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BILL

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PUBLIC EMPLOYEES; EXEMPTING CERTAIN EDUCATIONAL  
RETIREMENT BOARD EMPLOYEES FROM THE PERSONNEL ACT; ALLOWING THE  
EDUCATIONAL RETIREMENT DIRECTOR TO EMPLOY AND FIX THE SALARIES  
OF CERTAIN EMPLOYEES; PROVIDING THAT THE BOARD FIX THE  
DIRECTOR'S SALARY.

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

SECTION 1. Section 10-9-4 NMSA 1978 (being Laws 1961,  
Chapter 240, Section 4, as amended) is amended to read:

"10-9-4. COVERAGE OF SERVICE.--The Personnel Act and the  
service cover all state positions except:

A. officials elected by popular vote or appointed  
to fill vacancies to elective offices;

B. members of boards and commissions and heads of  
agencies appointed by the governor;

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1 C. heads of agencies appointed by boards or  
2 commissions;

3 D. directors of department divisions;

4 E. those in educational institutions and in public  
5 schools;

6 F. those who are employed by state institutions and  
7 by state agencies providing educational programs and who are  
8 required to hold valid certificates as certified school  
9 instructors as defined in Section 22-1-2 NMSA 1978 issued by  
10 the public education department;

11 G. the director, the deputy director, the chief  
12 investment officer and the general counsel of the educational  
13 retirement board and those employed in the investment division  
14 of the board as portfolio managers, investment analysts or  
15 supervisors;

16 [~~G.~~] H. those in the governor's office;

17 [~~H.~~] I. those in the state militia or the  
18 commissioned officers of the New Mexico state police division  
19 of the department of public safety;

20 [~~I.~~] J. those in the judicial branch of government;

21 [~~J.~~] K. those in the public defender department,  
22 upon implementation of personnel policies and rules by the  
23 public defender commission;

24 [~~K.~~] L. those in the legislative branch of  
25 government;

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1           ~~[L.]~~ M. ~~[not more than]~~ up to two assistants and  
2 one secretary in the office of each official listed in  
3 Subsections A ~~[B]~~ and C of this section ~~[excluding members of~~  
4 ~~boards and commissions in Subsection B of this section]~~ and in  
5 the office of each head of an agency appointed by the governor;

6           ~~M.]~~ N. those of a professional or scientific nature  
7 that are temporary in nature;

8           ~~[N.]~~ O. those filled by patients or inmates in  
9 charitable, penal or correctional institutions;

10           ~~[O.]~~ P. state employees if the board in its  
11 discretion decides that the position is one of policymaking;  
12 and

13           ~~[P.]~~ Q. disadvantaged youth under twenty-two years  
14 of age who are regularly enrolled or to be enrolled in a  
15 secondary educational institution approved by the public  
16 education department or in an accredited state institution of  
17 advanced learning or vocational training and who are to be  
18 employed for not more than seven hundred twenty hours during  
19 any calendar year:

20                   (1) the term "disadvantaged youth" shall be  
21 defined for purposes of this exemption by regulation duly  
22 promulgated by the board; and

23                   (2) the board shall:

24                           (a) require that all the criteria of  
25 this subsection have been met;

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1 (b) establish employment lists for the  
2 certification of the highest-standing candidates to the  
3 prospective employers; and

4 (c) establish the pay rates for such  
5 employees."

6 SECTION 2. Section 10-9-5 NMSA 1978 (being Laws 1978,  
7 Chapter 96, Section 1, as amended) is amended to read:

8 "10-9-5. PUBLIC OFFICERS AND PUBLIC EMPLOYEES--EXECUTIVE  
9 BRANCH--ANNUAL EXEMPT SALARIES PLAN.--

10 A. The department of finance and administration  
11 shall prepare, by December 1 of each year, an exempt salaries  
12 plan for the governor's approval [~~the plan shall specify~~] that  
13 specifies salary ranges for the following public officer and  
14 public employee positions of the executive branch of  
15 government:

- 16 (1) members of boards and commissions  
17 appointed by the governor;
- 18 (2) heads of agencies or departments appointed  
19 by the governor;
- 20 (3) heads of agencies or departments appointed  
21 by the respective boards and commissions of the agencies;
- 22 (4) directors of department divisions;
- 23 (5) employees in the governor's office;
- 24 (6) positions in the state militia and the  
25 commissioned officers of the New Mexico state police division

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1 of the department of public safety;

2 (7) assistants and secretaries in the offices  
3 of each official covered by Paragraphs (2), (3) and (10) of  
4 this subsection;

5 (8) temporary positions of a professional or  
6 scientific nature [~~which are temporary in nature~~]; and

7 (9) state employees whose positions the  
8 [~~personnel~~] board has classified as [~~policy-making~~]  
9 policymaking positions and exempt employees of elective public  
10 officials [~~and~~

11 ~~(10) secretaries of departments appointed by~~  
12 ~~the governor~~].

13 B. Excluded from the provisions of this section  
14 are:

15 (1) employees of the [~~commission on~~] higher  
16 education department and employees of state educational  
17 institutions named in Article 12, Section 11 of the  
18 constitution of New Mexico; and

19 (2) the director, the deputy director, the  
20 chief investment officer and the general counsel of the  
21 educational retirement board and those employed in the  
22 investment division of the board as portfolio managers,  
23 investment analysts or supervisors.

24 C. The exempt salaries plan for the ensuing fiscal  
25 year, as prepared by the department of finance and

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1 administration and approved by the governor, shall be published  
2 as a part of the executive budget document presented to the  
3 legislature at its next regular session following the  
4 preparation of the plan.

5 D. Upon the governor's approval, the plan shall  
6 take effect at the beginning of the subsequent fiscal year."

7 SECTION 3. Section 22-11-7 NMSA 1978 (being Laws 1967,  
8 Chapter 16, Section 131) is amended to read:

9 "22-11-7. EDUCATIONAL RETIREMENT DIRECTOR--BOND--  
10 EMPLOYEES OF THE DIRECTOR.--

11 A. The board shall employ [~~an educational~~  
12 ~~retirement~~] and fix the salary of a director. The director  
13 shall be the administrative officer for the board in carrying  
14 out the provisions of the Educational Retirement Act and shall  
15 have those additional duties provided in the regulations of the  
16 board.

17 B. Before assuming the duties of office, the  
18 director shall obtain an official bond payable to the fund and  
19 conditioned upon the faithful performance of [~~his~~] the  
20 director's duties during [~~his~~] the director's term of office.  
21 The bond shall be executed by a corporate surety company  
22 authorized to do business in this state. The amount of the  
23 bond shall be not less than twenty-five thousand dollars  
24 (\$25,000). The board may elect to obtain a schedule or blanket  
25 corporate surety bond covering the director and employees of

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1 the ~~[division]~~ board for any period not exceeding four years.  
2 The cost of a bond obtained pursuant to this section shall be  
3 paid from the fund. Any bond obtained shall be approved by the  
4 board and filed with the secretary of state.

5 C. The director may employ a deputy director, a  
6 chief investment officer, a general counsel, portfolio  
7 managers, investment analysts and investment division  
8 supervisors to serve at the director's pleasure. The director  
9 shall, within budget allowances and appropriation limits, fix  
10 the salary of an employee serving in any of those positions."