



STATE OF NEW MEXICO
Educational Retirement Board

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Legislative Summary
2011 Regular Legislative Session

The following summarizes legislation affecting the ERB that was passed in the regular 2011 legislative session and signed by the Governor.

HB 129 – Contributions by Retirees on Return to Work

HB 129 amends Section 22-11-25.1 to require retired members who return to employment with a local administrative unit (“LAU”) pursuant to Subsections A, B or F of that Section to pay contributions to the Educational Retirement Fund equal to the member contributions that non-retired employees make pursuant to Section 22-11-21. The contributions will not be refundable to the retired member. LAUs will continue to make the employer contributions as specified by statute.

HB 628 – Change Contribution Rates for State Retirement Plans

HB 628 changes contributions rates for all members of the Educational Retirement Fund whose annual salary is greater than \$20,000 during Fiscal Year 2012 (July 1, 2011 to June 30, 2012; “Fiscal Year 12”). In addition, those contribution rates may continue in effect during Fiscal Year 13 (July 1, 2012 to June 30 2013; “Fiscal Year 13”), as well. For employees whose annual salary is greater than \$20,000, the employee contribution rate will be 11.15% and the employer contribution rate will be 9.15%. This is an increase of 1.75% from the employee contribution rate in Fiscal Years 2010 (July 1, 2009 to June 30, 2010) and 2011 (July 1, 2010 to June 30, 2011). For employees who annual salary is \$20,000 or less, the employee contribution rate will remain at 7.9% and the employer rate at 12.4%.

The Fiscal Year 12 contribution rates for employees whose annual salary is greater than \$20,000 will continue in FY 13 (July 1, 2012, to 2013) if the Secretary of the Department of Finance and Administration (“DFA”) certifies that:

- general fund revenues in Fiscal Year 12 will not be at least \$100 million more than forecast to be in the Fiscal Year 12 budget; and,
- total state reserve funds at the end of Fiscal Year 12 will be less than 5% of general fund appropriations in Fiscal Year 12.

The DFA Secretary will make the certification to the LFC, ERB and PERA based on the last consensus revenue forecast issued before the regular 2012 legislative session. If the certification is not made, employee contributions rates for employees whose annual salary is greater than \$20,000 would be 9.4% in Fiscal Year 13 and employer contribution rates would be 10.9%.

Under HB 628, contribution rates for all employees, regardless of annual salary, would be 7.9% beginning in Fiscal Year 2014 (July 1, 2013 to June 30, 2014; "Fiscal Year 14"). Employer contribution rates would be 13.15% in Fiscal Year 14 and beginning July 1, 2014 would increase to 13.9%.

Senate Bill 119 - Retirement Beneficiary Designation of New Beneficiary

SB 119 amends the Educational Retirement Act to allow retired members who are receiving pension benefits under Option A (Straight Life Benefit) because of the death of a named beneficiary to exercise a one-time irrevocable option to designate another individual as the beneficiary under either Option B (Joint 100% Survivor Benefit) or Option C (Joint 50% Survivor Benefit). The pension benefit under the new selection will be recalculated to have the same actuarial present value as the benefit paid to the retired member prior the designation of a new beneficiary. The new beneficiary designation and the amount of the pension benefit will be subject to court orders regarding division of community property and child support obligations provided for in Section 22-11-42(B). Retired members must pay \$100 to defray the cost of determining the new annuity amount.

In addition, SB 119 allows a retired member receiving pension benefits under either Options B or C who has a living designated beneficiary other than a current or former spouse to exercise a one-time irrevocable option to deselect that beneficiary and designate another beneficiary or to receive future pension benefits under Option A. A retired member who designates another beneficiary will not have the option of changing from the current Option B or C form of payment and the pension benefit under the form of payment that the retired member is receiving will be recalculated and have the same actuarial present value, computed as of the effective date of the designation, as the annuity amount paid prior to the designation. Retired members who select a new beneficiary must pay \$100 to defray the cost of determining the new annuity amount. There is no charge if the retired member deselects the designated beneficiary and has benefit payments made without a reduction for the Option B or C benefits.

PERA retirees also have the same options of designating a new beneficiary upon the death of a named beneficiary or deselecting living beneficiary who is neither a spouse nor former spouse.

Senate Bill 269 - Allow the ERB to directly contract for custodial bank services and allow the ERB to contract for legal services on contingency fee basis

SB 269 amends Section 22-11-6 to allow the ERB to directly select and contract for custodial bank services. Formerly the State Board of Finance contracted for custodial bank services for the ERB, as well as for the State Investment Council ("SIC") and PERA. SIC was given authority in the 2010 regular legislative session to directly contract for custodial bank services. PERA also was given this authority in the 2011 regular legislative session.

SB 269 also amends Section 22-11-6 to allow the ERB to contract for legal services for litigation matters on a contingent fee basis, subject to the Procurement Code. Proposed contracts would be submitted to the Attorney General to review the reasonableness of the proposed contingency fee. That review would take into account the complexity of the factual and legal issues presented by the claims to be pursued under the contract. Notwithstanding the Attorney General's determination, the ERB may nevertheless approve a contingency fee contract by a vote of no fewer than four Board members. This assures that such contracts are approved by a majority of the entire ERB, rather than just a majority of those attending a given board meeting. SB 269 also states that nothing in the paragraph authorizing the ERB to enter into contingency fee attorney contracts will prejudice or impair the rights of a qui tam plaintiff pursuant to the Fraud Against Taxpayers Act, Chapter 44, Article 9, NMSA 1978.

Attorneys seeking to represent the ERB on a contingency fee basis must file a disclosure pursuant to Section 13-1-191.1 of all campaign contributions made to the Governor, Attorney General, State Treasurer or any member of the Board, or to a political committee intended to aid or promote the nomination or election of any candidate to a state office if the committee is: 1) established by or in consultation with or at the request of any of the foregoing persons or their agents or; 2) controlled by one of those persons or their agents.

SB 269 also establishes the Educational Retirement Suspense Fund, into which all amounts received in satisfaction of a claim brought by private attorneys on behalf of the ERB will be deposited. Compensation due the private attorneys and reimbursement for reasonable costs and expenses will be disbursed from the Suspense Fund in accordance with the term of the contract with the attorneys. The balance of each deposit after the disbursements have been made will be distributed to the Educational Retirement Fund.

Senate Bill 329 –Authorizing Ex Officio Members of the Educational Retirement Board to Appoint Designees

SB 329 authorizes the State Treasurer and the Secretary of Public Education to each appoint a designee to serve on the ERB. The designees must be New Mexico residents, current employees of the State Treasurer's Office or the Public Education Department, respectively, and possess experience relevant to the financial or fiduciary aspects of pension or investment fund management. Designee will have the same responsibilities, duties, liabilities and immunities as the ex officio Board member appointing them, including the indemnification provided by Section 22-11-13(H). Appointment of a designee will not relieve the ex officio Board members of their responsibilities, duties, liabilities and immunities as a Board member and the ex officio member will be fully responsible and liable for the actions of the designee while serving on the Board. Allowing qualified designees to serve when the two ex officio members cannot because of their other duties helps assure the Board of having sufficient members present to carry out its statutory duties. In addition, the SB 329 requires the two governor's appointees to have a background in investments, finance or pension fund administration. This requirement also will bring additional strength to the ERB.