

1 SENATE BILL 317

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Michael S. Sanchez

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10 AN ACT

11 RELATING TO PENSIONS; AMENDING THE PUBLIC EMPLOYEES RETIREMENT  
12 ACT; REDUCING AND DELAYING THE COST-OF-LIVING ADJUSTMENT FOR  
13 CERTAIN RETIREES AND PROVIDING THAT BEGINNING JULY 2030 A ONE  
14 PERCENT INCREASE TO THE COST-OF-LIVING ADJUSTMENT SHALL BE  
15 DEPENDENT UPON THE ACTUARIAL FUNDED RATIO OF THE RETIREMENT  
16 FUND; CLARIFYING HOW SERVICE CREDIT EARNED UNDER MULTIPLE  
17 COVERAGE PLANS WILL BE CALCULATED; AMENDING CERTAIN PROVISIONS  
18 APPLICABLE TO MUNICIPAL FIRE MEMBER COVERAGE PLAN 5 MEMBERS BY  
19 INCREASING EMPLOYEE AND EMPLOYER CONTRIBUTION RATES, DECREASING  
20 THE PENSION MULTIPLIER FOR MEMBERS HIRED ON OR AFTER JULY 1,  
21 2013 AND ELIMINATING THE PICK-UPS BY AN AFFILIATED PUBLIC  
22 EMPLOYER OF THE ONE AND ONE-HALF PERCENT EMPLOYEE CONTRIBUTION  
23 RATE INCREASE EFFECTIVE JULY 1, 2013.

24  
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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1           SECTION 1. Section 10-11-5 NMSA 1978 (being Laws 1987,  
2 Chapter 253, Section 5, as amended) is amended to read:

3           "10-11-5. CREDITED SERVICE--MUNICIPAL ELECTION TO MAKE  
4 EMPLOYEE CONTRIBUTIONS.--A municipal affiliated public employer  
5 may elect by resolution of its governing body or by execution  
6 of a collective bargaining agreement and in the manner  
7 prescribed by the retirement board to be responsible for making  
8 contributions of up to seventy-five percent of its employees'  
9 member contributions as follows:

10           A. the resolution or collective bargaining  
11 agreement shall be irrevocable, [~~however, a~~] except that the  
12 affiliated public employer shall not pay the one and one-half  
13 percent increase in employee member contribution rates  
14 effective July 1, 2013 applicable to members covered under  
15 municipal fire member coverage plan 5;

16           B. a municipal affiliated public employer may by  
17 subsequent resolution or execution of a subsequent collective  
18 bargaining agreement:

19                   (1) elect to increase the percentage of  
20 employee member contributions for which it will be responsible;  
21 or

22                   (2) at the time a new coverage plan is  
23 adopted, elect to be responsible under the new coverage plan  
24 for making a different percentage of employee member  
25 contributions than that which it elected to make under a

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1 previous coverage plan;

2           ~~[B-]~~ C. the resolution or collective bargaining  
3 agreement shall apply to all employees or else to specified  
4 employee divisions of the municipal affiliated public employer  
5 and shall be effective the first pay period of the month  
6 following the filing of the resolution with the retirement  
7 board;

8           ~~[G-]~~ D. the portion of the employee contributions  
9 made by the municipal affiliated public employer on behalf of a  
10 member shall be credited to the member's individual accumulated  
11 member contribution account in the member contribution fund.  
12 The member shall be responsible for the difference between the  
13 contributions the member would be required to make if the  
14 municipal affiliated public employer had not made the election  
15 provided for in this section and the amount contributed by the  
16 municipal affiliated public employer ~~[under]~~ pursuant to the  
17 provisions of this section;

18           ~~[D-]~~ E. pensions payable to members whose municipal  
19 affiliated public employer makes the election provided for in  
20 this section shall be the same as if the member had made the  
21 entire member contribution; and

22           ~~[E-]~~ F. any municipal affiliated public employer  
23 increasing the percentage of the employee member contributions  
24 it elects to make pursuant to this section shall submit a  
25 resolution or executed collective bargaining agreement to the

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1 association by July 1 of the fiscal year in which the increase  
2 will take place indicating the percentage of the employee  
3 member contributions that will be made by the municipal  
4 affiliated public employer."

5 SECTION 2. Section 10-11-8 NMSA 1978 (being Laws 1987,  
6 Chapter 253, Section 8, as amended) is amended to read:

7 "10-11-8. NORMAL RETIREMENT--RETURN TO EMPLOYMENT--  
8 BENEFITS CONTINUED--[EMPLOYER] CONTRIBUTIONS--SERVICE CREDIT  
9 EARNED UNDER MULTIPLE COVERAGE PLANS.--

10 A. A member may retire upon fulfilling the  
11 following requirements prior to the selected date of  
12 retirement:

13 (1) a written application for normal  
14 retirement, in the form prescribed by the association, is filed  
15 with the association;

16 (2) employment is terminated with all  
17 employers covered by any state system or the educational  
18 retirement system;

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

21 (4) the member meets the age and service  
22 credit requirement for normal retirement specified in the  
23 coverage plan applicable to the member.

24 B. The amount of normal retirement pension is  
25 determined in accordance with the coverage plan applicable to

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1 the member.

2 C. Except as provided in Subsection D of this  
3 section, on or after July 1, 2010, a retired member may be  
4 subsequently employed by an affiliated public employer only  
5 pursuant to the following provisions:

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

13 (2) the retired member's pension shall be  
14 suspended upon commencement of the employment;

15 (3) except as provided in Subsection F of this  
16 section, the previously retired member shall not become a  
17 member and thus the previously retired member shall accrue no  
18 service credit and the previously retired member and that  
19 person's affiliated public employer shall make no contributions  
20 under any coverage plan pursuant to the Public Employees  
21 Retirement Act; and

22 (4) upon termination of the subsequent  
23 employment, the previously retired member's pension shall  
24 resume in accordance with the provisions of Subsection A of  
25 this section.

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1           D. The provisions of Subsection C of this section  
2 do not apply to:

3                   (1) a retired member employed by the  
4 legislature for legislative session work;

5                   (2) a retired member employed temporarily as a  
6 precinct board member for a municipal election or an election  
7 covered by the Election Code; or

8                   (3) a retired member who is elected to serve a  
9 term as an elected official; provided that:

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

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

15           E. A retired member who returns to employment  
16 during retirement pursuant to Subsection D of this section is  
17 entitled to receive retirement benefits but is not entitled to  
18 accrue service credit or to acquire or purchase service credit  
19 in the future for the period of the previously retired member's  
20 reemployment with an affiliated public employer.

21           F. At any time during a previously retired member's  
22 subsequent employment pursuant to Subsection C of this section,  
23 the previously retired member may elect to become a member and  
24 the following conditions shall apply:

25                   (1) the previously retired member and the

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1 subsequent affiliated public employer shall make the required  
2 employee and employer contributions, and the previously retired  
3 member shall accrue service credit for the period of subsequent  
4 employment; and

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

10 (a) payment of the pension shall resume  
11 in accordance with the provisions of Subsection A of this  
12 section;

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

20 (c) the recalculated pension shall not  
21 be less than the amount of the suspended pension.

22 G. A previously retired member who returned to work  
23 with an affiliated public employer prior to July 1, 2010 shall  
24 be subject to the provisions of this section in effect on the  
25 date the previously retired member returned to work; provided

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1 that, on and after July 1, 2010, the previously retired member  
2 shall pay the employee contribution in an amount specified in  
3 the Public Employees Retirement Act for the position in which  
4 the previously retired member is employed.

5 H. The pension of a member who has earned service  
6 credit under more than one coverage plan shall be determined as  
7 follows:

8 (1) the pension of a member who has three or  
9 more years of service credit earned on or before June 30, 2013  
10 under each of two or more coverage plans shall be determined in  
11 accordance with the coverage plan that produces the highest  
12 pension;

13 (2) the pension of a member who has service  
14 credit earned on or before June 30, 2013 under two or more  
15 coverage plans but who has three or more years of service  
16 credit under only one of those coverage plans shall be  
17 determined in accordance with the coverage plan in which the  
18 member has three or more years of service credit. If the  
19 service credit is acquired under two different coverage plans  
20 applied to the same affiliated public employer as a consequence  
21 of an election by the members, adoption by the affiliated  
22 public employer or a change in the law that results in the  
23 application of a coverage plan with a greater pension, the  
24 greater pension shall be paid a member retiring from the  
25 affiliated public employer under which the change in coverage

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1 plan took place regardless of the amount of service credit  
2 under the coverage plan producing the greater pension; provided  
3 that the member has three or more years of continuous  
4 employment with that affiliated public employer immediately  
5 preceding or immediately preceding and immediately following  
6 the date the coverage plan changed;

7 (3) the pension of a member who has service  
8 credit earned on or before June 30, 2013 under each of two or  
9 more coverage plans and who has service credit earned under any  
10 coverage plan on or after July 1, 2013 shall be equal to the  
11 sum of:

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

15 (b) the pension attributable to the  
16 service credit earned under each coverage plan on or after July  
17 1, 2013;

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

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

25 "Service credit", for the purposes of this subsection, shall be

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1 only personal service rendered an affiliated public employer  
2 and credited to the member under the provisions of Subsection A  
3 of Section 10-11-4 NMSA 1978. Service credited under any other  
4 provision of the Public Employees Retirement Act shall not be  
5 used to satisfy the three-year service credit requirement of  
6 this subsection."

7 SECTION 3. Section 10-11-112 NMSA 1978 (being Laws 1987,  
8 Chapter 253, Section 112) is amended to read:

9 "10-11-112. MUNICIPAL FIRE MEMBER COVERAGE PLAN 5--AMOUNT  
10 OF PENSION--FORM OF PAYMENT A.--Under municipal fire member  
11 coverage plan 5, the amount of pension under form of payment A  
12 is equal to:

13 A. for a member who was a retired member or a  
14 member on June 30, 2013, the sum of three and one-half percent  
15 of the final average salary multiplied by credited service.  
16 The amount shall not exceed eighty percent of the final average  
17 salary; and

18 B. for a member who was not a retired member or a  
19 member on June 30, 2013, the sum of three and twenty-five  
20 hundredths percent of the final average salary multiplied by  
21 credited service. The amount shall not exceed eighty-five  
22 percent of the final average salary."

23 SECTION 4. Section 10-11-114 NMSA 1978 (being Laws 1987,  
24 Chapter 253, Section 114, as amended) is amended to read:

25 "10-11-114. MUNICIPAL FIRE MEMBER COVERAGE PLAN 5--MEMBER  
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1 CONTRIBUTION RATE.--A member under municipal fire member  
2 coverage plan 5 shall contribute [~~sixteen and two-tenths~~]  
3 seventeen and seven-tenths percent of salary."

4 SECTION 5. Section 10-11-115 NMSA 1978 (being Laws 1987,  
5 Chapter 253, Section 115, as amended) is amended to read:

6 "10-11-115. MUNICIPAL FIRE MEMBER COVERAGE PLAN 5--  
7 AFFILIATED PUBLIC EMPLOYER CONTRIBUTION RATE.--The affiliated  
8 public employer shall contribute [~~twenty-one and twenty-five~~  
9 ~~one-hundredths~~] twenty-two and seventy-five hundredths percent  
10 of the salary of each member whom it employs and covers under  
11 municipal fire member coverage plan 5, except that:

12 A. from July 1, 2013 through June 30, 2014, the  
13 affiliated public employer contribution rate shall be twenty-  
14 one and seventy-five hundredths percent of the salary of each  
15 member; and

16 B. from July 1, 2014 through June 30, 2015, the  
17 affiliated public employer contribution rate shall be twenty-  
18 two and twenty-five hundredths percent of the salary of each  
19 member."

20 SECTION 6. Section 10-11-118 NMSA 1978 (being Laws 1987,  
21 Chapter 253, Section 118, as amended) is amended to read:

22 "10-11-118. COST-OF-LIVING ADJUSTMENTS--QUALIFIED PENSION  
23 RECIPIENT.--

24 A. For the purposes of this section:

25 (1) "preceding calendar year" means the

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1 twelve-month period ending on the December 31 preceding the  
2 July 1 in which pensions are being adjusted; and

3 (2) "second preceding calendar year" means the  
4 full calendar year prior to the preceding calendar year.

5 B. A qualified pension recipient is eligible for a  
6 cost-of-living pension adjustment. Beginning July 1, 2013, the  
7 amount of pension payable to a qualified pension recipient  
8 shall be increased [~~three~~ two percent each July 1. The amount  
9 of the increase shall be determined by multiplying the amount  
10 of pension inclusive of all prior adjustments by [~~three~~ two  
11 percent, except that beginning on May 1, 2030, and no later  
12 than May 1 every five years thereafter, the retirement board  
13 shall certify to the association the actuarial funded ratio of  
14 the fund as of June 30 of the preceding calendar year. The  
15 amount of pension payable to a qualified pension recipient  
16 shall be determined as follows:

17 (1) if the certified funded ratio of the fund  
18 equals an amount less than eighty percent funded, the amount of  
19 pension payable shall be increased two percent. The amount of  
20 the increase applied pursuant to this paragraph shall be  
21 determined by multiplying the amount of the pension inclusive  
22 of all prior adjustments by two percent; or

23 (2) if the certified funded ratio of the fund  
24 equals an amount greater than or equal to eighty percent  
25 funded, the amount of pension payable shall be increased three

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1 percent. The amount of the increase applied pursuant to this  
2 paragraph shall be determined by multiplying the amount of the  
3 pension inclusive of all prior adjustments by three percent.

4 C. A qualified pension recipient is:

5 (1) a normal retired member who:

6 (a) retires on or before June 30, 2016  
7 and has been retired for at least two full calendar years from  
8 the effective date of the latest retirement prior to July 1 of  
9 the year in which the pension is being adjusted; or

10 (b) retires on or after July 1, 2016 and  
11 has been retired for at least three full calendar years from  
12 the effective date of the latest retirement prior to July 1 of  
13 the year in which the pension is being adjusted;

14 (2) a normal retired member who has attained  
15 age sixty-five years and been retired for at least one full  
16 calendar year from the effective date of the latest retirement  
17 prior to July 1 of the year in which the pension is being  
18 adjusted;

19 (3) a disability retired member who has been  
20 retired for at least one full calendar year from the effective  
21 date of the latest retirement prior to July 1 of the year in  
22 which the pension is being adjusted;

23 (4) a survivor beneficiary who has received a  
24 survivor pension for at least two full calendar years; or

25 (5) a survivor beneficiary of a deceased

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1 retired member who otherwise would have been retired at least  
2 two full calendar years from the effective date of the latest  
3 retirement prior to July 1 of the year in which the pension is  
4 being adjusted.

5 D. A qualified pension recipient may decline an  
6 increase in a pension by giving the association written notice  
7 of the decision to decline the increase at least thirty days  
8 prior to the date the increase would take effect."

9 SECTION 7. Section 10-11-130 NMSA 1978 (being Laws 1987,  
10 Chapter 253, Section 130, as amended) is amended to read:

11 "10-11-130. RETIREMENT BOARD--AUTHORITY--MEMBERSHIP--DUTY  
12 TO CERTIFY FUNDED RATIO.--

13 A. The "retirement board" is created and is the  
14 trustee of the association and the funds created by the state  
15 retirement system acts and has all the powers necessary or  
16 convenient to carry out and effectuate the purposes and  
17 provisions of the state retirement system acts, including, in  
18 addition to any specific powers provided for in the Public  
19 Employees Retirement Act but without limiting the generality of  
20 the foregoing, the power to:

21 (1) administer the state retirement system  
22 acts, including the management of the association and making  
23 effective the provisions of those acts, as well as to  
24 administer and manage any other employee benefit acts as  
25 provided by law;

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1 (2) in addition to utilizing services of the  
2 attorney general and notwithstanding any other provision of  
3 law, employ or contract with and compensate competent legal  
4 counsel to handle the legal matters and litigation of the  
5 retirement board and the association and to give advice and  
6 counsel in regard to any matter connected with the duties of  
7 the retirement board;

8 (3) administer oaths;

9 (4) adopt and use a seal for authentication of  
10 records, processes and proceedings;

11 (5) create and maintain records relating to  
12 all members, affiliated public employers and all activities and  
13 duties required of the retirement board;

14 (6) issue subpoenas and compel the production  
15 of evidence and attendance of witnesses in connection with any  
16 hearings or proceedings of the retirement board;

17 (7) make and execute contracts;

18 (8) purchase, acquire or hold land adjacent to  
19 the state capitol grounds or other suitable location and build  
20 thereon a building to house the association and its employees  
21 and, in the event additional office space is available in the  
22 building after the retirement board and its employees have been  
23 housed, to rent or lease the additional space to any public  
24 agency or private person; provided that first priority for the  
25 rental or leasing shall be to public agencies; and further

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1 provided that for the purpose of purchasing, acquiring or  
2 holding the land and the building thereon, the retirement board  
3 may use funds from the income fund and any other funds  
4 controlled by the retirement board the use of which for such  
5 purposes is not prohibited by law;

6 (9) after the sale of the land and building  
7 acquired pursuant to Paragraph (8) of this subsection, acquire  
8 land and build thereon a new building to house the association  
9 and its employees and hold the building and land in fee simple  
10 in the name of the association. In order to acquire the land  
11 and plan, design and construct the building, the retirement  
12 board may expend the proceeds of the sale of the land and  
13 building acquired pursuant to Paragraph (8) of this subsection  
14 or any funds controlled by the board, the use of which for such  
15 purposes is not otherwise prohibited by law;

16 (10) make and adopt such reasonable rules as  
17 may be necessary or convenient to carry out the duties of the  
18 retirement board and activities of the association, including  
19 any rules necessary to preserve the status of the association  
20 as a qualified pension plan under the provisions of the  
21 Internal Revenue Code of 1986, as amended, or under successor  
22 or related provisions of law;

23 (11) designate committees and designate  
24 committee members, including individuals who may not be members  
25 of the association; and

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1 (12) select and contract for the services of  
2 one or more custodian banks for all funds under the retirement  
3 board's management. For the purpose of this paragraph,  
4 "custodian bank" means a financial institution with the general  
5 fiduciary duties to manage, control and collect the assets of  
6 an investment fund, including receiving all deposits and paying  
7 all disbursements as directed by staff, safekeeping of assets,  
8 coordination of asset transfers, timely settlement of  
9 securities transactions and accurate and timely reporting of  
10 the assets by individual account and in total.

11 B. In addition to the powers provided to the  
12 retirement board in Subsection A of this section, the  
13 retirement board shall certify to the association the actuarial  
14 funded ratio of the fund as provided in Subsection B of Section  
15 10-11-118 NMSA 1978.

16 [~~B.~~] C. The retirement board consists of:

- 17 (1) the secretary of state;  
18 (2) the state treasurer;  
19 (3) four members under a state coverage plan  
20 to be elected by the members under state coverage plans;  
21 (4) four members under a municipal coverage  
22 plan to be elected by the members under municipal coverage  
23 plans, provided one member shall be a municipal member employed  
24 by a county; and  
25 (5) two retired members to be elected by the

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1 retired members of the association.

2 ~~[G-]~~ D. The results of elections of elected members  
3 of the retirement board shall be certified at the annual  
4 meeting of the association. Elections shall be conducted  
5 according to rules the retirement board adopts from time to  
6 time.

7 ~~[D-]~~ E. The regular term of office of the elected  
8 members of the retirement board is four years. The term of one  
9 retirement board member under a state coverage plan expires  
10 annually on December 31. The terms of retirement board members  
11 under a municipal coverage plan expire on December 31 of  
12 noncoinciding years in the pattern set by the retirement board.  
13 Members of the retirement board serve until their successors  
14 have qualified.

15 ~~[E-]~~ F. A member elected to the retirement board  
16 who fails to attend four consecutively scheduled meetings of  
17 the retirement board, unless in each case excused for cause by  
18 the retirement board members in attendance, is considered to  
19 have resigned from the retirement board, and the retirement  
20 board shall by resolution declare the office vacated as of the  
21 date of adoption of the resolution. A vacancy occurring on the  
22 retirement board, except in the case of an elected official,  
23 shall be filled by the remaining retirement board members,  
24 without requirement that a quorum be present. The member  
25 appointed to fill the vacancy serves for the remainder of the

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1 vacated term.

2 [F-] G. Members of the retirement board serve  
3 without salary for their services as retirement board members,  
4 but they shall receive those amounts authorized under the Per  
5 Diem and Mileage Act.

6 [G-] H. The retirement board shall hold four  
7 regular meetings each year and shall designate in advance the  
8 time and place of the meetings. Special meetings and emergency  
9 meetings of the retirement board may be held upon call of the  
10 chair or any three members of the retirement board. Written  
11 notice of special meetings shall be sent to each member of the  
12 retirement board at least seventy-two hours in advance of the  
13 special meeting. Verbal notice of emergency meetings shall be  
14 given to as many members as is feasible at least eight hours  
15 before the emergency meeting, and the meeting shall commence  
16 with a statement of the nature of the emergency. The  
17 retirement board shall adopt its own rules of procedure and  
18 shall keep a record of its proceedings. All meetings of the  
19 retirement board shall comply with the Open Meetings Act. A  
20 majority of retirement board members shall constitute a quorum.  
21 Each attending member of the retirement board is entitled to  
22 one vote on each question before the retirement board, and at  
23 least a majority of a quorum shall be necessary for a decision  
24 by the retirement board.

25 [H-] I. Annual meetings of the members of the

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1 association shall be held in Santa Fe at such time and place as  
2 the retirement board shall from time to time determine.  
3 Special meetings of the members of the association shall be  
4 held in Santa Fe upon call of any seven retirement board  
5 members. The retirement board shall send a written notice to  
6 the last known residence address of each member currently  
7 employed by an affiliated public employer at least ten days  
8 prior to any meeting of the members of the association. The  
9 notice shall contain the call of the meeting and the principal  
10 purpose of the meeting. All meetings of the association shall  
11 be public and shall be conducted according to procedures the  
12 retirement board shall from time to time adopt. The retirement  
13 board shall keep a record of the proceedings of each meeting of  
14 the association.

15 ~~[F.]~~ J. Neither the retirement board nor the  
16 association shall allow public inspection of, or disclosure of,  
17 information from any member or retiree file unless a prior  
18 release and consent, in the form prescribed by the association,  
19 has been executed by the member or retiree; except that  
20 applicable coverage plans, amounts of retirement plan  
21 contributions made by members and affiliated public employers,  
22 pension amounts paid and the names and addresses of public  
23 employees retirement association members or retirees requested  
24 for election purposes by candidates for election to the  
25 retirement board may be produced or disclosed without release

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or consent."

SECTION 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2013.

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