions of the state, except the public schools and political subdivisions of the state with twenty-five employees or fewer, shall not exceed sixty percent of the cost of the insurance.

J. When a public employee elects to participate in a cafeteria plan as authorized by the Cafeteria Plan Act [10-7-14 to 10-7-19 NMSA 1978] and enters into a salary reduction agreement with the governmental employer, the provisions of Subsections B through G of this section with respect to the maximum contributions that can be made by the employer are not violated and will still apply. The employer percentage or dollar contributions as provided in Subsections B through E of this section shall be determined by the employee's gross salary prior to any salary reduction agreement.

K. Any group medical insurance plan offered pursuant to this section shall include effective cost-containment measures to control the growth of health care costs. The responsible public body that administers a plan offered pursuant to this section shall report annually by September 1 to appropriate interim legislative committees on the effectiveness of the cost-containment measures required by this subsection.

L. Within available revenue, school districts, charter schools and participating entities pursuant to the Public School Insurance Authority Act [Chapter 22, Article 29 NMSA 1978] may contribute up to one hundred percent of the cost of the insurance of all employees and institutions of higher education may contribute up to eighty percent of the cost of the insurance of all employees.

History: Laws 1941, ch. 188, § 1; 1941 Comp., § 10-416; 1953 Comp., § 5-4-12; Laws 1965, ch. 181, § 1; 1969, ch. 86, § 1; 1970, ch. 73, § 1; 1973, ch. 387, § 1; 1981, ch. 151, § 1; 1986, ch. 84, § 1; 1987, ch. 256, § 1; 1987, ch. 289, § 7; 1989, ch. 27, § 1; 1989, ch. 231, § 9; 1991, ch. 191, § 2; 1994, ch. 62, § 18; 1999, ch. 44, § 1; 2003, ch. 412, § 1; 2004, ch. 82, § 1; 2013, ch. 186, § 1; 2016, ch. 39, § 1; 2023, ch. 83, § 1.

10-7-4.1. Children, youth and families department; group life insurance.

Notwithstanding the provisions of Section 10-7-4 NMSA 1978 and in addition to all other benefits provided juvenile correctional officers and correctional officer specialists, the children, youth and families department shall provide life insurance coverage in the amount of twenty-five thousand dollars (\$25,000) for each juvenile correctional officer and correctional officer specialist, to be paid to his designated beneficiary. The coverage shall include double indemnity provisions for death incurred in the line of duty. The coverage shall be provided by a group term insurance policy, the premium for which shall be paid out of state funds appropriated to the children, youth and families department.

History: Laws 1990, ch. 29, § 1; 1992, ch. 57, § 18.

10-7-4.2. Group insurance; counties and municipalities; contributions; definition; exemption from state plan.

A. All municipalities, counties and political subdivisions with twenty-five employees or fewer shall cooperate in providing group term life, medical or disability income insurance for the benefit of eligible employees or salaried officers of the respective departments, institutions and subdivisions.

B. Municipalities, counties and political subdivisions with twenty-five employees or fewer may contribute any amount up to one hundred percent of the cost of the insurance. As used in this section, "cost of the insurance" means the premium required to be paid to provide coverages.

C. When a public employee elects to participate in a cafeteria plan as authorized by the Cafeteria Plan Act [10-7-14 to 10-7-19 NMSA 1978] and enters into a salary reduction agreement with a municipal or county employer, the provisions of Subsection B of this section with respect to the maximum contributions that can be made by the employer are not violated and will still apply. The employer contributions as provided in Subsection B of this section shall be determined by the employee's gross salary prior to any salary reduction agreement.

D. Any group medical insurance plan offered pursuant to this section shall include effective cost-containment measures to control the growth of health care costs. The responsible public body that administers a plan offered pursuant to this section shall report annually by September 1 to appropriate interim legislative committees on the effectiveness of the cost-containment measures required by this subsection.

E. Exempt from the provisions of Section 10-7-4 NMSA 1978 are all municipalities, counties and political subdivisions with twenty-five employees or fewer.

History: Laws 1991, ch. 191, § 1; 1994, ch. 62, § 19; 1999, ch. 44, § 2.

10-7-5. [Premiums; deduction from salaries.]

That said departments and institutions and all political subdivisions of the state shall be authorized to deduct from said employees' salaries, who may elect to be covered by group or other insurance under this act [10-7-4, 10-7-5, 10-7-6 NMSA 1978], for the payment of premiums on said policies of insurance.

History: Laws 1941, ch. 188, § 2; 1941 Comp., § 10-417; 1953 Comp., § 5-4-13.

10-7-5.1. Local public bodies; group health and group life insurance.

A. Every local public body that is an affiliated public employer under the Public Employees Retirement Act [Chapter 10, Article 11 NMSA 1978] and that provides a group health insurance plan to its employees by any method shall offer such insurance to any retiree who was immediately prior to retirement an employee of that affiliated public employer, is a retired member under the Public Employees Retirement Act and upon retirement wishes to continue to be insured under that affiliated public employer's health insurance plan.

B. Every local public body that is an affiliated public employer under the Public Employees Retirement Act and that provides a group life insurance plan to its employees by any method may offer to any employee retiring after July 1, 1990, a life insurance plan to such retiree who was immediately prior to retirement an employee of that affiliated public employer, is a retired member under the Public Employees Retirement Act and upon retirement wishes to be insured under that affiliated public employer's life insurance plan for retirees. Premiums may be paid by deduction from the retirement warrant of the retired employee.

C. Each of those affiliated public employers shall also offer such health insurance to the survivors of individuals who immediately prior to retirement were employees of that affiliated public employer who are survivor pension beneficiaries under the Public Employees Retirement Act and who wish to continue to be insured under that affiliated public employer's health insurance plan upon the employee's death.

History: Laws 1989, ch. 347, § 1; 1990, ch. 128, § 1.

10-7-6. [Repeal and saving clause.]

All acts and parts of acts in conflict herewith, are hereby repealed. Provided that the provisions of this act [10-7-4, 10-7-5, 10-7-6 NMSA 1978] shall not affect any contract of group insurance now maintained or in force; nor shall the provisions of this act repeal, alter or amend any special statute authorizing the carrying of such insurance by the state of New Mexico or any of its departments or the political subdivisions of the state.

History: Laws 1941, ch. 188, § 3; 1941 Comp., § 10-418; 1953 Comp., § 5-4-14.

10-7-7. [Old-age benefits under Social Security Act.]

That in the event the government of the United States through amendment of the Social Security Act of the United States and particularly Title 8 thereof or by any other similar law of congress which authorizes or permits the payment by states of [or] their political subdivisions to become employers to the extent that they may cover employees of the respective states and the political subdivisions thereof under Title 8 of the Social Security Act of the United States or any amendment thereto or any other similar act of congress whereby old-age benefits or pensions may be established for said employees; then, and in that event, the state of New Mexico, its departments, municipalities in said state and the political subdivisions of the said state may [be] and hereby are authorized and directed to comply with the provisions of the said act of congress to the extent that all members of state and municipal police forces, and all paid members and employees of municipal fire departments within this state may receive any and all benefits with respect to such old-age benefit or pension provision of said federal law, and the state, its municipalities, and political subdivisions are hereby authorized and directed to pay on account of such employees the rate of tax which said federal law may levy and assess for said purposes, and to withhold and make payments on account of the employee's contributions required by such act of congress pertaining to said employees herein mentioned.

History: Laws 1939, ch. 138, § 1; 1941 Comp., § 10-419; 1953 Comp, § 5-4-15.

10-7-8. Annuities and deferred compensation plans; reductions from gross salaries.

State agencies, state or educational institutions and political subdivisions of the state shall be authorized to enter into salary reduction agreements with their employees for the purpose of purchasing annuity contracts and deferred compensation plans, offered by insurance companies, banks and savings and loan associations authorized to transact business in New Mexico, when the salary reduction will result in an income tax deferment for the employees under federal law. The salary reduction agreement shall provide that the employer is not liable to the employee in the event the plan provider becomes insolvent or income tax on the salary reductions is not deferred. Such annuity contracts and deferred compensation plans must be approved by the secretary of general services for state agencies and the governing body of political subdivisions for such political subdivisions. State agencies, state or educational institutions and political subdivisions of the state shall further be authorized to deposit or invest funds deducted from an employee's salary or wages pursuant to any such approved deferred compensation plan. Any funds deducted from an employee's salary or wages pursuant to any such deferred compensation plan shall not be subject to any state law regulating or restricting the deposit or investment of public funds.

History: 1953 Comp., § 5-4-18, enacted by Laws 1968, ch. 49, § 1; 1977, ch. 65, § 1; 1978, ch 37, § 1; 1981, ch. 155, § 11; 1983, ch. 301, § 20.

10-7-9. Minimum salary rate.

Every state employee and every person regularly employed at a state educational institution named in Article 12, Section 11 of the New Mexico constitution, except student employees as defined by the board of educational finance, shall receive a salary at a rate equal to at least four hundred dollars (\$400) per month.

History: 1953 Comp., § 5-4-51, enacted by Laws 1974, ch. 10, § 2.

10-7-10. Accumulated sick leave; payment of certain excess amounts.

An employee of the state who has accumulated six hundred hours of unused sick leave shall be entitled to be paid for additional unused sick leave at a rate equal to fifty percent of his hourly wage multiplied by the number of hours of unused sick leave over six hundred hours, not to exceed one hundred twenty hours of such sick leave in any one fiscal year. Payment for sick leave as authorized by this section shall be paid only on either the payday immediately following the first full pay period in January or the first full pay period in July. An eligible employee shall notify his agency of his desired payment date and the number of unused sick leave hours he wishes to convert pursuant to this section before payment can be authorized.

History: Laws 1983, ch. 150, § 1; 1984, ch. 6, § 1.

10-7-11. Accumulated sick leave prior to retirement; payment of certain excess amounts.

Immediately prior to retirement from state service, an employee of the state who has accumulated six hundred hours of unused sick leave shall be entitled to be paid for additional unused sick leave at a rate equal to fifty percent of his hourly wage multiplied by the number of hours of unused sick leave over six hundred hours, not to exceed four hundred hours of such sick leave.

History: Laws 1983, ch. 150, § 2.

10-7-12. Government cost savings incentive award.

A. As used in this section:

- (1) "actual cost savings" means realized, not projected, cost savings substantiated by documentation;
- (2) "award" means a government cost savings incentive award;
- (3) "economy" includes maximizing the purchasing value of public funds;

(4) "efficiency" includes a significant reduction in paperwork and the elimination of unnecessary rules, regulations and procedures; and

(5) "state agency" means any office, department, institution, school district, board, commission, court, district attorney, council or committee of state government which receives appropriations and is authorized expenditures pursuant to a general appropriation act.

B. A state agency may provide an award to any employee whose accomplishment or written suggestion beyond the scope of his responsibility contributes to the efficiency, economy or improvement of agency operations and results in actual cost savings to the agency.

C. An award pursuant to this section shall:

(1) be paid only from actual cost savings;

(2) be paid only on the payday immediately following the first full pay period succeeding the award or immediately prior to separation or transfer from the agency; and

(3) be paid one time based on actual cost savings in an amount not to exceed the lesser of:

(a) two thousand dollars (\$2,000); or

(b) an amount equal to ten percent of the actual cost savings attributable to the employee in the twelve-month period immediately preceding the award or a lesser period preceding the award, if appropriate.

D. Documentation substantiating awards pursuant to this section shall be submitted to the state personnel board which shall, as necessary or appropriate, prescribe regulations and review proposed awards made under this section and procedures used in making the awards to verify the cost savings for which the awards were made.

E. The state personnel board shall report by September 1 of each year to the legislative finance committee all awards paid and savings realized under this act [this section].

History: Laws 1986, ch. 39, § 1.

10-7-13. Leave; coordination with workmen's compensation benefits.

A. Payment of leave-time benefits in excess of an amount which results, when combined with workmen's compensation weekly benefits, in an injured state or

university worker receiving in any month more than one hundred percent of that workman's monthly base salary is not permitted; provided that payment of accrued vacation leave time and compensating leave-time benefits may be permitted without regard to this limitation where the workman is finally determined to be permanently totally disabled or resigns his state or university employment.

B. As used in this section:

(1) "leave time" includes time accrued as sick leave, vacation leave and compensating leave; and

(2) "monthly base salary" means the full monthly salary to be paid the employee if he had worked as scheduled for the entire month, as established by the state personnel board's official salary schedule, or the official salary schedule of any state agency or university in effect during the last pay period during which the employee worked, exclusive of all overtime pay and the value of all accrued leave time and all fringe benefits of any kind.

C. The state personnel board shall send a copy of this law to all state agencies and universities which have salaried employees who do not fall under the jurisdiction of the state personnel board.

History: Laws 1987, ch. 258, § 1.

10-7-14. Short title.

Sections 1 through 6 [10-7-14 to 10-7-19 NMSA 1978] of this act may be cited as the "Cafeteria Plan Act".

History: Laws 1987, ch. 289, § 1.

10-7-15. Definitions.

As used in the Cafeteria Plan Act [10-7-14 to 10-7-19 NMSA 1978]:

A. "agency" means the state of New Mexico, any of its political subdivisions, tax supported educational institutions or a local public school district;

B. "cafeteria plan" means a written plan as defined in 26 U.S.C. 125 under which all participants are eligible public employees and the participants are allowed to choose among two or more benefits consisting of cash and statutory nontaxable benefits;

C. "eligible public employee" means any public employee who elects to participate in a cafeteria plan as provided in the Cafeteria Plan Act but does not include individuals engaged as independent contractors or whose periods of employment are on an

intermittent or irregular basis or who are employed on less than half-time basis unless the individual is employed in a position classified as a job-sharing position;

D. "public employee" means any officer or employee of an agency to whom a salary is paid from public funds for services rendered;

E. "salary reduction agreement" means a written agreement between an eligible public employee and his agency employer whereby the employee agrees to reduce his or her salary by a stated amount or an amount equal to the cost of benefits selected under a cafeteria plan and the agency agrees to contribute that amount to cover the cost of the benefits selected by the eligible public employee; and

F. "statutory nontaxable benefits" means any benefits that are not includable in the gross income of the public employee by reason of an express provision of the Internal Revenue Code, and such benefits may include but not be limited to: group life insurance not exceeding fifty thousand dollars (\$50,000); disability benefits; accident and health plans; group legal services plans and dependent care services.

History: Laws 1987, ch. 289, § 2.

10-7-16. Cafeteria plan; optional.

Notwithstanding any other benefit plan or group insurance plan offered to an eligible public employee, any agency may adopt a cafeteria plan, as defined in 26 U.S.C. 125 et seq. and regulations made thereunder, for the benefit of eligible public employees and their dependents.

History: Laws 1987, ch. 289, § 3.

10-7-17. Salary reduction agreements.

A. Contributions to cover the cost of benefits provided under a cafeteria plan authorized by Section 3 [10-7-16 NMSA 1978] of the Cafeteria Plan Act shall be paid by the eligible public employee pursuant to a salary reduction agreement. The agency is authorized to pay part or all of the administrative expenses therefor.

B. The agency may agree with an eligible public employee that the employee's salary payment shall be reduced by an amount equal to the cost of benefits selected and to be paid for by the eligible public employee. Such reduction shall be made pursuant to salary reduction agreements entered into between eligible public employees and the agency.

History: Laws 1987, ch. 289, § 4.

10-7-18. Status of salary reduction.

A. The amount by which an eligible public employee's salary is reduced pursuant to a salary reduction agreement shall continue to be included as compensation for the purpose of computing retirement benefits under the Public Employees Retirement Act [Chapter 10, Article 11 NMSA 1978], the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] and the Judicial Retirement Act [Chapter 10, Article 12B NMSA 1978]; provided this inclusion does not conflict with federal law, including federal regulations, pertaining to the Federal Insurance Contributions Act or to Internal Revenue Code, Section 125 pertaining to cafeteria plans.

B. The amount by which an eligible public employee's salary is reduced pursuant to a salary reduction agreement shall not be considered as gross income for purposes of computing New Mexico income tax, state unemployment tax and state worker's compensation and federal income taxes to be withheld and paid on behalf of the employee.

History: Laws 1987, ch. 289, § 5.

10-7-19. Applicability to deferred compensation plans.

The provisions of the Cafeteria Plan Act [10-7-14 to 10-7-19 NMSA 1978] do not apply to deferred compensation plans.

History: Laws 1987, ch. 289, § 6.

10-7-20. Qualified transportation fringe benefit.

State agencies, state educational institutions and political subdivisions of the state may offer to their employees a qualified transportation fringe benefit in accordance with Section 132(f) of the Internal Revenue Code of 1986. The qualified transportation fringe benefit may be offered as an employee pretax deduction or an employer-paid benefit or a combination of the two, as determined by the department of finance and administration, the governing authority of an institution or the governing body of a political subdivision of the state.

History: Laws 2005, ch. 17, § 1.

10-7-21. Undercover agents; life insurance benefits.

A. The state and any political subdivision of the state shall provide paid life insurance in the amount of at least two hundred fifty thousand dollars (\$250,000) for employees during any period of employment when an employee is working as an undercover agent.

B. As used in this section:

(1) "undercover agent" means a law enforcement officer who is actively involved in the investigation of alleged violations of state or federal law and whose identity as a law enforcement officer is being concealed; and

(2) "law enforcement officer" means a state or municipal police officer, county sheriff, deputy sheriff, conservation officer, motor transportation enforcement officer or other state employee authorized by state law to enforce criminal statutes.

C. The department of public safety shall adopt rules necessary to determine the eligibility of undercover agents for paid life insurance pursuant to Subsection A of this section.

History: Laws 2007, ch. 258, § 1.

10-7-22. Leave donation policy.

A. State agencies, political subdivisions and school districts shall implement policies that provide for employees who earn annual or sick leave the opportunity to donate annual or sick leave to another employee for a medical emergency. The policy shall provide:

(1) that a reasonable amount of leave may be donated by an employee annually and that each employee shall maintain a certain minimum amount of leave before making a donation of leave in excess of that amount;

(2) that the donation may be limited to a donation between employees within an organizational unit;

(3) for an application process for donated leave that includes:

(a) a method of soliciting donated leave;

(b) documentation of the identity of the donor and recipient of leave;

(c) a certified document by a health care provider that describes the nature, severity and anticipated duration of the emergency medical condition of the recipient and that includes a statement that the recipient is unable to work all or a portion of the recipient's work hours; and

(d) other information that the employing agency may reasonably require;

(4) that an employee who wishes to request donated leave shall first use all annual, sick and personal day leave that the employee has accrued and any compensatory time due prior to receiving donated leave;

(5) for conversion of the value of the donor's donated leave based on the donor's hourly rate of pay to hours of leave for the recipient based on the recipient's hourly rate of pay; and

(6) that unused donated leave at the end of a medical emergency or when no longer needed shall revert to the donating employees on a prorated basis.

B. To the extent any provision of this section conflicts with a current collective bargaining agreement negotiated pursuant to the Public Employee Bargaining Act [Chapter 10, Article 7E NMSA 1978], the provisions of this section shall not apply.

History: Laws 2015, ch. 81, § 1.

ARTICLE 7A

Deferred Compensation

10-7A-1. Short title.

Sections 1 through 10 [10-7A-1 to 10-7A-10 NMSA 1978] of this act may be cited as the "Deferred Compensation Act".

History: Laws 1981, ch. 155, § 1.

10-7A-2. Definitions.

As used in the Deferred Compensation Act:

A. "board" means the public employees retirement board;

B. "local public body" means all political subdivisions of the state, their agencies, instrumentalities and institutions;

C. "local public employee" means any officer or employee to whom a local public body pays a salary for services rendered;

D. "deferred compensation carriers" means any corporation, partnership or persons providing administrative, recordkeeping or investment consulting services to participants in deferred compensation plans pursuant to funding agreements; and

E. "state employee" means any officer or employee to whom the state pays a salary for services rendered.

History: Laws 1981, ch. 155, § 2; 1985, ch. 161, § 1; 2017, ch. 20, § 1.

10-7A-3. Deferred compensation plan; state and local public employees.

A. After the effective date of the Deferred Compensation Act, the board shall review and approve deferred compensation plans for participation by state and local public employees. A deferred compensation plan shall provide for the method of transfer of funds to a plan through written or electronic salary reduction agreements with state and local public employees and shall provide for deferral of only those salary amounts upon which income taxes are eligible for deferral pursuant to federal law.

B. Compensation deferred under any deferred compensation plan shall be included with current income for purposes of computing retirement contributions and benefits.

C. Amounts by which salary is reduced shall be transmitted to the approved deferred compensation carrier.

D. Local public employees may participate in a deferred compensation plan selected by their local public body employer after it takes formal action conforming to board requirements. If the plan selected is different from the plan approved by the board, the board shall have no responsibility concerning the plan. If the plan selected is that approved by the board pursuant to Section 10-7A-5 NMSA 1978, the provisions of Section 10-7A-8 NMSA 1978 shall apply.

History: 1978 Comp., § 10-7A-3, enacted by Laws 1984, ch. 127, § 988.1; 1985, ch. 161, § 2; 2017, ch. 20, § 2.

10-7A-4. Deferred compensation plan; other participants.

The deferred compensation plan may allow persons other than public employees, who provide services to the state or any local public body, to participate in the plan to the extent permitted by federal law.

History: Laws 1981, ch. 155, § 4.

10-7A-5. Deferred compensation plan; approval.

A. The board shall review proposals providing investment options to participants of a deferred compensation plan submitted by deferred compensation carriers that have been engaged for a minimum of three years in the business of funding public employee deferred compensation plans authorized by 26 U.S.C. Section 457 and approve proposals that are consistent with the goals of providing state or local public employees with an investment that, in the opinion of the board, is safe and will provide a reasonable return to the employees upon their reaching the appropriate age or date at which they may begin receiving funds from the deferred compensation plan.

B. The type of deferred compensation investment options that may be approved include mutual funds, including stock, bond or capital preservation funds or any other investments determined by the board to fulfill the goals of providing viable deferred compensation for state or local public employees.

History: 1978 Comp., § 10-7A-5, enacted by Laws 1984, ch. 127, § 988.2; 1985, ch. 161, § 3; 2017, ch. 20, § 3.

10-7A-6. Deferred compensation plans; investment options.

The board may select a deferred compensation plan that offers varied investment options to participating employees.

History: Laws 1981, ch. 155, § 6; 1985, ch. 161, § 4.

10-7A-7. Deferred compensation plan; state tax deferral.

Income deferred pursuant to the Deferred Compensation Act and any gains arising from such income, shall be subject to New Mexico income tax and other applicable taxes in the same year or years in which the income is subject to federal income tax pursuant to federal law.

History: Laws 1981, ch. 155, § 7.

10-7A-8. Deferred compensation plan; local public employee participation.

A. Local public employees shall be eligible to participate in a deferred compensation plan approved by the board upon the filing of a local public body's participation agreement, conforming to board requirements, applicable to its local public employees and such other participants permitted by the plan as the local public body may elect. Such filing shall be made at such dates and places and in such manner as the board requires.

B. A local public body may terminate its local public employees' and other qualified participants' future participation in a board-approved plan any time not less than two years after the date participation has become effective, upon the local public body's filing of written or electronic notice conforming to board requirements.

History: Laws 1981, ch. 155, § 8; 1985, ch. 161, § 5; 2017, ch. 20, § 4.

10-7A-9. Existing deferred compensation plans.

Any state or local public body deferred compensation plan in existence on the effective date of the Deferred Compensation Act shall not be affected and may be made

available to employees and other persons of the state agency or local public body which had adopted said deferred compensation plan on the same basis as on the effective date of the Deferred Compensation Act. Funds of existing plans may be invested in all or any combination of the investments set forth in Subsection B of Section 10-7A-5 NMSA 1978.

History: Laws 1981, ch. 155, § 9; 1983, ch. 251, § 3.

10-7A-10. Expenditure.

Any expenditure necessary to implement the Deferred Compensation Act shall be charged to participating employees or to deferred compensation carriers including those submitting proposals.

History: Laws 1981, ch. 155, § 10; 1985, ch. 161, § 6.

10-7A-11. Rule making; agreements.

The board may adopt such rules and enter into such agreements as may be necessary to implement the Deferred Compensation Act; provided, however, that any expenditures associated therewith are charged as provided in Section 10-7A-10 NMSA 1978.

History: 1978 Comp., § 10-7A-11, enacted by Laws 1985, ch. 161, § 7.

10-7A-12. Division of funds as community property; notice requirement.

A court of competent jurisdiction, solely for the purposes of effecting a division of community property, may provide by appropriate order for a determination and division of a community interest in the deferred compensation plan provided for in the Deferred Compensation Act. Pursuant to such a court order a deferred compensation administrator shall provide notice, within ten days after a participating public employee files an application for a disbursement from the deferred compensation plan, to a former spouse who has a court-determined interest in a participating public employee's deferred compensation plan. The notice shall be sent to the last name and address the former spouse has filed with the administrator of the deferred compensation plan and shall include the schedule for and amounts of the disbursement and the address to which the participating public employee's disbursement will be sent.

History: 1978 Comp., § 10-7A-12, enacted by Laws 1991, ch. 22, § 1.

ARTICLE 7B

Group Benefits

10-7B-1. Short title.

Chapter 10, Article 7B NMSA 1978 may be cited as the "Group Benefits Act".

History: Laws 1989, ch. 231, § 1; 2005, ch. 301, § 1; 2005, ch. 305, § 1.

10-7B-2. Definitions.

As used in the Group Benefits Act:

- A. "committee" means the group benefits committee;
- B. "director" means the director of the state health benefits division of the health care authority;
- C. "employee" means a salaried officer, employee or legislator of the state; a salaried officer or an employee of a local public body; or an elected or appointed supervisor of a soil and water conservation district;
- D. "local public body" means any New Mexico municipality, county or school district;
- E. "professional claims administrator" means any person or legal entity that has at least five years of experience handling group benefits claims, as well as such other qualifications as the director may determine from time to time with the committee's advice;
- F. "small employer" means a person having for-profit or nonprofit status that employs an average of fifty or fewer persons over a twelve-month period; and
- G. "state" or "state agency" means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions.

History: Laws 1989, ch. 231, § 2; 2003, ch. 412, § 2; 2005, ch. 301, § 2; 2005, ch. 305, § 2; 2006, ch. 88, § 1; 2024, ch. 39, § 15.

10-7B-3. Group benefits committee; created.

A. The "group benefits committee" is created. The committee shall be composed of nine members as follows:

- (1) one employee of, appointed by the secretary of, each of the two departments of the state, excluding state institutions of higher education, having the largest number of full-time employees;
- (2) the superintendent of insurance or his designee;

- (3) the director of the state personnel office or his designee;
- (4) the executive secretary of the public employees retirement association or his designee;
- (5) the chief financial officer of a state agency or institution, appointed by the governor;
- (6) one employee of a local public body participating in the state group plan, appointed by the governor; and
- (7) two public employees of state agencies, other than those from whom members are appointed pursuant to Paragraphs (1) through (4) of this subsection, appointed by the governor.

B. Members of the committee appointed by the governor or by a department secretary shall serve terms of four years. Vacancies in appointive memberships shall be filled by the appointing authority. An appointive membership shall be deemed vacant when the member ceases to be a public employee or ceases to meet the qualifications for his membership set forth in Subsection A of this section. An appointive membership shall also be deemed vacant when the member fails to attend three consecutive meetings of the committee.

C. A majority of the committee shall constitute a quorum. The members of the committee shall elect annually from among the membership a chairman and vice chairman.

History: Laws 1989, ch. 231, § 3.

10-7B-4. Group benefits committee; powers and duties.

The committee shall:

- A. review and advise the director on all group benefits coverages, whether insured or self-insured, included or to be included in the state group plan;
- B. review and advise the director on all professional, technical or consulting contracts to be entered into in connection with the state group plan;
- C. if insurance is to be purchased through negotiation, pursuant to Subparagraph (a) of Paragraph (1) of Subsection D of Section 6 [10-7B-7 NMSA 1978] of the Group Benefits Act, review and advise the director as to companies and agents to be selected to submit proposals;
- D. review and advise the director on rules and regulations relating to group benefits insurance and self-insurance;

E. review and advise the director on selection of an investment advisor for investments of the group self-insurance fund;

F. review and advise the director on guidelines establishing rates for and methods of rating participating state agencies and local public bodies;

G. perform any other duties and exercise any other powers as provided by law; and

H. review any matters specified in this section, which review by the committee shall preempt such review of such matters previously accorded to the risk management advisory board.

History: Laws 1989, ch. 231, § 4.

10-7B-5. Administrative costs.

The director, with the prior approval of the committee, may apportion the costs of employee benefits administration and other employee benefit costs to all participating state agencies and their employees, participating local public bodies and their employees, participating small employers and persons and dependents eligible through the small employer and participating soil and water conservation district supervisors and their covered dependents, whether the plan is insured or self-insured.

History: Laws 1989, ch. 231, § 5; 2005, ch. 301, § 3; 2005, ch. 305, § 3; 2006, ch. 88, § 2.

10-7B-6. State employees group benefits self-insurance plan; authorization; local public body participation.

A. The state health benefits division of the health care authority may, with the prior advice of the committee, establish and administer a group benefits self-insurance plan, providing life, vision, health, dental and disability coverages, or any combination of such coverages, for employees of the state and of participating local public bodies. Any such group benefits self-insurance plan shall afford coverage for employees' dependents at each employee's option. Any such group benefits self-insurance plan may consist of self-insurance or a combination of self-insurance and insurance; provided that particular coverages or risks may be fully insured, fully self-insured or partially insured and partially self-insured.

B. The director, with the advice of the committee, shall establish by rule the types, extent, nature and description of coverages, the eligibility rules for participation, the deductibles, rates and all other matters reasonably necessary to carry on or administer a group benefits self-insurance plan established pursuant to Subsection A of this section.

C. The contribution of each participating state agency to the cost of any such group benefits self-insurance plan shall not exceed that percentage provided for state group benefits insurance plans as provided by law. The contribution of a participating local public body to the cost of any such group benefits self-insurance plan shall not exceed that percentage provided for local public body group benefits insurance plans as provided by law.

D. Except as provided in Subsection E of this section, public employees' contributions to the cost of any group benefits self-insurance plan may be deducted from their salaries and paid directly to the group self-insurance fund; provided that where risks are insured or reinsured, the director may authorize payment of the costs of such insurance or reinsurance directly to the insurer or reinsurer.

E. A legislator and the legislator's covered dependents and a soil and water conservation district supervisor and the supervisor's covered dependents are eligible to participate in and receive benefits from the group benefits self-insurance plan if the legislator or supervisor pays monthly premiums in amounts that equal one hundred percent of the cost of the insurance. The premiums shall be paid directly to the group self-insurance fund; provided that where risks are insured or reinsured, the director may authorize payment of the premiums directly to the insurer or reinsurer.

F. Local public bodies and state agencies that are not participating in the state group benefits insurance plan or self-insurance plan may elect to participate in any group benefits self-insurance plan established pursuant to Subsection A of this section by giving written notice to the director on a date set by the director, which date shall not be later than ninety days prior to the date participation is to begin. The director shall determine an initial rate for the electing entity in accordance with a letter of administration setting forth written guidelines established by the director with the committee's advice. The initial rate shall be based on the claims experience of the electing entity's group for the three immediately preceding continuous years. If three years of continuous experience are not available, a rate fixed for the entity by the director with the committee's advice shall apply, and the electing entity's group shall be rerated on the first premium anniversary following the date one full year of experience for the group becomes available. Any such election may be terminated effective not earlier than June 30 of the third calendar year succeeding the year in which the election became effective or on any June 30 thereafter. Notice of termination shall be made in writing to the director not later than April 1 immediately preceding the June 30 on which participation will terminate. A reelection to participate in the plan following a termination shall not be made effective for at least three full years following the effective date of termination.

G. As soon as practicable, the director with the committee's advice shall establish an experience rating plan for state agencies and local public bodies participating in any group benefits self-insurance plan created pursuant to Subsection A of this section. Rates applicable to state agencies and participating local public bodies shall be based on such experience rating plan. Any such experience rating plan may provide separate

rates for individual state agencies and individual local public bodies or for such other experience centers as the director may determine.

History: Laws 1989, ch. 231, § 6; 2003, ch. 412, § 3; 2006, ch. 88, § 3; 2024, ch. 39, § 16.

10-7B-6.1. Small employer health care coverage.

A. The director may enter into an agreement with a small employer to voluntarily purchase health care coverage offered pursuant to the Group Benefits Act for persons and dependents eligible through the small employer.

B. The director may enter into agreements with an association, cooperative or mutual alliance representing small employers to provide outreach and assistance for small employers to voluntarily purchase health care coverage offered pursuant to the Group Benefits Act for persons and dependents eligible through the small employer.

C. The director shall only permit voluntary purchase of health care coverage by small employers if the small employer has not offered health care coverage to persons and dependents eligible through a small employer for a period of at least twelve months prior to enrollment in the coverage offered pursuant to the Group Benefits Act; provided, however, that the waiting period in this subsection shall not apply to a person having nonprofit status that employs an average of fifty or fewer persons over a twelve-month period.

D. A separate account shall be maintained for small employers that voluntarily elect to purchase health care coverage offered pursuant to the Group Benefits Act to provide separate accounting, payment and private funding of health care coverage for small employers. The funds in the small employers account shall be maintained separately in actuarially sound condition as evidenced by an annual written certification of a qualified actuary, including verification that the premiums charged are actuarially sound in relation to the benefits provided. This certification shall be filed with the superintendent of insurance.

History: Laws 2005, ch. 301, § 4; 2005, ch. 305, § 4; 2007, ch. 111, § 1.

10-7B-7. Group self-insurance fund created.

A. The "group self-insurance fund" is created. The fund and any income produced by the fund shall be held in trust for the benefit of participating state agencies and their employees and local public bodies and their employees, deposited in a segregated account and invested by the director with the advice of the committee. Money in the fund shall be used solely for the purposes of the fund and shall not be used to pay any general or special obligation or debt of the state, other than as authorized by this section. Balances in the fund in excess of amounts needed for the purposes of the fund shall not be used to pay dividends or refunds, however described, to individual public

employees or their dependents, but may be used, in the director's discretion, to reduce future contributions, to provide additional benefits or as a reserve to stabilize premiums.

B. The fund shall consist of money appropriated to the fund, income from investment of the fund, employers' contributions, employees' contributions, insurance or reinsurance proceeds and other funds received by gift, grant, bequest or otherwise for deposit in the fund, including but not limited to refunds of amounts from prior state group life, vision, dental, health and disability insurance plans, all of which are hereby appropriated to and for the purposes of the fund.

C. Disbursements from the fund shall be made by warrant signed by the secretary of finance and administration upon vouchers signed by the director. Lump sum disbursements from the fund may be advanced, in the manner described in this subsection, to a professional claims administrator to be used to pay benefits. Such lump sum disbursements may be made not more than weekly in advance. The professional claims administrator shall keep any such lump sum advance in a segregated account and shall hold the advance in trust for the benefit of participating employees. On or before the last day of each month, the professional claims administrator shall prepare a request for replenishment of the lump sum disbursement in the amount actually paid out for benefits during the month. Not more than thirty days after the last day of each month, the professional claims administrator shall make and submit to the director a detailed report of expenditures of any such lump sum advance during the month.

D. Money in the fund may be used by and is appropriated to the state health benefits division of the health care authority:

(1) to purchase life, vision, health, dental and disability insurance, or any combination of these, for state and local public body employees participating in the group self-insurance plan and their covered dependents, from an insurance company determined to be the best responsible bidder, as defined in the Procurement Code [13-1-28 to 13-1-199 NMSA 1978], after:

(a) requesting sealed proposals from three or more insurance agents licensed in New Mexico; or

(b) requesting sealed proposals in accordance with the provisions of the Procurement Code;

(2) to contract with and pay one or more professional claims administrators;

(3) to contract with and pay private attorneys or law firms for advice and for defense of contested claims determinations;

(4) to contract with and pay qualified independent actuaries, financial auditors and claims management and procedures auditors;

(5) to contract with and pay consultants, financial advisors and investment advisors for independent consulting and advice;

(6) to pay reasonable investment commissions and expenses;

(7) to make lump sum advances to any person or firm acting as a professional claims administrator, such advances to be used exclusively to pay benefits to participating employees;

(8) to pay benefits to or for participating employees and their dependents;

(9) to pay any other costs and expenses incurred in carrying out this section;
and

(10) as otherwise provided by law.

E. The fund shall be maintained in actuarially sound condition as evidenced by the annual written certification of an actuary qualified for such work that as of June 30 of the current year the fund was actuarially sound.

F. Annually on or before January 15, the director shall submit to the legislature a report on any group self-insurance plan created pursuant to Subsection A of Section 10-7B-6 NMSA 1978, a financial audit of the fund and a claims management and procedures audit by a qualified claims auditor for the one-year period ending on June 30 immediately preceding the report. With respect to claims files, the claims audit may, in the director's discretion, be limited to a random sampling.

History: Laws 1989, ch. 231, § 7; 2024, ch. 39, § 17.

10-7B-8. Group self-insurance fund; investment.

A. In making investments of the fund, the director shall consider the relative safety of the investment and the need for liquidity in the fund, as well as the income to be produced. No investment of the fund shall have a maturity date, or similar date before which it may not be liquidated for cash without penalty, premium, deduction, surcharge or interest rate decrease, later than one year from the date of purchase.

B. The director may seek such investment advice as he deems proper. State agencies with investment expertise, including but not limited to the state treasurer, the state investment council, the state investment officer and the state board of finance, shall cooperate in providing investment advice upon the director's request. The director may contract with an investment advisor and pay him from the fund. Any such investment advisor shall have at least a bachelor's degree in economics, accounting, business administration or a related field from an accredited college or university and shall have at least five years of experience as an investment advisor or as a funds investment manager or a combination of both.

C. Any commission paid for the purchase or sale of any securities pursuant to this section shall be reasonable and shall not exceed the brokerage rate for such transaction charged at the time of purchase or sale by national brokerage firms.

D. Investment of the fund shall be made with the exercise of that degree of judgment and care, under the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation but for investment, considering the probable safety of their capital as well as the probable income to be derived.

E. Securities purchased from the fund shall be held in the custody of the state treasurer. At the director's direction, the state treasurer shall deposit the securities with a bank or trust company for safekeeping or servicing.

F. The director may delegate his investment authority to the state treasurer, who shall make investments or reinvestments of the fund in accordance with this section.

History: Laws 1989, ch. 231, § 8.

ARTICLE 7C

Retiree Health Care

10-7C-1. Short title.

Sections 1 through 16 [10-7C-1 to 10-7C-16 NMSA 1978] of this act may be cited as the "Retiree Health Care Act".

History: Laws 1990, ch. 6, § 1.

10-7C-2. Purpose of act.

The purpose of the Retiree Health Care Act is to provide comprehensive core group health insurance for persons who have retired from certain public service in New Mexico. The purpose is to provide eligible retirees, their spouses, dependents and surviving spouses and dependents with health insurance consisting of a plan or optional plans of benefits that can be purchased by funds flowing into the retiree health care fund and by co-payments or out-of-pocket payments of insureds.

History: Laws 1990, ch. 6, § 2.

10-7C-3. Legislative findings and declaration of policy.

A. The legislature finds and declares that public employees face a severe problem in securing continuing medical insurance when they retire. Medical care inflation has far exceeded the general inflation rate for the past decade. It is expected that at least some

of the factors that have contributed to this phenomenon will continue into the foreseeable future. As the public employee population grows older, the ratio of retirees to active employees is expected to continue to rise. This factor will be exacerbated as the life expectancy of the aged improves and the post-world war two generation approaches retirement age. Financial problems faced by the federal medicare system are becoming more serious, and it is apparent that there will be attempts to shift those costs to the public employer and employee. More such cost shifting is likely, and one of the purposes of the Retiree Health Care Act is, within the constraints of what can be afforded by the taxpayers, to alleviate this burden on the retiree as much as possible.

B. The legislature further finds and declares that the public employees covered by the Retiree Health Care Act have entered into public employment in circumstances where they have received in exchange for their services a present salary and an expectation of receiving a future stream of benefits, including payment of certain retirement benefits. The legislature declares that the expectation of receiving future benefits may be modified from year to year in order to respond to changing financial exigencies, but that such modification must be reasonably calculated to result in the least possible detriment to the expectation and to be consistent with any employer-employee relationship established to meet that expectation. The legislature does not intend for the Retiree Health Care Act to create trust relationships among the participating employees, retirees, employers and the authority administering the Retiree Health Care Act nor does the legislature intend to create contract rights which may not be modified or extinguished in the future; rather the legislature intends to create, through the Retiree Health Care Act, a means for maximizing health care services returned to the participants for their participation under the Retiree Health Care Act.

C. The legislature further finds and declares that nothing in the Retiree Health Care Act shall prohibit the legislature from increasing or decreasing participating employer and employee contributions, eligible retiree premiums or group health insurance coverages or plans, and that participation in the Retiree Health Care Act by retired and active public employees shall not be construed to establish rights between the retired and active public employees and the state for health care benefits which cannot be modified or extinguished in the future to meet changes in economic or social conditions.

D. The legislature further finds and declares that the health care coverage provided under the Retiree Health Care Act shall constitute a state group health insurance plan, separate subsequent state group health insurance plan, state group insurance plan, separate subsequent state group insurance plan, state medical group insurance plan and separate subsequent state medical group insurance plan for the purposes of Sections 10-11-121, 10-12-15, 10-12A-11 and 22-11-41 NMSA 1978.

E. The legislature further finds and declares that participation of current retirees in the Retiree Health Care Act is predicated on State ex rel. Hudgins v. Public Employees Retirement Board 58 N.M. 543, 273 P.2d 543 [743] (1954); the additional monthly participation fee to be paid by current retirees as a condition of participation in the

Retiree Health Care Act is in lieu of the lump-sum consideration paid by the retirees who were the relators in that case.

History: Laws 1990, ch. 6, § 3.

10-7C-4. Definitions.

As used in the Retiree Health Care Act:

A. "active employee" means an employee of a public institution or any other public employer participating in either the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978], the Public Employees Retirement Act [Chapter 10, Article 11 NMSA 1978], the Judicial Retirement Act [Chapter 10, Article 12B NMSA 1978], the Magistrate Retirement Act [Chapter 10, Article 12C NMSA 1978] or the Public Employees Retirement Reciprocity Act [Chapter 10, Article 13A NMSA 1978] or an employee of an independent public employer;

B. "authority" means the retiree health care authority created pursuant to the Retiree Health Care Act;

C. "basic plan of benefits" means only those coverages generally associated with a medical plan of benefits;

D. "board" means the board of the retiree health care authority;

E. "current retiree" means an eligible retiree who is receiving a disability or normal retirement benefit under the Educational Retirement Act, the Public Employees Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act, the Public Employees Retirement Reciprocity Act [Chapter 10, Article 13A NMSA 1978] or the retirement program of an independent public employer on or before July 1, 1990;

F. "eligible dependent" means a person obtaining retiree health care coverage based upon that person's relationship to an eligible retiree as follows:

(1) a spouse;

(2) a child under the age of twenty-six who is:

(a) a natural child;

(b) a legally adopted child;

(c) a stepchild living in the same household who is primarily dependent on the eligible retiree for maintenance and support;

(d) a child for whom the eligible retiree is the legal guardian and who is primarily dependent on the eligible retiree for maintenance and support, as long as evidence of the guardianship is evidenced in a court order or decree; or

(e) a foster child living in the same household;

(3) a dependent child over twenty-six who is wholly dependent on the eligible retiree for maintenance and support and who is incapable of self-sustaining employment by reason of intellectual disability or physical handicap; provided that proof of incapacity and dependency shall be provided within thirty-one days after the child reaches the limiting age and at such times thereafter as may be required by the board;

(4) a surviving spouse defined as follows:

(a) "surviving spouse" means the spouse to whom a retiree was married at the time of death; or

(b) "surviving spouse" means the spouse to whom a deceased vested active employee was married at the time of death; or

(5) a surviving dependent child who is the dependent child of a deceased eligible retiree and whose other parent is also deceased;

G. "eligible employer" means either:

(1) a "retirement system employer", which means an institution of higher education, a school district or other entity participating in the public school insurance authority, a state agency, state court, magistrate court, municipality, county or public entity, each of which is affiliated under or covered by the Educational Retirement Act, the Public Employees Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act or the Public Employees Retirement Reciprocity Act; or

(2) an "independent public employer", which means a municipality, county or public entity that is not a retirement system employer;

H. "eligible retiree" means:

(1) a "nonsalaried eligible participating entity governing authority member", which means a person who is not a retiree and who:

(a) has served without salary as a member of the governing authority of an employer eligible to participate in the benefits of the Retiree Health Care Act and is certified to be such by the executive director of the public school insurance authority;

(b) has maintained group health insurance coverage through that member's governing authority if such group health insurance coverage was available and offered

to the member during the member's service as a member of the governing authority;
and

(c) was participating in the group health insurance program under the Retiree Health Care Act prior to July 1, 1993; or

(d) notwithstanding the provisions of Subparagraphs (b) and (c) of this paragraph, is eligible under Subparagraph (a) of this paragraph and has applied before August 1, 1993 to the authority to participate in the program;

(2) a "salaried eligible participating entity governing authority member", which means a person who is not a retiree and who:

(a) has served with salary as a member of the governing authority of an employer eligible to participate in the benefits of the Retiree Health Care Act;

(b) has maintained group health insurance through that member's governing authority, if such group health insurance was available and offered to the member during the member's service as a member of the governing authority; and

(c) was participating in the group health insurance program under the Retiree Health Care Act prior to July 1, 1993; or

(d) notwithstanding the provisions of Subparagraphs (b) and (c) of this paragraph, is eligible under Subparagraph (a) of this paragraph and has applied before August 1, 1993 to the authority to participate in the program;

(3) an "eligible participating retiree", which means a person who:

(a) falls within the definition of a retiree, has made contributions to the fund for at least five years prior to retirement and whose eligible employer during that period of time made contributions as a participant in the Retiree Health Care Act on the person's behalf, unless that person retires on or before July 1, 1995, in which event the time period required for employee and employer contributions shall become the period of time between July 1, 1990 and the date of retirement, and who is certified to be a retiree by the educational retirement director, the executive secretary of the public employees retirement board or the governing authority of an independent public employer;

(b) falls within the definition of a retiree, retired prior to July 1, 1990 and is certified to be a retiree by the educational retirement director, the executive secretary of the public employees retirement association or the governing authority of an independent public employer; but this paragraph does not include a retiree who was an employee of an eligible employer who exercised the option not to be a participating employer pursuant to the Retiree Health Care Act and did not after January 1, 1993 elect to become a participating employer; unless the retiree: 1) retired on or before

June 30, 1990; and 2) at the time of retirement, did not have a retirement health plan or retirement health insurance coverage available from the retiree's employer; or

(c) is a retiree who: 1) was at the time of retirement an employee of an eligible employer who exercised the option not to be a participating employer pursuant to the Retiree Health Care Act, but which eligible employer subsequently elected after January 1, 1993 to become a participating employer; 2) has made contributions to the fund for at least five years prior to retirement and whose eligible employer during that period of time made contributions as a participant in the Retiree Health Care Act on the person's behalf, unless that person retires prior to the eligible employer's election to become a participating employer or less than five years after the date participation begins when the participation date begins before July 1, 2009, in which event the time period required for employee and employer contributions shall become the period of time, if any, between the date participation begins and the date of retirement or when the participation date begins on or after July 1, 2009, in which event the person and employer shall contribute to the fund an amount equal to the full actuarial present value of the accrued benefits as determined by the authority; and 3) is certified to be a retiree by the educational retirement director, the executive director of the public employees retirement board or the governing authority of an independent public employer;

(4) a "legislative member", which means a person who is not a retiree and who served as a member of the New Mexico legislature for at least two years, but is no longer a member of the legislature and is certified to be such by the legislative council service; or

(5) a "former participating employer governing authority member", which means a person, other than a nonsalaried eligible participating entity governing authority member or a salaried eligible participating entity governing authority member, who is not a retiree and who served as a member of the governing authority of a participating employer for at least four years but is no longer a member of the governing authority and whose length of service is certified by the chief executive officer of the participating employer;

I. "fund" means the retiree health care fund;

J. "group health insurance" means coverage that includes but is not limited to life insurance, accidental death and dismemberment, hospital care and benefits, surgical care and treatment, medical care and treatment, dental care, eye care, obstetrical benefits, prescribed drugs, medicines and prosthetic devices, medicare supplement, medicare carveout, medicare coordination and other benefits, supplies and services through the vehicles of indemnity coverages, health maintenance organizations, preferred provider organizations and other health care delivery systems as provided by the Retiree Health Care Act and other coverages considered by the board to be advisable;

K. "ineligible dependents" includes:

- (1) those dependents created by common law relationships;
- (2) dependents while in active military service;
- (3) parents, aunts, uncles, brothers, sisters, grandchildren and other family members left in the care of an eligible retiree without evidence of legal guardianship; and
- (4) anyone not specifically referred to as an eligible dependent pursuant to the rules adopted by the board;

L. "participating employee" means an employee of a participating employer, which employee has not been expelled from participation in the Retiree Health Care Act pursuant to Section 10-7C-10 NMSA 1978;

M. "participating employer" means an eligible employer who has satisfied the conditions for participating in the benefits of the Retiree Health Care Act, including the requirements of Subsection M of Section 10-7C-7 NMSA 1978 and Subsection D or E of Section 10-7C-9 NMSA 1978, as applicable;

N. "public entity" means a flood control authority, economic development district, council of governments, regional housing authority, conservancy district or other special district or special purpose government; and

O. "retiree" means a person who:

- (1) is receiving:
 - (a) a disability or normal retirement benefit or survivor's benefit pursuant to the Educational Retirement Act;
 - (b) a disability or normal retirement benefit or survivor's benefit pursuant to the Public Employees Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act or the Public Employees Retirement Reciprocity Act; or
 - (c) a disability or normal retirement benefit or survivor's benefit pursuant to the retirement program of an independent public employer to which that employer has made periodic contributions; or
- (2) is not receiving a survivor's benefit but is the eligible dependent of a person who received a disability or normal retirement benefit pursuant to the Educational Retirement Act, the Public Employees Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act or the Public Employees Retirement Reciprocity Act.

History: Laws 1990, ch. 6, § 4; 1993, ch. 362, § 1; 1998, ch. 45, § 1; 2003, ch. 85, § 1; 2005, ch. 86, § 1; 2009, ch. 288, § 2; 2021, ch. 23, § 1.

10-7C-5. Authority created.

There is created the "retiree health care authority", which is established to provide for comprehensive group health insurance programs under the Retiree Health Care Act.

History: Laws 1990, ch. 6, § 5; 2002, ch. 75, § 1; 2002, ch. 80, § 1; 2021, ch. 23, § 2.

10-7C-6. Board created; membership; authority.

A. The "board of the retiree health care authority" is created. The board shall be composed of not more than thirteen members.

B. The board shall include:

(1) one member who is not employed by or on behalf of or contracting with an employer participating in or eligible to participate in the Retiree Health Care Act and who shall be appointed by the governor to serve at the pleasure of the governor;

(2) the educational retirement director or the educational retirement director's designee;

(3) one member to be selected by the New Mexico coalition of school administrators;

(4) one member who is a teacher who is certified and teaching in elementary or secondary education to be selected by a committee composed of one person designated by the New Mexico association of classroom teachers, one person designated by the national education association of New Mexico and one person designated by the American federation of teachers New Mexico;

(5) one member who is an eligible retiree of a public school and who is selected by the New Mexico association of educational retirees;

(6) the executive secretary of the public employees retirement association or the executive secretary's designee;

(7) one member who is an eligible retiree receiving a benefit from the public employees retirement association and who is selected by the retired public employees of New Mexico;

(8) one member who is an elected official or employee of a municipality participating in the Retiree Health Care Act and who is selected by the New Mexico municipal league;

- (9) the state treasurer or the state treasurer's designee;
- (10) one member who is a classified state employee selected by the personnel board; and
- (11) the director of the state benefits division of the health care authority.

C. The board, in accordance with the provisions of Paragraph (3) of Subsection D of Section 10-7C-9 NMSA 1978, shall include, if they qualify:

- (1) one member who is an eligible retiree of an institution of higher education participating in the Retiree Health Care Act and who is selected by the New Mexico association of educational retirees; and
- (2) one member who is an elected official or employee of a county participating in the Retiree Health Care Act and who is selected by the New Mexico association of counties.

D. Every member of the board shall serve at the pleasure of the party that selected that member.

E. The members of the board shall begin serving their positions on the board on the effective date of the Retiree Health Care Act or upon their selection, whichever occurs last, unless that member's corresponding position on the board has been eliminated pursuant to Subsection D of Section 10-7C-9 NMSA 1978.

F. The board shall elect from its membership a president, vice president and secretary.

G. The board may appoint such officers and advisory committees as it deems necessary. The board may enter into contracts or arrangements with consultants, professional persons or firms as may be necessary to carry out the provisions of the Retiree Health Care Act.

H. The members of the board and its advisory committees shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] but shall receive no other compensation, perquisite or allowance.

History: Laws 1990, ch. 6, § 6; 1993, ch. 362, § 2; 2003, ch. 382, § 1; 2024, ch. 39, § 18.

10-7C-7. Board; duties.

In order to achieve the purposes of the Retiree Health Care Act, the board may take all actions reasonably necessary to implement that act, including but not limited to the following:

A. employ or contract for the services of the state fiscal agent or select its own fiscal agent in accordance with the Procurement Code [13-1-28 to 13-1-199 NMSA 1978];

B. employ or contract for persons to assist it in carrying out the Retiree Health Care Act and determine the duties and compensation of these employees;

C. collect and disburse funds;

D. collect all current and historical claims and financial information necessary for effective procurement of lines of insurance coverage;

E. promulgate and adopt necessary rules, regulations and procedures for implementation of the Retiree Health Care Act;

F. negotiate insurance policies covering additional or lesser benefits as determined appropriate by the board, but the board shall maintain all coverage as required by federal or state law for each eligible retiree. In the event it is practical to wholly self-insure part or all of the retiree health care coverages, the board may do so;

G. procure group health care and other coverages authorized by the Retiree Health Care Act in accordance with the Procurement Code and the Health Care Purchasing Act [Chapter 13, Article 7 NMSA 1978];

H. establish the procedures for contributions and deductions;

I. determine methods and procedures for claims administration;

J. administer the fund;

K. contract for and make available to all eligible retirees and eligible dependents basic and optional group health insurance plans. The optional coverage may include a lower deductible, lower coinsurance or additional categories of benefits permitted under this section and all other applicable sections of the Retiree Health Care Act to provide additional levels of coverages and benefits. Any additional contributions for these optional plans shall be paid for by the eligible retiree or eligible dependent. The coverage provided by the plans shall be secondary to all other benefit coverages to which the eligible retiree or eligible dependent is entitled. In the event a covered eligible retiree becomes employed by an employer offering its employees a basic plan of benefits, the coverage provided by the plan under the Retiree Health Care Act shall be secondary to such coverage regardless of whether the employee enrolls in that employer's plan. In the event the eligible retiree or eligible dependent is entitled to receive medicare hospital insurance benefits at no charge, then the coverage provided by the plan under the Retiree Health Care Act shall be secondary to medicare hospital and medical insurance to the extent permitted by federal law;

L. provide, at its discretion, different plans for eligible retirees and eligible dependents covered by medicare than the plans provided for eligible retirees and eligible dependents who are not covered by medicare; and

M. promulgate and adopt rules and regulations governing eligibility, participation, enrollment, length of service and any other conditions or requirements for providing substantially equal treatment to participating employers.

History: Laws 1990, ch. 6, § 7; 1997, ch. 74, § 5; 1998, ch. 45, § 2.

10-7C-7.1. Board may provide for an administration building; payment of obligations from contributions.

The board may take all actions reasonably necessary to provide an administration building for the authority, including the acquisition of real property for that purpose. The board is authorized to make payments from the first money received each month as contributions pursuant to Section 10-7C-15 NMSA 1978 to pay principal of, interest on and other expenses or obligations related to revenue bonds issued by the New Mexico finance authority to plan, design, acquire, construct, furnish and equip an administration building for the authority, including the acquisition of real property.

History: Laws 2000, ch. 79, § 1.

10-7C-7.2. New Mexico finance authority revenue bonds; purpose; appropriation.

A. The New Mexico finance authority may issue and sell revenue bonds in compliance with the New Mexico Finance Authority Act [Chapter 6, Article 21 NMSA 1978] in installments or at one time in an amount not exceeding two million five hundred thousand dollars (\$2,500,000) for the purpose of planning, designing, acquiring, constructing, equipping and furnishing an administration building for the retiree health care authority, including the acquisition of real property for that purpose.

B. The New Mexico finance authority may issue and sell revenue bonds authorized by this section when the board of the retiree health care authority certifies the need for issuance of the bonds. The net proceeds from the sale of the bonds are appropriated to the retiree health care authority for the purposes described in Subsection A of this section.

C. The first money received each month as contributions to the retiree health care fund pursuant to Section 10-7C-15 NMSA 1978 in an amount sufficient to pay the principal of, interest on and any other expenses or obligations related to the revenue bonds is appropriated to the New Mexico finance authority and shall be distributed monthly to the New Mexico finance authority to be pledged irrevocably for the payment

of the principal of, interest on, any premium and expenses related to the issuance and sale of the bonds authorized pursuant to this section.

D. The amounts from the retiree health care fund distributed to the New Mexico finance authority shall be deposited in a special bond fund or account of the New Mexico finance authority. Any money remaining in the special fund or account from distributions made to the New Mexico finance authority during each fiscal year, after all principal of, interest on and any other expenses or obligations related to the bonds in that fiscal year are fully paid, shall be returned to the retiree health care fund. Upon payment of all principal of, interest on and any other expenses or obligations related to the bonds, the New Mexico finance authority shall certify to the retiree health care authority that all obligations for the bonds issued pursuant to this section have been fully discharged and direct the retiree health care authority to cease distributing money to the New Mexico finance authority.

E. The legislature shall not repeal, amend or otherwise modify any law that affects or impairs any revenue bonds of the New Mexico finance authority secured by a pledge of the contributions to the retiree health care fund, unless the revenue bonds have been discharged in full or provisions have been made for a full discharge.

F. The New Mexico finance authority may additionally secure the revenue bonds issued pursuant to this section by a pledge of money in the public project revolving fund with a lien priority on the money in the public project revolving fund as determined by the New Mexico finance authority.

History: Laws 2000, ch. 79, § 2.

10-7C-8. Fund created; investment; premiums; appropriation.

A. There is created the "retiree health care fund". All money in the fund shall be invested as provided for in Subsection D of this section. All income earned from investment of the fund shall be credited to the fund. Except as otherwise specifically provided herein, the money in the fund is appropriated to the board to carry out the provisions of the Retiree Health Care Act. Any funds remaining at the end of any fiscal year shall not revert to the general fund.

B. The board shall provide for the collection of premiums from eligible retirees and eligible dependents which money when combined with other money appropriated to the fund shall be sufficient to provide the required insurance coverage and to pay the expenses of the authority. All premiums and other money appropriated to the fund shall be credited to the fund.

C. All premiums and other money collected by the authority shall be received and disbursed directly by the authority. Receipts and disbursements are subject to audit by the state auditor.

D. The board shall determine which money in the fund constitutes the long-term reserves of the authority. The state investment officer shall invest the long-term reserves of the authority in accordance with the provisions of Sections 6-8-1 through 6-8-16 NMSA 1978. The state treasurer shall invest the money in the fund that does not constitute the long-term reserves of the fund in accordance with the applicable provisions of Chapter 6, Article 10.

History: Laws 1990, ch. 6, § 8.

10-7C-9. Participation.

A. All eligible employers shall participate in the Retiree Health Care Act except as provided in Subsection D or Subsection E of this section. Participating employers are required to continue existing group health insurance coverages until such time as similar coverages are offered by the board.

B. Participation in the basic health insurance coverages provided by the authority shall be conditioned upon receipt by the board of a certificate of eligibility from the educational retirement director, the executive secretary of the public employees retirement association, the executive director of the public school insurance authority or the governing body of an independent public employer. Once eligibility is established for each eligible retiree, the board shall contribute from money in the fund the authority's portion of the premium for the basic plan of benefits commencing no earlier than January 1, 1991 plus the balance of the premium, which shall be collected from the retiree.

C. Each eligible retiree shall accept or reject enrollment in the basic plan of benefits on an enrollment form provided by the board. An eligible retiree who rejects enrollment or fails to return a properly executed enrollment form within the open enrollment period as established by the board forfeits all entitlement and eligibility for benefits under the Retiree Health Care Act until the next open enrollment period as established by the board.

D. On or before January 1, 1991, municipalities, counties and institutions of higher education that are retirement system employers may at their option determine by ordinance, or for institutions of higher education, by resolution, to be excluded from coverage under the Retiree Health Care Act; that determination shall be subject to the following conditions:

(1) any contributions paid into the fund by a municipality, county or institution of higher education that exercises timely an irrevocable option not to participate in the Retiree Health Care Act under this subsection shall be returned without interest to that municipality, county or institution of higher education for return of the employee contributions to the employees and for crediting of the employer contributions to the appropriate fund of the municipality, county or institution of higher education. If the determination to be excluded from coverage is exercised by a municipality, county or

institution of higher education prior to July 1, 1990, then that municipality, county or institution of higher education shall not be required to make the contributions that would otherwise be required by Section 10-7C-15 NMSA 1978;

(2) any municipality, county or institution of higher education, in addition to complying with all other required notice and public hearing or meeting requirements, shall, no less than thirty days prior to the public hearing or public meeting on a proposed ordinance or proposed resolution, notify the authority of the public hearing or public meeting by certified mail; and

(3) in the event that:

(a) the number of active employees employed by municipalities contributing to the fund reaches a number equaling sixty percent or more of all active employees employed by all municipalities that are retirement system employers, the municipal position on the board of the authority shall be restored within sixty days of the date that percentage is reached; provided, however, that if a municipality with a population greater than one hundred thousand that is located in a class A county exercises this option, then the sixty-percent requirement shall be applied to the remaining municipalities only;

(b) the number of active employees employed by counties contributing to the fund reaches a number equaling sixty percent or more of all active employees employed by all counties that are retirement system employers, the county position on the board of the authority shall be restored within sixty days of the date that percentage is reached; provided, however, that if a class A county exercises this option, then the eighty-percent requirement shall be applied to the remaining counties only; or

(c) the number of active employees employed by institutions of higher learning contributing to the fund reaches a number equaling seventy percent or more of all active employees employed by an institution of higher education contributing to the educational retirement fund, the institution of higher education position on the board shall be restored within sixty days of the date that percentage is reached.

E. An independent public employer may become a participating employer if that employer satisfies the requirements imposed pursuant to Subsection M of Section 10-7C-7 NMSA 1978 and if that employer also files with the authority on or prior to January 1, 1991 or prior to July 1, 1993 or July 1 of any year a written irrevocable election by the governing body of that employer to participate in the Retiree Health Care Act. Any such independent public employer or retirement system employer, as defined in Subsection G of Section 10-7C-4 NMSA 1978 that chooses to become a participating employer after January 1, 1998 shall begin making the appropriate employer and employee contributions to the fund on the July 1 immediately following the adoption of the ordinance or resolution. On the following January 1, eligible retirees of those participating employers and their eligible dependents shall be eligible to receive group health insurance coverage pursuant to the provisions of the Retiree Health Care Act.

F. A municipality or county that enacted an ordinance or an institution of higher education that enacted a resolution prior to January 1, 1991 pursuant to Subsection D of this section to be excluded from coverage under the Retiree Health Care Act may become a participating employer if that employer satisfies the requirements imposed pursuant to Subsection M of Section 10-7C-7 NMSA 1978 and if that employer also enacts an ordinance or resolution, as applicable, after a public hearing and published notice of the hearing, prior to July 1, 1993 or July 1 of any year to choose to become a participating employer under the Retiree Health Care Act. Any such municipality, county or institution of higher education that chooses to become a participating employer after January 1, 1998 shall begin making the appropriate employer and employee contributions determined by the board to the fund on the July 1 immediately following the adoption of the ordinance or resolution. On the following January 1, eligible retirees of those participating employers and their eligible dependents shall be eligible to receive group health insurance coverage pursuant to the provisions of the Retiree Health Care Act.

History: Laws 1990, ch. 6, § 9; 1993, ch. 362, § 3; 1998, ch. 45, § 3.

10-7C-10. Expulsion from program for falsification.

A. After written notice to the participating employee, eligible retiree or eligible dependent and hearing with a fair opportunity to appear and present the case personally or by counsel, the board may expel from participation in the retiree health care plan or plans any participating employee, eligible retiree or eligible dependent who submits a false claim under, or has falsified or attempted to falsify, any claim for health benefits or life insurance offered by the authority.

B. On its motion or on the receipt of a complaint, the board may call and hold a hearing to determine whether a participating employee, eligible retiree or eligible dependent has submitted a false claim under, or has falsified or attempted to falsify any claim for health benefits or life insurance offered under the Retiree Health Care Act.

C. If the board, at the conclusion of the hearing, issues a decision that finds that a participating employee, eligible retiree or eligible dependent submitted a false claim or has falsified or attempted to falsify any claim for health benefits or life insurance offered under that act, the board shall expel the participating employee, eligible retiree or eligible dependent from participation in any or all coverage plans or impose conditions upon continued or future participation.

History: Laws 1990, ch. 6, § 10.

10-7C-11. Purchase of group insurance.

A. The board shall be designated as the group policyholder for any plans established under the Retiree Health Care Act.

B. The group insurance coverages provided under the plans may include but are not limited to life insurance, accidental death and dismemberment, hospital care and benefits, surgical care and treatment, medical care and treatment, dental care, eye care, obstetrical benefits, prescribed drugs, medicines and prosthetic devices, medicare supplement, medicare carveout, medicare coordination and other benefits, supplies and services through the vehicles of indemnity coverages, health maintenance organizations, preferred provider organizations and other health care delivery systems as provided by the Retiree Health Care Act and other coverages considered by the board to be advisable.

C. To the extent practicable, each basic plan of benefits shall cover preexisting conditions.

D. Any group medical insurance plan offered pursuant to this section shall include effective cost-containment measures to control the growth of health care costs. The board shall report annually by September 1 to appropriate interim legislative committees on the effectiveness of the cost-containment measures required by this subsection.

History: Laws 1990, ch. 6, § 11; 1994, ch. 62, § 20.

10-7C-12. Automatic coverage; effect of preexisting conditions.

A. An eligible retiree who applies for coverage during the initial and subsequent open enrollment periods as established by the board may not be denied any of the group insurance basic coverages provided under the Retiree Health Care Act except as provided in Section 10 [10-7C-10 NMSA 1978] of that act.

B. An eligible retiree or an eligible dependent who applies for optional coverage under the program after the first offering to the eligible retiree or eligible dependent is not entitled to coverage for preexisting conditions existing during the six-month period immediately preceding the date on which optional coverage takes effect.

History: Laws 1990, ch. 6, § 12.

10-7C-13. Payment of premiums on health care plans.

A. Except as otherwise provided in this section, each eligible retiree shall pay a monthly premium for the basic plan in an amount set by the board not to exceed fifty dollars (\$50.00) plus the amount, if any, of the compounded annual increases authorized by the board, which increases shall not exceed nine percent until fiscal year 2008 after which the increases shall not exceed the authority's group health care trend. In addition to the monthly premium for the basic plan, each current retiree and nonsalaried eligible participating entity governing authority member who becomes an eligible retiree shall also pay monthly an additional participation fee set by the board. That fee shall be five dollars (\$5.00) plus the amount, if any, of the compounded annual increases authorized by the board, which increases shall not exceed nine percent until

fiscal year 2008 after which the increases shall not exceed the authority's group health care trend. The additional monthly participation fee paid by the current retirees and nonsalaried eligible participating entity governing authority members who become eligible retirees shall be a consideration and a condition for being permitted to participate in the Retiree Health Care Act. A legislative member or a former participating employer governing authority member shall pay a monthly premium for any selected plan equal to one-twelfth of the annual cost of the claims and administrative costs of that plan allocated to the member by the board. In addition, a legislative member or a former participating employer governing authority member shall pay the additional monthly participation fee set by the board pursuant to this subsection as a consideration and condition for participation in the Retiree Health Care Act. Eligible dependents shall pay monthly premiums in amounts that with other money appropriated to the fund shall cover the cost of the basic plan for the eligible dependents.

B. Eligible retirees and eligible dependents shall pay monthly premiums to cover the cost of the optional plans that they elect to receive, and the board shall adopt rules for the collection of additional premiums from eligible retirees and eligible dependents participating in the optional plans. An eligible retiree or eligible dependent may authorize the authority in writing to deduct the amount of these premiums from the monthly annuity payments, if applicable.

C. The participating employers, active employees and retirees are responsible for the financial viability of the program. The overall financial viability is not an additional financial obligation of the state.

D. For eligible retirees who become eligible for participation on or after July 1, 2001, the board may determine monthly premiums based on the retirees' years of credited service with participating employers.

History: Laws 1990, ch. 6, § 13; 1993, ch. 362, § 4; 1999, ch. 286, § 1; 2000, ch. 31, § 1; 2001, ch. 335, § 2; 2003, ch. 85, § 2; 2005, ch. 86, § 2.

10-7C-14. Exemption from legal process.

All insurance benefit payments, participating employee and participating employer contributions, eligible retiree and eligible dependent contributions, optional benefits payments and any rights, benefits or payments accruing to any person under the Retiree Health Care Act, as well as all money in the fund created by that act, are exempt from execution, attachment, garnishment or any other legal process and may not be assigned except as specifically provided by that act.

History: Laws 1990, ch. 6, § 14.

10-7C-15. Retiree health care fund contributions.

A. Following completion of the preliminary contribution period, each participating employer shall make contributions to the fund pursuant to the following provisions:

(1) for participating employees who are not members of an enhanced retirement plan, the employer's contribution shall equal:

(a) one and three-tenths percent of each participating employee's salary for the period from July 1, 2002 through June 30, 2010;

(b) one and six hundred sixty-six thousandths percent of each participating employee's salary for the period from July 1, 2010 through June 30, 2011;

(c) one and eight hundred thirty-four thousandths percent of each participating employee's salary for the period from July 1, 2011 through June 30, 2012; and

(d) two percent of each participating employee's salary beginning July 1, 2012;

(2) for participating employees who are members of an enhanced retirement plan, the employer's contribution shall equal:

(a) one and three-tenths percent of each participating employee's salary for the period from July 1, 2002 through June 30, 2010;

(b) two and eighty-four thousandths percent of each participating employee's salary for the period from July 1, 2010 through June 30, 2011;

(c) two and two hundred ninety-two thousandths percent of each participating employee's salary for the period from July 1, 2011 through June 30, 2012; and

(d) two and one-half percent of each participating employee's salary beginning July 1, 2012; and

(3) each employer that chooses to become a participating employer after January 1, 1998 shall make contributions to the fund in the amount determined to be appropriate by the board.

B. Following completion of the preliminary contribution period, each participating employee, as a condition of employment, shall contribute to the fund pursuant to the following provisions:

(1) for a participating employee who is not a member of an enhanced retirement plan, the employee's contribution shall equal:

(a) sixty-five hundredths of one percent of the employee's salary for the period from July 1, 2002 through June 30, 2010;

(b) eight hundred thirty-three thousandths of one percent of the employee's salary for the period from July 1, 2010 through June 30, 2011;

(c) nine hundred seventeen thousandths of one percent of the employee's salary for the period from July 1, 2011 through June 30, 2012; and

(d) one percent of the employee's salary beginning July 1, 2012;

(2) for a participating employee who is a member of an enhanced retirement plan, the employee's contribution shall equal:

(a) sixty-five hundredths of one percent of the employee's salary for the period from July 1, 2002 through June 30, 2010;

(b) one and forty-two thousandths percent of the employee's salary for the period from July 1, 2010 through June 30, 2011;

(c) one and one hundred forty-six thousandths percent of the employee's salary for the period from July 1, 2011 through June 30, 2012; and

(d) one and one-fourth percent of the employee's salary beginning July 1, 2012; and

(3) as a condition of employment, each participating employee of an employer that chooses to become a participating employer after January 1, 1998 shall contribute to the fund an amount that is determined to be appropriate by the board. Each month, participating employers shall deduct the contribution from the participating employee's salary and shall remit it to the board as provided by any procedures that the board may require.

C. On or after July 1, 2009, no person who has obtained service credit pursuant to Subsection B of Section 10-11-6 NMSA 1978, Section 10-11-7 NMSA 1978 or Paragraph (3) or (4) of Subsection A of Section 22-11-34 NMSA 1978 may enroll with the authority unless the person makes a contribution to the fund equal to the full actuarial present value of the amount of the increase in the person's health care benefit, as determined by the authority.

D. Except for contributions made pursuant to Subsection C of this section, a participating employer that fails to remit before the tenth day after the last day of the month all employer and employee deposits required by the Retiree Health Care Act to be remitted by the employer for the month shall pay to the fund, in addition to the deposits, interest on the unpaid amounts at the rate of six percent per year compounded monthly.

E. Except for contributions made pursuant to Subsection C of this section, the employer and employee contributions shall be paid in monthly installments based on the percent of payroll certified by the employer.

F. Except in the case of erroneously made contributions or as may be otherwise provided in Subsection D of Section 10-7C-9 NMSA 1978, contributions from participating employers and participating employees shall become the property of the fund on receipt by the board and shall not be refunded under any circumstances, including termination of employment or termination of the participating employer's operation or participation in the Retiree Health Care Act.

G. Notwithstanding any other provision in the Retiree Health Care Act and at the first session of the legislature following July 1, 2013, the legislature shall review and adjust the distributions pursuant to Section 7-1-6.1 NMSA 1978 and the employer and employee contributions to the authority in order to ensure the actuarial soundness of the benefits provided under the Retiree Health Care Act.

H. As used in this section, "member of an enhanced retirement plan" means:

(1) a member of the public employees retirement association who, pursuant to the Public Employees Retirement Act [Chapter 10, Article 11 NMSA 1978], is included in:

(a) state police member and adult correctional officer member coverage plan 1;

(b) municipal police member coverage plan 3, 4 or 5;

(c) municipal fire member coverage plan 3, 4 or 5; or

(d) municipal detention officer member coverage plan 1; or

(2) a member pursuant to the provisions of the Judicial Retirement Act [Chapter 10, Article 12B NMSA 1978].

History: Laws 1990, ch. 6, § 15; 1998, ch. 45, § 4; 2001, ch. 335, § 3; 2009, ch. 287, § 2; 2009, ch. 288, § 3.

10-7C-16. Retiree health care fund; budget.

Expenditures for the administration of the Retiree Health Care Act shall be made as provided by an operating budget adopted by the board and approved by the state budget division of the department of finance and administration as provided by law and pursuant to appropriation by the legislature.

History: Laws 1990, ch. 6, § 16; 1995, ch. 29, § 1; 1998, ch. 45, § 5.

10-7C-17. Repealed.

History: Laws 2002, ch. 75, § 2; 2002, ch. 80, § 2; 2003, ch. 382, § 2; 2006, ch. 26, § 1; repealed by Laws 2021, ch. 23, § 3.

10-7C-18. Repealed.

History: Laws 2002, ch. 75, § 3; 2002, ch. 80, § 3; 2006, ch. 26, § 2; repealed by Laws 2021, ch. 23, § 3.

10-7C-19. Repealed.

History: Laws 2002, ch. 75, § 4; 2002, ch. 80, § 4; 2006, ch. 26, § 3; repealed by Laws 2021, ch. 23, § 3.

ARTICLE 7D

Public Employee Bargaining (Repealed.)

10-7D-1 to 10-7D-26. Repealed.

ARTICLE 7E

Public Employee Bargaining

10-7E-1. Short title.

Chapter 10, Article 7E NMSA 1978 may be cited as the "Public Employee Bargaining Act".

History: Laws 2003, ch. 4, § 1 and by Laws 2003, ch. 5, § 1; 2005, ch. 333, § 1.

10-7E-2. Purpose of act.

The purpose of the Public Employee Bargaining Act is to guarantee public employees the right to organize and bargain collectively with their employers, to promote harmonious and cooperative relationships between public employers and public employees and to protect the public interest by ensuring, at all times, the orderly operation and functioning of the state and its political subdivisions.

History: Laws 2003, ch. 4, § 2 and by Laws 2003, ch. 5, § 2.

10-7E-3. Conflicts.

In the event of conflict with other laws, the provisions of the Public Employee Bargaining Act shall supersede other previously enacted legislation and rules; provided that the Public Employee Bargaining Act shall not supersede the provisions of the Bateman Act [6-6-11 NMSA 1978], the Personnel Act [Chapter 10, Article 9 NMSA 1978], the Group Benefits Act [Chapter 10, Article 7B NMSA 1978], the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], the Retiree Health Care Act [10-7C-1 to 10-7C-16 NMSA 1978], public employee retirement laws or the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978].

History: Laws 2003, ch. 4, § 3; 2003, ch. 5, § 3; 2020, ch. 48, § 1.

10-7E-4. Definitions.

As used in the Public Employee Bargaining Act:

A. "appropriate bargaining unit" means a group of public employees designated by the board or local board for the purpose of collective bargaining;

B. "appropriate governing body" means the policymaking body or individual representing a public employer as designated in Section 10-7E-7 NMSA 1978;

C. "authorization card" means a signed affirmation by a member of an appropriate bargaining unit designating a particular organization as exclusive representative;

D. "board" means the public employee labor relations board;

E. "certification" means the designation by the board or local board of a labor organization as the exclusive representative for all public employees in an appropriate bargaining unit;

F. "collective bargaining" means the act of negotiating between a public employer and an exclusive representative for the purpose of entering into a written agreement regarding wages, hours and other terms and conditions of employment;

G. "confidential employee" means a person who devotes a majority of the person's time to assisting and acting in a confidential capacity with respect to a person who formulates, determines and effectuates management policies;

H. "emergency" means a one-time crisis that was unforeseen and unavoidable;

I. "exclusive representative" means a labor organization that, as a result of certification, has the right to represent all public employees in an appropriate bargaining unit for the purposes of collective bargaining;

J. "impasse" means failure of a public employer and an exclusive representative, after good-faith bargaining, to reach agreement in the course of negotiating a collective bargaining agreement;

K. "labor organization" means an employee organization, one of whose purposes is the representation of public employees in collective bargaining and in otherwise meeting, consulting and conferring with employers on matters pertaining to employment relations;

L. "local board" means a local labor relations board established by a public employer, other than the state, through ordinance, resolution or charter amendment, and which continues to exist by virtue of the election described in Subsection B of Section 10-7E-10 NMSA 1978;

M. "lockout" means an act by a public employer to prevent its employees from going to work for the purpose of resisting the demands of the employees' exclusive representative or for the purpose of gaining a concession from the exclusive representative;

N. "management employee" means an employee who is engaged primarily in executive and management functions and is charged with the responsibility of developing, administering or effectuating management policies. An employee shall not be deemed a management employee solely because the employee participates in cooperative decision-making programs or whose fiscal responsibilities are routine, incidental or clerical;

O. "mediation" means assistance by an impartial third party to resolve an impasse between a public employer and an exclusive representative regarding employment relations through interpretation, suggestion and advice;

P. "professional employee" means an employee whose work is predominantly intellectual and varied in character and whose work involves the consistent exercise of discretion and judgment in its performance and requires knowledge of an advanced nature in a field of learning customarily requiring specialized study at an institution of higher education or its equivalent. The work of a professional employee is of such character that the output or result accomplished cannot be standardized in relation to a given period of time;

Q. "public employee" means a regular nonprobationary employee of a public employer; provided that, in the public schools, "public employee" shall also include a regular probationary employee and includes those employees whose work is funded in whole or in part by grants or other third-party sources;

R. "public employer" means the state or a political subdivision thereof, including a municipality that has adopted a home rule charter, and does not include a government of an Indian nation, tribe or pueblo, provided that state educational institutions as

provided in Article 12, Section 11 of the constitution of New Mexico shall be considered public employers other than the state for collective bargaining purposes only;

S. "strike" means a public employee's refusal, in concerted action with other public employees, to report for duty or the willful absence in whole or in part from the full, faithful and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of public employment; and

T. "supervisor" means an employee who devotes a majority of work time to supervisory duties, who customarily and regularly directs the work of two or more other employees and who has the authority in the interest of the employer to hire, promote or discipline other employees or to recommend such actions effectively, but "supervisor" does not include an individual who performs merely routine, incidental or clerical duties or who occasionally assumes a supervisory or directory role or whose duties are substantially similar to those of the individual's subordinates and does not include a lead employee or an employee who participates in peer review or occasional employee evaluation programs.

History: Laws 2003, ch. 4, § 4; 2003, ch. 5, § 4; 2020, ch. 48, § 2.

10-7E-5. Rights of public employees.

A. Public employees, other than management employees and confidential employees, may form, join or assist a labor organization for the purpose of collective bargaining through representatives chosen by public employees without interference, restraint or coercion and shall have the right to refuse those activities.

B. Public employees have the right to engage in other concerted activities for mutual aid or benefit. This right shall not be construed as modifying the prohibition on strikes set forth in Section 10-7E-21 NMSA 1978.

History: Laws 2003, ch. 4, § 5; 2003, ch. 5, § 5; 2020, ch. 48, § 3.

10-7E-6. Rights of public employers.

Unless limited by the provisions of a collective bargaining agreement or by other statutory provision, a public employer may:

A. direct the work of, hire, promote, assign, transfer, demote, suspend, discharge or terminate public employees;

B. determine qualifications for employment and the nature and content of personnel examinations;

C. take actions as may be necessary to carry out the mission of the public employer in emergencies; and

D. retain all rights not specifically limited by a collective bargaining agreement or by the Public Employee Bargaining Act.

History: Laws 2003, ch. 4, § 6 and by Laws 2003, ch. 5, § 6.

10-7E-7. Appropriate governing body; public employer.

The appropriate governing body of a public employer is the policymaking individual or body representing the public employer. In the case of the state, the appropriate governing body is the governor or his designee or, in the case of a constitutionally created body, the constitutionally designated head of that body. At the local level, the appropriate governing body is the elected or appointed representative body or individual charged with management of the local public body. In the event of dispute, the board shall determine the appropriate governing body.

History: Laws 2003, ch. 4, § 7 and by Laws 2003, ch. 5, § 7.

10-7E-8. Public employee labor relations board; created; terms; qualifications.

A. The "public employee labor relations board" is created. The board consists of three members appointed by the governor. The governor shall appoint one member recommended by organized labor representatives actively involved in representing public employees, one member recommended by public employers actively involved in collective bargaining and one member jointly recommended by the other two appointees.

B. Except for appointments made in 2003, board members shall serve for a period of three years with terms commencing on July 1. Vacancies shall be filled by appointment by the governor in the same manner as the original appointment, and such appointments shall only be made for the remainder of the unexpired term. A board member may serve an unlimited number of terms.

C. During the term for which he is appointed, a board member shall not hold or seek any other political office or public employment or be an employee of a labor organization or an organization representing public employees or public employers.

D. Each board member shall be paid per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

E. For the purpose of making initial appointments to the board in 2003, the governor shall designate one member to serve a one-year term, one member to serve a two-year

term and one member to serve a three-year term. Thereafter, all members shall be appointed for three-year terms.

History: Laws 2003, ch. 4, § 8 and by Laws 2003, ch. 5, § 8.

10-7E-9. Board; powers and duties.

A. The board or a local board shall promulgate rules necessary to accomplish and perform its functions and duties as established in the Public Employee Bargaining Act, including the establishment of procedures for:

- (1) the designation of appropriate bargaining units;
- (2) the selection, certification and decertification of exclusive representatives;
and
- (3) the filing of, hearing on and determination of complaints of prohibited practices.

B. The board or a local board shall:

- (1) hold hearings and make inquiries necessary to carry out its functions and duties;
- (2) conduct studies on problems pertaining to employee-employer relations;
and
- (3) request from public employers and labor organizations the information and data necessary to carry out the board's or the local board's functions and responsibilities.

C. The board or a local board may issue subpoenas requiring, upon reasonable notice, the attendance and testimony of witnesses and the production of evidence, including books, records, correspondence or documents relating to the matter in question. The board or a local board may prescribe the form of subpoena, but it shall adhere insofar as practicable to the form used in civil actions in the district court. The board or a local board may administer oaths and affirmations, examine witnesses and receive evidence.

D. The board or a local board shall decide issues by majority vote and each shall issue its decisions in the form of written orders and opinions.

E. The board or a local board may hire personnel or contract with third parties as each deems necessary to assist it in carrying out its functions and each may delegate any or all of its authority to those third parties, subject to final review of the board or local board.

F. The board or a local board each has the power to enforce provisions of the Public Employee Bargaining Act through the imposition of appropriate administrative remedies, actual damages related to dues, back pay including benefits, reinstatement with the same seniority status that the employee would have had but for the violation, declaratory or injunctive relief or provisional remedies, including temporary restraining orders or preliminary injunctions. No punitive damages or attorney fees may be awarded by the board or local board.

G. Local board rules shall conform to the rules adopted by the board and shall not be effective until approved by an order of the board. On good cause shown, the board may approve rules proposed by a local board, which rules vary from rules of the board. All rules promulgated by a local board shall comply with state law. A rule promulgated by the board or a local board shall not require, directly or indirectly, as a condition of continuous employment, a public employee covered by the Public Employee Bargaining Act to pay money to a labor organization that is certified as an exclusive representative.

H. The board shall maintain current versions of its rules and current versions of the rules of each local board on a publicly accessible website. That website shall also include a current listing of the members of the board and the members of each local board. Each local board shall notify the board, within thirty days of revisions of its rules or changes in its membership, of any such revisions of its rules or changes in its membership.

History: Laws 2003, ch. 4, § 9; 2003, ch. 5, § 9; 2020, ch. 48, § 4.

10-7E-10. Local boards; conditions of continued existence; transfer of authority upon termination; prohibition of new local boards.

A. All local boards shall continue to exist except as provided in Subsections B through J of this section.

B. No later than December 31, 2020, each local board shall submit to the board copies of a revised local ordinance, resolution or charter amendment authorizing continuation of the local board. A local board that fails to meet the submission deadline set forth in this subsection shall cease to exist on January 1, 2021. No later than February 15, 2021, the board shall determine whether the local ordinance, resolution or charter amendment authorizing continuation of a local board provides the same or greater rights to public employees and labor organizations as the Public Employee Bargaining Act, allows for the determination of, and remedies for, an action that would constitute a prohibited practice under the Public Employee Bargaining Act and contains impasse resolution procedures equivalent to those set forth in Section 10-7E-18 NMSA 1978. If the board determines that a local ordinance, resolution or charter amendment authorizing continuation of a local board does not satisfy the requirements of this subsection, defects may be cured by June 30, 2021 or the local board will cease to exist. The board shall certify by written order whether the requirements of this subsection have been met.

C. No later than April 30, 2021, each local board shall submit to the board copies of its rules. A local board that fails to meet the submission deadline set forth in this subsection shall cease to exist on July 1, 2021. No later than May 30, 2021, the board shall determine whether the rules of a local board conform to the rules of the board, or for good cause shown, any variances meet the requirements of the Public Employee Bargaining Act. If the board determines that the rules of a local board do not meet the requirements of this subsection, the local board may cure any defects by June 30, 2021, or it will cease to exist. The board shall certify by written order whether the requirements of this subsection have been met by a local board.

D. A local board existing as of July 1, 2021 shall continue to exist after December 31, 2021 only if it has submitted to the board an affirmation that:

(1) the public employer subject to the local board has affirmatively elected to continue to operate under the local board; and

(2) each labor organization representing employees of the public employer subject to the local board has submitted a written notice to the board that it affirmatively elects to continue to operate under the local board.

E. The affirmation required pursuant to Subsection D of this section shall be submitted to the board by each local board between November 1 and December 31 of each odd-numbered year. A local board that fails to timely submit the affirmation required by this subsection shall cease to exist as of January 1 of the next even-numbered year.

F. Beginning on July 1, 2020, if at any time thereafter a local board has a membership vacancy exceeding sixty days in length, the local board shall cease to exist.

G. A local board may cease to exist upon:

(1) a repeal of the local ordinance, resolution or charter amendment authorizing continuation of the local board; or

(2) a vote of a local board, which vote is filed with the board.

H. Once a local board ceases to exist for any reason, it may not be revived.

I. Whenever a local board ceases to exist, all matters pending before such local board shall be transferred to the board for resolution.

J. After June 30, 2020, no new local board may be created.

History: Laws 2003, ch. 4, § 10; 2003, ch. 5, § 10; repealed and reenacted by Laws 2020, ch. 48, § 5.

10-7E-11. Repealed.

History: Laws 2003, ch. 4, § 11; 2003, ch. 5, § 11; repealed by Laws 2020, ch. 48, § 13.

10-7E-12. Hearing procedures.

A. The board or local board may hold hearings for the purposes of:

- (1) information gathering and inquiry;
- (2) adopting rules; and
- (3) adjudicating disputes and enforcing the provisions of the Public Employee Bargaining Act and rules adopted pursuant to that act.

B. The board or local board shall adopt rules setting forth procedures to be followed during hearings of the board or local board. The procedures adopted for conducting adjudicatory hearings shall meet all minimal due process requirements of the state and federal constitutions.

C. The board or local board may appoint a hearing examiner to conduct any adjudicatory hearing authorized by the board or local board. At the conclusion of the hearing, the examiner shall prepare a written report, including findings and recommendations, all of which shall be submitted to the board or local board for its decision.

D. A rule proposed to be adopted by the board or local board that affects a person or governmental entity outside of the board or local board and its staff shall not be adopted, amended or repealed without public hearing and comment on the proposed action before the board or local board. The public hearing shall be held after notice of the subject matter of the rule, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed rule, proposed amendment or repeal of an existing rule may be obtained. All meetings of the board shall be held in New Mexico. All meetings of local boards shall be held in the county of residence of the local public employer. Notice shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation in the state or, in the case of a local board hearing, in a newspaper of general circulation in the county, and notice shall be mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearings.

E. All adopted rules shall be filed in accordance with applicable state statutes.

F. A verbatim record made by electronic or other suitable means shall be made of every rulemaking and adjudicatory hearing. The record shall not be transcribed unless required for judicial review or unless ordered by the board or local board.

History: Laws 2003, ch. 4, § 12 and by Laws 2003, ch. 5, § 12; 2005, ch. 137, § 1.

10-7E-13. Appropriate bargaining units.

A. The board or local board shall, upon receipt of a petition for a representation election filed by a labor organization, designate the appropriate bargaining units for collective bargaining. Appropriate bargaining units shall be established on the basis of occupational groups or clear and identifiable communities of interest in employment terms and conditions and related personnel matters among the public employees involved. Occupational groups shall generally be identified as blue-collar, secretarial clerical, technical, professional, paraprofessional, police, fire and corrections. The parties, by mutual agreement, may further consolidate occupational groups. Essential factors in determining appropriate bargaining units shall include the principles of efficient administration of government, the history of collective bargaining and the assurance to public employees of the fullest freedom in exercising the rights guaranteed by the Public Employee Bargaining Act.

B. Within thirty days of a disagreement arising between a public employer and a labor organization concerning the composition of an appropriate bargaining unit, the board or local board shall hold a hearing concerning the composition of the bargaining unit before designating an appropriate bargaining unit.

C. The board or local board shall not include in an appropriate bargaining unit supervisors, managers or confidential employees.

D. Jobs included within a bargaining unit pursuant to a local ordinance in effect on January 1, 2020 shall remain in that bargaining unit.

History: Laws 2003, ch. 4, § 13; 2003, ch. 5, § 13; 2020, ch. 48, § 6.

10-7E-14. Elections.

A. Whenever, in accordance with rules prescribed by the board or local board, a petition is filed by a labor organization containing the signatures of at least thirty percent of the public employees in an appropriate bargaining unit, the board or local board shall conduct a secret ballot representation election to determine whether and by which labor organization the public employees in the appropriate bargaining unit shall be represented. Upon acceptance of a valid petition, the board or a local board shall require the public employer to provide the labor organization within ten business days the names, job titles, work locations, home addresses, personal email addresses and home or cellular telephone numbers of any public employee in the proposed bargaining unit. This information shall be kept confidential by the labor organization and its

employees or officers. The ballot shall contain the name of any labor organization submitting a petition containing signatures of at least thirty percent of the public employees in the appropriate bargaining unit. The ballot shall also contain a provision allowing public employees to indicate whether they do not desire to be represented by a labor organization. An election shall only be valid if forty percent of the eligible employees in the bargaining unit vote in the election.

B. Once a labor organization has filed a valid petition with the board or local board calling for a representation election, other labor organizations may seek to be placed on the ballot. Such an organization shall file a petition containing the signatures of not less than thirty percent of the public employees in the appropriate bargaining unit no later than ten days after the board or the local board and the public employer post a written notice that the petition in Subsection A of this section has been filed by a labor organization.

C. As an alternative to the provisions of Subsection A of this section, a labor organization with a reasonable basis for claiming to represent a majority of the employees in an appropriate bargaining unit may submit authorization cards from a majority of the employees in an appropriate bargaining unit to the board or local board, which shall, upon verification that a majority of the employees in the appropriate bargaining unit have signed valid authorization cards, certify the labor organization as the exclusive representative of all public employees in the appropriate bargaining unit. The employer may challenge the verification of the board or local board; the board or local board shall hold a fact-finding hearing on the challenge to confirm that a majority of the employees in the appropriate bargaining unit have signed valid authorization cards.

D. If a labor organization receives a majority of votes cast, it shall be certified as the exclusive representative of all public employees in the appropriate bargaining unit. Within fifteen days of an election in which no labor organization receives a majority of the votes cast, a runoff election between the two choices receiving the largest number of votes cast shall be conducted. The board or local board shall certify the results of the election, and, when a labor organization receives a majority of the votes cast, the board or local board shall certify the labor organization as the exclusive representative of all public employees in the appropriate bargaining unit.

E. An election shall not be conducted if an election or runoff election has been conducted in the twelve-month period immediately preceding the proposed representation election. An election shall not be held during the term of an existing collective bargaining agreement, except as provided in Section 10-7E-16 NMSA 1978.

History: Laws 2003, ch. 4, § 14; 2003, ch. 5, § 14; 2020, ch. 48, § 7.

10-7E-15. Exclusive representation.

A. A labor organization that has been certified by the board or local board as representing the public employees in the appropriate bargaining unit shall be the

exclusive representative of all public employees in the appropriate bargaining unit. The exclusive representative shall act for all public employees in the appropriate bargaining unit and negotiate a collective bargaining agreement covering all public employees in the appropriate bargaining unit. The exclusive representative shall represent the interests of all public employees in the appropriate bargaining unit without discrimination or regard to membership in the labor organization. A claim by a public employee that the exclusive representative has violated this duty of fair representation shall be forever barred if not brought within six months of the date on which the public employee knew, or reasonably should have known, of the violation.

B. This section does not prevent a public employee, acting individually, from presenting a grievance without the intervention of the exclusive representative. At a hearing on a grievance brought by a public employee individually, the exclusive representative shall be afforded the opportunity to be present and make its views known. An adjustment made shall not be inconsistent with or in violation of the collective bargaining agreement then in effect between the public employer and the exclusive representative.

C. A public employer shall provide an exclusive representative of an appropriate bargaining unit reasonable access to employees within the bargaining unit, including the following:

(1) for purposes of newly hired employees in the bargaining unit, reasonable access includes:

(a) the right to meet with new employees, without loss of employee compensation or leave benefits; and

(b) the right to meet with new employees within thirty days from the date of hire for a period of at least thirty minutes but not more than one hundred twenty minutes, during new employee orientation or, if the public employer does not conduct new employee orientations, at individual or group meetings; and

(2) for purposes of employees in the bargaining unit who are not new employees, reasonable access includes:

(a) the right to meet with employees during the employees' regular work hours at the employees' regular work location to investigate and discuss grievances, workplace-related complaints and other matters relating to employment relations; and

(b) the right to conduct meetings at the employees' regular work location before or after the employees' regular work hours, during meal periods and during any other break periods.

D. A public employer shall permit an exclusive representative to use the public employer's facilities or property, whether owned or leased by the employer, for purposes

of conducting meetings with the represented employees in the bargaining unit. An exclusive representative may hold the meetings described in this section at a time and place set by the exclusive representative. The exclusive representative shall have the right to conduct the meetings without undue interference and may establish reasonable rules regarding appropriate conduct for meeting attendees.

E. The meetings described in this section shall not interfere with the public employer's operations.

F. If a public employer has the information in the employer's records, the public employer shall provide to the exclusive representative, in an editable digital file format agreed to by the exclusive representative, the following information for each employee in an appropriate bargaining unit:

- (1) the employee's name and date of hire;
- (2) contact information, including:
 - (a) cellular, home and work telephone numbers;
 - (b) a means of electronic communication, including work and personal electronic mail addresses; and
 - (c) home address or personal mailing address; and
- (3) employment information, including the employee's job title, salary and work site location.

G. The public employer shall provide the information described in Subsection F of this section to the exclusive representative within ten days from the date of hire for newly hired employees in an appropriate bargaining unit, and every one hundred twenty days for employees in the bargaining unit who are not newly hired employees. The information shall be kept confidential by the labor organization and its employees or officers. Apart from the disclosure required by this subsection, and notwithstanding any provision contained in the Inspection of Public Records Act [Chapter 14, Article 3 NMSA 1978], the public employer shall not disclose the information described in Subsection F of this section, or public employees' dates of birth or social security numbers to a third party.

H. An exclusive representative shall have the right to use the electronic mail systems or other similar communication systems of a public employer to communicate with the employees in the bargaining unit regarding:

- (1) collective bargaining, including the administration of collective bargaining agreements;

(2) the investigation of grievances or other disputes relating to employment relations; and

(3) matters involving the governance or business of the labor organization.

I. Nothing in this section prevents a public employer from providing an exclusive representative access to employees within the bargaining unit beyond the reasonable access required under this section, or limits any existing right of a labor organization to communicate with public employees.

History: Laws 2003, ch. 4, § 15; 2003, ch. 5, § 15; 2020, ch. 48, § 8.

10-7E-16. Decertification of exclusive representative.

A. A member of a labor organization or the labor organization itself may initiate decertification of a labor organization as the exclusive representative if thirty percent of the public employees in the appropriate bargaining unit make a written request to the board or local board for a decertification election. Decertification elections shall be held in a manner prescribed by rule of the board. An election shall only be valid if forty percent of the eligible employees in the bargaining unit vote in the election.

B. When there is a collective bargaining agreement in effect, a request for a decertification election shall be made to the board or local board no earlier than ninety days and no later than sixty days before the expiration of the collective bargaining agreement; provided, however, a request for an election may be filed at any time after the expiration of the third year of a collective bargaining agreement with a term of more than three years.

C. When, within the time period prescribed in Subsection B of this section, a competing labor organization files a petition containing signatures of at least thirty percent of the public employees in the appropriate bargaining unit, a representation election rather than a decertification election shall be conducted.

D. When an exclusive representative has been certified but no collective bargaining agreement is in effect, the board or local board shall not accept a request for a decertification election or an election sought by a competing labor organization earlier than twelve months subsequent to a labor organization's certification as the exclusive representative.

History: Laws 2003, ch. 4, § 16; 2003, ch. 5, § 16; 2020, ch. 48, § 9.

10-7E-17. Scope of bargaining.

A. Except for retirement programs provided pursuant to the Public Employees Retirement Act [Chapter 10, Article 11 NMSA 1978] or the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978], public employers and exclusive representatives:

(1) shall bargain in good faith on wages, hours and all other terms and conditions of employment and other issues agreed to by the parties. However, neither the public employer nor the exclusive representative shall be required to agree to a proposal or to make a concession; and

(2) shall enter into written collective bargaining agreements covering employment relations. Entering into a collective bargaining agreement shall not obviate the duty to bargain in good faith during the term of the collective bargaining agreement regarding changes to wages, hours and all other terms and conditions of employment, unless it can be demonstrated that the parties clearly and unmistakably waived the right to bargain regarding those subjects. However, no party may be required, by this provision, to renegotiate the existing terms of collective bargaining agreements already in place.

B. In regard to the Public Employees Retirement Act and the Educational Retirement Act, a public employer in a written collective bargaining agreement may agree to assume any portion of a public employee's contribution obligation to retirement programs provided pursuant to the Public Employees Retirement Act or the Educational Retirement Act. Such agreements are subject to the limitations set forth in this section.

C. The obligation to bargain collectively imposed by the Public Employee Bargaining Act shall not be construed as authorizing a public employer and an exclusive representative to enter into an agreement that is in conflict with the provisions of any other statute of this state; provided, however, that a collective bargaining agreement that provides greater rights, remedies and procedures to public employees than contained in a state statute shall not be considered to be in conflict with that state statute. In the event of an actual conflict between the provisions of any other statute of this state and an agreement entered into by the public employer and the exclusive representative in collective bargaining, the statutes of this state shall prevail.

D. Payroll deduction of the exclusive representative's membership dues shall be a mandatory subject of bargaining if either party chooses to negotiate the issue. The amount of dues shall be certified in writing by an official of the labor organization and shall not include special assessments, penalties or fines of any type. The public employer shall honor payroll deductions until the authorization is revoked in writing by the public employee in accordance with the negotiated agreement and this subsection and for so long as the labor organization is certified as the exclusive representative. Public employees who have authorized the payroll deduction of dues to a labor organization may revoke that authorization by providing written notice to their labor organization during a window period not to exceed ten days per year for each employee. The public employer and the labor organization shall negotiate when the commencement of that period will begin annually for each employee. If no agreement is reached, the period shall be during the ten days following the anniversary date of each employee's employment. Within ten days of receipt of notice from a public employee of revocation of authorization for the payroll deduction of dues, the labor organization shall provide notice to the public employer of a public employee's revocation of that

authorization. A public employee's notice of revocation for the payroll deduction of dues shall be effective on the thirtieth day after the notice provided to the public employer by the labor organization. No authorized payroll deduction of dues held by a public employer or a labor organization on July 1, 2020 shall be rendered invalid by this provision and shall remain valid until replaced or revoked by the public employee. During the time that a board certification is in effect for a particular appropriate bargaining unit, the public employer shall not deduct dues for any other labor organization.

E. Public employers and a labor organization, or their employees or agents, are not liable for, and have a complete defense to, any claims or actions under the law of this state for requiring, deducting, receiving or retaining fair share dues or fees from public employees, and current or former public employees do not have standing to pursue these claims or actions if the fair share dues or fees were permitted at the time under the laws of this state then in force and paid, through payroll deduction or otherwise, on or before June 27, 2018. This subsection:

(1) applies to all claims and actions pending on July 1, 2020 and to claims and actions filed on or after July 1, 2020; and

(2) shall not be interpreted to infer that any relief made unavailable by this section would otherwise be available.

F. The scope of bargaining for the exclusive representative and the state shall include enhancements of employee rights and benefits existing pursuant to the Personnel Act [Chapter 10, Article 9 NMSA 1978].

G. The scope of bargaining for representatives of public schools as well as educational employees in state agencies shall include, as a mandatory subject of bargaining, the impact of professional and instructional decisions made by the employer.

H. An impasse resolution or an agreement provision by the state and an exclusive representative that requires the expenditure of funds shall be contingent upon the specific appropriation of funds by the legislature and the availability of funds. An impasse resolution or an agreement provision by a public employer other than the state or the public schools and an exclusive representative that requires the expenditure of funds shall be contingent upon the specific appropriation of funds by the appropriate governing body and the availability of funds. An agreement provision by a local school board and an exclusive representative that requires the expenditure of funds shall be contingent upon ratification by the appropriate governing body. An arbitration decision shall not require the reappropriation of funds.

I. An agreement shall include a grievance procedure to be used for the settlement of disputes pertaining to employment terms and conditions and related personnel matters. The grievance procedure shall provide for a final and binding determination.

The final determination shall constitute an arbitration award within the meaning of the Uniform Arbitration Act [44-7A-1 to 44-7A-32 NMSA 1978]; such award shall be subject to judicial review pursuant to the standard set forth in the Uniform Arbitration Act. The costs of an arbitration proceeding conducted pursuant to this subsection shall be shared equally by the parties.

J. The following meetings shall be closed:

(1) meetings for the discussion of bargaining strategy preliminary to collective bargaining negotiations between the public employer and the exclusive representative of the public employees of the public employer;

(2) collective bargaining sessions; and

(3) consultations and impasse resolution procedures at which the public employer and the exclusive representative of the appropriate bargaining unit are present.

History: Laws 2003, ch. 4, § 17; 2003, ch. 5, § 17; 2020, ch. 48, § 10.

10-7E-18. Impasse resolution.

A. The following negotiations and impasse procedures shall be followed by the state and exclusive representatives for state employees:

(1) a request to the state for the commencement of initial negotiations shall be filed in writing by the exclusive representative no later than June 1 of the year in which negotiations are to take place. Negotiations shall begin no later than July 1 of that year;

(2) in subsequent years, negotiations agreed to by the parties shall begin no later than August 1 following the submission of written notice to the state by the exclusive representative no later than July 1 of the year in which negotiations are to take place;

(3) if an impasse occurs during negotiations between the parties, either party may request mediation services from the board. A mediator from the federal mediation and conciliation service shall be assigned by the board to assist in negotiations unless the parties agree to another mediator;

(4) the mediator shall provide services to the parties until the parties reach agreement or the mediator believes that mediation services are no longer helpful or until thirty days after the mediator was requested, whichever occurs first; and

(5) if the impasse continues after the time described in Paragraph (4) of this subsection, either party may request a list of seven arbitrators from the federal mediation and conciliation service. One arbitrator shall be chosen by the parties by

alternately striking names from such list. Who strikes first shall be determined by coin toss. The arbitrator shall render a final, binding, written decision resolving unresolved issues pursuant to Subsection H of Section 10-7E-17 NMSA 1978 and the Uniform Arbitration Act [44-7A-1 to 44-7A-32 NMSA 1978] no later than thirty days after the arbitrator has been notified of selection by the parties. The arbitrator's decision shall be limited to a selection of one of the two parties' complete, last, best offer. The costs of an arbitrator and the arbitrator's related costs conducted pursuant to this subsection shall be shared equally by the parties. Each party shall be responsible for bearing the cost of presenting its case. The decision shall be subject to judicial review pursuant to the standard set forth in the Uniform Arbitration Act.

B. The following impasse procedures shall be followed by all public employers and exclusive representatives, except the state and the state's exclusive representatives:

(1) if an impasse occurs, either party may request from the board or local board that a mediator be assigned to the negotiations unless the parties can agree on a mediator. A mediator with the federal mediation and conciliation service shall be assigned by the board or local board to assist negotiations unless the parties agree to another mediator; and

(2) if the impasse continues after a thirty-day mediation period, either party may request a list of seven arbitrators from the federal mediation and conciliation service. One arbitrator shall be chosen by the parties by alternately striking names from such list. Who strikes first shall be determined by coin toss. The arbitrator shall render a final, binding, written decision resolving unresolved issues pursuant to Subsection H of Section 10-7E-17 NMSA 1978 and the Uniform Arbitration Act no later than thirty days after the arbitrator has been notified of selection by the parties. The arbitrator's decision shall be limited to a selection of one of the two parties' complete, last, best offer. The costs of an arbitrator and the arbitrator's related costs conducted pursuant to this subsection shall be shared equally by the parties. Each party shall be responsible for bearing the cost of presenting its case. The decision shall be subject to judicial review pursuant to the standard set forth in the Uniform Arbitration Act.

C. A public employer other than the state may enter into a written agreement with the exclusive representative setting forth an alternative impasse resolution procedure.

D. In the event that an impasse continues after the expiration of a contract, the existing contract will continue in full force and effect until it is replaced by a subsequent written agreement. However, this shall not require the public employer to increase any employees' levels, steps or grades of compensation contained in the existing contract.

History: Laws 2003, ch. 4, § 18; 2003, ch. 5, § 18; 2020, ch. 48, § 11.

10-7E-19. Public employers; prohibited practices.

A public employer or the public employer's representative shall not:

A. discriminate against a public employee with regard to terms and conditions of employment because of the employee's membership in a labor organization;

B. interfere with, restrain or coerce a public employee in the exercise of a right guaranteed pursuant to the Public Employee Bargaining Act or use public funds to influence the decision of its employees or the employees of its subcontractors regarding whether to support or oppose a labor organization that represents or seeks to represent those employees, or whether to become a member of any labor organization; provided, however, that this subsection does not apply to activities performed or expenses incurred:

(1) addressing a grievance or negotiating or administering a collective bargaining agreement;

(2) allowing a labor organization or its representatives access to the public employer's facilities or properties;

(3) performing an activity required by federal or state law or by a collective bargaining agreement;

(4) negotiating, entering into or carrying out an agreement with a labor organization;

(5) paying wages to a represented employee while the employee is performing duties if the payment is permitted under a collective bargaining agreement; or

(6) representing the public employer in a proceeding before the board or a local board or in a judicial review of that proceeding;

C. dominate or interfere in the formation, existence or administration of a labor organization;

D. discriminate in regard to hiring, tenure or a term or condition of employment in order to encourage or discourage membership in a labor organization;

E. discharge or otherwise discriminate against a public employee because the employee has signed or filed an affidavit, petition, grievance or complaint or given information or testimony pursuant to the provisions of the Public Employee Bargaining Act or because a public employee is forming, joining or choosing to be represented by a labor organization;

F. refuse to bargain collectively in good faith with the exclusive representative;

G. refuse or fail to comply with a provision of the Public Employee Bargaining Act or board rule; or

H. refuse or fail to comply with a collective bargaining agreement.

History: Laws 2003, ch. 4, § 19; 2003, ch. 5, § 19; 2020, ch. 48, § 12.

10-7E-20. Public employees; labor organizations; prohibited practices.

A public employee or labor organization or its representative shall not:

A. discriminate against a public employee with regard to labor organization membership because of race, color, religion, creed, age, sex or national origin;

B. interfere with, restrain or coerce any public employee in the exercise of a right guaranteed pursuant to the provisions of the Public Employee Bargaining Act;

C. refuse to bargain collectively in good faith with a public employer;

D. refuse or fail to comply with a collective bargaining or other agreement with the public employer;

E. refuse or fail to comply with a provision of the Public Employee Bargaining Act; or

F. picket homes or private businesses of elected officials or public employees.

History: Laws 2003, ch. 4, § 20 and by Laws 2003, ch. 5, § 20.

10-7E-21. Strikes and lockouts prohibited.

A. A public employee or labor organization shall not engage in a strike. A labor organization shall not cause, instigate, encourage or support a public employee strike. A public employer shall not cause, instigate or engage in a public employee lockout.

B. A public employer may apply to the district court for injunctive relief to end a strike, and an exclusive representative of public employees affected by a lockout may apply to the district court for injunctive relief to end a lockout.

C. The board or local board, upon a clear and convincing showing of proof at a hearing that a labor organization directly caused or instigated a public employee strike, may impose appropriate penalties on that labor organization, up to and including decertification of the labor organization with respect to any of its bargaining units which struck as a result of such causation or instigation.

History: Laws 2003, ch. 4, § 21 and by Laws 2003, ch. 5, § 21.

10-7E-22. Agreements valid; enforcement.

Collective bargaining agreements and other agreements between public employers and exclusive representatives shall be valid and enforceable according to their terms when entered into in accordance with the provisions of the Public Employee Bargaining Act.

History: Laws 2003, ch. 4, § 22 and by Laws 2003, ch. 5, § 22.

10-7E-23. Judicial enforcement; standard of review.

A. The board or local board may request the district court to enforce orders issued pursuant to the Public Employee Bargaining Act, including those for appropriate temporary relief and restraining orders. The court shall consider the request for enforcement on the record made before the board or local board. It shall uphold the action of the board or local board and take appropriate action to enforce it unless it concludes that the order is:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence on the record considered as a whole; or
- (3) otherwise not in accordance with law.

B. A person or party, including a labor organization affected by a final rule, order or decision of the board or local board, may appeal to the district court for further relief. All such appeals shall be based upon the record made at the board or local board hearing. All such appeals to the district court shall be taken within thirty days of the date of the final rule, order or decision of the board or local board. Actions taken by the board or local board shall be affirmed unless the court concludes that the action is:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence on the record considered as a whole; or
- (3) otherwise not in accordance with law.

History: Laws 2003, ch. 4, § 23 and by Laws 2003, ch. 5, § 23.

10-7E-24. Existing collective bargaining units.

A. Bargaining units established prior to July 1, 1999 shall continue to be recognized as appropriate bargaining units for the purposes of the Public Employee Bargaining Act. Bargaining units established between July 1, 1999 and the effective date of that act shall continue in effect only if the unit is covered by a collective bargaining agreement on the date of this act.

B. A labor organization that was recognized by a public employer as the exclusive representative of an appropriate bargaining unit on June 30, 1999 shall be recognized as the exclusive representative of the unit on the effective date of the Public Employee Bargaining Act; provided, however, that the public employer shall not enter into a new collective bargaining agreement pursuant to this subsection unless the labor organization demonstrates majority support to the public employer pursuant to Section 14 [10-7E-14 NMSA 1978] of the Public Employee Bargaining Act. A labor organization which attempts and fails to show majority support shall no longer be recognized as the exclusive bargaining representative of that unit.

History: Laws 2003, ch. 4, § 24 and by Laws 2003, ch. 5, § 24.

10-7E-24.1. Certain new entities created by statute.

A new entity, created by or pursuant to statute, that encompasses the same powers and duties as a previous public employer and uses essentially the same employees as the previous public employer shall be treated as if it were that previous public employer for purposes of the Public Employee Bargaining Act, including the continued applicability of existing ordinances or resolutions pursuant to Section 10-7E-26 NMSA 1978 and of existing collective bargaining units pursuant to Section 10-7E-24 NMSA 1978.

History: Laws 2005, ch. 333, § 2.

10-7E-25. Existing collective bargaining agreements.

Nothing in the Public Employee Bargaining Act shall be construed to annul or modify a collective bargaining agreement entered into between a public employer and an exclusive representative prior to the effective date of the Public Employee Bargaining Act. Nor shall anything in the Public Employee Bargaining Act be construed to annul or modify the status of an existing or recognized exclusive representative.

History: Laws 2003, ch. 4, § 25 and by Laws 2003, ch. 5, § 25.

10-7E-26. Repealed.

History: Laws 2003, ch. 4, § 26; 2003, ch. 5, § 26; repealed by Laws 2020, ch. 48, § 13.

ARTICLE 7F

Hazardous Duty Officers' Employer-Employee Relations

10-7F-1. Short title.

Chapter 10, Article 7F NMSA 1978 may be cited as the "Hazardous Duty Officers' Employer-Employee Relations Act".

History: Laws 2010, ch. 62, § 1; 2019, ch. 83, § 1.

10-7F-2. Definitions.

As used in the Hazardous Duty Officers' Employer-Employee Relations Act:

A. "compelled statement" means a statement provided by an officer to the officer's employer if the statement is compelled under threat of dismissal from employment or any other employment sanction;

B. "emergency medical technician" means an individual who has been licensed by the department of health as an emergency medical technician;

C. "firefighter" means an individual who is employed as a non-volunteer firefighter and who has taken the oath prescribed for firefighters;

D. "hazardous duty officer" or "officer" means an individual who is employed full time by the state or a political subdivision of the state as a firefighter, emergency medical technician or paramedic, provided that "hazardous duty officer" does not include an individual who has not completed the probationary period established by the individual's employer as a condition of employment; and

E. "paramedic" means an individual who has been licensed by the department of health as a paramedic.

History: Laws 2010, ch. 62, § 2; 2019, ch. 83, § 2.

10-7F-3. Investigations of hazardous duty officers; requirements; limitation.

A. When a hazardous duty officer is under investigation by the officer's employer for alleged actions that could result in administrative sanctions being levied against the officer, any investigative interview of the officer shall be conducted only:

(1) upon the order of the officer's department director or the department director's designee;

(2) when the officer is on duty or during the officer's normal waking hours, unless the urgency of the investigation requires otherwise; and

(3) at the employer's facility, unless the urgency of the investigation requires otherwise.

B. Prior to commencement of an investigative interview:

(1) the officer shall be informed of the name and rank of the person in charge of the investigative interview and all other persons who will be present during the investigative interview;

(2) the officer shall be informed of the nature of the investigation, and the names of all known complainants shall be disclosed to the officer unless the chief administrator of the officer's employer determines that the identification of the complainant shall not be disclosed because it is necessary for the protection of an informant or because disclosure would jeopardize or compromise the integrity or security of the investigation; and

(3) a reasonable attempt shall be made to notify the officer's immediate superior of the pending investigative interview.

C. During an investigative interview, the following requirements shall be adhered to:

(1) at the commencement of the investigative interview, the officer shall be advised of all legal rights that the officer has with respect to the investigative interview;

(2) each investigative interview session shall not exceed two hours unless the parties mutually consent to continuation of the session;

(3) there shall not be more than one investigative interview session within a twenty-four-hour period, unless the parties mutually consent to additional sessions, provided that there shall be at least a one-hour rest period between the sessions;

(4) there shall not be more than two investigators at any given time;

(5) the officer shall be allowed to attend to physical necessities as they occur in the course of an investigative interview; and

(6) the officer shall not be subjected to offensive language or illegal coercion by an investigator in the course of an investigative interview.

D. An investigative interview of an officer shall be recorded, and the complete investigative interview shall be published as a transcript; provided that any recesses called during the investigative interview shall be noted in the transcript. An accurate copy of the transcript or tape shall be provided to the officer, upon written request, no later than fifteen working days after the investigation has been completed.

E. The compelled statement of an officer shall not be released by the employer except upon court order.

History: Laws 2010, ch. 62, § 3; 2019, ch. 83, § 3.

10-7F-4. Polygraph examinations.

After reviewing all the information collected in the course of an investigation of a hazardous duty officer, the chief administrator of the officer's employer may order the officer to submit to a polygraph examination administered by a licensed polygraph examiner, provided that:

A. all other reasonable investigative means have been exhausted; and

B. the officer has been advised of the administrator's reasons for ordering the polygraph examination.

History: Laws 2010, ch. 62, § 4.

10-7F-5. Right to produce evidence.

When a hazardous duty officer is under investigation for an administrative matter, the officer shall be permitted to produce any relevant documents, witnesses or other evidence to support the officer's case and the officer may cross-examine any adverse witnesses during any grievance process or appeal involving disciplinary action.

History: Laws 2010, ch. 62, § 5.

10-7F-6. Personnel files.

A. No document containing comments adverse to a hazardous duty officer shall be entered into the officer's personnel file unless the officer has read and signed the document. When an officer refuses to sign a document containing adverse comments, the document may be entered into an officer's personnel file if:

(1) the officer's refusal to sign is noted on the document by the chief administrator of the officer's employer; and

(2) the notation regarding the officer's refusal to sign the document is witnessed by a third party.

B. A hazardous duty officer may file a written response to any document containing adverse comments entered into the officer's personnel file, and the response shall be filed with the officer's employer within thirty days after the document was entered into the officer's personnel file. A hazardous duty officer's written response shall be attached to the document.

History: Laws 2010, ch. 62, § 6.

10-7F-7. Constitutional rights; notification.

When a hazardous duty officer is under administrative investigation and a determination is made to commence a criminal investigation, the officer shall be immediately notified of the investigation and shall be afforded all the protections set forth in the bill of rights of the United States constitution and of the constitution of New Mexico.

History: Laws 2010, ch. 62, § 7.

10-7F-8. Forced disclosure of financial information.

A hazardous duty officer shall not be required by an employer to disclose information regarding the officer's financial status, unless all other reasonable investigative means have been exhausted or except as otherwise required by law.

History: Laws 2010, ch. 62, § 8.

10-7F-9. Political activity.

A hazardous duty officer shall not be prohibited by an employer from engaging in any political activity when the officer is off duty, except as otherwise provided by law.

History: Laws 2010, ch. 62, § 9.

ARTICLE 8

Per Diem and Mileage

10-8-1. Short title.

Sections 10-8-1 through 10-8-8 NMSA 1978 may be cited as the "Per Diem and Mileage Act".

History: 1953 Comp., § 5-10-1, enacted by Laws 1963, ch. 31, § 1; 1978, ch. 184, § 1; 1979, ch. 273, § 2.

10-8-2. Purpose of act.

The purpose of the Per Diem and Mileage Act is to establish standard rates for reimbursement for travel for public officers and employees coming under the Per Diem and Mileage Act. The act is designed to be referred to where applicable in statutes setting compensation of public officers and employees.

History: 1953 Comp., § 5-10-2, enacted by Laws 1963, ch. 31, § 2; 1971, ch. 116, § 1.

10-8-3. Definitions.

As used in the Per Diem and Mileage Act:

A. "attend" means the act of being present, either physically or through a virtual platform that is approved by the entity responsible for determining attendance;

B. "secretary" means the secretary of finance and administration;

C. "employee" means any person who is in the employ of any state agency, local public body or public post-secondary educational institution and whose salary is paid either completely or in part from public money, but does not include jurors or jury commissioners;

D. "governing board" means the board of regents of any institution designated in Article 12, Section 11 of the constitution of New Mexico or designated in Chapter 21, Article 14 NMSA 1978, or the board of any institution designated in Chapter 21, Articles 13, 16 and 17 NMSA 1978;

E. "local public body" means all political subdivisions of the state and their agencies, instrumentalities and institutions, except public post-secondary educational institutions;

F. "state agency" means the state or any of its branches, agencies, departments, boards, instrumentalities or institutions, except public post-secondary educational institutions;

G. "public post-secondary educational institution" means any institution designated in Article 12, Section 11 of the constitution of New Mexico and any institution designated in Chapter 21, Articles 13, 14, 16 and 17 NMSA 1978; and

H. "public officer" or "public official" means every elected or appointed officer of the state, local public body or any public post-secondary educational institution. "Public officer" or "public official" includes members of advisory boards appointed by any state agency, local public body or public post-secondary educational institution.

History: 1953 Comp., § 5-10-2.1, enacted by Laws 1971, ch. 116, § 2; 1977, ch. 247, § 49; 1978, ch. 184, § 2; 1979, ch. 273, § 3; 1989, ch. 338, § 1; 2021, ch. 81, § 1.

10-8-4. Per diem and mileage rates; in lieu of payment.

A. Notwithstanding any other specific law to the contrary and except as provided in Subsection I of this section, every nonsalaried public officer shall receive either reimbursement pursuant to the provisions of Subsection K or L of this section or per diem expenses in the following amounts for a board or committee meeting attended; provided that the officer shall not receive per diem expenses for more than one board or committee meeting that occurs on the same day; or for each day spent in discharge of official duties for travel within the state but away from the officer's home:

(1) forty-five dollars (\$45.00) if the officer physically attends the board or committee meeting for less than four hours or the officer attends a virtual meeting of any duration during a single calendar day; or

(2) ninety-five dollars (\$95.00) if the officer physically attends the board or committee meeting for four hours or more during a single calendar day.

B. Every salaried public officer or employee who is traveling within the state but away from the officer's or employee's home and designated post of duty on official business shall receive either reimbursement pursuant to the provisions of Subsection K or L of this section or for each day spent in the discharge of official duties, the amount established by the department of finance and administration for the fiscal year in which the travel occurs. The department of finance and administration shall establish the reimbursement rate to be used for the next fiscal year by May 1 of each fiscal year; provided that such rate shall take into consideration the rates available for lodging, meals and incidentals as determined by the United States general services administration for that period of time.

C. Every public officer or employee who is traveling outside of the state on official business shall receive either reimbursement pursuant to the provisions of Subsection K or L of this section or for each day spent in the discharge of official duties, the amount established by the department of finance and administration for the fiscal year in which the travel occurs. The department of finance and administration shall establish the reimbursement rate to be used for the next fiscal year by May 1 of each fiscal year; provided that such rate shall take into consideration the rates available for lodging, meals and incidentals as determined by the United States general services administration for that period of time. For a salaried public officer or employee of a local public body or state agency, expenses shall be substantiated in accordance with rules promulgated by the secretary of finance and administration, and the secretary may promulgate rules defining what constitutes out-of-state travel for the purposes of the Per Diem and Mileage Act. For a public officer or employee of a public post-secondary educational institution, expenses shall be substantiated in accordance with rules promulgated by the governing board of that public post-secondary educational institution, and the governing board may promulgate rules defining what constitutes out-of-state travel for the purposes of the Per Diem and Mileage Act.

D. Every public officer or employee shall receive up to the internal revenue service standard mileage rate set January 1 of the previous year for each mile traveled in a privately owned vehicle or eighty-eight cents (\$.88) a mile for each mile traveled in a privately owned airplane if the travel is necessary to the discharge of the officer's or employee's official duties and if the private conveyance is not a common carrier; provided, however, that only one person shall receive mileage for each mile traveled in a single privately owned vehicle or airplane, except in the case of common carriers, in which case the person shall receive the cost of the ticket in lieu of the mileage allowance.

E. The per diem and mileage or per diem and cost of tickets for common carriers paid to salaried public officers or employees is in lieu of actual expenses for transportation, lodging and subsistence.

F. In addition to the in-state per diem set forth in this section, the department of finance and administration, by rule, may authorize a flat subsistence rate in the amount set by the legislature in the general appropriation act for commissioned officers of the New Mexico state police in accordance with rules promulgated by the department of finance and administration.

G. In lieu of the in-state per diem set in Subsection B of this section, the department of finance and administration may, by rule, authorize a flat monthly subsistence rate for certain employees of the department of transportation, provided that the payments made under this subsection shall not exceed the maximum amount that would be paid under Subsection B of this section.

H. Per diem received by nonsalaried public officers for travel on official business or in the discharge of their official duties, other than attending a board or committee meeting, and per diem received by public officers and employees for travel on official business shall be prorated in accordance with rules of the department of finance and administration or the governing board.

I. The provisions of Subsection A of this section do not apply to payment of per diem expense to a nonsalaried public official of a municipality for attendance at board or committee meetings held within the boundaries of the municipality.

J. In addition to any other penalties prescribed by law for false swearing on an official voucher, it shall be cause for removal or dismissal from office.

K. With prior written approval of the secretary or the secretary's designee or the local public body, a nonsalaried public officer of a state agency or local public body, a salaried public officer of a state agency or local public body or a salaried employee of a state agency or local public body is entitled to per diem expenses under this subsection and shall receive:

(1) reimbursement for actual expenses for lodging; and

(2) reimbursement for actual expenses for meals and incidentals not to exceed the maximum amounts for in-state and out-of-state travel established by the department of finance and administration for the fiscal year in which the travel occurs; provided that the department of finance and administration shall establish the maximum rates for the reimbursement of actual expenses for meals and incidentals as described in Subsections B and C of this section.

L. With prior written approval of the governing board or its designee, a nonsalaried public officer of a public post-secondary educational institution, a salaried public officer

of a public post-secondary educational institution or a salaried employee of a public post-secondary educational institution is entitled to per diem expenses under this subsection and shall receive:

- (1) reimbursement for actual expenses for lodging; and
- (2) reimbursement for actual expenses for meals and incidentals not to exceed the maximum amounts for in-state and out-of-state travel established by the department of finance and administration for the fiscal year in which the travel occurs; provided that the department of finance and administration shall establish the maximum rates for the reimbursement of actual expenses for meals and incidentals as described in Subsections B and C of this section.

History: 1953 Comp., § 5-10-3, enacted by Laws 1963, ch. 31, § 3; 1971, ch. 116, § 3; 1974, ch. 26, § 1; 1975, ch. 106, § 1; 1977, ch. 194, § 1; 1978, ch. 184, § 3; 1979, ch. 38, § 1; 1980, ch. 9, § 1; 1980, ch. 32, § 1; 1981, ch. 109, § 1; 1984, ch. 29, § 2; 1987, ch. 129, § 1; 1989, ch. 338, § 2; 2003, ch. 215, § 1; 2009, ch. 170, § 1; 2021, ch. 81, § 2.

10-8-5. Restrictions; rules.

A. The secretary may promulgate rules for state agencies and local public bodies for the purpose of carrying out the provisions of the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978]. Public officials of public post-secondary educational institutions and employees of public post-secondary educational institutions shall be subject to the rules of their governing boards.

B. Public funds may be advanced to any public officer or employee before the travel occurs only with prior written approval of the secretary, the secretary's designee, the local public body or the governing board or its designee. This restriction shall not prohibit the use of authorized credit cards in connection with purchases necessary to the use of vehicles owned by the state, a local public body or a public post-secondary educational institution or for food, lodging or transportation as permitted by the department of finance and administration or the governing board. Public funds shall be paid out under the Per Diem and Mileage Act only upon vouchers duly presented with any required receipts attached thereto. For employees authorized to receive public funds in advance of travel, payment shall be received only upon vouchers submitted with attached authorization for each travel period. For public officers or employees using authorized credit cards, vouchers with required receipts for each month's travel expenses shall be submitted as a condition to receiving authorization to use the credit card for the next month's travel. Travel expenses may also be advanced if the travel is to be performed under provisions of federal or private contracts and the funds used are not derived from taxes or revenues paid to the state or any of its political subdivisions.

C. The secretary may reduce the rates set for the per diem and mileage for any class of public officials and for employees of state agencies, except public officials of

public post-secondary educational institutions, at any time the secretary deems it to be in the public interest, and such reduction shall not be construed to permit payment of any other compensation, perquisite or allowance. The secretary shall exercise this power of reduction in a reasonable manner and shall attempt to achieve a standard rate for all public officers and employees of the same classification. The secretary may, at the request of any state agency and for good cause shown, reduce the rates of per diem and mileage for that state agency. The governing body of any local public body may eliminate or may reduce the rates set for the per diem and mileage for all or any class of public officials and employees of the local public body at any time the local public body deems it to be in the public interest, and such reduction shall not be construed to permit payment of any other compensation, perquisite or allowance. The local public body shall exercise this power of reduction in a reasonable manner and shall attempt to achieve a standard rate for all public officers and employees of the same classification. The secretary may, in extraordinary circumstances and with the prior approval of the state board of finance in public meeting, allow actual expenses rather than the per diem rates set in the Per Diem and Mileage Act.

D. The governing board or its designee may reduce the rates set for the per diem and mileage for public officials of public post-secondary educational institutions and for employees of public post-secondary educational institutions at any time the governing board deems it to be in the public interest, and such reduction shall not be construed to permit payment of any other compensation, perquisite or allowance. The governing board shall exercise this power of reduction in a reasonable manner and shall attempt to achieve a standard rate for public officers and employees of public post-secondary educational institutions. The governing board may reduce the rates of per diem and mileage for its public post-secondary educational institution and may, in extraordinary circumstances and in public meeting, allow actual expenses rather than the per diem rates set in the Per Diem and Mileage Act.

E. No reimbursement for out-of-state travel shall be paid to any elected public officer, including any member of the legislature, if after the last day to do so that officer has not filed a declaration of candidacy for reelection to the public officer's currently held office or has been defeated for reelection to the public officer's currently held office in a primary election or any general election.

F. Subsection E of this section does not apply to any elected public officer who is ineligible to serve another term after serving the public officer's term in office.

G. Subsection E of this section does not apply to legislators whose travel has been approved by a three-fourths' vote of the New Mexico legislative council at a regularly called meeting.

H. Any person who is not an employee, appointee or elected official of a county or municipality and who is reimbursed under the provisions of the Per Diem and Mileage Act in an amount that singly or in the aggregate exceeds one thousand five hundred dollars (\$1,500) in any one year shall not be entitled to further reimbursement under the

provisions of that act until the person furnishes in writing to the person's department head or, in the case of a department head or board or commission member, to the governor or, in the case of a member of the legislature, to the New Mexico legislative council an itemized statement on each separate instance of travel covered within the reimbursement, the place to which traveled and the executive, judicial or legislative purpose served by the travel.

History: 1953 Comp., § 5-10-3.1, enacted by Laws 1978, ch. 184, § 4; 1979, ch. 273, § 4; 1984, ch. 29, § 3; 1989, ch. 338, § 3; 1990, ch. 67, § 1; 1995, ch. 209, § 1; 2018, ch. 27, § 2.

10-8-6. Application of act.

A. The Per Diem and Mileage Act shall not apply to the members of the legislature unless the legislature by specific reference to the act makes it applicable to the members and such application does not thereby exceed the per diem and mileage rates fixed in the constitution of New Mexico.

B. The provisions of Subsection D of Section 10-8-4 NMSA 1978 pertaining to the mileage reimbursement rate for travel in a privately owned vehicle shall not apply to employees of a hospital facility under the control of the board of trustees of a special hospital district created pursuant to the provisions of the Special Hospital District Act [Chapter 4, Article 48A NMSA 1978], if the board of trustees has fixed a mileage reimbursement rate for those employees.

History: 1953 Comp., § 5-10-3.2, enacted by Laws 1971, ch. 116, § 5; 2003, ch. 21, § 2.

10-8-7. Penalty.

Any public officer or employee covered by the Per Diem and Mileage Act who knowingly authorizes or who knowingly accepts payment in excess of the amount allowed by the Per Diem and Mileage Act or in excess of the amount authorized by the secretary or the governing board pursuant to Section 10-8-5 NMSA 1978 is liable to the state in an amount that is twice the excess payment.

History: 1953 Comp., § 5-10-4, enacted by Laws 1963, ch. 31, § 4; 1971, ch. 116, § 6; 1977, ch. 247, § 51; 1989, ch. 338, § 4.

10-8-8. Other reimbursements.

A. The secretary may authorize by regulation reimbursement for the following actual expenses incurred by public officers and employees of state agencies:

- (1) moving expenses;

- (2) professional fees or dues;
- (3) tuition and fees for attending educational programs or classes approved by the secretary; and
- (4) registration fees for attending seminars, educational programs or classes.

B. The governing body of any local public body may, by resolution, authorize the reimbursement of public officers and employees for any of the actual expenses set forth in Subsection A of this section. No resolution adopted pursuant to this subsection shall authorize the reimbursement for any expense not authorized by regulation of the secretary pursuant to Subsection A of this section.

C. The governing board may, by regulation, authorize the reimbursement of public officers of public post-secondary educational institutions and employees of public post-secondary educational institutions for any of the actual expenses set forth in Subsection A of this section.

D. No reimbursement shall be made for any expenses unless receipts for all such expenses are attached to the reimbursement voucher.

History: 1978 Comp., § 10-8-8, enacted by Laws 1979, ch. 273, § 5; 1989, ch. 338, § 5.

ARTICLE 9

Personnel

10-9-1. Short title.

Chapter 10, Article 9 NMSA 1978 may be cited as the "Personnel Act".

History: 1953 Comp., § 5-4-28, enacted by Laws 1961, ch. 240, § 1; 2009, ch. 76, § 1.

10-9-2. Purpose of act; enactment under constitution.

The purpose of the Personnel Act is to establish for New Mexico a system of personnel administration based solely on qualification and ability, which will provide greater economy and efficiency in the management of state affairs. The Personnel Act is enacted under and pursuant to the provisions of Article 7, Section 2 of the constitution of New Mexico, as amended.

History: 1953 Comp., § 5-4-29, enacted by Laws 1961, ch. 240, § 2; 1963, ch. 200, § 1.

10-9-3. Definitions.

As used in the Personnel Act:

- A. "director" means the personnel director;
- B. "board" means the personnel board;
- C. "service" means the state personnel service created by the Personnel Act, and includes all positions covered by the Personnel Act;
- D. "position" means any state office, job, or position of employment;
- E. "employer" means any authority having power to fill positions, in an agency;
- F. "agency" means any state department, bureau, division, branch or administrative group which is under the same employer;
- G. "class" means a group of positions similar enough in powers and responsibilities that they can be covered by the same qualifications and rate of pay;
- H. "test" means a test of the qualifications, fitness and ability, and includes tests that are written, oral, physical or in the form of a demonstration of skill or any combination thereof;
- I. "employee" means a person in a position in the service who has completed his probationary period; and
- J. "probationer" means a person in a position in the service who is still in the probationary period for that position.

History: 1953 Comp., § 5-4-30, enacted by Laws 1961, ch. 240, § 3.

10-9-4. Coverage of service.

The Personnel Act and the service cover all state positions except:

- A. officials elected by popular vote or appointed to fill vacancies to elective offices;
- B. members of boards and commissions and heads of agencies appointed by the governor;
- C. heads of agencies appointed by boards or commissions;
- D. directors of department divisions;
- E. those in educational institutions and in public schools;

F. those employed by state institutions and by state agencies providing educational programs and who are required to hold valid certificates as certified school instructors as defined in Section 22-1-2 NMSA 1978 issued by the public education department;

G. those in the governor's office;

H. those in the state militia or the commissioned officers of the New Mexico state police division of the department of public safety;

I. those in the judicial branch of government;

J. those in the public defender department, upon implementation of personnel policies and rules by the public defender commission;

K. those in the legislative branch of government;

L. not more than two assistants and one secretary in the office of each official listed in Subsections A, B and C of this section, excluding members of boards and commissions in Subsection B of this section;

M. those of a professional or scientific nature that are temporary in nature;

N. those filled by patients or inmates in charitable, penal or correctional institutions;

O. state employees if the board in its discretion decides that the position is one of policymaking; and

P. disadvantaged youth under twenty-two years of age regularly enrolled or to be enrolled in a secondary educational institution approved by the public education department or in an accredited state institution of advanced learning or vocational training and who are to be employed for not more than seven hundred twenty hours during any calendar year:

(1) the term "disadvantaged youth" shall be defined for purposes of this exemption by regulation duly promulgated by the board; and

(2) the board shall:

(a) require that all the criteria of this subsection have been met;

(b) establish employment lists for the certification of the highest-standing candidates to the prospective employers; and

(c) establish the pay rates for such employees.

History: 1953 Comp., § 5-4-31, enacted by Laws 1961, ch. 240, § 4; 1963, ch. 200, § 2; 1967, ch. 181, § 1; 1969, ch. 126, § 1; 1975, ch. 182, § 1; 1977, ch. 247, § 45; 1979, ch. 202, § 6; 1981, ch. 339, § 5; 1987, ch. 254, § 15; 1989, ch. 204, § 10; 1990, ch. 20, § 1; 2014, ch. 78, § 1.

10-9-4.1. Personnel Act; rocky mountain information network employees; exemption from coverage.

A. Notwithstanding the provisions of Section 10-9-4 NMSA 1978, all employees of the rocky mountain information network who commence employment on or after the effective date of this act are exempt from coverage under the Personnel Act.

B. Notwithstanding the provisions of Section 10-9-4 NMSA 1978, any employee of the rocky mountain information network who was employed prior to the effective date of this act may elect to become exempt from coverage under the Personnel Act by filing a written election to do so with the director of the rocky mountain information network and the director of the state personnel office. An election is effective upon filing and shall be irrevocable so long as the employee remains employed by the rocky mountain information network.

C. As used in this section, "rocky mountain information network" means that project funded by the United States department of justice, regulated by the provisions of 28 Code of Federal Regulations, Part 23, created as part of the regional information sharing systems program established by the United States department of justice and serving law enforcement agencies in the states of New Mexico, Arizona, Nevada, Colorado, Wyoming, Montana, Idaho and Utah.

History: Laws 1987, ch. 337, § 1.

10-9-5. Public officers and public employees; executive branch; annual exempt salaries plan.

A. The department of finance and administration shall prepare, by December 1 of each year, an exempt salaries plan for the governor's approval. The plan shall specify salary ranges for the following public officer and public employee positions of the executive branch of government:

- (1) members of boards and commissions appointed by the governor;
- (2) heads of agencies or departments appointed by the governor;
- (3) heads of agencies or departments appointed by the respective boards and commissions of the agencies;
- (4) directors of department divisions;

- (5) employees in the governor's office;
- (6) positions in the state militia and the commissioned officers of the New Mexico state police division of the department of public safety;
- (7) assistants and secretaries in the offices of each official covered by Paragraphs (2), (3) and (10) of this subsection;
- (8) positions of a professional or scientific nature which are temporary in nature;
- (9) state employees whose positions the personnel board has classified as policy-making positions and exempt employees of elective public officials; and
- (10) secretaries of departments appointed by the governor.

B. Excluded from the provisions of this section are employees of the commission on higher education and employees of state educational institutions named in Article 12, Section 11 of the constitution of New Mexico.

C. The exempt salaries plan for the ensuing fiscal year, as prepared by the department of finance and administration and approved by the governor, shall be published as a part of the executive budget document presented to the legislature at its next regular session following the preparation of the plan.

D. Upon the governor's approval, the plan shall take effect at the beginning of the subsequent fiscal year.

History: 1953 Comp., § 5-4-31.1, enacted by Laws 1978, ch. 96, § 1; 1979, ch. 6, § 1; 1979, ch. 202, § 7; 1987, ch. 254, § 16; 1989, ch. 204, § 11.

10-9-6. Certified school instructors previously employed under the provisions of the Personnel Act.

Certified school instructors who were employed as certified school instructors by state institutions or state agencies under the provisions of the Personnel Act prior to July 1, 1974, may elect to continue to be employed under the Personnel Act. Certified school instructors who elect to continue under the Personnel Act shall file a notice of such election with the personnel director prior to the effective date of this act.

History: 1953 Comp., § 5-4-31.2, enacted by Laws 1975, ch. 182, § 2.

10-9-7. Certain rules changes requiring legislative approval.

The state personnel office shall not spend any of its appropriation for the promulgating or filing of rules, policies or plans which have significant financial impact or

which would require significant future appropriations to maintain without prior, specific legislative approval.

History: 1953 Comp., § 5-4-31.3, enacted by Laws 1976, ch. 11, § 1; 1980, ch. 6, § 1; 1984, ch. 7, § 1.

10-9-8. Personnel board; appointment.

The personnel board is created, and shall be composed of five members appointed by the governor and confirmed by the senate, who shall serve staggered terms of five years each with one board member's term expiring each year. No person shall be a member of the board or eligible for appointment to the board who is an employee in the service, holds political office or is an officer of a political organization.

History: 1953 Comp., § 5-4-32, enacted by Laws 1961, ch. 240, § 5; 1980, ch. 47, § 1.

10-9-9. Board members; pay; meetings.

Each board member shall be paid per diem and mileage according to the Per Diem and Mileage Act [Chapter 10, Article 8 NMSA 1978] when traveling on board business. The board shall meet at the call of the chairman but in the absence of such call, at least once every two months.

History: 1953 Comp., § 5-4-33, enacted by Laws 1961, ch. 240, § 6; 1967, ch. 181, § 2.

10-9-10. Board duties.

The board shall:

- A. promulgate regulations to effectuate the Personnel Act;
- B. hear appeals and make recommendations to employers;
- C. hire, with the approval of the governor, a director experienced in the field of personnel administration;
- D. review budget requests prepared by the director for the operation of the personnel program and make appropriate recommendations thereon;
- E. make investigations, studies and audits necessary to the proper administration of the Personnel Act;
- F. make an annual report to the governor at the end of each fiscal year;
- G. establish and maintain liaison with the general services department; and

H. represent the public interest in the improvement of personnel administration in the system.

History: 1953 Comp., § 5-4-34, enacted by Laws 1961, ch. 240, § 7; 1963, ch. 200, § 3; 1967, ch. 181, § 3; 1983, ch. 301, § 21.

10-9-11. Board and office administratively attached to general services department.

The board and the state personnel office are administratively attached, as defined in the Executive Reorganization Act [9-1-1 to 9-1-10 NMSA 1978], to the general services department.

History: 1953 Comp., § 5-4-34.1, enacted by Laws 1977, ch. 247, § 47; 1983, ch. 301, § 22.

10-9-12. Director duties.

The director shall:

- A. supervise all administrative and technical personnel activities of the state;
- B. act as secretary to the board;
- C. establish, maintain and publish annually a roster of all employees of the state, showing for each employee his division, title, pay rate and other pertinent data;
- D. make annual reports to the board;
- E. recommend to the board rules he considers necessary or desirable to effectuate the Personnel Act; and
- F. supervise all tests and prepare lists of persons passing them to submit to prospective employers.

History: 1953 Comp., § 5-4-35, enacted by Laws 1961, ch. 240, § 8; 1967, ch. 181, § 4.

10-9-13. Rules; adoption; coverage.

Rules promulgated by the board shall be effective when filed as required by law. The rules shall provide, among other things, for:

- A. a classification plan for all positions in the service;
- B. a pay plan for all positions in the service;

C. competitive entrance and promotion tests to determine the qualifications, fitness and ability of applicants to perform the duties of the position for which they apply. Such rules shall also provide for the awarding to those applicants having a passing grade of two preference points for each year of residency in New Mexico not to exceed a total of ten preference points;

D. exemption from competitive entrance tests for those professional persons applying for classified positions in the service who possess recognized registration or certification by another state agency;

E. a period of probation of one year during which a probationer may be discharged or demoted or returned to the eligible list without benefit of hearing;

F. the establishment of employment lists for the certification of the highest standing candidates to the prospective employers and procedure to be followed in hiring from the lists;

G. hours of work, holiday and leave;

H. dismissal or demotion procedure for employees in the service, including presentation of written notice stating specific reasons and time for the employees to reply thereto, in writing, and appeals to the board;

I. the rejection of applicants who fail to meet reasonable requirements as to age, physical condition, training, experience or moral conduct; and

J. employment of any apparently qualified applicant for a period of not more than ninety days when an emergency condition exists and there are no applicants available on an appropriate employment list as provided in Subsection F of this section. The applicant, if employed, shall be paid at the same rate as a comparable position covered by the Personnel Act.

History: 1953 Comp., § 5-4-36, enacted by Laws 1961, ch. 240, § 9; 1963, ch. 200, § 4; 1967, ch. 181, § 5; 1975, ch. 26, § 1; 1983, ch. 28, § 2.

10-9-13.1. Legislative finding; purpose of act.

The legislature finds that residents of the state are a valuable resource in state employment because of their dedication and commitment to the state they live in. Therefore, the purpose of this act [10-9-13, 10-9-13.1 NMSA 1978] is to encourage residents to remain in the state rather than moving out of state because of unsatisfactory employment opportunities in New Mexico.

History: Laws 1983, ch. 28, § 1.

10-9-13.2. Veteran's preference.

A. In establishing the list of eligibles for appointment, the board shall provide preference points for veterans honorably discharged from the armed forces of the United States. Veterans with a service-connected disability shall be awarded ten points over and above their regular test scores. Veterans without a service-connected disability shall be awarded five points over and above their regular test scores.

B. The board shall determine the rank on any employment list by adding the points to the veteran's final passing grade on the examination after the veteran has submitted proof of having status as a veteran at the time of application for employment with a state agency. In the case of a veteran having a service-connected disability, the veteran shall provide proof of a service-connected disability in the form of a certification by the federal veterans' administration. A veteran with or without a service-connected disability shall have his name placed on the list in accordance with the numerical rating of other veterans and nonveterans.

History: Laws 1989, ch. 43, § 1 and Laws 1989, ch. 284, § 1.

10-9-14. Blind not barred from competitive examination; method of testing.

A. No agency or officer of the state or any of its political subdivisions shall prohibit, prevent, disqualify or discriminate against any blind person, otherwise qualified, from registering, taking or competing in a competitive entrance or promotion test for any position for which the blind person makes application.

B. The state personnel board and all political subdivisions of the state which require competitive or promotion tests for any position shall provide an adequate and equal test by an appropriate method for any blind person requesting such a test at the time of submitting his application.

History: 1953 Comp., § 5-4-36.1, enacted by Laws 1967, ch. 71, § 1.

10-9-15. Duties of state officers and employers.

All officers and employers of the state shall comply with the Personnel Act. All employers shall hire employees only from employment lists of applicants who meet prescribed minimum requirements and have passed the prescribed tests, provided by the director. All officers and employers shall furnish any records or information which the director or the board requests.

History: 1953 Comp., § 5-4-37, enacted by Laws 1961, ch. 240, § 10.

10-9-16. Status of present employees.

All employees of the state holding positions brought into the classified service by the Personnel Act shall be continued in their positions and become regular employees without original examinations, if they have held the position for at least one year immediately prior to the effective date of the Personnel Act. All other employees of the state holding positions brought into the service by the Personnel Act shall be continued in their positions as probationers until they have, not later than one year from the effective date of the Personnel Act, taken and passed a qualifying test prescribed by the director for the position held. An employee who fails to qualify shall be dismissed within thirty days after the establishment of an employment or promotion list for his position. Nothing in the Personnel Act shall preclude the reclassification or reallocation of any position held by an incumbent.

This section shall not apply to employees of the grant-in-aid agencies whose status as employees or probationers shall be recognized under rules to be promulgated by the board.

History: 1953 Comp., § 5-4-38, enacted by Laws 1961, ch. 240, § 11.

10-9-17. Certification of payroll.

No person shall make or approve payment for personnel services to any person in the service, unless the payroll voucher or account of the pay is certified by the director that the person being paid was employed in accordance with the Personnel Act.

History: 1953 Comp., § 5-4-39, enacted by Laws 1961, ch. 240, § 12.

10-9-18. Appeals by employees to the board.

A. An employee who is dismissed, demoted or suspended may, within thirty days after the dismissal, demotion or suspension, appeal to the board. The appealing employee and the agency whose action is reviewed have the right to be heard publicly and to present facts pertinent to the appeal.

B. An applicant denied permission to take an examination or who is disqualified may appeal to the board.

C. The technical rules of evidence shall not apply to appeals to the board.

D. A record shall be made of the hearing, which shall be transcribed if there is an appeal to the district court. Costs of the transcripts, including one copy for the board, shall be paid initially by the agency. The cost of the transcripts may be assessed by the court to the losing party on appeal.

E. The board may designate a hearing officer who may be a member of the board or any qualified state employee to preside over and take evidence at any hearing held pursuant to this section. The hearing officer shall prepare and submit to the board a

summary of the evidence taken at the hearing and proposed findings of fact. The board shall render a decision, which shall include findings of fact and conclusions of law.

F. If the board finds that the action taken by the agency was without just cause, the board may modify the disciplinary action or order the agency to reinstate the appealing employee to the employee's former position or to a position of like status and pay. Every consideration shall be given to placing the appealing employee in the same geographical location in which the employee was employed prior to the disciplinary action. The board may recommend that the appealing employee be reinstated by an agency other than the one that disciplined the appealing employee. When the board orders an agency to reinstate an appealing employee, the reinstatement shall be effective within thirty days of the board's order. The board may award back pay as of the date of the dismissal, demotion or suspension or as of the later date as the board may specify.

G. A party aggrieved by the decision of the board made pursuant to this section may appeal the decision to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

H. Where the public employer has entered into a collective bargaining agreement pursuant to the Public Employee Bargaining Act [Chapter 10, Article 7E NMSA 1978] covering the employee, such an employee who is dismissed, demoted or suspended may, within thirty days after the dismissal, demotion or suspension, irrevocably elect to appeal the action through arbitration. An appeal under this subsection shall be conducted in accordance with procedures and requirements as set forth in Subsections A, C and D of this section. The arbitrator shall have all of the powers of the board as set forth in Subsection F of this section. A party aggrieved by the decision of the arbitrator may appeal the decision pursuant to Subsection G of this section. The selection of an arbitrator shall be conducted in accordance with selection procedures set forth in the collective bargaining agreement that covers the employee.

History: 1978 Comp., § 10-9-18, enacted by Laws 1980, ch. 47, § 2; 1998, ch. 55, § 21; 1999, ch. 265, § 21; 2009, ch. 76, § 2.

10-9-19. Reduction in force.

Whenever an employee is terminated by an employer in a reduction in force by the employer, the terminated employee shall be rehired by that employer if the same or a comparable position becomes available in an increase of force within six months after the termination.

History: 1953 Comp., § 5-4-40.1, enacted by Laws 1963, ch. 200, § 7.

10-9-20. Oaths; testimony; records; refusal.

The board has the power to administer oaths, subpoena witnesses and compel the production of books and papers pertinent to any investigation or hearing authorized by the Personnel Act. Refusal to testify before the board on matters pertaining to personnel is grounds for dismissal from the service.

History: 1953 Comp., § 5-4-41, enacted by Laws 1961, ch. 240, § 14.

10-9-21. Prohibited acts.

A. No employer shall dismiss an employee for failure or refusal to pay or promise to pay any assessment, subscription or contribution to any political organization or candidate; however, nothing contained in this section shall prevent voluntary contributions to political organizations.

B. No person in the personnel office or employee in the service shall hold political office except for a non-partisan county or municipal office or be an officer of a political organization during his employment. For the purposes of the Personnel Act, being a local school board member or an elected board member of any post-secondary educational institution shall not be construed to be holding political office, and being an election official shall not be construed to be either holding political office or being an officer of a political organization. Nothing in the Personnel Act shall deny employees the right to vote as they choose or to express their opinions on political subjects and candidates.

C. Any employee who becomes a candidate for public office shall, upon filing or accepting the nomination and during the campaign, take a leave of absence. This subsection does not apply to those employees of a grant-in-aid agency whose political activities are governed by federal statute.

D. The director shall investigate any written charge by any person that this section has been violated and take whatever steps deemed necessary.

E. No person shall be refused the right of taking an examination, from appointment to a position, from promotion or from holding a position because of political or religious opinions or affiliation or because of race or color.

F. No employee or probationer shall engage in partisan political activity while on duty.

G. With respect to employees of federal grant-in-aid agencies, the applicable personnel standards, regulations and federal laws limiting activities shall apply and shall be set forth in rules promulgated by the board.

History: 1953 Comp., § 5-4-42, enacted by Laws 1961, ch. 240, § 15; 1963, ch. 200, § 6; 1967, ch. 181, § 6; 1983, ch. 81, § 1; 1991, ch. 152, § 1.

10-9-22. Unlawful acts prohibited.

It is unlawful to:

A. make any false statement, certificate, mark or rating with regard to any test, certification or appointment made under the Personnel Act;

B. directly or indirectly give, pay, offer, solicit or accept any money or other valuable consideration or secure or furnish any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in the service.

History: 1953 Comp., § 5-4-43, enacted by Laws 1961, ch. 240, § 16.

10-9-23. Penalties.

Any person wilfully violating any provision of the Personnel Act or the rules of the board is guilty of a misdemeanor. In addition to the criminal penalties, a person found guilty of a misdemeanor under the Personnel Act is ineligible for appointment to or employment in a position in the service, and forfeits his office or position.

History: 1953 Comp., § 5-4-44, enacted by Laws 1961, ch. 240, § 17.

10-9-24. Existing rules.

Existing personnel rules, policies and pay plans for employees of the state shall govern until new rules, policies and pay plans are established under the Personnel Act.

History: 1953 Comp., § 5-4-45, enacted by Laws 1961, ch. 240, § 18.

10-9-25. Federal funds and assistance.

When the provisions of any laws of the United States, or any rule, order, or regulation of any federal agency or authority providing federal funds for use in New Mexico, either directly or indirectly or as a grant-in-aid, to be matched or otherwise, impose as a condition for the receipt of such funds, other or higher personnel standards or different classifications than are provided for by the Personnel Act, the board has the authority and is directed to adopt rules and regulations to meet the requirements of such law, rule, order or regulation.

History: 1953 Comp., § 5-4-46, enacted by Laws 1961, ch. 240, § 19.

ARTICLE 10

State Government Internship Program

10-10-1. Creation of state government internship program.

There is established under the personnel board the office of inter-university and college training, to administer a program for securing, placing and training qualified university and college students who are New Mexico residents in positions within the state government.

History: 1953 Comp., § 5-8-1, enacted by Laws 1959, ch. 73, § 1; 1967, ch. 54, § 1; 1975, ch. 85, § 1.

10-10-2. Purposes.

The purposes of this act [10-10-1 to 10-10-5 NMSA 1978] are:

A. to secure and to channel selected college students into positions within the state government;

B. to aid in the process of coordinating the various institutions of higher learning of the state with the state government;

C. to stimulate the various state agencies and offices to improve their services and functions;

D. to formulate recommendations concerning personnel administration and other programs affecting state personnel.

History: 1953 Comp., § 5-8-2, enacted by Laws 1959, ch. 73, § 2.

10-10-3. Director of inter-university training program.

The inter-university training program shall be headed by the personnel director.

History: 1953 Comp., § 5-8-3, enacted by Laws 1959, ch. 73, § 3; 1963, ch. 124, § 1; 1967, ch. 54, § 2; 1975, ch. 85, § 2.

10-10-4. Duties of director.

The duties of the personnel director are:

A. with the approval of the personnel board, to establish regulations regarding qualifications, procedures for applying for internships, and related matters;

B. to select and place especially talented university or college students, or graduates, as interns in state government;

C. to provide orientation and training programs for student interns to prepare them for a career in state government;

D. to coordinate the activities of the intern personnel and the various state agencies to obtain the maximum benefits for both the state and the agency personnel; and

E. to submit to the personnel board, the governor and the legislature recommendations concerning the intern program.

History: 1953 Comp., § 5-8-4, enacted by Laws 1959, ch. 73, § 4; 1967, ch. 54, § 3; 1975, ch. 85, § 3.

10-10-5. Employment of intern personnel.

A. Every employing office or agency of the state hiring a student or graduate under the inter-university and college program shall be free to employ intern personnel under conditions and salary provisions determined by the employing office or agency. The employing office or agency or the director of inter-university training, with the consent of the employing office or agency, shall have the right to discharge any intern with one week advance notice.

B. The employing office or agency shall cooperate with the personnel director and release intern personnel to participate in orientation or training programs where the employing office or agency head determines that the programs are beneficial and within the functions of the participating state employer. Participation by intern personnel in orientation or training programs in connection with their state employment, when approved by the employing office or agency head, shall be compensated as regular employment.

C. At each college or university in the state which desires to participate in the state government internship program, the president or other chief executive officer shall appoint an intern advisor who will serve as a liaison between the personnel director, the university or college, and the students. The intern advisor shall assist the personnel director in recruiting and selecting students for the program.

History: 1953 Comp., § 5-8-5, enacted by Laws 1959, ch. 73, § 5; 1967, ch. 54, § 4; 1975, ch. 85, § 4.

ARTICLE 11

Retirement of Public Officers and Employees Generally

10-11-1. Short title.

Chapter 10, Article 11 NMSA 1978 may be cited as the "Public Employees Retirement Act".

History: Laws 1987, ch. 253, § 1.

10-11-2. Definitions.

As used in the Public Employees Retirement Act:

A. "accumulated member contributions" means the amounts deducted from the salary of a member and credited to the member's individual account, together with interest, if any, credited to that account;

B. "affiliated public employer" means the state and any public employer affiliated with the association as provided in the Public Employees Retirement Act, but does not include an employer pursuant to the Magistrate Retirement Act [Chapter 10, Article 12C NMSA 1978, the Judicial Retirement Act [Chapter 10, Article 12B NMSA 1978] or the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978];

C. "association" means the public employees retirement association established under the Public Employees Retirement Act;

D. "coverage plan funded ratio" means the ratio of the actuarial value of the assets of a coverage plan to the actuarial accrued liability of the association for payments from the coverage plan, as determined by the association's actuaries;

E. "disability retired member" means a retired member who is receiving a pension pursuant to the disability retirement provisions of the Public Employees Retirement Act;

F. "disability retirement pension" means the pension paid pursuant to the disability retirement provisions of the Public Employees Retirement Act;

G. "educational retirement system" means that retirement system provided for in the Educational Retirement Act;

H. "employee" means any employee of an affiliated public employer;

I. "federal social security program" means that program or those programs created and administered pursuant to the act of congress approved August 14, 1935, Chapter 531, 49 Stat. 620, as that act may be amended;

J. "final average salary" means the final average salary calculated in accordance with the provisions of the applicable coverage plan;

K. "form of payment" means the applicable form of payment of a pension provided for in Section 10-11-117 NMSA 1978;

L. "former member" means a person who was previously employed by an affiliated public employer, who has terminated that employment and who has received a refund of member contributions;

M. "fund" means the funds included under the Public Employees Retirement Act;

N. "member" means a currently employed, contributing employee of an affiliated public employer, or a person who has been but is not currently employed by an affiliated public employer, who has not retired and who has not received a refund of member contributions; "member" also includes the following:

(1) "adult correctional officer member" means a member who is employed as an adult correctional officer or an adult correctional officer specialist by a state correctional facility of the corrections department or its successor agency;

(2) "adult probation and parole officer member" means a member who is employed as a probation and parole officer by the corrections department or its successor agency;

(3) "juvenile correctional officer member" means a member who is employed as a juvenile correctional officer by the children, youth and families department or its successor agency;

(4) "juvenile probation and parole officer member" means a member who is employed as a probation and parole officer by the children, youth and families department or its successor agency;

(5) "municipal detention officer member" means a member who is employed by an affiliated public employer other than the state and who has inmate custodial responsibilities at a facility used for the confinement of persons charged with or convicted of a violation of a law or ordinance;

(6) "municipal fire member" means any member who is employed as a full-time nonvolunteer firefighter by an affiliated public employer, other than the state, and who has taken the oath prescribed for firefighters;

(7) "municipal police member" means any member who is employed as a police officer by an affiliated public employer, other than the state, and who has taken the oath prescribed for police officers;

(8) "state fire member" means any member who is employed as a nonvolunteer firefighter of the state and who has taken the oath prescribed for firefighters; and

(9) "state police member" means a member who is an officer of the New Mexico state police division and who has taken the oath prescribed for such officers and

shall include a member who is an officer of the New Mexico state police division and who was certified and commissioned in the former motor transportation division or the former special investigations division of the department of public safety;

O. "membership" means membership in the association;

P. "pension" means a series of monthly payments to a retired member or survivor beneficiary as provided in the Public Employees Retirement Act;

Q. "public employer" means the state, any municipality, city, county, metropolitan arroyo flood control authority, economic development district, regional housing authority, soil and water conservation district, entity created pursuant to a joint powers agreement, council of government, conservancy district, irrigation district, water and sanitation district, water district and metropolitan water board, including the boards, departments, bureaus and agencies of a public employer, so long as these entities fall within the meaning of governmental plan as that term is used in Section 414(d) of the Internal Revenue Code of 1986, as amended;

R. "refund beneficiary" means a supplemental needs trust or a natural person designated by the member, in writing, in the form prescribed by the association, as the trust or person that would be refunded the member's accumulated member contributions payable if the member dies and no survivor pension is payable or that would receive the difference between pension paid and accumulated member contributions if the retired member dies before receiving in pension payments the amount of the accumulated member contributions;

S. "retire" means to:

(1) terminate employment with all employers covered by any state system or the educational retirement system; and

(2) receive a pension from a state system or the educational retirement system;

T. "retired member" means a person who has met all requirements for retirement and who is receiving a pension from the fund;

U. "retirement board" means the retirement board provided for in the Public Employees Retirement Act;

V. "salary" means the base salary or wages paid a member, including longevity pay, for personal services rendered an affiliated public employer. "Salary" shall not include overtime pay, unless the overtime payment is required for a regular scheduled tour of duty as set forth in Section 207(k) of Title 29 of the United States Code and is made on the regular payroll for the period represented by that payment, allowances for housing, clothing, equipment or travel, payments for unused sick leave, unless the unused sick

leave payment is made through continuation of the member on the regular payroll for the period represented by that payment, and any other form of remuneration not specifically designated by law as included in salary for Public Employees Retirement Act purposes. Salary in excess of the limitations set forth in Section 401(a)(17) of the Internal Revenue Code of 1986, as amended, shall be disregarded. The limitation on compensation for eligible employees shall not be less than the amount that was allowed to be taken into account under the state retirement system acts in effect on July 1, 1993. For purposes of this subsection, "eligible employee" means an individual who was a member of a state system before the first plan year beginning after December 31, 1995;

W. "state system" means the retirement programs provided for in the Public Employees Retirement Act, the Magistrate Retirement Act and the Judicial Retirement Act;

X. "state retirement system acts" means collectively the Public Employees Retirement Act, the Magistrate Retirement Act, the Judicial Retirement Act and the Volunteer Firefighters Retirement Act [Chapter 10, Article 11A NMSA 1978];

Y. "supplemental needs trust" means a valid third-party irrevocable trust that is authorized by the federal Social Security Act, as amended, for the sole benefit and lifetime of a trust beneficiary who is disabled and is created for the purpose of providing, accounting for or receiving supplemental assets that do not supplant, impair or diminish any benefits or assistance of any federal, state or other government entity for which the beneficiary would otherwise be eligible; and

Z. "survivor beneficiary" means a supplemental needs trust or a natural person that receives a pension or that has been designated to be paid a pension as a result of the death of a member or retired member.

History: Laws 1987, ch. 253, § 2; 1989, ch. 31, § 1; 1989, ch. 333, § 1; 1991, ch. 231, § 1; 1992, ch. 116, § 1; 1993, ch. 160, § 1; 1995, ch. 115, § 1; 2003, ch. 268, § 1; 2005, ch. 196, § 1; 2013, ch. 225, § 1; 2015, ch. 3, § 42; 2020, ch. 11, § 1; 2021, ch. 36, § 1; 2021, ch. 38, § 1; 2023, ch. 156, § 1; 2024, ch. 52, § 1.

10-11-2.1. Definitions.

As used in Chapter 10, Article 11 NMSA 1978, with reference to the public employees retirement association, "executive secretary" means "executive director".

History: 1978 Comp., § 10-11-2.1, enacted by Laws 1997, ch. 189, § 1.

10-11-2.2. Additional definition; state legislator member.

As used in the Public Employees Retirement Act, "state legislator member" means a person who is currently serving or who has served as a state legislator or lieutenant

governor and who has elected to participate in a state legislator member retirement plan. A former state legislator or former lieutenant governor may be a state legislator member whether or not currently receiving a pension under a state legislator member coverage plan.

History: Laws 2004, ch. 68, § 1.

10-11-3. Membership; requirements; exclusions; termination.

A. Except as may be provided for in the Volunteer Firefighters Retirement Act [Chapter 10, Article 11A NMSA 1978], the Judicial Retirement Act [Chapter 10, Article 12B NMSA 1978], the Magistrate Retirement Act [Chapter 10, Article 12C NMSA 1978], the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] and the provisions of Sections 29-4-1 through 29-4-11 NMSA 1978 governing the state police pension fund, each employee and elected official of every affiliated public employer shall be a member of the association, unless excluded from membership in accordance with Subsection B of this section.

B. The following employees and elected officials are excluded from membership in the association:

- (1) elected officials who file with the association a written application for exemption from membership within twenty-four months of taking office;
- (2) elected officials who file with the association a written application for exemption from membership within twenty-four months of the date the elected official's public employer becomes an affiliated public employer;
- (3) employees designated by the affiliated public employer as seasonal or student employees or as trainee participants of the federally funded and state-funded senior employment trainee program, administered by the aging and long-term services department;
- (4) employees who file with the association a written application for exemption from membership within thirty days of the date the employee's public employer becomes an affiliated public employer;
- (5) employees of an affiliated public employer that is making contributions to a private retirement program on behalf of the employee as part of a compensation arrangement who file with the association a written application for exemption within thirty days of employment, unless the employee has previously retired under the provisions of the Public Employees Retirement Act;
- (6) employees of an affiliated public employer who have retired under and are receiving a pension pursuant to the provisions of the Educational Retirement Act; and

(7) retired members who return to work pursuant to Section 10-11-8 NMSA 1978 and are exempted from membership by the provisions of that section.

C. Employees designated as seasonal and student employees shall be notified in writing by their affiliated public employer of the designation and the consequences of the designation with respect to membership, service credit and benefits. A copy of the notification shall be filed with the association within thirty days of the date of employment.

D. An exemption from membership by an elected official shall expire at the end of the term of office for which filed.

E. Employees and elected officials who have exempted themselves from membership may subsequently withdraw the exemption by filing a membership application. Membership shall commence the first day of the first pay period following the date the application is filed.

F. The membership of an employee or elected official shall cease if the employee terminates employment with an affiliated public employer or the elected official leaves office and the employee or elected official requests and receives a refund of member contributions.

History: Laws 1987, ch. 253, § 3; 1992, ch. 116, § 2; 1993, ch. 160, § 2; 1995, ch. 114, § 1.; 2004, ch. 68, § 2; 2009, ch. 137, § 1.

10-11-4. Service credit; requirements for; forfeiture; reinstatement.

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

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

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

(1) the member has the applicable minimum number of years of service credit required for normal retirement. As used in this paragraph, "service credit" means only

the service credit earned by the member during periods of employment with an affiliated public employer; and

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

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

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

F. A member or former member who is a member of another state system or the educational retirement system and who has forfeited service credit by withdrawal of member contributions may reinstate the forfeited service credit by repaying the amount withdrawn plus compound interest from the date of withdrawal to the date of repayment at the rate set by the retirement board. Withdrawn member contributions may be repaid in increments of one year in accordance with the procedures established by the retirement board. Full payment of each one-year increment shall be made in a single lump-sum amount in accordance with procedures established by the retirement board.

History: Laws 1987, ch. 253, § 4; 1992, ch. 116, § 3; 1997, ch. 189, § 2; 2013, ch. 225, § 2.

10-11-4.1. Repealed.

10-11-4.2. Correction of errors and omissions; estoppel.

A. If an error or omission results in an overpayment to a member or beneficiary of a member, the association shall correct the error or omission and adjust all future payments accordingly. The association shall recover all overpayments made for a period of up to one year prior to the date the error or omission was discovered.

B. A person who is paid more than the amount that is lawfully due him as a result of fraudulent information provided by the member or beneficiary shall be liable for the repayment of that amount to the association plus interest on that amount at the rate set by the retirement board plus all costs of collection, including attorney fees if necessary.

Recovery of such overpayments shall extend back to the date the first payment was made based on the fraudulent information.

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

History: Laws 1993, ch. 239, § 1; 1997, ch. 189, § 3.

10-11-5. Credited service; municipal election to make employee contributions.

A municipal affiliated public employer may elect by resolution of its governing body or by execution of a collective bargaining agreement and in the manner prescribed by the retirement board to be responsible for making contributions of up to seventy-five percent of its employees' member contributions as follows:

A. the resolution or collective bargaining agreement shall be irrevocable; except that:

(1) if the resolution is passed or the collective bargaining agreement is executed on or before June 30, 2020, the percentage of the employee contributions that the municipal affiliated public employer elects to be responsible for making shall apply to the statutory employee contribution rate in effect on June 30, 2020 and shall not apply to any increase in the statutory employee contribution rate that may occur after that date; and

(2) if the resolution is passed or the collective bargaining agreement is executed on or after July 1, 2020, the percentage of the employee contributions that the municipal affiliated public employer elects to be responsible for making shall apply to the statutory employee contribution rate in effect on the date that the resolution is passed or the collective bargaining agreement is executed and shall not apply to any increases in the statutory employee contribution rate that may occur after that date; provided, however, that if the statutory employee contribution rate is decreased after the date that the resolution is passed or the collective bargaining agreement is executed, the percentage of the employee contributions that the municipal public affiliated employer is responsible for making shall apply to the decreased statutory employee contribution rate;

B. a municipal affiliated public employer may by subsequent resolution or collective bargaining agreement:

(1) elect to increase the percentage of employee member contributions for which it will be responsible;

(2) elect to be responsible for a percentage of any increase to the statutory employee contribution rate in effect after the passing of an earlier resolution or the execution of an earlier collective bargaining agreement; or

(3) at the time a new coverage plan is adopted, elect to be responsible under the new coverage plan for making a different percentage of employee member contributions than that which it elected under a previous coverage plan;

C. the resolution or executed collective bargaining agreement shall apply to all employees or else to specified employee divisions of the municipal affiliated public employer and shall be effective the first pay period of the month following the filing of the resolution with the retirement board;

D. the portion of the employee contributions made by the municipal affiliated public employer on behalf of a member shall be credited to the member's individual accumulated member contribution account in the member contribution fund. The member shall be responsible for the difference between the contributions the member would be required to make if the municipal affiliated public employer had not made the election provided for in this section and the amount contributed by the municipal affiliated public employer pursuant to the provisions of this section;

E. pensions payable to members whose municipal affiliated public employer makes the election provided for in this section shall be the same as if the member had made the entire member contribution; and

F. any municipal affiliated public employer increasing the percentage of the employee member contributions it elects to make pursuant to this section shall submit a resolution or executed collective bargaining agreement to the association by July 1 of the fiscal year in which the increase will take place indicating the percentage of the employee member contributions that will be made by the municipal affiliated public employer.

History: Laws 1987, ch. 253, § 5; 1999, ch. 92, § 1; 2013, ch. 225, § 3; 2020, ch. 11, § 2.

10-11-6. Service credit; credit for intervening military and United States government service.

A. A member who leaves the employ of an affiliated public employer to enter a uniformed service of the United States shall be given service credit for periods of service in the uniformed services subject to the following conditions:

(1) the member is reemployed by an affiliated public employer within ninety days following termination of the period of intervening service in the uniformed service or the affiliated employer certifies in writing to the association that the member is

entitled to reemployment rights under the federal Uniformed Services Employment and Reemployment Rights Act of 1994;

(2) the member retains membership in the association during the period of service in the uniformed services;

(3) free service credit shall not be given for periods of intervening service in the uniformed services following voluntary reenlistment. Service credit for such periods shall be given only after the member pays the association the sum of the contributions that the person would have been required to contribute had the person remained continuously employed throughout the period of intervening service following voluntary reenlistment, which payment shall be made during the period beginning with the date of reemployment and whose duration is three times the period of the person's intervening service in the uniformed services following voluntary reenlistment, not to exceed five years;

(4) service credit shall not be given for periods of intervening service in the uniformed services that are used to obtain or increase a benefit from another state system or the retirement program provided under the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978];

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

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

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

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

(a) the member has fifteen or more years of service credit;

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

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

(d) the member remits to the association, at the times and in the manner prescribed by the association, the member contributions and the employer contributions

that would have been made had the member continued in the employ of the last affiliated public employer;

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

(3) service credit will be determined as if the employment by the government of the United States was rendered the last affiliated public employer;

(4) the employer contributions remitted by the member shall be credited to the employer's accumulation fund and shall not be paid out of the association in the event of subsequent cessation of membership; and

(5) a member receiving service credit under this subsection who enrolls in the retiree health care authority shall make contributions pursuant to Subsection C of Section 10-7C-15 NMSA 1978.

History: Laws 1987, ch. 253, § 6; 1997, ch. 189, § 4; 2009, ch. 288, § 4.

10-11-6.1. Service credit for certain injured members on approved workers' compensation leave.

A. A member whose affiliated public employer has provided written certification to the association, in the form and manner prescribed by the association, that the employee was injured while performing a work-related function or duty in an inherently dangerous location or under inherently dangerous circumstances and that the member is absent from work and has been placed on approved workers' compensation leave as a result of the injury shall accrue service credit for the period of absence from work while on workers' compensation leave; provided that:

(1) the member is a peace officer covered pursuant to state general member coverage plan 3; a state police member; an adult correctional officer member; a municipal fire member; a municipal police member; or a municipal detention officer member;

(2) the member retains membership in the association during the period of absence from work on approved workers' compensation leave; and

(3) the member's affiliated public employer pays the injured employee's member contributions as well as the employer contributions and remits to the association the total amount of employee and employer contributions that would have been paid if the member had not been absent from work while on approved workers' compensation leave. The contribution amounts shall be calculated based upon a salary equal to the member's salary at the time of the injury.

B. The affiliated public employer shall provide an appeal process for an injured employee on approved workers' compensation leave who is determined by the affiliated public employer not to meet the criteria in Subsection A of this section.

History: Laws 2016, ch. 39, § 2.

10-11-6.2. Elected official; award of service credit for shortened term of office; Local Election Act.

A member shall be credited an award of service to the member's service credit account:

A. if, but for the shortening under the Local Election Act of a term in elected office served by the member, the member would meet the service requirement for normal retirement; and

B. in the minimum amount of service credit needed for the member to meet the requirement for normal retirement, but no more than three months.

History: Laws 2019, ch. 212, § 213.

10-11-7. Service credit; purchase of service.

A. A member who entered a uniformed service of the United States may purchase service credit for periods of active duty in the uniformed services subject to the following conditions:

(1) the member pays the association the purchase cost determined according to Subsection E of this section;

(2) the member has the applicable minimum number of years of service credit required for normal retirement. As used in this paragraph, "service credit" means only the service credit earned by the member during periods of employment with an affiliated public employer;

(3) the aggregate amount of service credit purchased pursuant to this subsection does not exceed five years reduced by any period of service credit acquired for military service pursuant to any other provision of the Public Employees Retirement Act;

(4) service credit may not be purchased for periods of service in the uniformed services that are used to obtain or increase a benefit from another retirement program; and

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

B. A member who was a civilian prisoner of war captured while in service to the United States as an employee of the federal government or as an employee of a contractor with the federal government may purchase service credit for the period of internment as a civilian prisoner of war, provided that:

(1) the member provides proof of employment with the federal government or as a contractor to the federal government in a form acceptable to the association;

(2) the member provides proof of the period of internment in a form acceptable to the association;

(3) the member has the applicable minimum number of years of service credit required for normal retirement. As used in this paragraph, "service credit" means only the service credit earned by the member during periods of employment with an affiliated public employer;

(4) the aggregate amount of service credit purchased pursuant to this subsection does not exceed five years reduced by any period of service credit acquired for military service pursuant to any other provision of the Public Employees Retirement Act;

(5) service credit may not be purchased for periods of service in internment as a civilian prisoner of war if such periods are used to obtain or increase a benefit from another retirement program; and

(6) the member pays the association the purchase cost determined according to Subsection E of this section.

C. A member who was employed by a utility company, library, museum, transit company or nonprofit organization administering federally funded public service programs, which utility company, library, museum, transit company or nonprofit organization administering federally funded public service programs or federally funded public service programs administered by a nonprofit organization are subsequently taken over by an affiliated public employer, or a member who was employed by an entity created pursuant to a joint powers agreement between two or more affiliated public employers for the purpose of administering or providing drug or alcohol addiction treatment services irrespective of whether the entity is subsequently taken over by an affiliated public employer, may purchase service credit for the period of employment subject to the following conditions:

(1) the member pays the association the purchase cost determined according to Subsection E of this section;

(2) the member has the applicable minimum number of years of service credit required for normal retirement. As used in this paragraph, "service credit" means only

the service credit earned by the member during periods of employment with an affiliated public employer; and

(3) the aggregate amount of service credit purchased pursuant to this subsection does not exceed five years.

D. A member who was appointed to participate in a cooperative work study training program established jointly by a state agency and a state post-secondary educational institution may purchase service credit for the period of participation subject to the following conditions:

(1) the member pays the association the full actuarial present value of the amount of the increase in the employee's pension as a consequence of the purchase as determined by the association;

(2) the member pays the full cost of the purchase within sixty days of the date the member is informed of the amount of the payment;

(3) the member has the applicable minimum number of years of service credit required for normal retirement. As used in this paragraph, "service credit" means only the service credit earned by the member during periods of employment with an affiliated public employer; and

(4) the aggregate amount of service credit purchased pursuant to this subsection does not exceed five years.

E. Except for service to be used under a state legislator coverage plan, the purchase cost for each month of service credit purchased pursuant to the provisions of this section is equal to the member's final average salary multiplied by the sum of the member contribution rate and employer contribution rate, determined in accordance with the coverage plan applicable to the member at the time of the written election to purchase. The purchase cost for each year of service credit to be used under a state legislator coverage plan is equal to three times the normal member contribution per year of service credit under the state legislator coverage plan applicable to the member. Full payment shall be made in a single lump sum within sixty days of the date the member is informed of the amount of the payment. The portion of the purchase cost derived from the employer contribution rate shall be credited to the employer's accumulation fund and shall not be paid out of the association in the event of cessation of membership. In no case shall a member be credited with a month of service for less than the purchase cost as defined in this section.

F. A member shall be refunded, upon written request filed with the association, the portion of the purchase cost of service credit purchased pursuant to this section that the association determines to have been unnecessary to provide the member with the maximum pension applicable to the member. The association shall not pay interest on the portion of the purchase cost refunded to the member.

G. A member of the magistrate retirement system who during the member's service as a magistrate was eligible to become a member of the public employees retirement system and elected not to become a member of that system may purchase service credit pursuant to the public employees retirement system for the period for which the magistrate elected not to become a public employees retirement system member by paying the amount of the increase in the actuarial present value of the magistrate pension as a consequence of the purchase as determined by the association. Full payment shall be made in a single lump-sum amount in accordance with procedures established by the retirement board. Except as provided in Subsection F of this section, seventy-five percent of the purchase cost shall be considered to be employer contributions and shall not be refunded to the member in the event of cessation of membership.

H. At any time prior to retirement, any member may purchase service credit in monthly increments, subject to the following conditions:

(1) the member has the applicable minimum number of years of service credit required for normal retirement. As used in this paragraph, "service credit" means only the service credit earned by the member during periods of employment with an affiliated public employer;

(2) the aggregate amount of service credit purchased pursuant to this subsection does not exceed one year;

(3) the member pays full actuarial present value of the amount of the increase in the employee's pension as a consequence of the purchase as determined by the association;

(4) the member pays the full cost of the purchase within sixty days of the date the member is informed of the amount of the payment; and

(5) the purchase of service credit under this subsection cannot be used to determine the final average salary or the pension factor or be used to exceed the pension maximum.

I. A member receiving service credit under this section who enrolls in the retiree health care authority shall make contributions pursuant to Subsection C of Section 10-7C-15 NMSA 1978.

History: Laws 1987, ch. 253, § 7; 1991, ch. 157, § 1; 1994, ch. 128, § 1; 1997, ch. 189, § 5; 1999, ch. 105, § 1; 2003, ch. 418, § 1; 2004, ch. 68, § 3; 2007, ch. 195, § 1; 2009, ch. 288, § 5; 2013, ch. 225, § 4.

10-11-8. Normal retirement; return to employment; benefits continued; contributions.

A. A member may retire upon fulfilling the following requirements prior to the selected date of retirement:

- (1) a written application for normal retirement, in the form prescribed by the association, is filed with the association;
- (2) employment is terminated with all employers covered by any state system or the educational retirement system;
- (3) the member selects an effective date of retirement that is the first day of a calendar month; and
- (4) the member meets the age and service credit requirement for normal retirement specified in the coverage plan applicable to the member.

B. The amount of normal retirement pension is determined in accordance with the coverage plan applicable to the member.

C. Except as provided in Subsections D, J and K of this section, on or after July 1, 2010, a retired member may be subsequently employed by an affiliated public employer only pursuant to the following provisions:

- (1) the retired member has not been employed as an employee of an affiliated public employer or retained as an independent contractor by the affiliated public employer from which the retired member retired for at least twelve consecutive months from the date of retirement to the commencement of subsequent employment or reemployment with an affiliated public employer;
- (2) the retired member's pension shall be suspended upon commencement of the subsequent employment;
- (3) except as provided in Subsection F of this section, the retired member shall not become a member and shall not accrue service credit, and the retired member and that person's subsequent affiliated public employer shall not make contributions under any coverage plan pursuant to the Public Employees Retirement Act; and
- (4) upon termination of the subsequent employment, the retired member's pension shall resume in accordance with the provisions of Subsection A of this section.

D. The provisions of Subsections C, G, H, J and K of this section do not apply to:

- (1) a retired member employed by the legislature for legislative session work;
- (2) a retired member employed temporarily as a precinct board member for a municipal election or an election covered by the Election Code [Chapter 1 NMSA 1978]; or

(3) a retired member who is elected to serve a term as an elected official in an office covered pursuant to the Public Employees Retirement Act; provided that:

(a) the retired member files an irrevocable exemption from membership with the association within thirty days of taking office; and

(b) the irrevocable exemption shall be for the elected official's term of office.

E. A retired member who returns to employment during retirement pursuant to Subsection D of this section is entitled to receive retirement benefits but is not entitled to accrue service credit or to acquire or purchase service credit in the future for the period of the retired member's subsequent employment with an affiliated public employer.

F. At any time during a retired member's subsequent employment pursuant to Subsection C of this section, the retired member may elect to become a member and the following conditions shall apply:

(1) the previously retired member and the subsequent affiliated public employer shall make the required employee and employer contributions, and the previously retired member shall accrue service credit for the period of subsequent employment; and

(2) when the previously retired member terminates the subsequent employment with an affiliated public employer, the previously retired member shall retire according to the provisions of the Public Employees Retirement Act, subject to the following conditions:

(a) payment of the pension shall resume in accordance with the provisions of Subsection A of this section;

(b) unless the previously retired member accrued at least three years of service credit on account of the subsequent employment, the recalculation of pension shall: 1) employ the form of payment selected by the previously retired member at the time of the first retirement; and 2) use the provisions of the coverage plan applicable to the member on the date of the first retirement; and

(c) the recalculated pension shall not be less than the amount of the suspended pension.

G. A retired member who returned to work with an affiliated public employer prior to July 1, 2010 shall be subject to the provisions of this section in effect on the date the retired member returned to work; provided that on and after July 1, 2010, the retired member shall pay the employee contribution in an amount specified in the Public Employees Retirement Act for the position in which the retired member is subsequently employed.

H. Effective July 1, 2014, if a retired member who, subsequent to retirement, is employed and covered pursuant to the provisions of the Magistrate Retirement Act [Chapter 10, Article 12C NMSA 1978] or Judicial Retirement Act [Chapter 10, Article 12B NMSA 1978], during the period of subsequent employment:

- (1) the member shall be entitled to receive retirement benefits;
- (2) the retired member's cost-of-living pension adjustment shall be suspended upon commencement of the employment; and
- (3) upon termination of the employment, the retired member's suspended cost-of-living pension adjustment shall be reinstated as provided under Section 10-11-118 NMSA 1978.

I. The pension of a member who has earned service credit under more than one coverage plan shall be determined as follows:

- (1) the pension of a member who has three or more years of service credit earned on or before June 30, 2013 under each of two or more coverage plans shall be determined in accordance with the coverage plan that produces the highest pension;
- (2) the pension of a member who has service credit earned on or before June 30, 2013 under two or more coverage plans but who has three or more years of service credit under only one of those coverage plans shall be determined in accordance with the coverage plan in which the member has three or more years of service credit. If the service credit is acquired under two different coverage plans applied to the same affiliated public employer as a consequence of an election by the members, adoption by the affiliated public employer or a change in the law that results in the application of a coverage plan with a greater pension, the greater pension shall be paid a member retiring from the affiliated public employer under which the change in coverage plan took place regardless of the amount of service credit under the coverage plan producing the greater pension; provided that the member has three or more years of continuous employment with that affiliated public employer immediately preceding or immediately preceding and immediately following the date the coverage plan changed;
- (3) the pension of a member who has service credit earned on or before June 30, 2013 under each of two or more coverage plans and who has service credit earned under any coverage plan on or after July 1, 2013 shall be equal to the sum of:
 - (a) the pension attributable to the service credit earned on or before June 30, 2013 determined pursuant to Paragraph (1) or (2) of this subsection; and
 - (b) the pension attributable to the service credit earned under each coverage plan on or after July 1, 2013;

(4) the pension of a member who has service credit earned only on and after July 1, 2013 shall be equal to the sum of the pension attributable to the service credit the member has accrued under each coverage plan; and

(5) the provisions of each coverage plan for the purpose of this subsection shall be those in effect at the time the member ceased to be covered by the coverage plan. "Service credit", for the purposes of this subsection, shall be only personal service rendered an affiliated public employer and credited to the member under the provisions of Subsection A of Section 10-11-4 NMSA 1978. Service credited under any other provision of the Public Employees Retirement Act shall not be used to satisfy the three-year service credit requirement of this subsection.

J. A retired member may be subsequently employed by an affiliated public employer; provided that the retired member has not been employed as an employee of an affiliated public employer or retained as an independent contractor by the affiliated public employer from which the retired member retired for at least ninety consecutive days from the date of retirement to the commencement of subsequent employment or reemployment with an affiliated public employer; and further provided that the:

(1) retired member shall only be employed in one of the following positions:

- (a) adult correctional officer;
- (b) adult detention officer;
- (c) courthouse security officer;
- (d) emergency medical dispatcher;
- (e) emergency medical technician or paramedic;
- (f) firefighter;
- (g) juvenile correctional officer;
- (h) juvenile detention officer;
- (i) municipal police officer;
- (j) peace officer;
- (k) protective services investigator;
- (l) public safety telecommunicator;
- (m) sheriff's deputy; or

- (n) state police officer;
- (2) retired member shall have retired prior to December 31, 2023;
- (3) retired member's pension, including any cost-of-living adjustment, shall continue to be paid during the period of subsequent employment;
- (4) retired member shall not become a member during the period of subsequent employment;
- (5) retired member shall not accrue service credit for any portion of the period of subsequent employment;
- (6) retired member and the retired member's subsequent affiliated public employer shall make the contributions that would be required for members and employers under the applicable coverage plan during the entire period of subsequent employment;
- (7) contributions paid by or on behalf of the retired member during the term of subsequent employment shall not be refundable at the termination of the subsequent employment;
- (8) retired member shall have no seniority based on pre-retirement employment for purposes of selecting shifts;
- (9) retired member shall have no limitation on the length of time that the retired member can be subsequently employed or reemployed by an affiliated public employer; provided that the retired member shall only receive up to thirty-six consecutive months of pension payments while reemployed;
- (10) retired member shall not be hired for reemployment into an employment position with a vacancy rate that is lower than ten percent at the time of the retired member's hiring; and
- (11) subsequent employment begins prior to July 1, 2027.

K. An affiliated public employer that employs a retired member provided in Subsection J of this section shall:

- (1) track and document:
 - (a) the date of hire and date of separation for each reemployed retired member;
 - (b) the retired member's employment position prior to retirement;

(c) the salary of each reemployed retired member; and

(d) the monthly vacancy rate for each employment position at the affiliated public employer; and

(2) if the affiliated public employer has to lay off employees due to budgetary restrictions, lay off reemployed retired members before laying off any members.

L. For the purposes of this section:

(1) "adult correctional officer" means a person who is employed as an adult correctional officer or an adult correctional officer specialist by a state correctional facility of the corrections department or its successor agency;

(2) "adult detention officer" means a person who is employed by an affiliated public employer other than the state and who has inmate custodial responsibilities at a facility used for the confinement of adults charged with or convicted of a violation of a law or ordinance;

(3) "courthouse security officer" means a person who is employed by the administrative office of the courts who provides security or protective services for a courthouse;

(4) "emergency medical dispatcher" means a person who is trained and licensed pursuant to the Emergency Medical Services Act [Chapter 24, Article 10B NMSA 1978] and who receives calls for emergency medical assistance, provides pre-arrival medical instructions, dispatches emergency medical assistance and coordinates its response;

(5) "emergency medical technician" means a person who is licensed as an emergency medical technician or paramedic and who provides patient care pursuant to the Emergency Medical Services Act;

(6) "firefighter" means a person who is employed as a full-time non-volunteer firefighter by an affiliated public employer who has taken the oath for firefighters and who serves in a non-management position serving or supporting the delivery of emergency services in a front line capacity;

(7) "juvenile correctional officer" means a person who is employed as a juvenile correctional officer by the children, youth and families department or its successor agency;

(8) "juvenile detention officer" means a person who is employed as a juvenile detention officer or youth program officer by an affiliated public employer other than the state;

(9) "municipal police officer" means a person who is employed by an affiliated public employer other than the state or a county and who is a law enforcement officer who serves in a uniformed patrol capacity responding to dispatched calls for service;

(10) "peace officer" means a person who is appointed by the attorney general or district attorney and who is a certified law enforcement officer who investigates and enforces state laws, rules and regulations, including the execution of warrants;

(11) "protective services investigator" means a person who is an employee of the protective services division of the children, youth and families department who investigates child abuse referrals, assesses the risk and safety of the child and takes appropriate action or prepares cases for transfer to child protective services permanency planning;

(12) "public safety telecommunicator" means a person who is an employee of a safety agency who receives calls or dispatches the appropriate personnel or equipment in response to calls for police, fire or medical services and makes decisions affecting the life, health or welfare of the public or safety employees and who has qualified for the certification set forth in the Public Safety Telecommunicator Training Act [29-7C-1 to 29-7C-9 NMSA 1978];

(13) "sheriff's deputy" means a person who is employed by a county and who is a law enforcement officer who serves in a uniformed patrol capacity responding to dispatched calls for service or serves as a courthouse security officer employed by a county; and

(14) "state police officer" means a person who is an officer of the New Mexico state police division of the department of public safety, who has taken the oath prescribed for such officers and who serves in a uniformed patrol capacity responding to dispatched calls for service.

History: Laws 1987, ch. 253, § 8; 1989, ch. 79, § 1; 1992, ch. 116, § 4; 1995, ch. 114, § 2; 2003, ch. 85, § 3; 2004, ch. 2, § 1; 2004, ch. 68, § 4; 2009, ch. 285, § 1; 2010, ch. 18, § 1; 2012, ch. 26, § 2; 2013, ch. 225, § 5; 2014, ch. 35, § 1; 2014, ch. 39, § 1; 2014, ch. 43, § 1; 2020, ch. 11, § 3; 2024, ch. 48, § 1.

10-11-9. Repealed.

10-11-9.1, 10-11-9.2. Repealed.

10-11-10. Repealed.

10-11-10.1. Disability retirement.

A. There is created a "disability review committee" of the retirement board. The disability review committee shall consist of at least three but not more than five retirement board members and at least one physician licensed in New Mexico appointed by the retirement board. The disability review committee shall review all applications for disability retirement, review reports required under this section and approve or deny applications for disability retirement.

B. The disability review committee may retire a member on account of disability before the time the member would otherwise be eligible for retirement if the following requirements are satisfied:

(1) the member applying for disability retirement was a member at the time the disability was incurred;

(2) a written application for disability retirement, in the form and containing the information prescribed by the association, has been filed with the association by the member or by the member's affiliated public employer;

(3) employment is terminated within forty-five days of the date of approval of the application for disability retirement;

(4) if:

(a) the member has the applicable minimum number of years of service credit required for normal retirement. For the purposes of this subparagraph, "service credit" means only the service credit earned by the member during periods of employment with an affiliated public employer; or

(b) the disability review committee finds the disability to have been the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty with an affiliated public employer;

(5) the member submits to all medical examinations and tests and furnishes copies of all medical reports requested by the association or disability review committee; provided that if the disability review committee requires independent medical or other examinations, those examinations shall be performed at the association's expense; and

(6) the disability review committee makes the determination required under Subsection C of this section.

C. The disability review committee shall review applications for disability retirement to determine whether:

(1) if the member is a currently employed, contributing employee of an affiliated public employer:

(a) the member is mentally or physically totally incapacitated for continued employment with an affiliated public employer; and

(b) the incapacity is likely to be permanent; or

(2) if the member is not a currently employed, contributing employee of an affiliated public employer:

(a) the member is mentally or physically totally incapacitated for any gainful employment; and

(b) the incapacity is likely to be permanent.

D. The disability retirement pension shall be paid for a period of one year after approval of the initial application unless the disability review committee for good cause shown grants disability retirement for a longer period of time. After approval, payment shall be effective commencing the first of the month following submission of the initial application and termination of employment.

E. At the end of the first year that a disability retirement pension is paid, the disability retired member's condition shall be reevaluated to determine eligibility for continuation of payment of a disability retirement pension. If the disability retired member has applied for disability benefits under the federal social security program, the member shall submit copies of the member's application. The association shall continue payment of the state disability retirement pension if the disability retired member presents a written final determination from the federal social security administration that the disability retired member qualifies, based on the same conditions as presented in the application for a state disability retirement pension, for federal disability benefits.

F. If the disability retired member applied for federal disability benefits within thirty days of receiving approval for a state disability retirement pension but the federal social security administration has not made a written final determination of entitlement by the end of the first year that the disability retired member has received a state disability retirement pension, eligibility for continued payment of the state disability retirement pension shall be determined by the disability review committee. The state disability retirement pension shall be discontinued if the disability review committee finds that the disability retired member is capable of any gainful employment.

G. The disability retired member shall notify the association of the federal social security administration's final determination within fifteen working days of the date of issuance of the final written determination. If the federal social security administration denies federal disability benefits, the state disability retirement pension shall be discontinued effective the first of the month following the month in which the written final determination of the federal social security administration was issued. If the federal social security administration grants federal disability benefits, the state disability retirement pension shall be continued so long as the disability retired member provides

annually, on or before the anniversary date of commencement of payment of the state disability retirement pension, written evidence of continuation of payment of federal disability benefits. If the disability review committee has denied continuation of payment of a state disability retirement pension and the disability retired member is later granted federal disability benefits, the state disability retirement pension shall be reinstated effective the first of the month following the month in which the state disability retirement pension was discontinued.

H. If, at the time of reevaluation under Subsection E of this section, the disability retired member has applied for and has qualified for federal disability benefits, but for a different condition than was reviewed by the disability review committee, the disability review committee shall review the disability retired member's condition as described by the application for federal disability benefits. The process set forth in Subsection I of this section shall be followed to determine whether payment of a state disability retirement pension should be continued.

I. If the disability retired member is not eligible to apply for federal disability benefits or is not a member of the federal social security program, the disability review committee annually shall determine eligibility for continuation of payment of a state disability retirement pension. To make its determination of continued entitlement, the disability review committee shall use the guidelines established by the federal social security administration for determination of eligibility for federal disability benefits. The determination shall be based on:

- (1) the medical and all other information provided by the disability retired member;
- (2) at least one independent medical or other examination performed at the association's expense if required by the disability review committee; and
- (3) any medical, vocational or other information related to the disability compiled during the period of disability by any medical or other practitioner consulted by the disability retired member regarding the disability which was not paid for by the association.

J. Each disability retired member annually shall submit to the association, prior to July 1, a statement of earnings from gainful employment during the preceding calendar year. The statement of earnings shall be in the form prescribed by the association. Payment of the state disability retirement pension shall be discontinued if the amount of earnings from gainful employment is one hundred percent or more of the amount that causes a decrease or suspension of an old age benefit under the federal social security program, or fifteen thousand dollars (\$15,000), whichever is less. Payment of the state disability retirement pension shall be discontinued starting with the month of July if the statement of earnings is not received by the association prior to July 1.

K. Upon prior approval by the association, a disability retired member may return to employment with an affiliated public employer or other employer for a trial period not to exceed one hundred twenty calendar days without becoming a member or causing suspension or discontinuation of payment of a state disability retirement pension. If the trial period of employment is successfully completed, payment of the disability retirement pension shall be discontinued beginning the first of the month following the one hundred twentieth day of the trial period of employment. Trial periods of employment shall be limited to two in any five-year period following disability retirement.

L. If the disability retired member meets the minimum age and service credit requirements for normal retirement while receiving a disability retirement pension, the disability retirement pension shall be reclassified by the association as a normal retirement pension and no further determinations of eligibility for continuation of payment of the disability retirement pension shall be made. Upon reclassification as a normal retirement pension, all the provisions of the Public Employees Retirement Act regarding normal retirement shall be applicable.

M. If the disability review committee found the disability to be the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's employment with an affiliated public employer, service credit shall continue to accrue during the disability retirement period as though the disability retired member was actively employed.

N. The amount of a disability retirement pension shall be calculated according to the provisions of the coverage plan applicable to the member at the time of application, except that the service credit requirement shall be waived and the actual amount of service credit shall be used instead. If the disability is the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty for an affiliated public employer, the amount of disability retirement pension shall be calculated according to the provisions of the coverage plan applicable to the member, imputing the amount of service credit necessary to meet the minimum service credit requirements for normal retirement.

O. For the purposes of this section, the following definitions apply:

(1) "continued employment with the affiliated public employer" means the ability of the member to fulfill the required duties of the position in which the member was last employed by an affiliated public employer;

(2) "gainful employment" means remunerative employment or self-employment that is commensurate with the applicant's background, age, education, experience and any new skills or training the applicant may have acquired after terminating public employment or incurring the disability;

(3) "state disability retirement pension" means the pension paid pursuant to the provisions of this section; and

(4) "federal disability benefits" means those benefits paid by the federal social security program.

History: Laws 1993, ch. 160, § 3; 2013, ch. 225, § 6.

10-11-11. Repealed.

10-11-12. Status of disability retired member upon termination of disability retirement.

A. The membership status of a disability retired member following termination of the disability retirement pension shall be governed by the membership provisions of the Public Employees Retirement Act. Upon reacquisition of membership, the credited service of the member at time of disability retirement shall be restored. Credited service shall not be granted for the period of disability retirement unless the retirement board has found the disability to have been the natural and proximate result of causes arising solely and exclusively out of and in the course of the disability retired member's performance of duty with an affiliated public employer. In no case shall credited service be granted for disability retirement time incurred after the date the disability retired member meets an age and service requirement for normal retirement or after the date the disability retired member attains age sixty-five years.

B. A terminated disability retired member who does not reacquire membership shall have actual credited service at time of disability retirement restored and shall become a vested former member. The former disability retired member may retire upon meeting the requirements for normal retirement specified by the applicable coverage plan, except the service requirement for normal retirement at age sixty-five years or older shall be waived.

History: Laws 1987, ch. 253, § 12.

10-11-13, 10-11-14. Repealed.

10-11-14.1 to 10-11-14.4. Repealed.

10-11-14.5. Death before retirement; survivor pensions.

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

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

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

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

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

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

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

The total amount of survivor pension shall be divided equally among all eligible surviving children. If there is only one eligible child, the amount of pension shall be twenty-five percent of the deceased member's final average salary.

D. If the member had the applicable minimum number of years of service credit required for normal retirement, but the retirement board did not find the death to have been the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty with an affiliated public employer and there is no designated survivor beneficiary, a survivor pension shall be payable to the eligible surviving spouse. The amount of the survivor pension shall be the greater of:

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

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

E. If the member had the applicable minimum number of years of service credit required for normal retirement, but the retirement board did not find the death to have

been the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty with an affiliated public employer and there is no designated survivor beneficiary, and if there is no eligible surviving spouse at the time of death, a survivor pension shall be payable to and divided equally among all eligible surviving children, if any. The total amount of survivor pension payable for all eligible surviving children shall be the greater of:

(1) the amount as calculated under the coverage plan applicable to the deceased member at the time of death as though the deceased member had retired the day preceding death under form of payment B with the oldest eligible surviving child as the survivor beneficiary using the total amount of actual service credit attributable to the deceased member at the time of death; or

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

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

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

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

I. A member may designate a survivor beneficiary to receive a pre-retirement survivor pension, subject to the following conditions:

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

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

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

(4) if the member is divorced subsequent to the time of designation, any prior designation of the former spouse as survivor beneficiary shall automatically be revoked upon the date of divorce; and

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

J. If there is a designated survivor beneficiary and the retirement board finds the death to have been the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty with an affiliated public employer, a survivor pension shall be payable to the designated survivor beneficiary. The amount of the survivor pension shall be the greater of:

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

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

K. If there is a designated survivor beneficiary, if the member had the applicable minimum number of years of service credit required for normal retirement and if the retirement board did not find the death to have been the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty with an affiliated public employer, a survivor pension shall be payable to the designated survivor beneficiary. The amount of the survivor pension shall be the greater of:

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

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

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

M. For purposes of this section, "service credit" means only the service credit earned by a member during periods of employment with an affiliated public employer.

History: Laws 1993, ch. 160, § 4; 1997, ch. 189, § 6; 2013, ch. 225, § 7.

10-11-14.6. Calculation of final average salary.

Under the Public Employees Retirement Act:

A. for a member who was a member on June 30, 2013, the final average salary is one thirty-sixth of the greatest aggregate amount of salary paid a member for thirty-six consecutive, but not necessarily continuous, months of service credit; and

B. for a member who was not a member on June 30, 2013, the final average salary is one-sixtieth of the greatest aggregate amount of salary paid a member for sixty consecutive, but not necessarily continuous, months of service credit.

History: Laws 2009, ch. 288, § 12; 2013, ch. 225, § 8.

10-11-15. State general member coverage plan 1; applicability.

State general member coverage plan 1 is applicable to state general members who are not specifically covered by another coverage plan.

History: Laws 1987, ch. 253, § 15.

10-11-16. State general member coverage plan 1; age and service requirements for normal retirement.

Under state general member coverage plan 1, the age and service requirements for normal retirement are:

- A. age sixty-five years or older and five or more years of credited service;
- B. age sixty-four years and eight or more years of credited service;
- C. age sixty-three years and eleven or more years of credited service;
- D. age sixty-two years and fourteen or more years of credited service;
- E. age sixty-one years and seventeen or more years of credited service;
- F. age sixty years and twenty or more years of credited service; or
- G. any age and twenty-five or more years of credited service.

History: Laws 1987, ch. 253, § 16.

10-11-17. State general member coverage plan 1; amount of normal requirements for normal retirement; form of payment A.

Under state general member coverage plan 1, the amount of a normal retirement pension under form of payment A is equal to two percent of final average salary multiplied by credited service. The amount shall not exceed sixty percent of final average salary.

History: Laws 1987, ch. 253, § 17.

10-11-18. State general member coverage plan 1; final average salary.

Under state general member coverage plan 1, final average salary is one thirty-sixth of the greatest aggregate amount of salary paid a member for thirty-six consecutive months of credited service. Under state general member coverage plan 1, if a member has less than thirty-six months of credited service, final average salary is the aggregate amount of salary paid a member for the member's period of credited service divided by the member's credited service.

History: Laws 1987, ch. 253, § 18.

10-11-18.1. Repealed.

10-11-19. State general member coverage plan 1; member contribution rate.

A member under state general member coverage plan 1 shall contribute three and eighty-three one-hundredths percent of salary.

History: Laws 1987, ch. 253, § 19.

10-11-20. State general member coverage plan 1; state contribution rate.

The state shall contribute eleven and forty-eight one-hundredths percent of the salary of each member under state general member coverage plan 1.

History: Laws 1987, ch. 253, § 20.

10-11-21. State general member coverage plan 2; applicability.

State general member coverage plan 2 is applicable to state general members after September 30, 1987.

History: Laws 1987, ch. 253, § 21.

10-11-22. State general member coverage plan 2; age and service requirements for normal retirement.

Under state general member coverage plan 2, the age and service requirements for normal retirement are:

- A. age sixty-five years or older and five or more years of credited service;
- B. age sixty-four years and eight or more years of credited service;
- C. age sixty-three years and eleven or more years of credited service;
- D. age sixty-two years and fourteen or more years of credited service;
- E. age sixty-one years and seventeen or more years of credited service;
- F. age sixty years and twenty or more years of credited service; or
- G. any age and twenty-five or more years of credited service.

History: Laws 1987, ch. 253, § 22.

10-11-23. State general member coverage plan 2; amount of pension; form of payment A.

Under state general member coverage plan 2, the amount of pension under form of payment A is equal to two and one-half percent of final average salary multiplied by credited service. The amount shall not exceed seventy-five percent of the final average salary.

History: Laws 1987, ch. 253, § 23.

10-11-24. State general member coverage plan 2; final average salary.

Under state general member coverage plan 2, the final average salary is one thirty-sixth of the greatest aggregate amount of salary paid a member for thirty-six consecutive months of credited service. Under state general member coverage plan 2, if a member has less than thirty-six months of credited service, the final average salary is the aggregate amount of salary paid a member for the member's period of credited service divided by the member's credited service.

History: Laws 1987, ch. 253, § 24.

10-11-25. State general member coverage plan 2; member contribution rate.

A member under state general member coverage plan 2 shall contribute six and eighteen one-hundredths percent of salary starting with the first full pay period in the calendar month in which state general member coverage plan 2 becomes applicable to the member.

History: Laws 1987, ch. 253, § 25.

10-11-26. State general member coverage plan 2; state contribution rate.

The state shall contribute thirteen and eighty-three one-hundredths percent of the salary of each member covered by state general member coverage plan 2.

History: Laws 1987, ch. 253, § 26.

10-11-26.1. State general member coverage plan 3; applicability.

State general member coverage plan 3 is applicable to peace officer members and is applicable to state general members in the first full pay period after July 1, 1995 if the retirement board certifies to the secretary of state that a majority of the members voting of those members to be covered under state general member coverage plan 3 has voted to approve adoption of this plan at an election conducted pursuant to Laws 1994, Chapter 128, Section 17.

History: Laws 1994, ch. 128, § 2; 2013, ch. 225, § 9.

10-11-26.2. State general member coverage plan 3; age and service credit requirements for normal retirement.

A. Under state general member coverage plan 3:

(1) for a member who on or before June 30, 2013 was a peace officer and for a member who is not a peace officer but was a retired member or a member on June 30, 2013, the age and service credit requirements for normal retirement are:

- (a) age sixty-five years or older and five or more years of service credit;
- (b) age sixty-four years and eight or more years of service credit;
- (c) age sixty-three years and eleven or more years of service credit;
- (d) age sixty-two years and fourteen or more years of service credit;

(e) age sixty-one years and seventeen or more years of service credit;

(f) age sixty years and twenty or more years of service credit; or

(g) any age and twenty-five or more years of service credit;

(2) for a member who is not a peace officer and was not a retired member or a member on June 30, 2013, the age and service requirements for normal retirement are:

(a) age sixty-five years or older and five or more years of service credit; or

(b) any age if the member has five or more years of service credit and the sum of the member's age and years of service credit equals at least eighty-five;

(3) for a member who on or after July 1, 2013 becomes a peace officer and who was not a retired member or a member on June 30, 2013, the age and service requirements for normal retirement are:

(a) age sixty years or older and five or more years of service credit; or

(b) any age and twenty-five or more years of service credit; and

(4) for a member who on or after January 1, 2023 becomes a public regulation commission commissioner, who was not a retired member or a member prior to January 1, 2023 and whose service credit is limited to service as a commissioner, the age and service requirement for normal retirement is age sixty-five years or older and six or more years of service credit.

B. As used in this section, "peace officer" means any employee of the state with a duty to maintain public order or to make arrests for crime, whether that duty extends to all crimes or is limited to specific crimes, and who is not specifically covered by another coverage plan.

History: Laws 1994, ch. 128, § 3; 2009, ch. 288, § 6; 2013, ch. 225, § 10; 2020, ch. 9, § 24; 2020, ch. 11, § 4.

10-11-26.3. State general member coverage plan 3; amount of pension; form of payment A.

Under state general member coverage plan 3:

A. for a member with age and service requirements provided under Paragraph (1) or (3) of Subsection A of Section 10-11-26.2 NMSA 1978, the amount of pension under form of payment A is equal to three percent of final average salary multiplied by service

credit. The amount shall not exceed one hundred percent of the final average salary; and

B. for a member with age and service requirements provided under Paragraph (2) of Subsection A of Section 10-11-26.2 NMSA 1978, the amount of pension under form of payment A is equal to two and one-half percent of the final average salary multiplied by service credit. The amount shall not exceed one hundred percent of the final average salary.

History: Laws 1994, ch. 128, § 4; 2013, ch. 225, § 11; 2023, ch. 53, § 1.

10-11-26.4. Repealed.

History: Laws 1994, ch. 128, § 5; repealed by Laws 2009, ch. 288, § 20.

10-11-26.5. State general member coverage plan 3; member contribution rate.

A member under state general member coverage plan 3 shall contribute seven and forty-two hundredths percent of salary starting with the first full pay period that ends within the calendar month in which state general member coverage plan 3 becomes applicable to the member, except that a member whose annual salary is greater than twenty-five thousand dollars (\$25,000) shall contribute :

A. beginning July 1, 2020 and continuing through June 30, 2021, nine and forty-two hundredths percent of salary;

B. beginning July 1, 2021 and continuing through June 30, 2022, nine and ninety-two hundredths percent of salary;

C. beginning July 1, 2022 and continuing through June 30, 2023, ten and forty-two hundredths percent of salary; and

D. beginning July 1, 2023 and thereafter, ten and ninety-two hundredths percent of salary.

History: Laws 1994, ch. 128, § 6; 2009, ch. 127, § 1; 2011, ch. 178, § 1; 2013, ch. 225, § 12; 2020, ch. 11, § 5.

10-11-26.6. State general member coverage plan 3; state contribution rate.

The state shall contribute the following percentages of the salary of each member covered by state general member coverage plan 3 starting with the first pay period that

ends within the calendar month in which state general member coverage plan 3 becomes applicable to the member:

A. beginning July 1, 2020 and continuing through June 30, 2021, seventeen and seventy-four hundredths percent of salary;

B. beginning July 1, 2021 and continuing through June 30, 2022, eighteen and twenty-four hundredths percent of salary;

C. beginning July 1, 2022 and continuing through June 30, 2023, eighteen and seventy-four hundredths percent of salary; and

D. beginning July 1, 2023 and thereafter, nineteen and twenty-four hundredths percent of salary.

History: Laws 1994, ch. 128, § 7; 2009, ch. 127, § 2; 2011, ch. 178, § 2; 2013, ch. 225, § 13; 2019, ch. 237, § 1; 2020, ch. 11, § 6.

10-11-26.7. Service credit under this plan required.

Notwithstanding the provisions of Section 3 [10-11-26.2 NMSA 1978] of this act, to qualify for payment under state general member coverage plan 3, a member shall have one and one-half years of service credit earned under the general member coverage plan 3 subsequent to July 1, 1995.

History: Laws 1994, ch. 128, § 8.

10-11-27. State public safety member coverage plan 1; applicability; credited service.

A. State public safety member coverage plan 1 is applicable to:

(1) state police members who are not specifically covered by another coverage plan;

(2) adult correctional officer members;

(3) adult probation and parole officer members;

(4) juvenile probation and parole officer members; and

(5) state fire members.

B. The credited service of a state police member who was a retired member or a member on or before June 30, 2013 or of an adult correctional officer member shall

have actual credited service increased by twenty percent for the purposes of state public safety member coverage plan 1.

C. The credited service, accrued after July 1, 2021, of an adult probation and parole officer or a juvenile probation and parole officer shall be increased by twenty percent for the purposes of state public safety member coverage plan 1.

D. The credited service, accrued after July 1, 2024, of a state fire member shall be increased by twenty percent for the purposes of state public safety member coverage plan 1.

E. The increase of twenty percent to accrued credited service provided by this section shall only apply to a state public safety member who was a retired member or a member on or before June 30, 2013.

F. Except as provided in Subsections B through E of this section, the credited service of a member covered under state public safety member coverage plan 1 shall be credited as provided in Section 10-11-4 NMSA 1978.

G. State public safety member coverage plan 1 is applicable to adult probation and parole officer members and juvenile probation and parole officer members in the first full pay period after July 1, 2021 if the retirement board certifies to the secretary of state that, of those adult probation and parole officer members and juvenile probation and parole officer members to be covered under state public safety member coverage plan 1, a majority of the respective members voting have voted to approve adoption of that plan at an election conducted pursuant to Laws 2020, Chapter 11, Sections 63 through 66.

H. State public safety member coverage plan 1 is applicable in the first full pay period after July 1, 2024 for:

(1) state fire members who begin employment as a state fire member on or after July 1, 2024; and

(2) state fire members who were employed in a position and were subject to the definition of a "state fire member" prior to July 1, 2024, if the retirement board certifies to the secretary of state that, of those state fire members to be covered under state public safety member coverage plan 1, a majority of the respective members voting have voted to approve the adoption of that plan at an election conducted pursuant to Section 8 [Laws 2024, ch. 52, § 8] of this 2024 act.

History: Laws 1987, ch. 253, § 27; 2003, ch. 268, § 9; 2003, ch. 269, § 1; 2013, ch. 225, § 14; 2020, ch. 11, § 7; 2023, ch. 35, § 1; 2024, ch. 52, § 2.

10-11-27.1. State public safety member coverage plan 1; service credit required.

Notwithstanding the provisions of Section 10-11-27 NMSA 1978, to qualify for payment under state public safety member coverage plan 1, an adult correctional officer member shall have eighteen months of service credit earned under state public safety member coverage plan 1 subsequent to July 1, 2004.

History: 1978 Comp., § 10-11-27.1, enacted by Laws 2003, ch. 268, § 10; 2020, ch. 11, § 8; 2024, ch. 52, § 3.

10-11-27.2. Legislative findings.

The legislature finds that:

A. it is appropriate to recognize the professionalism and dedication of state police officers, who provide an essential service to the citizens of New Mexico;

B. it is appropriate to recognize the hazardous nature of the work performed by state police officers;

C. the spirit of what it takes to be a state police officer is personified by Sergeant Brent H. Bateman, who served with honor as a state police officer for twenty-two years. Sergeant Bateman became ill days after his retirement and passed away a short six months following retirement; and

D. the twenty percent credit toward actual service, as provided in Subsection B of Section 10-11-27 NMSA 1978 under state police member coverage plan 1, is dedicated to Sergeant Brent H. Bateman and all other officers who have served, and who do serve, as New Mexico state police officers.

History: 1978 Comp., § 10-11-27.2, enacted by Laws 2003, ch. 269, § 2; 2013, ch. 225, § 15.

10-11-28. State public safety member coverage plan 1; age and service requirements for normal retirement.

Under state public safety member coverage plan 1:

A. for a member who was a retired member or a member on June 30, 2013, the age and service requirements for normal retirement are:

- (1) age sixty-five years or older and five or more years of credited service;
- (2) age sixty-four years and eight or more years of credited service;
- (3) age sixty-three years and eleven or more years of credited service;
- (4) age sixty-two years and fourteen or more years of credited service;

- (5) age sixty-one years and seventeen or more years of credited service;
- (6) age sixty years and twenty or more years of credited service; or
- (7) any age and twenty-five or more years of credited service; and

B. for a member who was not a retired member or a member on June 30, 2013, the age and service requirements for normal retirement are:

- (1) age sixty years or older and five or more years of service credit; or
- (2) any age and twenty-five or more years of service credit.

History: Laws 1987, ch. 253, § 28; 2003, ch. 268, § 11; 2013, ch. 225, § 16; 2020, ch. 11, § 9; 2024, ch. 52, § 4.

10-11-29. State public safety member coverage plan 1; amount of pension; form of payment A.

Under state public safety member coverage plan 1, the amount of pension under form of payment A is equal to three percent of final average salary multiplied by credited service. The amount shall not exceed one hundred percent of the final average salary.

History: Laws 1987, ch. 253, § 29; 2003, ch. 268, § 12; 2013, ch. 225, § 17; 2020, ch. 11, § 10; 2023, ch. 53, § 2; 2024, ch. 52, § 5.

10-11-29.1. Repealed.

10-11-30. Repealed.

History: Laws 1987, ch. 253, § 30; 2003, ch. 268, § 13; repealed by Laws 2009, ch. 288, § 20.

10-11-31. State public safety member coverage plan 1; member contribution rate.

A member under state public safety member coverage plan 1 shall contribute seven and six-tenths percent of salary, except that a member whose annual salary is greater than twenty-five thousand dollars (\$25,000) shall contribute nine and one-tenth percent of salary.

History: Laws 1987, ch. 253, § 31; 2003, ch. 268, § 14; 2009, ch. 127, § 3; 2011, ch. 178, § 3; 2013, ch. 225, § 18; 2020, ch. 11, § 11; 2024, ch. 52, § 6.

10-11-32. State public safety member coverage plan 1; state contribution rate.

The state shall contribute twenty-five and one-half percent of the salary of each member under state public safety member coverage plan 1.

History: Laws 1987, ch. 253, § 32; 2003, ch. 268, § 15; 2009, ch. 127, § 4; 2011, ch. 178, § 4; 2013, ch. 225, § 19; 2020, ch. 11, § 12; 2024, ch. 52, § 7.

10-11-33. Juvenile correctional officer member coverage plan 1; applicability.

Juvenile correctional officer member coverage plan 1 is applicable to juvenile correctional officer members who are not specifically covered by another coverage plan.

History: Laws 1987, ch. 253, § 33; 2013, ch. 225, § 20.

10-11-34. Juvenile correctional officer member coverage plan 1; age and service requirements for normal retirement.

Under juvenile correctional officer member coverage plan 1, the age and service requirements for normal retirement are:

- A. age sixty-five years or older and five or more years of credited service;
- B. age sixty-four years and eight or more years of credited service;
- C. age sixty-three years and eleven or more years of credited service;
- D. age sixty-two years and fourteen or more years of credited service;
- E. age sixty-one years and seventeen or more years of credited service;
- F. age sixty years and twenty or more years of credited service; or
- G. any age and twenty-five or more years of credited service.

History: Laws 1987, ch. 253, § 34; 2013, ch. 225, § 21.

10-11-35. Juvenile correctional officer member coverage plan 1; amount of pension; form of payment A.

Under juvenile correctional officer member coverage plan 1, the amount of pension under form of payment A is equal to two and one-half percent of final average salary

multiplied by credited service. The amount shall not exceed one hundred percent of the final average salary.

History: Laws 1987, ch. 253, § 35; 2013, ch. 225, § 22.

10-11-36. Repealed.

History: Laws 1987, ch. 253, § 36; repealed by Laws 2013, ch. 225, § 91.

10-11-37. Juvenile correctional officer member coverage plan 1; member contribution rate.

A member under juvenile correctional officer member coverage plan 1 shall contribute four percent of salary.

History: Laws 1987, ch. 253, § 37; 2013, ch. 225, § 23.

10-11-38. Juvenile correctional officer member coverage plan 1; state contribution rate.

The state shall contribute twenty-one and five-tenths percent of the salary of each member under juvenile correctional officer member coverage plan 1.

History: Laws 1987, ch. 253, § 38; 2013, ch. 225, § 24.

10-11-38.1. Juvenile correctional officer member coverage plan 2; applicability.

Juvenile correctional officer member coverage plan 2 is applicable to juvenile correctional officer members in the first full pay period after July 1, 1995 if the retirement board certifies to the secretary of state that a majority of the members voting of those members to be covered under juvenile correctional officer member coverage plan 2 has voted to approve adoption of this plan at an election conducted pursuant to Laws 1994, Chapter 128, Section 17.

History: Laws 1994, ch. 128, § 9; 2013, ch. 225, § 25.

10-11-38.2. Juvenile correctional officer member coverage plan 2; age and service credit requirements for normal retirement.

Under juvenile correctional officer member coverage plan 2:

A. for a member who was a retired member or a member on June 30, 2013, the age and service credit requirements for normal retirement are:

- (1) age sixty-five years or older and five or more years of service credit;
- (2) age sixty-four years and eight or more years of service credit;
- (3) age sixty-three years and eleven or more years of service credit;
- (4) age sixty-two years and fourteen or more years of service credit;
- (5) age sixty-one years and seventeen or more years of service credit;
- (6) age sixty years and twenty or more years of service credit; and
- (7) any age and twenty-five or more years of service credit; and

B. for a member who was not a retired member or a member on June 30, 2013, the age and service requirements for normal retirement are:

- (1) age sixty years or older and five or more years of service credit; or
- (2) any age and twenty-five or more years of service credit.

History: Laws 1994, ch. 128, § 10; 2013, ch. 225, § 26; 2020, ch. 11, § 13.

10-11-38.3. Juvenile correctional officer member coverage plan 2; amount of pension; form of payment A.

Under juvenile correctional officer member coverage plan 2, the amount of pension under form of payment A is equal to three percent of final average salary multiplied by service credit. The amount shall not exceed one hundred percent of the final average salary.

History: Laws 1994, ch. 128, § 11; 2013, ch. 225, § 27; 2023, ch. 53, § 3.

10-11-38.4. Repealed.

History: Laws 1994, ch. 128, § 12; repealed by Laws 2009, ch. 288, § 20.

10-11-38.5. Juvenile correctional officer member coverage plan 2; member contribution rate.

A member under juvenile correctional officer member coverage plan 2 shall contribute four and seventy-eight hundredths percent of salary starting with the first full pay period that ends within the calendar month in which juvenile correctional officer member coverage plan 2 becomes applicable to the member, except that a member

whose annual salary is greater than twenty-five thousand dollars (\$25,000) shall contribute:

A. beginning July 1, 2020 and continuing through June 30, 2021, six and seventy-eight hundredths percent of salary;

B. beginning July 1, 2021 and continuing through June 30, 2022, seven and twenty-eight hundredths percent of salary;

C. beginning July 1, 2022 and continuing through June 30, 2023, seven and seventy-eight hundredths percent of salary; and

D. beginning July 1, 2023 and thereafter, eight and twenty-eight hundredths percent of salary.

History: Laws 1994, ch. 128, § 13; 2009, ch. 127, § 5; 2011, ch. 178, § 5; 2013, ch. 225, § 28; 2020, ch. 11, § 14.

10-11-38.6. Juvenile correctional officer member coverage plan 2; state contribution rate.

The state shall contribute the following percentages of the salary of each member covered by juvenile correctional officer member coverage plan 2 starting with the first pay period that ends within the calendar month in which juvenile correctional officer member coverage plan 2 becomes applicable to the member:

A. beginning July 1, 2020 and continuing through June 30, 2021, twenty-six and eighty-seven hundredths percent of salary;

B. beginning July 1, 2021 and continuing through June 30, 2022, twenty-seven and thirty-seven hundredths percent of salary;

C. beginning July 1, 2022 and continuing through June 30, 2023, twenty-seven and eighty-seven hundredths percent of salary; and

D. beginning July 1, 2023 and thereafter, twenty-eight and thirty-seven hundredths percent of salary.

History: Laws 1994, ch. 128, § 14; 2009, ch. 127, § 6; 2011, ch. 178, § 6; 2013, ch. 225, § 29; 2019, ch. 237, § 2; 2020, ch. 11, § 15.

10-11-38.7. Service credit under this plan required.

Notwithstanding the provisions of Section 10-11-38.2 NMSA 1978, to qualify for payment under juvenile correctional officer member coverage plan 2, a member shall

have one and one-half years of service credit earned under the juvenile correctional officer member coverage plan 2 subsequent to July 1, 1995.

History: Laws 1994, ch. 128, § 15; 2013, ch. 225, § 30.

10-11-39. State legislator member coverage plan 1; applicability.

State legislator member coverage plan 1 is applicable to state legislators and lieutenant governors who served terms of office that ended on or before December 31, 2002.

History: Laws 1987, ch. 253, § 39; 2003, ch. 85, § 4.

10-11-40. State legislator member coverage plan 1; age and service requirements for normal retirement.

Under state legislator member coverage plan 1, the age and service requirements for normal retirement are:

- A. age sixty-five years or older and five or more years of credited service;
- B. age sixty-four years or older and eight or more years of credited service;
- C. age sixty-three years or older and eleven or more years of credited service;
- D. age sixty years or older and twelve or more years of credited service; or
- E. any age and fourteen or more years of credited service.

History: Laws 1987, ch. 253, § 40.

10-11-41. State legislator member coverage plan 1; amount of pension; form of payment A.

A. Prior to January 1, 2004, under state legislator member coverage plan 1, the annual amount of pension under form of payment A is equal to two hundred fifty dollars (\$250) multiplied by credited service as a legislator or lieutenant governor, if the member served as legislator or lieutenant governor after December 31, 1959 and his service ended on or before December 31, 2002.

B. Under state legislator member coverage plan 1, the annual amount of pension under form of payment A is equal to forty dollars (\$40.00) multiplied by credited service as a legislator or lieutenant governor, if all service as a legislator or lieutenant governor is prior to January 1, 1960.

C. After December 31, 2003, under state legislator member coverage plan 1, the annual amount of pension under form of payment A is equal to:

(1) the amount in Subsection A of this section if the member makes no additional contributions pursuant to Subsection B of Section 10-11-42 NMSA 1978; or

(2) five hundred dollars (\$500) multiplied by the years of credited service as a legislator or lieutenant governor, if the state legislator member makes additional contributions by December 31, 2003 pursuant to Subsection B of Section 10-11-42 NMSA 1978.

History: Laws 1987, ch. 253, § 41; 2003, ch. 85, § 5.

10-11-42. State legislator member coverage plan 1; member contribution rate.

A. Prior to January 1, 2004, a member under state legislator member coverage plan 1 shall contribute one hundred dollars (\$100) for each year of credited service earned after December 31, 1959.

B. To be eligible for the pension amount in Paragraph (2) of Subsection C of Section 10-11-41 NMSA 1978, a member under state legislator member coverage plan 1 must contribute one hundred dollars (\$100) for each year of credited service earned after December 31, 1959 and must make that required contribution no later than December 31, 2003.

History: Laws 1987, ch. 253, § 42; 2003, ch. 85, § 6.

10-11-43. State legislator member coverage plan 1; state contribution rate.

The state shall contribute amounts sufficient to finance the membership of members under state legislator member coverage plan 1 on an actuarial reserve basis.

History: Laws 1987, ch. 253, § 43.

10-11-43.1. State legislator member coverage plan 2; applicability.

State legislator member coverage plan 2 is applicable to state legislators who receive no salary for their legislative service and lieutenant governors who serve terms of office that end after December 31, 2002. To be covered under state legislator member coverage plan 2, a state legislator or lieutenant governor must elect to be a member no later than one hundred eighty days after first taking office or, for state legislators and the lieutenant governor serving on July 1, 2003, within one hundred eighty days of that date.

History: Laws 2003, ch. 85, § 7.

10-11-43.2. State legislator member coverage plan 2; age and service requirements for normal retirement.

Under state legislator member coverage plan 2, the age and service requirements for normal retirement are:

- A. age sixty-five years or older and five or more years of credited service; or
- B. any age and ten or more years of credited service.

History: Laws 2003, ch. 85, § 8.

10-11-43.3. State legislator member coverage plan 2; amount of pension; form of payment A.

Under state legislator member coverage plan 2, the annual amount of pension under form of payment A is equal in any calendar year to fourteen percent of the per diem rate in effect, pursuant to Section 2-1-8 NMSA 1978, on the first day of the fiscal year that the legislator or lieutenant governor retires multiplied by ninety and further multiplied by credited service as a legislator or lieutenant governor. A pension paid under state legislator member coverage plan 2 shall be adjusted pursuant to Section 10-11-118 NMSA 1978 for a legislator or lieutenant governor who has been retired for at least two full calendar years from the effective date of the latest retirement prior to July 1 of the year in which the pension is being adjusted.

History: Laws 2003, ch. 85, § 9; 2012, ch. 61, § 1; 2019, ch. 251, § 1; 2022, ch. 16, § 1; 2024, ch. 29, § 1.

10-11-43.4. State legislator member coverage plan 2; member contribution rate.

A member under state legislator member coverage plan 2 shall contribute an amount equal to one thousand dollars (\$1,000) for each year of credited service less the amount of any prior contributions made by the member for that credited service.

History: Laws 2003, ch. 85, § 10; 2012, ch. 61, § 2; 2019, ch. 251, § 2.

10-11-43.5. State legislator member coverage plan 2; state contribution rate.

The state shall contribute amounts sufficient to finance the membership of members under state legislator member coverage plan 2 on an actuarial reserve basis.

History: Laws 2003, ch. 85, § 11.

10-11-43.6. State legislator member coverage plan 2; contributions for service prior to 2003.

To be eligible for state legislator member coverage plan 2, a state legislator or lieutenant governor shall make the necessary contributions by December 31, 2004 for years of credited service earned prior to January 1, 2003, in an amount that totals five hundred dollars (\$500) for each year of credited service.

History: Laws 2003, ch. 85, § 12.

10-11-44. Municipal general member coverage plan 1; applicability.

Municipal general member coverage plan 1 is applicable to municipal general members who are not specifically covered by another coverage plan.

History: Laws 1987, ch. 253, § 44.

10-11-45. Municipal general member coverage plan 1; age and service requirements for normal retirement.

Under municipal general member coverage plan 1:

A. for a member who was a retired member or a member on June 30, 2013, the age and service requirements for normal retirement are:

- (1) age sixty-five years or older and five or more years of service credit;
- (2) age sixty-four years and eight or more years of service credit;
- (3) age sixty-three years and eleven or more years of service credit;
- (4) age sixty-two years and fourteen or more years of service credit;
- (5) age sixty-one years and seventeen or more years of service credit;
- (6) age sixty years and twenty or more years of service credit; or
- (7) any age and twenty-five or more years of service credit; and

B. for a member who was not a retired member or a member on June 30, 2013, the age and service requirements for normal retirement are:

- (1) age sixty-five years or older and five or more years of service credit; or

(2) any age if the member has five or more years of service credit and the sum of the member's age and years of service credit equals at least eighty-five.

History: Laws 1987, ch. 253, § 45; 2009, ch. 288, § 7; 2013, ch. 225, § 31; 2020, ch. 11, § 16.

10-11-46. Municipal general member coverage plan 1; amount of pension; form of payment A.

Under municipal general member coverage plan 1, the amount of pension under form of payment A is equal to two percent of the final average salary multiplied by credited service. The amount shall not exceed one hundred percent of the final average salary.

History: Laws 1987, ch. 253, § 46; 2013, ch. 225, § 32; 2023, ch. 53, § 4.

10-11-47. Repealed.

History: Laws 1987, ch. 253, § 47; repealed by Laws 2009, ch. 288, § 20.

10-11-48. Municipal general member coverage plan 1; member contribution rate.

A member under municipal general member coverage plan 1 shall contribute seven percent of salary starting with the first full pay period in the calendar month in which municipal general member coverage plan 1 becomes applicable to the member, except that a member whose annual salary is greater than twenty-five thousand dollars (\$25,000) shall contribute:

- A. prior to July 1, 2022, eight and one-half percent of salary;
- B. beginning July 1, 2022 and continuing through June 30, 2023, nine percent of salary;
- C. beginning July 1, 2023 and continuing through June 30, 2024, nine and one-half percent of salary;
- D. beginning July 1, 2024 and continuing through June 30, 2025, ten percent of salary; and
- E. beginning July 1, 2025 and thereafter, ten and one-half percent of salary.

History: Laws 1987, ch. 253, § 48; 2013, ch. 225, § 33; 2020, ch. 11, § 17.

10-11-49. Municipal general member coverage plan 1; affiliated public employer contribution rate.

An affiliated public employer shall contribute the following percentages of the salary of each member it employs and who is covered under municipal general member coverage plan 1:

- A. prior to July 1, 2022, seven and sixty-five hundredths percent of salary;
- B. beginning July 1, 2022 and continuing through June 30, 2023, eight and fifteen-hundredths percent of salary;
- C. beginning July 1, 2023 and continuing through June 30, 2024, eight and sixty-five hundredths percent of salary;
- D. beginning July 1, 2024 and continuing through June 30, 2025, nine and fifteen-hundredths percent of salary; and
- E. beginning July 1, 2025 and thereafter, nine and sixty-five hundredths percent of salary.

History: Laws 1987, ch. 253, § 49; 2013, ch. 225, § 34; 2019, ch. 237, § 3; 2020, ch. 11, § 18.

10-11-50. Municipal general member coverage plan 2; applicability.

Municipal general member coverage plan 2 is applicable to a designated group of municipal general members the first day of the calendar month following an affirmative vote by the majority of the municipal general members in a designated group. A designated group may be all members employed by the affiliated public employer, an organizational group whose compensation is established by negotiated contract or all members employed by the affiliated public employer whose compensation is not established by negotiated contract. The election shall be conducted by the retirement board in accordance with procedures adopted by the retirement board. The procedures shall afford all municipal general members who are part of the designated group an opportunity to vote. A new election for coverage by municipal general member coverage plan 2 shall not be held prior to the expiration of six months following the date of an election which failed to adopt municipal general member coverage plan 2. An election adopting municipal general member coverage plan 2 is irrevocable for the purpose of subsequently adopting a coverage plan which would decrease employer or employee contributions with respect to all current and future municipal general employees of the affiliated public employer who are part of the designated group.

History: Laws 1987, ch. 253, § 50; 1989, ch. 79, § 2.

10-11-51. Municipal general member coverage plan 2; age and service requirements for normal retirement.

Under municipal general member coverage plan 2:

A. for a member who was a retired member or a member on June 30, 2013, the age and service requirements for normal retirement are:

- (1) age sixty-five years or older and five or more years of service credit;
- (2) age sixty-four years and eight or more years of service credit;
- (3) age sixty-three years and eleven or more years of service credit;
- (4) age sixty-two years and fourteen or more years of service credit;
- (5) age sixty-one years and seventeen or more years of service credit;
- (6) age sixty years and twenty or more years of service credit; or
- (7) any age and twenty-five or more years of service credit; and

B. for a member who was not a retired member or a member on June 30, 2013, the age and service requirements for normal retirement are:

- (1) age sixty-five years or older and five or more years of service credit; or
- (2) any age if the member has five or more years of service credit and the sum of the member's age and years of service credit equals at least eighty-five.

History: Laws 1987, ch. 253, § 51; 2009, ch. 288, § 8; 2013, ch. 225, § 35; 2020, ch. 11, § 19.

10-11-52. Municipal general member coverage plan 2; amount of pension; form of payment A.

Under municipal general member coverage plan 2:

A. for a member with age and service requirements provided in Subsection A of Section 10-11-51 NMSA 1978, the amount of pension under form of payment A is equal to two and one-half percent of the final average salary multiplied by credited service. The amount shall not exceed one hundred percent of the final average salary; and

B. for a member with age and service requirements provided in Subsection B of Section 10-11-51 NMSA 1978, the amount of pension under form of payment A is equal

to two percent of the final average salary multiplied by service credit. The amount shall not exceed one hundred percent of the final average salary.

History: Laws 1987, ch. 253, § 52; 2013, ch. 225, § 36; 2023, ch. 53, § 5.

10-11-53. Repealed.

History: Laws 1987, ch. 253, § 5; repealed by Laws 2009, ch. 288, § 20.

10-11-54. Municipal general member coverage plan 2; member contribution rate.

A member under municipal general member coverage plan 2 shall contribute nine and fifteen-hundredths percent of salary starting with the first full pay period in the calendar month in which municipal general member coverage plan 2 becomes applicable to the member, except that a member whose annual salary is greater than twenty-five thousand dollars (\$25,000) shall contribute:

- A. prior to July 1, 2022, ten and sixty-five hundredths percent of salary;
- B. beginning July 1, 2022 and continuing through June 30, 2023, eleven and fifteen-hundredths percent of salary;
- C. beginning July 1, 2023 and continuing through June 30, 2024, eleven and sixty-five hundredths percent of salary;
- D. beginning July 1, 2024 and continuing through June 30, 2025, twelve and fifteen-hundredths percent of salary; and
- E. beginning July 1, 2025 and thereafter, twelve and sixty-five hundredths percent of salary.

History: Laws 1987, ch. 253, § 54; 2013, ch. 225, § 37; 2020, ch. 11, § 20.

10-11-55. Municipal general member coverage plan 2; affiliated public employer contribution rate.

An affiliated public employer shall contribute the following percentages of the salary of each member it employs and who is covered under municipal general member coverage plan 2:

- A. prior to July 1, 2022, nine and eight-tenths percent of salary;
- B. beginning July 1, 2022 and continuing through June 30, 2023, ten and three-tenths percent of salary;

C. beginning July 1, 2023 and continuing through June 30, 2024, ten and eight-tenths percent of salary;

D. beginning July 1, 2024 and continuing through June 30, 2025, eleven and three-tenths percent of salary; and

E. beginning July 1, 2025 and thereafter, eleven and eight-tenths percent of salary.

History: Laws 1987, ch. 253, § 55; 2013, ch. 225, § 38; 2019, ch. 237, § 4; 2020, ch. 11, § 21.

10-11-55.1. Municipal general member coverage plan 3; applicability.

History: Laws 1998, ch. 106, § 4; repealed by Laws 2009, ch. 288, § 20.

Municipal general member coverage plan 3 is applicable to a designated group of municipal general members the first day of the calendar month following an affirmative vote by the majority of the municipal general members in a designated group. A designated group may be all members employed by the affiliated public employer, an organizational group whose compensation is established by negotiated contract or all members employed by the affiliated public employer, whose compensation is not established by negotiated contract. The election shall be conducted by the retirement board in accordance with procedures adopted by the retirement board. The procedures shall afford all municipal general members who are part of the designated group an opportunity to vote. A new election for coverage by municipal general member coverage plan 3 shall not be held prior to the expiration of six months following the date of an election which failed to adopt municipal general member coverage plan 3. An election adopting municipal general member coverage plan 3 is irrevocable for the purpose of subsequently adopting a coverage plan that would decrease employer or employee contributions with respect to all current and future municipal general employees of the affiliated public employer who are part of the designated group. All elections for the purpose of adopting municipal general member coverage plan 3 shall take place prior to July 1, 1995. Any election occurring after June 30, 1995 shall be null, void and of no effect.

History: 1978 Comp., § 10-11-55.1, enacted by Laws 1993, ch. 58, § 1.

10-11-55.2. Municipal general member coverage plan 3; age and service requirements for normal retirement.

Under municipal general member coverage plan 3:

A. for a member who was a retired member or a member on June 30, 2013, the age and service requirements for normal retirement are:

- (1) age sixty-five years or older and five or more years of service credit;
- (2) age sixty-four years and eight or more years of service credit;
- (3) age sixty-three years and eleven or more years of service credit;
- (4) age sixty-two years and fourteen or more years of service credit;
- (5) age sixty-one years and seventeen or more years of service credit;
- (6) age sixty years and twenty or more years of service credit; or
- (7) any age and twenty-five or more years of service credit; and

B. for a member who was not a retired member or a member on June 30, 2013, the age and service requirements for normal retirement are:

- (1) age sixty-five years or older and five or more years of service credit; or
- (2) any age if the member has five or more years of service credit and the sum of the member's age and years of service credit equals at least eighty-five.

History: 1978 Comp., § 10-11-55.2, enacted by Laws 1993, ch. 58, § 2; 2009, ch. 288, § 9; 2013, ch. 225, § 39; 2020, ch. 11, § 22.

10-11-55.3. Municipal general member coverage plan 3; amount of pension; form of payment A.

Under municipal general member coverage plan 3:

A. for a member with age and service requirements provided under Subsection A of Section 10-11-55.2 NMSA 1978, the amount of pension under form of payment A is equal to three percent of the final average salary multiplied by credited service. The amount shall not exceed one hundred percent of the final average salary; and

B. for a member with age and service requirements provided under Subsection B of Section 10-11-55.2 NMSA 1978, the amount of pension under form of payment A is equal to two and one-half percent of the final average salary multiplied by credited service. The amount shall not exceed one hundred percent of the final average salary.

History: 1978 Comp., § 10-11-55.3, enacted by Laws 1993, ch. 58, § 3; 2013, ch. 225, § 40; 2023, ch. 53, § 6.

10-11-55.4. Repealed.

History: 1978 Comp., § 10-11-55.4, enacted by Laws 1993, ch. 58, § 4; repealed by Laws 2009, ch. 288, § 20.

10-11-55.5. Municipal general member coverage plan 3; member contribution rate.

A member under municipal general member coverage plan 3 shall contribute thirteen and fifteen-hundredths percent of salary starting with the first full pay period in the calendar month in which municipal general member coverage plan 3 becomes applicable to the member, except that a member whose annual salary is greater than twenty-five thousand dollars (\$25,000) shall contribute:

- A. prior to July 1, 2022, fourteen and sixty-five hundredths percent of salary;
- B. beginning July 1, 2022 and continuing through June 30, 2023, fifteen and fifteen-hundredths percent of salary;
- C. beginning July 1, 2023 and continuing through June 30, 2024, fifteen and sixty-five hundredths percent of salary;
- D. beginning July 1, 2024 and continuing through June 30, 2025, sixteen and fifteen-hundredths percent of salary; and
- E. beginning July 1, 2025 and thereafter, sixteen and sixty-five hundredths percent of salary.

History: 1978 Comp., § 10-11-55.5, enacted by Laws 1993, ch. 58, § 5; 2013, ch. 225, § 41; 2020, ch. 11, § 23.

10-11-55.6. Municipal general member coverage plan 3; affiliated public employer contribution rate.

An affiliated public employer shall contribute the following percentages of the salary of each member it employs and who is covered under municipal general member coverage plan 3:

- A. prior to July 1, 2022, nine and eight-tenths percent of salary;
- B. beginning July 1, 2022 and continuing through June 30, 2023, ten and three-tenths percent of salary;
- C. beginning July 1, 2023 and continuing through June 30, 2024, ten and eight-tenths percent of salary;

D. beginning July 1, 2024 and continuing through June 30, 2025, eleven and three-tenths percent of salary; and

E. beginning July 1, 2025 and thereafter, eleven and eight-tenths percent of salary.

History: 1978 Comp., § 10-11-55.6, enacted by Laws 1993, ch. 58, § 6; 2013, ch. 225, § 42; 2019, ch. 237, § 5; 2020, ch. 11, § 24.

10-11-55.7. Municipal general member coverage plan 4; applicability.

Municipal general member coverage plan 4 is applicable to a designated group of municipal general members the first day of the calendar month following an affirmative vote by the majority of the municipal general members in a designated group. A designated group may be all members employed by the affiliated public employer, an organizational group whose compensation is established by negotiated contract or all members employed by the affiliated public employer, whose compensation is not established by negotiated contract. The election shall be conducted by the retirement board in accordance with the procedures adopted by the retirement board. The procedures shall afford all municipal general members who are part of the designated group an opportunity to vote. A new election for coverage by municipal general member coverage plan 4 shall not be held prior to the expiration of six months following the date of an election that failed to adopt municipal general member coverage plan 4. An election adopting municipal general member coverage plan 4 is irrevocable for the purpose of subsequently adopting a coverage plan that would decrease employer or employee contributions with respect to all current and future municipal general employees of the affiliated public employer who are part of the designated group. All elections for the purpose of adopting municipal general member coverage plan 4 shall take place prior to July 1, 2000. Any election occurring after June 30, 2000 shall be void.

History: Laws 1998, ch. 106, § 1; 1999, ch. 38, § 1.

10-11-55.8. Municipal general member coverage plan 4; age and service requirements for normal retirement.

Under municipal general member coverage plan 4:

A. for a member who was a retired member or a member on June 30, 2013, the age and service requirements for normal retirement are:

- (1) age sixty-five years or older and five or more years of service credit;
- (2) age sixty-four years and eight or more years of service credit;

- (3) age sixty-three years and eleven or more years of service credit;
- (4) age sixty-two years and fourteen or more years of service credit;
- (5) age sixty-one years and seventeen or more years of service credit;
- (6) age sixty years and twenty or more years of service credit; or
- (7) any age and twenty-five or more years of service credit; and

B. for a member who was not a retired member or a member on June 30, 2013, the age and service requirements for normal retirement are:

- (1) age sixty-five years or older and five or more years of service credit; or
- (2) any age if the member has five or more years of service credit and the sum of the member's age and years of service credit equals at least eighty-five.

History: Laws 1998, ch. 106, § 2; 2009, ch. 288, § 10; 2013, ch. 225, § 43; 2020, ch. 11, § 25.

10-11-55.9. Municipal general member coverage plan 4; amount of pension; form of payment A.

Under municipal general member coverage plan 4:

A. for a member with age and service requirements provided under Subsection A of Section 10-11-55.8 NMSA 1978, the amount of pension under form of payment A is equal to three percent of the final average salary multiplied by credited service. The amount shall not exceed one hundred percent of the final average salary; and

B. for a member with age and service requirements provided under Subsection B of Section 10-11-55.8 NMSA 1978, the amount of pension under form of payment A is equal to two and one-half percent of the final average salary multiplied by credited service. The amount shall not exceed one hundred percent of the final average salary.

History: Laws 1998, ch. 106, § 3; 2013, ch. 225, § 44; 2023, ch. 53, § 7.

10-11-55.10. Repealed.

10-11-55.11. Municipal general member coverage plan 4; member contribution rate.

A member under municipal general member coverage plan 4 shall contribute fifteen and sixty-five hundredths percent of salary starting with the first full pay period in the

calendar month in which municipal general member coverage plan 4 becomes applicable to the member, except that a member whose annual salary is greater than twenty-five thousand dollars (\$25,000) shall contribute:

- A. prior to July 1, 2022, seventeen and fifteen hundredths percent of salary;
- B. beginning July 1, 2022 and continuing through June 30, 2023, seventeen and sixty-five hundredths percent of salary;
- C. beginning July 1, 2023 and continuing through June 30, 2024, eighteen and fifteen hundredths percent of salary;
- D. beginning July 1, 2024 and continuing through June 30, 2025, eighteen and sixty-five hundredths percent of salary; and
- E. beginning July 1, 2025 and thereafter, nineteen and fifteen hundredths percent of salary.

History: Laws 1998, ch. 106, § 5; 2013, ch. 225, § 45; 2020, ch. 11, § 26.

10-11-55.12. Municipal general member coverage plan 4; affiliated public employer contribution rate.

An affiliated public employer shall contribute the following percentages of the salary of each member it employs and who is covered under municipal general member coverage plan 4:

- A. prior to July 1, 2022, twelve and three-tenths percent of salary;
- B. beginning July 1, 2022 and continuing through June 30, 2023, twelve and eight-tenths percent of salary;
- C. beginning July 1, 2023 and continuing through June 30, 2024, thirteen and three-tenths percent of salary;
- D. beginning July 1, 2024 and continuing through June 30, 2025, thirteen and eight-tenths percent of salary; and
- E. beginning July 1, 2025 and thereafter, fourteen and three-tenths percent of salary.

History: Laws 1998, ch. 106, § 6; 2013, ch. 225, § 46; 2019, ch. 237, § 6; 2020, ch. 11, § 27.

10-11-56. Municipal police member coverage plan 1; applicability.

Municipal police member coverage plan 1 is applicable to municipal police members whose affiliated public employer has adopted municipal police member coverage plan 1 for its municipal police officers. The affiliated public employer shall certify this adoption to the retirement board in the form prescribed by the retirement board.

History: Laws 1987, ch. 253, § 56.

10-11-57. Municipal police member coverage plan 1; age and service requirements for normal retirement.

Under municipal police member coverage plan 1:

A. for a member who was a retired member or a member on June 30, 2013, the age and service requirements for normal retirement are:

- (1) age sixty-five years or older and five or more years of credited service;
- (2) age sixty-four years and eight or more years of credited service;
- (3) age sixty-three years and eleven or more years of credited service;
- (4) age sixty-two years and fourteen or more years of credited service;
- (5) age sixty-one years and seventeen or more years of credited service;
- (6) age sixty years and twenty or more years of credited service; or
- (7) any age and twenty-five or more years of credited service; and

B. for a member who was not a retired member or a member on June 30, 2013, the age and service requirements for normal retirement are:

- (1) age sixty years or older and five or more years of service credit; or
- (2) any age and twenty-five or more years of service credit.

History: Laws 1987, ch. 253, § 57; 2013, ch. 225, § 47; 2020, ch. 11, § 28.

10-11-58. Municipal police member coverage plan 1; amount of pension; form of payment A.

Under municipal police member coverage plan 1, the amount of pension under form of payment A is equal to two percent of the final average salary multiplied by credited service. The amount shall not exceed one hundred percent of the final average salary.

History: Laws 1987, ch. 253, § 58; 2013, ch. 225, § 48; 2023, ch. 53, § 8.

10-11-59. Repealed.

History: Laws 1987, ch. 253, § 59; repealed by Laws 2009, ch. 288, § 20.

10-11-60. Municipal police member coverage plan 1; member contribution rate.

A member under municipal police member coverage plan 1 shall contribute seven percent of salary starting with the first full pay period in the calendar month in which municipal police member coverage plan 1 becomes applicable to the member, except that a member whose annual salary is greater than twenty-five thousand dollars (\$25,000) shall contribute:

- A. prior to July 1, 2022, eight and one-half percent of salary;
- B. beginning July 1, 2022 and continuing through June 30, 2023, nine percent of salary;
- C. beginning July 1, 2023 and continuing through June 30, 2024, nine and one-half percent of salary;
- D. beginning July 1, 2024 and continuing through June 30, 2025, ten percent of salary; and
- E. beginning July 1, 2025 and thereafter, ten and one-half percent of salary.

History: Laws 1987, ch. 253, § 60; 2013, ch. 225, § 49; 2020, ch. 11, § 29.

10-11-61. Municipal police member coverage plan 1; affiliated public employer contribution rate.

The affiliated public employer shall contribute the following percentages of the salary of each member it employs and who is covered under municipal police member coverage plan 1:

- A. prior to July 1, 2022, ten and sixty-five hundredths percent of salary;
- B. beginning July 1, 2022 and continuing through June 30, 2023, eleven and fifteen-hundredths percent of salary;
- C. beginning July 1, 2023 and continuing through June 30, 2024, eleven and sixty-five hundredths percent of salary;

D. beginning July 1, 2024 and continuing through June 30, 2025, twelve and fifteen-hundredths percent of salary; and

E. beginning July 1, 2025 and thereafter, twelve and sixty-five hundredths percent of salary.

History: Laws 1987, ch. 253, § 61; 2013, ch. 225, § 50; 2019, ch. 237, § 7; 2020, ch. 11, § 30.

10-11-62. Municipal police member coverage plan 2; applicability.

Municipal police member coverage plan 2 is applicable to municipal police members whose affiliated public employer has adopted municipal police member coverage plan 2 for its municipal police officers. The affiliated public employer shall certify this adoption to the retirement board in the form prescribed by the retirement board.

History: Laws 1987, ch. 253, § 62.

10-11-63. Municipal police member coverage plan 2; age and service requirements for normal retirement.

Under municipal police coverage plan 2:

A. for a member who was a retired member or a member on June 30, 2013, the age and service requirements for normal retirement are:

- (1) age sixty-five years or older and five or more years of credited service;
- (2) age sixty-four years and eight or more years of credited service;
- (3) age sixty-three years and eleven or more years of credited service;
- (4) age sixty-two years and fourteen or more years of credited service;
- (5) age sixty-one years and seventeen or more years of credited service;
- (6) age sixty years and twenty or more years of credited service; or
- (7) any age and twenty-five or more years of credited service; and

B. for a member who was not a retired member or a member on June 30, 2013, the age and service requirements for normal retirement are:

- (1) age sixty years or older and five or more years of service credit; or
- (2) any age and twenty-five or more years of service credit.

History: Laws 1987, ch. 253, § 63; 2013, ch. 225, § 51; 2020, ch. 11, § 31.

10-11-64. Municipal police member coverage plan 2; amount of pension; form of payment A.

Under municipal police member coverage plan 2:

A. for a member with age and service requirements provided under Subsection A of Section 10-11-63 NMSA 1978, the amount of pension under form of payment A is equal to two and one-half percent of the final average salary multiplied by credited service. The amount shall not exceed one hundred percent of the final average salary; and

B. for a member with age and service requirements provided under Subsection B of Section 10-11-63 NMSA 1978, the amount of pension under form of payment A is equal to two percent of the final average salary multiplied by credited service. The amount shall not exceed one hundred percent of the final average salary.

History: Laws 1987, ch. 253, § 64; 2013, ch. 225, § 52; 2023, ch. 53, § 9.

10-11-65. Repealed.

History: Laws 1987, ch. 253, § 65; repealed by Laws 2009, ch. 288, § 20.

10-11-66. Municipal police member coverage plan 2; member contribution rate.

A member under municipal police member coverage plan 2 shall contribute seven percent of salary with the first full pay period in the calendar month in which municipal police member coverage plan 2 becomes applicable to the member, except that a member whose annual salary is greater than twenty-five thousand dollars (\$25,000) shall contribute:

A. prior to July 1, 2022, eight and one-half percent of salary;

B. beginning July 1, 2022 and continuing through June 30, 2023, nine percent of salary;

C. beginning July 1, 2023 and continuing through June 30, 2024, nine and one-half percent of salary;

D. beginning July 1, 2024 and continuing through June 30, 2025, ten percent of salary; and

E. beginning July 1, 2025 and thereafter, ten and one-half percent of salary.

History: Laws 1987, ch. 253, § 66; 2013, ch. 225, § 53; 2020, ch. 11, § 32.

10-11-67. Municipal police member coverage plan 2; affiliated public employer contribution rate.

The affiliated public employer shall contribute the following percentages of the salary of each member it employs and who is covered under municipal police member coverage plan 2:

- A. prior to July 1, 2022, fifteen and sixty-five hundredths percent of salary;
- B. beginning July 1, 2022 and continuing through June 30, 2023, sixteen and fifteen-hundredths percent of salary;
- C. beginning July 1, 2023 and continuing through June 30, 2024, sixteen and sixty-five hundredths percent of salary;
- D. beginning July 1, 2024 and continuing through June 30, 2025, seventeen and fifteen-hundredths percent of salary; and
- E. beginning July 1, 2025 and thereafter, seventeen and sixty-five hundredths percent of salary.

History: Laws 1987, ch. 253, § 67; 2013, ch. 225, § 54; 2019, ch. 237, § 8; 2020, ch. 11, § 33.

10-11-68. Municipal police member coverage plan 3; applicability.

Municipal police member coverage plan 3 is applicable to municipal police members whose affiliated public employer has adopted municipal police member coverage plan 3 for its municipal police officers. The affiliated public employer shall certify this adoption to the retirement board in the form prescribed by the retirement board.

History: Laws 1987, ch. 253, § 68.

10-11-69. Municipal police member coverage plan 3; age and service requirements for normal retirement.

Under municipal police member coverage plan 3:

A. for a member who was a retired member or a member on June 30, 2013, the age and service requirements for normal retirement are:

- (1) age sixty-five years or older and five or more years of credited service;

- (2) age sixty-four years and eight or more years of credited service;
- (3) age sixty-three years and eleven or more years of credited service;
- (4) age sixty-two years and fourteen or more years of credited service;
- (5) age sixty-one years and seventeen or more years of credited service; or
- (6) any age and twenty or more years of credited service; and

B. for a member who was not a retired member or a member on June 30, 2013, the age and service requirements for normal retirement are:

- (1) age sixty years or older and five or more years of service credit; or
- (2) any age and twenty-five or more years of service credit.

History: Laws 1987, ch. 253, § 69; 2013, ch. 225, § 55; 2020, ch. 11, § 34.

10-11-70. Municipal police member coverage plan 3; amount of pension; form of payment A.

Under municipal police member coverage plan 3:

A. for a member with age and service requirements provided under Subsection A of Section 10-11-69 NMSA 1978, the amount of pension under form of payment A is equal to two and one-half percent of the final average salary multiplied by credited service. The amount shall not exceed one hundred percent of the final average salary; and

B. for a member with age and service requirements provided under Subsection B of Section 10-11-69 NMSA 1978, the amount of pension under form of payment A is equal to two percent of the final average salary multiplied by credited service. The amount shall not exceed one hundred percent of the final average salary.

History: Laws 1987, ch. 253, § 70; 2013, ch. 225, § 56; 2023, ch. 53, § 10.

10-11-71. Repealed.

History: Laws 1987, ch. 253, § 71; repealed by Laws 2009, ch. 288, § 20.

10-11-72. Municipal police member coverage plan 3; member contribution rate.

A member under municipal police member coverage plan 3 shall contribute seven percent of salary with the first full pay period in the calendar month in which municipal

police member coverage plan 3 becomes applicable to the member, except that a member whose annual salary is greater than twenty-five thousand dollars (\$25,000) shall contribute:

- A. prior to July 1, 2022, eight and one-half percent of salary;
- B. beginning July 1, 2022 and continuing through June 30, 2023, nine percent of salary;
- C. beginning July 1, 2023 and continuing through June 30, 2024, nine and one-half percent of salary;
- D. beginning July 1, 2024 and continuing through June 30, 2025, ten percent of salary; and
- E. beginning July 1, 2025 and thereafter, ten and one-half percent of salary.

History: Laws 1987, ch. 253, § 72; 2013, ch. 225, § 57; 2020, ch. 11, § 35.

10-11-73. Municipal police member coverage plan 3; affiliated public employer contribution rate.

The affiliated public employer shall contribute the following percentages of the salary of each member it employs and who is covered under municipal police member coverage plan 3:

- A. prior to July 1, 2022, nineteen and fifteen-hundredths percent of salary;
- B. beginning July 1, 2022 and continuing through June 30, 2023, nineteen and sixty-five hundredths percent of salary;
- C. beginning July 1, 2023 and continuing through June 30, 2024, twenty and fifteen-hundredths percent of salary;
- D. beginning July 1, 2024 and continuing through June 30, 2025, twenty and sixty-five hundredths percent of salary; and
- E. beginning July 1, 2025 and thereafter, twenty-one and fifteen-hundredths percent of salary.

History: Laws 1987, ch. 253, § 73; 2013, ch. 225, § 58; 2019, ch. 237, § 9; 2020, ch. 11, § 36.

10-11-74. Municipal police member coverage plan 4; applicability.

Municipal police member coverage plan 4 is applicable to municipal police members of an affiliated public employer on the first day of the calendar month following certification of the election adopting municipal police member coverage plan 4 by an affirmative vote of the majority of the affiliated public employer's municipal police members. The election shall be conducted by the affiliated public employer. The certification shall be in the form prescribed by the retirement board. The election procedures shall afford all municipal police members of the affiliated public employer an opportunity to vote. An election adopting municipal police member coverage plan 4 for a given affiliated public employer is irrevocable for the purpose of subsequently adopting a coverage plan which would decrease employer or employee contributions with respect to all current and future municipal police members of that affiliated public employer.

History: Laws 1987, ch. 253, § 74; 1989, ch. 79, § 3.

10-11-75. Municipal police member coverage plan 4; age and service requirements for normal retirement.

Under municipal police member coverage plan 4:

A. for a member who was a retired member or a member on June 30, 2013, the age and service requirements for normal retirement are:

- (1) age sixty-five years or older and five or more years of credited service;
- (2) age sixty-four years and eight or more years of credited service;
- (3) age sixty-three years and eleven or more years of credited service;
- (4) age sixty-two years and fourteen or more years of credited service;
- (5) age sixty-one years and seventeen or more years of credited service; or
- (6) any age and twenty or more years of credited service; and

B. for a member who was not a retired member or a member on June 30, 2013, the age and service requirements for normal retirement are:

- (1) age sixty years or older and five or more years of service credit; or
- (2) any age and twenty-five or more years of service credit.

History: Laws 1987, ch. 253, § 75; 2013, ch. 225, § 59; 2020, ch. 11, § 37.

10-11-76. Municipal police member coverage plan 4; amount of pension; form of payment A.

Under municipal police member coverage plan 4:

A. for a member with age and service requirements provided under Subsection A of Section 10-11-75 NMSA 1978, the amount of pension under form of payment A is equal to three percent of the final average salary multiplied by credited service. The amount shall not exceed one hundred percent of the final average salary; and

B. for a member with age and service requirements provided under Subsection B of Section 10-11-75 NMSA 1978, the amount of pension under form of payment A is equal to two and one-half percent of the final average salary multiplied by credited service. The amount shall not exceed one hundred percent of the final average salary.

History: Laws 1987, ch. 253, § 76; 2013, ch. 225, § 60; 2023, ch. 53, § 11.

10-11-77. Repealed.

History: Laws 1987, ch. 253, § 77; repealed by Laws 2009, ch. 288, § 20.

10-11-78. Municipal police member coverage plan 4; member contribution rate.

A member under municipal police member coverage plan 4 shall contribute twelve and thirty-five hundredths percent of salary starting with the first full pay period in the calendar month in which municipal police member coverage plan 4 becomes applicable to the member, except that a member whose annual salary is greater than twenty-five thousand dollars (\$25,000) shall contribute:

A. prior to July 1, 2022, thirteen and eighty-five hundredths percent of salary;

B. beginning July 1, 2022 and continuing through June 30, 2023, fourteen and thirty-five hundredths percent of salary;

C. beginning July 1, 2023 and continuing through June 30, 2024, fourteen and eighty-five hundredths percent of salary;

D. beginning July 1, 2024 and continuing through June 30, 2025, fifteen and thirty-five hundredths percent of salary; and

E. beginning July 1, 2025 and thereafter, fifteen and eighty-five hundredths percent of salary.

History: Laws 1987, ch. 253, § 78; 2013, ch. 225, § 61; 2020, ch. 11, § 38.

10-11-79. Municipal police member coverage plan 4; affiliated public employer contribution rate.

The affiliated public employer shall contribute the following percentages of the salary of each member it employs and who is covered under municipal police member coverage plan 4:

- A. prior to July 1, 2022, nineteen and fifteen-hundredths percent of salary;
- B. beginning July 1, 2022 and continuing through June 30, 2023, nineteen and sixty-five hundredths percent of salary;
- C. beginning July 1, 2023 and continuing through June 30, 2024, twenty and fifteen-hundredths percent of salary;
- D. beginning July 1, 2024 and continuing through June 30, 2025, twenty and sixty-five hundredths percent of salary; and
- E. beginning July 1, 2025 and thereafter, twenty-one and fifteen-hundredths percent of salary.

History: Laws 1987, ch. 253, § 79; 2013, ch. 225, § 62; 2019, ch. 237, § 10; 2020, ch. 11, § 39.

10-11-80. Municipal police member coverage plan 5; applicability.

Municipal police member coverage plan 5 is applicable to municipal police members of an affiliated public employer on the first day of the calendar month following certification of the election adopting municipal police member coverage plan 5 by an affirmative vote of the majority of the affiliated public employer's municipal police members. The election shall be conducted by the affiliated public employer. The certification shall be in the form prescribed by the retirement board. The election procedures shall afford all municipal police members of the affiliated public employer an opportunity to vote. An election adopting municipal police member coverage plan 5 for a given affiliated public employer is irrevocable for the purpose of subsequently adopting a coverage plan which would decrease employer or employee contributions with respect to all current and future municipal police members of that affiliated public employer.

History: Laws 1987, ch. 253, § 80; 1989, ch. 79, § 4.

10-11-81. Municipal police member coverage plan 5; age and service requirements for normal retirement.

Under municipal police member coverage plan 5:

A. for a member who was a retired member or a member on June 30, 2013, the age and service requirements for normal retirement are:

- (1) age sixty-five years or older and five or more years of credited service;

- (2) age sixty-four years and eight or more years of credited service;
- (3) age sixty-three years and eleven or more years of credited service;
- (4) age sixty-two years and fourteen or more years of credited service;
- (5) age sixty-one years and seventeen or more years of credited service; or
- (6) any age and twenty or more years of credited service; and

B. for a member who was not a retired member or a member on June 30, 2013, the age and service requirements for normal retirement are:

- (1) age sixty years or older and five or more years of service credit; or
- (2) any age and twenty-five or more years of service credit.

History: Laws 1987, ch. 253, § 81; 2013, ch. 225, § 63; 2020, ch. 11, § 40.

10-11-82. Municipal police member coverage plan 5; amount of pension; form of payment A.

Under municipal police member coverage plan 5:

A. for a member with age and service requirements provided under Subsection A of Section 10-11-81 NMSA 1978, the amount of pension under form of payment A is equal to three and one-half percent of the final average salary multiplied by credited service. The amount shall not exceed one hundred percent of the final average salary; and

B. for a member with age and service requirements provided under Subsection B of Section 10-11-81 NMSA 1978, the amount of pension under form of payment A is equal to three percent of the final average salary multiplied by credited service. The amount shall not exceed one hundred percent of the final average salary.

History: Laws 1987, ch. 253, § 82; 2013, ch. 225, § 64; 2023, ch. 53, § 12.

10-11-83. Repealed.

History: Laws 1987, ch. 253, § 83; repealed by Laws 2009, ch. 288, § 20.

10-11-84. Municipal police member coverage plan 5; member contribution rate.

A member under municipal police member coverage plan 5 shall contribute sixteen and three-tenths percent of salary starting with the first full pay period in the calendar

month in which municipal police member coverage plan 5 becomes applicable to the member, except that a member whose annual salary is greater than twenty-five thousand dollars (\$25,000) shall contribute:

- A. prior to July 1, 2022, seventeen and eight-tenths percent of salary;
- B. beginning July 1, 2022 and continuing through June 30, 2023, eighteen and three-tenths percent of salary;
- C. beginning July 1, 2023 and continuing through June 30, 2024, eighteen and eight-tenths percent of salary;
- D. beginning July 1, 2024 and continuing through June 30, 2025, nineteen and three-tenths percent of salary; and
- E. beginning July 1, 2025 and thereafter, nineteen and eight-tenths percent of salary.

History: Laws 1987, ch. 253, § 84; 2013, ch. 225, § 65; 2020, ch. 11, § 41.

10-11-85. Municipal police member coverage plan 5; affiliated public employer contribution rate.

The affiliated public employer shall contribute the following percentages of the salary of each member it employs and who is covered under municipal police member coverage plan 5:

- A. prior to July 1, 2022, nineteen and fifteen-hundredths percent of salary;
- B. beginning July 1, 2022 and continuing through June 30, 2023, nineteen and sixty-five hundredths percent of salary;
- C. beginning July 1, 2023 and continuing through June 30, 2024, twenty and fifteen-hundredths percent of salary;
- D. beginning July 1, 2024 and continuing through June 30, 2025, twenty and sixty-five hundredths percent of salary; and
- E. beginning July 1, 2025 and thereafter, twenty-one and fifteen-hundredths percent of salary.

History: Laws 1987, ch. 253, § 85; 2013, ch. 225, § 66; 2019, ch. 237, § 11; 2020, ch. 11, § 42.

10-11-86. Municipal fire member coverage plan 1; applicability.

Municipal fire member coverage plan 1 is applicable to municipal fire members whose affiliated public employer has adopted municipal fire member coverage plan 1 for its municipal firefighters. The affiliated public employer shall certify this adoption to the retirement board in the form prescribed by the retirement board.

History: Laws 1987, ch. 253, § 86.

10-11-87. Municipal fire member coverage plan 1; age and service requirements for normal retirement.

Under municipal fire member coverage plan 1:

A. for a member who was a retired member or a member on June 30, 2013, the age and service requirements for normal retirement are:

- (1) age sixty-five years or older and five or more years of credited service;
- (2) age sixty-four years and eight or more years of credited service;
- (3) age sixty-three years and eleven or more years of credited service;
- (4) age sixty-two years and fourteen or more years of credited service;
- (5) age sixty-one years and seventeen or more years of credited service;
- (6) age sixty years and twenty or more years of credited service; or
- (7) any age and twenty-five or more years of credited service; and

B. for a member who was not a retired member or a member on June 30, 2013, the age and service requirements for normal retirement are:

- (1) age sixty years or older and five or more years of service credit; or
- (2) any age and twenty-five or more years of service credit.

History: Laws 1987, ch. 253, § 87; 2013, ch. 225, § 67; 2020, ch. 11, § 43.

10-11-88. Municipal fire member coverage plan 1; amount of pension; form of payment A.

Under municipal fire member coverage plan 1, the amount of pension under form of payment A is equal to two percent of the final average salary multiplied by credited service. The amount shall not exceed one hundred percent of the final average salary.

History: Laws 1987, ch. 253, § 88; 2013, ch. 225, § 68; 2023, ch. 53, § 13.

10-11-89. Repealed.

History: Laws 1987, ch. 253, § 89; repealed by Laws 2009, ch. 288, § 20.

10-11-90. Municipal fire member coverage plan 1; member contribution rate.

A member under municipal fire member coverage plan 1 shall contribute eight percent of salary with the first full pay period in the calendar month in which municipal fire member coverage plan 1 becomes applicable to the member, except that a member whose annual salary is greater than twenty-five thousand dollars (\$25,000) shall contribute:

A. beginning July 1, 2021 and continuing through June 30, 2022, eleven percent of salary;

B. beginning July 1, 2022 and continuing through June 30, 2023, eleven and one-half percent of salary;

C. beginning July 1, 2023 and continuing through June 30, 2024, twelve percent of salary;

D. beginning July 1, 2024 and continuing through June 30, 2025, twelve and one-half percent of salary; and

E. beginning July 1, 2025 and thereafter, thirteen percent of salary.

History: Laws 1987, ch. 253, § 90; 1998, ch. 114, § 1; 2013, ch. 225, § 69; 2020, ch. 11, § 44; 2021, ch. 38, § 2.

10-11-91. Municipal fire member coverage plan 1; affiliated public employer contribution rate.

The affiliated public employer shall contribute the following percentages of the salary of each member it employs and covers under municipal fire member coverage plan 1:

A. prior to July 1, 2022, eleven and sixty-five hundredths percent of salary;

B. beginning July 1, 2022 and continuing through June 30, 2023, twelve and fifteen-hundredths percent of salary;

C. beginning July 1, 2023 and continuing through June 30, 2024, twelve and sixty-five hundredths percent of salary;

D. beginning July 1, 2024 and continuing through June 30, 2025, thirteen and fifteen-hundredths percent of salary; and

E. beginning July 1, 2025 and thereafter, thirteen and sixty-five hundredths percent of salary.

History: Laws 1987, ch. 253, § 91; 1998, ch. 114, § 2; 2013, ch. 225, § 70; 2019, ch. 237, § 12; 2020, ch. 11, § 45.

10-11-92. Municipal fire member coverage plan 2; applicability.

Municipal fire member coverage plan 2 is applicable to municipal fire members whose affiliated public employer has adopted municipal fire member coverage plan 2 for its municipal fire members. The affiliated public employer shall certify this adoption to the retirement board in the form prescribed by the retirement board.

History: Laws 1987, ch. 253, § 92.

10-11-93. Municipal fire member coverage plan 2; age and service requirements for normal retirement.

Under municipal fire member coverage plan 2:

A. for a member who was a retired member or a member on June 30, 2013, the age and service requirements for normal retirement are:

- (1) age sixty-five years or older and five or more years of credited service;
- (2) age sixty-four years and eight or more years of credited service;
- (3) age sixty-three years and eleven or more years of credited service;
- (4) age sixty-two years and fourteen or more years of credited service;
- (5) age sixty-one years and seventeen or more years of credited service;
- (6) age sixty years and twenty or more years of credited service; or
- (7) any age and twenty-five or more years of credited service; and

B. for a member who was not a retired member or a member on June 30, 2013, the age and service requirements for normal retirement are:

- (1) age sixty years or older and five or more years of service credit; or
- (2) any age and twenty-five or more years of service credit.

History: Laws 1987, ch. 253, § 93; 2013, ch. 225, § 71; 2020, ch. 11, § 46.

10-11-94. Municipal fire member coverage plan 2; amount of pension; form of payment A.

Under municipal fire member coverage plan 2:

A. for a member with age and service requirements provided under Subsection A of Section 10-11-93 NMSA 1978, the amount of pension under form of payment A is equal to two and one-half percent of the final average salary multiplied by credited service. The amount shall not exceed one hundred percent of the final average salary; and

B. for a member with age and service requirements provided under Subsection B of Section 10-11-93 NMSA 1978, the amount of pension under form of payment A is equal to two percent of the final average salary multiplied by credited service. The amount shall not exceed one hundred percent of the final average salary.

History: Laws 1987, ch. 253, § 94; 2013, ch. 225, § 72; 2023, ch. 53, § 14.

10-11-95. Repealed.

History: Laws 1987, ch. 253, § 95; repealed by Laws 2009, ch. 288, § 20.

10-11-96. Municipal fire member coverage plan 2; member contribution rate.

A member under municipal fire member coverage plan 2 shall contribute eight percent of salary with the first full pay period in the calendar month in which municipal fire member coverage plan 2 becomes applicable to the member, except that a member whose annual salary is greater than twenty-five thousand dollars (\$25,000) shall contribute:

A. beginning July 1, 2021 and continuing through June 30, 2022, eleven percent of salary;

B. beginning July 1, 2022 and continuing through June 30, 2023, eleven and one-half percent of salary;

C. beginning July 1, 2023 and continuing through June 30, 2024, twelve percent of salary;

D. beginning July 1, 2024 and continuing through June 30, 2025, twelve and one-half percent of salary; and

E. beginning July 1, 2025 and thereafter, thirteen percent of salary.

History: Laws 1987, ch. 253, § 96; 1998, ch. 114, § 3; 2013, ch. 225, § 73; 2020, ch. 11, § 47; 2021, ch. 38, § 3.

10-11-97. Municipal fire member coverage plan 2; affiliated public employer contribution rate.

The affiliated public employer shall contribute the following percentages of the salary of each member it employs and covers under municipal fire member coverage plan 2:

- A. prior to July 1, 2022, eighteen and fifteen-hundredths percent of salary;
- B. beginning July 1, 2022 and continuing through June 30, 2023, eighteen and sixty-five hundredths percent of salary;
- C. beginning July 1, 2023 and continuing through June 30, 2024, nineteen and fifteen-hundredths percent of salary;
- D. beginning July 1, 2024 and continuing through June 30, 2025, nineteen and sixty-five hundredths percent of salary; and
- E. beginning July 1, 2025 and thereafter, twenty and fifteen-hundredths percent of salary.

History: Laws 1987, ch. 253, § 97; 1998, ch. 114, § 4; 2013, ch. 225, § 74; 2019, ch. 237, § 13; 2020, ch. 11, § 48.

10-11-98. Municipal fire member coverage plan 3; applicability.

Municipal fire member coverage plan 3 is applicable to municipal fire members whose affiliated public employer has adopted municipal fire member coverage plan 3 for its municipal firefighters. The affiliated public employer shall certify this adoption to the retirement board in the form prescribed by the retirement board.

History: Laws 1987, ch. 253, § 98.

10-11-99. Municipal fire member coverage plan 3; age and service requirements for normal retirement.

Under municipal fire member coverage plan 3:

A. for a member who was a retired member or a member on June 30, 2013, the age and service requirements for normal retirement are:

- (1) age sixty-five years or older and five or more years of credited service;

- (2) age sixty-four years and eight or more years of credited service;
- (3) age sixty-three years and eleven or more years of credited service;
- (4) age sixty-two years and fourteen or more years of credited service;
- (5) age sixty-one years and seventeen or more years of credited service; or
- (6) any age and twenty or more years of credited service; and

B. for a member who was not a retired member or a member on June 30, 2013, the age and service requirements for normal retirement are:

- (1) age sixty years or older and five or more years of service credit; or
- (2) any age and twenty-five or more years of service credit.

History: Laws 1987, ch. 253, § 99; 2013, ch. 225, § 75; 2020, ch. 11, § 49.

10-11-100. Municipal fire member coverage plan 3; amount of pension; form of payment A.

Under municipal fire member coverage plan 3:

A. for a member with age and service requirements provided under Subsection A of Section 10-11-99 NMSA 1978, the amount of pension under form of payment A is equal to two and one-half percent of the final average salary multiplied by credited service. The amount shall not exceed one hundred percent of the final average salary; and

B. for a member with age and service requirements provided under Subsection B of Section 10-11-99 NMSA 1978, the amount of pension under form of payment A is equal to two percent of the final average salary multiplied by credited service. The amount shall not exceed one hundred percent of the final average salary.

History: Laws 1987, ch. 253, § 100; 2013, ch. 225, § 76; 2023, ch. 53, § 15.

10-11-101. Repealed.

History: Laws 1987, ch. 253, § 101; repealed by Laws 2009, ch. 288, § 20.

10-11-102. Municipal fire member coverage plan 3; member contribution rate.

A member under municipal fire member coverage plan 3 shall contribute eight percent of salary with the first full pay period in the calendar month in which municipal

fire member coverage plan 3 becomes applicable to the member, except that a member whose annual salary is greater than twenty-five thousand dollars (\$25,000) shall contribute:

A. beginning July 1, 2021 and continuing through June 30, 2022, eleven percent of salary;

B. beginning July 1, 2022 and continuing through June 30, 2023, eleven and one-half percent of salary;

C. beginning July 1, 2023 and continuing through June 30, 2024, twelve percent of salary;

D. beginning July 1, 2024 and continuing through June 30, 2025, twelve and one-half percent of salary; and

E. beginning July 1, 2025 and thereafter, thirteen percent of salary.

History: Laws 1987, ch. 253, § 102; 1998, ch. 114, § 5; 2013, ch. 225, § 77; 2020, ch. 11, § 50; 2021, ch. 38, § 4.

10-11-103. Municipal fire member coverage plan 3; affiliated public employer contribution rate.

The affiliated public employer shall contribute the following percentages of the salary of each member it employs and covers under municipal fire member coverage plan 3:

A. prior to July 1, 2022, twenty-one and nine-tenths percent of salary;

B. beginning July 1, 2022 and continuing through June 30, 2023, twenty-two and four-tenths percent of salary;

C. beginning July 1, 2023 and continuing through June 30, 2024, twenty-two and nine-tenths percent of salary;

D. beginning July 1, 2024 and continuing through June 30, 2025, twenty-three and four-tenths percent of salary; and

E. beginning July 1, 2025 and thereafter, twenty-three and nine-tenths percent of salary.

History: Laws 1987, ch. 253, § 103; 1998, ch. 114, § 6; 2013, ch. 225, § 78; 2019, ch. 237, § 14; 2020, ch. 11, § 51.

10-11-104. Municipal fire member coverage plan 4; applicability.

Municipal fire member coverage plan 4 is applicable to municipal fire members of an affiliated public employer on the first day of the calendar month following certification of the election adopting municipal fire member coverage plan 4 by an affirmative vote of the majority of the affiliated public employer's municipal fire members. The election shall be conducted by the affiliated public employer. The certification shall be in the form prescribed by the retirement board. The election procedures shall afford all municipal fire members of the affiliated public employer an opportunity to vote. An election adopting municipal fire member coverage plan 4 for a given affiliated public employer is irrevocable for the purpose of subsequently adopting a coverage plan which would decrease employer or employee contributions with respect to all current and future municipal fire members of that affiliated public employer.

History: Laws 1987, ch. 253, § 104; 1989, ch. 79, § 5.

10-11-105. Municipal fire member coverage plan 4; age and service requirements for normal retirement.

Under municipal fire member coverage plan 4:

A. for a member who was a retired member or a member on June 30, 2013, the age and service requirements for normal retirement are:

- (1) age sixty-five years or older and five or more years of credited service;
- (2) age sixty-four years and eight or more years of credited service;
- (3) age sixty-three years and eleven or more years of credited service;
- (4) age sixty-two years and fourteen or more years of credited service;
- (5) age sixty-one years and seventeen or more years of credited service; or
- (6) any age and twenty or more years of credited service; and

B. for a member who was not a retired member or a member on June 30, 2013, the age and service requirements for normal retirement are:

- (1) age sixty years or older and five or more years of service credit; or
- (2) any age and twenty-five or more years of service credit.

History: Laws 1987, ch. 253, § 105; 2013, ch. 225, § 79; 2020, ch. 11, § 52.

10-11-106. Municipal fire member coverage plan 4; amount of pension; form of payment A.

Under municipal fire member coverage plan 4:

A. for a member with age and service requirements provided under Subsection A of Section 10-11-105 NMSA 1978, the amount of pension under form of payment A is equal to three percent of the final average salary multiplied by credited service. The amount shall not exceed one hundred percent of the final average salary; and

B. for a member with age and service requirements provided under Subsection B of Section 10-11-105 NMSA 1978, the amount of pension under form of payment A is equal to two and one-half percent of the final average salary multiplied by credited service. The amount shall not exceed one hundred percent of the final average salary.

History: Laws 1987, ch. 253, § 106; 2013, ch. 225, § 80; 2023, ch. 53, § 16.

10-11-107. Repealed.

History: Laws 1987, ch. 253, § 107; repealed by Laws 2009, ch. 288, § 20.

10-11-108. Municipal fire member coverage plan 4; member contribution rate.

A member under municipal fire member coverage plan 4 shall contribute twelve and eight-tenths percent of salary with the first full pay period in the calendar month in which municipal fire member coverage plan 4 becomes applicable to the member, except that a member whose annual salary is greater than twenty-five thousand dollars (\$25,000) shall contribute:

A. beginning July 1, 2021 and continuing through June 30, 2022, fifteen and eight-tenths percent of salary;

B. beginning July 1, 2022 and continuing through June 30, 2023, sixteen and three-tenths percent of salary;

C. beginning July 1, 2023 and continuing through June 30, 2024, sixteen and eight-tenths percent of salary;

D. beginning July 1, 2024 and continuing through June 30, 2025, seventeen and three-tenths percent of salary; and

E. beginning July 1, 2025 and thereafter, seventeen and eight-tenths percent of salary.

History: Laws 1987, ch. 253, § 108; 1998, ch. 114, § 7; 2013, ch. 225, § 81; 2020, ch. 11, § 53; 2021, ch. 38, § 5.

10-11-109. Municipal fire member coverage plan 4; affiliated public employer contribution rate.

The affiliated public employer shall contribute the following percentages of the salary of each member it employs and covers under municipal fire member coverage plan 4:

- A. prior to July 1, 2022, twenty-one and nine-tenths percent of salary;
- B. beginning July 1, 2022 and continuing through June 30, 2023, twenty-two and four-tenths percent of salary;
- C. beginning July 1, 2023 and continuing through June 30, 2024, twenty-one and nine-tenths percent of salary;
- D. beginning July 1, 2024 and continuing through June 30, 2025, twenty-three and four-tenths percent of salary; and
- E. beginning July 1, 2025 and thereafter, twenty-three and nine-tenths percent of salary.

History: Laws 1987, ch. 253, § 109; 1998, ch. 114, § 8; 2013, ch. 225, § 82; 2019, ch. 237, § 15; 2020, ch. 11, § 54.

10-11-110. Municipal fire member coverage plan 5; applicability.

Municipal fire member coverage plan 5 is applicable to municipal fire members of an affiliated public employer on the first day of the calendar month following certification of the election adopting municipal fire member coverage plan 5 by an affirmative vote of the majority of the affiliated public employer's municipal fire members. The election shall be conducted by the affiliated public employer. The certification shall be in the form prescribed by the retirement board. The election procedures shall afford all municipal fire members of the affiliated public employer an opportunity to vote. An election adopting municipal fire member coverage plan 5 for a given affiliated public employer is irrevocable for the purpose of subsequently adopting a coverage plan which would decrease employer or employee contributions with respect to all current and future municipal fire members of that affiliated public employer.

History: Laws 1987, ch. 253, § 110; 1989, ch. 79, § 6.

10-11-111. Municipal fire member coverage plan 5; age and service requirements for normal retirement.

Under municipal fire member coverage plan 5:

A. for a member who was a retired member or a member on June 30, 2013, the age and service requirements for normal retirement are:

- (1) age sixty-five years or older and five or more years of credited service;
- (2) age sixty-four years and eight or more years of credited service;
- (3) age sixty-three years and eleven or more years of credited service;
- (4) age sixty-two years and fourteen or more years of credited service;
- (5) age sixty-one years and seventeen or more years of credited service; or
- (6) any age and twenty or more years of credited service; and

B. for a member who was not a retired member or a member on June 30, 2013, the age and service requirements for normal retirement are:

- (1) age sixty years or older and five or more years of service credit; or
- (2) any age and twenty-five or more years of service credit.

History: Laws 1987, ch. 253, § 111; 2013, ch. 225, § 83; 2020, ch. 11, § 55.

10-11-112. Municipal fire member coverage plan 5; amount of pension; form of payment A.

Under municipal fire member coverage plan 5:

A. for a member with age and service requirements provided under Subsection A of Section 10-11-111 NMSA 1978, the amount of pension under form of payment A is equal to three and one-half percent of the final average salary multiplied by credited service. The amount shall not exceed one hundred percent of the final average salary; and

B. for a member with age and service requirements provided under Subsection B of Section 10-11-111 NMSA 1978, the amount of pension under form of payment A is equal to three percent of the final average salary multiplied by credited service. The amount shall not exceed one hundred percent of the final average salary.

History: Laws 1987, ch. 253, § 112; 2013, ch. 225, § 84; 2023, ch. 53, § 17.

10-11-113. Repealed.

History: Laws 1987, ch. 253, § 113; repealed by Laws 2009, ch. 288, § 20.

10-11-114. Municipal fire member coverage plan 5; member contribution rate.

A member under municipal fire member coverage plan 5 shall contribute sixteen and two-tenths percent of salary with the first full pay period in the calendar month in which municipal fire member coverage plan 5 becomes applicable to the member, except that a member whose annual salary is greater than twenty-five thousand dollars (\$25,000) shall contribute:

A. beginning July 1, 2021 and continuing through June 30, 2022, nineteen and two-tenths percent of salary;

B. beginning July 1, 2022 and continuing through June 30, 2023, nineteen and seven-tenths percent of salary;

C. beginning July 1, 2023 and continuing through June 30, 2024, twenty and two-tenths percent of salary;

D. beginning July 1, 2024 and continuing through June 30, 2025, twenty and seven-tenths percent of salary; and

E. beginning July 1, 2025 and thereafter, twenty-one and two-tenths percent of salary.

History: Laws 1987, ch. 253, § 114; 1998, ch. 114, § 9; 2013, ch. 225, § 85; 2020, ch. 11, § 56; 2021, ch. 38, § 6.

10-11-115. Municipal fire member coverage plan 5; affiliated public employer contribution rate.

The affiliated public employer shall contribute the following percentages of the salary of each member it employs and covers under municipal fire member coverage plan 5:

A. prior to July 1, 2022, twenty-one and nine-tenths percent of salary;

B. beginning July 1, 2022 and continuing through June 30, 2023, twenty-two and four-tenths percent of salary;

C. beginning July 1, 2023 and continuing through June 30, 2024, twenty-two and nine-tenths percent of salary;

D. beginning July 1, 2024 and continuing through June 30, 2025, twenty-three and four-tenths percent of salary; and

E. beginning July 1, 2025 and thereafter, twenty-three and nine-tenths percent of salary.

History: Laws 1987, ch. 253, § 115; 1998, ch. 114, § 10; 2013, ch. 225, § 86; 2019, ch. 237, § 16; 2020, ch. 11, § 57.

10-11-115.1. Municipal detention officer member coverage plan 1; applicability.

Municipal detention officer member coverage plan 1 is applicable to municipal detention officer members on the later of July 1, 2004 or the first day of the calendar month following certification of the election adopting municipal detention officer member coverage plan 1 by an affirmative vote of the majority of the affiliated public employer's municipal detention officer members. The election shall be conducted by the affiliated public employer. The certification shall be in the form prescribed by the retirement board. The election procedures shall afford all municipal detention officer members of the affiliated public employer an opportunity to vote. An election adopting municipal detention officer member coverage plan 1 for a given affiliated public employer is irrevocable for the purpose of subsequently adopting a coverage plan that would decrease employer or employee contributions with respect to all current and future municipal detention officer members of that affiliated public employer.

History: Laws 2003, ch. 268, § 2.

10-11-115.2. Municipal detention officer member coverage plan 1; age and service requirements for normal retirement; calculation of credited service.

A. Under municipal detention officer member coverage plan 1, for a member who was a retired member or a member on June 30, 2013, the age and service requirements for normal retirement are:

- (1) age sixty-five years or older and five or more years of credited service;
- (2) age sixty-four years and eight or more years of credited service;
- (3) age sixty-three years and eleven or more years of credited service;
- (4) age sixty-two years and fourteen or more years of credited service;
- (5) age sixty-one years and seventeen or more years of credited service;
- (6) age sixty years and twenty or more years of credited service; or
- (7) any age and twenty-five or more years of credited service.

B. For a member who was not a retired member or a member on June 30, 2013, the age and service requirements for normal retirement are:

- (1) age sixty years or older and five or more years of service credit; or
- (2) any age and twenty-five or more years of service credit.

C. For the purposes of determining retirement eligibility and the amount of pension, the credited service of a municipal detention officer member who was a retired member or a member on June 30, 2013 shall be increased by twenty percent for the purposes of municipal detention officer member coverage plan 1.

D. Except as provided in Subsection C of this section, the credited service of a municipal detention officer member shall be credited as provided under Section 10-11-4 NMSA 1978.

History: Laws 2003, ch. 268, § 3; 2013, ch. 225, § 87; 2020, ch. 11, § 58.

10-11-115.3. Municipal detention officer member coverage plan 1; amount of pension; form of payment A.

Under municipal detention officer member coverage plan 1, the amount of pension under form of payment A is equal to three percent of the final average salary multiplied by credited service. The amount shall not exceed one hundred percent of the final average salary.

History: Laws 2003, ch. 268, § 4; 2013, ch. 225, § 88; 2023, ch. 53, § 18.

10-11-115.4. Repealed.

History: Laws 2003, ch. 268, § 5; repealed by Laws 2009, ch. 288, § 20.

10-11-115.5. Municipal detention officer member coverage plan 1; member contribution rate.

A member under municipal detention officer member coverage plan 1 shall contribute sixteen and sixty-five hundredths percent of salary with the first full pay period in the calendar month in which municipal detention officer member coverage plan 1 becomes applicable to the member, except that a member whose annual salary is greater than twenty-five thousand dollars (\$25,000) shall contribute:

- A. prior to July 1, 2022, eighteen and fifteen-hundredths percent of salary;
- B. beginning July 1, 2022 and continuing through June 30, 2023, eighteen and sixty-five hundredths percent of salary;

C. beginning July 1, 2023 and continuing through June 30, 2024, nineteen and fifteen-hundredths percent of salary;

D. beginning July 1, 2024 and continuing through June 30, 2025, nineteen and sixty-five hundredths percent of salary; and

E. beginning July 1, 2025 and thereafter, twenty and fifteen-hundredths percent of salary.

History: Laws 2003, ch. 268, § 6; 2013, ch. 225, § 89; 2020, ch. 11, § 59.

10-11-115.6. Municipal detention officer member coverage plan 1; employer contribution rate.

The affiliated public employer shall contribute the following percentages of the salary of each member under municipal detention officer member coverage plan 1 starting with the first pay period that ends within the calendar month in which municipal detention officer member coverage plan 1 becomes applicable to the member:

A. prior to July 1, 2022, seventeen and three-tenths percent of salary;

B. beginning July 1, 2022 and continuing through June 30, 2023, seventeen and eight-tenths percent of salary;

C. beginning July 1, 2023 and continuing through June 30, 2024, eighteen and three-tenths percent of salary;

D. beginning July 1, 2024 and continuing through June 30, 2025, eighteen and eight-tenths percent of salary; and

E. beginning July 1, 2025 and thereafter, nineteen and three-tenths percent of salary.

History: Laws 2003, ch. 268, § 7; 2013, ch. 225, § 90; 2019, ch. 237, § 17; 2020, ch. 11, § 60.

10-11-115.7. Municipal detention officer member coverage plan 1; service credit required for municipal detention officer members.

Notwithstanding other provisions of the Public Employees Retirement Act, to qualify for retirement pursuant to municipal detention officer member coverage plan 1, a municipal detention officer member shall have eighteen months of service credit earned under that coverage plan.

History: Laws 2003, ch. 268, § 8.

10-11-116. Election of form of payment of a pension.

A. Except as otherwise provided in Section 10-11-136 NMSA 1978, a member may elect to have pension payments made under any one of the forms of payment provided in Section 10-11-117 NMSA 1978. The election of form of payment and naming of survivor beneficiary shall be made on a form furnished by and filed with the association prior to the date the first pension payment is made. An election of form of payment may not be changed after the date the first pension payment is made. If the member is married, the association shall obtain the consent of the member's spouse to the election of the form of payment and any designation of survivor beneficiary before the election or designation is effective. Except as provided in Subsection C, D or E of this section, a named survivor beneficiary may not be changed after the date the first pension payment is made if form of payment B or C is elected. Except as otherwise provided in Section 10-11-136 NMSA 1978, payment shall be made:

(1) under form of payment A if the member is not married at the time of retirement and if there is not a timely election of another form of payment; or

(2) under form of payment C with the member's spouse as survivor beneficiary if the member is married at the time of retirement and there is not a timely election of another form of payment.

B. The amount of pension under forms of payment B, C and D shall have the same actuarial present value, computed as of the effective date of the pension, as the amount of pension under form of payment A.

C. A retired member who is being paid a pension under form of payment B or C with the member's spouse as the designated survivor beneficiary may:

(1) exercise a one-time irrevocable option to designate another survivor beneficiary and may select either form of payment B or form of payment C; provided that:

(a) the amount of the pension under the form of payment selected shall be recalculated and have the same actuarial present value, computed on the effective date of the designation, as the amount of pension under form of payment A;

(b) the member's spouse provides a notarized, written statement expressing the spouse's consent to relinquish the designation as a survivor beneficiary; and

(c) the retired member shall pay one hundred dollars (\$100) to the retirement board to defray the cost of determining the new pension amount;

(2) upon becoming divorced from the named spouse and subject to an order of a court as provided for in Section 10-11-136 NMSA 1978, elect to have future payments made under form of payment A; or

(3) upon becoming divorced from the named spouse, exercise a one-time irrevocable option to designate another survivor beneficiary and may select either form of payment B or form of payment C; provided that:

(a) the amount of the pension under the form of payment selected shall be recalculated and have the same actuarial present value, computed on the effective date of the designation, as the amount of pension under form of payment A;

(b) the designation and the amount of the pension shall be subject to a court order as provided for in Section 10-11-136 NMSA 1978; and

(c) the retired member shall pay one hundred dollars (\$100) to the retirement board to defray the cost of determining the new pension amount.

D. A retired member who was previously being paid a pension under form of payment B or C but, because of the death of or divorce from the designated survivor beneficiary or in the event that a supplemental needs trust is the designated survivor beneficiary, the termination of that trust or the death of or divorce from the beneficiary of that trust, is currently receiving a pension under form of payment A may exercise a one-time irrevocable option to designate another survivor beneficiary and may select either form of payment B or form of payment C; provided that:

(1) the amount of the pension under the form of payment selected shall be recalculated and have the same actuarial present value, computed on the effective date of the designation, as the amount of pension under form of payment A;

(2) the designation and the amount of the pension shall be subject to a court order as provided for in Section 10-11-136 NMSA 1978; and

(3) the retired member shall pay one hundred dollars (\$100) to the retirement board to defray the cost of determining the new pension amount.

E. A retired member who is being paid a pension under form of payment B or C with a living or operating designated survivor beneficiary other than the retired member's spouse or former spouse or the supplemental needs trust of the retired member's spouse or former spouse may exercise a one-time irrevocable option to deselect the designated beneficiary and elect to:

(1) designate another survivor beneficiary and may select either form of payment B or form of payment C; provided that:

(a) the amount of the pension under the form of payment shall be recalculated and shall have the same actuarial present value, computed as of the effective date of the designation, as the amount of pension under form of payment A; and

(b) the retired member shall pay one hundred dollars (\$100) to the retirement board to defray the cost of determining the new pension amount; or

(2) have future payments made under form of payment A.

History: Laws 1987, ch. 253, § 116; 1991, ch. 149, § 1; 2010, ch. 19, § 1; 2011, ch. 122, § 1; 2021, ch. 115, § 1; 2023, ch. 156, § 2.

10-11-117. Forms of payment of a pension.

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

B. Life payments with full continuation to one survivor beneficiary is form of payment B. The retired member is paid a reduced pension for life under form of payment B. When the retired member dies, the designated survivor beneficiary is paid the full amount of the reduced pension until the death of the survivor beneficiary or the death of the beneficiary of a supplemental needs trust or the termination of that trust. If the designated survivor beneficiary or the beneficiary of a supplemental needs trust predeceases the retired member or if the supplemental needs trust terminates while the retired member is living, the amount of pension shall be changed to the amount that would have been payable had the retired member elected form of payment A.

C. Life payment with one-half continuation to one survivor beneficiary is form of payment C. The retired member is paid a reduced pension for life under form of payment C. When the retired member dies, the designated survivor beneficiary is paid one-half the amount of the reduced pension until the death of the survivor beneficiary or the death of the beneficiary of a supplemental needs trust. If the designated survivor beneficiary or the beneficiary of a supplemental needs trust predeceases the retired member or the supplemental needs trust terminates while the retired member is living, the amount of pension shall be changed to the amount that would have been payable had the retired member elected form of payment A.

D. Life payments with temporary survivor benefits for children is form of payment D. The retired member is paid a reduced pension for life under form of payment D. When the retired member dies, each declared eligible child is paid a share of the reduced pension until death or age twenty-five years, whichever occurs first. The share is the share specified in writing and filed with the association by the retired member. If shares are not specified in writing and filed with the association, each declared eligible child is paid an equal share of the reduced pension. A redetermination of shares shall be made when the pension of any child terminates. An eligible child is a natural or adopted child of the retired member who is under age twenty-five years. A declared eligible child is an eligible child whose name has been declared in writing and filed with the association by

the retired member at the time of election of form of payment D. The amount of pension shall be changed to the amount of pension that would have been payable had the retired member elected form of payment A upon there ceasing to be a declared eligible child during the lifetime of the retired member.

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

History: Laws 1987, ch. 253, § 117; 1992, ch. 116, § 7; 1997, ch. 189, § 7; 2023, ch. 156, § 3.

10-11-118. Cost-of-living adjustments; qualified pension recipient; declining increase.

A. As used in this section:

(1) "cost-of-living adjustment hurdle rate" means the investment rate of return required to fund a cost-of-living adjustment in excess of one-half percent, as determined by the association's actuaries;

(2) "funded ratio" means the ratio of the actuarial value of the assets of the fund to the actuarial accrued liability of the association for payments from the fund, as determined by the association's actuaries;

(3) "preceding calendar year" means the full calendar year preceding the July 1 on which pensions are being adjusted; and

(4) "smoothed investment rate of return" means a calculation made by spreading the difference between the expected actuarial value in investment income and the actual market value investment income over a smoothing period, as determined by the association's actuaries.

B. A qualified pension recipient is eligible for a cost-of-living pension adjustment. A qualified pension recipient is:

(1) a normal retired member who has been retired for at least two full calendar years from the effective date of the latest retirement prior to July 1 of the year in which the pension is being adjusted;

(2) a normal retired member who has attained the age of sixty-five years and has been retired for at least one full calendar year from the effective date of the

member's latest retirement prior to July 1 of the year in which the pension is being adjusted;

(3) a disability retired member who has been retired for at least one full calendar year from the effective date of the latest retirement prior to July 1 of the year in which the pension is being adjusted;

(4) a survivor beneficiary who has received a survivor pension for at least two full calendar years; or

(5) a survivor beneficiary of a deceased retired member who otherwise would have been retired at least two full calendar years from the effective date of the latest retirement prior to July 1 of the year in which the pension is being adjusted.

C. Except as provided in Subsections F, G and H of this section, during fiscal years 2021, 2022 and 2023, a qualified pension recipient shall receive an annual, non-compounding, additional payment. The amount of the payment shall be determined by multiplying the amount of annual pension payments, inclusive of all cost-of-living adjustments prior to fiscal year 2021, by two percent.

D. Beginning May 1, 2023 and no later than each May 1 thereafter, the retirement board shall certify to the association the:

(1) funded ratio as of June 30 of the preceding calendar year; and

(2) smoothed investment rate of return as of June 30 of the preceding calendar year.

E. Except as provided in Subsections F, G and H of this section, beginning July 1, 2023 and each July 1 thereafter, immediately following the retirement board's certification of the funded ratio and smoothed investment rate of return, the cost-of-living adjustment to a qualified pension recipient payable pursuant to the Public Employees Retirement Act shall be determined as an amount equal to the smoothed investment rate of return on the actuarial value of assets on June 30 of the preceding calendar year less the cost-of-living adjustment hurdle rate, as determined by the association's actuaries, multiplied by the funded ratio on June 30 of the preceding calendar year or five-tenths percent, whichever is greater, and subject to the following conditions:

(1) if the funded ratio of the fund is less than one hundred percent on June 30 of the preceding calendar year, the amount of the adjustment made pursuant to this subsection shall not exceed three percent;

(2) if the funded ratio of the fund is equal to or greater than one hundred percent on June 30 of the preceding calendar year, the adjustment made pursuant to this subsection shall not exceed five percent;

(3) notwithstanding the provisions of this subsection, a qualified pension recipient shall receive a minimum annual cost-of-living adjustment of five-tenths percent; and

(4) the amount of increase shall be determined by multiplying the amount of pension, inclusive of all prior adjustments, by the cost-of-living adjustment as determined by this subsection.

F. For a normal retired member who worked for at least twenty-five years under one or more applicable coverage plans and whose annual pension benefit, after all previous annual cost-of-living adjustments, is equal to an amount not greater than twenty-five thousand dollars (\$25,000), the pension benefit shall be increased by two and one-half percent each July 1. The amount of the increase shall be determined by multiplying the amount of pension, inclusive of all prior adjustments, by two and one-half percent.

G. For a disability retired member whose annual pension benefit, after all previous annual cost-of-living adjustments, is equal to an amount not greater than twenty-five thousand dollars (\$25,000), the pension benefit shall be increased by two and one-half percent each July 1. The amount of the increase shall be determined by multiplying the amount of pension, inclusive of all prior adjustments, by two and one-half percent.

H. For a normal retired member who has attained the age of seventy-five years prior to July 1, 2020, the pension benefit shall be increased by two and one-half percent each July 1. The amount of the increase shall be determined by multiplying the amount of pension, inclusive of all prior adjustments, by two and one-half percent.

I. A qualified pension recipient may decline an increase in a pension by giving the association written notice of the decision to decline the increase at least thirty days prior to the date the increase would take effect.

History: Laws 1987, ch. 253, § 118; 1992, ch. 116, § 8; 2013, ch. 225, § 91; repealed and reenacted by Laws 2020, ch. 11, § 61.

10-11-118.1. Adjustment of benefits.

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

B. If there is a change in the effect of a pension or other retirement benefit on any monetary payments or other needs-based benefits due to a payee from any other

governmental agency, the pension or other retirement benefits shall be adjusted to result in the maximum total benefit to the payee. In no event shall any pension be increased in an amount greater than that authorized by the Public Employees Retirement Act.

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

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

E. As used in this section:

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

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

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

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

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

History: 1978 Comp., § 10-11-118.1, enacted by Laws 1992, ch. 116, § 9; 1993, ch. 160, § 5; 1997, ch. 189, § 18.

10-11-119. Commencement, change and termination of a pension.

A. A normal or disability pension shall commence the first day of the month following retirement. A preretirement survivor pension shall commence the first day of the month following the date of the death resulting in the pension. A postretirement survivor pension shall commence the first day of the month following the date of the death resulting in the pension.

B. Termination of payment of a pension shall occur at the end of the month in which the event causing termination occurs. Payment shall be made for the full month of termination.

C. A change in the amount of a pension shall occur the first day of the month following the date of the event causing the change.

History: Laws 1987, ch. 253, § 119.

10-11-120. Denial of benefit claim; appeals.

A. A benefit claimant shall be notified in writing of a denial of a claim for benefits within thirty days of the denial. The notification shall give the reason for the denial. A claimant may appeal the denial and request a hearing. The appeal shall be in writing filed with the association within ninety days of the denial. The appeal shall contain a statement of the claimant's reason for claiming the denial to be improper. The retirement board shall schedule a de novo hearing of the appeal before the retirement board or, at the discretion of the retirement board, a designated hearing officer or committee of the retirement board within sixty days of receipt of the appeal. A final decision on the matter being appealed shall be made by the retirement board.

B. Appeals from a final decision of the retirement board may be filed pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: Laws 1987, ch. 253, § 120; 1997, ch. 189, § 8; 1998, ch. 55, § 22; 1999, ch. 265, § 22.

10-11-121. Group health insurance; continuation; group life insurance.

A. Any member or survivor pension beneficiary may continue to be insured under the provisions of any affiliated public employer's group health insurance plan in effect at the time of retirement or death or under the terms of any separate subsequent group health insurance plan of the affiliated public employer if the retired member or survivor pension beneficiary pays the periodic premium charges and consents to have the association deduct the periodic premium charges from the retired member's or survivor pension beneficiary's pension. The affiliated public employer shall furnish to the association in the manner prescribed by the association a monthly listing of all members or survivor pension beneficiaries who have elected to continue to be insured in accordance with this section and shall also provide the association with written notification of any changes in insurance providers at least sixty days prior to any such change. The association shall make any such changes no later than sixty days after the date of notification.

B. Any member who retires after July 1, 1990, may be insured under the provisions of any affiliated public employer's group life insurance plan for retirees in effect at the

time of retirement or death or under the terms of any separate subsequent group life insurance plan for retirees of the affiliated public employer if the retired member pays the periodic premium charges and consents to have the association deduct the periodic premium charges from the retired member's pension. The affiliated public employer shall furnish to the association in the manner prescribed by the association a monthly listing of all members who have elected to continue to be insured in accordance with this section and shall also provide the association with written notification of any changes in insurance providers at least sixty days prior to any such change. The association shall make any such changes no later than sixty days after the date of notification.

History: Laws 1987, ch. 253, § 121; 1989, ch. 347, § 2; 1990, ch. 128, § 2.

10-11-122. Public employer affiliation.

A. A public employer who is an affiliated public employer on the effective date of the Public Employees Retirement Act shall continue to be an affiliated public employer.

B. A public employer who is not an affiliated public employer on the effective date of the Public Employees Retirement Act may become an affiliated public employer by resolution or ordinance adopted by its governing body. Affiliation shall be effective the first day of the month following completion of each of the following requirements:

(1) the public employer files a certified copy of the resolution or ordinance with the association; and

(2) the public employer furnishes the association with all information requested by the association.

C. An affiliated public employer may adopt a coverage plan by resolution or ordinance of its governing body, unless a procedure for adopting the change is otherwise provided in the Public Employees Retirement Act. The change shall be effective the first day of the month following completion of each of the following requirements:

(1) the public employer files a certified copy of the resolution or ordinance with the association; and

(2) the public employer furnishes the association with all information requested by the association.

D. A public employer created by one of the methods specified in this subsection shall be an affiliated public employer with the coverage plan that provides the highest pension applicable to any of the groups of members brought under its employment.

(1) This subsection applies to a public employer created:

- (a) by a merger of two or more affiliated public employers;
 - (b) pursuant to a joint powers agreement between two or more affiliated public employers;
 - (c) pursuant to a statute that authorizes two or more affiliated public employers to jointly create the public employer; or
 - (d) pursuant to a statute that creates the public employer by expanding the jurisdiction or assuming the powers and duties of an existing affiliated public employer.
- (2) The public employer shall be an affiliated public employer on the first day of the month following the later of:
- (a) the date that the public employer files with the association a certified copy of the statute, ordinance, resolution or joint powers agreement under which the public employer is created; or
 - (b) the date that the public employer furnishes the association with all information requested by the association.

History: Laws 1987, ch. 253, § 122; 2005, ch. 333, § 3.

10-11-123. Funds of association.

A. The accounting funds of the association are the "member contribution fund", "employers accumulation fund", "retirement reserve fund" and "income fund". The maintenance of separate accounting funds shall not require the actual segregation of the assets of the association among the various funds.

B. The accounting funds provided for in Subsection A of this section are trust funds and shall be used only for the purposes provided in the Public Employees Retirement Act.

History: Laws 1987, ch. 253, § 123.

10-11-124. Member contribution fund.

A. The member contribution fund is the accounting fund in which shall be accumulated contributions of members and from which shall be made refunds and transfers of accumulated member contributions as provided in the Public Employees Retirement Act. Each affiliated public employer shall cause the member contributions specified by the coverage plan applicable to each of that affiliated public employer's members to be deducted from the salary of each member. Each affiliated public employer shall remit the deducted member contributions to the association in accordance with the procedures and schedules established by the association. The

association may assess an interest charge and a penalty charge on any remittance not made by its due date. Each member shall be deemed to consent and agree to the deductions made and provided for in this section by continuing employment with the affiliated public employer. Contributions by members shall be credited to the members' individual accounts in the member contribution fund.

B. A member's accumulated contributions shall be transferred to the retirement reserve fund if a pension becomes payable upon the retirement or death of the member. If a disability retirement pension is terminated for a reason other than the death of the disability retired member before an amount equal to the disability retired member's accumulated member contributions has been paid, the unexpended balance of the accumulated member contributions shall be transferred from the retirement reserve fund to the former disability retired member's individual account in the member contribution fund.

C. If a member terminates affiliated public employment or is on leave of absence from an affiliated public employer as a consequence of the entry into active duty with the armed forces of the United States, the member may, with the written consent of the member's spouse, if any, withdraw the member's accumulated member contributions, upon making written request in a form prescribed by the association. Upon written request of the member in the form prescribed by the association, a refund of member contributions may be made by a trustee-to-trustee transfer of the contributions from the member contribution fund directly to another qualified plan as allowed by the Internal Revenue Code of 1986. Withdrawal of member contributions shall result in forfeiture of the service credit accrued for the period during which the contributions were made.

D. A member shall, upon commencement of membership, designate a refund beneficiary who shall receive the refund of the member contributions, plus interest if any, if the member dies and no survivor pension is payable. If the member is married at the time of designation, written spousal consent shall be required if the designated refund beneficiary is other than the spouse or a supplemental needs trust to which the spouse is a beneficiary. Marriage subsequent to the designation shall automatically revoke a previous designation, and the spouse shall become the refund beneficiary unless or until another designation is filed with the association. Divorce subsequent to the designation shall automatically revoke designation of the former spouse as refund beneficiary, or the right of the former spouse to be refund beneficiary if no designation has been filed, and the refund shall be paid to the deceased member's estate unless the member filed a designation of refund beneficiary subsequent to the divorce. The refund shall be paid to the refund beneficiary named in the most recent designation of refund beneficiary on file with the association unless that beneficiary is deceased or otherwise terminated. If there is not a living or operating refund beneficiary named in the most recent designation of refund beneficiary on file with the association, the deceased member's accumulated member contributions shall be paid to the estate of the deceased member.

History: Laws 1987, ch. 253, § 124; 1993, ch. 160, § 6; 2023, ch. 156, § 4.

10-11-125. Member contributions; tax treatment.

Upon implementation, each affiliated public employer shall, solely for the purpose of compliance with Section 414(h) of the Internal Revenue Code, pick up, for the purposes specified in that section, member contributions required by the Public Employees Retirement Act for all salary earned by the member after implementation. Member contributions picked up under the provisions of this section shall be treated as affiliated public employer contributions for purposes of determining income tax obligations under the Internal Revenue Code; however, such picked up member contributions shall be included in the determination of the member's gross annual salary for all other purposes under federal and state laws. Members' contributions picked up under this section shall continue to be designated member contributions for all purposes of the Public Employees Retirement Act and shall be considered as part of the member's salary for purposes of determining the amount of the member's contribution. The provisions of this section are mandatory, and the member shall have no option concerning the pick up or to receive the contributed amounts directly instead of having them paid by the affiliated public employer to the association. With respect to members employed by an affiliated public employer other than the state, implementation occurs upon the employer's filing of a resolution with the association stating the employer's intent to pick up member contributions as provided in this section. With respect to members employed by the state, implementation occurs upon authorization by the association. In no event may implementation occur other than at the beginning of a pay period.

History: Laws 1987, ch. 253, § 125.

10-11-126. Employers accumulation fund; employers contributions; transfers to retirement reserve fund.

A. The employers accumulation fund is the fund in which shall be accumulated contributions by affiliated public employers. Except as provided in Section 5 [10-11-5 NMSA 1978] of the Public Employees Retirement Act, an affiliated public employer shall remit its contributions to the association in accordance with the procedures and schedules established by the association. The association may assess an interest charge and a penalty charge on any remittance not made by its due date.

B. Each year following receipt of the report of the annual actuarial valuation, the excess, if any, of the reported actuarial present value of pensions being paid and likely to be paid to retired members and survivor pension beneficiaries and residual refunds likely to be paid to refund beneficiaries of retired members and to survivor pension beneficiaries over the balance in the retirement reserve fund shall be transferred to the retirement reserve fund from the employers accumulation fund.

History: Laws 1987, ch. 253, § 126.

10-11-127. Retirement reserve fund.

The retirement reserve fund is the fund from which shall be paid all pensions to retired members and survivor pension beneficiaries and all residual refunds to refund beneficiaries of retired members and survivor pension beneficiaries.

History: Laws 1987, ch. 253, § 127.

10-11-128. Income fund.

The income fund is the fund to which shall be credited all interest, dividends, rents and other income from investments of the association, all gifts and bequests, all unclaimed member contributions and all other money the disposition of which is not specifically provided for in the Public Employees Retirement Act. There shall be paid or transferred from the income fund all administrative expenses of the association.

History: Laws 1987, ch. 253, § 128.

10-11-129. Distribution of income fund.

The association shall at least annually distribute all or a portion of the balance in the income fund to the member contribution fund, the retirement reserve fund and the employer accumulation fund. Distribution rates shall be determined by the retirement board and may vary by fund.

History: Laws 1987, ch. 253, § 129.

10-11-129.1. Legislative retirement fund.

The "legislative retirement fund" is created in the state treasury. The fund shall consist of money distributed, transferred or otherwise accruing to the fund. Money in the fund may be appropriated by the legislature to finance state legislator member coverage plan 2 pursuant to the Public Employees Retirement Act. Income from investment of the fund shall accrue to the fund, and balances in the fund at the end of any fiscal year shall not revert to the general fund.

History: Laws 2003, ch. 85, § 13.

10-11-130. Retirement board; authority; membership.

A. The "retirement board" is created and is the trustee of the association and the funds created by the state retirement system acts and has all the powers necessary or convenient to carry out and effectuate the purposes and provisions of the state retirement system acts, including, in addition to any specific powers provided for in the Public Employees Retirement Act but without limiting the generality of the foregoing, the power to:

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

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

(3) administer oaths;

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

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

(6) issue subpoenas and compel the production of evidence and attendance of witnesses in connection with any hearings or proceedings of the retirement board;

(7) make and execute contracts;

(8) purchase, acquire or hold land adjacent to the state capitol grounds or other suitable location and build thereon a building to house the association and its employees and, in the event additional office space is available in the building after the retirement board and its employees have been housed, to rent or lease the additional space to any public agency or private person; provided that first priority for the rental or leasing shall be to public agencies; and further provided that for the purpose of purchasing, acquiring or holding the land and the building thereon, the retirement board may use funds from the income fund and any other funds controlled by the retirement board the use of which for such purposes is not prohibited by law;

(9) after the sale of the land and building acquired pursuant to Paragraph (8) of this subsection, acquire land and build thereon a new building to house the association and its employees and hold the building and land in fee simple in the name of the association. In order to acquire the land and plan, design and construct the building, the retirement board may expend the proceeds of the sale of the land and building acquired pursuant to Paragraph (8) of this subsection or any funds controlled by the board, the use of which for such purposes is not otherwise prohibited by law;

(10) make and adopt such reasonable rules as may be necessary or convenient to carry out the duties of the retirement board and activities of the association, including any rules necessary to preserve the status of the association as a qualified pension plan under the provisions of the Internal Revenue Code of 1986, as amended, or under successor or related provisions of law;

(11) designate committees and designate committee members, including individuals who may not be members of the association; and

(12) select and contract for the services of one or more custodian banks for all funds under the retirement board's management. For the purpose of this paragraph, "custodian bank" means a financial institution with the general fiduciary duties to manage, control and collect the assets of an investment fund, including receiving all deposits and paying all disbursements as directed by staff, safekeeping of assets, coordination of asset transfers, timely settlement of securities transactions and accurate and timely reporting of the assets by individual account and in total.

B. The retirement board consists of:

(1) the secretary of state;

(2) the state treasurer;

(3) four members under a state coverage plan to be elected by the members under state coverage plans;

(4) four members under a municipal coverage plan to be elected by the members under municipal coverage plans, provided one member shall be a municipal member employed by a county; and

(5) two retired members to be elected by the retired members of the association.

C. The results of elections of elected members of the retirement board shall be certified at the annual meeting of the association. Elections shall be conducted according to rules the retirement board adopts from time to time.

D. The regular term of office of the elected members of the retirement board is four years. The term of one retirement board member under a state coverage plan expires annually on December 31. The terms of retirement board members under a municipal coverage plan expire on December 31 of noncoinciding years in the pattern set by the retirement board. Members of the retirement board serve until their successors have qualified.

E. A member elected to the retirement board who fails to attend four consecutively scheduled meetings of the retirement board, unless in each case excused for cause by the retirement board members in attendance, is considered to have resigned from the retirement board, and the retirement board shall by resolution declare the office vacated as of the date of adoption of the resolution. A vacancy occurring on the retirement board, except in the case of an elected official, shall be filled by the remaining retirement board members, without requirement that a quorum be present. The member appointed to fill the vacancy serves for the remainder of the vacated term.

F. Members of the retirement board serve without salary for their services as retirement board members, but they shall receive those amounts authorized under the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

G. The retirement board shall hold four regular meetings each year and shall designate in advance the time and place of the meetings. Special meetings and emergency meetings of the retirement board may be held upon call of the chair or any three members of the retirement board. Written notice of special meetings shall be sent to each member of the retirement board at least seventy-two hours in advance of the special meeting. Verbal notice of emergency meetings shall be given to as many members as is feasible at least eight hours before the emergency meeting, and the meeting shall commence with a statement of the nature of the emergency. The retirement board shall adopt its own rules of procedure and shall keep a record of its proceedings. All meetings of the retirement board shall comply with the Open Meetings Act [Chapter 10, Article 15 NMSA 1978]. A majority of retirement board members shall constitute a quorum. Each attending member of the retirement board is entitled to one vote on each question before the retirement board, and at least a majority of a quorum shall be necessary for a decision by the retirement board.

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

I. Neither the retirement board nor the association shall allow public inspection of, or disclosure of, information from any member or retiree file unless a prior release and consent, in the form prescribed by the association, has been executed by the member or retiree; except that applicable coverage plans, amounts of retirement plan contributions made by members and affiliated public employers, pension amounts paid and the names and addresses of public employees retirement association members or retirees requested for election purposes by candidates for election to the retirement board may be produced or disclosed without release or consent.

History: Laws 1987, ch. 253, § 130; 1992, ch. 116, § 10; 1995, ch. 115, § 2; 1997, ch. 189, § 9; 2005, ch. 147, § 1; 2011, ch. 27, § 1.

10-11-130.1. Restrictions on receipt of gifts; restriction on campaign contributions; required reporting.

A. Except for gifts of food or beverage given in a place of public accommodation, consumed at the time of receipt, not exceeding fifty dollars (\$50.00) for a single gift and the aggregate value of which gifts may not exceed one hundred fifty dollars (\$150) in a calendar year, neither a retirement board member nor an employee of the retirement board or association shall receive or accept anything of value directly or indirectly from a person who:

- (1) has a current contract with the retirement board or association;
- (2) is a potential bidder, offeror or contractor for the provision of services or personal property to the retirement board or association;
- (3) is authorized to invest public funds pursuant to state or federal law or is an employee or agent of such a person; or
- (4) is an organization, association or other entity having a membership that includes persons described in Paragraphs (1) through (3) of this subsection.

B. No person who is a candidate in a primary or general election for a position that qualifies the person for ex-officio membership on the retirement board, no member serving ex officio on the retirement board and no person who is a nominee for retirement board membership by election by some or all of the members of the association pursuant to the Public Employees Retirement Act shall accept anything of a value of more than twenty-five dollars (\$25.00) as a contribution to an ex-officio member's statewide campaign in a primary or general election or as a contribution to the campaign of a nominee for membership on the board as a member elected by all or some of the members of the association from a person who:

- (1) has a current contract with the retirement board or association;
- (2) is a potential bidder, offeror or contractor for the provision of services or personal property to the retirement board or association;
- (3) is authorized to invest public funds pursuant to state or federal law or is an employee or agent of such a person; or
- (4) is an organization, association or other entity having a membership that includes persons described in Paragraphs (1) through (3) of this subsection.

C. Within ten days after an election in which one or more board members are elected by some or all of the members of the association pursuant to the Public Employees Retirement Act, all persons who were candidates for board membership in that election shall file with the association a report disclosing all contributions to their respective campaigns whether made directly to the candidate, a political action committee or to some other entity supporting the candidate's election. The contributions

shall be reported by amount and specific source. Within sixty days after the election, the association shall publish the reports required by this subsection.

History: Laws 1999, ch. 153, § 1.

10-11-131. Retirement board; officers; employment of services.

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

B. The retirement board shall appoint an executive director who shall be the chief administrative officer for the retirement board and the association.

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

D. The state treasurer shall be the treasurer of the association and the custodian of its funds. The treasurer's general bond to the state shall cover all liability for acts as treasurer of the association. The treasurer shall credit all receipts of money and assets of the association to the association. The treasurer shall make disbursements from association assets only upon warrants issued by the secretary of finance and administration based upon vouchers signed by the executive secretary or vouchers signed by the state treasurer for purposes of investment.

History: Laws 1987, ch. 253, § 131; 1997, ch. 189, § 10.

10-11-132. Investment of funds; prudent investor standard; indemnification of board members.

The funds created by the state retirement system acts are trust funds of which the retirement board is trustee. Members of the retirement board jointly and individually shall be indemnified by the state from the funds administered by the retirement board from all claims, demands, suits, actions, damages, judgments, costs, charges and expenses, including court costs and attorney fees and against all liability losses and damages of any nature that members shall or may sustain by reason of any decision made in the performance of their duties pursuant to the state retirement system acts. The retirement board shall invest and reinvest the funds in accordance with the Uniform Prudent Investor Act [45-7-601 to 45-7-612 NMSA 1978].

History: Laws 1987, ch. 253, § 132; 1989, ch. 46, § 1; 1992, ch. 116, § 11; 1995, ch. 94, § 1; 1997, ch. 189, § 11; 2003, ch. 345, § 1; 2005, ch. 240, § 4.

10-11-133. Investment of funds; prudent investor standard; conditions.

A. Commissions paid for the purchase and sale of any security shall not exceed brokerage rates prescribed and approved by stock exchanges that have been approved by or are under the control of the United States securities and exchange commission or by industry practice.

B. The retirement board shall invest and manage the funds administered by the retirement board in accordance with the Uniform Prudent Investor Act [45-7-601 to 45-7-612 NMSA 1978].

C. The retirement board shall provide quarterly performance reports to the legislative finance committee and the department of finance and administration. Annually, the retirement board shall ratify and provide its written investment policy, including any amendments, to the legislative finance committee and the department of finance and administration.

D. Securities purchased with money from or held for any fund administered by the retirement board and for which the retirement board is trustee shall be in the custody of the state treasurer who shall, at the direction of the retirement board, deposit with a bank or trust company the securities for safekeeping or servicing.

E. The retirement board may consult with the state investment council or state investment officer and request information or advice with respect to the retirement board's overall investment plan, may utilize the services of the state investment council and state investment officer and may act on their advice concerning the plan. The state investment council and state investment officer shall render investment services to the retirement board without expense to the retirement board. The retirement board may also employ the investment management services and related management services of a trust company or national bank exercising trust powers or of an investment counseling firm or brokers for the purchase and sale of securities, commission recapture and transition services and may pay reasonable compensation for such services from funds administered by the retirement board. The terms of any such investment management services contract shall incorporate the statutory requirements for investment of funds under the retirement board's jurisdiction.

F. The retirement board shall annually provide for its members no less than eight hours of training in pension fund investing, fiduciary obligations or ethics. A member elected to the retirement board who fails to attend the training for two consecutive years shall be deemed to have resigned from the retirement board.

G. Except as provided in the Public Employees Retirement Act, a member of the retirement board, employee of the retirement board or any person connected with the retirement board in any manner shall not:

(1) have any direct or indirect interest in the gains or profits of any investment made by the retirement board;

(2) receive any direct or indirect pay or emolument for services provided to the retirement board or the association;

(3) directly or indirectly, for the member, employee or person, for themselves or as agent or partner of others, borrow any of the funds or deposits of the association or in any manner use them except to make current and necessary payments authorized by the retirement board; or

(4) become an endorser or surety or become in any manner an obligor for money of the retirement board loaned or borrowed.

History: Laws 1987, ch. 253, § 133; 1989, ch. 46, § 2; 1992, ch. 116, § 12; 2005, ch. 240, § 5; 2009, ch. 288, § 11.

10-11-133.1. Disclosure of third-party marketers; penalty.

A. The retirement board shall not make any investment, other than investments in publicly traded equities or publicly traded fixed-income securities, unless the recipient of the investment discloses the identity of any third-party marketer who rendered services on behalf of the recipient in obtaining the investment and also discloses the amount of any fee, commission or retainer paid to the third-party marketer for the services rendered.

B. Information disclosed pursuant to Subsection A of this section shall be included in the quarterly performance reports of the retirement board.

C. Any person who knowingly withholds information required by Subsection A of this section is guilty of a fourth degree felony and shall be punished by a fine of not more than twenty thousand dollars (\$20,000) or by imprisonment for a definite term not to exceed eighteen months or both.

D. As used in this section, "third-party marketer" means a person who, on behalf of an investment fund manager or other person seeking an investment from the fund and under a written or implied agreement, receives a fee, commission or retainer for such services from the person seeking an investment from the fund.

History: Laws 2009, ch. 152, § 2.

10-11-134. Survivor benefit fund; disposition.

A. The pensions being paid from the survivor benefit fund on June 30, 1987 shall thereafter be paid from the retirement reserve fund.

B. The actuarial present value of pensions being paid from the survivor benefit fund on June 30, 1987 shall be transferred from the survivor benefit fund to the retirement reserve fund.

C. Affiliated public employer contributions to the survivor benefit fund shall be discontinued effective the first full pay period after June 30, 1987.

D. Each affiliated public employer contributing to the survivor benefit fund as of June 30, 1987 shall have its equity in the survivor benefit fund credited toward future employer contributions. The amount of credit shall be transferred from the survivor benefit fund to the employer accumulation fund as credits are earned.

E. The association shall determine the equity of each affiliated public employer in the survivor benefit fund in proportion to contributions made during the year ended June 30, 1986 and the number of months the affiliated public employer has contributed to the survivor benefit fund. The determination shall be made after the provisions of Subsections A and B of this section have been implemented.

History: Laws 1987, ch. 253, § 134.

10-11-135. Funds not subject to process.

Except as provided in Sections 10-11-136 and 10-11-136.1 NMSA 1978, none of the money, pensions or other benefits mentioned in the Public Employees Retirement Act shall be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment or other legal process.

History: Laws 1987, ch. 253, § 135; 1989, ch. 125, § 1; 1990, ch. 49, § 14.

10-11-136. Division of funds as community property.

A court of competent jurisdiction, solely for the purposes of effecting a division of community property in a divorce or legal separation proceeding, may provide by appropriate order for a determination and division of a community interest in the pensions or other benefits provided for in the Public Employees Retirement Act. In so doing, the court shall fix the manner in which warrants shall be issued, may order direct payments to a person with a community interest in the pensions or other benefits, may require the election of a specific form of payment and designation of a specific survivor pension beneficiary, refund beneficiary or survivor pension beneficiary designated in accordance with Section 10-11-14.5 NMSA 1978 and may restrain the refund of accumulated member contributions. Payments made pursuant to such orders shall only be made when member contributions are refunded or a pension is payable in accordance with the provisions of the Public Employees Retirement Act. The court shall not alter the manner in which the amount of pensions or other benefits is calculated by the association or cause any increase in the actuarial present value of the pensions or other benefits to be paid by the association.

History: Laws 1987, ch. 253, § 136; 1991, ch. 149, § 2; 1993, ch. 160, § 7; 1995, ch. 115, § 3.

10-11-136.1. Legal process to satisfy child support obligations.

A court of competent jurisdiction, solely for the purposes of enforcing current or delinquent child support obligations, may provide by appropriate order for withholding amounts due in satisfaction of current or delinquent child support obligations from the pensions or other benefits provided for in the Public Employees Retirement Act and for payment of such amounts to third parties. The court shall not alter the manner in which the amount of pensions or other benefits is calculated by the association. The court shall not cause any increase in the actuarial present value of the pensions or other benefits to be paid by the association. Payments made pursuant to such orders shall only be made when member contributions are refunded or a pension is payable in accordance with the provisions of the Public Employees Retirement Act; in no case shall more money be paid out, either in a lump sum or in monthly benefits, of association funds in enforcement of current or delinquent child support obligations than would otherwise be payable at that time.

History: 1978 Comp., § 10-11-136.1, enacted by Laws 1989, ch. 125, § 2; 1993, ch. 160, § 8.

10-11-137. Insurance and banking laws not applicable.

None of the laws of this state regulating insurance or insurance companies or banking institutions shall apply to the association.

History: Laws 1987, ch. 253, § 137.

10-11-138. Gifts and bequests.

The retirement board is authorized and empowered to receive donations, gifts and bequests and credit them to the income fund.

History: Laws 1987, ch. 253, § 138.

10-11-139. Repealed.

10-11-140. Repealed.

10-11-141. Purchase of service credit.

An affiliated public employer that assumes a firefighting function previously provided by the United States department of energy may, at the time of the assumption of the firefighting function, provide credited service for retirement board purposes to any employees who were previously employed by a firefighting unit of the United States department of energy at the Los Alamos area office in connection with the assumed firefighting function or were previously employed as security inspectors in a protective

force of the United States department of energy at the Los Alamos area office. The credited service may be provided by the affiliated public employer subject to the following conditions:

A. the employee shall pay to the retirement board the difference between the actuarial present value of association benefits likely to be paid the employee computed with and without the United States department of energy service;

B. the employee, within one year of the assumption of the governmental function, irrevocably forfeits all rights based upon employee contributions in and to the immediate vested or nonvested retirement benefits under the retirement program of the United States department of energy in which the employee was participating immediately prior to the assumption of the governmental function;

C. the payments made under Subsections A and B of this section shall be made in a lump sum. The employee may purchase service credit equivalent to the employee's service in a firefighting unit of the United States department of energy at the Los Alamos area office or as a security inspector or in a protective force of the United States department of energy at the Los Alamos area office. The employee shall make a written election concerning payment and payment shall be made not later than December 1, 1998, and any election made thereafter shall be void; and

D. the amount of service credit purchased pursuant to this section shall not exceed five years.

History: Laws 1993, ch. 29, § 1; 1994, ch. 128, § 16; 1998, ch. 18, § 1.

10-11-142. Notice of eligibility and changes in benefits.

The association shall give written notice, to the member's last known address of record, to a member when:

A. the member meets the minimum age and service requirements for normal retirement pursuant to the coverage plan applicable to the member; or

B. when a change has been made, by law or rule, to a retirement requirement that applied to the member prior to the change or to the amount of normal retirement pension for which the member would have been eligible prior to the change.

History: Laws 2009, ch. 158, § 1.

10-11-143. Contribution rate reductions; coverage plan funded ratio.

A. Prior to May 1 of each year, the retirement board shall certify to the association the coverage plan funded ratio for each coverage plan as of June 30 of the preceding calendar year.

B. If a certified coverage plan funded ratio is greater than or equal to eighty percent pursuant to Subsection A of this section, the retirement board shall certify to the association the projected funded ratio of the coverage plan, including any potential contribution rate reductions, for July 1 of the next succeeding fiscal year.

C. If the projected coverage plan funded ratio, calculated pursuant to Subsection B of this section, is equal to or greater than:

(1) eighty percent and less than ninety percent, the employer and employee contribution rates for the coverage plan shall each be reduced by five-tenths percent in the next fiscal year;

(2) ninety percent and less than one hundred percent, the employer and employee contribution rates for the coverage plan shall each be reduced by one percent in the next fiscal year; or

(3) one hundred percent, the employer and employee contribution rates for the coverage plan shall each be reduced by two percent in the next fiscal year.

D. The percentage of the employer and employee contribution shall not be reduced to less than the employer and employee contribution rates in effect on June 30, 2020.

History: Laws 2020, ch. 11, § 62.

ARTICLE 11A

Volunteer Firefighters Retirement

10-11A-1. Short title.

Chapter 10, Article 11A NMSA 1978 may be cited as the "Volunteer Firefighters Retirement Act".

History: Laws 1983, ch. 263, § 1; 2003, ch. 370, § 1.

10-11A-2. Definitions.

As used in the Volunteer Firefighters Retirement Act:

A. "association" means the public employees retirement association;

B. "board" means the retirement board of the association;

C. "fire department" means a fire department with volunteer members that is certified by the state fire marshal's office;

D. "fund" means the volunteer firefighters retirement fund; and

E. "member" means a volunteer nonsalaried firefighter who is listed as an active member on the rolls of a fire department and whose first year of service credit was accumulated during or after the year the member attained the age of sixteen. A volunteer firefighter who receives reimbursement for personal out-of-pocket costs shall not be considered a salaried firefighter.

History: Laws 1983, ch. 263, § 2; 2003, ch. 370, § 2; 2009, ch. 262, § 1; 2020, ch. 9, § 25.

10-11A-3. Volunteer firefighters retirement fund; creation; transfer of funds from the fire protection fund.

A. There is created the "volunteer firefighters retirement fund" in the state treasury. All annuities and benefits in lieu of annuities shall be paid from the fund as provided in the Volunteer Firefighters Retirement Act.

B. Beginning in fiscal year 1998, the state treasurer shall transfer annually on or before the last day of July seven hundred fifty thousand dollars (\$750,000) plus an additional two hundred fifty thousand dollars (\$250,000) for fiscal year 1998 plus an additional two hundred fifty thousand dollars (\$250,000) for fiscal year 1999 plus an additional five hundred thousand dollars (\$500,000) for fiscal year 2000 from the fire protection fund to the credit of the volunteer firefighters retirement fund.

History: Laws 1983, ch. 263, § 3; 1996, ch. 8, § 1; 1997, ch. 150, § 1.

10-11A-4. Administration of the Volunteer Firefighters Retirement Act, program and funds by the board; annual actuarial evaluation.

A. The provisions of the Volunteer Firefighters Retirement Act and the volunteer firefighters retirement program authorized under that act shall be administered by the board. The provisions of law relating to the administration and investment of retirement funds administered by the board shall apply to all funds transferred and paid into the fund. In its administration of the volunteer firefighters retirement program, the board is authorized to promulgate rules and regulations.

B. The board shall provide for an annual actuarial evaluation of the fund and shall make recommendations to the legislature for any changes necessary to maintain the actuarial soundness of the fund.

C. The association shall remove a member's information file from the association's active database and enter it into an inactive database if qualifying documentation for the member has not been provided to the association for five consecutive years. A member's information file that has been entered into an inactive database shall not be included in the board's annual actuarial evaluation of the fund. The association shall return a member's information file to the association's active database if the association receives new qualifying documentation for the member.

History: Laws 1983, ch. 263, § 4; 2009, ch. 262, § 2.

10-11A-5. Retirement benefits; eligibility.

A. Any member who attains the age of fifty-five years and has twenty-five years or more of service credit shall be eligible to receive a retirement annuity of two hundred fifty dollars (\$250), payable monthly from the fund during the remainder of the member's life.

B. Any member who attains the age of fifty-five years and has at least ten but less than twenty-five years or more of service credit shall be eligible to receive a retirement annuity of one hundred twenty-five dollars (\$125), payable monthly from the fund during the remainder of the member's life.

C. Any member who ceases to be a volunteer nonsalaried firefighter after completing at least ten but less than twenty-five years of service credit is eligible to receive upon attaining the age of fifty-five years a retirement annuity of one hundred twenty-five dollars (\$125), payable monthly from the fund during the remainder of the member's life.

D. Any member who ceases to be a volunteer nonsalaried firefighter after completing twenty-five years of service credit is eligible to receive upon attaining the age of fifty-five years a retirement annuity of two hundred fifty dollars (\$250), payable monthly from the fund during the remainder of the member's life.

E. Any member who qualifies for and receives a retirement annuity pursuant to this section may continue as an active member on the rolls of a fire department. However, such member shall not accrue additional service credit for the purpose of increasing the amount of the member's retirement annuity.

History: Laws 1983, ch. 263, § 5; 2009, ch. 262, § 3; 2013, ch. 79, § 1.

10-11A-6. Determination of service credit.

A. A member may claim one year of service credit for each year in which a fire department certifies that the member:

(1) attended fifty percent of all scheduled fire drills for which the fire department held the member responsible to attend;

(2) attended fifty percent of all scheduled business meetings for which the fire department held the member responsible to attend; and

(3) participated in at least fifty percent of all emergency response calls for which the fire department held the member responsible to attend.

B. The chief of each fire department shall submit to the association by March 31 of each year documentation of the qualifications of each member for the preceding calendar year; provided that the chief shall:

(1) submit the documentation on forms provided by the association;

(2) acknowledge the truth of the records under oath before a notary public; and

(3) have the notarized forms signed by the mayor, if distributions from the fire protection fund for the fire department are made to an incorporated municipality, or the chair of the county commission, if distributions from the fire protection fund for the fire department are made to a county fire district.

C. For service credit that has been earned, but not credited pursuant to Subsection B of this section, a member may post or adjust service credit earned for not more than the two preceding calendar years; provided that the member shall:

(1) file with the association a completed "Corrected Qualification Record" or "Adjusted Qualification Record" as prescribed by the association;

(2) acknowledge the truth of the records under oath before a notary public; and

(3) have the notarized forms signed by the mayor, if distributions from the fire protection fund for the fire department are made to an incorporated municipality, or the chair of the county commission, if distributions from the fire protection fund for the fire department are made to a county fire district.

D. Prior to April 1, 2020, for service credit that has been earned, but not credited pursuant to Subsection B of this section, a member may post or adjust service credit earned for one or more years beginning on or after January 1, 1984; provided that the member shall:

(1) file with the association a completed "Corrected Qualification Record" or "Adjusted Qualification Record" as prescribed by the association;

(2) acknowledge the truth of the records under oath before a notary public;
and

(3) have the notarized forms signed by the mayor or city manager, if distributions from the fire protection fund for the fire department are made to an incorporated municipality, or the chair of the board of county commissioners, if distributions from the fire protection fund for the fire department are made to a county fire district.

E. The association may request the state fire marshal's office to verify member qualifications submitted to the association.

History: Laws 1983, ch. 263, § 6; 1997, ch. 150, § 2; 2005, ch. 119, § 1; 2009, ch. 262, § 4; 2015, ch. 67, § 1; 2019, ch. 240, § 1; 2020, ch. 9, § 26.

10-11A-7. Retirement annuity; surviving beneficiary.

A member may designate a spouse or dependent child as a beneficiary. In the event a retirement annuitant dies, the surviving beneficiary shall receive an annuity equal to two-thirds of the retirement annuity being paid to the retirement annuitant at the time of death; provided that the annuity paid to a beneficiary spouse shall cease upon the surviving spouse's marriage or death and the annuity paid to a beneficiary dependent child shall cease upon the child reaching eighteen years of age or upon the child's death, whichever comes first.

History: Laws 1983, ch. 263, § 7; 2009, ch. 262, § 5.

10-11A-8. Retroactivity; application of 2003 law.

A. The change in law made by Laws 2003, Chapter 370, Section 2 eliminating a maximum age for a volunteer nonsalaried firefighter to establish a first year of service credit under the Volunteer Firefighters Retirement Act shall apply to a volunteer nonsalaried firefighter who was listed as an active member on the rolls of a fire department before the effective date of Laws 2003, Chapter 370, Section 2.

B. A volunteer nonsalaried firefighter who retired before the effective date of Laws 2003, Chapter 370, Section 2 shall be entitled to receive retirement benefits under the Volunteer Firefighters Retirement Act if otherwise qualified under that act.

History: Laws 2009, ch. 262, § 6.

ARTICLE 11B

Firefighters' Survivors Supplement Benefits Act

10-11B-1. Short title.

Sections 1 through 5 of this act may be cited as the "Firefighters' Survivors Supplemental Benefits Act".

History: Laws 2007, ch. 149, § 1.

10-11B-2. Findings; purpose.

The legislature finds that firefighters throughout the state risk their lives daily to protect the residents of New Mexico. The legislature further finds that when firefighters are killed in the line of duty, their immediate families can suffer grievously, both emotionally and economically. To recognize the substantial public safety benefits conferred by firefighters, and in consideration of the sacrifices undertaken by these individuals and their families for the residents of New Mexico, it is the purpose of the Firefighters' Survivors Supplemental Benefits Act to ensure that certain supplemental death benefits accrue to the spouses and surviving children, or parents if there are no surviving children or spouse, of firefighters killed in the line of duty.

History: Laws 2007, ch. 149, § 2.

10-11B-3. Definitions.

As used in the Firefighters' Survivors Supplemental Benefits Act:

A. "firefighter" means any full- or part-time member or a volunteer member of a fire department that is part of or administered by the state or any political subdivision of the state and any red-carded firefighter trained in wildland firefighting skills and hired by the state of New Mexico; and

B. "fund" means the firefighters' survivors fund.

History: Laws 2007, ch. 149, § 3.

10-11B-4. Firefighters' survivors fund created.

The "firefighters' survivors fund" is created in the state treasury and shall be administered by the state fire marshal. The fund shall consist of all gifts, donations and bequests of money to the fund as well as any appropriations and distributions made to the fund. Earnings from investment of the fund shall be credited to the fund. Money in the fund is appropriated to the state fire marshal for the purpose of paying death benefits pursuant to the Firefighters' Survivors Supplemental Benefits Act and shall be paid out only upon warrants issued by the secretary of finance and administration pursuant to vouchers signed by the state fire marshal. Any unexpended or unencumbered balance remaining in the fund at the end of any fiscal year shall not revert.

History: Laws 2007, ch. 149, § 4.

10-11B-5. Firefighters' survivors supplemental benefits; review committee; determination; payment.

A. There is created the "firefighters' survivors supplemental death benefits review committee". The committee shall consist of the attorney general or the attorney general's designee and the fire services council.

B. The firefighters' survivors supplemental death benefits review committee shall determine whether a firefighter has been killed in the line of duty and advise the state fire marshal of that determination. In addition to any other death benefits provided by law, the surviving spouse or children shall be paid one million dollars (\$1,000,000) as supplemental death benefits whenever a firefighter is killed in the line of duty. The benefits shall be paid from the fund.

C. The benefits shall be paid entirely to the surviving spouse. If there is no surviving spouse, the benefits shall be distributed in pro rata shares to all surviving children. If there are no surviving children or spouse, benefits shall be distributed to the surviving parents of the firefighter.

History: Laws 2007, ch. 149, § 5; 2014, ch. 17, § 1; 2020, ch. 9, § 27; 2023, ch. 111, § 1.

ARTICLE 12 Judicial Retirement (Repealed.)

10-12-1 to 10-12-13. Repealed.

10-12-14. Repealed.

10-12-15 to 10-12-18. Repealed.

ARTICLE 12A Magistrate Retirement (Repealed.)

10-12A-1 to 10-12A-13. Repealed.

ARTICLE 12B Judicial Retirement

10-12B-1. Short title.

Chapter 10, Article 12B NMSA 1978 may be cited as the "Judicial Retirement Act".

History: Laws 1992, ch. 111, § 1; 2011, ch. 178, § 7.

10-12B-2. Definitions.

As used in the Judicial Retirement Act:

A. "association" means the public employees retirement association provided for in the Public Employees Retirement Act [Chapter 10, Article 11 NMSA 1978];

B. "board" means the retirement board provided for in the Public Employees Retirement Act;

C. "dependent child" means a natural or adopted child who is physically or mentally incapable of financial self-support, regardless of age;

D. "educational retirement system" means the retirement system provided for in the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978];

E. "effective date of retirement" means the first day of the month following the month in which the member met all requirements for retirement;

F. "final average salary" means the amount that is one-sixtieth of the greatest aggregate amount of salary paid a member for sixty consecutive, but not necessarily continuous, months of service credit;

G. "former member" means a person no longer in office who was previously covered pursuant to the provisions of Sections 10-12-1 through 10-12-18 NMSA 1978, but who has not retired pursuant to the provisions of the Judicial Retirement Act and who has received a refund of member contributions pursuant to the provisions of Sections 10-12B-1 through 10-12B-19 NMSA 1978;

H. "fund" means the judicial retirement fund;

I. "judge" means a judge of the metropolitan court, district court or court of appeals of New Mexico;

J. "justice" means a justice of the supreme court of New Mexico;

K. "member" means any judge or justice who is in office and covered pursuant to the provisions of the Judicial Retirement Act, or any person no longer in office who was previously a judge or justice covered pursuant to the provisions of the Judicial Retirement Act, who has not retired and who has not received a refund of member contributions from the fund;

L. "member contributions" means the amounts deducted from the salary of a member and credited to the member's individual account, together with interest, if any, credited thereto;

M. "minor child" means a natural or adopted child who has not reached his eighteenth birthday and who has not been emancipated by marriage or otherwise;

N. "pension" means a series of monthly payments to a retired member or survivor beneficiary pursuant to the provisions of the Judicial Retirement Act;

O. "refund beneficiary" means a supplemental needs trust or a natural person designated by the member, in writing in the form prescribed by the association, as the trust or person that would be refunded the member's accumulated member contributions payable if the member dies and no survivor pension is payable, or that would receive the difference between pension paid and accumulated member contributions if the retired member dies before receiving in pension payments the amount of the accumulated member contributions;

P. "retire" means to:

(1) terminate employment with all employers covered by any state system or the educational retirement system; and

(2) receive a pension from one state system or the educational retirement system;

Q. "retired member" means a person who has met all requirements for retirement and who is receiving a pension from the fund;

R. "salary" means the base salary or wages paid a member, including longevity pay, for personal services rendered; provided that salary does not include overtime pay; allowances for housing, clothing, equipment or travel; payments for unused sick leave, unless the unused sick leave payment is made through continuation of the member on the regular payroll for the period represented by that payment; and any other form of remuneration not specifically designated by law as included in salary pursuant to the provisions of the Judicial Retirement Act;

S. "state system" means the retirement programs provided pursuant to the provisions of the Public Employees Retirement Act [Chapter 10, Article 11 NMSA 1978], the Magistrate Retirement Act [Chapter 10, Article 12C NMSA 1978] and the Judicial Retirement Act;

T. "supplemental needs trust" means a valid third-party irrevocable trust that is authorized by the federal Social Security Act, as amended, for the sole benefit and the lifetime of a trust beneficiary who is disabled and is created for the purpose of providing, accounting for or receiving supplemental assets that do not supplant, impair or diminish

any benefits or assistance of any federal, state or other government entity for which the beneficiary would otherwise be eligible;

U. "surviving spouse" means the spouse to whom the member was married at the time of the member's death;

V. "survivor beneficiary" means a supplemental needs trust or a natural person that receives a pension or that has been designated to be paid a pension as a result of the death of a member or retired member; and

W. "years of service" means a period of time beginning on the date a person commences to hold office as a judge or justice because of appointment or election and ending on the date a person ceases to hold office as a judge or justice because of expiration of the judge's or justice's term, voluntary resignation, death or disability and shall include any fractions of years of service.

History: Laws 1992, ch. 111, § 2; 2003, ch. 81, § 1; 2014, ch. 35, § 2; 2023, ch. 156, § 5.

10-12B-3. Judicial retirement fund established; administration of fund; accounting funds.

A. There is established in the state treasury the "judicial retirement fund". The fund is comprised of money received from docket and jury fees of metropolitan courts, district courts, the court of appeals and the supreme court, employer and employee contributions and any investment earnings on fees and contributions. The board is the trustee of the fund and shall administer and invest the fund. Investment of the fund shall be conducted pursuant to the provisions of the Public Employees Retirement Act [Chapter 10, Article 11 NMSA 1978]. The provisions of the Judicial Retirement Act shall be administered by the board. The board is authorized to promulgate rules. Expenses related to the investment of the fund and administration of the Judicial Retirement Act shall be paid from the fund.

B. For purposes of this section, the accounting funds shall be known as the "member contribution fund", "employer's accumulation fund", "retirement reserve fund" and "income fund". The maintenance of separate accounting funds shall not require the actual segregation of the assets of the fund.

C. The accounting funds provided for in this section are trust funds and shall be used only for the purposes provided for in the Judicial Retirement Act.

D. The member contribution fund is the accounting fund in which shall be accumulated contributions of members and from which shall be made refunds and transfers of accumulated member contributions as provided in the Judicial Retirement Act. The member's court shall cause member contributions to be deducted from the salary of the member and shall remit the deducted member contributions to the

association in accordance with procedures and schedules established by the association. The association may assess an interest charge and a penalty charge on any late remittance. Each member shall be deemed to consent and agree to the deductions made and provided for in this section. Contributions by members shall be credited to the members' individual accounts in the member contribution fund. A member's accumulated member contributions shall be transferred to the retirement reserve fund when a pension becomes payable.

E. The employer's accumulation fund is the accounting fund in which shall be accumulated the contributions paid by the state through the member's court. The state, through the member's court, shall remit its contributions to the association in accordance with procedures and schedules established by the association. The board may assess an interest charge and a penalty charge on any late remittance.

F. The retirement reserve fund is the accounting fund from which shall be paid all pensions to retired members and survivor beneficiaries and all residual refunds to refund beneficiaries of retired members and survivor beneficiaries.

G. Each year, following receipt of the report of the annual actuarial valuation, the excess, if any, of the reported actuarial present value of pensions being paid and likely to be paid to retired members and survivor beneficiaries and residual refunds likely to be paid to refund beneficiaries of retired members and survivor beneficiaries over the balance in the retirement reserve fund shall be transferred to the retirement reserve fund from the employer's accumulation fund.

H. The income fund is the accounting fund to which shall be credited all interest, dividends, rents and other income from investments of the fund, all gifts and bequests, all unclaimed member contributions and all other money the disposition of which is not specifically provided for in the Judicial Retirement Act. Expenses related to the administration of the Judicial Retirement Act shall be paid for from the income fund.

I. The association shall at least annually distribute all or a portion of the balance in the income fund to the member contribution fund, the retirement reserve fund and the employer's accumulation fund. Distribution rates shall be determined by the board and may vary for the respective accounting funds.

History: Laws 1992, ch. 111, § 3; 1995, ch. 115, § 6; 2003, ch. 81, § 2.

10-12B-4. Membership.

Effective July 1, 2014, every judge or justice while in office shall become a member and shall be subject to the provisions of the Judicial Retirement Act; provided, however, that a judge or justice who, prior to July 1, 2014, applied for and received an exemption from membership, shall not become a member until such exemption ends. A judge or justice who is retired under any state system or the educational retirement system shall:

A. pay the applicable member contributions, and the state, through the member's court, shall pay the applicable employer contributions as provided pursuant to the Judicial Retirement Act; and

B. not accrue service credit, and shall not be eligible to purchase service credit nor to retire pursuant to the Judicial Retirement Act.

History: Laws 1992, ch. 111, § 4; 2014, ch. 35, § 3.

10-12B-5. Service credit; reinstatement of forfeited service; prior service; military service.

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

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

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

D. A member who during a term of office enters a uniformed service of the United States shall be given service credit for periods of service in the uniformed services subject to the following conditions:

(1) the member returns to office within ninety days following termination of the period of intervening service in the uniformed services or the affiliated employer certifies in writing to the association that the member is entitled to reemployment rights under the federal Uniformed Services Employment and Reemployment Rights Act of 1994;

(2) the member retains membership in the association during the period of service in the uniformed services;

(3) free service credit shall not be given for periods of intervening service in the uniformed services following voluntary reenlistment. Service credit for such periods shall only be given after the member pays the association the sum of the contributions that the person would have been required to contribute had the person remained continuously employed throughout the period of intervening service following voluntary reenlistment, which payment shall be made during the period beginning with the date of reemployment and whose duration is three times the period of the person's intervening service in the uniformed services following voluntary reenlistment, not to exceed five years;

(4) service credit shall not be given for periods of intervening service in the uniformed services that are used to obtain or increase a benefit from another state system or the retirement program provided under the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978]; and

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

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

E. A member who entered uniformed service of the United States may purchase service credit for periods of active duty in the uniformed services, subject to the following conditions:

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

(2) the member has the applicable minimum number of years of service credit accrued according to the provisions of the Judicial Retirement Act;

(3) the aggregate amount of service credit purchased pursuant to the provisions of this subsection does not exceed five years, reduced by any period of service credit acquired for military service under any other provision of the Judicial Retirement Act;

(4) service credit may not be purchased for periods of service in the uniformed services that are used to obtain or increase a benefit from another retirement program; and

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

F. The purchase cost for each year of service credit purchased pursuant to the provisions of this section shall be the increase in the actuarial present value of the

pension of the member under the Judicial Retirement Act as a consequence of the purchase, as determined by the association. Full payment shall be made in a single lump-sum amount in accordance with procedures established by the board. Except as provided in Subsection G of this section, seventy-five percent of the purchase cost shall be considered to be employer contributions and shall not be refunded to the member in the event of cessation of membership.

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

H. At any time prior to retirement, a member may purchase service credit in monthly increments, subject to the following conditions:

(1) the member has the applicable minimum number of years of service credit acquired as a result of personal service rendered under the Judicial Retirement Act;

(2) the aggregate amount of service credit purchased pursuant to this subsection does not exceed one year;

(3) the member pays full actuarial present value of the amount of the increase in the member's pension as a consequence of the purchase, as determined by the association;

(4) the member pays the full cost of the purchase within sixty days of the date the member is informed of the amount of the payment; and

(5) the purchase of service credit under this subsection cannot be used to exceed the pension maximum.

History: Laws 1992, ch. 111, § 5; 1997, ch. 189, § 12; 2007, ch. 133, § 1; 2014, ch. 35, § 4.

10-12B-6. Refund of contributions.

A. If a member leaves office, the member may, with the written consent of the member's spouse, if any, withdraw the member's accumulated member contributions upon making written request in a form prescribed by the association. Upon written request of the member in the form prescribed by the association, a refund of member contributions may be made by a trustee-to-trustee transfer of the contributions from the member contribution fund directly to another qualified plan as allowed by the Internal Revenue Code of 1986. Withdrawal of member contributions shall result in forfeiture of the service credit accrued for the period during which the contributions were made.

B. A member shall, upon commencement of membership, designate a refund beneficiary who shall receive the refund of the member contributions, plus interest, if the member dies and no survivor pension is payable. If the member is married at the time of designation, written spousal consent shall be required if the designated refund beneficiary is a person other than the spouse or a supplemental needs trust to which the spouse is a beneficiary. Marriage subsequent to the designation shall automatically revoke a previous designation, and the spouse shall become the refund beneficiary unless or until another designation is filed with the association. Divorce subsequent to the designation shall automatically revoke designation of the former spouse as refund beneficiary if no designation has been filed, and the refund shall be paid to the deceased member's estate unless the member filed a designation of refund beneficiary subsequent to the divorce. The refund shall be paid to the refund beneficiary named in the most recent designation of refund beneficiary on file with the association unless that beneficiary is deceased or otherwise terminated. If there is not a living or operating refund beneficiary named in the most recent designation of refund beneficiary on file with the association, the deceased member's accumulated member contributions shall be paid to the estate of the deceased member.

History: Laws 1992, ch. 111, § 6; 1995, ch. 115, § 7; 2023, ch. 156, § 6.

10-12B-7. Funds not subject to legal process; division of funds as community property; legal process to satisfy child support obligations.

A. Except as provided in Subsections B and C of this section, none of the money, pensions or other benefits provided pursuant to the provisions of the Judicial Retirement Act shall be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment or other legal process.

B. A court of competent jurisdiction, solely for the purposes of effecting a division of community property in a divorce or legal separation proceeding, may provide by appropriate order for a determination and division of a community interest in the pensions or other benefits provided for in the Judicial Retirement Act. The court shall fix the manner in which warrants are issued, may order direct payments to a person with a community interest in the pensions or other benefits, may require the election of a specific form of payment and designation of a specific survivor beneficiary or refund beneficiary and may restrain the refund of accumulated member contributions. Payments made pursuant to such orders shall only be made when member contributions are refunded or a pension is payable in accordance with the provisions of the Judicial Retirement Act. The court shall not alter the manner in which the amount of pensions or other benefits are calculated by the association or cause any increase in the actuarial present value of the pensions or other benefits to be paid by the association.

C. A court of competent jurisdiction, solely for the purposes of enforcing current or delinquent child-support obligations, may provide by appropriate order for withholding

amounts due in satisfaction of current or delinquent child-support obligations from the pensions or other benefits provided for in the Judicial Retirement Act and for payment of such amounts to third parties. The court shall not alter the manner in which the amount of pensions or other benefits are calculated by the association. The court shall not cause any increase in the actuarial present value of the pensions or other benefits to be paid from the fund. Payments made pursuant to such orders shall only be made when member contributions are refunded or when a pension is payable in accordance with the provisions of the Judicial Retirement Act. In no case shall more money be paid out, either in a lump sum or in monthly pension payments, of the fund in enforcement of current or delinquent child-support obligations than would otherwise be payable at that time.

History: Laws 1992, ch. 111, § 7; 1995, ch. 115, § 8.

10-12B-8. Age and service credit requirements for normal retirement.

A. For an individual who initially became a member prior to July 1, 2005, the age and service credit requirements for retirement provided for in the Judicial Retirement Act are:

- (1) age sixty-five years or older and five or more years of service credit; or
- (2) age sixty years or older and fifteen or more years of service credit.

B. For an individual who initially became a member after June 30, 2005 but on or before June 30, 2014, the age and service credit requirements for retirement provided for in the Judicial Retirement Act are:

- (1) age sixty-five years or older and five or more years of service credit; or
- (2) age fifty-five years or older and sixteen or more years of service credit.

C. For an individual who initially became a member on or after July 1, 2014, the age and service requirements provided for in the Judicial Retirement Act are:

- (1) age sixty-five years and eight or more years of service credit; or
- (2) age sixty years and fifteen or more years of service credit.

D. Except for a member who is retired under any state system or the educational retirement system, if a member leaves office for any reason, other than removal pursuant to Article 6, Section 32 of the constitution of New Mexico, before meeting the age and service credit requirements for retirement pursuant to the provisions of this section and if that member leaves the member contributions on deposit in the fund, that member may apply for retirement when that member meets the age and service credit

requirements for retirement pursuant to the provisions of the Judicial Retirement Act or provisions of the Public Employees Retirement Reciprocity Act [Chapter 10, Article 13A NMSA 1978].

E. No member shall be eligible to receive a pension pursuant to the provisions of the Judicial Retirement Act while still in office.

History: Laws 1992, ch. 111, § 8; 2005, ch. 246, § 1; 2014, ch. 35, § 5.

10-12B-9. Amount of pension.

A. For a judge or justice who occupied such an office prior to July 1, 1980, but who had ceased to hold such an office prior to that date and who elected to be excluded from the provisions of the Judicial Retirement Act; or a judge or justice who occupied such an office on July 1, 1980, but who elected to be covered under the provisions of the retirement plan in effect at that time, the amount of monthly pension is an amount equal to one-twelfth of:

seventy-five percent of salary received during last year in office prior to retirement	X	number of years of service, not exceeding ten years, divided by ten.
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B. For a judge or justice who initially became a member before July 1, 2005 and who initially occupied such an office after July 1, 1980; or a judge or justice who occupied such an office on or before July 1, 1980 and who has elected to be covered pursuant to the provisions of the Judicial Retirement Act, the amount of monthly pension is an amount equal to the sum of:

(1) for service credit earned on or before June 30, 2014, an amount equal to one-twelfth of:

seventy-five percent of salary received during last year in office prior to retirement	X .05 X	(number of years of service, not exceeding fifteen years, plus five years); and
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(2) for service credit earned on and after July 1, 2014, an amount equal to one-sixtieth of the greatest aggregate amount of salary received for sixty consecutive, but not necessarily continuous, months in office multiplied by the product of three and one-half percent times the number of years of service credit.

C. For a judge or justice who initially became a member after June 30, 2005 but on or before June 30, 2014, the amount of monthly pension is an amount equal to the sum of:

(1) for service credit earned on or before June 30, 2014, an amount equal to one-twelfth of the salary received during the last year in office prior to retirement multiplied by the product of three and seventy-five hundredths percent times the sum of the number of years of service; and

(2) for service credit earned on and after July 1, 2014, an amount equal to one-sixtieth of the greatest aggregate amount of salary received for sixty consecutive, but not necessarily continuous, months in office multiplied by the product of three and one-half percent times the number of years of service credit.

D. For a judge or justice who initially became a member on or after July 1, 2014, the amount of monthly pension under form of payment A is an amount equal to one-sixtieth of the greatest aggregate amount of salary received for sixty consecutive, but not necessarily continuous, months in office multiplied by the product of three and one-fourth percent times the number of years of service.

E. The amount of pension under form of payment A for a pension calculated pursuant to Subsection D of this section shall not exceed eighty-five percent of one-sixtieth of the greatest aggregate amount of salary received for sixty consecutive, but not necessarily continuous, months prior to the member leaving office.

F. The amount of pension payable for a pension calculated pursuant to Subsection A, B or C of this section shall not exceed eighty-five percent of one-sixtieth of the greatest aggregate amount of salary received for sixty consecutive, but not necessarily continuous, months prior to the member leaving office. A pension benefit determined pursuant to this subsection shall not be less than the benefit earned as of June 30, 2014.

History: Laws 1992, ch. 111, § 9; 2005, ch. 246, § 2; 2014, ch. 35, § 6.

10-12B-10. Member contributions; tax treatment.

A. On and after July 1, 2014, members, while in office, shall contribute ten and one-half percent of salary to the member contribution fund.

B. Upon implementation, the state, acting as employer of members covered pursuant to the provisions of the Judicial Retirement Act, shall, solely for the purpose of compliance with Section 414(h) of the Internal Revenue Code of 1986, pick up, for the purposes specified in that section, member contributions required by this section for all annual salary earned by the member. Member contributions picked up pursuant to the provisions of this section shall be treated as employer contributions for purposes of determining income tax obligations under the Internal Revenue Code of 1986; however,

such picked-up member contributions shall be included in the determination of the member's gross annual salary for all other purposes under federal and state laws. Member contributions picked up pursuant to the provisions of this section shall continue to be designated member contributions for all purposes of the Judicial Retirement Act and shall be considered as part of the member's annual salary for purposes of determining the amount of the member's contribution. The provisions of this section are mandatory, and the member shall have no option concerning the pickup or concerning the receipt of the contributed amounts directly instead of having the amounts paid by the employer to the retirement system. Implementation occurs upon authorization by the board. In no event may implementation occur other than at the beginning of a pay period applicable to the member.

History: Laws 1992, ch. 111, § 10; 2004, ch. 101, § 1; 2005, ch. 246, § 3; 2009, ch. 127, § 7; 2011, ch. 178, § 8; 2014, ch. 35, § 7.

10-12B-11. Employer contributions.

A. The member's court shall contribute fifteen percent of salary to the fund for each member in office.

B. Thirty-eight dollars (\$38.00) from each civil case docket fee paid in the district court, twenty-five dollars (\$25.00) from each civil docket fee paid in metropolitan court and ten dollars (\$10.00) from each jury fee paid in metropolitan court shall be paid by the court clerk to the employer's accumulation fund.

History: Laws 1992, ch. 111, § 11; 2003, ch. 81, § 3; 2005, ch. 246, § 4; 2009, ch. 127, § 8; 2011, ch. 178, § 9; 2014, ch. 35, § 8.

10-12B-12. Early retirement.

A. Any member who initially became a member prior to July 1, 2005 and has not less than eighteen years of service credit may elect to retire at any time between age fifty and age sixty and receive a monthly pension that is one-twelfth of the following formula:

Salary received during the last full year in office prior to retirement	$X.7 + (.005 X$	Number of years between age fifty and the age at retirement).
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B. The provisions of the Public Employees Retirement Reciprocity Act [Chapter 10, Article 13A NMSA 1978] and the provisions of the Judicial Retirement Act regarding cost-of-living adjustments shall apply to the provisions of this section.

History: Laws 1992, ch. 111, § 12; 2005, ch. 246, § 5.

10-12B-13. Disability retirement pension.

A. A judge or justice with the applicable minimum number of years of service credit accrued pursuant to the provisions of the Judicial Retirement Act who becomes unable to carry out the duties of that office due to physical or mental disability shall, upon determination of the disability and relinquishment of office, receive a pension from the fund so long as the disability continues. Determination of disability shall be made by the board in accordance with the provisions of the Public Employees Retirement Act [Chapter 10, Article 11 NMSA 1978] and rules promulgated pursuant to that act.

B. The amount of the pension shall be calculated using the formula for normal retirement set out in Section 10-12B-9 NMSA 1978.

C. The applicable service credit requirement shall be waived if the board finds the disability to have been the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty as a judge or justice, and the amount of pension shall be computed as if the member had the applicable minimum number of years of service credit as a judge or justice.

History: Laws 1992, ch. 111, § 13; 2014, ch. 35, § 9.

10-12B-14. Survivor's pension.

For a member whose initial term of office began prior to July 1, 2014:

A. unless that member has designated a survivor beneficiary in accordance with Subsection B of this section, a survivor pension shall be paid for life to a member's or retired member's surviving spouse;

B. the member may designate, in writing in a form prescribed by the association, a survivor beneficiary to receive the survivor's pension described in this section. If the member is married, a designation of survivor beneficiary other than the member's spouse or a supplemental needs trust to which the spouse is a beneficiary may only be made with the written consent of the member's spouse. Marriage subsequent to a designation of survivor beneficiary shall automatically revoke the designation of survivor beneficiary. A designation of survivor beneficiary made pursuant to a court order issued under Section 10-12B-7 NMSA 1978 shall not require the consent of the member's spouse, if any, and shall not be revoked by the subsequent remarriage of the member. A designation of survivor beneficiary may be revoked by the member at any time prior to the member's retirement. If the member is married, a revocation of designation of survivor beneficiary may only be made with the written consent of the member's spouse;

C. if there is no surviving spouse and no designated survivor beneficiary or if the surviving spouse dies while there are still minor and dependent children of the member, the survivor's pension shall be paid to all minor and dependent children, if any, of the member, in equal shares, so long as each child remains a minor or dependent child. As

each child ceases to be a minor or dependent child, the number of shares shall be reduced and the amount payable to each remaining child increased proportionately so that the total survivor's pension remains unchanged as long as there is any such child;

D. the survivor's pension is equal to seventy-five percent of the member's pension;

E. survivor beneficiaries shall be eligible for other benefits provided pursuant to the provisions of the Judicial Retirement Act, including cost-of-living adjustments and continuation of group insurance benefits; and

F. if the member dies while receiving a disability retirement pension, the survivor beneficiary shall receive the survivor pension provided pursuant to the provisions of the Judicial Retirement Act.

History: Laws 1992, ch. 111, § 14; 2014, ch. 35, § 10; 2023, ch. 156, § 7.

10-12B-14.1. Election form of pension.

For a member whose initial term in office begins on or after July 1, 2014, except as otherwise provided in Section 10-12B-7 NMSA 1978:

A. the member may elect to have pension payments made under any one of the forms of payment provided in Section 10-12B-14.2 NMSA 1978. The election of form of payment and naming of survivor pension beneficiary shall be made on a form furnished by and filed with the association prior to the date the first pension payment is made. An election of form of payment may not be changed after the date the first pension payment is made. If the member is married, the association shall require the consent of the member's spouse to the election of the form of payment and any designation of survivor pension beneficiary before the election or designation is effective. Except as provided in Subsection C, D or E of this section, a named survivor pension beneficiary may not be changed after the date the first pension payment is made if form of payment B or C is elected. Except as otherwise provided in Section 10-12B-7 NMSA 1978, payment shall be made:

(1) under form of payment A if the member is not married at the time of retirement and if there is not a timely election of another form of payment; or

(2) under form of payment C with the member's spouse as survivor pension beneficiary if the member is married at the time of retirement and there is not a timely election of another form of payment;

B. the amount of pension under forms of payment B, C and D shall have the same actuarial present value, computed as of the effective date of the pension, as the amount of pension under form of payment A;

C. if the member is a retired member who is being paid a pension under form of payment B or C with the member's spouse or a supplemental needs trust to which the spouse is a beneficiary as the designated survivor pension beneficiary, the retired member may, upon becoming divorced from the named spouse and subject to an order of a court as provided for in Section 10-12B-7 NMSA 1978, elect to have future payments made under form of payment A;

D. if the member is retired and was previously being paid a pension under form of payment B or C but, because of the death of the designated survivor pension beneficiary or the death of the beneficiary of a supplemental needs trust or the termination of that trust, is currently receiving a pension under form of payment A, the retired member may exercise a one-time irrevocable option to designate another survivor pension beneficiary and may select either form of payment B or form of payment C; provided that:

(1) the amount of the pension under the form of payment selected shall be recalculated and have the same actuarial present value, computed on the effective date of the designation, as the amount of pension under form of payment A;

(2) the designation and the amount of the pension shall be subject to a court order as provided for in Section 10-12B-7 NMSA 1978; and

(3) the retired member shall pay one hundred dollars (\$100) to the board to defray the cost of determining the new pension amount; and

E. if the member is a retired member who is being paid a pension under form of payment B or C with a living or operating designated survivor pension beneficiary other than the retired member's spouse or former spouse or the supplemental needs trust of the retired member's spouse or former spouse, the retired member may exercise a one-time irrevocable option to deselect the designated beneficiary and elect to:

(1) designate another survivor pension beneficiary; provided that:

(a) the retired member shall not have an option to change from the current form of payment;

(b) the amount of the pension under the form of payment shall be recalculated and shall have the same actuarial present value, computed as of the effective date of the designation, as the amount of pension under form of payment A; and

(c) the retired member shall pay one hundred dollars (\$100) to the board to defray the cost of determining the new pension amount; or

(2) have future payments made under form of payment A.

History: 1978 Comp., § 10-12B-14.1, enacted by Laws 2014, ch. 35, § 11; 2023, ch. 156, § 8.

10-12B-14.2. Form of pension payment.

A. Straight life pension is form of payment A. The retired member is paid the pension for life under form of payment A. All payments stop upon the death of the retired member, except as provided in Subsection E of this section. The amount of pension is determined in accordance with the Judicial Retirement Act.

B. Life payments with full continuation to one survivor beneficiary is form of payment B. The retired member is paid a reduced pension for life under form of payment B. When the retired member dies, the designated survivor beneficiary is paid the full amount of the reduced pension until death or in the event that supplemental needs trust is the designated survivor beneficiary, the termination of that trust or the death of the beneficiary of that trust. If the designated survivor beneficiary or the beneficiary of a supplemental needs trust predeceases the retired member or if the supplemental needs trust terminates while the retired member is living, the amount of pension shall be changed to the amount that would have been payable had the retired member elected form of payment A.

C. Life payment with one-half continuation to one survivor beneficiary is form of payment C. The retired member is paid a reduced pension for life under form of payment C. When the retired member dies, the designated survivor beneficiary is paid one-half the amount of the reduced pension until death or in the event that a supplemental needs trust is the designated survivor beneficiary, the termination of that trust or the death of the beneficiary of that trust. If the designated survivor beneficiary or if the beneficiary of a supplemental needs trust predeceases the retired member or if the supplemental needs trust terminates while the retired member is living, the amount of pension shall be changed to the amount that would have been payable had the retired member elected form of payment A.

D. Life payments with temporary survivor benefits for children is form of payment D. The retired member is paid a reduced pension for life under form of payment D. When the retired member dies, each declared eligible child is paid a share of the reduced pension until death or age twenty-five years, whichever occurs first. The share is the share specified in writing and filed with the association by the retired member. If shares are not specified in writing and filed with the association, each declared eligible child is paid an equal share of the reduced pension. A redetermination of shares shall be made when the pension of any child terminates. An eligible child is a natural or adopted child of the retired member who is under age twenty-five years. A declared eligible child is an eligible child whose name has been declared in writing and filed with the association by the retired member at the time of election of form of payment D. The amount of pension shall be changed to the amount of pension that would have been payable had the retired member elected form of payment A upon there ceasing to be a declared eligible child during the lifetime of the retired member.

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

History: 1978 Comp., § 10-12B-14.2, enacted by Laws 2014, ch. 35, § 12; 2023, ch. 156, § 9.

10-12B-14.3. Death before retirement; survivor pension.

For a member whose initial term in office begins on or after July 1, 2014:

A. a survivor pension may be paid to certain persons related to or designated by a member who dies before normal or disability retirement if a written application for the pension, in the form prescribed by the association, is filed with the association by the potential survivor beneficiary or beneficiaries within one year of the death of the member. Applications may be filed on behalf of the potential survivor beneficiary or beneficiaries or by a person legally authorized to represent them;

B. if there is no designated survivor beneficiary and the board finds the death to have been the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty while in office, a survivor pension shall be payable to the eligible surviving spouse. The amount of the survivor pension shall be the greater of:

(1) the amount as calculated pursuant to the Judicial Retirement Act and applicable to the deceased member at the time of death as though the deceased member had retired the day preceding death under form of payment B using the actual amount of service credit attributable to the deceased member at the time of death; or

(2) fifty percent of the deceased member's final average salary;

C. a survivor pension shall also be payable to eligible surviving children if there is no designated survivor beneficiary and the retirement board finds the death to have been the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty while in office. The total amount of survivor pension payable for all eligible surviving children shall be either:

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

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

The total amount of survivor pension shall be divided equally among all eligible surviving children. If there is only one eligible child, the amount of pension shall be twenty-five percent of the deceased member's final average salary;

D. if the member had the applicable minimum number of years of service credit required for normal retirement, but the retirement board did not find the death to have been the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty while in office and there is no designated survivor beneficiary, a survivor pension shall be payable to the eligible surviving spouse. The amount of the survivor pension shall be the greater of:

(1) the amount as calculated under the Judicial Retirement Act applicable to the deceased member at the time of death as though the deceased member had retired the day preceding death under form of payment B using the total amount of actual service credit attributable to the deceased member at the time of death; or

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

E. if the member had the applicable minimum number of years of service credit required for normal retirement, but the retirement board did not find the death to have been the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty while in office and there is no designated survivor beneficiary, and if there is no eligible surviving spouse at the time of death, a survivor pension shall be payable to and divided equally among all eligible surviving children, if any. The total amount of survivor pension payable for all eligible surviving children shall be the greater of:

(1) the amount as calculated under the Judicial Retirement Act applicable to the deceased member at the time of death as though the deceased member had retired the day preceding death under form of payment B with the oldest eligible surviving child as the survivor beneficiary using the total amount of actual service credit attributable to the deceased member at the time of death; or

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

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

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

H. if there is no designated survivor beneficiary and there is no eligible surviving child, the eligible surviving spouse may elect to be refunded the deceased member's accumulated member contributions instead of receiving a survivor pension;

I. a member may designate a survivor beneficiary to receive a pre-retirement survivor pension, subject to the following conditions:

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

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

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

(4) if the member is divorced subsequent to the time of designation, any prior designation of the former spouse or a supplemental needs trust to which the spouse is a beneficiary as survivor beneficiary shall automatically be revoked upon the date of divorce; and

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

J. if there is a designated survivor beneficiary and the board finds the death to have been the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty while in office, a survivor pension shall be payable to the designated survivor beneficiary. The amount of the survivor pension shall be the greater of:

(1) the amount as calculated under the Judicial Retirement Act applicable to the deceased member at the time of death as though the deceased member had retired the day preceding death under form of payment B using the actual amount of service credit attributable to the member at the time of death; or

(2) fifty percent of the deceased member's final average salary;

K. if there is a designated survivor beneficiary, if the member had the applicable minimum number of years of service credit required for normal retirement and if the retirement board did not find the death to have been the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty while in office, a survivor pension shall be payable to the designated survivor beneficiary. The amount of the survivor pension shall be the greater of:

(1) the amount as calculated under the Judicial Retirement Act applicable to the deceased member at the time of death as though the deceased member had retired the day preceding death under form of payment B using the actual amount of service credit attributable to the member at the time of death; or

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

L. if all pension payments permanently terminate before there is paid an aggregate amount equal to the deceased member's accumulated member contributions at time of death, the difference between the amount of accumulated member contributions and the aggregate amount of pension paid shall be paid to the deceased member's refund beneficiary. If no refund beneficiary survives the survivor beneficiary, the difference shall be paid to the estate of the deceased member; and

M. for purposes of this section, "service credit" means only the service credit earned by a member during periods in office as a judge or justice.

History: 1978 Comp., § 10-12B-14.3, enacted by Laws 2014, ch. 35, § 13; 2023, ch. 156, § 10.

10-12B-15. Cost-of-living adjustment.

A qualified pension recipient is eligible for a cost-of-living adjustment payable pursuant to the provisions of the Judicial Retirement Act as follows:

A. beginning July 1, 2014 and continuing through June 30, 2016, there shall not be a cost-of-living adjustment applied to a pension payable pursuant to the Judicial Retirement Act; and

B. beginning on May 1, 2016 and no later than each May 1 thereafter:

(1) the board shall certify to the association the actuarial funded ratio of the fund as of June 30 of the preceding calendar year;

(2) if, pursuant to Paragraph (1) of this subsection, the certified funded ratio is greater than or equal to one hundred percent, the board shall next certify the projected funded ratio of the fund on July 1 of the next succeeding calendar year if, effective July 1 of the current calendar year, a cost-of-living increase of two percent is applied to all payable pensions; and

(3) on each July 1 following the board's certification of the funded ratio, the cost-of-living adjustment, if any, applied to a pension payable pursuant to the Judicial Retirement Act shall be determined as follows:

(a) if, pursuant to Paragraph (1) of this subsection, the funded ratio of the fund is greater than or equal to one hundred percent, and if, pursuant to Paragraph (2)

of this subsection, the projected funded ratio is greater than or equal to one hundred percent, the amount of pension payable beginning July 1 of the next fiscal year shall be increased two percent. The amount of the increase shall be determined by multiplying the amount of the pension inclusive of all prior adjustments by two percent; and

(b) if the funded ratio of the fund, as certified pursuant to Paragraph (1) or (2) of this subsection, is less than one hundred percent, the amount of pension payable shall not include a cost-of-living adjustment; provided, however, that, if, pursuant to the provisions of this subsection, the cost-of-living adjustment is suspended for the two consecutive fiscal years immediately prior to the most recent certification of the funded ratio by the board: 1) the amount of pension payable in the fiscal year immediately following the two-year suspension shall be increased two percent regardless of the certified funded ratio; and 2) thereafter, if, pursuant to the provisions of Paragraph (1) of this subsection, the certified funded ratio is less than one hundred percent, the provisions of this subsection shall apply without exception in the next succeeding fiscal year.

History: Laws 1992, ch. 111, § 15; 2014, ch. 35, § 14.

10-12B-15.1. Qualified pension recipient; cost-of-living-adjustment wait period; declining increase.

A. Pursuant to the Judicial Retirement Act, a qualified pension recipient is a:

(1) normal retired member who retires:

(a) on or before June 30, 2014 and has been retired for at least two full calendar years from the effective date of the latest retirement prior to July 1 of the year in which the pension is being adjusted;

(b) between July 1, 2014 and June 30, 2015 and has been retired for at least three full calendar years from the effective date of the latest retirement prior to July 1 of the year in which the pension is being adjusted;

(c) between July 1, 2015 and June 30, 2016 and has been retired for at least four full calendar years from the effective date of the latest retirement prior to July 1 of the year in which the pension is being adjusted; or

(d) on or after July 1, 2016 and has been retired for at least seven full calendar years from the effective date of the latest retirement prior to July 1 of the year in which the pension is being adjusted;

(2) normal retired member who is at least sixty-five years of age and has been retired for at least one full calendar year from the effective date of the latest retirement prior to July 1 of the year in which the pension is being adjusted;

(3) disability retired member who has been retired for at least one full calendar year from the effective date of the latest retirement prior to July 1 of the year in which the pension is being adjusted;

(4) survivor beneficiary who has received a survivor pension for at least two full calendar years; or

(5) survivor beneficiary of a deceased retired member who otherwise would have been retired at least two full calendar years from the effective date of the latest retirement prior to July 1 of the year in which the pension is being adjusted.

B. A qualified pension recipient may decline an increase in a pension by giving the association written notice of the decision to decline the increase at least thirty days prior to the date the increase would take effect.

History: 1978 Comp., § 10-12B-15.1, enacted by Laws 2014, ch. 35, § 15.

10-12B-16. Group insurance; continuation.

If the provisions of the Retiree Health Care Act [Chapter 10, Article 7C NMSA 1978] do not apply to a retired member, that retired member may continue to be insured under the provisions of any state group insurance plan in effect at the time of retirement or under the terms of any separate subsequent state group insurance plan, if the retired member pays the entire periodic premium charges for such insurance and consents to have the periodic premium charges deducted from the retired member's pension.

History: Laws 1992, ch. 111, § 16.

10-12B-17. Suspension or forfeiture of benefits.

A. If a member retires and is subsequently employed by any employer covered by any state system or the educational retirement system, the retired member's pension shall be suspended effective the first day of the month following the month in which the subsequent employment begins. The suspended pension of a previously retired member shall resume and be effective the first day of the month following the month in which the member leaves office or terminates the subsequent employment.

B. The right to receive a pension pursuant to the provisions of the Judicial Retirement Act shall be forfeited if the member is removed from office pursuant to the provisions of Article 6, Section 32 of the constitution of New Mexico and the member's only entitlement from the fund shall be the refund of the member's own contributions.

History: Laws 1992, ch. 111, § 17.

10-12B-18. Adjustment of pension.

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

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

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

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

E. As used in this section:

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

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

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

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

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

History: Laws 1995, ch. 115, § 4; 1997, ch. 189, § 13.

10-12B-19. Corrections of errors and omissions; estoppel.

A. If an error or omission results in overpayment to a member or beneficiary of a member, the association shall correct the error or omission and adjust all future payments accordingly. The association shall recover all overpayments made for a period of up to one year prior to the date the error or omission was discovered.

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

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

History: Laws 1995, ch. 115, § 5; 1997, ch. 189, § 14.

ARTICLE 12C

Magistrate Retirement

10-12C-1. Short title.

Chapter 10, Article 12C NMSA 1978 may be cited as the "Magistrate Retirement Act".

History: Laws 1992, ch. 118, § 1; 2011, ch. 178, § 10.

10-12C-2. Definitions.

As used in the Magistrate Retirement Act:

A. "association" means the public employees retirement association provided for in the Public Employees Retirement Act [Chapter 10, Article 11 NMSA 1978];

B. "board" means the retirement board provided for in the Public Employees Retirement Act;

C. "dependent child" means a natural or adopted child who is physically or mentally incapable of financial self-support, regardless of age;

D. "educational retirement system" means the retirement system provided for in the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978];

E. "effective date of retirement" means the first day of the month following the month in which the member met all requirements for retirement;

F. "final average salary" means the amount that is one-sixtieth of the greatest aggregate amount of salary paid a member for sixty consecutive, but not necessarily continuous, months of service credit;

G. "former member" means a person no longer in office who was previously covered pursuant to the provisions of Sections 10-12A-1 through 10-12A-13 NMSA 1978, but who has not retired pursuant to the provisions of the Magistrate Retirement Act and who has received a refund of member contributions pursuant to the provisions of Sections 10-12C-1 through 10-12C-18 NMSA 1978;

H. "fund" means the magistrate retirement fund;

I. "magistrate" means a magistrate judge;

J. "member" means any magistrate who is in office and covered pursuant to the provisions of the Magistrate Retirement Act, or any person no longer in office who was previously a magistrate covered pursuant to the provisions of the Magistrate Retirement Act, who has not retired and who has not received a refund of member contributions from the fund;

K. "member contributions" means the amounts deducted from the salary of a member and credited to the member's individual account, together with interest, if any, credited thereto;

L. "minor child" means a natural or adopted child who has not reached the child's eighteenth birthday and who has not been emancipated by marriage or otherwise;

M. "pension" means a series of monthly payments to a retired member or survivor beneficiary pursuant to the provisions of the Magistrate Retirement Act;

N. "refund beneficiary" means a supplemental needs trust or a natural person designated by the member, in writing in the form prescribed by the association, as the trust or person that would be refunded the member's accumulated member contributions payable if the member dies and no survivor pension is payable, or as the trust or person that would receive the difference between pension paid and accumulated member contributions if the retired member dies before receiving in pension payments the amount of the accumulated member contributions;

O. "retire" means to:

(1) terminate employment with all employers covered by any state system or the educational retirement system; and

(2) receive a pension from one state system or the educational retirement system;

P. "retired member" means a person who has met all requirements for retirement and who is receiving a pension from the fund;

Q. "salary" means the base salary or wages paid a member, including longevity pay, for personal services rendered; provided that salary does not include overtime pay; allowances for housing, clothing, equipment or travel; payments for unused sick leave, unless the unused sick leave payment is made through continuation of the member on the regular payroll for the period represented by that payment; and any other form of remuneration not specifically designated by law as included in salary pursuant to the provisions of the Magistrate Retirement Act;

R. "state system" means the retirement programs provided pursuant to the provisions of the Public Employees Retirement Act, the Magistrate Retirement Act and the Judicial Retirement Act [Chapter 10, Article 12B NMSA 1978];

S. "supplemental needs trust" means a valid third-party irrevocable trust that is authorized by the federal Social Security Act, as amended, for the sole benefit and the lifetime of a trust beneficiary who is disabled and is created for the purpose of providing, accounting for or receiving supplemental assets that do not supplant, impair or diminish any benefits or assistance of any federal, state or other government entity for which the beneficiary would otherwise be eligible;

T. "surviving spouse" means the spouse to whom the member was married at the time of the member's death;

U. "survivor beneficiary" means a supplemental needs trust or a natural person that receives a pension or that has been designated to be paid a pension as a result of the death of a member or retired member; and

V. "years of service" means a period of time beginning on the date a person commences to hold office as a magistrate because of appointment or election and ending on the date a person ceases to hold office as a magistrate because of expiration of the magistrate's term, voluntary resignation, death or disability and shall include any fractions of years of service.

History: Laws 1992, ch. 118, § 2; 2003, ch. 81, § 4; 2014, ch. 39, § 2; 2014, ch. 43, § 2; 2023, ch. 156, § 11.

10-12C-3. Magistrate retirement fund established; administration of fund; accounting funds.

A. There is established in the state treasury the "magistrate retirement fund". The fund is comprised of money received from docket fees of magistrate courts, employer

and member contributions and any investment earnings on fees and contributions. The board is the trustee of the fund and shall administer and invest the fund. Investment of the fund shall be conducted pursuant to the provisions of the Public Employees Retirement Act [Chapter 10, Article 11 NMSA 1978]. The provisions of the Magistrate Retirement Act shall be administered by the board. The board is authorized to promulgate rules. Expenses related to the investment of the fund and administration of the Magistrate Retirement Act shall be paid from the fund.

B. For purposes of this section, the accounting funds shall be known as the "member contribution fund", "employer's accumulation fund", "retirement reserve fund" and "income fund". The maintenance of separate accounting funds shall not require the actual segregation of the assets of the fund.

C. The accounting funds provided for in this section are trust funds and shall be used only for the purposes provided for in the Magistrate Retirement Act.

D. The member contribution fund is the accounting fund in which shall be accumulated contributions of members and from which shall be made refunds and transfers of accumulated member contributions as provided in the Magistrate Retirement Act. The member's court shall cause member contributions to be deducted from the salary of the member and shall remit the deducted member contributions to the association in accordance with procedures and schedules established by the association. The association may assess an interest charge and a penalty charge on any late remittance. Each member shall be deemed to consent and agree to the deductions made and provided for in this section. Contributions by members shall be credited to the members' individual accounts in the member contribution fund. A member's accumulated member contributions shall be transferred to the retirement reserve fund when a pension becomes payable.

E. The employer's accumulation fund is the accounting fund in which shall be accumulated the contributions paid by the state through the administrative office of the courts. The state, through the administrative office of the courts, shall remit its contributions to the association in accordance with procedures and schedules established by the association. The board may assess an interest charge and a penalty charge on any late remittance.

F. The retirement reserve fund is the accounting fund from which shall be paid all pensions to retired members and survivor beneficiaries and all residual refunds to refund beneficiaries of retired members and survivor beneficiaries.

G. Each year, following receipt of the report of the annual actuarial valuation, the excess, if any, of the reported actuarial present value of pensions being paid and likely to be paid to retired members and survivor beneficiaries and residual refunds likely to be paid to refund beneficiaries of retired members and survivor beneficiaries over the balance in the retirement reserve fund shall be transferred to the retirement reserve fund from the employer's accumulation fund.

H. The income fund is the accounting fund to which shall be credited all interest, dividends, rents and other income from investments of the fund, all gifts and bequests, all unclaimed member contributions and all other money the disposition of which is not specifically provided for in the Magistrate Retirement Act. Expenses related to the administration of the Magistrate Retirement Act shall be paid for from the income fund.

I. The association shall at least annually distribute all or a portion of the balance in the income fund to the member contribution fund, the retirement reserve fund and the employer's accumulation fund. Distribution rates shall be determined by the board and may vary for the respective accounting funds.

History: Laws 1992, ch. 118, § 3; 1995, ch. 115, § 11; 2003, ch. 81, § 5.

10-12C-4. Membership.

Every magistrate while in office shall become a member and shall be subject to the provisions of the Magistrate Retirement Act; provided, however, that a magistrate who, prior to July 1, 2014, applied for and received an exemption from membership shall not become a member until such exemption ends. A magistrate who is retired under any state system or the educational retirement system shall:

A. pay the applicable member contributions and the state, through the administrative office of the courts, shall pay the applicable employer contributions as provided pursuant to the Magistrate Retirement Act; and

B. not accrue a service credit and shall not be eligible to purchase service credit nor to retire pursuant to the Magistrate Retirement Act.

History: Laws 1992, ch. 118, § 4; 2014, ch. 39, § 3; 2014, ch. 43, § 3.

10-12C-5. Service credit; reinstatement of forfeited service; prior service; military service.

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

B. Service credit shall be forfeited if a member leaves office and withdraws the member's accumulated member contributions. A member or former member who is a member of another state system or the educational retirement system who has forfeited service credit by withdrawal of member contributions may reinstate the forfeited service credit by repaying the amount withdrawn plus compound interest from the date of withdrawal to the date of repayment at a rate set by the board. Withdrawn member

contributions may be repaid in increments of one year in accordance with procedures established by the board. Full payment of each one-year increment shall be made in a single lump-sum amount in accordance with procedures established by the board.

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

D. A member who during a term of office enters a uniformed service of the United States shall be given service credit for periods of service in the uniformed services subject to the following conditions:

(1) the member returns to office within ninety days following termination of the period of intervening service in the uniformed services or the affiliated employer certifies in writing to the association that the member is entitled to reemployment rights under the federal Uniformed Services Employment and Reemployment Rights Act of 1994;

(2) the member retains membership in the association during the period of service in the uniformed services;

(3) free service credit shall not be given for periods of intervening service in the uniformed services following voluntary reenlistment. Service credit for such periods shall only be given after the member pays the association the sum of the contributions that the person would have been required to contribute had the person remained continuously employed throughout the period of intervening service following voluntary reenlistment, which payment shall be made during the period beginning with the date of reemployment and whose duration is three times the period of the person's intervening service in the uniformed services following voluntary reenlistment, not to exceed five years;

(4) service credit shall not be given for periods of intervening service in the uniformed services that are used to obtain or increase a benefit from another state system or the retirement program provided under the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978]; and

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

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

E. A member who entered a uniformed service of the United States may purchase service credit for periods of active duty in the uniformed services, subject to the following conditions:

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

(2) the member has the applicable minimum number of years of service credit accrued according to the provisions of the Magistrate Retirement Act;

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

(4) service credit may not be purchased for periods of service in the uniformed services that are used to obtain or increase a benefit from another retirement program; and

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

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

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

H. At any time prior to retirement, a member may purchase service credit in monthly increments, subject to the following conditions:

(1) the member has the applicable minimum number of years of service credit acquired as a result of personal service rendered under the Magistrate Retirement Act;

(2) the aggregate amount of service credit purchased pursuant to this subsection does not exceed one year;

(3) the member pays full actuarial present value of the amount of the increase in the member's pension as a consequence of the purchase, as determined by the association;

(4) the member pays the full cost of the purchase within sixty days of the date the member is informed of the amount of the payment; and

(5) the purchase of service credit under this subsection cannot be used to exceed the pension maximum.

History: Laws 1992, ch. 118, § 5; 1997, ch. 189, § 15; 2007, ch. 134, § 1; 2014, ch. 39, § 4; 2014, ch. 43, § 4.

10-12C-6. Refund of contributions.

A. If a member leaves office, the member may, with the written consent of the member's spouse, if any, withdraw the member's accumulated member contributions, upon making written request in a form prescribed by the association. Upon written request of the member in the form prescribed by the association, a refund of member contributions may be made by a trustee-to-trustee transfer of the contributions from the member contribution fund directly to another qualified plan as allowed by the Internal Revenue Code of 1986. Withdrawal of member contributions shall result in forfeiture of the service credit accrued for the period during which the contributions were made.

B. A member shall, upon commencement of membership, designate a refund beneficiary who shall receive the refund of the member contributions, plus interest if any, if the member dies and no survivor pension is payable. If the member is married at the time of designation, written spousal consent shall be required if the designated refund beneficiary is a person other than the spouse or a supplemental needs trust to which the spouse is a beneficiary. Marriage subsequent to the designation shall automatically revoke a previous designation, and the spouse shall become the refund beneficiary unless or until another designation is filed with the association. Divorce subsequent to the designation shall automatically revoke designation of the former spouse as refund beneficiary, or the right of the former spouse to be refund beneficiary if no designation has been filed, and the refund shall be paid to the deceased member's estate unless the member filed a designation of refund beneficiary subsequent to the divorce. The refund shall be paid to the refund beneficiary named in the most recent designation of refund beneficiary on file with the association unless that beneficiary is deceased or otherwise terminated. If there is not a living or operating refund beneficiary named in the most recent designation of refund beneficiary on file with the association, the deceased member's accumulated member contributions shall be paid to the estate of the deceased member.

History: Laws 1992, ch. 118, § 6; 1995, ch. 115, § 12; 2023, ch. 156, § 12.

10-12C-7. Funds not subject to legal process; division of funds as community property; legal process to satisfy child support obligations.

A. Except as provided in Subsections B and C of this section, none of the money, pensions or other benefits provided pursuant to the provisions of the Magistrate Retirement Act shall be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment or other legal process.

B. A court of competent jurisdiction, solely for the purposes of effecting a division of community property in a divorce or legal separation proceeding, may provide by appropriate order for a determination and division of a community interest in the pensions or other benefits provided for in the Magistrate Retirement Act. The court shall fix the manner in which warrants are issued, may order direct payments to a person with a community interest in the pensions or other benefits, may require the election of a specific form of payment and designation of a specific survivor beneficiary or refund beneficiary and may restrain the refund of accumulated member contributions. Payments made pursuant to such orders shall only be made when member contributions are refunded or a pension is payable in accordance with the provisions of the Magistrate Retirement Act. The court shall not alter the manner in which the amount of pensions or other benefits is calculated by the association or cause any increase in the actuarial present value of the pensions or other benefits to be paid by the association.

C. A court of competent jurisdiction, solely for the purposes of enforcing current or delinquent child-support obligations, may provide by appropriate order for withholding amounts due in satisfaction of current or delinquent child-support obligations from the pensions or other benefits provided for in the Magistrate Retirement Act and for payment of such amounts to third parties. The court shall not alter the manner in which the amount of pensions or other benefits is calculated by the association. The court shall not cause any increase in the actuarial present value of the pensions or other benefits to be paid from the fund. Payments made pursuant to such orders shall only be made when member contributions are refunded or when a pension is payable in accordance with the provisions of the Magistrate Retirement Act. In no case shall more money be paid out, either in a lump sum or in monthly pension payments, of the fund in enforcement of current or delinquent child-support obligations than would otherwise be payable at that time.

History: Laws 1992, ch. 118, § 7; 1995, ch. 115, § 13.

10-12C-8. Age and service credit requirements for normal retirement.

A. For a magistrate who was a member on June 30, 2014, the age and service credit requirements for retirement provided for in the Magistrate Retirement Act are:

- (1) age sixty-five years or older and five or more years of service credit;
- (2) age sixty years or older and fifteen or more years of service credit; or

- (3) any age and twenty-four or more years of service credit.

B. For a magistrate who initially became a member on or after July 1, 2014, the age and service requirements for normal retirement provided for in the Magistrate Retirement Act are:

- (1) age sixty-five years or older and eight or more years of service credit;
- (2) age sixty years or older and fifteen or more years of service credit; or
- (3) any age and twenty-four or more years of service credit.

C. Except for a member who is retired under any state system or the educational retirement system, if a member leaves office for any reason, other than removal pursuant to Article 6, Section 32 of the constitution of New Mexico before meeting the age and service credit requirements for retirement pursuant to the provisions of this section and if that member leaves the member contributions on deposit in the fund, that member may apply for retirement when that member meets the age and service credit requirements for retirement pursuant to the provisions of the Magistrate Retirement Act or provisions of the Public Employees Retirement Reciprocity Act [Chapter 10, Article 13A NMSA 1978].

D. No member shall be eligible to receive a pension pursuant to the provisions of the Magistrate Retirement Act while still in office.

History: Laws 1992, ch. 118, § 8; 2014, ch. 39, § 5; 2014, ch. 43, § 5.

10-12C-9. Amount of pension.

A. For a magistrate who was a member on June 30, 2014, the monthly pension is an amount equal to the sum of:

- (1) for service credit earned on or before June 30, 2014, the amount is equal to one-twelfth of:

seventy-five percent
of salary received
during last year in
office prior to
retirement

X .05 X

(number of years of
service, not exceeding
fifteen years,
plus five years); and

- (2) for service credit earned on and after July 1, 2014, an amount equal to one-sixtieth of the greatest aggregate amount of salary received for sixty consecutive, but not necessarily continuous, months in office multiplied by the product of three and one-half percent times the sum of the number of years of service.

B. For a magistrate who initially became a member on or after July 1, 2014, the amount of monthly pension is equal to one-sixtieth of the greatest aggregate amount of salary received for sixty consecutive, but not necessarily continuous, months in office multiplied by the product of three percent times the sum of the number of years of service.

C. The amount of monthly pension under form of payment A for a pension calculated pursuant to Subsection B of this section shall not exceed eighty-five percent of one-sixtieth of the greatest aggregate amount of salary received for sixty consecutive, but not necessarily continuous, months prior to the member leaving office.

D. The amount of monthly pension payable for a pension calculated pursuant to Subsection A of this section shall not exceed eighty-five percent of one-sixtieth of the greatest aggregate amount of salary received for sixty consecutive, but not necessarily continuous, months prior to the member leaving office. A pension benefit determined pursuant to this subsection shall not be less than the benefit earned as of June 30, 2014.

History: Laws 1992, ch. 118, § 9; 2014, ch. 39, § 6; 2014, ch. 43, § 6.

10-12C-10. Member contributions; tax treatment.

A. On and after July 1, 2014, members, while in office, shall contribute ten and one-half percent of salary to the member contribution fund.

B. Upon implementation, the state, acting as employer of members covered pursuant to the provisions of the Magistrate Retirement Act, shall, solely for the purpose of compliance with Section 414(h) of the Internal Revenue Code of 1986, pick up, for the purposes specified in that section, member contributions required by this section for all annual salary earned by the member. Member contributions picked up pursuant to the provisions of this section shall be treated as employer contributions for purposes of determining income tax obligations under the Internal Revenue Code of 1986; however, such picked-up member contributions shall be included in the determination of the member's gross annual salary for all other purposes under federal and state laws. Member contributions picked up pursuant to the provisions of this section shall continue to be designated member contributions for all purposes of the Magistrate Retirement Act and shall be considered as part of the member's annual salary for purposes of determining the amount of the member's contribution. The provisions of this section are mandatory, and the member shall have no option concerning the pick up or concerning the receipt of the contributed amounts directly instead of having the amounts paid by the employer to the retirement system. Implementation occurs upon authorization by the board. In no event may implementation occur other than at the beginning of a pay period applicable to the member.

History: Laws 1992, ch. 118, § 10; 2004, ch. 101, § 2; 2005, ch. 247, § 1; 2009, ch. 127, § 9; 2011, ch. 178, § 11; 2014, ch. 39, § 7; 2014, ch. 43, § 7.

10-12C-11. Employer contributions.

A. The state, through the administrative office of the courts, shall contribute to the fund fifteen percent of salary for each member in office, except that, from July 1, 2014 through June 30, 2015, the state contribution rate shall be eleven percent of salary for each member in office.

B. Twenty-five dollars (\$25.00) from each civil case docket fee paid in magistrate court and ten dollars (\$10.00) from each civil jury fee paid in magistrate court shall be paid by the court clerk to the employer's accumulation fund.

History: Laws 1992, ch. 118, § 11; 2003, ch. 81, § 6; 2005, ch. 247, § 2; 2009, ch. 127, § 10; 2011, ch. 178, § 12; 2014, ch. 39, § 8; 2014, ch. 43, § 8.

10-12C-12. Disability retirement pension.

A. A magistrate with the applicable minimum number of years of service credit accrued pursuant to the provisions of the Magistrate Retirement Act who becomes unable to carry out the duties of that office due to physical or mental disability shall, upon determination of the disability and relinquishment of office, receive a pension from the fund so long as the disability continues. Determination of disability shall be made by the board in accordance with the provisions of the Public Employees Retirement Act [Chapter 10, Article 11 NMSA 1978] and rules promulgated pursuant to that act.

B. The amount of the pension shall be calculated using the formula for normal retirement set out in Section 10-12C-9 NMSA 1978.

C. The applicable service credit requirement shall be waived if the board finds the disability to have been the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty as a magistrate, and the amount of pension shall be computed as if the member had the applicable minimum number of years of service credit as a magistrate.

History: Laws 1992, ch. 118, § 12; 2014, ch. 39, § 9; 2014, ch. 43, § 9.

10-12C-13. Survivor's pension.

For a member whose initial term in office began prior to July 1, 2014:

A. unless the member has designated a survivor beneficiary in accordance with Subsection B of this section, a survivor pension shall be paid for life to a member's or retired member's surviving spouse;

B. the member may designate, in writing in a form prescribed by the association, a survivor beneficiary to receive the survivor's pension described in this section. If the member is married, a designation of survivor beneficiary other than the member's

spouse or a supplemental needs trust to which the spouse is a beneficiary may only be made with the written consent of the member's spouse. Marriage subsequent to a designation of survivor beneficiary shall automatically revoke the designation of survivor beneficiary. A designation of survivor beneficiary made pursuant to a court order issued under Section 10-12C-7 NMSA 1978 shall not require the consent of the member's spouse, if any, and shall not be revoked by the subsequent remarriage of the member. A designation of survivor beneficiary may be revoked by the member at any time prior to the member's retirement. If the member is married, a revocation of designation of survivor beneficiary may only be made with the written consent of the member's spouse;

C. if there is no surviving spouse and no designated survivor beneficiary or if the surviving spouse dies while there are still minor and dependent children of the member, the survivor's pension shall be paid to all minor and dependent children, if any, of the member, in equal shares, so long as each child remains a minor or dependent child. As each child ceases to be a minor or dependent child, the number of shares shall be reduced and the amount payable to each remaining child increased proportionately so that the total survivor's pension remains unchanged as long as there is any such child;

D. the survivor's pension is equal to seventy-five percent of the member's pension;

E. survivor beneficiaries shall be eligible for other benefits provided pursuant to the provisions of the Magistrate Retirement Act, including cost-of-living adjustments and continuation of group insurance benefits; and

F. if a member dies while receiving a disability retirement pension, the survivor beneficiary shall receive the survivor pension provided pursuant to the provisions of the Magistrate Retirement Act.

History: Laws 1992, ch. 118, § 13; 2014, ch. 39, § 10; 2014, ch. 43, § 10; 2023, ch. 156, § 13.

10-12C-13.1. Election form of pension.

For a member whose initial term in office begins on or after July 1, 2014, except as otherwise provided in Section 10-12C-7 NMSA 1978:

A. the member may elect to have pension payments made under any one of the forms of payment provided in Section 10-12C-13.2 NMSA 1978. The election of form of payment and naming of survivor pension beneficiary shall be made on a form furnished by and filed with the association prior to the date the first pension payment is made. An election of form of payment may not be changed after the date the first pension payment is made. If the member is married, the association shall require the consent of the member's spouse to the election of the form of payment and any designation of survivor pension beneficiary before the election or designation is effective. Except as provided in Subsection C, D or E of this section, a named survivor pension beneficiary may not be changed after the date the first pension payment is made if form of payment

B or C is elected. Except as otherwise provided in Section 10-12C-7 NMSA 1978, payment shall be made:

(1) under form of payment A if the member is not married at the time of retirement and if there is not a timely election of another form of payment; or

(2) under form of payment C with the member's spouse as survivor pension beneficiary if the member is married at the time of retirement and there is not a timely election of another form of payment;

B. the amount of pension under forms of payment B, C and D shall have the same actuarial present value, computed as of the effective date of the pension, as the amount of pension under form of payment A;

C. if the member is a retired member who is being paid a pension under form of payment B or C with the member's spouse or a supplemental needs trust to which the spouse is a beneficiary as the designated survivor pension beneficiary, the retired member may, upon becoming divorced from the named spouse and subject to an order of a court as provided for in Section 10-12C-7 NMSA 1978, elect to have future payments made under form of payment A;

D. if the member is retired and was previously being paid a pension under form of payment B or C but, because of the death of the designated survivor pension beneficiary or the death of the beneficiary of a supplemental needs trust or the termination of that trust, is currently receiving a pension under form of payment A, the retired member may exercise a one-time irrevocable option to designate another survivor pension beneficiary and may select either form of payment B or form of payment C; provided that:

(1) the amount of the pension under the form of payment selected shall be recalculated and have the same actuarial present value, computed on the effective date of the designation, as the amount of pension under form of payment A;

(2) the designation and the amount of the pension shall be subject to a court order as provided for in Section 10-12C-7 NMSA 1978; and

(3) the retired member shall pay one hundred dollars (\$100) to the board to defray the cost of determining the new pension amount; and

E. if the member is a retired member who is being paid a pension under form of payment B or C with a living or operating designated survivor pension beneficiary other than the retired member's spouse or former spouse or the supplemental needs trust of the retired member's spouse or former spouse, the retired member may exercise a one-time irrevocable option to deselect the designated beneficiary and elect to:

(1) designate another survivor pension beneficiary; provided that:

(a) the retired member shall not have an option to change from the current form of payment;

(b) the amount of the pension under the form of payment shall be recalculated and shall have the same actuarial present value, computed as of the effective date of the designation, as the amount of pension under form of payment A; and

(c) the retired member shall pay one hundred dollars (\$100) to the board to defray the cost of determining the new pension amount; or

(2) have future payments made under form of payment A.

History: 1978 Comp., § 10-12C-13.1, enacted by Laws 2014, ch. 39, § 11; 2014, ch. 43, § 11; 2023, ch. 156, § 14.

10-12C-13.2. Form of pension payment.

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

B. Life payments with full continuation to one survivor beneficiary is form of payment B. The retired member is paid a reduced pension for life under form of payment B. When the retired member dies, the designated survivor beneficiary is paid the full amount of the reduced pension until death or in the event that a supplemental needs trust is the designated survivor beneficiary, the termination of that trust or the death of the beneficiary of that trust. If the designated survivor beneficiary or the beneficiary of a supplemental needs trust predeceases the retired member or if the supplemental needs trust terminates while the retired member is living, the amount of pension shall be changed to the amount that would have been payable had the retired member elected form of payment A.

C. Life payment with one-half continuation to one survivor beneficiary is form of payment C. The retired member is paid a reduced pension for life under form of payment C. When the retired member dies, the designated survivor beneficiary is paid one-half the amount of the reduced pension until death or in the event that a supplemental needs trust is the designated survivor beneficiary, the termination of that trust or the death of the beneficiary of that trust. If the designated survivor beneficiary or the beneficiary of a supplemental needs trust predeceases the retired member or if the supplemental needs trust terminates while the retired member is living, the amount of pension shall be changed to the amount that would have been payable had the retired member elected form of payment A.

D. Life payments with temporary survivor benefits for children is form of payment D. The retired member is paid a reduced pension for life under form of payment D. When the retired member dies, each declared eligible child is paid a share of the reduced pension until death or age twenty-five years, whichever occurs first. The share is the share specified in writing and filed with the association by the retired member. If shares are not specified in writing and filed with the association, each declared eligible child is paid an equal share of the reduced pension. A redetermination of shares shall be made when the pension of any child terminates. An eligible child is a natural or adopted child of the retired member who is under age twenty-five years. A declared eligible child is an eligible child whose name has been declared in writing and filed with the association by the retired member at the time of election of form of payment D. The amount of pension shall be changed to the amount of pension that would have been payable had the retired member elected form of payment A upon there ceasing to be a declared eligible child during the lifetime of the retired member.

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

History: 1978 Comp., § 10-12C-13.2, enacted by Laws 2014, ch. 39, § 12; 2014, ch. 43, § 12; 2023, ch. 156, § 15.

10-12C-13.3. Death before retirement; survivor pension.

For a member whose initial term in office begins on or after July 1, 2014:

A. a survivor pension may be paid to certain persons related to or designated by a member who dies before normal or disability retirement if a written application for the pension, in the form prescribed by the association, is filed with the association by the potential survivor beneficiary or beneficiaries within one year of the death of the member. Applications may be filed on behalf of the potential survivor beneficiary or beneficiaries or by a person legally authorized to represent them;

B. if there is no designated survivor beneficiary and the board finds the death to have been the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty while in office, a survivor pension shall be payable to the eligible surviving spouse. The amount of the survivor pension shall be the greater of:

(1) the amount as calculated pursuant to the Magistrate Retirement Act and applicable to the deceased member at the time of death as though the deceased member had retired the day preceding death under form of payment B using the actual amount of service credit attributable to the deceased member at the time of death; or

- (2) fifty percent of the deceased member's final average salary;

C. a survivor pension shall also be payable to eligible surviving children if there is no designated survivor beneficiary and the board finds the death to have been the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty while in office. The total amount of survivor pension payable for all eligible surviving children shall be either:

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

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

The total amount of survivor pension shall be divided equally among all eligible surviving children. If there is only one eligible child, the amount of pension shall be twenty-five percent of the deceased member's final average salary;

D. if the member had the applicable minimum number of years of service credit required for normal retirement but the board did not find the death to have been the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty while in office and there is no designated survivor beneficiary, a survivor pension shall be payable to the eligible surviving spouse. The amount of the survivor pension shall be the greater of:

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

- (2) thirty percent of the deceased member's final average salary;

E. if the member had the applicable minimum number of years of service credit required for normal retirement but the board did not find the death to have been the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty while in office and there is no designated survivor beneficiary, and if there is no eligible surviving spouse at the time of death, a survivor pension shall be payable to and divided equally among all eligible surviving children, if any. The total amount of survivor pension payable for all eligible surviving children shall be the greater of:

- (1) the amount as calculated under the coverage plan applicable to the deceased member at the time of death as though the deceased member had retired the day preceding death under form of payment B with the oldest eligible surviving child as the survivor beneficiary using the total amount of actual service credit attributable to the deceased member at the time of death; or

- (2) thirty percent of the deceased member's final average salary;

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

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

H. if there is no designated survivor beneficiary and there is no eligible surviving child, the eligible surviving spouse may elect to be refunded the deceased member's accumulated member contributions instead of receiving a survivor pension;

I. a member may designate a survivor beneficiary to receive a pre-retirement survivor pension, subject to the following conditions:

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

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

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

- (4) if the member is divorced subsequent to the time of designation, any prior designation of the former spouse or a supplemental needs trust to which the spouse is a beneficiary as survivor beneficiary shall automatically be revoked upon the date of divorce; and

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

J. if there is a designated survivor beneficiary and the board finds the death to have been the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty while in office, a survivor pension shall be payable to the designated survivor beneficiary. The amount of the survivor pension shall be the greater of:

- (1) the amount as calculated under the coverage plan applicable to the deceased member at the time of death as though the deceased member had retired the

day preceding death under form of payment B using the actual amount of service credit attributable to the member at the time of death; or

- (2) fifty percent of the deceased member's final average salary;

K. if there is a designated survivor beneficiary, if the member had the applicable minimum number of years of service credit required for normal retirement and if the board did not find the death to have been the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty while in office, a survivor pension shall be payable to the designated survivor beneficiary. The amount of the survivor pension shall be the greater of:

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

- (2) thirty percent of the deceased member's final average salary;

L. if all pension payments permanently terminate before there is paid an aggregate amount equal to the deceased member's accumulated member contributions at time of death, the difference between the amount of accumulated member contributions and the aggregate amount of pension paid shall be paid to the deceased member's refund beneficiary. If no refund beneficiary survives the survivor beneficiary, the difference shall be paid to the estate of the deceased member; and

M. for purposes of this section, "service credit" means only the service credit earned by a member during periods in office as a magistrate.

History: 1978 Comp., § 10-12C-13.3, enacted by Laws 2014, ch. 39, § 13; 2014, ch. 43, § 13; 2023, ch. 156, § 16.

10-12C-14. Cost-of-living adjustment.

A qualified pension recipient is eligible for a cost-of-living adjustment payable pursuant to the provisions of the Magistrate Retirement Act as follows:

A. beginning July 1, 2014 and continuing through June 30, 2016, there shall not be a cost-of-living adjustment applied to a pension payable pursuant to the Magistrate Retirement Act; and

B. beginning on May 1, 2016 and no later than each May 1 thereafter:

- (1) the board shall certify to the association the actuarial funded ratio of the fund as of June 30 of the preceding calendar year;

(2) if, pursuant to Paragraph (1) of this subsection, the certified funded ratio is greater than or equal to one hundred percent, the board shall next certify the projected funded ratio of the fund on July 1 of the next succeeding calendar year if, effective July 1 of the current calendar year, a cost-of-living increase of two percent is applied to all payable pensions; and

(3) on each July 1 following the board's certification of the funded ratio, the cost-of-living adjustment, if any, applied to a pension payable pursuant to the Magistrate Retirement Act shall be determined as follows:

(a) if, pursuant to Paragraph (1) of this subsection, the funded ratio of the fund is greater than or equal to one hundred percent, and if, pursuant to Paragraph (2) of this subsection, the projected funded ratio is greater than or equal to one hundred percent, the amount of pension payable beginning July 1 of the next fiscal year shall be increased two percent. The amount of the increase shall be determined by multiplying the amount of the pension inclusive of all prior adjustments by two percent; and

(b) if the funded ratio of the fund, as certified pursuant to Paragraph (1) or (2) of this subsection, is less than one hundred percent, the amount of pension payable shall not include a cost-of-living increase; provided, however, that, if, pursuant to the provisions of this subparagraph, the cost-of-living adjustment is suspended for the two consecutive fiscal years immediately prior to the most recent certification by the board of the funded ratio: 1) the amount of pension payable in the fiscal year immediately following the two-year suspension shall be increased two percent regardless of the certified funded ratio; and 2) thereafter, if, pursuant to the provisions of Paragraph (1) of this subsection, the certified funded ratio is less than one hundred percent, the provisions of this subsection shall apply without exception in the next succeeding fiscal year.

History: Laws 1992, ch. 118, § 14; 2014, ch. 39, § 14; 2014, ch. 43, § 14.

10-12C-14.1. Qualified pension recipient; cost-of-living adjustment wait period; declining increase.

A. Pursuant to the Magistrate Retirement Act, a qualified pension recipient is a:

(1) normal retired member who retires:

(a) on or before June 30, 2014 and has been retired for at least two full calendar years from the effective date of the latest retirement prior to July 1 of the year in which the pension is being adjusted;

(b) between July 1, 2014 and June 30, 2015 and has been retired for at least three full calendar years from the effective date of the latest retirement prior to July 1 of the year in which the pension is being adjusted;

(c) between July 1, 2015 and June 30, 2016 and has been retired for at least four full calendar years from the effective date of the latest retirement prior to July 1 of the year in which the pension is being adjusted; or

(d) on or after July 1, 2016 and has been retired for at least seven full calendar years from the effective date of the latest retirement prior to July 1 of the year in which the pension is being adjusted;

(2) normal retired member who is at least sixty-five years of age and has been retired for at least one full calendar year from the effective date of the latest retirement prior to July 1 of the year in which the pension is being adjusted;

(3) disability retired member who has been retired for at least one full calendar year from the effective date of the latest retirement prior to July 1 of the year in which the pension is being adjusted;

(4) survivor beneficiary who has received a survivor pension for at least two full calendar years; or

(5) survivor beneficiary of a deceased retired member who otherwise would have been retired at least two full calendar years from the effective date of the latest retirement prior to July 1 of the year in which the pension is being adjusted.

B. A qualified pension recipient may decline an increase in a pension by giving the association written notice of the decision to decline the increase at least thirty days prior to the date the increase would take effect.

History: 1978 Comp., § 10-12C-14.1, enacted by Laws 2014, ch. 39, § 15 and Laws 2014, ch. 43, § 15.

10-12C-15. Group insurance; continuation.

If the provisions of the Retiree Health Care Act [10-7C-1 to 10-7C-16 NMSA 1978] do not apply to a retired member, that retired member may continue to be insured under the provisions of any state group insurance plan in effect at the time of retirement or under the terms of any separate subsequent state group insurance plan, if the retired member pays the entire periodic premium charges for such insurance and consents to have the periodic premium charges deducted from the retired member's pension.

History: Laws 1992, ch. 118, § 15.

10-12C-16. Suspension or forfeiture of benefits.

A. If a member retires and is subsequently employed by any employer covered by any state system or the educational retirement system, the retired member's pension shall be suspended effective the first day of the month following the month in which the

subsequent employment begins. The suspended pension of a previously retired member shall resume and be effective the first day of the month following the month in which the member leaves office or terminates the subsequent employment.

B. The right to receive a pension pursuant to the provisions of the Magistrate Retirement Act shall be forfeited if the member is removed from office pursuant to the provisions of Article 6, Section 32 of the constitution of New Mexico and the member's only entitlement from the fund shall be the refund of the member's own contributions.

C. The provisions of Subsection A of this section shall not apply to a retired member who is elected to serve a term as an elected official if the retired member files an irrevocable exemption from membership in any state system with the association within thirty days of taking office. Filing of an irrevocable exemption shall irrevocably bar the retired member from acquiring service credit for the period of exemption from the membership.

History: Laws 1992, ch. 118, § 16; 2001, ch. 104, § 1.

10-12C-17. Adjustment of pension.

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

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

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

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

E. As used in this section:

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

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

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

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

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

History: Laws 1995, ch. 115, § 9; 1997, ch. 189, § 16.

10-12C-18. Correction of errors and omissions; estoppel.

A. If an error or omission results in an overpayment to a member or beneficiary of a member, the association shall correct the error or omission and adjust all future payments accordingly. The association shall recover all overpayments made for a period of up to one year prior to the date the error or omission was discovered.

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

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

History: Laws 1995, ch. 115, § 10; 1997, ch. 189, § 17.

ARTICLE 13

Retirement Reciprocity (Repealed.)

10-13-1 to 10-13-5. Repealed.

10-13-6 to 10-13-9. Repealed.

ARTICLE 13A

Public Employees Retirement Reciprocity

10-13A-1. Short title.

Chapter 10, Article 13A NMSA 1978 may be cited as the "Public Employees Retirement Reciprocity Act".

History: 1978 Comp., § 10-13A-1, enacted by Laws 1992, ch. 116, § 13.

10-13A-2. Definitions.

As used in the Public Employees Retirement Reciprocity Act:

- A. "association" means the public employees retirement association of New Mexico;
- B. "board" means the retirement board provided for in the Public Employees Retirement Act [Chapter 10, Article 11 NMSA 1978] or the educational retirement board;
- C. "educational retirement system" means that retirement system provided for in the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978];
- D. "eligible reciprocal service credit" means a minimum of one month of service credit under any state system as calculated according to the retirement act applicable to the member;
- E. "former member" means a person who was previously employed by an employer covered by a state system, who has terminated that employment and who has received a refund of member contributions;
- F. "judicial retirement system" means that retirement system provided for in the Judicial Retirement Act [Chapter 10, Article 12B NMSA 1978];
- G. "magistrate retirement system" means that retirement system provided for in the Magistrate Retirement Act [Chapter 10, Article 12C NMSA 1978];
- H. "member" means:
 - (1) a currently employed, contributing employee of an employer covered by a state system; or

(2) a person who has been but is not currently employed by an employer covered by a state system, who has not retired and who has not received a refund of member contributions from the state system under which he was covered;

I. "member contributions" means the amounts deducted from the salary of a member and credited to the member's individual account in a state system, together with interest, if any, credited to that account;

J. "pension" means a series of monthly payments to a retired member or survivor beneficiary as defined and provided in the Educational Retirement Act, the Public Employees Retirement Act, the Magistrate Retirement Act or the Judicial Retirement Act;

K. "public employees retirement system" means that retirement system provided for in the Public Employees Retirement Act;

L. "retire" means to:

(1) terminate employment with all employers covered by any state system;
and

(2) receive a pension benefit from one state system;

M. "salary" means the member's salary as defined under the applicable retirement act; and

N. "state system" means a retirement program provided for in the Educational Retirement Act, the Public Employees Retirement Act, the Magistrate Retirement Act or the Judicial Retirement Act.

History: 1978 Comp., § 10-13A-2, enacted by Laws 1992, ch. 116, § 14; 1993, ch. 279, § 1.

10-13A-3. Service credit; forfeiture; reinstatement.

Forfeited service credit under any state system shall be reinstated according to the provisions of the retirement act applicable to that state system before that service credit may be considered eligible reciprocal service credit.

History: 1978 Comp., § 10-13A-3, enacted by Laws 1992, ch. 116, § 15; 1993, ch. 279, § 2.

10-13A-4. Normal retirement; pension benefit.

If a member has one month or more of eligible reciprocal service credit under each of two or more state systems, the following provisions shall apply, together with the

applicable provisions of the Public Employees Retirement Reciprocity Act, the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978], the Public Employees Retirement Act [Chapter 10, Article 11 NMSA 1978], the Judicial Retirement Act [Chapter 10, Article 12B NMSA 1978], the Magistrate Retirement Act [Chapter 10, Article 12C NMSA 1978] and the rules and regulations for those acts promulgated by the board:

A. a member's total eligible reciprocal service credit under all state systems shall be used in satisfying the service credit requirements for normal retirement under the state system from which the member retires;

B. when a member with eligible reciprocal service credit retires, the member shall receive a pension that is equal to the sum of the pensions attributable to the service credit the member has accrued under each state system, subject to the following restrictions:

(1) the salary used in calculating each component of the pension shall be the salary, average annual salary or final average salary, as those terms are defined under the applicable act, earned while the member was covered under the state system calculating that component as follows:

(a) the member's entire salary history under the public employees retirement system and the educational retirement system shall be used to determine the final average salary and annual average salary under each state system if the member has eligible reciprocal service credit under both state systems;

(b) the member's entire salary history under the educational retirement system and the judicial retirement system or the magistrate retirement system, or both, shall be used to determine the average annual salary under the Educational Retirement Act if the member has eligible reciprocal service credit under those state systems but has less than five years of service credit under the educational retirement system;

(c) the member's salary history under the educational retirement system shall be used to determine the average annual salary under that system if the member has eligible reciprocal service credit under the Educational Retirement Act and the Judicial Retirement Act or the Magistrate Retirement Act, or both, and has five or more years of service credit under the educational retirement system; or

(d) if a member has less than twelve months of credited service under the judicial retirement system or the magistrate retirement system, the final year's salary shall be the aggregate amount of salary paid to the member for the period of credited service divided by the member's credited service times twelve;

(2) the member shall meet the age and service credit requirements for retirement under each applicable state system before the component of the pension attributable to service credit accrued under that state system may be paid; provided that

the member's total eligible reciprocal service credit under all state systems shall be used in satisfying the service credit requirement for normal retirement under each state system;

(3) the member shall terminate employment under all state systems before the member may receive a pension from any state system; and

(4) the member shall file an application for retirement under the state system under which the member was last employed, in accordance with the requirements of that state system;

C. subject to the restrictions contained in this section, the component of the pension attributable to each state system shall be calculated based upon:

(1) the member's eligible reciprocal service credit acquired as a member of that state system; and

(2) the pension calculation formula applicable to the member under that state system;

D. the following limitations shall apply to pensions calculated under the Public Employees Retirement Reciprocity Act:

(1) in no case shall the total amount of the pension, calculated under the Public Employees Retirement Reciprocity Act and received by a member attributable to all state systems, exceed the amount allowable under Section 415 of the Internal Revenue Code; and

(2) where the member has less than five years of service credit in one state system, the pension from that state system shall not exceed six hundred twenty-five thousandths percent per month of service under that state system multiplied by the following amount applicable under that state system:

(a) one-twelfth of the member's magistrate salary received during the last year in office;

(b) one-twelfth of the member's judicial salary received during the last year in office; or

(c) the member's final average salary as defined pursuant to the Public Employees Retirement Act;

E. for members who retire prior to July 1, 2017, the state system from which a member with earned eligible reciprocal service credit retires shall be the payor fund for the pension; provided that:

(1) each state system shall reimburse the payor fund the amount of the component of the pension attributable to service credit accrued under that state system; and

(2) reimbursements shall be made in the manner and frequency determined by the boards;

F. for members who retire on or after July 1, 2017, each state system from which a member earned eligible reciprocal service credit shall pay the amount of the component of the pension attributable to service credit accrued under that state system;

G. in no case shall any member retire from more than one state system; and

H. if a member retires from any state system with eligible reciprocal service credit and is subsequently employed by any employer covered by a state system, the retired member's eligibility to continue to receive pension payments shall be governed by the retirement act governing the state system from which the member retired. Subsequent membership in the retirement program under which the subsequent employee is covered shall be governed by that retirement act.

History: 1978 Comp., § 10-13A-4, enacted by Laws 1992, ch. 116, § 16; 1993, ch. 279, § 3; 2017, ch. 25, § 1.

10-13A-5. Condition for separate payment of pension component.

Notwithstanding the provisions of Subsection E of Section 10-13A-4 NMSA 1978 to the contrary, a member who retires prior to July 1, 2017 shall be paid pursuant to Subsection E of Section 10-13A-4 NMSA 1978 until the executive director of the public employees retirement association and the executive director of the educational retirement board have certified to each other that the association or the board, respectively, has in place the appropriate accounting and financial structures and information technology for each state retirement system from which a member earned eligible reciprocal service credit to separately pay the amount of the component of the pension attributable to service credit accrued under that state system, at which time each state retirement system shall separately pay a member who retires prior to July 1, 2017 pursuant to Subsection F of Section 10-13A-4 NMSA 1978.

History: Laws 2017, ch. 25, § 2.

ARTICLE 14

Social Security Coverage

10-14-1. Declaration of policy.

In order to extend to employees of the state and its political subdivisions and to the dependents and survivors of such employees, the basic protection accorded to others by the old-age and survivors' insurance system embodied in the Social Security Act, it is hereby declared to be the policy of the legislature, subject to the limitations of this act [10-14-1 to 10-14-3, 10-14-5 to 10-14-10 NMSA 1978], that such steps be taken as to provide such protection to employees of the state and its political subdivisions on as broad [broad] a basis as is permitted under the Social Security Act. It is also the policy of the legislature that the protection afforded employees in positions covered by a retirement system on the date an agreement under this act is made applicable to service performed in such positions, or receiving periodic benefits under such retirement system at such time, will not be impaired as a result of making the agreement so applicable or as a result of legislative enactment in anticipation thereof.

History: 1953 Comp., § 5-7-1, enacted by Laws 1955, ch. 172, § 1.

10-14-2. Definitions.

For the purposes of Sections 10-14-1 through 10-14-10 NMSA 1978:

A. the term "wages" means all remuneration for employment as defined herein, including the cash value of all remuneration paid in any medium other than cash, except that such term shall not include that part of such remuneration which, even if it were for "employment" within the meaning of the Federal Insurance Contributions Act would not constitute "wages" within the meaning of that act;

B. the term "employment" means any service performed by an employee in the employ of the state, or any political subdivision thereof, for such employer, except (1) service which in the absence of an agreement entered into under this act [10-14-1 to 10-14-3, 10-14-5 to 10-14-10 NMSA 1978] would constitute "employment" as defined in the Social Security Act; or (2) service which under the Social Security Act may not be included in an agreement between the state and the secretary of health, education and welfare entered into under this act. Service which under the Social Security Act may be included in an agreement only upon certification by the governor or an officer of the state designated by the governor, in accordance with Section 218(d)(3) of that act shall be included in the term "employment" if and when the governor, or an officer of the state designated by the governor, issues, with respect to such service, a certificate to the secretary of health, education and welfare pursuant to Section 9(b) [10-14-10B NMSA 1978] of this act, provided, however, that an agreement may exclude (1) any service of an emergency nature; (2) services performed in the employ of a school, college or university by a student who is enrolled and regularly attending classes at such school, college or university; (3) all services in any class or classes of (a) elective positions; (b) part-time positions, or (c) positions the compensation for which is on a fee basis, performed by an employee of the state or an employee of a subdivision of the state, if so provided in a plan submitted by said subdivision under Section 5 [10-14-6 NMSA 1978] of this act;

C. the term "employee" includes an officer of a state or political subdivision thereof;

D. the term "state agency" means the agency of the state of New Mexico designated by the governor for the administration of this act;

E. the term "secretary of health, education and welfare" includes any individual to whom the secretary of health, education and welfare has delegated any functions under the Social Security Act with respect to coverage under such act of employees of states and their political subdivisions, and with respect to any action taken prior to April 11, 1953, includes the federal security administrator and any individual to whom such administrator had delegated any such function;

F. the term "political subdivision" includes an instrumentality of the state or one or more of its political subdivisions, or of the state and one or more of its political subdivisions, but only if such instrumentality is a juristic entity which is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the state or subdivision;

G. the term "Social Security Act" means the act of congress approved August 14, 1935, Chapter 531, 49 Stat. 620, officially cited as the "Social Security Act," (including regulations and requirements issued pursuant thereto), as such act has been and may from time to time be amended; and

H. the term "Federal Insurance Contributions Act" means Subchapter A of Chapter 9 of the federal Internal Revenue Code of 1939 and Subchapters A and B of Chapter 21 of the federal Internal Revenue Code of 1954, as such codes have been and may from time to time be amended; and the term "employee tax" means the tax imposed by Section 1400 of such code of 1939 and Section 3101 of such code of 1954, as it has been and may from time to time be amended.

History: 1953 Comp., § 5-7-2, enacted by Laws 1955, ch. 172, § 2; 1973, ch. 329, § 1.

10-14-3. Federal-state agreement.

A. The state agency, with the approval of the governor, is hereby authorized to enter on behalf of the state into an agreement with the secretary of health, education and welfare, consistent with the terms and provisions of this act [10-14-1 to 10-14-3, 10-14-5 to 10-14-10 NMSA 1978], for the purpose of extending the benefits of the federal old-age and survivors' insurance system to employees of the state or any political subdivision thereof with respect to services specified in such agreement which constitute "employment" as defined in Section 2 [10-14-2 NMSA 1978] of this act. Such agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration and other appropriate provisions as the state agency and secretary of health, education and welfare shall agree upon, but, except as may be otherwise required by or under the

Social Security Act as to the services to be covered, such agreement shall provide in effect that:

(1) benefits will be provided for employees whose services are covered by the agreement (and their dependents and survivors) on the same basis as though such services constituted employment within the meaning of Title II of the Social Security Act;

(2) the state will pay to the secretary of the treasury, at such time or times as may be prescribed under the Social Security Act, contributions with respect to wages (as defined in Section 2 of this act), equal to the sum of the taxes which would be imposed by the Federal Insurance Contributions Act if the services covered by the agreement constituted employment within the meaning of that act;

(3) such agreement shall be effective with respect to services in employment covered by the agreement performed after a date specified therein in accordance with the Social Security Act;

(4) all services which constitute employment as defined in Section 2 and are performed in the employ of the state by employees of the state, shall be covered by the agreement;

(5) all services which (a) constitute employment as defined in Section 2, (b) are performed in the employ of a political subdivision of the state, and (c) are covered by a plan which is in conformity with the terms of the agreement and has been approved by the state agency under Section 5 [10-14-6 NMSA 1978], shall be covered by the agreement;

(6) as modified, the agreement shall include all services described in either Paragraph (4) or Paragraph (5) of this subsection and performed by individuals to whom Section 218(c)(3)(C) of the Social Security Act is applicable, and shall provide that the service of any such individual shall continue to be covered by the agreement in case he thereafter becomes eligible to be a member of a retirement system; and

(7) as modified, the agreement shall include all services described in either Paragraph (4) or Paragraph (5) of this subsection and performed by individuals in positions covered by a retirement system with respect to which the governor, or an officer of the state designated by the governor, has issued a certificate to the secretary of health, education and welfare pursuant to Section 9(b) [10-14-10B NMSA 1978] of this act.

B. Any instrumentality jointly created by this state and any other state or states is hereby authorized, upon the granting of like authority by such other state or states, (1) to enter into an agreement with the secretary of health, education and welfare whereby the benefits of the federal old-age and survivors' insurance system shall be extended to employees of such instrumentality, (2) to require its employees to pay (and for that purpose to deduct from their wages) contributions equal to the amounts which they

would be required to pay under Section 4(a) [10-14-5A NMSA 1978] if they were covered by an agreement made pursuant to Subsection A of this section; and (3) to make payments to the secretary of the treasury in accordance with such agreement, including payments from its own funds, and otherwise to comply with such agreements. Such agreements, shall, to the extent practicable, be consistent with the terms and provisions of Subsection A and other provisions of this act.

C. Pursuant to Section 218(d)(6)(B) of the Social Security Act, the retirement system covering the employees who are eligible to acquire or who have acquired retirement and emeritus status under Section 1 of Chapter 112, Laws of 1937, as amended, shall be deemed to constitute a separate system for the employees of each institution of higher learning covered thereunder.

History: 1953 Comp., § 5-7-3, enacted by Laws 1955, ch. 172, § 3; 1973, ch. 329, § 2.

10-14-4. Federal-state agreement; divided retirement systems.

The agreement executed and approved as specified in Section 10-14-3 NMSA 1978 shall provide, in accordance with the Social Security Act, 42 U.S.C. § 301 et seq., for dividing retirement systems, and for extending coverage to individuals in positions covered by divided retirement systems.

History: 1953 Comp., § 5-7-3.1, enacted by Laws 1962 (S.S.), ch. 2, § 1.

10-14-5. Contributions by state employees.

A. Every employee of the state whose services are covered by an agreement entered into under Section 3 [10-14-3 NMSA 1978] shall be required to pay for the period of such coverage, into the contribution fund established by Section 6 [10-14-7 NMSA 1978], contributions, with respect to wages (as defined in Section 2 [10-14-2 NMSA 1978]) of this act, equal to the amount of the employee tax which would be imposed by the Federal Insurance Contributions Act, if such services constituted employment within the meaning of that act. Such liability shall arise in consideration of the employee's retention in the service of the state, or his entry upon such service, after the enactment of this act [10-14-1 to 10-14-3, 10-14-5 to 10-14-10 NMSA 1978.]

B. The contribution imposed by this section shall be collected by deducting the amount of the contribution from wages as and when paid, but failure to make such deduction shall not relieve the employee from liability for such contribution.

C. If more or less than the correct amount of the contribution imposed by this section is paid or reduced [deducted] with respect to any remuneration, proper adjustments, or refund if adjustment is impracticable, shall be made, without interest, in such manner and at such times as the state agency shall prescribe.

History: 1953 Comp., § 5-7-4, enacted by Laws 1955, ch. 172, § 4.

10-14-6. Plans for coverage of employees of political subdivisions.

A. Each political subdivision of the state is hereby authorized to submit for approval by the state agency a plan for extending the benefits of Title 2 [II] of the Social Security Act, in conformity with applicable provisions of such act, to employees of such political subdivision. Each such plan and any amendment thereof shall be approved by the state agency if it finds that such plan, or such plan as amended, is in conformity with such requirements as are provided in regulations of the state agency, except that no such plan shall be approved unless:

(1) it is in conformity with the requirements of the Social Security Act and with the agreement entered into under Section 10-14-3 NMSA 1978;

(2) it provides that all services which constitute employment as defined in Section 10-14-2 NMSA 1978 and are performed in the employ of the political subdivision by employees thereof, shall be covered by the plan, except that it may exclude services performed by individuals to whom Section 218(c)3(C) [Section 218(c)(3)(C)] of the Social Security Act is applicable;

(3) it specifies the source or sources from which the funds necessary to make the payments required by Paragraph (1) of Subsection C and by Subsection D of this section are expected to be derived and contains reasonable assurance that such sources will be adequate for such purpose;

(4) it provides for such methods of administration of the plan by the political subdivision as are found by the state agency to be necessary for the proper and efficient administration of the plan;

(5) it provides that the political subdivision will make such reports, in such form and containing such information, as the state agency may from time to time require, and comply with such provisions as the state agency or the secretary of health and human services may from time to time find necessary to assure the correctness and verification of such reports; and

(6) it authorizes the state agency to terminate the plan in its entirety, in the discretion of the state agency, if it finds that there has been a failure to comply substantially with any provision contained in such plan, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the state agency, and may be consistent with the provisions of the Social Security Act.

B. The state agency shall not finally refuse to approve a plan submitted by a political subdivision under Subsection A of this section, and shall not terminate an approved plan, without reasonable notice and opportunity for hearing to the political subdivision affected thereby.

C. (1) Each political subdivision as to which a plan has been approved under this section shall pay into the contribution fund, with respect to wages, as defined in Section 10-14-2 NMSA 1978, at such time or times as the state agency may by regulation prescribe, contributions in the amounts and at the rates specified in the applicable agreement entered into by the state agency under Section 10-14-3 NMSA 1978.

(2) Each political subdivision required to make payments under Paragraph (1) of this subsection is authorized, in consideration of the employee's retention in, or entry upon, employment after enactment of Sections 10-14-1 through 10-14-3 and 10-14-5 through 10-14-10 NMSA 1978, to impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to his wages, as defined in Section 10-14-2 NMSA 1978, not exceeding the amount of the employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act, and to deduct the amount of such contribution from his wages as and when paid. Contributions so collected shall be paid into the contribution fund in partial discharge of the liability of such political subdivision or instrumentality under Paragraph (1) of this subsection. Failure to deduct such contribution shall not relieve the employee or employer of liability therefor.

D. Delinquent payments due under Paragraph (1) of Subsection C of this section with interest charged by the federal government, may be recovered by action in a court of competent jurisdiction against the political subdivision liable therefor or may, at the request of the state agency, be deducted from any other money payable to such subdivision by any department or agency of the state.

History: 1953 Comp., § 5-7-5, enacted by Laws 1955, ch. 172, § 5; 1981, ch. 154, § 1.

10-14-7. Contribution fund.

A. There is hereby established a special fund to be known as the "contribution fund." Such fund shall consist of and there shall be deposited in such fund:

(1) all contributions, interest, and penalties collected under Sections 10-14-5 and 10-14-6 NMSA 1978;

(2) all moneys appropriated thereto under this act [10-14-1 to 10-14-3, 10-14-5 to 10-14-10 NMSA 1978];

(3) any property or securities and earnings thereof acquired through the use of moneys belonging to the fund;

(4) interest earned upon any moneys in the fund; and

(5) all sums recovered upon the bond of the custodian or otherwise for losses sustained by the fund and all other moneys received for the fund from any other source. All moneys in the fund shall be mingled and undivided. Subject to the provisions of this

act, the state agency is vested with full power, authority and jurisdiction over the fund, including all moneys and property or securities belonging thereto, and may perform any and all acts whether or not specifically designated, which are necessary to the administration thereof and are consistent with the provisions of this act.

B. The contribution fund shall be established and held separate and apart from any other funds or moneys of the state and shall be used and administered exclusively for the purpose of this act. Withdrawals from such fund shall be made for, and solely for:

(1) payments of amounts required to be paid to the secretary of the treasury pursuant to an agreement entered into under Section 10-14-3 NMSA 1978;

(2) payment of refunds provided for in Subsection C of Section 10-14-5 NMSA 1978;

(3) refunds of overpayments, not otherwise adjustable, made by a political subdivision or instrumentality;

(4) expenditures by the state agency for the administration of this act; and

(5) transfers by the state treasurer, upon certification by the director of the social security division, to the state general fund of amounts not necessary to satisfy expenditures required by Paragraphs (1) through (4) of this subsection. Such transfers shall be made by July 30 of each fiscal year.

C. From the contribution fund the custodian of the fund shall pay to the secretary of the treasury such amounts and at such time or times as may be directed by the state agency in accordance with any agreement entered into under Section 10-14-3 NMSA 1978 and the Social Security Act.

D. The state treasurer shall be ex-officio treasurer. The secretary of finance and administration shall be custodian of the contribution fund and shall administer such funds in accordance with the provisions of this act and the directions of the state agency and shall pay all warrants drawn upon it in accordance with the provisions of this section and with such regulations as the state agency may prescribe pursuant thereto.

E. (1) There are hereby authorized to be appropriated annually to the contribution fund, in addition to the contributions collected and paid into the contribution fund under Sections 10-14-5 and 10-14-6 NMSA 1978 to be available for the purposes of Subsections B and C of Section 10-14-7 NMSA 1978 [this section] until expended, such additional sums as are found to be necessary in order to make the payments to the secretary of the treasury which the state is obligated to make pursuant to an agreement entered into under Section 10-14-3 NMSA 1978.

(2) The state agency shall submit to each regular session of the state legislature, at least ninety days in advance of the beginning of such session, an

estimate of the amounts authorized to be appropriated to the contribution fund by Paragraph (1) of this subsection for the next appropriation period.

History: 1953 Comp., § 5-7-6, enacted by Laws 1955, ch. 172, § 6; 1973, ch. 329, § 3; 1983, ch. 5, § 1; 1983, ch. 301, § 23.

10-14-8. Rules and regulations.

The state agency shall make and publish such rules and regulations, not inconsistent with the provisions of this act [10-14-1 to 10-14-3, 10-14-5 to 10-14-10 NMSA 1978], as it finds necessary or appropriate to the efficient administration of the functions with which it is charged under this act.

History: 1953 Comp., § 5-7-7, enacted by Laws 1955, ch. 172, § 7.

10-14-9. Studies and reports.

The state agency shall make studies concerning the problem of old-age and survivors insurance protection for employees of the state and local governments and their instrumentalities and concerning the operation of agreements made and plans approved under this act [10-14-1 to 10-14-3, 10-14-5 to 10-14-10 NMSA 1978] and shall submit a report to the legislature at the beginning of each regular session, covering the administration and operation of this act during the preceding biennium, including such recommendations for amendments to this act as it considers proper.

History: 1953 Comp., § 5-7-8, enacted by Laws 1955, ch. 172, § 8.

10-14-10. Referenda and certification.

A. The governor is empowered to authorize a referendum, and to designate any agency or individual to supervise its conduct, in accordance with the requirements of Section 218(d)(3) of the Social Security Act, on the question of whether service in positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under an agreement under this act [10-14-1 to 10-14-3, 10-14-5 to 10-14-10 NMSA 1978]. The notice of referendum required by Section 218(d)(3)(C) of the Social Security Act to be given to employees shall contain or shall be accompanied by a statement, in such form and such detail as the agency or individual designated to supervise the referendum shall deem necessary and sufficient, to inform the employees of the rights which will accrue to them and their dependents and survivors, and the liabilities to which they will be subject, if their services are included under an agreement under this act.

B. Upon receiving evidence satisfactory to him that with respect to any such referendum the conditions specified in Section 218(d)(3) of the Social Security Act have been met, the governor or an officer of the state designated by the governor, shall so certify to the secretary of health, education and welfare.

History: 1953 Comp., § 5-7-9, enacted by Laws 1955, ch. 172, § 9; 1973, ch. 329, § 4.

10-14-11. Social security referendum.

A referendum for or against participation in the federal old age and survivors insurance embodied in the federal Social Security Act shall be conducted for the employees of a general hospital, or outpatient clinics thereof, operated by a state educational institution named in Article 12, Section 11 of the constitution of New Mexico, if required by federal or state law.

History: 1978 Comp., § 10-14-11, enacted by Laws 1978, ch. 167, § 3.

ARTICLE 15

Open Meetings

10-15-1. Formation of public policy; procedures for open meetings; exceptions and procedures for closed meetings.

A. In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them. The formation of public policy or the conduct of business by vote shall not be conducted in closed meeting. All meetings of any public body except the legislature and the courts shall be public meetings, and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings. Reasonable efforts shall be made to accommodate the use of audio and video recording devices.

B. All meetings of a quorum of members of any board, commission, administrative adjudicatory body or other policymaking body of any state agency or any agency or authority of any county, municipality, district or political subdivision, held for the purpose of formulating public policy, including the development of personnel policy, rules, regulations or ordinances, discussing public business or taking any action within the authority of or the delegated authority of any board, commission or other policymaking body are declared to be public meetings open to the public at all times, except as otherwise provided in the constitution of New Mexico or the Open Meetings Act. No public meeting once convened that is otherwise required to be open pursuant to the Open Meetings Act shall be closed or dissolved into small groups or committees for the purpose of permitting the closing of the meeting.

C. If otherwise allowed by law or rule of the public body, a member of a public body may participate in a meeting of the public body by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person, provided that each member participating by conference telephone can be identified when speaking, all participants are able to

hear each other at the same time and members of the public attending the meeting are able to hear any member of the public body who speaks during the meeting.

D. Any meetings at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs and at which a majority or quorum of the body is in attendance, and any closed meetings, shall be held only after reasonable notice to the public. The affected body shall determine at least annually in a public meeting what notice for a public meeting is reasonable when applied to that body. That notice shall include broadcast stations licensed by the federal communications commission and newspapers of general circulation that have provided a written request for such notice.

E. A public body may recess and reconvene a meeting to a day subsequent to that stated in the meeting notice if, prior to recessing, the public body specifies the date, time and place for continuation of the meeting and, immediately following the recessed meeting, posts notice of the date, time and place for the reconvened meeting on or near the door of the place where the original meeting was held and in at least one other location appropriate to provide public notice of the continuation of the meeting. Only matters appearing on the agenda of the original meeting may be discussed at the reconvened meeting.

F. Meeting notices shall include an agenda containing a list of specific items of business to be discussed or transacted at the meeting or information on how the public may obtain a copy of such an agenda. Except in the case of an emergency or in the case of a public body that ordinarily meets more frequently than once per week, at least seventy-two hours prior to the meeting, the agenda shall be available to the public and posted on the public body's web site, if one is maintained. A public body that ordinarily meets more frequently than once per week shall post a draft agenda at least seventy-two hours prior to the meeting and a final agenda at least thirty-six hours prior to the meeting. Except for emergency matters, a public body shall take action only on items appearing on the agenda. For purposes of this subsection, "emergency" refers to unforeseen circumstances that, if not addressed immediately by the public body, will likely result in injury or damage to persons or property or substantial financial loss to the public body. Within ten days of taking action on an emergency matter, the public body shall report to the attorney general's office the action taken and the circumstances creating the emergency; provided that the requirement to report to the attorney general is waived upon the declaration of a state or national emergency.

G. The board, commission or other policymaking body shall keep written minutes of all its meetings. The minutes shall include at a minimum the date, time and place of the meeting, the names of members in attendance and those absent, the substance of the proposals considered and a record of any decisions and votes taken that show how each member voted. All minutes are open to public inspection. Draft minutes shall be prepared within ten working days after the meeting and shall be approved, amended or disapproved at the next meeting where a quorum is present. Minutes shall not become official until approved by the policymaking body.

H. The provisions of Subsections A, B and G of this section do not apply to:

- (1) meetings pertaining to issuance, suspension, renewal or revocation of a license, except that a hearing at which evidence is offered or rebutted shall be open. All final actions on the issuance, suspension, renewal or revocation of a license shall be taken at an open meeting;
- (2) limited personnel matters; provided that for purposes of the Open Meetings Act, "limited personnel matters" means the discussion of hiring, promotion, demotion, dismissal, assignment or resignation of or the investigation or consideration of complaints or charges against any individual public employee; provided further that this paragraph is not to be construed as to exempt final actions on personnel from being taken at open public meetings, nor does it preclude an aggrieved public employee from demanding a public hearing. Judicial candidates interviewed by any commission shall have the right to demand an open interview;
- (3) deliberations by a public body in connection with an administrative adjudicatory proceeding. For purposes of this paragraph, "administrative adjudicatory proceeding" means a proceeding brought by or against a person before a public body in which individual legal rights, duties or privileges are required by law to be determined by the public body after an opportunity for a trial-type hearing. Except as otherwise provided in this section, the actual administrative adjudicatory proceeding at which evidence is offered or rebutted and any final action taken as a result of the proceeding shall occur in an open meeting;
- (4) the discussion of personally identifiable information about any individual student, unless the student or the student's parent or guardian requests otherwise;
- (5) meetings for the discussion of bargaining strategy preliminary to collective bargaining negotiations between the policymaking body and a bargaining unit representing the employees of that policymaking body and collective bargaining sessions at which the policymaking body and the representatives of the collective bargaining unit are present;
- (6) that portion of meetings at which a decision concerning purchases in an amount exceeding two thousand five hundred dollars (\$2,500) that can be made only from one source is discussed and that portion of meetings at which the contents of competitive sealed proposals solicited pursuant to the Procurement Code are discussed during the contract negotiation process. The actual approval of purchase of the item or final action regarding the selection of a contractor shall be made in an open meeting;
- (7) meetings subject to the attorney-client privilege pertaining to threatened or pending litigation in which the public body is or may become a participant;
- (8) meetings for the discussion of the purchase, acquisition or disposal of real property or water rights by the public body;

(9) those portions of meetings of committees or boards of public hospitals where strategic and long-range business plans or trade secrets are discussed; and

(10) that portion of a meeting of the gaming control board dealing with information made confidential pursuant to the provisions of the Gaming Control Act [Chapter 60, Article 2E NMSA 1978].

I. If any meeting is closed pursuant to the exclusions contained in Subsection H of this section:

(1) the closure, if made in an open meeting, shall be approved by a majority vote of a quorum of the policymaking body; the authority for the closure and the subject to be discussed shall be stated with reasonable specificity in the motion calling for the vote on a closed meeting; the vote shall be taken in an open meeting; and the vote of each individual member shall be recorded in the minutes. Only those subjects announced or voted upon prior to closure by the policymaking body may be discussed in a closed meeting; or

(2) if a closure is called for when the policymaking body is not in an open meeting, the closed meeting shall not be held until public notice, appropriate under the circumstances, stating the specific provision of the law authorizing the closed meeting and stating with reasonable specificity the subject to be discussed is given to the members and to the general public.

J. Following completion of any closed meeting, the minutes of the open meeting that was closed or the minutes of the next open meeting if the closed meeting was separately scheduled shall state that the matters discussed in the closed meeting were limited only to those specified in the motion for closure or in the notice of the separate closed meeting. This statement shall be approved by the public body under Subsection G of this section as part of the minutes.

History: 1953 Comp., § 5-6-23, enacted by Laws 1974, ch. 91, § 1; 1979, ch. 366, § 1; 1989, ch. 299, § 1; 1993, ch. 262, § 1; 1997, ch. 190, § 65; 1999, ch. 157, § 1; 2013, ch. 42, § 1.

10-15-1.1. Short title.

Chapter 10, Article 15 NMSA 1978 may be cited as the "Open Meetings Act".

History: 1978 Comp., § 10-15-1.1, enacted by Laws 1979, ch. 366, § 2; 1989, ch. 299, § 2.

10-15-2. State legislature; meetings.

A. Unless otherwise provided by joint house and senate rule, all meetings of any committee or policy-making body of the legislature held for the purpose of discussing

public business or for the purpose of taking any action within the authority of or the delegated authority of the committee or body are declared to be public meetings open to the public at all times. Reasonable notice of meetings shall be given to the public by publication or by the presiding officer of each house prior to the time the meeting is scheduled.

B. The provisions of Subsection A of this section do not apply to matters relating to personnel or matters adjudicatory in nature or to investigative or quasi-judicial proceedings relating to ethics and conduct or to a caucus of a political party.

C. For the purposes of this section, "meeting" means a gathering of a quorum of the members of a standing committee or conference committee held for the purpose of taking any action within the authority of the committee or body.

History: 1953 Comp., § 5-6-24, enacted by Laws 1974, ch. 91, § 2; 2009, ch. 105, § 1.

10-15-3. Invalid actions; standing.

A. No resolution, rule, regulation, ordinance or action of any board, commission, committee or other policymaking body shall be valid unless taken or made at a meeting held in accordance with the requirements of Section 10-15-1 NMSA 1978. Every resolution, rule, regulation, ordinance or action of any board, commission, committee or other policymaking body shall be presumed to have been taken or made at a meeting held in accordance with the requirements of Section 10-15-1 NMSA 1978.

B. All provisions of the Open Meetings Act shall be enforced by the attorney general or by the district attorney in the county of jurisdiction. However, nothing in that act shall prevent an individual from independently applying for enforcement through the district courts, provided that the individual first provides written notice of the claimed violation to the public body and that the public body has denied or not acted on the claim within fifteen days of receiving it. A public meeting held to address a claimed violation of the Open Meetings Act shall include a summary of comments made at the meeting at which the claimed violation occurred.

C. The district courts of this state shall have jurisdiction, upon the application of any person to enforce the purpose of the Open Meetings Act, by injunction, mandamus or other appropriate order. The court shall award costs and reasonable attorney fees to any person who is successful in bringing a court action to enforce the provisions of the Open Meetings Act. If the prevailing party in a legal action brought under this section is a public body defendant, it shall be awarded court costs. A public body defendant that prevails in a court action brought under this section shall be awarded its reasonable attorney fees from the plaintiff if the plaintiff brought the action without sufficient information and belief that good grounds supported it.

D. No section of the Open Meetings Act shall be construed to preclude other remedies or rights not relating to the question of open meetings.

History: 1953 Comp., § 5-6-25, enacted by Laws 1974, ch. 91, § 3; 1989, ch. 299, § 3; 1993, ch. 262, § 2; 1997, ch. 148, § 1.

10-15-4. Penalty.

Any person violating any of the provisions of Section 10-15-1 or 10-15-2 NMSA 1978 is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars (\$500) for each offense.

History: 1953 Comp., § 5-6-26, enacted by Laws 1974, ch. 91, § 4; 1989, ch. 299, § 4.

ARTICLE 16

Governmental Conduct

10-16-1. Short title.

Chapter 10, Article 16 NMSA 1978 may be cited as the "Governmental Conduct Act".

History: 1953 Comp., § 5-12-1, enacted by Laws 1967, ch. 306, § 1; 1993, ch. 46, § 26.

10-16-2. Definitions.

As used in the Governmental Conduct Act:

A. "business" means a corporation, partnership, sole proprietorship, firm, organization or individual carrying on a business;

B. "confidential information" means information that by law or practice is not available to the public;

C. "contract" means an agreement or transaction having a value of more than one thousand dollars (\$1,000) with a state or local government agency for:

- (1) the rendition of services, including professional services;
- (2) the furnishing of any material, supplies or equipment;
- (3) the construction, alteration or repair of any public building or public work;
- (4) the acquisition, sale or lease of any land or building;
- (5) a licensing arrangement;
- (6) a loan or loan guarantee; or

(7) the purchase of financial securities or instruments;

D. "employment" means rendering of services for compensation in the form of salary as an employee;

E. "family" means an individual's spouse, parents, children or siblings, by consanguinity or affinity;

F. "financial interest" means an interest held by an individual or the individual's family that is:

(1) an ownership interest in business or property; or

(2) any employment or prospective employment for which negotiations have already begun;

G. "local government agency" means a political subdivision of the state or an agency of a political subdivision of the state;

H. "official act" means an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority;

I. "public officer or employee" means any elected or appointed official or employee of a state agency or local government agency who receives compensation in the form of salary or is eligible for per diem or mileage but excludes legislators;

J. "standards" means the conduct required by the Governmental Conduct Act;

K. "state agency" means any branch, agency, instrumentality or institution of the state; and

L. "substantial interest" means an ownership interest that is greater than twenty percent.

History: 1953 Comp., § 5-12-2, enacted by Laws 1967, ch. 306, § 2; 1979, ch. 350, § 1; 1993, ch. 46, § 27; 2007, ch. 362, § 1; 2011, ch. 138, § 2.

10-16-3. Ethical principles of public service; certain official acts prohibited; penalty.

A. A legislator or public officer or employee shall treat the legislator's or public officer's or employee's government position as a public trust. The legislator or public officer or employee shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests.

B. Legislators and public officers and employees shall conduct themselves in a manner that justifies the confidence placed in them by the people, at all times maintaining the integrity and discharging ethically the high responsibilities of public service.

C. Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times, reasonable efforts shall be made to avoid undue influence and abuse of office in public service.

D. No legislator or public officer or employee may request or receive, and no person may offer a legislator or public officer or employee, any money, thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: 1978 Comp., § 10-16-3, enacted by Laws 1993, ch. 46, § 28; 2007, ch. 362, § 2; 2011, ch. 138, § 3.

10-16-3.1. Prohibited political activities.

A public officer or employee is prohibited from:

A. directly or indirectly coercing or attempting to coerce another public officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for a political purpose;

B. threatening to deny a promotion or pay increase to an employee who does or does not vote for certain candidates, requiring an employee to contribute a percentage of the employee's pay to a political fund, influencing a subordinate employee to purchase a ticket to a political fundraising dinner or similar event, advising an employee to take part in political activity or similar activities; or

C. violating the officer's or employee's duty not to use property belonging to a state agency or local government agency, or allow its use, for other than authorized purposes.

History: Laws 2007, ch. 362, § 9; 2011, ch. 138, § 4.

10-16-4. Official act for personal financial interest prohibited; disqualification from official act; providing a penalty.

A. It is unlawful for a public officer or employee to take an official act for the primary purpose of directly enhancing the public officer's or employee's financial interest or financial position. Any person who knowingly and willfully violates the provisions of this

subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

B. A public officer or employee shall be disqualified from engaging in any official act directly affecting the public officer's or employee's financial interest, except a public officer or employee shall not be disqualified from engaging in an official act if the financial benefit of the financial interest to the public officer or employee is proportionately less than the benefit to the general public.

C. No public officer during the term for which elected and no public employee during the period of employment shall acquire a financial interest when the public officer or employee believes or should have reason to believe that the new financial interest will be directly affected by the officer's or employee's official act.

History: 1953 Comp., § 5-12-4, enacted by Laws 1967, ch. 306, § 4; 1993, ch. 46, § 29; 2007, ch. 362, § 3; 2011, ch. 138, § 5.

10-16-4.1. Honoraria prohibited.

No legislator, public officer or employee may request or receive an honorarium for a speech or service rendered that relates to the performance of public duties. For the purposes of this section, "honorarium" means payment of money, or any other thing of value in excess of one hundred dollars (\$100), but does not include reasonable reimbursement for meals, lodging or actual travel expenses incurred in making the speech or rendering the service, or payment or compensation for services rendered in the normal course of a private business pursuit.

History: Laws 1993, ch. 46, § 38.

10-16-4.2. Disclosure of outside employment.

A public officer or employee shall disclose in writing to the officer's or employee's respective office or employer all employment engaged in by the officer or employee other than the employment with or service to a state agency or local government agency.

History: Laws 2007, ch. 362, § 10; 2011, ch. 138, § 6.

10-16-4.3. Prohibited employment.

It is unlawful for a state agency employee or local government agency employee who is participating directly or indirectly in the contracting process to become or to be, while such an employee, the employee of any person or business contracting with the governmental body by whom the employee is employed.

History: Laws 2011, ch. 138, § 1.

10-16-5. Repealed.

10-16-6. Confidential information.

No legislator or public officer or employee shall use or disclose confidential information acquired by virtue of the legislator's or public officer's or employee's position with a state agency or local government agency for the legislator's, public officer's or employee's or another's private gain.

History: 1953 Comp., § 5-12-6, enacted by Laws 1967, ch. 306, § 6; 1993, ch. 46, § 30; 2007, ch. 362, § 4; 2011, ch. 138, § 7.

10-16-7. Contracts involving public officers or employees.

A. A state agency shall not enter into a contract with a public officer or employee of the state, with the family of the public officer or employee or with a business in which the public officer or employee or the family of the public officer or employee has a substantial interest unless the public officer or employee has disclosed through public notice the public officer's or employee's substantial interest and unless the contract is awarded pursuant to a competitive process; provided that this section does not apply to a contract of official employment with the state. A person negotiating or executing a contract on behalf of a state agency shall exercise due diligence to ensure compliance with the provisions of this section.

B. Unless a public officer or employee has disclosed the public officer's or employee's substantial interest through public notice and unless a contract is awarded pursuant to a competitive process, a local government agency shall not enter into a contract with a public officer or employee of that local government agency, with the family of the public officer or employee or with a business in which the public officer or employee or the family of the public officer or employee has a substantial interest.

C. Subsection B of this section does not apply to a contract of official employment with a political subdivision. A person negotiating or executing a contract on behalf of a local government agency shall exercise due diligence to ensure compliance with the provisions of this section.

History: 1953 Comp., § 5-12-7, enacted by Laws 1967, ch. 306, § 7; 1983, ch. 90, § 1; 1989, ch. 264, § 26; 1993, ch. 46, § 31; 2007, ch. 362, § 5; 2009, ch. 66, § 11; 2011, ch. 138, § 8.

10-16-8. Contracts involving former public officers or employees; representation of clients after government service.

A. A state agency shall not enter into a contract with, or take any action favorably affecting, any person or business that is:

(1) represented personally in the matter by a person who has been a public officer or employee of the state within the preceding year if the value of the contract or action is in excess of one thousand dollars (\$1,000) and the contract is a direct result of an official act by the public officer or employee; or

(2) assisted in the transaction by a former public officer or employee of the state whose official act, while in state employment, directly resulted in the agency's making that contract or taking that action.

B. A former public officer or employee shall not represent a person in the person's dealings with the government on a matter in which the former public officer or employee participated personally and substantially while a public officer or employee.

C. A local government agency shall not enter into a contract with, or take any action favorably affecting, any person or business that is:

(1) represented personally in the matter by a person who has been a public officer or employee of that local government agency within the preceding year if the value of the contract or action is in excess of one thousand dollars (\$1,000) and the contract is a direct result of an official act by the public officer or employee; or

(2) assisted in the transaction by a former public officer or employee of that political subdivision of the state whose official act, while in employment with that political subdivision of the state, directly resulted in the agency's making that contract or taking that action.

D. For a period of one year after leaving government service or employment, a former public officer or employee shall not represent for pay a person before the state agency or local government agency at which the former public officer or employee served or worked.

History: 1953 Comp., § 5-12-8, enacted by Laws 1967, ch. 306, § 8; 1983, ch. 90, § 2; 1993, ch. 46, § 32; 2011, ch. 138, § 9.

10-16-9. Contracts involving legislators; representation before state agencies.

A. A state agency shall not enter into a contract for services, construction or items of tangible personal property with a legislator, the legislator's family or with a business in which the legislator or the legislator's family has a substantial interest unless the legislator has disclosed the legislator's substantial interest and unless the contract is awarded in accordance with the provisions of the Procurement Code [13-1-28 to 13-1-199 NMSA 1978], except the potential contractor shall not be eligible for a sole source or small purchase contract. A person negotiating or executing a contract on behalf of a state agency shall exercise due diligence to ensure compliance with the provisions of this subsection.

B. Except as provided in Subsection C of this section, a legislator shall not appear for, represent or assist another person in a matter before a state agency, unless that appearance, representation or assistance is provided without compensation.

C. A legislator may appear for, represent or assist another person in a matter before a state agency when the legislator is an attorney or other professional who is making that appearance or providing that representation or assistance while engaged in the conduct of that legislator's profession. That legislator shall not:

(1) make references to the legislator's legislative capacity except as to matters of scheduling; or

(2) use legislative stationery, legislative email or any other indicia of the legislator's legislative capacity.

D. A legislator shall not make direct or indirect threats related to legislative actions in any instance in which the legislator appears for, represents or assists another person in a matter before a state agency.

History: 1953 Comp., § 5-12-9, enacted by Laws 1967, ch. 306, § 9; 1989, ch. 143, § 1; 1993, ch. 46, § 33; 2007, ch. 362, § 6; 2023, ch. 3, § 1.

10-16-10. Repealed.

10-16-11. Codes of conduct.

A. Each elected statewide executive branch public officer shall adopt a general code of conduct for employees subject to the officer's control. The New Mexico legislative council shall adopt a general code of conduct for all legislative branch employees. The general codes of conduct shall be based on the principles set forth in the Governmental Conduct Act.

B. Within thirty days after the general codes of conduct are adopted, they shall be given to and reviewed with all executive and legislative branch officers and employees. All new public officers and employees of the executive and legislative branches shall review the employees' general code of conduct prior to or at the time of being hired.

C. The head of every executive and legislative agency and institution of the state may draft a separate code of conduct for all public officers and employees in that agency or institution. The separate agency code of conduct shall prescribe standards, in addition to those set forth in the Governmental Conduct Act and the general codes of conduct for all executive and legislative branch public officers and employees, that are peculiar and appropriate to the function and purpose for which the agency or institution was created or exists. The separate codes, upon approval of the responsible executive branch public officer for executive branch public officers and employees or the New Mexico legislative council for legislative branch employees, govern the conduct of the

public officers and employees of that agency or institution and, except for those public officers and employees removable only by impeachment, shall, if violated, constitute cause for dismissal, demotion or suspension. The head of each executive and legislative branch agency shall adopt ongoing education programs to advise public officers and employees about the codes of conduct. All codes shall be filed with the state ethics commission and are open to public inspection.

D. Codes of conduct shall be reviewed at least once every four years. An amended code shall be filed as provided in Subsection C of this section.

E. All legislators shall attend a minimum of two hours of ethics continuing education and training developed and provided, in consultation with the director of the legislative council service, by the state ethics commission or a national state legislative organization of which the state is a member, approved by the director, biennially.

History: 1953 Comp., § 5-12-11, enacted by Laws 1967, ch. 306, § 11; 1969, ch. 93, § 1; 1993, ch. 46, § 34; 2003, ch. 33, § 1; 2019, ch. 86, 23.

10-16-11.1. State agency or local government agency authority.

Nothing in the Governmental Conduct Act shall be construed to preclude a state agency or local government agency from adopting and publishing ordinances, rules or standards that are more stringent than those required by the Governmental Conduct Act.

History: Laws 2011, ch. 138, § 13.

10-16-12. Repealed.

10-16-13. Prohibited bidding.

No state agency or local government agency shall accept a bid or proposal from a person who directly participated in the preparation of specifications, qualifications or evaluation criteria on which the specific competitive bid or proposal was based. A person accepting a bid or proposal on behalf of a state agency or local government agency shall exercise due diligence to ensure compliance with this section.

History: 1953 Comp., § 5-12-13, enacted by Laws 1967, ch. 306, § 13; 2007, ch. 362, § 7; 2011, ch. 138, § 10.

10-16-13.1. Education and voluntary compliance.

A. The state ethics commission shall advise and seek to educate all persons required to perform duties under the Governmental Conduct Act of those duties. This includes advising all those persons at least annually of that act's ethical principles.

B. The state ethics commission shall seek first to ensure voluntary compliance with the provisions of the Governmental Conduct Act. A person who violates that act unintentionally or for good cause shall be given ten days' notice to correct the matter. Referrals for civil enforcement of that act shall be pursued only after efforts to secure voluntary compliance with that act have failed.

History: 1978 Comp., § 10-16-13.1, enacted by Laws 1993, ch. 46, § 35; 2019, ch. 86, § 24.

10-16-13.2. Certain business sales to the employees of state agencies and local government agencies prohibited.

A. A public officer or employee shall not sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible personal property directly or indirectly through the public officer's or employee's family or a business in which the public officer or employee has a substantial interest, to an employee supervised by the public officer or employee. A public officer or employee shall not receive a commission or shall not profit from the sale or a transaction to sell goods, services, construction or items of tangible personal property to an employee supervised by the public officer or employee. The provisions of this subsection shall not apply if the supervised employee initiates the sale. It is not a violation of this subsection if a public officer or employee, in good faith, is not aware that the employee to whom the goods, services, construction or items of tangible personal property are being sold is under the supervision of the public officer or employee.

B. A public officer or employee shall not sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible personal property, directly or indirectly through the public officer's or employee's family or a business in which the public officer or employee has a substantial interest, to a person over whom the public officer or employee has regulatory authority.

C. A public officer or employee shall not receive a commission or profit from the sale or a transaction to sell goods, services, construction or items of tangible personal property to a person over whom the public officer or employee has regulatory authority.

D. A public officer or employee shall not accept from a person over whom the public officer or employee has regulatory authority an offer of employment or an offer of a contract in which the public officer or employee provides goods, services, construction, items of tangible personal property or other things of value to the person over whom the public officer or employee has regulatory authority.

History: Laws 2007, ch. 362, § 8; 2011, ch. 138, § 11.

10-16-13.3. Prohibited contributions; financial service contractors.

A. A business that contracts with a state agency or local government agency to provide financial services involving the investment of public money or issuance of bonds for public projects shall not knowingly contribute anything of value to a public officer or employee of that state agency or local government agency who has authority over the investment of public money or issuance of bonds, the revenue of which is used for public projects in the state.

B. A public officer or employee of a state agency or local government agency that has authority over the investment of public money or issuance of bonds, the revenue of which is used for public projects in the state, shall not knowingly accept a contribution of anything of value from a business that contracts with that state agency or local government agency to provide financial services involving the investment of public money or issuance of bonds for public projects.

C. For the purposes of this section:

(1) "anything of value" means any money, property, service, loan or promise, but does not include food and refreshments with a value of less than one hundred dollars (\$100) consumed in a day; and

(2) "contribution" means a donation or transfer to a recipient for the personal use of the recipient, without commensurate consideration.

History: Laws 2007, ch. 362, § 11; 2011, ch. 138, § 12.

10-16-14. Enforcement procedures.

A. The state ethics commission may investigate suspected violations of the Governmental Conduct Act and forward its findings and evidence to the attorney general, district attorney or appropriate state agency or legislative body for enforcement. If a suspected violation involves the office of the state ethics commission, the attorney general may enforce that act. If a suspected violation involves the office of the attorney general, a district attorney may enforce that act.

B. Violation of the provisions of the Governmental Conduct Act by any legislator is grounds for discipline by the appropriate legislative body.

C. If the state ethics commission determines that there is sufficient cause to file a complaint to remove from office a public officer removable only by impeachment, the commission shall refer the matter to the house of representatives of the legislature. If within thirty days after the referral the house of representatives has neither formally declared that the charges contained in the complaint are not substantial nor instituted hearings on the complaint, the state ethics commission shall make public the nature of the charges but shall make clear that the merits of the charges have never been determined. Days during which the legislature is not in session shall not be included in determining the thirty-day period.

D. Violation of the provisions of the Governmental Conduct Act by any public officer or employee, other than those covered by Subsection C of this section, is grounds for discipline, including dismissal, demotion or suspension. Complaints against executive branch employees may be filed with the agency head and reviewed pursuant to the procedures provided in the Personnel Act. Complaints against legislative branch employees may be filed with and reviewed pursuant to procedures adopted by the New Mexico legislative council. Complaints against judicial branch employees may be filed and reviewed pursuant to the procedures provided in the judicial personnel rules. Complaints against employees subject to the State Ethics Commission Act [Chapter 10, Article 16G NMSA 1978] may also be filed with the state ethics commission, which shall determine whether to forward a complaint to the appropriate state agency or investigate the complaint on its own.

E. Subject to the provisions of this section, the provisions of the Governmental Conduct Act may be enforced by the state ethics commission. Except as regards legislators, state employees or statewide elected officials, a district attorney in the county where a person who allegedly violated the provisions resides or where an alleged violation occurred may also enforce that act. Enforcement actions may include seeking civil injunctive or other appropriate orders.

History: 1953 Comp., § 5-12-14, enacted by Laws 1967, ch. 306, § 14; 1993, ch. 46, § 36; 2019, ch. 86, § 25.

10-16-15. Repealed.

10-16-16. Recompiled.

10-16-17. Criminal penalties.

Unless specified otherwise in the Governmental Conduct Act, any person who knowingly and willfully violates any of the provisions of that act is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one year or both. Nothing in the Governmental Conduct Act shall preclude criminal prosecution for bribery or other provisions of law set forth in the constitution of New Mexico or by statute.

History: Laws 1993, ch. 46, § 37.

10-16-18. Enforcement; civil penalties.

A. If the state ethics commission reasonably believes that a person committed, or is about to commit, a violation of the Governmental Conduct Act, the state ethics commission may refer the matter to the attorney general or a district attorney for enforcement.

B. The state ethics commission may institute a civil action in district court or refer a matter to the attorney general or a district attorney to institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the Governmental Conduct Act. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of two hundred fifty dollars (\$250) for each violation not to exceed five thousand dollars (\$5,000).

History: Laws 1995, ch. 153, § 23; 2019, ch. 86, § 26.

ARTICLE 16A

Financial Disclosures

10-16A-1. Short title; Financial Disclosure Act.

Chapter 10, Article 16A NMSA 1978 may be cited as the "Financial Disclosure Act".

History: Laws 1993, ch. 46, § 39; 2019, ch. 86, § 27.

10-16A-2. Definitions.

As used in the Financial Disclosure Act:

A. "business" means a corporation, partnership, sole proprietorship, firm, organization or individual carrying on a business;

B. "employment" means rendering of services for compensation in the form of salary as an employee;

C. "financial interest" means an interest held by an individual or his spouse that is:

(1) an ownership interest in business; or

(2) any employment or prospective employment for which negotiations have already begun;

D. "official act" means an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority;

E. "person" means an individual or entity; and

F. "public officer or employee" means any person who has been elected to, appointed to or hired for any state office and who receives compensation in the form of salary or is eligible for per diem or mileage, but excludes legislators and judges.

History: Laws 1993, ch. 46, § 40.

10-16A-3. Required disclosures for certain candidates and public officers and employees; condition for placement on ballot or appointment.

A. A person holding a legislative or statewide office shall file with the secretary of state a financial disclosure statement during the month of January every year that the person holds public office.

B. A candidate for legislative or statewide office who has not already filed a financial disclosure statement with the secretary of state in the same calendar year shall file with the proper filing officer, as defined in the Election Code [Chapter 1 NMSA 1978], a financial disclosure statement at the time of filing a declaration of candidacy. If the proper filing officer is not the secretary of state, the proper filing officer shall forward a copy of the financial disclosure statement to the secretary of state within three days.

C. A state agency head, an official whose appointment to a board or commission is subject to confirmation by the senate, a member of the insurance nominating committee or a member of the state ethics commission shall file with the secretary of state a financial disclosure statement within thirty days of appointment and during the month of January every year thereafter that the person holds public office.

D. The financial disclosure statement shall include for any person identified in Subsection A, B or C of this section and the person's spouse the following information for the prior calendar year:

(1) the full name, mailing address and residence address of each person covered in the disclosure statement, except the address of the spouse need not be disclosed; the name and address of the person's and spouse's employer and the title or position held; and a brief description of the nature of the business or occupation;

(2) all sources of gross income of more than five thousand dollars (\$5,000) to each person covered in the disclosure statement, identified by general category descriptions that disclose the nature of the income source, in the following broad categories: law practice or consulting operation or similar business, finance and banking, farming and ranching, medicine and health care, insurance (as a business and not as payment on an insurance claim), oil and gas, transportation, utilities, general stock market holdings, bonds, government, education, manufacturing, real estate, consumer goods sales with a general description of the consumer goods and the category "other", with direction that the income source be similarly described. In describing a law practice, consulting operation or similar business of the person or spouse, the major areas of specialization or income sources shall be described, and if the spouse or a person in the reporting person's or spouse's law firm, consulting operation or similar business is or was during the reporting calendar year or the prior calendar year a registered lobbyist under the Lobbyist Regulation Act [Chapter 2, Article

11 NMSA 1978], the names and addresses of all clients represented for lobbying purposes during those two years shall be disclosed;

(3) a general description of the type of real estate owned in New Mexico, other than a personal residence, and the county where it is located;

(4) all other New Mexico business interests not otherwise listed of ten thousand dollars (\$10,000) or more in a New Mexico business or entity, including any position held and a general statement of purpose of the business or entity;

(5) all memberships held by the reporting individual and the individual's spouse on boards of for-profit businesses in New Mexico;

(6) all New Mexico professional licenses held;

(7) each state agency that was sold goods or services in excess of five thousand dollars (\$5,000) during the prior calendar year by a person covered in the disclosure statement; and

(8) each state agency, other than a court, before which a person covered in the disclosure statement represented or assisted clients in the course of the person's employment during the prior calendar year.

E. A complete financial disclosure statement shall be filed every year. The secretary of state shall deliver to each elected official required to file a financial disclosure statement a copy of any statement the person filed the previous year.

F. The financial disclosure statements filed pursuant to this section are public records open to public inspection during regular office hours and shall be retained by the state for five years from the date of filing.

G. A person who files a financial disclosure statement may file an amended statement at any time to reflect significant changed circumstances that occurred since the last statement was filed.

H. A person who files to be a candidate for a legislative or statewide office who fails or refuses to file a financial disclosure statement required by this section before the final date for qualification of the person as a candidate as provided for in the Election Code shall not be qualified by the proper filing officer as a candidate.

I. For a state agency head, an official whose appointment to a board or commission is subject to confirmation by the senate, a member of the insurance nominating committee or a member of the state ethics commission, the filing of the financial disclosure statement required by this section is a condition of entering upon and continuing in state employment or holding an appointed position.

History: Laws 1993, ch. 46, § 41; 1995, ch. 153, § 24; 1997, ch. 112, § 8; 2015, ch. 11, § 1; 2019, ch. 212, § 214; 2021, ch. 109, § 12.

10-16A-4. Disclosures by certain public officers or employees of state agencies; condition of employment.

A. Every employee who is not otherwise required to file a financial disclosure statement under the Financial Disclosure Act and who has a financial interest that he believes or has reason to believe may be affected by his official act or actions of the state agency by which he is employed shall disclose the nature and extent of that interest. The disclosures shall be made in writing to the secretary of state before entering state employment and during the month of January every year thereafter.

B. Every public officer who is not otherwise required to file a financial disclosure statement under the Financial Disclosure Act and who has a financial interest that he believes or has reason to believe may be affected by his official act or actions of the board or commission to which he is appointed shall disclose the nature and extent of that interest. The disclosures shall be made in writing to the secretary of state before taking office and during the month of January every year thereafter.

C. The information on the disclosures shall be made available by the secretary of state for inspection to any citizen of this state.

D. The filing of disclosures pursuant to this section is a condition of entering upon and continuing in state employment or, for persons subject to Subsection B of this section, of holding public office.

History: Laws 1993, ch. 46, § 42.

10-16A-5. Education and voluntary compliance.

A. The secretary of state shall advise and seek to educate all persons required to perform duties under the Financial Disclosure Act of those duties. This includes providing timely advance notice of the required financial disclosure statement and preparing forms that are clear and easy to complete.

B. The secretary of state shall seek first to ensure voluntary compliance with the provisions of the Financial Disclosure Act. A person who violates that act unintentionally or for good cause shall be given ten days' notice to correct the matter before fines are imposed. Referrals to the state ethics commission for civil enforcement of the Financial Disclosure Act shall be pursued only after efforts to secure voluntary compliance with that act have failed.

History: Laws 1993, ch. 46, § 43; 2019, ch. 86, § 28.

10-16A-6. Investigations; fines; enforcement.

A. The state ethics commission may conduct thorough examinations of statements and initiate investigations to determine whether the Financial Disclosure Act has been violated. Any person who believes that act has been violated may file a written complaint with the state ethics commission. The commission shall adopt procedures for processing complaints and notifications of violations.

B. If the state ethics commission determines that a violation has occurred for which a penalty should be imposed, the commission shall so notify the person charged and impose the penalty.

C. Any person who files a statement or report after the deadline imposed by the Financial Disclosure Act is liable for and shall pay to the secretary of state, at or from the time initially required for the filing, fifty dollars (\$50.00) per day for each regular working day after the time required for the filing of the statement or report until the complete report is filed, up to a maximum of five thousand dollars (\$5,000).

D. The secretary of state may refer a matter to the state ethics commission, attorney general or a district attorney for a civil injunctive or other appropriate order or enforcement.

History: Laws 1993, ch. 46, § 44; 1997, ch. 112, § 9; 2019, ch. 86, § 29; 2021, ch. 109, § 13.

10-16A-7. Criminal penalties.

Any person who knowingly and willfully violates any of the provisions of the Financial Disclosure Act is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one year or both.

History: Laws 1993, ch. 46, § 45.

10-16A-8. Enforcement; civil penalties.

A. If the state ethics commission reasonably believes that a person committed, or is about to commit, a violation of the Financial Disclosure Act, the commission may refer the matter to the attorney general or a district attorney for enforcement.

B. The state ethics commission may institute a civil action in district court or refer a matter to the attorney general or a district attorney to institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the Financial Disclosure Act. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of two

hundred fifty dollars (\$250) for each violation not to exceed five thousand dollars (\$5,000).

History: Laws 1995, ch. 153, § 25; 2019, ch. 86, § 30.

10-16A-9. Rulemaking authority.

The secretary of state may promulgate rules to implement the provisions of the Financial Disclosure Act. In promulgating the rules, the secretary of state shall comply with the provisions of the State Rules Act [Chapter 14, Article 4 NMSA 1978].

History: Laws 2021, ch. 109, § 21.

ARTICLE 16B

Gift Act

10-16B-1. Short title.

Chapter 10, Article 16B NMSA 1978 may be cited as the "Gift Act".

History: Laws 2007, ch. 226, § 1; 2019, ch. 86, § 31.

10-16B-2. Definitions.

As used in the Gift Act:

A. "family" means a spouse and dependent children;

B. "gift" means any donation or transfer without commensurate consideration of money, property, service, loan, promise or any other thing of value, including food, lodging, transportation and tickets for entertainment or sporting events, but does not include:

(1) any activity, including but not limited to the acceptance of a donation, transfer or contribution, or the making of an expenditure or reimbursement, that is authorized by the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978] or the Federal Election Campaign Act of 1971, as amended;

(2) a gift given under circumstances that make it clear that the gift is motivated by a family relationship or close personal relationship rather than the recipient's position as a state officer or employee or candidate for state office;

(3) compensation for services rendered or capital invested that is:

(a) normal and reasonable in amount;

(b) commensurate with the value of the service rendered or the magnitude of the risk taken on the investment;

(c) in no way increased or enhanced by reason of the recipient's position as a state officer or employee or candidate for state office; and

(d) not otherwise prohibited by law;

(4) payment for a sale or lease of tangible or intangible property that is commensurate with the value of the services rendered and is in no way increased or enhanced by reason of the recipient's position as a state officer or employee or candidate for state office;

(5) a commercially reasonable loan made in the ordinary course of the lender's business on terms that are available to all similarly qualified borrowers;

(6) reimbursement for out-of-pocket expenses actually incurred in the course of performing a service for the person making the reimbursement;

(7) any gift accepted on behalf of and to be used by the state or a political subdivision of the state, including travel, subsistence and related expenses accepted by a state agency in connection with a state officer's or employee's official duties that take place away from the state official's or employee's station of duty;

(8) anything for which fair market value is paid or reimbursed by the state officer or employee or candidate for state office;

(9) reasonable expenses for a bona fide educational program that is directly related to the state officer's or employee's official duties; or

(10) a retirement gift;

C. "market value" means the retail cost a person would incur to purchase a gift;

D. "restricted donor" means a person who:

(1) is or is seeking to be a party to any one or any combination of sales, purchases, leases or contracts to, from or with the agency in which the donee holds office or is employed;

(2) will personally be, or is the agent of a person who will be, directly and substantially affected financially by the performance or nonperformance of the donee's official duty in a way that is greater than the effect on the public generally or on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry or region;

(3) is personally, or is the agent of a person who is, the subject of or party to a matter that is pending before a regulatory agency and over which the donee has discretionary authority as part of the donee's official duties or employment within the regulatory agency; or

(4) is a lobbyist or a client of a lobbyist with respect to matters within the donee's jurisdiction; and

E. "state officer or employee" means any person who has been elected to, appointed to or hired for any state office and who receives compensation in the form of salary or is eligible for per diem or mileage.

History: Laws 2007, ch. 226, § 2.

10-16B-3. Limitation on gifts.

A. A state officer or employee or a candidate for state office, or that person's family, shall not knowingly accept from a restricted donor, and a restricted donor shall not knowingly donate to a state officer or employee or a candidate for state office, or that person's family, a gift of a market value greater than two hundred fifty dollars (\$250).

B. A lobbyist registered with the secretary of state, the lobbyist's employer or a government contractor shall not donate gifts of an aggregate market value greater than one thousand dollars (\$1,000) in a calendar year to any one state officer or employee or to any one candidate for state office.

C. A state officer or employee shall not solicit gifts for a charity from a business or corporation regulated by the state agency for which the state officer or employee works and shall not otherwise solicit donations for a charity in such a manner that it appears that the purpose of the donor in making the gift is to influence the state officer or employee in the performance of an official duty.

History: Laws 2007, ch. 226, § 3.

10-16B-4. Penalties.

A person who violates the provisions of the Gift Act is guilty of a petty misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

History: Laws 2007, ch. 226, § 4.

10-16B-5. Investigations; complaints; enforcement.

A. The state ethics commission may initiate investigations to determine whether the provisions of the Gift Act have been violated. A person who believes that a violation of the Gift Act has occurred may file a complaint with the state ethics commission.

B. If the state ethics commission determines that a violation has occurred, the commission shall refer the matter to the attorney general for criminal prosecution.

History: Laws 2019, ch. 86, § 32.

ARTICLE 16C

Whistleblower Protection

10-16C-1. Short title.

This act [10-16C-1 to 10-16C-4 NMSA 1978] may be cited as the "Whistleblower Protection Act".

History: Laws 2010, ch. 12, § 1.

10-16C-2. Definitions.

As used in the Whistleblower Protection Act:

A. "good faith" means that a reasonable basis exists in fact as evidenced by the facts available to the public employee;

B. "public employee" means a person who works for or contracts with a public employer;

C. "public employer" means:

(1) any department, agency, office, institution, board, commission, committee, branch or district of state government;

(2) any political subdivision of the state, created under either general or special act, that receives or expends public money from whatever source derived;

(3) any entity or instrumentality of the state specifically provided for by law; and

(4) every office or officer of any entity listed in Paragraphs (1) through (3) of this subsection;

D. "retaliatory action" means taking any discriminatory or adverse employment action against a public employee in the terms and conditions of public employment; and

E. "unlawful or improper act" means a practice, procedure, action or failure to act on the part of a public employer that:

- (1) violates a federal law, a federal regulation, a state law, a state administrative rule or a law of any political subdivision of the state;
- (2) constitutes malfeasance in public office; or
- (3) constitutes gross mismanagement, a waste of funds, an abuse of authority or a substantial and specific danger to the public.

History: Laws 2010, ch. 12, § 2.

10-16C-3. Public employer retaliatory action prohibited.

A public employer shall not take any retaliatory action against a public employee because the public employee:

- A. communicates to the public employer or a third party information about an action or a failure to act that the public employee believes in good faith constitutes an unlawful or improper act;
- B. provides information to, or testifies before, a public body as part of an investigation, hearing or inquiry into an unlawful or improper act; or
- C. objects to or refuses to participate in an activity, policy or practice that constitutes an unlawful or improper act.

History: Laws 2010, ch. 12, § 3.

10-16C-4. Right to civil action for damages; affirmative defenses; remedy not exclusive.

A. A public employer that violates the provisions of the Whistleblower Protection Act shall be liable to the public employee for actual damages, reinstatement with the same seniority status that the employee would have had but for the violation, two times the amount of back pay with interest on the back pay and compensation for any special damage sustained as a result of the violation. In addition, an employer shall be required to pay the litigation costs and reasonable attorney fees of the employee. An employee may bring an action pursuant to this section in any court of competent jurisdiction.

B. It shall be an affirmative defense to a civil action brought pursuant to this section that the action taken by a public employer against a public employee was due to the employee's misconduct, the employee's poor job performance, a reduction in work force or other legitimate business purpose unrelated to conduct prohibited pursuant to the Whistleblower Protection Act and that retaliatory action was not a motivating factor.

C. The remedies provided for in the Whistleblower Protection Act are not exclusive and shall be in addition to any other remedies provided for in any other law or available under common law.

D. Nothing in the Whistleblower Protection Act precludes civil actions or criminal sanctions for libel, slander or other civil or criminal claims against a person who files a false claim under that act.

History: Laws 2010, ch. 12, § 4.

10-16C-5. Posting of law and information.

Every public employer shall keep posted in a conspicuous place on the public employer's premises notices prepared by the employer that set forth the provisions of the Whistleblower Protection Act.

History: Laws 2010, ch. 12, § 5.

10-16C-6. Limitation on actions.

A civil action pursuant to the Whistleblower Protection Act shall be forever barred unless the action is filed within two years from the date on which the retaliatory action occurred.

History: Laws 2010, ch. 12, § 6.

ARTICLE 16D

Sunshine Portal Transparency

10-16D-1. Short title.

Chapter 10, Article 16D NMSA 1978 may be cited as the "Sunshine Portal Transparency Act".

History: Laws 2010, ch. 34, § 1; 2011, ch. 13, § 1.

10-16D-2. Definitions.

As used in the Sunshine Portal Transparency Act:

A. "contract" means an agreement with a state agency for:

- (1) the rendition of services, including professional services;

- (2) the furnishing of any material, supplies or equipment;
- (3) the construction, alteration or repair of any public building or public work;
- (4) the acquisition, sale or lease of any land or building;
- (5) a licensing arrangement;
- (6) a loan or loan guarantee; or
- (7) the purchase of financial securities or instruments;

B. "department" means the department of information technology, or its successor agency;

C. "exempt employee" means an employee of the state or a state agency who is in a policymaking or supervisory position and who serves at the discretion of the agency head or at the discretion of an appointee of the agency head;

D. "expenditure" means:

- (1) for a state agency, a disbursement of state or federal funds by the state agency, whether or not the funds have been appropriated by the legislature; or
- (2) for a local education provider, a disbursement of federal, state or other funds by the local education provider;

E. "federal funds" means money received by a state agency from the federal government or one of its branches, departments, agencies, offices, officers or instrumentalities;

F. "local education provider" means:

- (1) a school district, including the local school board for that school district; or
- (2) a locally chartered or state-chartered charter school, including the governing body of that charter school;

G. "revenue" means:

- (1) for a state agency, money received by the state agency and deposited into the general fund or another state fund. "Revenue" includes money from taxes, fines, fees, royalties, federal funds and other sources but does not include money deposited into a state suspense fund; or

(2) for a local education provider, all money received by the local education provider, including federal and state grants, state distributions, property tax revenues and donations; and

H. "state agency" means the New Mexico state government or any department, division, institution, board, bureau, commission or committee of state government and includes any office or officer of any of the above.

History: Laws 2010, ch. 34, § 2; 2011, ch. 13, § 2.

10-16D-3. Sunshine portal; department duties.

A. The department, with the department of finance and administration, shall develop, operate and maintain a single internet web site that is free, user-friendly, searchable and accessible to the public, known as the "sunshine portal", to host the state's financial information for the purpose of governmental transparency and accountability to taxpayers.

B. No later than October 1, 2010, the department shall create the architecture and the information exchange process for the collection and electronic publication of the state's financial information.

C. No later than July 1, 2011, the sunshine portal shall be available for public access and include updated information as required by Subsection D of this section.

D. The sunshine portal shall provide, at a minimum, access to the following information:

- (1) the state's cash balances by account or fund;
- (2) a monthly summary of the state's investment accounts;
- (3) annual operating budgets for each state agency with monthly expenditures by category;
- (4) contracts that a state agency enters into for the lease, sale or development of state land and state contracts that have a total contract price of more than twenty thousand dollars (\$20,000), naming the recipient of the contract, the purpose of the contract and the amounts expended. No later than January 1, 2017, the information provided shall also include:
 - (a) the name of the recipient of the contract;
 - (b) the purpose of the contract;
 - (c) the amounts expended on the contract;

(d) a copy of or an internet web site link to a copy of the contract document, including amendments; and

(e) a copy of or an internet web site link to a copy of a resident certificate issued pursuant to Section 13-1-22 NMSA 1978 and used in the award of a contract;

(5) the revenue that the state received in the preceding month by source, such as type of tax, fee, fine, administrative fee or other collection category;

(6) special appropriations received outside the general appropriation act by each state agency and the purpose of those appropriations;

(7) approved budget adjustment requests by state agency and affected budget category;

(8) quarterly consensus revenue estimates;

(9) reversions and cash balances by state agency and fund;

(10) appropriations for capital projects, identified by project location, type of project and funding source;

(11) a directory of all employee positions, other than exempt employee positions, identified only by state agency, position title and salary;

(12) a directory of all exempt employee positions, identified by state agency, position title, salary and the name of the individual that holds the position;

(13) information relating to local education providers compiled and published by the public education department pursuant to Section 10-16D-6 NMSA 1978;

(14) a link to an open meeting tracker web site upon which each state agency shall post open meetings scheduled for the current month and the next month, including the time and place of the meeting, the subject of the meeting and an agenda;

(15) a link to the web site maintained by the regulation and licensing department for the purpose of accessing information relating to occupational licenses;

(16) a link to the state auditor's web site for the purpose of accessing financial audits;

(17) a link to New Mexico's statutes;

(18) a link to the New Mexico Administrative Code;

(19) a link to the secretary of state's web sites for lobbyist regulation;

(20) an annual summary within three months after the end of the fiscal year, or as soon thereafter as the information becomes available, of the state's fiscal health, including the state budget, revenues and expenditures for the previous fiscal year and projected revenues and operating budgets for the current fiscal year; and

(21) additional information, as required by rule of the department of finance and administration, that will assist the public in understanding state government operations and the use of taxpayer dollars.

E. State agencies shall provide updated financial information as frequently as possible but at least monthly.

F. The department shall update the web site as new information is received but at least monthly, include information from the previous month or year, where relevant, for comparison purposes and maintain the web site as the primary source of public information about the activity of the state government.

History: Laws 2010, ch. 34, § 3; 2011, ch. 13, § 3; 2015, ch. 141, § 1.

10-16D-4. Rules promulgation; compliance required.

A. Pursuant to the State Rules Act [Chapter 14, Article 4 NMSA 1978], the department shall promulgate rules necessary to implement the architecture, information exchange process and maintenance of the sunshine portal pursuant to the Sunshine Portal Transparency Act.

B. Pursuant to the State Rules Act, the department of finance and administration shall promulgate rules to carry out the provisions of the Sunshine Portal Transparency Act.

C. All state agencies shall comply with the provisions of the Sunshine Portal Transparency Act and rules promulgated by the department and the department of finance and administration pursuant to that act.

History: Laws 2010, ch. 34, § 4.

10-16D-5. Protection of confidential information.

Nothing in the Sunshine Portal Transparency Act shall require disclosure of information that is confidential by state or federal law.

History: Laws 2010, ch. 34, § 5.

10-16D-6. Local education providers; required information; publication by public education department on the sunshine portal.

A. Commencing no later than July 1, 2012, and on a continuing basis thereafter, each local education provider shall provide the following information to the public education department for online publication on the sunshine portal, in a downloadable format, for free public access:

- (1) the annual operating budget, commencing with the budget for fiscal year 2012;
- (2) salary schedules and policies;
- (3) a directory of the local education provider's employee positions by school name, title and salary;
- (4) monthly expenditures by category;
- (5) monthly revenue by source; and
- (6) an inventory of all real property owned by the local education provider, including the location of the property, the size of the property, a description of the improvements on the property and a description of the use of the property.

B. As soon as practicable after July 1, 2011, the public education department shall begin working with the department of information technology to create a monthly data extract from applicable computer database systems. As information is received pursuant to Subsection A of this section, the public education department, working with the department of information technology, shall publish the information on the sunshine portal.

C. The public education department and each local education provider that maintains a web site shall have a link to the sunshine portal on its web site.

History: 1978 Comp., § 10-16D-6, enacted by Laws 2011, ch. 13, § 4.

ARTICLE 16E

One-Stop Business Portal

10-16E-1. Short title.

This act [10-16E-1 to 10-16E-4 NMSA 1978] may be cited as the "One-Stop Business Portal Act".

History: Laws 2014, ch. 20, § 1.

10-16E-2. Definitions.

As used in the One-Stop Business Portal Act:

A. "authorized representative" means a person authorized by a business to use the one-stop business portal to complete business transactions with state agencies on behalf of the business;

B. "department" means the department of information technology; and

C. "state agency" means the New Mexico state government or any department, division, institution, board, bureau, commission or committee of state government and includes any office or officer of any of the above.

History: Laws 2014, ch. 20, § 2.

10-16E-3. One-stop business portal; duties.

A. The department shall develop, operate and maintain a centralized web site that is free, user-friendly, searchable and accessible to the public that shall provide authorized representatives of businesses with access or the ability to electronically conduct certain business transactions with state agencies and that shall be known as the "one-stop business portal".

B. No later than January 1, 2017, the department shall provide the framework and define the information exchange process necessary for the one-stop business portal.

C. No later than July 1, 2017, the one-stop business portal shall be available for public access and use and shall include the information and capabilities required by Subsection D of this section.

D. The one-stop business portal shall provide authorized representatives with a single point of entry for conducting certain business transactions with state agencies and shall facilitate or provide the capability to:

- (1) access taxation information, including filing and renewal deadlines;
- (2) make taxation filings and payments;
- (3) access workers' compensation information, including requirements and deadlines;
- (4) access information related to business licensing requirements and associated filing and renewal deadlines;
- (5) complete and submit applications for licenses, registrations and permits that are issued by state agencies and that are required for the transaction of business in New Mexico;

(6) complete and file documents that state agencies require for the transaction of business in New Mexico;

(7) make payments, including payments for application fees, license fees, registration fees, permit fees, filing fees and payments made pursuant to the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978] that must be paid to state agencies;

(8) provide electronic communications with customer service representatives during regular business hours regarding the use of the one-stop business portal and the services offered through the one-stop business portal; and

(9) access the sunshine portal.

E. The department and state agencies shall share information received pursuant to or required for the operation or function of the one-stop business portal only for the purpose of implementing the provisions of the One-Stop Business Portal Act or rules promulgated by a state agency pursuant to that act.

History: Laws 2014, ch. 20, § 3.

10-16E-4. Rules promulgation; compliance required.

A. Pursuant to the State Rules Act [Chapter 14, Article 4 NMSA 1978], the department shall promulgate rules necessary to support the framework, information exchange process and maintenance of the one-stop business portal pursuant to the One-Stop Business Portal Act.

B. Pursuant to the State Rules Act, the secretary of state, the taxation and revenue department, the workforce solutions department, the regulation and licensing department and the workers' compensation administration may promulgate rules to carry out the provisions of the One-Stop Business Portal Act.

History: Laws 2014, ch. 20, § 4.

ARTICLE 16F

Electronic Communications Privacy

10-16F-1. Short title.

This act [10-16F-1 to 10-16F-4 NMSA 1978] may be cited as the "Electronic Communications Privacy Act".

History: Laws 2019, ch. 39, § 1.

10-16F-2. Definitions.

As used in the Electronic Communications Privacy Act:

A. "adverse result" means:

- (1) danger to the life or physical safety of a natural person;
- (2) flight from prosecution;
- (3) destruction of or tampering with evidence;
- (4) intimidation of a potential witness; or
- (5) serious jeopardy to an investigation;

B. "authorized possessor" means a natural person who owns and possesses an electronic device or a natural person who, with the owner's consent, possesses an electronic device;

C. "electronic communication" means the transfer of a sign, a signal, a writing, an image, a sound, a datum or intelligence of any nature in whole or in part by a wire, radio, electromagnetic, photoelectric or photo-optical system;

D. "electronic communication information":

(1) means information about an electronic communication or the use of an electronic communication service, including:

(a) the contents, sender, recipients, format or the sender's or recipients' precise or approximate location at any point during the communication;

(b) the time or date the communication was created, sent or received; and

(c) any information, including an internet protocol address, pertaining to a person or device participating in the communication; and

(2) excludes subscriber information;

E. "electronic communication service" means a service that:

(1) allows its subscribers or users to send or receive electronic communications, including by acting as an intermediary in the transmission of electronic communications; or

(2) stores electronic communication information;

F. "electronic device" means a device that stores, generates or transmits information in electronic form;

G. "electronic device information":

(1) means information stored on or generated through the operation of an electronic device; and

(2) includes the current and prior locations of the device;

H. "electronic information" means electronic communication information or electronic device information;

I. "government entity" means:

(1) a department, agency or political subdivision of the state; or

(2) a natural person acting for or on behalf of the state or a political subdivision of the state;

J. "service provider" means a person offering an electronic communication service;

K. "specific consent":

(1) means consent provided directly to a government entity seeking information; and

(2) includes consent provided when the government entity is the addressee, the intended recipient or a member of the intended audience of an electronic communication, regardless of whether the originator of the communication had actual knowledge that the addressee, intended recipient or member of the specific audience is a government entity, except where the government entity has taken deliberate steps to hide the government entity's government association; and

L. "subscriber information" means:

(1) the name, street address, telephone number, email address or other similar type of contact information provided by a subscriber to a service provider to establish or maintain an account or communication channel;

(2) a subscriber or account number or identifier; or

(3) the length and type of service used by a user or a service-provider subscriber.

History: Laws 2019, ch. 39, § 2.

10-16F-3. Government entity; proscribed acts; permitted acts; warrants; information retention; emergency.

A. Except as otherwise provided in this section, a government entity shall not:

- (1) compel or incentivize the production of or access to electronic communication information from a service provider;
- (2) compel the production of or access to electronic device information from a person other than the device's authorized possessor; or
- (3) access electronic device information by means of physical interaction or electronic communication with the electronic device.

B. A government entity may compel the production of or access to electronic communication information from a service provider or compel the production of or access to electronic device information from a person other than the authorized possessor of the device only if the production or access is made under a:

- (1) warrant that complies with the requirements in Subsection D of this section; or
- (2) wiretap order.

C. A government entity may access electronic device information by means of physical interaction or electronic communication with the device only if that access is made:

- (1) under a warrant that complies with the requirements in Subsection D of this section;
- (2) under a wiretap order;
- (3) with the specific consent of the device's authorized possessor;
- (4) with the specific consent of the device's owner if the device has been reported as lost or stolen;
- (5) because the government entity believes in good faith that the device is lost, stolen or abandoned, in which case, the government entity may access that information only as necessary and for the purpose of attempting to identify, verify or contact the device's authorized possessor; or
- (6) because the government entity believes in good faith that an emergency involving danger of death or serious physical injury to a natural person requires access to the electronic device information.

D. A warrant for the search and seizure of electronic information shall:

(1) describe with particularity the information to be seized by specifying the time periods covered and, as appropriate and reasonable, the natural persons or accounts targeted, the applications or services covered and the types of information sought;

(2) require that information obtained through the execution of the warrant that is unrelated to the objective of the warrant or is not exculpatory to the target of the warrant shall be sealed and shall not be subject to further review, use or disclosure except pursuant to a court order or to comply with discovery as required. A court shall issue such an order upon a finding that there is probable cause to believe that the information is relevant to an active investigation or review, use or disclosure is required by state or federal law; and

(3) comply with all New Mexico and federal laws, including laws prohibiting, limiting or imposing additional requirements on the use of search warrants.

E. When issuing a warrant or order for electronic information or upon a petition of the target or recipient of the warrant or order, a court may appoint a special master charged with ensuring that only the information necessary to achieve the objective of the warrant or order is produced or accessed.

F. A service provider may voluntarily disclose electronic communication information or subscriber information if the law otherwise permits that disclosure.

G. Information obtained through the execution of a warrant or order that is unrelated to the objective of the warrant shall be destroyed as soon as feasible after the termination of the current investigation and related investigations or proceedings.

H. If a government entity receives electronic communication information as provided in Subsection F of this section, the government entity shall seal that information, which shall not be subject to further review, use or disclosure except pursuant to a court order upon a finding that there is probable cause to believe that the information is relevant to an active investigation or review, use or disclosure is required by state or federal law or to comply with discovery as required, within ninety days after the disclosure unless the government entity:

(1) has or obtains the specific consent of the sender or recipient of the electronic communication about which information was disclosed; or

(2) obtains a court order under Subsection I of this section.

I. A court may issue an order authorizing the retention of electronic communication information:

(1) only upon a finding that the conditions justifying the initial voluntary disclosure persist; and

(2) lasting only for the time those conditions persist or there is probable cause to believe that the information constitutes criminal evidence.

J. Information retained as provided in Subsection I of this section shall be shared only with a person that agrees to limit the person's use of the information to the purposes identified in the court order and that:

(1) is legally obligated to destroy the information upon the expiration or rescindment of the court order; or

(2) voluntarily agrees to destroy the information upon the expiration or rescindment of the court order.

K. If a government entity obtains electronic information because of an emergency that involves danger of death or serious physical injury to a natural person and that requires access to the electronic information without delay, the government entity shall file with the appropriate court within three days after obtaining the electronic information:

(1) an application for a warrant or order authorizing the production of electronic information and, if applicable, a request supported by a sworn affidavit for an order delaying notification as provided in Subsection B of Section 10-16F-4 NMSA 1978; or

(2) a motion seeking approval of the emergency disclosures that sets forth the facts giving rise to the emergency and, if applicable, a request supported by a sworn affidavit for an order delaying notification as provided in Subsection B of Section 10-16F-4 NMSA 1978.

L. A court that receives an application or motion as provided in Subsection K of this section shall promptly rule on the application or motion. If the court finds that the facts did not give rise to an emergency or if the court rejects the application for a warrant or order on any other ground, the court shall order:

(1) the immediate sealing of all information obtained, which shall not be subject to further review, use or disclosure except pursuant to a court order upon a finding that there is probable cause to believe that the information is relevant to an active investigation or review, use or disclosure is required by state or federal law or to comply with discovery as required; and

(2) the immediate notification provided in Subsection A of Section 10-16F-4 NMSA 1978 if that notice has not already been given.

M. This section does not limit the authority of a government entity to use an administrative, grand jury, trial or civil discovery subpoena to require:

(1) an originator, addressee or intended recipient of an electronic communication to disclose any electronic communication information associated with that communication;

(2) when a person that provides electronic communications services to its officers, directors, employees or agents for those officers, directors, employees or agents to carry out their duties, the person to disclose the electronic communication information associated with an electronic communication to or from the officer, director, employee or agent; or

(3) a service provider to provide subscriber information.

N. This section does not prohibit the intended recipient of an electronic communication from voluntarily disclosing electronic communication information concerning that communication to a government entity.

O. Nothing in this section shall be construed to expand any authority under New Mexico law to compel the production of or access to electronic information.

P. This section shall not be construed to alter the authority of a government entity that owns an electronic device to compel an employee who is authorized to possess the device to return the device to the government entity's possession.

History: Laws 2019, ch. 39, § 3; 2020, ch. 41, § 1.

10-16F-4. Warrant; emergency; government duties; notification.

A. Except as otherwise provided in this section, a government entity that executes a warrant or obtains electronic information in an emergency as provided in Section 10-16F-3 NMSA 1978 shall:

(1) serve upon or deliver, by registered or first-class mail, electronic mail or other means reasonably calculated to be effective, to the identified targets of the warrant or emergency request, a notice that informs the recipient that information about the recipient has been compelled or requested and that states with reasonable specificity the nature of the government investigation under which the information is sought;

(2) serve or deliver the notice:

(a) contemporaneously with the execution of a warrant; or

(b) in the case of an emergency, within three days after obtaining the electronic information; and

(3) include with the notice:

(a) a copy of the warrant; or

(b) a written statement setting forth the facts giving rise to the emergency.

B. When a government entity seeks a warrant or obtains electronic information in an emergency as provided in Section 10-16F-3 NMSA 1978, the government entity may request from a court an order delaying notification and prohibiting any party providing information from notifying any other party that information has been sought. The government entity shall support the request with a sworn affidavit. The court:

(1) shall issue the order if the court determines that there is reason to believe that notification may have an adverse result, but for no more than ninety days and only for the period that the court finds there is reason to believe that the notification may have that adverse result; and

(2) may grant one or more extensions of the delay of up to ninety days each on the grounds provided in Paragraph (1) of this subsection.

C. When the period of delay of a notification ordered by a court as provided in Subsection B of this section expires, the government entity that requested the order shall serve upon or deliver, by registered or first-class mail, electronic mail or other means reasonably calculated to be effective, as specified by the court issuing the order, to the identified targets of the warrant:

(1) a document that includes the information described in Subsection A of this section; and

(2) a copy of all electronic information obtained or a summary of that information, including, at a minimum:

(a) the number and types of records disclosed; and

(b) a statement of the grounds for the court's determination to grant a delay in notifying the targeted person.

D. If there is no identified target of a warrant or emergency request at the time of the warrant's or request's issuance, the government entity shall submit to the attorney general within three days after the execution of the warrant or request issuance the information described in Paragraph (1) of Subsection A of this section. If an order delaying notice is obtained under Subsection B of this section, the government entity shall submit to the attorney general when the period of delay of the notification expires

the information described in Paragraph (2) of Subsection C of this section and the information required by this subsection. The attorney general shall publish all those reports on the attorney general's website as provided in Section 10-16F-6 NMSA 1978.

E. Except as otherwise provided in this section, nothing in the Electronic Communications Privacy Act prohibits or limits a service provider or any other party from disclosing information about a request or demand for electronic information.

History: Laws 2019, ch. 39, § 4; 2020, ch. 41, § 2.

10-16F-5. Violations of law.

A. A person in a trial, hearing or proceeding may move to suppress any electronic information obtained or retained in violation of the United States constitution, the constitution of New Mexico or the Electronic Communications Privacy Act. The motion shall be made, determined and subject to review in accordance with the procedures provided in law.

B. The attorney general may commence a civil action to compel a government entity to comply with the Electronic Communications Privacy Act.

C. A natural person, service provider or other recipient of a warrant, order or other legal process obtained in violation of the United States constitution, the constitution of New Mexico or the Electronic Communications Privacy Act may petition the court that issued the warrant, order or process to void or modify it or order the destruction of any information obtained in violation of those sources of law.

History: Laws 2019, ch. 39, § 5.

10-16F-6. Annual reporting.

A. A government entity that obtains electronic communication information under the Electronic Communications Privacy Act shall report to the attorney general beginning in 2021 and every year thereafter on or before February 1. The report shall include, to the extent it reasonably can be determined:

(1) the number of times electronic information was sought or obtained under the Electronic Communications Privacy Act;

(2) the number of times each of the following were sought and, for each, the number of records obtained:

(a) electronic communication content;

(b) location information;

- (c) electronic device information, excluding location information; and
- (d) other electronic communication information; and
- (3) for each type of information listed in Paragraph (2) of this subsection:
 - (a) the number of times that type of information was sought or obtained under: 1) a wiretap order issued under the Electronic Communications Privacy Act; 2) a search warrant issued under the Electronic Communications Privacy Act; and 3) an emergency request as provided in Subsection K of Section 10-16F-3 NMSA 1978;
 - (b) the number of instances in which information sought or obtained did not specify a target natural person; and
 - (c) the number of times notice to targeted persons was delayed.

B. Beginning in 2021 and every year thereafter, on or before April 1, the attorney general shall publish on the attorney general's website a summary aggregating each of the items in Subsection A of this section.

C. Nothing in the Electronic Communications Privacy Act prohibits or restricts a service provider from producing an annual report summarizing the demands or requests it receives under the Electronic Communications Privacy Act.

History: Laws 2019, ch. 39, § 6; 2020, ch. 41, § 3.

ARTICLE 16G

State Ethics Commission

10-16G-1. Short title.

Chapter 10, Article 16G NMSA 1978 may be cited as the "State Ethics Commission Act".

History: Laws 2019, ch. 86, § 1; 2023, ch. 164, § 1.

10-16G-2. Definitions.

As used in the State Ethics Commission Act:

- A. "commission" means the state ethics commission;
- B. "commissioner" means a member of the commission;

C. "complainant" means a person who files a verified complaint with the commission;

D. "complaint" means a complaint that has been signed by the complainant and the complainant attests under oath and subject to penalty of perjury that the information in the complaint, and any attachments provided with the complaint, are true and accurate;

E. "director" means the executive director of the commission;

F. "government contractor" means a person who has a contract with a public agency or who has submitted a competitive sealed proposal or competitive sealed bid for a contract with a public agency;

G. "legislative body" means the house of representatives or the senate;

H. "lobbyist" means a person who is required to register as a lobbyist pursuant to the provisions of the Lobbyist Regulation Act [Chapter 2, Article 11 NMSA 1978];

I. "political party" means a political party that has been qualified in accordance with the provisions of the Election Code [Chapter 1 NMSA 1978];

J. "public agency" means any department, commission, council, board, committee, agency or institution of the executive or legislative branch of government of the state or any instrumentality of the state, including the New Mexico mortgage finance authority, the New Mexico finance authority, the New Mexico exposition center authority, the New Mexico hospital equipment loan council and the New Mexico renewable energy transmission authority;

K. "public employee" means an employee of a public agency;

L. "public official" means a person elected to an office of the executive or legislative branch of the state or a person appointed to a public agency; and

M. "respondent" means a person against whom a complaint has been filed with or by the commission.

History: Laws 2019, ch. 86, § 2; 2021, ch. 109, § 14.

10-16G-3. State ethics commission created; membership; terms; removal.

A. The "state ethics commission", as created in Article 5, Section 17 of the constitution of New Mexico, is composed of seven commissioners, appointed as follows:

(1) one commissioner appointed by the speaker of the house of representatives;

(2) one commissioner appointed by the minority floor leader of the house of representatives;

(3) one commissioner appointed by the president pro tempore of the senate;

(4) one commissioner appointed by the minority floor leader of the senate;

(5) two commissioners appointed by the four legislatively appointed commissioners; and

(6) one commissioner appointed by the governor, who shall be a retired judge and who shall chair the commission.

B. No more than three members of the commission may be members of the same political party.

C. The appointing authorities shall give due regard to the cultural diversity of the state and to achieving geographical representation from across the state. Each appointing authority shall file letters of appointment with the secretary of state.

D. Commissioners shall be appointed for staggered terms of four years beginning July 1, 2019. The initial commissioners appointed by the speaker of the house of representatives and senate minority floor leader shall serve an initial term of four years; members appointed by the president pro tempore of the senate and house minority floor leader shall serve an initial term of two years; members appointed by the legislatively appointed members shall serve an initial term of one year; and the member appointed by the governor shall serve an initial term of three years. Members shall serve until their successors are appointed and qualified.

E. A person shall not serve as a commissioner for more than two consecutive four-year terms.

F. When any member of the commission dies, resigns or no longer has the qualifications required for the commissioner's original selection, the commissioner's position on the commission becomes vacant. The director shall notify the original appointing authority of the vacant position. The original appointing authority shall select a successor in the same manner as the original selection was made. A vacancy shall be filled by appointment by the original appointing authority no later than sixty days following notification of a vacancy for the remainder of the unexpired term. A vacancy on the commission shall be filled by appointment by the original appointing authority for the remainder of the unexpired term.

G. The commission shall meet as necessary to carry out its duties pursuant to the State Ethics Commission Act. Commissioners are entitled to receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

H. Four commissioners consisting of two members of the largest political party in the state and two members of the second largest political party in the state constitute a quorum for the transaction of business. No action shall be taken by the commission unless at least four members, including at least two members of the largest political party in the state and two members of the second largest political party in the state, concur.

I. A commissioner may be removed only for incompetence, neglect of duty or malfeasance in office. A proceeding for the removal of a commissioner may be commenced by the commission or by the attorney general upon the request of the commission. A commissioner shall be given notice of hearing and an opportunity to be heard before the commissioner is removed. The supreme court has original jurisdiction over proceedings to remove commissioners, and its decision shall be final. A commissioner is also liable to impeachment pursuant to Article 4, Section 36 of the constitution of New Mexico.

History: Laws 2019, ch. 86, § 3.

10-16G-4. Commissioners; qualifications; limitations.

A. To qualify for appointment to the commission, a person shall:

- (1) be a qualified elector of New Mexico;
- (2) not have changed party registration in the five years next preceding the member's appointment in such a manner that the member's prior party registration would make the member ineligible to serve on the commission;
- (3) not continue to serve as a commissioner if the member changes party registration after the date of appointment in such a manner as to make the member ineligible to serve on the commission; and
- (4) not be, or within the two years prior to appointment shall not have been, in New Mexico, any of the following:
 - (a) a public official;
 - (b) a public employee;
 - (c) a candidate;
 - (d) a lobbyist;
 - (e) a government contractor; or
 - (f) an office holder in a political party at the state or federal level.

B. Before entering upon the duties of the office of commissioner, each commissioner shall review the State Ethics Commission Act and other laws and rules pertaining to the commission's responsibilities and to ethics and governmental conduct in New Mexico. Each commissioner shall take the oath of office as provided in Article 20, Section 1 of the constitution of New Mexico and, pursuant to the Financial Disclosure Act [Chapter 10, Article 16A NMSA 1978], file with the secretary of state a financial disclosure statement within thirty days of appointment and during the month of January every year thereafter that the commissioner serves on the commission.

C. For a period of one calendar year following a commissioner's tenure or following the resignation or removal of a commissioner, the commissioner shall not:

(1) represent a respondent, unless appearing on the commissioner's own behalf; or

(2) accept employment or otherwise provide services to a respondent unless the commissioner accepted employment or provided services prior to the filing of a complaint against the respondent.

D. During a commissioner's tenure, a commissioner shall not hold another public office or be:

(1) a public employee;

(2) a candidate;

(3) a lobbyist;

(4) a government contractor; or

(5) an office holder in a political party at the state or federal level.

E. A commissioner who changes political party affiliation in violation of the provisions of Subsection A of this section or who chooses to seek or hold an office in violation of Subsection D of this section shall resign from the commission or be deemed to have resigned.

History: Laws 2019, ch. 86, § 4; 2021, ch. 109, § 15.

10-16G-5. Commission; duties and powers.

A. The commission shall:

(1) employ an executive director, who shall be an attorney, upon approval of at least five commissioners;

(2) develop, adopt and promulgate the rules necessary for it to implement and administer the provisions of the State Ethics Commission Act; and

(3) establish qualifications for hearing officers and rules for hearing procedures and appeals.

B. Beginning January 1, 2020, the commission shall:

(1) receive and investigate complaints alleging ethics violations against public officials, public employees, candidates, persons subject to the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978], government contractors, lobbyists and lobbyists' employers;

(2) hold hearings in appropriate cases to determine whether there has been an ethics violation;

(3) compile, index, maintain and provide public access to all advisory opinions and reports required to be made public pursuant to the State Ethics Commission Act;

(4) draft a proposed code of ethics for public officials and public employees and submit the proposed code to each elected public official and public agency for adoption; and

(5) submit an annual report of its activities, including any recommendations regarding state ethics laws or the scope of its powers and duties, in December of each year to the legislature and the governor.

C. Beginning January 1, 2020, the commission may:

(1) by approval of at least five commissioners, initiate complaints alleging ethics violations against a public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist or lobbyist's employer;

(2) petition a district court to issue subpoenas under seal requiring the attendance of witnesses and the production of books, records, documents or other evidence relevant or material to an investigation;

(3) issue advisory opinions in accordance with the provisions of the State Ethics Commission Act;

(4) compile, adopt, publish and make available to all public officials, public employees, government contractors and lobbyists an ethics guide that clearly and plainly explains the ethics requirements set forth in state law, including those that relate to conducting business with the state and public agencies; and

(5) offer annual ethics training to public officials, public employees, government contractors, lobbyists and other interested persons.

History: Laws 2019, ch. 86, § 5.

10-16G-6. Executive director; appointment; duties and powers.

A. The commission shall appoint an executive director who shall be knowledgeable about state ethics laws and who shall be appointed without reference to party affiliation and solely on the grounds of fitness to perform the duties of the office. The director shall hold office from the date of appointment until such time as the director is removed by the commission.

B. The director shall:

(1) take the oath of office required by Article 20, Section 1 of the constitution of New Mexico;

(2) hire a general counsel who may serve for no more than five years, unless rehired for up to an additional five years;

(3) hire additional personnel as may be necessary to carry out the duties of the commission;

(4) prepare an annual budget for the commission and submit it to the commission for approval;

(5) make recommendations to the commission of proposed rules or legislative changes needed to provide better administration of the State Ethics Commission Act;

(6) perform other duties as assigned by the commission; and

(7) be required to reapply for the position after six years of service and may serve as director for no more than twelve years.

C. The director may:

(1) enter into contracts and agreements on behalf of the commission; and

(2) have the general counsel administer oaths and take depositions subject to the Rules of Civil Procedure for the District Courts.

D. For a period of one calendar year immediately following termination of the director's employment with the commission, the director shall not:

(1) represent a respondent, unless appearing on the director's own behalf; or

(2) accept employment or otherwise provide services to a respondent, unless the director accepted employment or provided services prior to the filing of a complaint against the respondent.

History: Laws 2019, ch. 86, § 6.

10-16G-7. Recusal and disqualification of a commissioner.

A. A commissioner may recuse from a particular matter.

B. A commissioner shall recuse from any matter in which the commissioner is unable to make a fair and impartial decision or in which there is a reasonable doubt about whether the commissioner can make a fair and impartial decision, including:

(1) when the commissioner has a personal bias or prejudice concerning a party to the proceeding or has prejudged a disputed evidentiary fact involved in a proceeding prior to a hearing. For the purposes of this paragraph, "personal bias or prejudice" means a predisposition toward a person based on a previous or ongoing relationship that renders the commissioner unable to exercise the commissioner's functions impartially;

(2) when the commissioner has a pecuniary interest in the outcome of the matter; or

(3) when in previous employment the commissioner served as an attorney, adviser, consultant or witness in the matter in controversy.

C. A party to the proceeding may request the recusal of a commissioner and shall provide the commission with the grounds for the request. If the commissioner declines to recuse upon request of a party to the proceeding, the commissioner shall provide a full explanation in support of the refusal to recuse.

D. A party may appeal a commissioner's refusal to recuse, or if the propriety of a commissioner's participation in a particular matter is otherwise questioned, the issue shall be decided by a majority of the other commissioners present and voting.

E. A disqualified commissioner shall not participate in any proceedings with reference to the matter from which the commissioner is disqualified or recused, and the commissioner shall be excused from that portion of any meeting at which the matter is discussed.

F. Minutes of commission meetings shall record the name of any commissioner not voting on a matter by reason of disqualification or recusal.

G. If two or more commissioners have recused themselves or are disqualified from participating in a proceeding, the remaining commissioners shall appoint temporary

commissioners to participate in that proceeding. Appointments of temporary commissioners shall be made by a majority vote of the remaining commissioners in accordance with the political affiliation and geographical representation requirements and the qualifications set forth in the State Ethics Commission Act.

H. The commission shall promulgate rules for the recusal and disqualification of commissioners, for an appeal of a recusal decision and for the appointment of temporary commissioners.

History: Laws 2019, ch. 86, § 7.

10-16G-8. Advisory opinions.

A. The commission may issue advisory opinions on matters related to ethics. Advisory opinions shall:

- (1) be requested in writing by a public official, public employee, candidate, person subject to the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978], government contractor, lobbyist or lobbyist's employer;
- (2) identify a specific set of circumstances involving an ethics issue;
- (3) be issued within sixty days of receipt of the request unless the commission notifies the requester of a delay in issuance and continues to notify the requester every thirty days until the advisory opinion is issued; and
- (4) be published after omitting the requester's name and identifying information.

B. A request for an advisory opinion shall be confidential and not subject to the provisions of the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978].

C. Unless amended or revoked, an advisory opinion shall be binding on the commission in any subsequent commission proceedings concerning a person who acted in good faith and in reasonable reliance on the advisory opinion.

History: Laws 2019, ch. 86, § 8.

10-16G-9. Commission jurisdiction; compliance provisions.

A. The commission has jurisdiction to enforce the applicable civil compliance provisions for public officials, public employees, candidates, persons subject to the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978], government contractors, lobbyists and lobbyists' employers of:

- (1) the Campaign Reporting Act;

- (2) the Financial Disclosure Act [Chapter 10, Article 16A NMSA 1978];
- (3) the Gift Act [10-16B-1 to 10-16B-4 NMSA 1978];
- (4) the Lobbyist Regulation Act [Chapter 2, Article 11 NMSA 1978];
- (5) the Voter Action Act [1-19A-1 to 1-19A-17 NMSA 1978];
- (6) the Governmental Conduct Act [Chapter 10, Article 16 NMSA 1978];
- (7) the Procurement Code [13-1-28 to 13-1-199 NMSA 1978];
- (8) the State Ethics Commission Act;
- (9) the Revised Uniform Law on Notarial Acts [Chapter 14, Article 14A NMSA 1978]; and
- (10) Article 9, Section 14 of the constitution of New Mexico.

B. All complaints filed with a public agency regarding the statutes listed in Subsection A of this section shall be forwarded to the commission.

C. The commission may choose to act on some or all aspects of a complaint and forward other aspects of a complaint to another state or federal agency with jurisdiction over the matter in accordance with Subsection E of this section.

D. If the commission decides not to act on a complaint, whether the complaint was filed with the commission or forwarded from another public agency, or decides only to act on part of a complaint, the commission shall promptly forward the complaint, or any part of a complaint on which it does not wish to act, to the public agency that has appropriate jurisdiction within ten days of the decision. The complainant and respondent shall be notified in writing when the complainant's request has been forwarded to another agency unless otherwise provided pursuant to Subsection H of Section 10-16G-10 NMSA 1978.

E. The commission may share jurisdiction with other public agencies having authority to act on a complaint or any aspect of a complaint. Such shared jurisdiction shall be formalized through an agreement entered into by all participating agencies involved with the complaint and the director. The commission may also investigate a complaint referred to the commission by the legislature, or a legislative committee, in accordance with an agreement entered into pursuant to policies of the New Mexico legislative council or rules of the house of representatives or senate.

F. The commission may file a court action to enforce the civil compliance provisions of an act listed in Subsection A of this section. The court action shall be filed in the district court in the county where the defendant resides.

History: Laws 2019, ch. 86, § 9; 2021, ch. 21, § 33; 2021, ch. 109, § 16.

10-16G-10. Complaints; investigations; subpoenas.

A. A complaint of an alleged ethics violation committed by a public official, public employee, candidate, person subject to the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978], government contractor, lobbyist, lobbyist's employer or a restricted donor subject to the Gift Act [Chapter 10, Article 16B NMSA] may be filed with the commission by a person who has actual knowledge of the alleged ethics violation.

B. The complainant shall set forth in detail the specific charges against the respondent and the factual allegations that support the charges and shall sign the complaint under penalty of false statement. The complainant shall submit any evidence the complainant has that supports the complaint. Evidence may include documents, records and names of witnesses. The commission shall prescribe the forms on which complaints are to be filed. The complaint form shall be signed under oath by the complainant.

C. Except as provided in Subsection H of this section, the respondent shall be notified within seven days of the filing of the complaint and offered an opportunity to file a response on the merits of the complaint.

D. The director shall determine if the complaint is subject to referral to another state agency pursuant to an agreement or outside the jurisdiction of the commission, and if so, promptly refer the complaint to the appropriate agency. If the director determines that the complaint is within the commission's jurisdiction, the director shall have the general counsel initiate an investigation.

E. The general counsel shall conduct an investigation to determine whether the complaint is frivolous or unsubstantiated. If the general counsel determines that the complaint is frivolous or unsubstantiated, the complaint shall be dismissed, and the complainant and respondent shall be notified in writing of the decision and reasons for the dismissal. The commission shall not make public a complaint that has been dismissed pursuant to this subsection or the reasons for the dismissal.

F. If the general counsel and the respondent reach a settlement on the matters of the complaint, the settlement shall be submitted to the commission for its approval, and if the matter has been resolved to the satisfaction of the commission, the complaint and terms of the settlement shall be subject to public disclosure.

G. If an independent hearing officer determines that there is probable cause, the director shall promptly notify the respondent of the finding of probable cause and of the specific allegations in the complaint that are being investigated and that a public hearing will be set. If the finding of probable cause involves a discriminatory practice or actions by the respondent against the complainant, no settlement agreement shall be reached without prior consultation with the complainant. In any case, the notification, complaint,

specific allegations being investigated and any response to the complaint shall be made public thirty days following notice to the respondent. The hearing officer chosen to consider probable cause shall not participate in the adjudication of the complaint.

H. Notwithstanding the provisions of Subsections C and G of this section, the director may delay notifying a respondent and complainant and releasing to the public the complaint and related information required by Subsection G of this section if it is deemed necessary to protect the integrity of a criminal investigation. A decision whether to delay notifying a respondent shall be taken by a majority vote of the commission and shall be documented in writing with reasonable specificity.

I. As part of an investigation, the general counsel may administer oaths, interview witnesses and examine books, records, documents and other evidence reasonably related to the complaint. All testimony in an investigation shall be under oath, and the respondent may be represented by legal counsel. If the general counsel determines that a subpoena is necessary to obtain the testimony of a person or the production of books, records, documents or other evidence, the director shall request that the commission petition a district court to issue a subpoena.

J. The commission may petition the court for a subpoena for the attendance and examination of witnesses or for the production of books, records, documents or other evidence reasonably related to an investigation. If a person neglects or refuses to comply with a subpoena, the commission may apply to a district court for an order enforcing the subpoena and compelling compliance. All proceedings in the district court prior to the complaint being made public pursuant to Subsection G of this section, or upon entry of a settlement agreement, shall be sealed. A case is automatically unsealed upon notice by the commission to the court that the commission has made the complaint public. No later than July 1 of each even-numbered year, the chief justice of the supreme court shall appoint an active or pro tempore district judge to consider the issuance and enforcement of subpoenas provided for in this section. The appointment shall end on June 30 of the next even-numbered year after appointment.

K. A public official or state public employee who is a respondent who is subject to a complaint alleging a violation made in the performance of the respondent's duties shall be entitled to representation by the risk management division of the general services department.

History: Laws 2019, ch. 86, § 10; 2021, ch. 109, § 17; 2023, ch. 164, § 2.

10-16G-11. Status of investigation; reports to commission.

A. If a hearing has not been scheduled concerning the disposition of a complaint within ninety days after the complaint is received, the director shall report to the commission on the status of the investigation. The commission may dismiss the complaint or instruct the director to continue the investigation of the complaint. Unless

the commission dismisses the complaint, the director shall report to the commission every ninety days thereafter on the status of the investigation.

B. Upon dismissal of a complaint or a decision to continue an investigation of a complaint, the commission shall notify the complainant and respondent in writing of its action. If the commission has not notified a respondent pursuant to the provisions of Subsection G of Section 10 [10-16G-10 NMSA 1978] of the State Ethics Commission Act, the commission shall vote on whether to notify the respondent. A decision whether to continue to delay notifying the respondent shall be taken by a majority vote of a quorum of the commission and shall be documented in writing with reasonable specificity.

History: Laws 2019, ch. 86, § 11.

10-16G-12. Investigation report; commission hearings; decisions and reasons given; disclosure of an ethics violation.

A. Upon receipt of the general counsel's recommendation, the commission or hearing officer shall:

- (1) dismiss a complaint and notify the complainant and the respondent of the dismissal; or
- (2) set a public hearing, as soon as practicable.

B. At any time before or during a hearing provided for in Subsection A of this section, the hearing officer may, at a public meeting, approve a disposition of a complaint agreed to by the general counsel and the respondent, as approved by the commission.

C. The hearing provided for in Subsection A of this section shall be pursuant to the rules of evidence that govern proceedings in the state's courts and procedures established by the commission. An audio recording shall be made of the hearing. The respondent may be represented by counsel. The parties may present evidence and testimony, request the director to compel the presence of witnesses and examine and cross-examine witnesses.

D. The hearing officer shall issue a written decision that shall include the reasons for the decision. If the hearing officer finds by a preponderance of the evidence that the respondent's conduct constituted a violation, the decision may include recommendations for disciplinary action against the respondent, and the hearing officer may impose any fines provided for by law. A finding of fraudulent or willful misconduct shall require clear and convincing evidence.

E. The complainant or respondent may appeal a decision of the hearing officer within thirty days of the decision to the full commission, which shall hear the matter within sixty days of notice of the appeal and issue its decision within 180 days.

F. The commission shall publicly disclose a decision, including a dismissal following a finding of probable cause or the terms of a settlement, issued pursuant to this section. The commission shall provide the decision to the complainant, the respondent and the:

- (1) house of representatives if the respondent is a public official who is subject to impeachment;
- (2) appropriate legislative body if the respondent is a member of the legislature;
- (3) respondent's appointing authority if the respondent is an appointed public official;
- (4) appropriate public agency if the respondent is a public employee;
- (5) public agency with which the respondent has a government contract if the respondent is a government contractor; and
- (6) secretary of state and the respondent's employer, if any, if the respondent is a lobbyist.

G. The commission shall produce a quarterly report subject to public inspection containing the following information:

- (1) the number of complaints filed with and referred to the commission;
- (2) the disposition of the complaints; and
- (3) the type of violation alleged in the complaints.

History: Laws 2019, ch. 86, § 12.

10-16G-13. Confidentiality of records; penalty.

A. A decision that a respondent's conduct constituted a violation, and the terms of a settlement approved by the commission, are public records. Pleadings, motions, briefs and other documents or information related to the decision are public records, except for information that is confidential or protected pursuant to attorney-client privilege, provider-patient privilege or state or federal law.

B. If a complaint is determined to be frivolous, unsubstantiated or outside the jurisdiction of the commission, the complaint shall not be made public by the

commission; provided that the commission shall not prohibit the complainant or respondent from releasing the commission's decision or other information concerning the complaint.

C. Except as otherwise provided in the acts listed in Section 9 of the State Ethics Commission Act, all complaints, reports, files, records and communications collected or generated by the commission, hearing officer, general counsel or director that pertain to alleged violations shall not be disclosed by the commission or any commissioner, agent or employee of the commission, unless:

- (1) disclosure is necessary to pursue an investigation by the commission;
- (2) disclosure is required pursuant to the provisions of the State Ethics Commission Act; or
- (3) they are offered into evidence by the commission, respondent or another party at a judicial, legislative or administrative proceeding, including a hearing before a hearing officer.

D. Information and reports containing information made confidential by law shall not be disclosed by the commission or its director, staff or contractors.

E. A commissioner, director, staff or contractor who knowingly discloses any confidential complaint, report, file, record or communication in violation of the State Ethics Commission Act is guilty of a petty misdemeanor.

History: Laws 2019, ch. 86, § 13.

10-16G-14. Criminal violations; referral.

If the commission finds at any time that a respondent's conduct amounts to a criminal violation, the director shall consult with the attorney general or an appropriate district attorney, and the commission may refer the matter to the attorney general or an appropriate district attorney. The commission may provide the attorney general or district attorney with all evidence collected during the commission's investigation. Nothing in this section prevents the commission from taking any action authorized by the State Ethics Commission Act or deciding to suspend an investigation pending resolution of any criminal charges.

History: Laws 2019, ch. 86, § 14.

10-16G-15. Time limitations on jurisdiction.

A. The commission shall not accept or consider a complaint unless the complaint is filed with the commission within the later of two years from the date:

- (1) on which the alleged conduct occurred; or
- (2) the alleged conduct could reasonably have been discovered.

B. The commission shall not adjudicate a complaint filed against a candidate, except pursuant to the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978] or Voter Action Act [1-19A-1 to 1-19A-17 NMSA 1978], less than sixty days before a primary or general election. During that time period, the commission may dismiss complaints that are frivolous or unsubstantiated or refer complaints that are outside the jurisdiction of the commission.

C. A complainant shall be notified in writing of the provisions of this section and shall also be notified in writing that the complainant may refer allegations of criminal conduct to the attorney general or the appropriate district attorney.

D. When commission action on a complaint is suspended pursuant to the provisions of this section, the respondent shall promptly be notified that a complaint has been filed and of the specific allegations in the complaint and the specific violations charged in the complaint.

History: Laws 2019, ch. 86, § 15.

10-16G-16. Prohibited actions.

A. A person shall not take or threaten to take any retaliatory, disciplinary or other adverse action against another person who in good faith:

- (1) files a verified complaint with the commission that alleges a violation; or
- (2) provides testimony, records, documents or other information to the commission during an investigation or at a hearing.

B. A complainant and a respondent shall not communicate ex parte with any hearing officer, commissioner or other person involved in a determination of the complaint.

C. Nothing in the State Ethics Commission Act precludes civil or criminal actions for libel or slander or other civil or criminal actions against a person who files a false claim.

History: Laws 2019, ch. 86, § 16.

ARTICLE 16H

Public Employee Caregiver Leave

10-16H-1. Short title.

Sections 5 through 8 [10-16H-1 to 10-16H-4 NMSA 1978] of this act may be cited as the "Public Employee Caregiver Leave Act".

History: Laws 2019, ch. 177, § 5.

10-16H-2. Definitions.

As used in the Public Employee Caregiver Leave Act:

A. "eligible employee" means, except as provided pursuant to Section 8 [10-16H-4 NMSA 1978] of this 2019 act, an individual who is an officer or employee of the state or of a public school and who, in accordance with the policies of the state agency or public school employing the officer or employee, is eligible to accrue sick leave;

B. "family member" means an individual who is the spouse or domestic partner of or is by blood, marriage or legal adoption a parent, grandparent, great-grandparent, child, grandchild, great-grandchild, brother, sister, niece, nephew, aunt or uncle, or is living in the household of an eligible employee;

C. "sick leave" means a leave of absence from employment for which a state agency or public school pays an eligible employee due to illness or injury or to receive care from a licensed or certified health professional. "Sick leave" does not include leave to which an employee is entitled under the federal Family and Medical Leave Act of 1993, regardless of whether the employee uses sick leave during that leave; and

D. "state" or "state agency" means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions.

History: Laws 2019, ch. 177, § 6.

10-16H-3. Accumulated sick leave; application to family caregiving.

A. A state agency or public school that provides eligible employees with sick leave for an eligible employee's own illness or injury or to receive health care shall permit its eligible employees to use accrued sick leave to care for their family members in accordance with the same terms and procedures that the state agency or public school imposes for any other use of sick leave by eligible employees.

B. A state agency or public school employing an eligible employee shall not discharge or threaten to discharge, demote, suspend or retaliate or discriminate in any manner, including using the employee's use of caregiver leave as a factor in the employee's performance evaluation, against an eligible employee because that employee requests or uses caregiver leave in accordance with the state agency's or public school's general sick leave policy, files a grievance for violation of the Public Employee Caregiver Leave Act, cooperates in an investigation or prosecution of an

alleged violation of that act or opposes any policy or practice established pursuant to that act.

C. Nothing in this section shall require a state agency or public school to provide sick leave to its employees.

D. The provisions of the Public Employee Caregiver Leave Act are nonexclusive and cumulative and are in addition to any other rights or remedies afforded by contract or under other provision of law. The Public Employee Caregiver Leave Act does not prohibit a state agency or public school from providing greater sick leave benefits than are provided pursuant to that act.

E. Each state agency director and public school administrator shall adopt and promulgate policies to implement the provisions of the Public Employee Caregiver Leave Act. These policies shall include, at a minimum, grievance procedures for according eligible employees recourse for violations of the Public Employee Caregiver Leave Act. As used in this section, "state agency director" means:

(1) the director of the state personnel office for those state agencies to which the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978] apply; and

(2) the director of a state agency to which the provisions of the Personnel Act do not apply.

History: Laws 2019, ch. 177, § 7.

10-16H-4. Exemptions.

A. The provisions of the Public Employee Caregiver Leave Act shall not apply to any employment expressly exempted under rules adopted by the state personnel office or any other state agency.

B. Nothing in the Public Employee Caregiver Leave Act shall be construed to invalidate, diminish or otherwise interfere with any collective bargaining agreement, nor shall it be construed to invalidate, diminish or otherwise interfere with any party's power to collectively bargain for a collective bargaining agreement.

History: Laws 2019, ch. 177, § 8.

ARTICLE 17

Miscellaneous Provisions

10-17-1. [County, municipal and educational boards; monthly summary of minutes; contents.]

That on or before the 10th [tenth] day of each month there shall be prepared by each board of county commissioners in this state, by the council, commission or trustees of every city, town or village in this state, and by every board of education in this state, a summary of the minutes of all meetings held by such board during the preceding calendar month, such summary to mean a full and correct account of all business transacted by such boards and commissions, showing all matters presented, the action taken thereon, or other disposition thereof, and a statement of all monies received by any such boards or commissions during the preceding calendar month, showing the source from which received and the amount received from each source, and a detailed statement of all expenditures made during such preceding calendar month, including a list of all warrants issued, to whom issued, the amount of each warrant and the purpose for which the warrant was issued.

History: Laws 1939, ch. 220, § 1; 1941 Comp., § 10-505; 1953 Comp. § 5-6-5.

10-17-2. [Filing summary of minutes; furnishing to legal newspapers.]

Such summary of minutes shall be filed with the clerk of each board mentioned in Section 1 [10-17-1 NMSA 1978] hereof and such summary shall be a public record and open to inspection of the public, provided, however, that a copy thereof shall be by the board or commission mailed to each and every legal newspaper published in the county for such use as such newspaper may see fit.

History: Laws 1939, ch. 220, § 2; 1941 Comp., § 10-506; 1953 Comp., § 5-6-6.

10-17-3. Publication of list of expenditures monthly.

On or before the 10th [tenth] day of each month there may be published in a legal newspaper published in the county where such board or commission is situated, by the council, commission or trustees of every city, town or village in this state, and by every board of education in this state, a summary of expenditures made during the preceding calendar month, which shall include a list of the total expenditures during the month and the amount spent in connection with each budgetary item and a summary of all receipts; provided, however, that the publication herein mentioned shall be made only at the discretion of the council, commission or trustee of every city, town or village, and board of education in this state if they shall deem the said publication necessary in the public interest.

History: Laws 1939, ch. 220, § 3; 1941 Comp., § 10-507; Laws 1947, ch. 189, § 1; 1953, ch. 84, § 1; 1953 Comp., § 5-6-7.

10-17-4. County and precinct officers; monthly financial statements; audit.

All county and precinct officers except justices of the peace shall file monthly statements with the county clerk on the first Monday of each month, showing in detail the amounts of all public money received and disbursed by them. The statements shall be verified by the officers making them and the board of county commissioners shall audit and adjust them in accordance with the facts.

History: 1953 Comp., § 5-6-8, enacted by Laws 1961, ch. 212, § 10.

10-17-5. [Delivery of lawbooks, records and documents to successors; exception.]

All public officers of this state who may have received lawbooks, as such officers, are hereby required to turn over the same to their successors, as also the records and all other documents relative to their respective offices: provided, that the members of the legislature shall not be included in this section.

History: Laws 1854-1855; C.L. 1865, ch. 92, § 20; C.L. 1884, § 1741; C.L. 1897, § 2557; Code 1915, § 3985; C.S. 1929, § 96-135; 1941 Comp., § 10-510; 1953 Comp., § 5-6-9.

10-17-6. Repealed.

10-17-7. [Shortages in accounts of public officers; compromise prohibited.]

It shall hereafter be unlawful for any state official, district attorney, board of county commissioners or other official charged with the collection of any indebtedness, or the prosecution of any suit for the collection of any indebtedness due to, or claimed by the state, any county, city, town, precinct or school district, from any public official or the sureties on his official bond, to compromise, satisfy or discharge such indebtedness in favor of such official or sureties, except upon payment in full of the amount claimed to be due, or of the amount for which judgment is rendered by a court of competent jurisdiction.

History: Laws 1893, ch. 5, § 1; C.L. 1897, § 3193; Code 1915, § 1864; C.S. 1929, § 39-113; 1941 Comp., § 10-512; 1953 Comp., § 5-6-11.

10-17-8. [Shortage compromises declared invalid; recovery of full payment; limitation of action.]

Any compromise, satisfaction or discharge of indebtedness prohibited by the preceding section [10-17-7 NMSA 1978] of this article is hereby declared to be invalid, and shall not be held a bar to any suit for the collection thereof, and suit may be brought at any time within four years from the date of any such compromise, satisfaction or discharge to enforce the payment thereof, notwithstanding any existing law of limitation.

History: Laws 1893, ch. 5, § 2; C.L. 1897, § 3194; Code 1915, § 1865; C.S. 1929, § 39-114; 1941 Comp., § 10-513; 1953 Comp., § 5-6-12.

10-17-9. [Defaulting officers; auditor's transcript of account; purpose.]

Whenever any revenue officer or other person responsible for public money has neglected or refused or shall in future neglect or refuse to pay over to the state treasurer the sum or balance for which he is accountable, and which is due to the state, upon the settlement of his accounts, it shall be the duty of the state auditor to make a transcript of the account of such officer or person, with the state, showing the sum due the state by such officer or person, which said account shall be certified as true and correct, as taken from the books of the auditor, and shall be signed by said auditor and sealed with his official seal, and if he shall have no official seal, with his private seal, and the auditor shall transmit the same immediately, together with correct copies of any other document, bond, obligation or other instrument of writing, signed, sealed and certified as aforesaid, to the district attorney or attorney general to be used in the prosecution of such judge, officer, individual and their sureties, if they have such sureties.

History: Laws 1869-1870, ch. 39, § 1; C.L. 1884, § 2284; C.L. 1897, § 3195; Code 1915, § 1866; C.S. 1929, § 39-115; 1941 Comp., § 10-514; 1953 Comp., § 5-6-13.

10-17-10. [Prosecution for shortage; proof required; judgment; execution.]

Such prosecution shall be brought for the whole sum due and the interest accrued, and it shall be sufficient to prove the amount of the debt, and the fact that the securities were the securities of the said officer or individual prosecuted, and judgment shall be given against said officer or individual and their said securities for the sum so due and interest according to law, and execution shall thereupon be issued against all the parties so tried, in favor of the state.

History: Laws 1869-1870, ch. 39, § 2; C.L. 1884, § 2285; C.L. 1897, § 3196; Code 1915, § 1867; C.S. 1929, § 39-116; 1941 Comp., § 10-515; 1953 Comp., § 5-6-14.

10-17-11. [Institution of shortage prosecution; admissible evidence.]

When any party shall be liable to be prosecuted under the provisions of this and the two preceding sections [10-17-9, 10-17-10 NMSA 1978], it shall be the duty of the district attorney to immediately commence a suit in favor of the state against said party and his securities for the sum due and interest according to law, and in the trial of any cause now or that may be hereafter pending against any officer or person and their securities, the certified transcript of the account of said officer or individual provided for by said sections and the certified copies of any other document, bond, obligation or

other instrument of writing sealed, signed and certified in conformity with the said sections, or the originals, shall be admitted as evidence of such debt or liability of said officer or individual, and their securities, and the court trying the cause shall give judgment and issue execution in conformity to said evidence.

History: Laws 1869-1870, ch. 39, § 3; C.L. 1884, § 2286; C.L. 1897, § 3197; Code 1915, § 1868; C.S. 1929, § 39-117; 1941 Comp., § 10-516; 1953 Comp., § 5-6-15.

10-17-12. [Willful neglect of duty; penalty.]

When any duty is or shall be enjoined by law upon any public officer, or upon any person holding any public trust or employment, every wilful [willful] neglect to perform such duty, where no special provision shall have been made for the punishment of such delinquency, shall be deemed a misdemeanor, punishable by imprisonment in the county jail for not less than ten nor more than sixty days or by a fine of not less than \$100, nor more than \$500.

History: 1941 Comp., § 10-517, enacted by Laws 1951, ch. 13, § 1; 1953 Comp., § 5-6-16.