

NOTICE OF PUBLIC RULE HEARING

The New Mexico Educational Retirement Board (NMERB) will hold a public board meeting and rule hearing on June 19, 2020 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. In the event that Governor Lujan Grisham's Public Health Emergency Order 04-06-2020 concerning the COVID-19 pandemic is still in effect on June 19, 2020, the public board meeting and rule hearing will be held via a virtual meeting. Instructions regarding how to join the virtual meeting will be posted on NMERB's website www.nmerb.org.

The purpose of the rule hearing is to consider proposed amendments as indicated below:

- 2.82.2.9 NMAC - Regular Members
- 2.82.2.11 NMAC - Employees Excluded from Coverage
- 2.82.2.12 NMAC - Retired Members
- 2.82.4.11 NMAC - Sick Leave Service Credit
- 2.82.5.8 NMAC - Eligibility
- 2.82.5.10 NMAC - Computation and Commencement of Retirement Benefits
- 2.82.5.12 NMAC - Approval of Retirement Application
- 2.82.5.15 NMAC - Return to Work Program
- 2.82.5.16 NMAC - Return to Work .25 FTE or Less
- 2.82.5.17 NMAC - Return to Work Less Than \$15,000 Per Year
- 2.82.5.17 [18] NMAC - Termination of Plan; Accrued Rights of Members
- 2.82.5.18 [19] NMAC - Internal Revenue Code Selection
- 2.82.5.19 [20] NMAC - Rollover Distributions for Non-Spouse Beneficiaries
- 2.82.5.20 [21] NMAC - Death Benefits While Performing Military Service
- 2.82.7.9 NMAC - Employment

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 call Amanda Olsen, Paralegal, at (505) 476-6133. If the Governor has lifted COVID-19 restrictions and state agencies are open to the public, copies of the proposed rule changes will also be available at the NMERB office located at 701 Camino de los Marquez, Santa Fe, NM, during regular business hours.

Interested individuals may provide comments during 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, P.O. Box 26129, Santa Fe, NM 87502. Written comments must be received no later than 3:00 pm June 18, 2020. 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 proposed rule amendments is to bring the rules into conformity with amendments to the Educational Retirement Act (Act) resulting from the passage of Senate Bill 111, as amended (SB 111) (54th Leg., 2nd Session (N.M. 2019)) and Senate Bill 157 (SB 157) (Laws 2019, ch. 31 § 1). Senate Bill 111 is effective on May 20, 2020. Senate Bill 157 is effective on July 1, 2020. Other proposed amendments are intended to correct typographical or grammar errors, to renumber or reletter, to make language gender neutral or as described under each rule section below.

Summary of Proposed Changes:

2.82.2.9 NMAC - Regular Members

Subsections A, B, C and D are amended to also list the new program for working after retirement known as Return to Work Less than \$15,000 Per Year, 2.82.5.17 NMAC.

2.82.2.11 NMAC - Employees Excluded from Coverage

Subsection B is amended to delete a provision which required that ERB members who returned to work at a level of .25 FTE or less, and their employers, pay contributions beginning July 1, 2020. This is because SB 111 repealed the provision in Subsection E of Section 22-11-25.1 of the Act which required retired ERB members who return to work at a level of .25 FTE or less, and their employers, to pay contributions to the fund beginning July 1, 2020.

Subsection C is deleted in its entirety and the subsequent subsections are re-lettered. This is because SB 111 took the current provisions of Subsection C almost verbatim and codified that language into Section 22-11-16.2 of the Act. SB 111 also repealed the current language of Section 22-11-16.2 of the Act, which would have required contributions from substitute teachers who work greater than .25 FTE beginning July 1, 2020.

Subsection F regarding certain PERA retired police officers is deleted in its entirety. This is because SB 111 repealed provisions of the Act which require that PERA retirees, except for certain retired police officers, who have not suspended their benefit and who work for ERB employers pay contributions to the fund, beginning July 1, 2019. See, Subsection A of Section 22-11-25.2 NMSA 1978. SB 111 also repealed Subsection B of Section 22-11-25.2 of the Act which exempted certain retired PERA police officers from paying contributions to the ERB fund.

2.82.2.12 - Retired Members

Amended to list the new rule of 2.82.5.17, Return to Work Less than \$15,000 Per Year.

2.82.4.11 - Sick Leave Service Credit

Senate Bill 157 created a new section of the Act, codified as Section 22-11-34.1 NMSA 1978, which allows a member to convert unused sick leave into earned service credit. The member must pay the actuarial present value, as determined by the board, for the benefit attributable to the conversion. New rule 2.82.4.11 NMAC describes the procedure for purchasing sick leave service credit and acceptable methods of payment.

2.82.5.8 - Eligibility

Subsection B is amended to gender neutral language.

2.82.5.10 NMAC - Computation and Commencement of Retirement Benefits

Subsections B, C, D and F are amended to gender neutral language. Subsection D is also amended to add new rule 2.82.5.17 NMAC, known as Return to Work Less than \$15,000 Per Year, to the list of working after retirement programs.

2.82.5.12 NMAC – Approval of Retirement Applications

Amended to delete “of educational retirement” as this is redundant language. The word “director” is already defined in Subsection Q of Section 22-11-2 of the Act to mean the educational retirement director.

2.82.5.15 NMAC – Return to Work Program

Subsection D is amended to delete “and notarized” because the return to work application does not have to be notarized.

2.82.5.16 NMAC - Return to Work .25 FTE or Less

Subsection B is amended to correct a typographical error in the third line, because the “and” should be “or”.

2.82.5.17 Return to Work Less than \$15,000

This new rule implements Subsection H of Section 22-11-25.1 of the Act which was enacted pursuant to SB 111. Under SB 111, a retired member may return to work and earn up to \$15,000 per year provided the retired member has completed a 90 day layout period after retirement. Also, prior to retiring, or within 90 days after retiring, the retired member cannot have entered into a formal or informal agreement with an ERB employer or any contractor

providing services to an ERB employer to return to employment. A retired member who returns to work under this new pathway must limit their earnings to less than \$15,000 per year. Subsection A lists the requirements of the new program. Subsection B describes the sanctions that may be imposed if a member does not comply with the program requirements, which are that benefits will be suspended and the retiree must repay benefits received while ineligible.

2.82.5.17 [18] NMAC – Termination of Plan; Accrued Rights of Members

Renumbered as “2.82.5.18 NMAC”.

2.82.5.18 [19] NMAC – Internal Revenue Code Selection

Renumbered as “2.82.5.19 NMAC”.

2.82.5.19 [20] NMAC – Rollover Distributions for Non-Spouse Beneficiaries

Renumbered as “2.82.5.20 NMAC”.

2.82.5.20 [21] NMAC – Death Benefits While Performing Military Service

Renumbered as “2.82.5.21 NMAC” and amended to delete “participant” and insert “member”. This is because the rule pertains to the ERB defined benefit plan, which has “members”, not participants. § 22-11-2(A). A “participant” is someone who participates in the alternative retirement plan. See, Subsection W of Section 22-11-2 NMSA 1978.

2.82.7.9 NMAC – Employment

Subsection D is amended for gender neutral language. A technical correction is made in Subsection E to re-letter the cross reference.

Individuals with disabilities who require the above information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Amanda Olsen at (505) 476-6133 as soon as possible before the date set for the public hearing. ERB requires at least 10 calendar days advance notice to provide any special accommodations requested.