

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill No: *HB 525a

49th Legislature, 1st Session, 2009

Short Title: Alternative Educational Retirement Plans

Sponsor(s): Representatives Gail Chasey and Danice Picraux

Analyst: Kathleen Forrer

Date: March 6, 2009

AS AMENDED¹

The House Judiciary Committee amendment adds an emergency clause.

The House Education Committee amendment:

- strikes the word “irrevocable” as a modifier of the word “election” (see “Technical Issues” in this bill analysis);
- replaces the phrase “payments for a term of years” with the phrase “if held in an annuity contract; payments for a term of years” to clarify that lifetime income is a choice only if the individual’s retirement account is in the form of an annuity contract;
- inserts the term “roll over” as an option regarding the employee’s retirement account balance when employment with a qualifying state educational institution is terminated;
- replaces the phrase “that meet” with the phrase “held in trust or a custodial account that meets” to clarify the type of investments that may be included as part of the alternative retirement plan offered by the ERB; and
- inserts the phrase “without limitation” after the word “including” as a modifier of the phrase “annuity contracts or certificates that are fixed or variable in nature or some combination thereof” to further clarify the manner in which benefits may be provided through the ERB alternative retirement plan.

Original Bill Summary:

HB 525 amends those sections of the *Educational Retirement Act* that pertain to the alternative retirement plan (ARP) to:

- clarify that eligible participants who fail to elect to participate in an ARP within 90 days of becoming eligible at a qualifying state educational institution may not choose to participate in an ARP at any point in the future, even if they are subsequently hired by a different qualifying state educational institution;
- allow eligible participants who have contributed to an ARP for a cumulative total of seven years or more to exercise a one-time option within 120 days of becoming eligible to become a regular member. However, funds on deposit in an ARP at the time the

¹ As of March 6, 2009, the House Judiciary Committee and the House Education Committee amendments appear to make HB 525aa identical to SB 572aa.

individual becomes a regular member remain with the ARP contractor, unless otherwise provided by law;

- specify that the Educational Retirement Board (ERB) is responsible for approving the positions at each qualifying state educational institution that are eligible to participate in an ARP;
- provide that an ARP participant has the option of selecting retirement benefits not only in the form of an annuity (lifetime income payments), as in current statute, but also as payments over a term of years or a single lump sum cash payment;
- allow eligible participants, upon termination of employment with a qualifying institution, to transfer, roll over, or withdraw the balance in their ARP accounts in accordance with the provisions of the federal *Internal Revenue Code*;
- allow the ERB to solicit proposals for ARP benefits that meet the requirements of the Internal Revenue Code, thereby expanding the options available to participants, who currently may only choose an annuity; and
- increase the total number of vendors that ERB may select from three to five (ERB must select at least two).

In addition, HB 525 specifies that ARP participants who choose to become regular members:

- will use the date on which they were first employed at a qualifying state educational institution for purposes of determining any retirement eligibility;
- may not purchase service credit for periods of employment during which they participated in an ARP; and
- must acquire at least five years of contributory employment as a regular member in order to be eligible for ERB retirement benefits.

Fiscal Impact:

HB 525 makes no appropriation.

Fiscal Issues:

In its analysis of HB 525, ERB indicates that the proposed changes to the ARP would have no significant fiscal impact on the Educational Retirement Fund.

Issues:

The *Educational Retirement Act* allows regularly employed faculty or professional employees and certain regularly employed researchers or service providers at New Mexico public postsecondary institutions² to participate in an ARP, which is a defined contribution retirement plan. Under current statute, the only option that has been available to eligible ARP participants is an annuity. In addition, once an eligible employee has chosen to participate in an ARP, that individual has been prohibited from later choosing to become a regular ERB member, covered by the state's educational retirement defined benefits plan.

² The qualifying state educational institutions are: the University of New Mexico, New Mexico State University, New Mexico Institute of Mining and Technology, New Mexico Highlands University, Eastern New Mexico University, Western New Mexico University, Central New Mexico Community College, Clovis Community College, Luna Community College, Mesalands Community College, New Mexico Junior College, Northern New Mexico College, San Juan College, and Santa Fe Community College.

According to the ERB analysis of HB 525, beginning in 1991, the ARP was made an option for faculty and professional employees of the four-year postsecondary institutions to assist those institutions in recruiting qualified staff: “The ARP is oriented towards mobile professionals ... who do not anticipate completing their careers in New Mexico or who anticipate changing careers at some point.” The two-year postsecondary institutions were added in 1999.

ERB states that, currently, approximately 1,600 postsecondary employees participate in the ARP, over 1,200 of whom are employed by the University of New Mexico and New Mexico State University.

Technical Issues:

In its analysis of HB 525, HED notes that on page 2, line 14, the word “irrevocable” remains as a modifier of the word “election.” Because the phrase refers to an employee initially choosing to participate in an ARP and because HB 525 would allow that employee a one-time chance to change his or her mind, the initial election is not “irrevocable.”

As introduced, HB 525 and SB 572 are almost identical. The only difference is on page 5, lines 4-5 of both bills. SB 572 states that the participant may be paid in the form of a lifetime income, “if held in an annuity contract...”; whereas, HB 525 states that the participant may be paid in the form of a lifetime income but does not include the phrase “if held in an annuity contract.”

Background:

The ARP is a defined contribution plan in which employees contribute 7.9 percent of their gross income on a pre-tax basis to their ARP plan. The employer contribution is 11.65 percent of gross earnings and will increase by 0.75 percent each year until 2011 when the employer contribution will be 13.9 percent. Three percent of the employer match goes to the ERB to help pay for the unfunded liability incurred by the plan.

Currently ARP participants have a choice between two annuity providers:

- Teachers Insurance and Annuity Association - College Retirement Equities Fund (TIAA-CREF); and
- AIG Retirement Services (American International Group/The Variable Annuity Life Insurance Company).

Related Bill:

*SB 572a *Alternative Educational Retirement Plans* (almost duplicates *HB 525a)