

1 SENATE BILL 572

2 **49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

3 INTRODUCED BY

4 Mary Jane M. Garcia

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10 AN ACT

11 RELATING TO EDUCATIONAL RETIREMENT; PROVIDING CERTAIN
12 CONDITIONS AND OPTIONS FOR EMPLOYEES IN ALTERNATIVE RETIREMENT
13 PLANS; CHANGING THE BENEFITS AVAILABLE UNDER ALTERNATIVE
14 RETIREMENT PLANS; CLARIFYING THE PORTABILITY OF THE PLANS.

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16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 Section 1. Section 22-11-47 NMSA 1978 (being Laws 1991,
18 Chapter 118, Section 5, as amended) is amended to read:

19 "22-11-47. ALTERNATIVE RETIREMENT PLAN--ELECTION OF
20 COVERAGE.--

21 A. Beginning October 1, 1991, any employee of the
22 university of New Mexico, New Mexico state university, New
23 Mexico institute of mining and technology, New Mexico highlands
24 university, eastern New Mexico university or western New Mexico
25 university who is eligible to become a participant may make

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1 within ninety days of that date an [~~irrevocable~~] election to
2 participate in the alternative retirement plan. Beginning
3 October 1, 1999, an employee of central New Mexico community
4 college, Clovis community college, Luna community college,
5 Mesalands community college, New Mexico junior college,
6 northern New Mexico college, San Juan college or Santa Fe
7 community college who is eligible to become a participant may
8 make an [~~irrevocable~~] election to participate in the
9 alternative retirement plan within ninety days of the initial
10 date. Thereafter, any employee who is eligible to become a
11 participant may make within the first ninety days of employment
12 with a qualifying state educational institution an
13 [~~irrevocable~~] election to participate in the alternative
14 retirement plan. Any employee who makes the irrevocable
15 election shall become a participant the first day of the first
16 pay period following the election. Any employee who fails to
17 make the [~~irrevocable~~] election within ninety days of October
18 1, 1991 or October 1, 1999, whichever is applicable, or within
19 the first ninety days of employment with a qualifying state
20 educational institution shall become or remain a regular member
21 if that employee is eligible to be a regular member and shall
22 not later be eligible to elect to be a participant, regardless
23 of whether the employee subsequently is employed in another
24 position that is eligible for participation in the alternative
25 retirement plan. Except as provided in Subsection D of this

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1 section, an election to become a participant is irrevocable.

2 B. Until the time an employee who is eligible to
3 become a participant elects to participate in the alternative
4 retirement plan, that employee shall be a regular member.

5 C. When an employee elects to become a participant,
6 any employer and employee contributions made as a regular
7 member shall be withdrawn from the fund and applied instead
8 toward the alternative retirement plan as if the participant
9 had been participating in the alternative retirement plan from
10 the commencement of employment with the qualifying state
11 educational institution.

12 D. On July 1, 2009, any participant who has made
13 contributions to the alternative retirement plan for a
14 cumulative total of seven years or more shall have a one-time
15 option of electing to become a regular member. Thereafter,
16 once a participant has made contributions to the alternative
17 retirement plan for a cumulative total of seven years, a
18 participant shall have a one-time option of electing to become
19 a regular member. Participants electing to become regular
20 members shall exercise that option within one hundred twenty
21 days of the date of becoming eligible to elect to become a
22 regular member. Any amounts on deposit in an employee's
23 alternative retirement plan account when a participant becomes
24 a regular member shall remain on deposit with the contractor or
25 carrier subject to that plan's provisions, unless otherwise

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1 provided by law. An employee who elects to become a regular
2 member under this subsection shall use the date on which the
3 employee was first employed with a qualifying state educational
4 institution for purposes of determining any retirement
5 eligibility requirement, provided that the employee:

6 (1) may not purchase service credit for
7 periods of employment during which the employee participated in
8 the alternative retirement plan; and

9 (2) shall acquire not less than five years of
10 contributory employment as a regular member as provided for in
11 Section 22-11-24 NMSA 1978 to be eligible for retirement
12 benefits pursuant to the Educational Retirement Act.

13 E. The board shall approve the positions at each
14 qualifying state educational institution that are eligible for
15 participation in the alternative retirement plan."

16 Section 2. Section 22-11-51 NMSA 1978 (being Laws 1991,
17 Chapter 118, Section 9, as amended) is amended to read:

18 "22-11-51. ALTERNATIVE RETIREMENT PLANS--BENEFITS--
19 TRANSFER UPON UNEMPLOYMENT.--

20 A. No retirement, death or other benefit shall be
21 paid by the board from the fund for services credited under the
22 alternative retirement plan. Such benefits are payable to
23 participants or their beneficiaries only by the appropriate
24 alternative retirement plan contractor or carrier in accordance
25 with the terms of the applicable contracts or certificates;

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1 provided, however, that retirement benefits shall, at the
2 option of the participant, be paid in the form of a lifetime
3 income, [~~and, except for death benefits, single sum cash~~
4 ~~payments shall not be permitted~~] if held in an annuity
5 contract; payments for a term of years; or a single-sum cash
6 payment.

7 B. Upon termination of employment with a qualifying
8 state educational institution, a participant may transfer or
9 roll over the account balance to another eligible retirement
10 plan or may withdraw the balance as permitted for a plan
11 qualified under Section 401(a) of the Internal Revenue Code of
12 1986."

13 Section 3. Section 22-11-52 NMSA 1978 (being Laws 1991,
14 Chapter 118, Section 10) is amended to read:

15 "22-11-52. ALTERNATIVE RETIREMENT PLAN--SELECTION OF
16 CONTRACTOR OR CARRIER--ADMINISTRATION.--

17 A. The board shall solicit and review proposals for
18 providing retirement, death and any other benefits deemed
19 desirable by the board for participants in the alternative
20 retirement plan. The board shall solicit proposals for
21 providing the benefits through contracts or investments held in
22 trust or a custodial account that meets the requirements of
23 Section 401(a) or 403(a) of the Internal Revenue Code of 1986,
24 including, without limitation, annuity contracts or
25 certificates that are fixed or variable in nature or some

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1 combination thereof.

2 B. The board, after consultation with the
3 qualifying state educational institutions, shall select no less
4 than two nor more than [~~three~~] five contractors or carriers to
5 provide the contracts or certificates. In making its
6 selection, the board shall consider, among other things, the
7 following criteria:

8 (1) the portability of the benefits offered,
9 based upon the number of states and institutions of higher
10 education in which the offeror provides similar benefits;

11 (2) the nature and extent of the rights and
12 benefits that would be provided to the participants, including
13 the right to maintain their accounts or to transfer the balance
14 to another eligible retirement plan upon termination of
15 employment with the qualifying educational institution, to the
16 extent permitted for a plan qualified under Section 401(a) of
17 the Internal Revenue Code of 1986;

18 (3) the relation of the rights and benefits to
19 the contributions that would be made by the participants and
20 the qualifying state educational institutions;

21 (4) the ability of the offeror to provide the
22 rights and benefits;

23 (5) the suitability of the rights and benefits
24 for recruitment and retention of employees by the qualifying
25 state educational institutions; and

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1 (6) compliance with the requirements of the
2 Educational Retirement Act and Section 401(a) or 403(a) of the
3 Internal Revenue Code of 1986.

4 C. The board shall provide for the administration
5 and maintenance of the alternative retirement plan and may
6 adopt rules and regulations for that purpose."

7 Section 4. EFFECTIVE DATE.--The effective date of the
8 provisions of this act is July 1, 2009.

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