

NOTICE OF PUBLIC RULE HEARING

The New Mexico Educational Retirement Board (NMERB) will hold a public board meeting and rule hearing on October 18, 2019 at 9:00 a.m. The rule hearing will be conducted during NMERB's regular public board meeting and will be held at the NMERB office located at 8500 Menaul Blvd. NE, Suite A-319, Albuquerque, NM 87112. The purpose of the rule hearing is to consider proposed amendments to the following rules:

Proposed Rule Amendments:

- 2.82.2.9 NMAC - Regular Members
- 2.82.2.11 NMAC - Employees Excluded from Coverage
- 2.82.3.8 NMAC - Salary Covered; Salary Excluded
- 2.82.3.9 NMAC - Refunds of Contributions
- 2.82.3.10 NMAC - Refunds of Contributions in the Event of Death of Member or Beneficiary
- 2.82.3.12 NMAC - Purchase of Non-Reported Service; Failure to Deduct Member Contributions
- 2.82.4.8 NMAC - Earned Service Credit
- 2.82.4.10 NMAC - Return to Work
- 2.82.5.10 NMAC - Computation and Commencement of Retirement Benefits
- 2.82.5.11 NMAC - Effective Date of Benefit
- 2.82.5.13 NMAC - Options
- 2.82.5.15 NMAC - Return to Work Program
- 2.82.5.16 NMAC - Return to Work .25 FTE or Less

Details for Obtaining a Copy of Proposed Rule Changes and Submitting Oral or Written Comments

To obtain a copy of the proposed rule changes, please go to the NMERB website at www.nmerb.org or visit the NMERB office located at 701 Camino de los Marquez, Santa Fe, NM 87505, or call Amanda Olsen, Paralegal, at (505) 476-6133.

Interested individuals may provide comments at the public hearing and/or submit written comments to Amanda Olsen, Paralegal, via email at rule.change@state.nm.us or by fax, attention Amanda Olsen, at (505) 827-1855, or by regular mail to Amanda Olsen – rule change, NMERB, 701 Camino de los Marquez, Santa Fe, NM 87505. Written comments must be received no later than 5:00 pm October 15, 2019. All written public comments will be posted on the NMERB website at www.nmerb.org.

Statutory Authority: Legal authority for this rulemaking can be found in the Educational Retirement Act, NMSA 1978 Sections 22-11-1 through 22-11-55 (Act) which, among other provisions, specifically authorizes the Board of Trustees of the Educational Retirement Board to adopt regulations pursuant to the Act. Section 22-11-6(A)(5) NMSA 1978.

Purpose:

The purpose of the majority of the proposed rule amendments is to bring the rules into conformity with amendments to the Educational Retirement Act resulting from the passage of House Bill 360 (H.B. 360) and Senate Bill 664 (S.B. 664), 54th Leg., 1st Sess. (N.M. 2019). Other proposed amendments are necessary for purposes of clarity, to correct confusing or ungrammatical language, to make language gender neutral or as described under each rule section below.

Summary of Proposed Changes:

2.82.2.9 NMAC - Regular Members

H.B. 360 eliminated the \$15,000 earnings limit for retirees working under the NMERB program formerly known as the "return to work exception". Subsections A, B, C and D are amended to delete the phrase "return to work exception" as it no longer accurately describes retirees who work .25 full time equivalency (FTE) or less. Subsection D is also amended to delete the word "participants" and insert the phrase "retired members working..." because the

word “participants” is a defined term under Subsection W of Section 22-11-2 NMSA 1978 that refers to individuals who participate in the Alternative Retirement Plan.

2.82.2.11 NMAC - Employees Excluded from Coverage

Subsection B is amended to provide that beginning July 1, 2020, retired members working .25 FTE or less full time must make nonrefundable contributions to the fund, pursuant to H.B. 360. Subsection F is a new provision which provides that police officers who receive a pension pursuant to the Public Employees Retirement Act (PERA) and were hired by a local administrative unit (LAU) prior to July 1, 2019, will be grandfathered in and will not have to make contributions to the fund, pursuant to H.B. 360.

2.82.3.8 NMAC - Salary Covered; Salary Excluded

Subsection A is amended to delete language that excluded salary earned while a retiree is in the return to work program for the purpose of contributions to the fund and computation of benefits. The previous language conflicts with H.B. 360, which requires that retired members working .25 FTE or less must make nonrefundable contributions to the fund beginning July 1, 2020. See also the proposed amendment at Subsection D of 2.82.5.10 NMAC which would exclude from a member’s annual salary any salary earned by a retiree working in the return to work program or the return to work .25 FTE or less program. Subsection A is also amended to delete “\$20,000” and insert “\$24,000” in several locations in order to comply with H.B. 360, which increased to \$24,000 the threshold for the higher employee contribution rate of 10.70%.

2.82.3.9 - Refunds of Contributions

Subsection B is amended to add language providing that contributions made to the fund after July 1, 2019 by PERA retirees are nonrefundable.

2.82.3.10 - Refunds of Contributions in the Event of Death of Member or Beneficiary

Subsection B is amended to add language providing that a surviving spouse or domestic partner will be considered a beneficiary if no beneficiary has been named, in accordance with S.B. 664. Subsection E is a new provision that lists the documents NMERB may accept as proof that a person is the domestic partner of the member.

2.82.3.12 - Purchase of Non-Reported Service; Failure to Deduct Member Contributions

Subsection A is amended to delete “\$20,000” and insert “\$24,000” as the salary threshold for the purpose of determining the contribution rate for non-reported service, in accordance with H.B. 360.

2.82.4.8 NMAC - Earned Service Credit

Adds a new provision (Subsection J) providing that PERA retirees who are employed by an LAU do not earn service credit unless the retiree has suspended their PERA benefit.

2.82.4.10 NMAC - Return to Work

Amends language to provide that service credit cannot be earned, purchased or credited for any time that a retired member is employed by an LAU unless the retired member has suspended their benefit. Deletes the reference to the return to work program and the return to work exception and simplifies the provision by referring to retired members working for an LAU. Also, adds language to provide that while a retired member is employed by an LAU, no service credit can be purchased for service previously earned or withdrawn unless the retired member suspends their benefit.

2.82.5.10 NMAC - Computation and Commencement of Retirement Benefits

Subsection D is amended to clarify that salary earned by a retiree who is in the return to work program or a retiree who works .25 FTE or less cannot be used in determining the member’s average annual salary. Subsections E and H are amended to gender neutral language.

2.82.5.11 NMAC - Effective Date of Benefit

Subsections A and B are amended to gender neutral language.

2.82.5.13 NMAC - Options

Subsection F is amended to add language to reflect that NMERB has a new form for designating beneficiaries, known as a “beneficiary designation form” and that NMERB will continue to accept the old form, known as “form

42.” Also adds language to Subsection F clarifying that the beneficiary must be a human being to receive Option B coverage. The previous language was unclear because the phrase “if a person is not named” could be interpreted to mean that nobody was named or an entity was named.

2.82.5.15 NMAC – Return to Work Program

Subsection A is amended to correct a typographical error so that the rule correctly refers to Subsection F of Section 22-11-25.1 NMSA 1978, rather than Subsection E of Section 22-11-25.1 NMSA 1978. Subsection B is amended to reflect that members who retired on or before January 1, 2001, who subsequently suspend retirement, and who thereafter re-retire need not complete an additional 90 day layout after re-retirement prior to returning to work for an ERB employer. Clarifies language to specify that the member need only complete the 12 month layout after the member’s initial retirement, in accordance with H.B. 360. Subsection D is amended to active voice rather than passive voice and also to clarify that a member is not eligible for the return to work program until NMERB has approved their return to work application. Subsection F is amended to clarify that a retired member who has violated the provisions of the return to work program, and NMERB has suspended their benefit, must re-apply for retirement. Subsection G is amended to clarify that a retired member must receive approval of their return to work application before they are considered approved for the program. Subsection H is amended to correct grammatically incorrect language.

2.82.5.16 NMAC - Return to Work .25 FTE or Less

Prior to the enactment of H.B. 360, retirees were allowed to work for an NMERB employer after retirement without qualifying or applying for the return to work program, but their earnings were limited. This was known as the “return to work exception.” Under NMERB’s return to work exception rule, a retiree could earn the greater of \$15,000 per fiscal year or work .25 FTE. House Bill 360 eliminated the \$15,000 earnings limitation. Under H.B. 360, retired members who have not completed a 12 consecutive month layout may work .25 FTE or less and there is no limitation on their earnings. These statutory changes are effective as of July 1, 2019. Accordingly, several changes must be made in 2.82.5.16 NMAC to comply with H.B. 360. Subsections A, B and C of the “Return to Work Exception” rule are deleted, the name of the rule is changed to “Return to Work .25 FTE or Less, and new Subsections A and B provide as follows:

Subsection A provides that a retired member may return to employment (includes substitution) at .25 FTE or less without affecting the retiree’s benefit if the retiree submits a return to work application and is approved by NMERB prior to commencing employment. Subsection B provides that NMERB may suspend a retiree’s benefit if the retiree enters into an agreement for employment greater than .25 FTE or actually works greater than .25 FTE without first completing a 12 consecutive month layout. Also, the retiree must repay any benefits received while ineligible under the .25 FTE or Less provision.