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HOUSE BILL 194

**51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**

INTRODUCED BY

William "Bill" R. Rehm

AN ACT

RELATING TO PUBLIC EMPLOYEES; AMENDING THE PUBLIC EMPLOYEES  
RETIREMENT ACT AND PUBLIC EMPLOYER GROUP INSURANCE PROVISIONS;  
DEFINING "PUBLIC SAFETY EMPLOYEE"; PROVIDING THAT RETIRED  
PUBLIC SAFETY EMPLOYEES MAY RETURN TO PUBLIC SAFETY EMPLOYMENT  
WITHOUT SUSPENDING THEIR PENSIONS DURING REEMPLOYMENT;  
PROVIDING THAT CERTAIN REEMPLOYED PUBLIC SAFETY EMPLOYEES AND  
THEIR AFFILIATED PUBLIC EMPLOYERS ARE NOT REQUIRED TO PAY THE  
CONTRIBUTIONS UNDER THE APPLICABLE MEMBER COVERAGE PLAN;  
REQUIRING THAT THE STATE OR ANY OTHER AFFILIATED PUBLIC  
EMPLOYER PAY PUBLIC SAFETY EMPLOYEES' MEMBER CONTRIBUTIONS AND  
ALL GROUP INSURANCE CONTRIBUTIONS IF SUCH AN EMPLOYEE SUSTAINS  
A NON-ADMINISTRATIVE WORK-RELATED INJURY RENDERING THE EMPLOYEE  
ABSENT FROM WORK ON APPROVED WORKERS' COMPENSATION LEAVE.

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

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1           SECTION 1. Section 10-7-4 NMSA 1978 (being Laws 1941,  
2 Chapter 188, Section 1, as amended) is amended to read:

3           "10-7-4. GROUP INSURANCE--CAFETERIA PLAN--CONTRIBUTIONS  
4 FROM PUBLIC FUNDS.--

5           A. All state departments and institutions and all  
6 political subdivisions of the state, excluding municipalities,  
7 counties and political subdivisions of the state with twenty-  
8 five employees or fewer, shall cooperate in providing group  
9 term life, medical or disability income insurance for the  
10 benefit of eligible employees or salaried officers of the  
11 respective departments, institutions and subdivisions.

12           B. The group insurance contributions of the state  
13 or any of its departments or institutions, including  
14 institutions of higher education and the public schools, shall  
15 be made as follows:

16                   (1) at least seventy-five percent of the cost  
17 of the insurance of an employee whose annual salary is less  
18 than fifteen thousand dollars (\$15,000);

19                   (2) at least seventy percent of the cost of  
20 the insurance of an employee whose annual salary is fifteen  
21 thousand dollars (\$15,000) or more but less than twenty  
22 thousand dollars (\$20,000);

23                   (3) at least sixty-five percent of the cost of  
24 the insurance of an employee whose annual salary is twenty  
25 thousand dollars (\$20,000) or more but less than twenty-five

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1 thousand dollars (\$25,000); and

2 (4) at least sixty percent of the cost of the  
3 insurance of an employee whose annual salary is twenty-five  
4 thousand dollars (\$25,000) or more.

5 C. Effective July 1, 2004, the group insurance  
6 contributions of the state or any of its executive, judicial or  
7 legislative departments, including agencies, boards or  
8 commissions, shall be made as follows; provided that the  
9 contribution percentage shall be the same for all affected  
10 public employees in a given salary bracket:

11 (1) up to eighty percent of the cost of the  
12 insurance of an employee whose annual salary is less than  
13 thirty thousand dollars (\$30,000);

14 (2) up to seventy percent of the cost of the  
15 insurance of an employee whose annual salary is thirty thousand  
16 dollars (\$30,000) or more but less than forty thousand dollars  
17 (\$40,000); and

18 (3) up to sixty percent of the cost of the  
19 insurance of an employee whose annual salary is forty thousand  
20 dollars (\$40,000) or more.

21 D. Except as provided in Subsection G of this  
22 section, effective July 1, 2005, the group insurance  
23 contributions of the state or any of its executive, judicial or  
24 legislative departments, including agencies, boards or  
25 commissions, shall be made as follows; provided that the

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1 contribution percentage shall be the same for all affected  
2 public employees in a given salary bracket:

3 (1) up to eighty percent of the cost of the  
4 insurance of an employee whose annual salary is less than fifty  
5 thousand dollars (\$50,000);

6 (2) up to seventy percent of the cost of the  
7 insurance of an employee whose annual salary is fifty thousand  
8 dollars (\$50,000) or more but less than sixty thousand dollars  
9 (\$60,000); and

10 (3) up to sixty percent of the cost of the  
11 insurance of an employee whose annual salary is sixty thousand  
12 dollars (\$60,000) or more.

13 E. Effective July 1, 2013, the employer shall pay  
14 one hundred percent of basic life insurance premiums for  
15 employees, and employees who choose to carry disability  
16 insurance shall pay one hundred percent of the premium.

17 F. The state shall not make any group insurance  
18 contributions for legislators. A legislator shall be eligible  
19 for group benefits only if the legislator contributes one  
20 hundred percent of the cost of the insurance.

21 G. An affiliated public employer, as defined  
22 pursuant to the Public Employees Retirement Act, in addition to  
23 paying the employer portion of the group insurance  
24 contributions, shall be responsible for one hundred percent of  
25 the employee group insurance contributions due and payable on

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1 or after July 1, 2014 and applicable to an injured public  
2 safety employee as provided in Section 10-11-5.1 NMSA 1978.  
3 The group insurance contributions paid by the employer pursuant  
4 to this subsection shall be paid for the duration of the  
5 employee's approved leave.

6           ~~[G.]~~ H. As used in this section, "cost of the  
7 insurance" means the premium required to be paid to provide  
8 coverages. Any contributions of the political subdivisions of  
9 the state, except the public schools and political subdivisions  
10 of the state with twenty-five employees or fewer, shall not  
11 exceed sixty percent of the cost of the insurance.

12           ~~[H.]~~ I. When a public employee elects to  
13 participate in a cafeteria plan as authorized by the Cafeteria  
14 Plan Act and enters into a salary reduction agreement with the  
15 governmental employer, the provisions of Subsections B through  
16 ~~[F]~~ G of this section with respect to the maximum contributions  
17 that can be made by the employer are not violated and will  
18 still apply. The employer percentage or dollar contributions  
19 as provided in Subsections B through D of this section shall be  
20 determined by the employee's gross salary prior to any salary  
21 reduction agreement.

22           ~~[I.]~~ J. Any group medical insurance plan offered  
23 pursuant to this section shall include effective cost-  
24 containment measures to control the growth of health care  
25 costs. The responsible public body that administers a plan

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1 offered pursuant to this section shall report annually by  
2 September 1 to appropriate interim legislative committees on  
3 the effectiveness of the cost-containment measures required by  
4 this subsection.

5 ~~[J-]~~ K. Within available revenue, school districts,  
6 charter schools, participating entities pursuant to the Public  
7 School Insurance Authority Act and institutions of higher  
8 education may contribute up to eighty percent of the cost of  
9 the insurance of all employees."

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

12 "10-11-2. DEFINITIONS.--As used in the Public Employees  
13 Retirement Act:

14 A. "accumulated member contributions" means the  
15 amounts deducted from the salary of a member and credited to  
16 the member's individual account, together with interest, if  
17 any, credited to that account;

18 B. "affiliated public employer" means the state and  
19 any public employer affiliated with the association as provided  
20 in the Public Employees Retirement Act, but does not include an  
21 employer pursuant to the Magistrate Retirement Act, the  
22 Judicial Retirement Act or the Educational Retirement Act;

23 C. "association" means the public employees  
24 retirement association established under the Public Employees  
25 Retirement Act;

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1           D. "disability retired member" means a retired  
2 member who is receiving a pension pursuant to the disability  
3 retirement provisions of the Public Employees Retirement Act;

4           E. "disability retirement pension" means the  
5 pension paid pursuant to the disability retirement provisions  
6 of the Public Employees Retirement Act;

7           F. "educational retirement system" means that  
8 retirement system provided for in the Educational Retirement  
9 Act;

10          G. "employee" means any employee of an affiliated  
11 public employer;

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

16          I. "final average salary" means the final average  
17 salary calculated in accordance with the provisions of the  
18 applicable coverage plan;

19          J. "form of payment" means the applicable form of  
20 payment of a pension provided for in Section 10-11-117 NMSA  
21 1978;

22          K. "former member" means a person who was  
23 previously employed by an affiliated public employer, who has  
24 terminated that employment and who has received a refund of  
25 member contributions;

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1           L. "fund" means the funds included under the Public  
2 Employees Retirement Act;

3           M. "member" means a currently employed,  
4 contributing employee of an affiliated public employer, or a  
5 person who has been but is not currently employed by an  
6 affiliated public employer, who has not retired and who has not  
7 received a refund of member contributions; "member" also  
8 includes the following:

9           (1) "adult correctional officer member" means  
10 a member who is employed as an adult correctional officer or an  
11 adult correctional officer specialist by a state correctional  
12 facility of the corrections department or its successor agency;

13           (2) "juvenile correctional officer member"  
14 means a member who is employed as a juvenile correctional  
15 officer by the children, youth and families department or its  
16 successor agency;

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

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

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

5 (6) "state police member" means any member who  
6 is an officer of the New Mexico state police and who has taken  
7 the oath prescribed for such officers;

8 N. "membership" means membership in the  
9 association;

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

13 P. "public employer" means the state, any  
14 municipality, city, county, metropolitan arroyo flood control  
15 authority, economic development district, regional housing  
16 authority, soil and water conservation district, entity created  
17 pursuant to a joint powers agreement, council of government,  
18 conservancy district, irrigation district, water and sanitation  
19 district, water district and metropolitan water board,  
20 including the boards, departments, bureaus and agencies of a  
21 public employer, so long as these entities fall within the  
22 meaning of governmental plan as that term is used in Section  
23 414(d) of the Internal Revenue Code of 1986, as amended;

24 Q. "public safety duty" means a function or duty  
25 that is performed by a public safety employee while on duty and

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1 that occurs in an inherently dangerous location or under  
2 inherently dangerous circumstances;

3 R. "public safety employee" means a member who  
4 retired from, or an individual who is employed in, a job that,  
5 when held by a member, is covered under a Public Employees  
6 Retirement Act member coverage plan applicable to a:

- 7 (1) state police member and adult correctional
- 8 officer member;
- 9 (2) juvenile correctional officer member;
- 10 (3) municipal detention officer member;
- 11 (4) municipal fire member;
- 12 (5) municipal police member; or
- 13 (6) peace officer member;

14 ~~[Q-]~~ S. "refund beneficiary" means a person  
15 designated by the member, in writing, in the form prescribed by  
16 the association, as the person who would be refunded the  
17 member's accumulated member contributions payable if the member  
18 dies and no survivor pension is payable or who would receive  
19 the difference between pension paid and accumulated member  
20 contributions if the retired member dies before receiving in  
21 pension payments the amount of the accumulated member  
22 contributions;

23 ~~[R-]~~ T. "retire" means to:  
24 (1) terminate employment with all employers  
25 covered by any state system or the educational retirement

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1 system; and

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

4 [~~S.~~] U. "retired member" means a person who has met  
5 all requirements for retirement and who is receiving a pension  
6 from the fund;

7 [~~T.~~] V. "retirement board" means the retirement  
8 board provided for in the Public Employees Retirement Act;

9 [~~U.~~] W. "salary" means the base salary or wages  
10 paid a member, including longevity pay, for personal services  
11 rendered an affiliated public employer. "Salary" shall not  
12 include overtime pay, allowances for housing, clothing,  
13 equipment or travel, payments for unused sick leave, unless the  
14 unused sick leave payment is made through continuation of the  
15 member on the regular payroll for the period represented by  
16 that payment, and any other form of remuneration not  
17 specifically designated by law as included in salary for Public  
18 Employees Retirement Act purposes. Salary in excess of the  
19 limitations set forth in Section 401(a)(17) of the Internal  
20 Revenue Code of 1986, as amended, shall be disregarded. The  
21 limitation on compensation for eligible employees shall not be  
22 less than the amount that was allowed to be taken into account  
23 under the state retirement system acts in effect on July 1,  
24 1993. For purposes of this subsection, "eligible employee"  
25 means an individual who was a member of a state system before

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1 the first plan year beginning after December 31, 1995;  
2 [V-] X. "state system" means the retirement  
3 programs provided for in the Public Employees Retirement Act,  
4 the Magistrate Retirement Act and the Judicial Retirement Act;

5 [W-] Y. "state retirement system acts" means  
6 collectively the Public Employees Retirement Act, the  
7 Magistrate Retirement Act, the Judicial Retirement Act and the  
8 Volunteer Firefighters Retirement Act; and

9 [X-] Z. "survivor beneficiary" means a person who  
10 receives a pension or who has been designated to be paid a  
11 pension as a result of the death of a member or retired  
12 member."

13 SECTION 3. A new section of the Public Employees  
14 Retirement Act, Section 10-11-5.1 NMSA 1978, is enacted to  
15 read:

16 "10-11-5.1. [NEW MATERIAL] CREDITED SERVICE--PAYMENT OF  
17 INJURED PUBLIC SAFETY EMPLOYEES' MEMBER CONTRIBUTIONS.--

18 A. An affiliated public employer, in addition to  
19 paying the applicable employer contributions, shall be  
20 responsible for one hundred percent of the member contributions  
21 due and payable for service credit earned on or after July 1,  
22 2014 and applicable to a public safety employee who is injured  
23 while performing a public safety duty and the injury renders  
24 the employee absent from work pursuant to approved workers'  
25 compensation leave.

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1           B. The member contributions paid by the affiliated  
2 public employer pursuant to Subsection A of this section shall  
3 be paid for the duration of the public safety employee's  
4 workers' compensation leave.

5           C. A pension payable to a member whose affiliated  
6 public employer pays the member contributions pursuant to this  
7 section shall be an amount equal to the pension payment the  
8 member would receive if all member contributions had been paid  
9 by the member."

10           SECTION 4. Section 10-11-8 NMSA 1978 (being Laws 1987,  
11 Chapter 253, Section 8, as amended) 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 C. Except as provided in Subsection E or G 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 the subsequent employment or reemployment with  
16 an affiliated public employer;

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

20 (3) except as provided in Subsection [~~G~~] H of  
21 this section, during the subsequent employment, the  
22 [~~previously~~] retired member shall not become a member and thus  
23 the [~~previously~~] retired member shall not accrue service  
24 credit, and the [~~previously~~] retired member and that person's  
25 affiliated public employer shall not make contributions under

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1 any coverage plan pursuant to the Public Employees Retirement  
2 Act; and

3 (4) upon termination of the subsequent  
4 employment, the [~~previously~~] retired member's pension shall  
5 resume in accordance with the provisions of Subsection A of  
6 this section.

7 D. Notwithstanding the provisions of Subsection B  
8 of Section 10-11-118 NMSA 1978, on and after July 1, 2013, if a  
9 retired member becomes employed with an employer pursuant to  
10 the Educational Retirement Act:

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

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

18 E. The provisions of Subsections C and [~~H~~] I of  
19 this section do not apply to:

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

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

25 (3) a county undersheriff;

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1                   (4) a retired public safety employee who is  
2 subsequently employed as an instructor at the New Mexico law  
3 enforcement academy or a state, local or municipal police,  
4 sheriff's or firefighter training academy and who is paid for  
5 that employment a salary in an amount less than or equal to  
6 thirty thousand dollars (\$30,000) in any fiscal year; or

7                   [~~(3)~~] (5) a retired member who is elected to  
8 serve a term as an elected official; provided that:

9                                 (a) the retired member files an  
10 irrevocable exemption from membership with the association  
11 within thirty days of taking office; and

12                                 (b) the irrevocable exemption shall be  
13 for the elected official's term of office.

14                   F. A retired member who returns to employment  
15 during retirement pursuant to Subsection E of this section:

16                                 (1) is entitled to receive retirement benefits  
17 but is not entitled to accrue service credit or to [~~acquire or~~]  
18 purchase service credit in the future for the period of the  
19 [~~previously~~] retired member's [~~reemployment~~] subsequent  
20 employment with an affiliated public employer; and

21                                 (2) shall not pay the member contributions,  
22 and the retired member's affiliated public employer shall not  
23 pay the employer contributions, under the applicable member  
24 coverage plan pursuant to the Public Employees Retirement Act  
25 during the period of subsequent employment.

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1                   G. On and after July 1, 2014, a retired public  
2 safety employee may return to employment with an affiliated  
3 public employer as a public safety employee without suspension  
4 of the employee's pension if, during the subsequent employment,  
5 the employee is paid by the affiliated public employer a salary  
6 in an amount not to exceed sixty thousand dollars (\$60,000) in  
7 any fiscal year. During the subsequent public safety  
8 employment, the employee shall not accrue service credit and is  
9 not entitled to purchase service credit and the employee's  
10 affiliated public employer shall pay both the member and  
11 employer contributions required under the applicable member  
12 coverage plan.

13                   H. Member contributions paid, during the period of  
14 subsequent employment, on behalf of a retired public safety  
15 employee who returns to employment pursuant to the provisions  
16 of Subsection G of this section shall not be refundable.

17                   [~~G.~~] I. At any time during a [~~previously~~] retired  
18 member's subsequent employment pursuant to Subsection C of this  
19 section, the [~~previously~~] retired member may elect to become a  
20 member and, upon membership, the following conditions shall  
21 apply:

22                                 (1) the [~~previously retired~~] member and the  
23 subsequent affiliated public employer shall make the required  
24 employee and employer contributions, and the [~~previously~~  
25 ~~retired~~] member shall accrue service credit for the period of

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1 subsequent employment; and

2 (2) when the [~~previously retired~~] member  
3 terminates the subsequent employment with an affiliated public  
4 employer, the [~~previously retired~~] member shall retire  
5 according to the provisions of the Public Employees Retirement  
6 Act, subject to the following conditions:

7 (a) payment of the pension shall resume  
8 in accordance with the provisions of Subsection A of this  
9 section;

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

18 (c) the recalculated pension shall not  
19 be less than the amount of the suspended pension.

20 [H.] J. A [~~previously~~] retired member who returned  
21 to work with an affiliated public employer prior to July 1,  
22 2010 shall be subject to the provisions of this section in  
23 effect on the date the [~~previously~~] retired member returned to  
24 work; provided that:

25 (1) on and after July 1, 2010, the

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1 [previously] retired member shall pay the employee contribution  
2 in an amount specified in the Public Employees Retirement Act  
3 for the position in which the [previously] retired member is  
4 subsequently employed;

5 (2) notwithstanding the provisions of  
6 Subsection B of Section 10-11-118 NMSA 1978, on and after July  
7 1, 2013, the [previously] retired member's cost-of-living  
8 pension adjustment shall be suspended; and

9 (3) upon termination of the subsequent  
10 employment with an affiliated public employer, the [previously]  
11 retired member's cost-of-living pension adjustment shall be  
12 reinstated as provided in Subsection B of Section 10-11-118  
13 NMSA 1978.

14 [~~F.~~] K. The pension of a member who has earned  
15 service credit under more than one coverage plan shall be  
16 determined as follows:

17 (1) the pension of a member who has three or  
18 more years of service credit earned on or before June 30, 2013  
19 under each of two or more coverage plans shall be determined in  
20 accordance with the coverage plan that produces the highest  
21 pension;

22 (2) the pension of a member who has service  
23 credit earned on or before June 30, 2013 under two or more  
24 coverage plans but who has three or more years of service  
25 credit under only one of those coverage plans shall be

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

16 (3) the pension of a member who has service  
17 credit earned on or before June 30, 2013 under each of two or  
18 more coverage plans and who has service credit earned under any  
19 coverage plan on or after July 1, 2013 shall be equal to the  
20 sum of:

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

24 (b) the pension attributable to the  
25 service credit earned under each coverage plan on or after July

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1 1, 2013;

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

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

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

16 SECTION 5. EFFECTIVE DATE.--The effective date of the  
17 provisions of this act is July 1, 2014.