

**NEW MEXICO RETIREE HEALTH CARE AUTHORITY
STATE OF NEW MEXICO**

RESOLUTION INITIATING RULEMAKING PROCEEDINGS

WHEREAS, NMSA 1978, Section 10-7C-2 (1990) of the Retiree Health Care Act, NMSA 1978, Sections 10-7C-1 to -16 (1990, as amended through 2009) (the “Act”), provides that the purpose of the Act “is to provide comprehensive core group health insurance for persons who have retired from certain public service in New Mexico[,]” and to “provide eligible retirees, their spouses, dependents and surviving spouses and dependents with health insurance consisting of a plan or optional plans of benefits that can be purchased by funds flowing into the retiree health care fund and by co-payments or by out-of-pocket payments by insureds[;]” and

WHEREAS, the Act, at NMSA 1978, Section 10-7C-5 (2002), created the New Mexico Retiree Health Care Authority (the “NMRHCA”) “to provide for comprehensive group health insurance programs” under the Act; and

WHEREAS, the Act, at NMSA 1978, Section 10-7C-6 (2003), created the board of directors of the NMRHCA (the “Board”), which shall be composed of no more than twelve members who represent certain constituencies receiving benefits under the Act or who are otherwise designated or deemed eligible to serve on the Board, to, among other things, implement the Act and determine the duties of its employees; and

WHEREAS, the Act, at NMSA 1978, Section 10-7C-7 (1998), provides that in order to achieve the purposes of the Act, the Board, among other things, “may take all actions reasonably necessary to implement” the Act, including, but not limited to: (i) Employing or contracting for persons to assist it in carrying out the Act; (ii) Promulgating and adopting necessary rules, regulations and procedures for implementation of the Act; and (iii) Promulgating and adopting rules and regulations governing eligibility, participation, enrollment, length of service and any other conditions or requirements for providing substantially equal treatment to participating employers; and

WHEREAS, the Board has previously promulgated its rule establishing subsidy levels on the basis of years of creditable service, codified at 2.81.11 NMAC (4/30/03) (the “Existing Rule”);

WHEREAS, the Board has previously considered a proposal to establish, through the rulemaking process, a minimum age requirement for the receipt of certain subsidies from the NMRHCA for persons who retire after January 1, 2020, under a non-enhanced retirement plan, with certain classes of retirees being grandfathered into the current class of retirees (the “Proposed Rule”); and

WHEREAS, the Executive Director of the NMRHCA (the “Executive Director”) has proposed that the Board consider amending the Existing Rule to modify the subsidy schedule thereunder to require 25 years of creditable service in order for participants to receive the maximum subsidy provided by the NMRHCA for eligible retirees who become eligible for

participation on or after January 1, 2020, and to adopt the Proposed Rule, after conducting public rule hearings concerning the proposal to amend the Existing Rule and the adoption of the Proposed Rule (the process required to effectuate the proposed amendments to the Existing Rule and adoption of the Proposed Rule under the Rules Act (defined below) and the Default Procedural Rule (defined below) is referred to herein as the “Rulemaking Proceedings”), in conformity with the Act and the Rules Act (defined below); and

WHEREAS, in April 2018, the New Mexico Attorney General’s Office promulgated its Default Procedural Rule for Rulemaking, codified at 1.24.25 NMAC (4/10/2018) (the “Default Procedural Rule”), which provides default procedural rules for public rule hearings for use by agencies that have not adopted their own procedural rules consistent with the State Rules Act, NMSA 1978, Sections 14-4-1 to -11 (1967, as amended through 2017) (the “Rules Act”), and to facilitate public engagement with the administrative rulemaking process in a transparent, organized, and fair manner; and

WHEREAS, the Default Procedural Rule provides that: (i) Agencies that have not adopted their own rules consistent with the Rules Act shall apply the Default Procedural Rule until such time as they have adopted their own rules; (ii) Agencies may adopt the Default Procedural Rule, in whole or in part as their own, or continue to use their existing rules, so long as those rules satisfy the requirements of the Rules Act and provide as much opportunity for public participation as provided by the Default Procedural Rule; and (iii) Agencies that adopt their own rules must submit a copy to the Attorney General’s Office within 30 calendar days of adoption, and post a copy of those rules on the agency’s website, if one exists; and

WHEREAS, as of this date, the Board has not adopted procedural rules for public rule hearings consistent with the Rules Act for the NMRHCA, and therefore, the Default Procedural Rule applies with respect to rulemakings by the Board for the NMRHCA, including the Rulemaking Proceedings;

WHEREAS, the Default Procedural Rule provides that: (i) The rulemaking process may be initiated by an agency when a notice for rule hearing is publicly posted pursuant to the Default Procedural Rule; (ii) The agency shall proceed with the rulemaking process by posting public notice, publishing the proposed rule for comment, and setting a public rule hearing in accordance with the Rules Act and any other applicable law; (iii) If the agency is a public body subject to the Open Meetings Act, NMSA 1978, Section 10-15-1 to -4 (1974, as amended through 2013) (the “OMA”), the decision to initiate the rulemaking process must be an action taken by vote of the public body in open session; and (iv) Once the agency initiates the rulemaking process, the agency must maintain a record as prescribed in NMSA 1978, Section 14-4-5.4 (2017); and

WHEREAS, the Board of the NMRHCA is a public body subject to the OMA, and therefore, any decision by the Board to initiate the Rulemaking Proceedings must be an action taken by vote of the Board in open session; and

WHEREAS, the Board, having considered the Executive Director’s proposal to undertake the Rulemaking Proceedings, desires to initiate the Rulemaking Proceedings in full conformity

with the Act, the Rules Act, the Default Procedural Rule, the OMA and any other applicable law in a transparent, organized and fair manner; and

WHEREAS, on this date, the Board convened a regular meeting at which it considered the adoption of this Resolution Initiating Rulemaking Proceedings (the “Resolution”) and voted to adopt said Resolution, all in full conformity with the OMA.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE NEW MEXICO RETIREE HEALTH CARE AUTHORITY THAT:

1. The Board’s adoption of this Resolution shall memorialize its decision to initiate the Rulemaking Proceedings.
2. The Executive Director, or his designee, is hereby authorized and directed to initiate the Rulemaking Proceedings by publicly posting a notice for a rule hearing concerning the proposed revisions to the Existing Rule and the adoption of the Proposed Rule pursuant to, and in conformity with, the Act, the Rules Act and the Default Procedural Rule.
3. The Executive Director, or his designee, is hereby authorized and directed to post public notice concerning the Rulemaking Proceedings, publish the proposed revisions to the Existing Rule and the Proposed Rule for public comment, and to set a public rule hearing on the proposed revisions to the Existing Rule and the proposed adoption of the Proposed Rule, in accordance with the Act, the Rules Act, the Default Procedural Rule and any other applicable law.
4. The Executive Director, or his designee, is hereby authorized and directed to act as the Board’s hearing officer and to preside over the Rulemaking Proceedings, including the public hearing contemplated in this Resolution, as required and in accordance with, the Act, the Rules Act, the Default Procedural Rule and any other applicable law.
5. The Executive Director, or his designee, shall maintain a record of the Rulemaking Proceedings contemplated in this Resolution, as prescribed in Section 14-4-5.4 of the Rules Act.
6. The Executive Director, or his designee, is hereby authorized and directed to do all acts and things necessary or desirable to effectuate the provisions of this Resolution and to undertake the Rulemaking Proceedings in full conformity with the Act, the Rules Act, the Default Procedural Rule, the OMA and any other applicable law.
7. This Resolution shall take effect immediately upon its adoption.

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PASSED, ADOPTED AND APPROVED ON MAY 8, 2018.



**Tom Sullivan, President
New Mexico Retiree Health Care Authority
Board of Directors**

ATTEST:



**Doug Crandall, Secretary
New Mexico Retiree Health Care Authority
Board of Directors**

[Signature Page for Resolution Initiating Rulemaking Proceedings]