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AN ACT
RELATING TO EDUCATIONAL RETIREMENT; 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 22-11-2 NMSA 1978 (being Laws 1967,
Chapter 16, Section 126, as amended) is amended to read:

"22-11-2. DEFINITIONS.--As used in the Educational
Retirement Act:

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

B. "regular member" means:

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

(a) a participant; or

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

(2) a person regularly employed by a junior
college or community college created pursuant to Chapter 21,

1 Article 13 NMSA 1978, except for a participant;

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

6 (4) a person regularly employed by the
7 New Mexico boys' school, the girls' welfare home, the Los
8 Lunas medical center or a school district or as a licensed
9 school employee of a state institution or agency providing an
10 educational program and holding a license issued by the
11 department, except for a participant;

12 (5) a person regularly employed by the
13 department holding a license issued by the department at the
14 time of commencement of such employment;

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

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

20 (8) a person regularly employed by a
21 regional education cooperative holding a license issued by
22 the department at the time of commencement of such
23 employment;

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

1 D. "local administrative unit" means an employing
2 agency however constituted that is directly responsible for
3 the payment of compensation for the employment of members or
4 participants;

5 E. "beneficiary" means a person having an
6 insurable interest in the life of a member or a participant
7 designated by written instrument duly executed by the member
8 or participant and filed with the director to receive a
9 benefit pursuant to the Educational Retirement Act that may
10 be received by someone other than the member or participant;

11 F. "employment" means employment by a local
12 administrative unit that qualifies a person to be a member or
13 participant;

14 G. "service employment" means employment that
15 qualifies a person to be a regular member;

16 H. "provisional service employment" means
17 employment that qualifies a person to be a provisional
18 member;

19 I. "prior employment" means employment performed
20 prior to the effective date of the Educational Retirement Act
21 that would be service employment or provisional service
22 employment if performed thereafter;

23 J. "service credit" means that period of time with
24 which a member is accredited for the purpose of determining
25 the member's eligibility for and computation of retirement or

1 disability benefits;

2 K. "earned service credit" means that period of
3 time during which a member was engaged in employment or prior
4 employment with which the member is accredited for the
5 purpose of determining the member's eligibility for
6 retirement or disability benefits;

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

12 M. "retirement benefit" means an annuity paid
13 monthly to members whose employment has been terminated by
14 reason of their age;

15 N. "disability benefit" means an annuity paid
16 monthly to members whose employment has been terminated by
17 reason of a disability;

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

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

20 Q. "director" means the educational retirement
21 director;

22 R. "medical authority" means a medical doctor or
23 medical review panel designated or employed by the board to
24 examine medical records and report on the medical condition
25 of applicants for or recipients of disability benefits;

1 S. "actuary" means a person trained and regularly
2 engaged in the occupation of calculating present and
3 projected monetary assets and liabilities under annuity or
4 insurance programs;

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

9 U. "contributory employment" means employment for
10 which contributions have been made by both a member and a
11 local administrative unit pursuant to the Educational
12 Retirement Act;

13 V. "qualifying state educational institution"
14 means the university of New Mexico, New Mexico state
15 university, New Mexico institute of mining and technology,
16 New Mexico highlands university, eastern New Mexico
17 university, western New Mexico university, central New Mexico
18 community college, Clovis community college, Luna community
19 college, Mesalands community college, New Mexico junior
20 college, northern New Mexico college, San Juan college, Santa
21 Fe community college and southeast New Mexico college;

22 W. "participant" means:

23 (1) a person regularly employed as a faculty
24 or professional employee of the university of New Mexico, New
25 Mexico state university, New Mexico institute of mining and

1 technology, New Mexico highlands university, eastern New
2 Mexico university or western New Mexico university who first
3 becomes employed with such an educational institution on or
4 after July 1, 1991, or a person regularly employed as a
5 faculty or professional employee of the central New Mexico
6 community college, Clovis community college, Luna community
7 college, Mesalands community college, New Mexico junior
8 college, northern New Mexico college, San Juan college or
9 Santa Fe community college who is first employed by the
10 institution on or after July 1, 1999, or a person regularly
11 employed as a faculty or professional employee of southeast
12 New Mexico college who is first employed by the institution
13 on or after July 1, 2023, and who elects, pursuant to Section
14 22-11-47 NMSA 1978, to participate in the alternative
15 retirement plan; and

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

23 X. "salary" means the compensation or wages paid
24 to a member or participant by any local administrative unit
25 for services rendered. "Salary" includes payments made for

1 annual or sick leave and payments for additional service
2 provided to related activities, but does not include payments
3 for sick leave not taken unless the payment for the unused
4 sick leave is made through continuation of the member on the
5 regular payroll for the period represented by that payment
6 and does not include allowances or reimbursements for travel,
7 housing, food, equipment or similar items;

8 Y. "alternative retirement plan" means the
9 retirement plan provided for in Sections 22-11-47 through
10 22-11-52 NMSA 1978; and

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

14 SECTION 2. Section 22-11-30 NMSA 1978 (being Laws 1967,
15 Chapter 16, Section 153, as amended) is amended to read:

16 "22-11-30. RETIREMENT BENEFITS--REDUCTIONS.--

17 A. Retirement benefits for a member retired
18 pursuant to the Educational Retirement Act on or before
19 June 30, 1967 shall be paid monthly and shall be one-twelfth
20 of a sum equal to one and one-half percent of the first four
21 thousand dollars (\$4,000) of the member's average annual
22 salary and one percent of the remainder of the member's
23 average annual salary multiplied by the number of years of
24 the member's total service credit.

25 B. Retirement benefits for a member retired

1 pursuant to the Educational Retirement Act on or after July
2 1, 1967 but on or before June 30, 1971 shall be paid monthly
3 and shall be one-twelfth of a sum equal to one and one-half
4 percent of the first six thousand six hundred dollars
5 (\$6,600) of the member's average annual salary and one
6 percent of the remainder of the member's average annual
7 salary multiplied by the number of years of the member's
8 total service credit.

9 C. Retirement benefits for a member retired
10 pursuant to the Educational Retirement Act on or after
11 July 1, 1971 but on or before June 30, 1974 shall be paid
12 monthly and shall be one-twelfth of a sum equal to one and
13 one-half percent of the member's average annual salary
14 multiplied by the number of years of the member's total
15 service credit.

16 D. Retirement benefits for a member retired
17 pursuant to the Educational Retirement Act on or before
18 June 30, 1974 but returning to employment on or after July 1,
19 1974 for a cumulation of one or more years shall be computed
20 pursuant to Subsection E of this section. Retirement
21 benefits for a member retired pursuant to the Educational
22 Retirement Act on or before June 30, 1974 but returning to
23 employment on or after July 1, 1974 for a cumulation of less
24 than one year shall be computed pursuant to Subsection A of
25 this section if the member's date of last retirement was on

1 or before June 30, 1967 or pursuant to Subsection B of this
2 section if the member's date of last retirement was on or
3 after July 1, 1967 but not later than June 30, 1971 or
4 pursuant to Subsection C of this section if the member's date
5 of last retirement was on or after July 1, 1971 but not later
6 than June 30, 1974.

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

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

14 (a) prior employment; and

15 (b) allowed service credit for service
16 performed prior to July 1, 1957, except United States
17 military service credit purchased pursuant to Paragraph (3)
18 of Subsection A of Section 22-11-34 NMSA 1978; plus

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

22 (a) contributory employment;

23 (b) allowed service credit for service
24 performed after July 1, 1957; and

25 (c) United States military service

1 credit for service performed prior to July 1, 1957 and
2 purchased pursuant to Paragraph (3) of Subsection A of
3 Section 22-11-34 NMSA 1978.

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

15 G. Retirement benefits for a member who retires
16 pursuant to Section 22-11-23 NMSA 1978 on or after July 1,
17 1991 shall be paid monthly and shall be one-twelfth of a sum
18 equal to two and thirty-five hundredths percent of the
19 member's average annual salary multiplied by the number of
20 years of the member's total service credit; provided that:

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

24 (a) six-tenths percent for each one-
25 fourth, or portion thereof, year that retirement occurs prior

1 to the member attaining the age of sixty years but after the
2 member attains the age of fifty-five years; and

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

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

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

17 H. Retirement benefits for a member who retires
18 pursuant to Section 22-11-23.1 NMSA 1978 shall be paid
19 monthly and shall be one-twelfth of a sum equal to two and
20 thirty-five hundredths percent of the member's average annual
21 salary multiplied by the number of years of the member's
22 total service credit; provided that:

23 (1) the benefit for a member who retires
24 pursuant to Paragraph (3) of Subsection A of Section
25 22-11-23.1 NMSA 1978 shall be reduced by:

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
11 existed at the beginning of the member's last cumulated four
12 quarters of earned service credit, regardless of later
13 amendment.

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

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

23 (a) six-tenths percent for each one-
24 fourth, or portion thereof, year that retirement occurs prior
25 to the member attaining the age of sixty-five years but after

1 the member attains the age of sixty years; and

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

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

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

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

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

21 (b) for that portion of the member's
22 service credit earned after ten years of service credit and
23 through twenty years of service credit, two and thirty-five
24 hundredths percent of the member's average annual salary
25 multiplied by the member's years of service credit between

1 ten and twenty years;

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

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

13 (2) if the member retires in accordance
14 with:

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

23 (b) Subsection C of Section 22-11-23.3
24 NMSA 1978 and is sixty years of age or older and under sixty-
25 five, in an amount equal to the result determined under

1 Paragraph (1) of this subsection, but reduced by six-tenths
2 percent for each one-fourth, or portion thereof, year before
3 the member reaches age sixty-five; or

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

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

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

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

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

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

1 consecutive months of service credit preceding the five-year
2 period; and

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

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

21 N. Notwithstanding any provision of the
22 Educational Retirement Act, retirement benefits shall be
23 distributed in accordance with Section 401(a)(9) of the
24 federal Internal Revenue Code of 1986, as amended, and the
25 regulations thereunder, including the minimum incidental

1 death benefit restrictions of Section 401(a)(9)(G) of the
2 Internal Revenue Code of 1986, as amended."

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

5 "22-11-47. ALTERNATIVE RETIREMENT PLAN--ELECTION OF
6 COVERAGE.--

7 A. Beginning October 1, 1991, any employee of the
8 university of New Mexico, New Mexico state university, New
9 Mexico institute of mining and technology, New Mexico
10 highlands university, eastern New Mexico university or
11 western New Mexico university who is eligible to become a
12 participant may make within ninety days of that date an
13 election to participate in the alternative retirement plan.

14 Beginning October 1, 1999, an employee of central New Mexico
15 community college, Clovis community college, Luna community
16 college, Mesalands community college, New Mexico junior
17 college, northern New Mexico college, San Juan college or
18 Santa Fe community college who is eligible to become a
19 participant may make an election to participate in the
20 alternative retirement plan within ninety days of the initial
21 date. Beginning October 1, 2023, an employee of southeast
22 New Mexico college who is eligible to become a participant
23 may make an election to participate in the alternative
24 retirement plan within ninety days of the initial date.

25 Thereafter, any employee who is eligible to become a

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

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

21 C. When an employee elects to become a
22 participant, any employer and employee contributions made as
23 a regular member shall be withdrawn from the fund and applied
24 instead toward the alternative retirement plan as if the
25 participant had been participating in the alternative

1 retirement plan from the commencement of employment with the
2 qualifying state educational institution.

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

23 (1) may not purchase service credit for
24 periods of employment during which the employee participated
25 in the alternative retirement plan; and

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

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