

AN ACT  
RELATING TO EDUCATIONAL RETIREMENT; COMPLYING WITH FEDERAL  
INTERNAL REVENUE CODE PROVISIONS; AMENDING AND ENACTING  
SECTIONS OF THE NMSA 1978.

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

Section 1. A new section of the Educational Retirement Act is enacted to read:

"EDUCATIONAL RETIREMENT--QUALIFIED EXCESS BENEFIT.--The educational retirement board, by rule, may establish and maintain a qualified excess benefit arrangement under Section 415(m) of the United States Internal Revenue Code of 1986 for employees hired before July 1, 1999. The amount of annual benefit that would be payable but for the limitation imposed by Section 415 of the United States Internal Revenue Code of 1986 to an employee hired before July 1, 1999 shall be paid from a qualified excess benefit arrangement established and maintained pursuant to this section."

Section 2. Section 22-11-21.2 NMSA 1978 (being Laws 1995, Chapter 148, Section 2) is amended to read:

"22-11-21.2. SALARY CALCULATION--LIMITATIONS.--In establishing a member's average annual salary for determination of retirement benefits, salary in excess of limitations set forth in Section 401(a)(17) of the Internal Revenue Code of 1986, as amended, shall be disregarded. The limitation on compensation for eligible employees shall not be less than the amount allowed pursuant to the Educational Retirement Act in effect on July 1, 1993. For purposes of this section, "eligible employee" means an individual who was a member or participant of the educational retirement

plan or alternative retirement plan prior to the first plan year beginning after December 31, 1995. For a member who first becomes a clinical faculty member of the university of New Mexico health sciences center on or after July 1, 1999, the limitation on compensation shall not be in excess of the member's base salary as specified in the member's annual faculty contract or the limitations set forth in Section 401(a)(17) of the Internal Revenue Code of 1986, as amended, whichever is less."

Section 3. Section 22-11-47 NMSA 1978 (being Laws 1991, Chapter 118, Section 5) is amended to read:

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

A. Beginning October 1, 1991, any employee who is eligible to become a participant may make within ninety days of that date an irrevocable election to participate in the alternative retirement plan. Thereafter, any employee who is eligible to become a participant may make within the first ninety days of employment with a qualifying state educational institution an irrevocable election to participate in the alternative retirement plan. Any employee who makes the irrevocable election shall become a participant the first day of the first pay period following the election. Any employee who fails to make the irrevocable election within ninety days of October 1, 1991 or within the first ninety days of employment with a qualifying state educational institution shall become or remain a regular member if that employee is eligible to be a regular member.

B. Until the time an employee who is eligible to

become a participant elects to participate in the alternative retirement plan, that employee shall be a regular member.

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

D. Notwithstanding the provisions of Subsections A through C of this section, a member who first becomes a clinical faculty member of the university of New Mexico health sciences center on or after July 1, 1999, who does not elect to participate in the alternative retirement plan and whose base salary, as specified in the member's annual faculty contract, does not exceed the limitations set forth in Section 401(a)(17) of the Internal Revenue Code of 1986, as amended, in any contract year shall become a participant in the alternative retirement plan with respect to any amount by which the limitations set forth in Section 401(a)(17) of the Internal Revenue Code of 1986, as amended, or the member's total salary, whichever is less, exceeds the member's base salary. Those members shall be deemed to be both members of the educational retirement plan and participants in the alternative retirement plan." \_\_\_\_\_

SB 278  
Page 3

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