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HOUSE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PENSIONS; AMENDING THE PUBLIC EMPLOYEES RETIREMENT ACT BY CREATING THE PENSION INVESTMENT PLAN; CREATING THE PENSION INVESTMENT PLAN ACCUMULATION FUND; PROVIDING THAT A PARTICIPANT IN THE PENSION INVESTMENT PLAN SHALL MAKE EMPLOYEE CONTRIBUTIONS AND THE SUBSEQUENT AFFILIATED PUBLIC EMPLOYER SHALL NOT MAKE EMPLOYER CONTRIBUTIONS.

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

SECTION 1. Section 10-11-2 NMSA 1978 (being Laws 1987, Chapter 253, Section 2, as amended) is amended to read:

"10-11-2. DEFINITIONS.--As used in the Public Employees Retirement Act:

A. "accumulated member contributions" means the amounts deducted from the salary of a member and credited to the member's individual account, together with interest, if

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1 any, credited to that account;

2 B. "affiliated public employer" means the state and
3 any public employer affiliated with the association as provided
4 in the Public Employees Retirement Act, but does not include an
5 employer pursuant to the Magistrate Retirement Act, the
6 Judicial Retirement Act or the Educational Retirement Act;

7 C. "association" means the public employees
8 retirement association established under the Public Employees
9 Retirement Act;

10 D. "disability retired member" means a retired
11 member who is receiving a pension pursuant to the disability
12 retirement provisions of the Public Employees Retirement Act;

13 E. "disability retirement pension" means the
14 pension paid pursuant to the disability retirement provisions
15 of the Public Employees Retirement Act;

16 F. "educational retirement system" means that
17 retirement system provided for in the Educational Retirement
18 Act;

19 G. "employee" means any employee of an affiliated
20 public employer;

21 H. "federal social security program" means that
22 program or those programs created and administered pursuant to
23 the act of congress approved August 14, 1935, Chapter 531, 49
24 Stat. 620, as that act may be amended;

25 I. "final average salary" means the final average

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1 salary calculated in accordance with the provisions of the
2 applicable coverage plan;

3 J. "form of payment" means the applicable form of
4 payment of a pension provided for in Section 10-11-117 NMSA
5 1978;

6 K. "former member" means a person who was
7 previously employed by an affiliated public employer, who has
8 terminated that employment and who has received a refund of
9 member contributions;

10 L. "fund" means the funds included under the Public
11 Employees Retirement Act;

12 M. "member" [~~means~~] excludes a pension investment
13 plan participant; includes a currently employed, contributing
14 employee of an affiliated public employer or a person who has
15 been but is not currently employed by an affiliated public
16 employer, who has not retired and who has not received a refund
17 of member contributions; [~~"member" also~~] and includes the
18 following:

19 (1) "adult correctional officer member" means
20 a member who is employed as an adult correctional officer or an
21 adult correctional officer specialist by a state correctional
22 facility of the corrections department or its successor agency;

23 (2) "juvenile correctional officer member"
24 means a member who is employed as a juvenile correctional
25 officer by the children, youth and families department or its

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1 successor agency;

2 (3) "municipal detention officer member" means
3 a member who is employed by an affiliated public employer other
4 than the state and who has inmate custodial responsibilities at
5 a facility used for the confinement of persons charged with or
6 convicted of a violation of a law or ordinance;

7 (4) "municipal fire member" means any member
8 who is employed as a full-time nonvolunteer firefighter by an
9 affiliated public employer and who has taken the oath
10 prescribed for firefighters;

11 (5) "municipal police member" means any member
12 who is employed as a police officer by an affiliated public
13 employer, other than the state, and who has taken the oath
14 prescribed for police officers; and

15 (6) "state police member" means a member who
16 is an officer of the New Mexico state police and who has taken
17 the oath prescribed for such officers, except that a state
18 police member shall not include a member who is an officer of
19 the New Mexico state police division and who was certified and
20 commissioned as of June 30, 2015 in the former motor
21 transportation division or the former special investigations
22 division of the department of public safety;

23 N. "membership" means membership in the
24 association;

25 O. "pension" means a series of monthly payments to
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1 a retired member or survivor beneficiary as provided in the
2 Public Employees Retirement Act;

3 P. "pension investment plan" means the pension
4 investment plan administered by the association pursuant to the
5 provisions of the Public Employees Retirement Act;

6 Q. "pension investment plan account" means the
7 balance accumulated in a pension investment plan account, which
8 account is credited with the pension investment plan
9 participant's pension, along with any investment earnings on
10 the balance in the account, less the annual account service fee
11 paid to the association and less penalties or taxes withheld
12 pursuant to state or federal laws;

13 R. "pension investment plan participant" means a
14 retired member who is subsequently employed by an affiliated
15 public employer and who elects to participate in the pension
16 investment plan;

17 [~~P.~~] S. "public employer" means the state, any
18 municipality, city, county, metropolitan arroyo flood control
19 authority, economic development district, regional housing
20 authority, soil and water conservation district, entity created
21 pursuant to a joint powers agreement, council of government,
22 conservancy district, irrigation district, water and sanitation
23 district, water district and metropolitan water board,
24 including the boards, departments, bureaus and agencies of a
25 public employer, so long as these entities fall within the

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1 meaning of governmental plan as that term is used in Section
2 414(d) of the Internal Revenue Code of 1986, as amended;

3 ~~[Q.]~~ T. "refund beneficiary" means a person
4 designated by the member, in writing, in the form prescribed by
5 the association, as the person who would be refunded the
6 member's accumulated member contributions payable if the member
7 dies and no survivor pension is payable or who would receive
8 the difference between pension paid and accumulated member
9 contributions if the retired member dies before receiving in
10 pension payments the amount of the accumulated member
11 contributions;

12 ~~[R.]~~ U. "retire" means to:

13 (1) terminate employment with all employers
14 covered by any state system or the educational retirement
15 system; and

16 (2) receive a pension from a state system or
17 the educational retirement system;

18 ~~[S.]~~ V. "retired member" means a person who has met
19 all requirements for retirement and who is receiving a pension
20 from the fund;

21 ~~[T.]~~ W. "retirement board" means the retirement
22 board provided for in the Public Employees Retirement Act;

23 ~~[U.]~~ X. "salary" means the base salary or wages
24 paid a member, including longevity pay, for personal services
25 rendered an affiliated public employer. "Salary" shall not

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1 include overtime pay, allowances for housing, clothing,
2 equipment or travel; payments for unused sick leave, unless the
3 unused sick leave payment is made through continuation of the
4 member on the regular payroll for the period represented by
5 that payment; and any other form of remuneration not
6 specifically designated by law as included in salary for Public
7 Employees Retirement Act purposes. Salary in excess of the
8 limitations set forth in Section 401(a)(17) of the Internal
9 Revenue Code of 1986, as amended, shall be disregarded. The
10 limitation on compensation for eligible employees shall not be
11 less than the amount that was allowed to be taken into account
12 under the state retirement system acts in effect on July 1,
13 1993. For purposes of this subsection, "eligible employee"
14 means an individual who was a member of a state system before
15 the first plan year beginning after December 31, 1995;

16 ~~[V.]~~ Y. "state system" means the retirement
17 programs provided for in the Public Employees Retirement Act,
18 the Magistrate Retirement Act and the Judicial Retirement Act;

19 ~~[W.]~~ Z. "state retirement system acts" means
20 collectively the Public Employees Retirement Act, the
21 Magistrate Retirement Act, the Judicial Retirement Act and the
22 Volunteer Firefighters Retirement Act; and

23 ~~[X.]~~ AA. "survivor beneficiary" means a person who
24 receives a pension or who has been designated to be paid a
25 pension as a result of the death of a member or retired

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1 member."

2 SECTION 2. Section 10-11-4 NMSA 1978 (being Laws 1987,
3 Chapter 253, Section 4, as amended) is amended to read:

4 "10-11-4. SERVICE CREDIT--CERTAIN SERVICE CREDIT NOT
5 ACQUIRED--REQUIREMENTS FOR--FORFEITURE--REINSTATEMENT.--

6 A. Personal service rendered an affiliated public
7 employer by a member shall be credited to the member's service
8 credit account in accordance with retirement board rules and
9 regulations. Service shall be credited to the nearest month.
10 In no case shall any member be credited with a year of service
11 for less than twelve months of service in any calendar year or
12 more than a month of service for all service in any calendar
13 month or more than a year of service for all service in any
14 calendar year. In no case shall any member be allowed to
15 purchase service credit unless the purchase is authorized in
16 the Public Employees Retirement Act.

17 B. Personal service rendered an affiliated public
18 employer prior to August 1, 1947 shall be credited to a member
19 if the member acquires one year of service credit for personal
20 service rendered an affiliated public employer.

21 C. Personal service rendered an affiliated public
22 employer after July 31, 1947 but prior to the date the public
23 employer became an affiliated public employer is prior service
24 and shall be credited to a member if:

25 (1) the member has the applicable minimum

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1 number of years of service credit required for normal
2 retirement. As used in this paragraph, "service credit" means
3 only the service credit earned by the member during periods of
4 employment with an affiliated public employer; and

5 (2) the member pays the association the amount
6 determined in accordance with Subsection D of this section.

7 D. The purchase cost for each month of service
8 credit purchased under the provisions of this section is equal
9 to the member's final average salary multiplied by the sum of
10 the member contribution rate and employer contribution rate
11 determined in accordance with the coverage plan applicable to
12 the member at the time of the written election to purchase.
13 Full payment shall be made in a single lump-sum amount in
14 accordance with the procedures established by the retirement
15 board. The portion of the purchase cost derived from the
16 employer contribution rate shall be credited to the employers
17 accumulation fund and shall not be refunded to the member in
18 the event of cessation of membership. In no case shall any
19 member be credited with a month of service for less than the
20 purchase cost as defined in this section.

21 E. Service credit shall be forfeited if a member
22 terminates employment with an affiliated public employer and
23 withdraws the member's accumulated member contributions.

24 F. A member or former member who is a member of
25 another state system or the educational retirement system and

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1 who has forfeited service credit by withdrawal of member
2 contributions may reinstate the forfeited service credit by
3 repaying the amount withdrawn plus compound interest from the
4 date of withdrawal to the date of repayment at the rate set by
5 the retirement board. Withdrawn member contributions may be
6 repaid in increments of one year in accordance with the
7 procedures established by the retirement board. Full payment
8 of each one-year increment shall be made in a single lump-sum
9 amount in accordance with procedures established by the
10 retirement board.

11 G. Personal service rendered by a retired member
12 who is a pension investment plan participant shall not be
13 considered service credit for any purpose, and the pension
14 investment plan participant shall not accrue service credit for
15 any subsequent employment with an affiliated public employer."

16 SECTION 3. Section 10-11-5 NMSA 1978 (being Laws 1987,
17 Chapter 253, Section 5, as amended) is amended to read:

18 "10-11-5. [~~CREDITED~~] SERVICE CREDIT--MUNICIPAL ELECTION
19 TO MAKE [~~EMPLOYEE~~] EMPLOYEES' CONTRIBUTIONS.--A municipal
20 affiliated public employer may elect by resolution of its
21 governing body or by execution of a collective bargaining
22 agreement and in the manner prescribed by the retirement board
23 to be responsible for making contributions of up to seventy-
24 five percent of its employees' member contributions as follows:

25 A. the resolution or collective bargaining

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1 agreement shall be irrevocable, except that:

2 (1) if the resolution is passed or the
3 collective bargaining agreement is executed on or before
4 June 30, 2013, the percentage of [~~the employee~~] employees'
5 contributions that the municipal affiliated public employer
6 elects to be responsible for making shall apply to the
7 statutory [~~employee~~] member contribution rate in effect on June
8 30, 2013 and shall not apply to any increase in the statutory
9 [~~employee~~] member contribution rate that may occur after that
10 date; and

11 (2) if the resolution is passed or the
12 collective bargaining agreement is executed on or after
13 July 1, 2013, the percentage of the [~~employee~~] employees'
14 contributions that the municipal affiliated public employer
15 elects to be responsible for making shall apply to the
16 statutory [~~employee~~] member contribution rate in effect on the
17 date that the resolution is passed or the collective bargaining
18 agreement is executed and shall not apply to any increases in
19 the statutory [~~employee~~] member contribution rate that may
20 occur after that date; provided, however, that if the statutory
21 [~~employee~~] member contribution rate is decreased after the date
22 that the resolution is passed or the collective bargaining
23 agreement is executed, the percentage of [~~the employee~~]
24 employees' contributions that the municipal public affiliated
25 employer is responsible for making shall apply to the decreased

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1 statutory [~~employee~~] member contribution rate;

2 B. a municipal affiliated public employer may by
3 subsequent resolution or collective bargaining agreement:

4 (1) elect to increase the percentage of
5 [~~employee~~] employees' member contributions for which it will be
6 responsible;

7 (2) elect to be responsible for a percentage
8 of any increase to the statutory [~~employee~~] member contribution
9 rate in effect after the passing of an earlier resolution or
10 the execution of an earlier collective bargaining agreement; or

11 (3) at the time a new coverage plan is
12 adopted, elect to be responsible under the new coverage plan
13 for making a different percentage of [~~employee~~] employees'
14 member contributions than that which it elected under a
15 previous coverage plan;

16 C. the resolution or executed collective bargaining
17 agreement shall apply to all employees or else to specified
18 employee divisions of the municipal affiliated public employer
19 and shall be effective the first pay period of the month
20 following the filing of the resolution with the retirement
21 board;

22 D. except as provided in Subsection G of this
23 section, the portion of the [~~employee~~] member contributions
24 made by the municipal affiliated public employer on behalf of a
25 member shall be credited to the member's individual accumulated

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1 member contribution account in the member contribution fund.
2 The member shall be responsible for the difference between the
3 contributions the member would be required to make if the
4 municipal affiliated public employer had not made the election
5 provided for in this section and the amount contributed by the
6 municipal affiliated public employer pursuant to the provisions
7 of this section;

8 E. pensions payable to members whose municipal
9 affiliated public employer makes the election provided for in
10 this section shall be the same as if the member had made the
11 entire member contribution; ~~and~~

12 F. any municipal affiliated public employer
13 increasing the percentage of the ~~[employee]~~ employees' member
14 contributions ~~[it]~~ the municipal affiliated public employer
15 elects to make pursuant to this section shall submit a
16 resolution or executed collective bargaining agreement to the
17 association by July 1 of the fiscal year in which the increase
18 will take place indicating the percentage of the ~~[employee]~~
19 employees' member contributions that will be made by the
20 municipal affiliated public employer; and

21 G. the portion of the employee contributions made
22 by the municipal affiliated public employer on behalf of a
23 pension investment plan participant shall be credited to the
24 member contribution fund and shall not be credited to the
25 retired member's pension investment plan account. The pension

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1 investment plan participant shall be responsible for the
2 difference between the contributions that the pension
3 investment plan participant would be required to make if the
4 municipal affiliated public employer had not made the election
5 provided for in this section and the amount contributed by the
6 municipal affiliated public employer pursuant to the provisions
7 of this section."

8 SECTION 4. Section 10-11-8 NMSA 1978 (being Laws 1987,
9 Chapter 253, Section 8, as amended by Laws 2014, Chapter 35,
10 Section 1 and by Laws 2014, Chapter 39, Section 1 and also by
11 Laws 2014, Chapter 43, Section 1) is amended to read:

12 "10-11-8. NORMAL RETIREMENT [~~RETURN TO EMPLOYMENT~~--
13 ~~BENEFITS CONTINUED--CONTRIBUTIONS~~].--

14 A. A member may retire upon fulfilling the
15 following requirements prior to the selected date of
16 retirement:

17 (1) a written application for normal
18 retirement, in the form prescribed by the association, is filed
19 with the association;

20 (2) employment is terminated with all
21 employers covered by any state system or the educational
22 retirement system;

23 (3) the member selects an effective date of
24 retirement that is the first day of a calendar month; and

25 (4) the member meets the age and service

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1 credit requirement for normal retirement specified in the
2 coverage plan applicable to the member.

3 B. The amount of normal retirement pension is
4 determined in accordance with the coverage plan applicable to
5 the member.

6 ~~[G. Except as provided in Subsection E of this~~
7 ~~section, on or after July 1, 2010, a retired member may be~~
8 ~~subsequently employed by an affiliated public employer only~~
9 ~~pursuant to the following provisions:~~

10 ~~(1) the retired member has not been employed~~
11 ~~as an employee of an affiliated public employer or retained as~~
12 ~~an independent contractor by the affiliated public employer~~
13 ~~from which the retired member retired for at least twelve~~
14 ~~consecutive months from the date of retirement to the~~
15 ~~commencement of subsequent employment or reemployment with an~~
16 ~~affiliated public employer;~~

17 ~~(2) the retired member's pension shall be~~
18 ~~suspended upon commencement of the subsequent employment;~~

19 ~~(3) except as provided in Subsection G of this~~
20 ~~section, the retired member shall not become a member and shall~~
21 ~~not accrue service credit, and the retired member and that~~
22 ~~person's subsequent affiliated public employer shall not make~~
23 ~~contributions under any coverage plan pursuant to the Public~~
24 ~~Employees Retirement Act; and~~

25 ~~(4) upon termination of the subsequent~~

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1 ~~employment, the retired member's pension shall resume in~~
2 ~~accordance with the provisions of Subsection A of this section.~~

3 ~~D. Notwithstanding the provisions of Subsection B~~
4 ~~of Section 10-11-118 NMSA 1978, on and after July 1, 2013, if a~~
5 ~~retired member becomes employed with an employer pursuant to~~
6 ~~the Educational Retirement Act, and effective July 1, 2014, if~~
7 ~~a retired member who, subsequent to retirement, is employed and~~
8 ~~covered pursuant to the Judicial Retirement Act, and, effective~~
9 ~~July 1, 2014, if a retired member who, subsequent to~~
10 ~~retirement, is employed and covered pursuant to the Magistrate~~
11 ~~Retirement Act:~~

12 ~~(1) the retired member's cost-of-living~~
13 ~~pension adjustment shall be suspended upon commencement of the~~
14 ~~employment; and~~

15 ~~(2) upon termination of the employment, the~~
16 ~~retired member's suspended cost-of-living pension adjustment~~
17 ~~shall be reinstated as provided under Subsection B of Section~~
18 ~~10-11-118 NMSA 1978.~~

19 ~~E. The provisions of Subsections C, H and I of this~~
20 ~~section do not apply to:~~

21 ~~(1) a retired member employed by the~~
22 ~~legislature for legislative session work;~~

23 ~~(2) a retired member employed temporarily as a~~
24 ~~precinct board member for a municipal election or an election~~
25 ~~covered by the Election Code; or~~

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1 ~~(3) a retired member who is elected to serve a~~
2 ~~term as an elected official in an office covered pursuant to~~
3 ~~the Public Employees Retirement Act; provided that:~~

4 ~~(a) the retired member files an~~
5 ~~irrevocable exemption from membership with the association~~
6 ~~within thirty days of taking office; and~~

7 ~~(b) the irrevocable exemption shall be~~
8 ~~for the elected official's term of office.~~

9 ~~F. A retired member who returns to employment~~
10 ~~during retirement pursuant to Subsection E of this section is~~
11 ~~entitled to receive retirement benefits but is not entitled to~~
12 ~~accrue service credit or to acquire or purchase service credit~~
13 ~~in the future for the period of the retired member's subsequent~~
14 ~~employment with an affiliated public employer.~~

15 ~~G. At any time during a retired member's subsequent~~
16 ~~employment pursuant to Subsection C of this section, the~~
17 ~~retired member may elect to become a member and the following~~
18 ~~conditions shall apply:~~

19 ~~(1) the previously retired member and the~~
20 ~~subsequent affiliated public employer shall make the required~~
21 ~~employee and employer contributions, and the previously retired~~
22 ~~member shall accrue service credit for the period of subsequent~~
23 ~~employment; and~~

24 ~~(2) when the previously retired member~~
25 ~~terminates the subsequent employment with an affiliated public~~

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1 ~~employer, the previously retired member shall retire according~~
2 ~~to the provisions of the Public Employees Retirement Act,~~
3 ~~subject to the following conditions:~~

4 ~~(a) payment of the pension shall resume~~
5 ~~in accordance with the provisions of Subsection A of this~~
6 ~~section;~~

7 ~~(b) unless the previously retired member~~
8 ~~accrued at least three years of service credit on account of~~
9 ~~the subsequent employment, the recalculation of pension shall:~~
10 ~~1) employ the form of payment selected by the previously~~
11 ~~retired member at the time of the first retirement; and 2) use~~
12 ~~the provisions of the coverage plan applicable to the member on~~
13 ~~the date of the first retirement; and~~

14 ~~(c) the recalculated pension shall not~~
15 ~~be less than the amount of the suspended pension.~~

16 ~~H. A retired member who returned to work with an~~
17 ~~affiliated public employer prior to July 1, 2010 shall be~~
18 ~~subject to the provisions of this section in effect on the date~~
19 ~~the retired member returned to work; provided that:~~

20 ~~(1) on and after July 1, 2010, the retired~~
21 ~~member shall pay the employee contribution in an amount~~
22 ~~specified in the Public Employees Retirement Act for the~~
23 ~~position in which the retired member is subsequently employed;~~

24 ~~(2) notwithstanding the provisions of~~
25 ~~Subsection B of Section 10-11-118 NMSA 1978, on and after July~~

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1 ~~1, 2013, the retired member's cost-of-living pension adjustment~~
2 ~~shall be suspended; and~~

3 ~~(3) upon termination of the subsequent~~
4 ~~employment with the affiliated public employer, the retired~~
5 ~~member's cost-of-living pension adjustment shall be reinstated~~
6 ~~as provided in Subsection B of Section 10-11-118 NMSA 1978.~~

7 ~~I. Effective July 1, 2014, if a retired member who,~~
8 ~~subsequent to retirement, is employed and covered pursuant to~~
9 ~~the provisions of the Magistrate Retirement Act or Judicial~~
10 ~~Retirement Act, during the period of subsequent employment:~~

11 ~~(1) the member shall be entitled to receive~~
12 ~~retirement benefits;~~

13 ~~(2) the retired member's cost-of-living~~
14 ~~pension adjustment shall be suspended upon commencement of the~~
15 ~~employment; and~~

16 ~~(3) upon termination of the employment, the~~
17 ~~retired member's suspended cost-of-living pension adjustment~~
18 ~~shall be reinstated as provided under Subsection B of Section~~
19 ~~10-11-118 NMSA 1978.~~

20 ~~J.] C.~~ The pension of a member who has earned
21 service credit under more than one coverage plan shall be
22 determined as follows:

23 (1) the pension of a member who has three or
24 more years of service credit earned on or before June 30, 2013
25 under each of two or more coverage plans shall be determined in

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1 accordance with the coverage plan that produces the highest
2 pension;

3 (2) the pension of a member who has service
4 credit earned on or before June 30, 2013 under two or more
5 coverage plans but who has three or more years of service
6 credit under only one of those coverage plans shall be
7 determined in accordance with the coverage plan in which the
8 member has three or more years of service credit. If the
9 service credit is acquired under two different coverage plans
10 applied to the same affiliated public employer as a consequence
11 of an election by the members, adoption by the affiliated
12 public employer or a change in the law that results in the
13 application of a coverage plan with a greater pension, the
14 greater pension shall be paid a member retiring from the
15 affiliated public employer under which the change in coverage
16 plan took place regardless of the amount of service credit
17 under the coverage plan producing the greater pension; provided
18 that the member has three or more years of continuous
19 employment with that affiliated public employer immediately
20 preceding or immediately preceding and immediately following
21 the date the coverage plan changed;

22 (3) the pension of a member who has service
23 credit earned on or before June 30, 2013 under each of two or
24 more coverage plans and who has service credit earned under any
25 coverage plan on or after July 1, 2013 shall be equal to the

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1 sum of:

2 (a) the pension attributable to the
3 service credit earned on or before June 30, 2013 determined
4 pursuant to Paragraph (1) or (2) of this subsection; and

5 (b) the pension attributable to the
6 service credit earned under each coverage plan on or after July
7 1, 2013;

8 (4) the pension of a member who has service
9 credit earned only on and after July 1, 2013 shall be equal to
10 the sum of the pension attributable to the service credit the
11 member has accrued under each coverage plan; and

12 (5) the provisions of each coverage plan for
13 the purpose of this subsection shall be those in effect at the
14 time the member ceased to be covered by the coverage plan.

15 "Service credit", for the purposes of this subsection, shall be
16 only personal service rendered an affiliated public employer
17 and credited to the member under the provisions of Subsection A
18 of Section 10-11-4 NMSA 1978. Service credited under any other
19 provision of the Public Employees Retirement Act shall not be
20 used to satisfy the three-year service credit requirement of
21 this subsection."

22 SECTION 5. Section 10-11-123 NMSA 1978 (being Laws 1987,
23 Chapter 253, Section 123) is amended to read:

24 "10-11-123. FUNDS OF ASSOCIATION.--

25 A. The accounting funds of the association are the

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1 "member contribution fund", "employers accumulation fund",
2 "retirement reserve fund", [~~and~~] "income fund" and "pension
3 investment plan accumulation fund". The maintenance of
4 separate accounting funds shall not require the actual
5 segregation of the assets of the association among the various
6 funds.

7 B. The accounting funds provided for in Subsection
8 A of this section are trust funds and shall be used only for
9 the purposes provided in the Public Employees Retirement Act."

10 SECTION 6. Section 10-11-129 NMSA 1978 (being Laws 1987,
11 Chapter 253, Section 129) is amended to read:

12 "10-11-129. DISTRIBUTION OF INCOME FUND.--The association
13 shall at least annually distribute all or a portion of the
14 balance in the income fund to the member contribution fund, the
15 retirement reserve fund, [~~and~~] the [~~employer~~] employers
16 accumulation fund and the pension investment plan accumulation
17 fund. Distribution rates shall be determined by the retirement
18 board and may vary by fund."

19 SECTION 7. A new section of the Public Employees
20 Retirement Act is enacted to read:

21 "[NEW MATERIAL] RETURN TO EMPLOYMENT.--A retired member
22 may be subsequently employed by a public employer if the
23 retired member:

24 A. returns to work after not having been employed
25 as an employee of an affiliated public employer or retained as

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1 an independent contractor by the affiliated public employer
2 from which the retired member retired for at least twelve
3 consecutive months from the date of retirement to the
4 commencement of subsequent employment or reemployment with an
5 affiliated public employer and:

6 (1) the retired member elects to not become a
7 member during the subsequent employment and:

8 (a) upon commencement and for the
9 duration of the subsequent employment, the retired member's
10 pension and any cost-of-living adjustment are suspended;

11 (b) for the duration of the subsequent
12 employment: 1) the retired member shall not make member
13 contributions; 2) the retired member shall not accrue service
14 credit; and 3) the retired member's subsequent affiliated
15 public employer shall not make contributions under any coverage
16 plan pursuant to the Public Employees Retirement Act; and

17 (c) at the conclusion of the subsequent
18 employment, upon application to the association, the retired
19 member's: 1) pension shall be reinstated in accordance with
20 the coverage plan under which the retired member originally
21 retired; and 2) cost-of-living pension adjustment shall be
22 reinstated as provided in Subsection B of Section 10-11-118
23 NMSA 1978;

24 (2) the retired member elects to become a
25 member and:

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1 (a) the previously retired member's
2 pension shall be terminated;

3 (b) the previously retired member and
4 the subsequent affiliated public employer shall make the
5 required member and employer contributions;

6 (c) the previously retired member shall
7 accrue service credit for the period of subsequent employment;
8 and

9 (d) when the previously retired member
10 terminates the subsequent employment with an affiliated public
11 employer, the pension shall be recalculated based on the form
12 of payment selected by the previously retired member at the
13 time of the first retirement and the provisions of the coverage
14 plan applicable to the member on the date of the first
15 retirement and the recalculated pension shall not be less than
16 the amount of the terminated pension; or

17 (3) the retired member elects to become a
18 pension investment plan participant;

19 B. returns to employment during retirement pursuant
20 to the provisions of the Magistrate Retirement Act, Judicial
21 Retirement Act or the Educational Retirement Act. Such retired
22 member is not subject to the provisions of Subsection A of this
23 section and shall continue to receive a pension. Upon
24 commencement and for the duration of the subsequent employment
25 of a retired member pursuant to the provisions of this

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1 subsection, the retired member's cost-of-living pension
2 adjustment shall be suspended. Upon termination of the
3 subsequent employment, the retired member's cost-of-living
4 pension adjustment shall be reinstated as provided in
5 Subsection B of Section 10-11-118 NMSA 1978;

6 C. returns to employment as an employee of the
7 legislature for a legislative session or a precinct board
8 member for a municipal election or an election covered by the
9 Election Code. Such retired member is entitled to continue to
10 receive a pension during the subsequent employment and is not
11 entitled to accrue service credit or purchase service credit in
12 the future for all or any part of subsequent employment;

13 D. returns to employment after being elected to
14 serve in an office covered pursuant to the Public Employees
15 Retirement Act. Such retired member shall file an irrevocable
16 application with the association within thirty days of taking
17 office to:

18 (1) continue to receive a pension during the
19 term of elected office; provided that during the term of
20 elected office:

21 (a) the elected official shall not
22 accrue service credit and shall not purchase service credit in
23 the future for all or any part of the term of elected office;
24 and

25 (b) the elected official shall not make

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1 member contributions and the affiliated public employer shall
2 not make employer contributions;

3 (2) terminate retirement and reinstate
4 membership during the term of elected office; provided that
5 during the term of elected office:

6 (a) payment of the pension shall be
7 discontinued;

8 (b) the elected official shall accrue
9 service credit;

10 (c) the elected official and the
11 affiliated public employer shall make the appropriate
12 contributions; and

13 (d) at the conclusion of the term of
14 elected office, the elected official shall retire under the
15 terms of the retirement plan under which the elected official
16 first retired; or

17 (3) become a pension investment plan
18 participant; or

19 E. returned to employment with an affiliated public
20 employer prior to July 1, 2010; provided that:

21 (1) the retired member shall pay the member
22 contribution in an amount specified in the Public Employees
23 Retirement Act for the position in which the retired member is
24 subsequently employed; and

25 (2) notwithstanding the provisions of Section

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1 10-11-118 NMSA 1978, the retired member's cost-of-living
2 pension adjustment shall be suspended."

3 SECTION 8. A new section of the Public Employees
4 Retirement Act is enacted to read:

5 "[NEW MATERIAL] PENSION INVESTMENT PLAN PURPOSE.--The
6 purpose of the pension investment plan is to improve the funded
7 status of the public employees retirement association funds,
8 while also providing an incentive for skilled and trained
9 members who retire after meeting the age and service
10 requirements for normal retirement, to return to work for
11 affiliated public employers, make the applicable employee
12 contributions for that employment and invest their pensions
13 into the public employees retirement association funds."

14 SECTION 9. A new section of the Public Employees
15 Retirement Act is enacted to read:

16 "[NEW MATERIAL] PENSION INVESTMENT PLAN ACCUMULATION FUND
17 CREATED.--The pension investment plan accumulation fund is the
18 accounting fund in which shall be accumulated the pensions of
19 participants in the pension investment plan and from which
20 shall be paid all pensions deposited therein, together with
21 investment earnings as determined by the retirement board and
22 less any annual association service fee due and any penalties
23 or taxes withheld pursuant to state or federal law, pursuant to
24 the provisions of the Public Employees Retirement Act."

25 SECTION 10. A new section of the Public Employees

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1 Retirement Act is enacted to read:

2 "[NEW MATERIAL] PENSION INVESTMENT PLAN CREATED--SERVICE
3 FEES.--

4 A. The "pension investment plan" is created. The
5 plan shall be administered by the association pursuant to the
6 provisions of the Public Employees Retirement Act. The money
7 deposited into the pension investment plan accumulation fund
8 shall be invested by the retirement board as provided in the
9 Public Employees Retirement Act.

10 B. At any time within five calendar years from the
11 date of retirement, a retired member may return to employment
12 with an affiliated public employer and become a pension
13 investment plan participant if, upon commencement of the
14 subsequent employment, the retired member submits to the
15 association, in a form and manner prescribed by the
16 association, an application for participation in the pension
17 investment plan.

18 C. Upon becoming a pension investment plan
19 participant:

20 (1) the pension investment plan participant's
21 pension, including any cost-of-living adjustments, is deposited
22 into an account in the participant's name in the pension
23 investment accumulation fund during the time of subsequent
24 employment with an affiliated public employer;

25 (2) the pension investment plan participant

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1 shall make member contributions to the member contribution fund
2 pursuant to the coverage plan applicable to the participant's
3 subsequent employment;

4 (3) the pension investment plan participant's
5 subsequent affiliated public employer shall not make the
6 employer contributions pursuant to the coverage plan applicable
7 to the participant's subsequent employment;

8 (4) the pension investment plan participant
9 shall not earn service credit for any period of the subsequent
10 employment; and

11 (5) the pension investment plan participant
12 terminates participation in the pension investment plan within
13 ten years of the date of retirement.

14 D. A pension investment plan participant may change
15 affiliated public employers while participating in the plan and
16 maintain eligibility to participate as long as the pension
17 investment plan participant does not receive a pension during
18 any time of transition between affiliated public employers.

19 E. Each pension investment plan account shall be
20 debited a service fee in an amount equal to ten percent of the
21 earnings on the balance in the account or one thousand two
22 hundred dollars (\$1,200) per year, whichever is greater. In
23 addition to the service fee, a pension investment plan account
24 may be debited a withdrawal fee and the amount of any penalties
25 or taxes withheld pursuant to state or federal law.

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1 F. Upon termination of a pension investment plan
2 participant's subsequent employment:

3 (1) the pension investment plan participant
4 shall retire under the terms of the retirement plan under which
5 the participant first retired; and

6 (2) if the pension investment plan participant
7 has been employed for a minimum of twelve consecutive months,
8 the pension investment plan participant may apply to receive
9 payment from the pension investment plan participant's pension
10 investment plan account; provided that the pension investment
11 plan participant submits to the association, in a form and
12 manner prescribed by the association, an application for
13 irrevocable election of one of the following payment options:

14 (a) a one-time payment of the balance in
15 the pension investment plan participant's pension investment
16 plan account, including cost-of-living adjustments, if any, and
17 investment earnings as determined by the retirement board, less
18 a withdrawal fee of ten percent of the balance in the account
19 and penalties or taxes withheld pursuant to state or federal
20 law;

21 (b) a monthly payment, including cost-
22 of-living adjustments, if any, and investment earnings as
23 determined by the retirement board and less a service fee of
24 ten percent of the earnings of the balance in the account or
25 one thousand two hundred dollars (\$1,200) per year, whichever

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1 is greater, and penalties or taxes withheld pursuant to state
2 or federal law, to be paid over a period of not less than ten
3 years and not more than thirty years in a manner prescribed by
4 the retirement board; or

5 (c) a one-time payment of up to fifty percent
6 of the balance in the pension investment plan participant's
7 pension investment plan account, less a withdrawal fee and
8 monthly payments on the remaining balance, including cost-of-
9 living adjustments, if any, and investment earnings as
10 determined by the retirement board and less service fees due
11 and penalties or taxes withheld pursuant to state or federal
12 law, to be paid over a period of not less than ten years and
13 not more than thirty years in a manner prescribed by the
14 retirement board.

15 G. If a pension investment plan participant
16 terminates subsequent employment less than twelve consecutive
17 months after commencing the subsequent employment and is not
18 immediately employed by another affiliated public employer, the
19 pension investment plan participant's participation in the
20 pension investment plan shall be terminated and the pension
21 investment plan participant shall forfeit the balance in the
22 pension investment plan participant's pension investment plan
23 account.

24 H. A pension investment plan participant who
25 applies to the retirement board for and receives a written

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1 approval of a hardship exception may terminate participation
2 before twelve consecutive months of subsequent employment, and
3 the penalty for early subsequent employment termination may be
4 waived. Penalties or taxes withheld pursuant to state or
5 federal law shall not be waived. The pension investment plan
6 participant's application for a hardship exception waiver shall
7 be made immediately upon the termination of subsequent
8 employment in a form and manner prescribed by the association.
9 The retirement board shall issue its decision to approve or
10 deny the application within forty-five days of receiving the
11 application. The retirement board's decision shall be final.

12 I. The retirement board shall promulgate rules to
13 allow a pension investment plan participant to withdraw once
14 during any calendar year up to fifty percent of the balance in
15 the pension investment plan participant's pension investment
16 plan account less a three percent withdrawal fee and less any
17 state or federal taxes that may apply.

18 J. Balances remaining in a pension investment plan
19 participant's pension investment plan account after the
20 termination of subsequent employment shall be credited with
21 investment earnings as determined by the retirement board, less
22 annual service fees due and penalties or taxes withheld
23 pursuant to state or federal law.

24 K. In the case of death, the balance in the pension
25 investment plan account, including cost-of-living adjustments,

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1 if any, and investment earnings as determined by the retirement
2 board shall be paid to the named beneficiary with no withdrawal
3 fee."

4 SECTION 11. EFFECTIVE DATE.--The effective date of the
5 provisions of this act is July 1, 2016.

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