

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
SENATE BILL 664

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;  
PROVIDING FOR A SURVIVING SPOUSE OR DOMESTIC PARTNER TO BE  
CONSIDERED A BENEFICIARY IF A DECEASED MEMBER OF THE  
EDUCATIONAL RETIREMENT PLAN HAS NOT OTHERWISE DESIGNATED A  
BENEFICIARY.

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

**SECTION 1.** Section 22-11-29 NMSA 1978 (being Laws 1967,  
Chapter 16, Section 152, as amended) is amended to read:

"22-11-29. RETIREMENT BENEFIT OPTIONS.--

A. Upon retirement pursuant to the Educational  
Retirement Act, a member may elect, and, except as provided in  
Subsection D or E of this section, such election shall be  
irrevocable, to receive the actuarial equivalent of the  
member's retirement benefit, as provided in Section 22-11-30

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1 NMSA 1978, to be effective on the member's retirement in any  
2 one of the following optional forms:

3 (1) OPTION A. An unreduced retirement benefit  
4 pursuant to Section 22-11-30 NMSA 1978;

5 (2) OPTION B. A reduced annuity payable  
6 during the member's life with provision that upon the member's  
7 death the same annuity shall be continued during the life of  
8 and paid to the beneficiary designated by the member in writing  
9 at the time of electing this option; or

10 (3) OPTION C. A reduced annuity payable  
11 during the member's life with provision that upon the member's  
12 death one-half of this same annuity shall be continued during  
13 the life of and paid to the beneficiary designated by the  
14 member in writing at the time of electing this option.

15 B. In the case of Options B and C of Subsection A  
16 of this section, the actuarial equivalent of the member's  
17 retirement benefit shall be computed on the basis of the lives  
18 of both the member and the beneficiary.

19 C. In the event that the named beneficiary of a  
20 retired member who elected Option B or C of Subsection A of  
21 this section at the time of retirement predeceases the retired  
22 member, the annuity of the retired member shall be adjusted by  
23 adding an amount equal to the amount by which the annuity of  
24 the retired member was reduced at retirement as a result of the  
25 election of Option B or C. The adjustment authorized in this

.214134.4

1 subsection shall be made as follows:

2 (1) beginning on the first month following the  
3 month in which the named beneficiary of a retiree dies  
4 applicable to an annuity received by a retiree who retires  
5 after June 30, 1987; or

6 (2) beginning on July 1, 1987 applicable to an  
7 annuity received by a retiree who retired prior to July 1, 1987  
8 and otherwise qualifies for the adjustment; provided, however,  
9 no adjustment shall be made retroactively.

10 D. A retired member who is being paid an adjusted  
11 annuity pursuant to Subsection C of this section because of the  
12 death of the named beneficiary may exercise a one-time  
13 irrevocable option to designate another individual as the  
14 beneficiary and may select either Option B or Option C of  
15 Subsection A of this section; provided that:

16 (1) the amount of the annuity under the option  
17 selected shall be recalculated and have the same actuarial  
18 present value, computed on the effective date of the  
19 designation, as the annuity being paid to the retired member  
20 prior to the designation;

21 (2) the designation and the amount of the  
22 annuity shall be subject to a court order as provided for in  
23 Subsection B of Section 22-11-42 NMSA 1978; and

24 (3) the retired member shall pay one hundred  
25 dollars (\$100) to the board to defray the cost of determining

.214134.4

1 the new annuity amount.

2 E. A retired member who is being paid an annuity  
3 under Option B or C of Subsection A of this section with a  
4 living designated beneficiary other than the retired member's  
5 spouse or former spouse may exercise a one-time irrevocable  
6 option to deselect the designated beneficiary and elect to:

7 (1) designate another beneficiary; provided  
8 that:

9 (a) the retired member shall not have an  
10 option to change from the current form of payment;

11 (b) the amount of the annuity under the  
12 form of payment shall be recalculated and shall have the same  
13 actuarial present value, computed as of the effective date of  
14 the designation, as the amount of annuity paid prior to the  
15 designation; and

16 (c) the retired member shall pay one  
17 hundred dollars (\$100) to the board to defray the cost of  
18 determining the new annuity amount; or

19 (2) have future annuity payments made without  
20 a reduction as a result of Option B or C.

21 F. In the event of the death of the member who has  
22 not retired and who has completed at least five years' earned  
23 service credit, the member shall be considered as retiring on  
24 the first day of the month following the date of death, and the  
25 benefits due the surviving beneficiary, computed as of that

.214134.4

1 date, shall, except as provided in Subsection [F] J of this  
 2 section, be commenced effective on the first day of such month  
 3 in accordance with the terms of Option B of Subsection A of  
 4 this section. In lieu of the provisions of Option B, the  
 5 surviving beneficiary may elect to receive payment of all the  
 6 contributions made by the member, plus interest at the rate set  
 7 by the board reduced by the sum of any disability benefits  
 8 previously received by the member, or the surviving beneficiary  
 9 may choose to defer receipt of the survivor's benefit to  
 10 whatever age the beneficiary chooses up to the time the member  
 11 would have attained age sixty. If the benefit is thus  
 12 deferred, it shall be calculated as though the member had  
 13 retired on the first day of the month in which the beneficiary  
 14 elects to receive the benefit. In the event of the death of  
 15 the beneficiary after the death of the member and prior to the  
 16 date on which the beneficiary has elected to receive the  
 17 beneficiary's benefit, the estate of the beneficiary shall be  
 18 entitled to a refund of the member's contributions plus  
 19 interest at the rate earned by the fund during the preceding  
 20 fiscal year, reduced by the sum of any disability benefits  
 21 previously received by the member.

22 G. In the event of the death of a member who has  
 23 not retired and who has completed at least five years' earned  
 24 service credit, but who has not designated a beneficiary in  
 25 writing pursuant to the Educational Retirement Act, the

.214134.4

1 eligible surviving spouse or surviving domestic partner shall  
2 be the surviving beneficiary eligible for benefits in  
3 accordance with the provisions of Subsection F of this section.

4           ~~[G.]~~ H. In the case of death of a retired member  
5 who did not elect either Option B or C of Subsection A of this  
6 section and before the benefits paid to the member have equaled  
7 the sum of the member's accumulated contributions to the fund  
8 plus accumulated interest at the rate set by the board, the  
9 balance shall be paid to the beneficiary designated in writing  
10 to the director by the member or, if no beneficiary was  
11 designated, to the eligible surviving spouse or surviving  
12 domestic partner of the member or, if there is no eligible  
13 surviving spouse or domestic partner of the member, to the  
14 estate of the member.

15           ~~[H.]~~ I. No benefit shall be paid pursuant to this  
16 section if the member's contributions have been refunded  
17 pursuant to Section 22-11-15 NMSA 1978.

18           ~~[I.]~~ J. In the case of death of a member with less  
19 than five years' earned service credit or death of a member who  
20 has filed with the director a notice rejecting the provisions  
21 of Subsection F of this section, which notice shall be  
22 revocable by the member at any time prior to retirement, the  
23 member's contributions to the fund plus interest at the rate  
24 set by the board shall be paid to the beneficiary designated in  
25 writing to the director by the member or, if no beneficiary was

.214134.4

1 designated, to the eligible surviving spouse or surviving  
2 domestic partner of the member or, if there is no eligible  
3 surviving spouse or domestic partner of the member, to the  
4 estate of the member."

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