



The Legislature
of the
State of New Mexico

49th Legislature, First Session

LAWS 2009

CHAPTER 9

SENATE BILL 572, as amended,

with emergency clause

Introduced by

SENATOR MARY JANE M. GARCIA
SENATOR STEPHEN H. FISCHMANN
SENATOR TIMOTHY M. KELLER



EMERGENCY CLAUSE

Chapter 9

AN ACT

1
2 RELATING TO EDUCATIONAL RETIREMENT; PROVIDING CERTAIN
3 CONDITIONS AND OPTIONS FOR EMPLOYEES IN ALTERNATIVE
4 RETIREMENT PLANS; CHANGING THE BENEFITS AVAILABLE UNDER
5 ALTERNATIVE RETIREMENT PLANS; CLARIFYING THE PORTABILITY OF
6 THE PLANS; DECLARING AN EMERGENCY.

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

9 Section 1. Section 22-11-47 NMSA 1978 (being Laws 1991,
10 Chapter 118, Section 5, as amended) is amended to read:

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

13 A. Beginning October 1, 1991, any employee of the
14 university of New Mexico, New Mexico state university, New
15 Mexico institute of mining and technology, New Mexico
16 highlands university, eastern New Mexico university or
17 western New Mexico university who is eligible to become a
18 participant may make within ninety days of that date an
19 election to participate in the alternative retirement plan.

20 Beginning October 1, 1999, an employee of central New Mexico
21 community college, Clovis community college, Luna community
22 college, Mesalands community college, New Mexico junior
23 college, northern New Mexico college, San Juan college or
24 Santa Fe community college who is eligible to become a
25 participant may make an election to participate in the

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

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

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

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

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

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

1 in the alternative retirement plan; and

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

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

10 Section 2. Section 22-11-51 NMSA 1978 (being Laws 1991,
11 Chapter 118, Section 9, as amended) is amended to read:

12 "22-11-51. ALTERNATIVE RETIREMENT PLANS--BENEFITS--
13 TRANSFER UPON UNEMPLOYMENT.--

14 A. No retirement, death or other benefit shall be
15 paid by the board from the fund for services credited under
16 the alternative retirement plan. Such benefits are payable
17 to participants or their beneficiaries only by the
18 appropriate alternative retirement plan contractor or carrier
19 in accordance with the terms of the applicable contracts or
20 certificates; provided, however, that retirement benefits
21 shall, at the option of the participant, be paid in the form
22 of a lifetime income, if held in an annuity contract;
23 payments for a term of years; or a single-sum cash payment.

24 B. Upon termination of employment with a
25 qualifying state educational institution, a participant may

1 transfer or roll over the account balance to another eligible
2 retirement plan or may withdraw the balance as permitted for
3 a plan qualified under Section 401(a) of the Internal Revenue
4 Code of 1986."

5 Section 3. Section 22-11-52 NMSA 1978 (being Laws 1991,
6 Chapter 118, Section 10) is amended to read:

7 "22-11-52. ALTERNATIVE RETIREMENT PLAN--SELECTION OF
8 CONTRACTOR OR CARRIER--ADMINISTRATION.--

9 A. The board shall solicit and review proposals
10 for providing retirement, death and any other benefits deemed
11 desirable by the board for participants in the alternative
12 retirement plan. The board shall solicit proposals for
13 providing the benefits through contracts or investments held
14 in trust or a custodial account that meets the requirements
15 of Section 401(a) or 403(a) of the Internal Revenue Code of
16 1986, including, without limitation, annuity contracts or
17 certificates that are fixed or variable in nature or some
18 combination thereof.

19 B. The board, after consultation with the
20 qualifying state educational institutions, shall select no
21 less than two nor more than five contractors or carriers to
22 provide the contracts or certificates. In making its
23 selection, the board shall consider, among other things, the
24 following criteria:

25 (1) the portability of the benefits offered,

1 based upon the number of states and institutions of higher
2 education in which the offeror provides similar benefits;

3 (2) the nature and extent of the rights and
4 benefits that would be provided to the participants,
5 including the right to maintain their accounts or to transfer
6 the balance to another eligible retirement plan upon
7 termination of employment with the qualifying educational
8 institution, to the extent permitted for a plan qualified
9 under Section 401(a) of the Internal Revenue Code of 1986;

10 (3) the relation of the rights and benefits
11 to the contributions that would be made by the participants
12 and the qualifying state educational institutions;

13 (4) the ability of the offeror to provide
14 the rights and benefits;

15 (5) the suitability of the rights and
16 benefits for recruitment and retention of employees by the
17 qualifying state educational institutions; and

18 (6) compliance with the requirements of the
19 Educational Retirement Act and Section 401(a) or 403(a) of
20 the Internal Revenue Code of 1986.

21 C. The board shall provide for the administration
22 and maintenance of the alternative retirement plan and may
23 adopt rules and regulations for that purpose."

24 Section 4. EMERGENCY.--It is necessary for the public
25 peace, health and safety that this act take effect

1 immediately.

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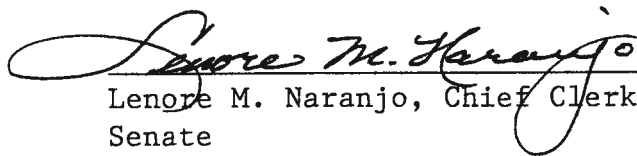
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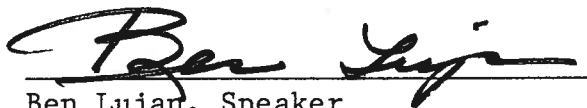
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Lenore M. Naranjo, Chief Clerk
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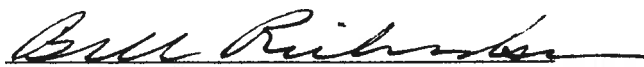


Ben Lujan, Speaker
House of Representatives



Stephen R. Arias, Chief Clerk
House of Representatives

Approved by me this 18th day of March, 2009



Governor Bill Richardson
State of New Mexico