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HOUSE BILL 189

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Cathrynn N. Brown

AN ACT

RELATING TO EDUCATIONAL RETIREMENT; PROVIDING AN EXCEPTION TO
ALLOW CERTAIN CONTRACTS OF THE EDUCATIONAL RETIREMENT BOARD TO
EXCEED FOUR YEARS PURSUANT TO THE PROCUREMENT CODE; ALLOWING
ELIGIBLE EMPLOYEES OF SOUTHEAST NEW MEXICO COLLEGE TO
PARTICIPATE IN THE ALTERNATIVE RETIREMENT PLAN; CONFORMING THE
REQUIRED MINIMUM DISTRIBUTION AGE TO THE FEDERAL INTERNAL
REVENUE CODE OF 1986.

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

SECTION 1. Section 13-1-150 NMSA 1978 (being Laws 1984,
Chapter 65, Section 123, as amended) is amended to read:

"13-1-150. MULTI-TERM CONTRACTS--SPECIFIED PERIOD.--

A. A multi-term contract for items of tangible
personal property, construction or services except for
professional services, in an amount under twenty-five thousand

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1 dollars (\$25,000), may be entered into for any period of time
2 deemed to be in the best interests of the state agency or a
3 local public body not to exceed four years; provided that the
4 term of the contract and conditions of renewal or extension, if
5 any, are included in the specifications and funds are available
6 for the first fiscal period at the time of contracting. If the
7 amount of the contract is twenty-five thousand dollars
8 (\$25,000) or more, the term shall not exceed ten years,
9 including all extensions and renewals, except that for a
10 contract entered into pursuant to the Public Facility Energy
11 Efficiency and Water Conservation Act, the term shall not
12 exceed twenty-five years, including all extensions and
13 renewals. Payment and performance obligations for succeeding
14 fiscal periods shall be subject to the availability and
15 appropriation of funds therefor.

16 B. A contract for professional services may not
17 exceed four years, including all extensions and renewals,
18 except for the following:

19 (1) services required to support or operate
20 federally certified medicaid, financial assistance and child
21 support enforcement management information or payment systems;

22 (2) services to design, develop or implement
23 the taxation and revenue information management systems project
24 authorized by Laws 1997, Chapter 125;

25 (3) a multi-term contract for the services of

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1 trustees, escrow agents, registrars, paying agents, letter of
2 credit issuers and other forms of credit enhancement and other
3 similar services, excluding bond attorneys, underwriters and
4 financial advisors with regard to the issuance, sale and
5 delivery of public securities, may be for the life of the
6 securities or as long as the securities remain outstanding;

7 (4) services relating to the implementation,
8 operation and administration of the Education Trust Act;

9 (5) services relating to measurement and
10 verification of conservation-related cost savings and utility
11 cost savings pursuant to the Public Facility Energy Efficiency
12 and Water Conservation Act; ~~and~~

13 (6) services relating to the design and
14 engineering of a state public works project:

15 (a) for a period not to exceed the
16 requisite time for project completion and a subsequent warranty
17 period; and

18 (b) upon approval of the secretary of
19 finance and administration; and

20 (7) services required to design, develop,
21 implement or operate the pension administration system of the
22 educational retirement board."

23 SECTION 2. Section 22-11-2 NMSA 1978 (being Laws 1967,
24 Chapter 16, Section 126, as amended) is amended to read:

25 "22-11-2. DEFINITIONS.--As used in the Educational

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1 Retirement Act:

2 A. "member" means an employee, except for a
3 participant or a retired member, coming within the provisions
4 of the Educational Retirement Act;

5 B. "regular member" means:

6 (1) a person regularly employed by a state
7 educational institution, except for:

8 (a) a participant; or

9 (b) all employees of a general hospital
10 or outpatient clinics thereof operated by a state educational
11 institution named in Article 12, Section 11 of the constitution
12 of New Mexico;

13 (2) a person regularly employed by a junior
14 college or community college created pursuant to Chapter 21,
15 Article 13 NMSA 1978, except for a participant;

16 (3) a person regularly employed by a technical
17 and vocational institute created pursuant to the Technical and
18 Vocational Institute Act, except for a participant;

19 (4) a person regularly employed by the
20 New Mexico boys' school, the girls' welfare home, the Los Lunas
21 medical center or a school district or as a licensed school
22 employee of a state institution or agency providing an
23 educational program and holding a license issued by the
24 department, except for a participant;

25 (5) a person regularly employed by the

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1 department holding a license issued by the department at the
2 time of commencement of such employment;

3 (6) a member classified as a regular member in
4 accordance with the rules of the board;

5 (7) a person regularly employed by the New
6 Mexico activities association holding a license issued by the
7 department at the time of commencement of such employment; or

8 (8) a person regularly employed by a regional
9 education cooperative holding a license issued by the
10 department at the time of commencement of such employment;

11 C. "provisional member" means a person described in
12 Section 22-11-17 NMSA 1978;

13 D. "local administrative unit" means an employing
14 agency however constituted that is directly responsible for the
15 payment of compensation for the employment of members or
16 participants;

17 E. "beneficiary" means a person having an insurable
18 interest in the life of a member or a participant designated by
19 written instrument duly executed by the member or participant
20 and filed with the director to receive a benefit pursuant to
21 the Educational Retirement Act that may be received by someone
22 other than the member or participant;

23 F. "employment" means employment by a local
24 administrative unit that qualifies a person to be a member or
25 participant;

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1 G. "service employment" means employment that
2 qualifies a person to be a regular member;

3 H. "provisional service employment" means
4 employment that qualifies a person to be a provisional member;

5 I. "prior employment" means employment performed
6 prior to the effective date of the Educational Retirement Act
7 that would be service employment or provisional service
8 employment if performed thereafter;

9 J. "service credit" means that period of time with
10 which a member is accredited for the purpose of determining the
11 member's eligibility for and computation of retirement or
12 disability benefits;

13 K. "earned service credit" means that period of
14 time during which a member was engaged in employment or prior
15 employment with which the member is accredited for the purpose
16 of determining the member's eligibility for retirement or
17 disability benefits;

18 L. "allowed service credit" means that period of
19 time during which a member has performed certain nonservice
20 employment with which the member may be accredited, as provided
21 in the Educational Retirement Act, for the purpose of computing
22 retirement or disability benefits;

23 M. "retirement benefit" means an annuity paid
24 monthly to members whose employment has been terminated by
25 reason of their age;

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1 N. "disability benefit" means an annuity paid
2 monthly to members whose employment has been terminated by
3 reason of a disability;

4 O. "board" means the educational retirement board;

5 P. "fund" means the educational retirement fund;

6 Q. "director" means the educational retirement
7 director;

8 R. "medical authority" means a medical doctor or
9 medical review panel designated or employed by the board to
10 examine medical records and report on the medical condition of
11 applicants for or recipients of disability benefits;

12 S. "actuary" means a person trained and regularly
13 engaged in the occupation of calculating present and projected
14 monetary assets and liabilities under annuity or insurance
15 programs;

16 T. "actuarial equivalent" means a sum paid as a
17 current or deferred benefit that is equal in value to a regular
18 benefit, computed upon the basis of interest rates and
19 mortality tables;

20 U. "contributory employment" means employment for
21 which contributions have been made by both a member and a local
22 administrative unit pursuant to the Educational Retirement Act;

23 V. "qualifying state educational institution" means
24 the university of New Mexico, New Mexico state university, New
25 Mexico institute of mining and technology, New Mexico highlands

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1 university, eastern New Mexico university, western New Mexico
2 university, central New Mexico community college, Clovis
3 community college, Luna community college, Mesalands community
4 college, New Mexico junior college, northern New Mexico [~~state~~
5 ~~school~~] college, San Juan college, [~~and~~] Santa Fe community
6 college and southeast New Mexico college;

7 W. "participant" means:

8 (1) a person regularly employed as a faculty
9 or professional employee of the university of New Mexico, New
10 Mexico state university, New Mexico institute of mining and
11 technology, New Mexico highlands university, eastern New Mexico
12 university or western New Mexico university who first becomes
13 employed with such an educational institution on or after July
14 1, 1991, or a person regularly employed as a faculty or
15 professional employee of the central New Mexico community
16 college, Clovis community college, Luna community college,
17 Mesalands community college, New Mexico junior college,
18 northern New Mexico [~~state school~~] college, San Juan college or
19 Santa Fe community college who is first employed by the
20 institution on or after July 1, 1999, or a person regularly
21 employed as a faculty or professional employee of southeast New
22 Mexico college who is first employed by the institution on or
23 after July 1, 2023, and who elects, pursuant to Section
24 22-11-47 NMSA 1978, to participate in the alternative
25 retirement plan; and

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1 (2) a person regularly employed who performs
2 research or other services pursuant to a contract between a
3 qualifying state educational institution and the United States
4 government or any of its agencies who elects, pursuant to
5 Section 22-11-47 NMSA 1978, to participate in the alternative
6 retirement plan; provided that the research or other services
7 are performed outside the state;

8 X. "salary" means the compensation or wages paid to
9 a member or participant by any local administrative unit for
10 services rendered. "Salary" includes payments made for annual
11 or sick leave and payments for additional service provided to
12 related activities, but does not include payments for sick
13 leave not taken unless the payment for the unused sick leave is
14 made through continuation of the member on the regular payroll
15 for the period represented by that payment and does not include
16 allowances or reimbursements for travel, housing, food,
17 equipment or similar items;

18 Y. "alternative retirement plan" means the
19 retirement plan provided for in Sections 22-11-47 through
20 22-11-52 NMSA 1978; and

21 Z. "retired member" means a person whose employment
22 has been terminated by reason of age and who is receiving or is
23 eligible to receive retirement benefits."

24 SECTION 3. Section 22-11-30 NMSA 1978 (being Laws 1967,
25 Chapter 16, Section 153, as amended) is amended to read:

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1 "22-11-30. RETIREMENT BENEFITS--REDUCTIONS.--

2 A. Retirement benefits for a member retired
3 pursuant to the Educational Retirement Act on or before
4 June 30, 1967 shall be paid monthly and shall be one-twelfth of
5 a sum equal to one and one-half percent of the first four
6 thousand dollars (\$4,000) of the member's average annual salary
7 and one percent of the remainder of the member's average annual
8 salary multiplied by the number of years of the member's total
9 service credit.

10 B. Retirement benefits for a member retired
11 pursuant to the Educational Retirement Act on or after July 1,
12 1967 but on or before June 30, 1971 shall be paid monthly and
13 shall be one-twelfth of a sum equal to one and one-half percent
14 of the first six thousand six hundred dollars (\$6,600) of the
15 member's average annual salary and one percent of the remainder
16 of the member's average annual salary multiplied by the number
17 of years of the member's total service credit.

18 C. Retirement benefits for a member retired
19 pursuant to the Educational Retirement Act on or after July 1,
20 1971 but on or before June 30, 1974 shall be paid monthly and
21 shall be one-twelfth of a sum equal to one and one-half percent
22 of the member's average annual salary multiplied by the number
23 of years of the member's total service credit.

24 D. Retirement benefits for a member retired
25 pursuant to the Educational Retirement Act on or before

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1 June 30, 1974 but returning to employment on or after July 1,
2 1974 for a cumulation of one or more years shall be computed
3 pursuant to Subsection E of this section. Retirement benefits
4 for a member retired pursuant to the Educational Retirement Act
5 on or before June 30, 1974 but returning to employment on or
6 after July 1, 1974 for a cumulation of less than one year shall
7 be computed pursuant to Subsection A of this section if the
8 member's date of last retirement was on or before June 30, 1967
9 or pursuant to Subsection B of this section if the member's
10 date of last retirement was on or after July 1, 1967 but not
11 later than June 30, 1971 or pursuant to Subsection C of this
12 section if the member's date of last retirement was on or after
13 July 1, 1971 but not later than June 30, 1974.

14 E. Retirement benefits for a member age sixty or
15 over, retired pursuant to the Educational Retirement Act on or
16 after July 1, 1974 but not later than June 30, 1987, shall be
17 paid monthly and shall be one-twelfth of a sum equal to:

18 (1) one and one-half percent of the member's
19 average annual salary multiplied by the number of years of
20 service credit for:

- 21 (a) prior employment; and
22 (b) allowed service credit for service
23 performed prior to July 1, 1957, except United States military
24 service credit purchased pursuant to Paragraph (3) of
25 Subsection A of Section 22-11-34 NMSA 1978; plus

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1 (2) two percent of the member's average annual
2 salary multiplied by the number of years of service credit for:

3 (a) contributory employment;
4 (b) allowed service credit for service
5 performed after July 1, 1957; and

6 (c) United States military service
7 credit for service performed prior to July 1, 1957 and
8 purchased pursuant to Paragraph (3) of Subsection A of Section
9 22-11-34 NMSA 1978.

10 F. Retirement benefits for a member age sixty or
11 over, retired pursuant to the Educational Retirement Act on or
12 after July 1, 1987 but not later than June 30, 1991, shall be
13 paid monthly and shall be one-twelfth of a sum equal to two and
14 fifteen-hundredths percent of the member's average annual
15 salary multiplied by the number of years of the member's total
16 service credit; provided that this subsection shall not apply
17 to any member who was retired in any of the four quarters
18 ending on June 30, 1987 without having accumulated not less
19 than 1.0 years earned service credit after June 30, 1987.

20 G. Retirement benefits for a member who retires
21 pursuant to Section 22-11-23 NMSA 1978 on or after July 1, 1991
22 shall be paid monthly and shall be one-twelfth of a sum equal
23 to two and thirty-five hundredths percent of the member's
24 average annual salary multiplied by the number of years of the
25 member's total service credit; provided that:

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1 (1) the benefit for a member who retires
2 pursuant to Paragraph (3) of Subsection A of Section 22-11-23
3 NMSA 1978 shall be reduced by:

4 (a) six-tenths percent for each one-
5 fourth, or portion thereof, year that retirement occurs prior
6 to the member attaining the age of sixty years but after the
7 member attains the age of fifty-five years; and

8 (b) one and eight-tenths percent for
9 each one-fourth, or portion thereof, year that retirement
10 occurs prior to the member attaining the age of fifty-five
11 years;

12 (2) the benefit formula provided in this
13 subsection shall not apply to any member who was retired in any
14 of the four consecutive quarters ending on June 30, 1991
15 without having accumulated at least one year of earned service
16 credit beginning on or after July 1, 1991; and

17 (3) a member shall be subject to the
18 provisions of Paragraph (1) of this subsection as they existed
19 at the beginning of the member's last cumulated four quarters
20 of earned service credit, regardless of later amendment.

21 H. Retirement benefits for a member who retires
22 pursuant to Section 22-11-23.1 NMSA 1978 shall be paid monthly
23 and shall be one-twelfth of a sum equal to two and thirty-five
24 hundredths percent of the member's average annual salary
25 multiplied by the number of years of the member's total service

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1 credit; provided that:

2 (1) the benefit for a member who retires
3 pursuant to Paragraph (3) of Subsection A of Section 22-11-23.1
4 NMSA 1978 shall be reduced by:

5 (a) six-tenths percent for each one-
6 fourth, or portion thereof, year that retirement occurs prior
7 to the member attaining the age of sixty-five years but after
8 the member attains the age of sixty years; and

9 (b) one and eight-tenths percent for
10 each one-fourth, or portion thereof, year that retirement
11 occurs prior to the member attaining the age of sixty years;
12 and

13 (2) a member shall be subject to the
14 provisions of Paragraph (1) of this subsection as they existed
15 at the beginning of the member's last cumulated four quarters
16 of earned service credit, regardless of later amendment.

17 I. Retirement benefits for a member who retires
18 pursuant to Section 22-11-23.2 NMSA 1978 shall be paid monthly
19 and shall be one-twelfth of a sum equal to two and thirty-five
20 hundredths percent of the member's average annual salary
21 multiplied by the number of years of the member's total service
22 credit; provided that:

23 (1) the benefit for a member retiring pursuant
24 to Paragraph (3) of Subsection A of Section 22-11-23.2 NMSA
25 1978 shall be reduced by:

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1 (a) six-tenths percent for each one-
2 fourth, or portion thereof, year that retirement occurs prior
3 to the member attaining the age of sixty-five years but after
4 the member attains the age of sixty years; and

5 (b) one and eight-tenths percent for
6 each one-fourth, or portion thereof, year that retirement
7 occurs prior to the member attaining the age of sixty years;
8 and

9 (2) a member shall be subject to the
10 provisions of Paragraph (1) of this subsection as they existed
11 at the beginning of the member's last cumulated four quarters
12 of earned service credit, regardless of later amendment.

13 J. Retirement benefits for a member who retires in
14 accordance with Section 22-11-23.3 NMSA 1978 shall be paid
15 monthly and:

16 (1) in an amount equal to one-twelfth of the
17 sum of the following:

18 (a) for the first ten years of the
19 member's service credit, one and thirty-five hundredths percent
20 of the member's average annual salary multiplied by the
21 member's years of service credit between one-fourth of a year
22 and ten years;

23 (b) for that portion of the member's
24 service credit earned after ten years of service credit and
25 through twenty years of service credit, two and thirty-five

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1 hundredths percent of the member's average annual salary
2 multiplied by the member's years of service credit between ten
3 and twenty years;

4 (c) for that portion of the member's
5 service credit earned after twenty years of service credit and
6 through thirty years of service credit, three and thirty-five
7 hundredths percent of the member's average annual salary
8 multiplied by the member's years of service credit between
9 twenty and thirty years; and

10 (d) for that portion of the member's
11 service credit earned after thirty years of service credit, two
12 and four-tenths percent of the member's average annual salary
13 multiplied by the member's years of service credit over thirty
14 years; or

15 (2) if the member retires in accordance with:

16 (a) Subsection A of Section 22-11-23.3
17 NMSA 1978 and is under fifty-eight years of age, in an amount
18 equal to the result determined under Paragraph (1) of this
19 subsection, but reduced to the actuarial equivalent, based on
20 what is at the time of the member's retirement the most current
21 set of actuarial factors determined by the board, of the
22 benefit the member would receive if the member had retired at
23 fifty-eight years of age;

24 (b) Subsection C of Section 22-11-23.3
25 NMSA 1978 and is sixty years of age or older and under sixty-

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1 five, in an amount equal to the result determined under
2 Paragraph (1) of this subsection, but reduced by six-tenths
3 percent for each one-fourth, or portion thereof, year before
4 the member reaches age sixty-five; or

5 (c) Subsection C of Section 22-11-23.3
6 NMSA 1978 and is younger than sixty years of age, in an amount
7 equal to one and eight-tenths percent for each one-fourth, or
8 portion thereof, year before the member reaches sixty years of
9 age.

10 K. In determining a member's average annual salary
11 for purposes of this section:

12 (1) the data set shall consist of the annual
13 salary of each of the last five years, or any consecutive five
14 years, for which contribution was made by the member, whichever
15 produces a higher result; and

16 (2) lump-sum payments made after July 1, 2010
17 of accrued sick leave or annual leave shall be excluded from
18 the calculation.

19 L. On and after July 1, 2019, if the member's
20 average annual salary is greater than sixty thousand dollars
21 (\$60,000):

22 (1) the salary in a first twelve-month
23 interval that occurs beginning July 1, 2019 or thereafter of
24 the five-year period used to determine the average annual
25 salary shall be adjusted to exclude any increase in salary in

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1 excess of thirty percent of the salary in the twelve
2 consecutive months of service credit preceding the five-year
3 period; and

4 (2) the salary in each of the four succeeding
5 twelve-month intervals that occur beginning July 1, 2019 or
6 thereafter of the five-year period, as adjusted to exclude any
7 increase in salary in the twelve months preceding each such
8 succeeding twelve-month interval that is in excess of the
9 thirty-percent limitation provided in this subsection, shall be
10 used to determine if the salary in that succeeding twelve-month
11 interval exceeds the thirty-percent limitation and to adjust
12 the salary to exclude any increase in excess of that limitation
13 in determining the average annual salary.

14 M. On July 1, 2020 and on each July 1 thereafter,
15 the salary threshold for applying the thirty-percent limitation
16 provided for in Subsection L of this section shall be adjusted
17 by applying an adjustment factor equal to the change in the
18 consumer price index between the next preceding calendar year
19 and the preceding calendar year if there is an increase in the
20 consumer price index between the next preceding calendar year
21 and the preceding calendar year.

22 N. ~~[Unless otherwise required by the Internal~~
23 ~~Revenue Code of 1986, a member shall begin receiving retirement~~
24 ~~benefits by age seventy years and six months, or upon~~
25 ~~termination of employment, whichever occurs later]~~

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1 Notwithstanding any provision of the Educational Retirement
2 Act, retirement benefits shall be distributed in accordance
3 with Section 401(a)(9) of the federal Internal Revenue Code of
4 1986, as amended, and the regulations thereunder, including the
5 minimum incidental death benefit restrictions of Section
6 401(a)(9)(G) of the Internal Revenue Code of 1986, as amended."

7 SECTION 4. Section 22-11-47 NMSA 1978 (being Laws 1991,
8 Chapter 118, Section 5, as amended) is amended to read:

9 "22-11-47. ALTERNATIVE RETIREMENT PLAN--ELECTION OF
10 COVERAGE.--

11 A. Beginning October 1, 1991, any employee of the
12 university of New Mexico, New Mexico state university, New
13 Mexico institute of mining and technology, New Mexico highlands
14 university, eastern New Mexico university or western New Mexico
15 university who is eligible to become a participant may make
16 within ninety days of that date an election to participate in
17 the alternative retirement plan. Beginning October 1, 1999, an
18 employee of central New Mexico community college, Clovis
19 community college, Luna community college, Mesalands community
20 college, New Mexico junior college, northern New Mexico
21 college, San Juan college or Santa Fe community college who is
22 eligible to become a participant may make an election to
23 participate in the alternative retirement plan within ninety
24 days of the initial date. Beginning October 1, 2023, an
25 employee of southeast New Mexico college who is eligible to

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1 become a participant may make an election to participate in the
2 alternative retirement plan within ninety days of the initial
3 date. Thereafter, any employee who is eligible to become a
4 participant may make within the first ninety days of employment
5 with a qualifying state educational institution an election to
6 participate in the alternative retirement plan. Any employee
7 who makes the election shall become a participant the first day
8 of the first pay period following the election. Any employee
9 who fails to make the election within ninety days of October 1,
10 1991, ~~[or]~~ October 1, 1999 or October 1, 2023, whichever is
11 applicable, or within the first ninety days of employment with
12 a qualifying state educational institution shall become or
13 remain a regular member if that employee is eligible to be a
14 regular member and shall not later be eligible to elect to be a
15 participant, regardless of whether the employee subsequently is
16 employed in another position that is eligible for participation
17 in the alternative retirement plan. Except as provided in
18 Subsection D of this section, an election to become a
19 participant is irrevocable.

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

23 C. When an employee elects to become a participant,
24 any employer and employee contributions made as a regular
25 member shall be withdrawn from the fund and applied instead

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1 toward the alternative retirement plan as if the participant
2 had been participating in the alternative retirement plan from
3 the commencement of employment with the qualifying state
4 educational institution.

5 D. On July 1, 2009, any participant who has made
6 contributions to the alternative retirement plan for a
7 cumulative total of seven years or more shall have a one-time
8 option of electing to become a regular member. Thereafter,
9 once a participant has made contributions to the alternative
10 retirement plan for a cumulative total of seven years, a
11 participant shall have a one-time option of electing to become
12 a regular member. Participants electing to become regular
13 members shall exercise that option within one hundred twenty
14 days of the date of becoming eligible to elect to become a
15 regular member. Any amounts on deposit in an employee's
16 alternative retirement plan account when a participant becomes
17 a regular member shall remain on deposit with the contractor or
18 carrier subject to that plan's provisions, unless otherwise
19 provided by law. An employee who elects to become a regular
20 member under this subsection shall use the date on which the
21 employee was first employed with a qualifying state educational
22 institution for purposes of determining any retirement
23 eligibility requirement, provided that the employee:

24 (1) may not purchase service credit for
25 periods of employment during which the employee participated in

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1 the alternative retirement plan; and

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

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