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SENATE BILL 303

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Cynthia Nava

AN ACT

RELATING TO PUBLIC EMPLOYEES RETIREMENT; AMENDING THE PUBLIC
EMPLOYEES RETIREMENT ACT AND THE EDUCATIONAL RETIREMENT ACT TO
PROVIDE THAT, FOR MEMBERS BEGINNING EMPLOYMENT AFTER DECEMBER
31, 2013, CERTAIN STATE MEMBERS UNDER THE PUBLIC EMPLOYEES
RETIREMENT ACT AND THE MEMBERS UNDER THE EDUCATIONAL RETIREMENT
ACT SHALL HAVE IDENTICAL RETIREMENT ELIGIBILITY REQUIREMENTS,
IDENTICAL CONTRIBUTION RATES, IDENTICAL COST-OF-LIVING
ADJUSTMENTS AND IDENTICAL METHODS FOR CALCULATING FINAL AVERAGE
SALARIES; REQUIRING EACH RETIREMENT BOARD TO CONDUCT ACTUARIAL
STUDIES TO DETERMINE RETIREMENT BENEFITS FOR THOSE NEW
EMPLOYEES.

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

SECTION 1. Section 10-11-14.6 NMSA 1978 (being Laws 2009,
Chapter 288, Section 12) is amended to read:

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1 "10-11-14.6. CALCULATION OF FINAL AVERAGE SALARY.--

2 A. Except as provided in Subsection B of this
3 section, under each coverage plan of the Public Employees
4 Retirement Act, the final average salary is one thirty-sixth of
5 the greatest aggregate amount of salary paid a member for
6 thirty-six consecutive but not necessarily continuous months of
7 service credit.

8 B. For a member under state general member coverage
9 plan 3 who was not a retired member or a member on December 31,
10 2013, the final average salary is one forty-eighth of the
11 greatest aggregate amount of salary paid a member for forty-
12 eight consecutive but not necessarily continuous months of
13 service."

14 SECTION 2. Section 10-11-26.3 NMSA 1978 (being Laws 1994,
15 Chapter 128, Section 4) is amended to read:

16 "10-11-26.3. STATE GENERAL MEMBER COVERAGE PLAN 3--AMOUNT
17 OF PENSION--FORM OF PAYMENT A.--

18 A. Under state general member coverage plan 3:

19 (1) except as provided in Paragraph (2) of
20 this subsection, the amount of pension under form of payment A
21 is equal to three percent of final average salary multiplied by
22 service credit; and

23 (2) for a member who was not a retired member
24 or a member on December 31, 2013, the amount of pension shall
25 be determined by act of the legislature after receiving the

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1 actuarial study required by Section 10-11-26.8 NMSA 1978.

2 B. The amount shall not exceed eighty percent of
3 the final average salary."

4 SECTION 3. Section 10-11-26.5 NMSA 1978 (being Laws 1994,
5 Chapter 128, Section 6, as amended) is amended to read:

6 "10-11-26.5. STATE GENERAL MEMBER COVERAGE PLAN 3--MEMBER
7 CONTRIBUTION RATE.--

8 A. Except as provided in Subsection B of this
9 section, a member under state general member coverage plan 3
10 shall contribute seven and forty-two hundredths percent of
11 salary starting with the first full pay period that ends within
12 the calendar month in which state general member coverage plan
13 3 becomes applicable to the member [~~except that, from July 1,~~
14 ~~2009 through June 30, 2011, for members whose annual salary is~~
15 ~~greater than twenty thousand dollars (\$20,000), the member~~
16 ~~contribution rate shall be eight and ninety-two hundredths~~
17 ~~percent of salary].~~

18 B. A member under state general member coverage
19 plan 3 who was not a retired member or a member on December 31,
20 2013 shall contribute seven and sixty-six hundredths percent of
21 salary."

22 SECTION 4. Section 10-11-26.6 NMSA 1978 (being Laws 1994,
23 Chapter 128, Section 7, as amended) is amended to read:

24 "10-11-26.6. STATE GENERAL MEMBER COVERAGE PLAN 3--STATE
25 CONTRIBUTION RATE.--

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1 A. Except as provided in Subsection B of this
2 section, the state shall contribute sixteen and fifty-nine
3 hundredths percent of the salary of each member covered by
4 state general member coverage plan 3 starting with the first
5 pay period that ends within the calendar month in which state
6 general member coverage plan 3 becomes applicable to the member
7 [~~except that, from July 1, 2009 through June 30, 2011, for~~
8 ~~members whose annual salary is greater than twenty thousand~~
9 ~~dollars (\$20,000), the state contribution rate shall be fifteen~~
10 ~~and nine hundredths percent of the salary of each member~~].

11 B. For a member under state general member coverage
12 plan 3 who was not a retired member or a member on December 31,
13 2013, the state shall contribute fifteen and two hundred forty-
14 five thousandths percent of salary."

15 SECTION 5. A new section of the Public Employees
16 Retirement Act, Section 10-11-26.8 NMSA 1978, is enacted to
17 read:

18 "10-11-26.8. [NEW MATERIAL] ACTUARIAL STUDY REQUIRED--
19 REPORT TO LEGISLATURE.--Taking into account the appropriate
20 retirement eligibility requirements, the state contribution
21 rate, the employee contribution rate, the method for
22 determining final average salary and the method for determining
23 cost-of-living adjustments, the retirement board shall conduct
24 an actuarial study to determine the amount of pension for
25 members covered by state general member coverage plan 3 who

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1 will not be retired members or members on December 31, 2013.
2 The report shall be submitted to the appropriate legislative
3 interim committee no later than August 1, 2012 and to the
4 legislature no later than December 1, 2012."

5 SECTION 6. Section 22-11-21 NMSA 1978 (being Laws 1967,
6 Chapter 16, Section 144, as amended) is amended to read:

7 "22-11-21. CONTRIBUTIONS--MEMBERS--LOCAL ADMINISTRATIVE
8 UNITS.--

9 A. Except as provided in Subsection C of this
10 section, each member shall make contributions to the fund
11 according to the following schedule:

12 (1) through June 30, 2005, an amount equal to
13 seven and six-tenths percent of the member's annual salary;

14 (2) from July 1, 2005 through June 30, 2006,
15 an amount equal to seven and six hundred seventy-five
16 thousandths percent of the member's annual salary;

17 (3) from July 1, 2006 through June 30, 2007,
18 an amount equal to seven and seventy-five hundredths percent of
19 the member's annual salary;

20 (4) from July 1, 2007 through June 30, 2008,
21 an amount equal to seven and eight hundred twenty-five
22 thousandths percent of the member's annual salary; and

23 (5) on and after July 1, 2008:

24 (a) except as provided in Subparagraph
25 (b) of this paragraph, an amount equal to seven and nine-tenths

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1 percent of the member's annual salary [~~except that from July 1,~~
2 ~~2009 through June 30, 2011, for members whose annual salary is~~
3 ~~greater than twenty thousand dollars (\$20,000), the member~~
4 ~~contribution rate shall be nine and four-tenths percent of the~~
5 ~~member's annual salary]; or~~

6 (b) for a member who was not a retired
7 member or a member on December 31, 2013, an amount equal to
8 seven and sixty-six hundredths percent of the member's annual
9 salary.

10 B. Except as provided in Subsection C of this
11 section, each local administrative unit shall make an annual
12 contribution to the fund according to the following schedule:

13 (1) through June 30, 2005, a sum equal to
14 eight and sixty-five hundredths percent of the annual salary of
15 each member employed by the local administrative unit;

16 (2) from July 1, 2005 through June 30, 2006, a
17 sum equal to nine and forty-hundredths percent of the annual
18 salary of each member employed by the local administrative
19 unit;

20 (3) from July 1, 2006 through June 30, 2007, a
21 sum equal to ten and fifteen-hundredths percent of the annual
22 salary of each member employed by the local administrative
23 unit;

24 (4) from July 1, 2007 through June 30, 2008, a
25 sum equal to ten and ninety-hundredths percent of the annual

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1 salary of each member employed by the local administrative
2 unit;

3 (5) from July 1, 2008 through June 30, 2009, a
4 sum equal to eleven and sixty-five hundredths percent of the
5 annual salary of each member employed by the local
6 administrative unit;

7 (6) from July 1, 2009 through June 30, 2011, a
8 sum equal to ten and nine-tenths percent of the annual salary
9 of each member employed by the local administrative unit,
10 except that for members whose annual salary is twenty thousand
11 dollars (\$20,000) or less, the local administrative unit shall
12 contribute twelve and four-tenths percent of the member's
13 annual salary;

14 (7) from July 1, 2011 through June 30, 2012, a
15 sum equal to thirteen and fifteen-hundredths percent of the
16 annual salary of each member employed by the local
17 administrative unit; and

18 (8) on and after July 1, 2012:

19 (a) except as provided in Subparagraph
20 (b) of this paragraph, a sum equal to thirteen and nine-tenths
21 percent of the annual salary of each member employed by the
22 local administrative unit; or

23 (b) for members who were not retired
24 members or members on December 31, 2013, a sum equal to fifteen
25 and two hundred forty-five thousandths percent of the annual

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1 salary of each member employed by the local administrative
2 unit.

3 C. If, in a calendar year, the salary of a member,
4 initially employed by a local administrative unit on or after
5 July 1, 1996, equals the annual compensation limit set pursuant
6 to Section 401(a)(17) of the Internal Revenue Code of 1986, as
7 amended, then:

8 (1) for the remainder of that calendar year,
9 no additional member contributions or local administrative unit
10 contributions for that member shall be made pursuant to this
11 section; provided that no member shall be denied service credit
12 solely because contributions are not made by the member or on
13 behalf of the member pursuant to the provisions of this
14 subsection; and

15 (2) the amount of the annual compensation
16 limit shall be divided into four equal portions, and, for
17 purposes of attributing contributory employment and crediting
18 service credit, each portion shall be attributable to one of
19 the four quarters of the calendar year."

20 SECTION 7. Section 22-11-23.1 NMSA 1978 (being Laws 2009,
21 Chapter 286, Section 2 and Laws 2009, Chapter 288, Section 15)
22 is amended to read:

23 "22-11-23.1. RETIREMENT ELIGIBILITY--INITIAL MEMBERSHIP
24 ON OR AFTER JULY 1, 2010.--

25 A. A member who initially became a member on or
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1 after July 1, 2010 or a member who was a member at any time
2 prior to that date and had, before that date, been refunded all
3 member contributions pursuant to Subsection A of Section
4 22-11-15 NMSA 1978, shall be eligible for retirement benefits
5 pursuant to the Educational Retirement Act when one of the
6 following conditions occurs:

7 (1) the member is any age and has thirty or
8 more years of earned service credit;

9 (2) the member is at least sixty-seven years
10 of age and has five or more years of earned service credit; or

11 (3) the sum of the member's age and years of
12 earned service credit equals at least eighty; provided that a
13 member who was a retired member or a member on December 31,
14 2013 and who retires pursuant to this paragraph shall be
15 subject to the benefit reductions provided in Paragraphs (1)
16 and (2) of Subsection H of Section 22-11-30 NMSA 1978.

17 B. A member shall be subject to the provisions of
18 this section as they existed at the beginning of the member's
19 last cumulated four quarters of earned service credit,
20 regardless of later amendment."

21 SECTION 8. Section 22-11-30 NMSA 1978 (being Laws 1967,
22 Chapter 16, Section 153, as amended by Laws 2009, Chapter 286,
23 Section 3 and by Laws 2009, Chapter 288, Section 17) is amended
24 to read:

25 "22-11-30. RETIREMENT BENEFITS.--

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1 A. Retirement benefits for a member retired
2 pursuant to the Educational Retirement Act on or before
3 June 30, 1967 shall be paid monthly and shall be one-twelfth of
4 a sum equal to one and one-half percent of the first four
5 thousand dollars (\$4,000) of the member's average annual salary
6 and one percent of the remainder of the member's average annual
7 salary multiplied by the number of years of the member's total
8 service credit.

9 B. Retirement benefits for a member retired
10 pursuant to the Educational Retirement Act on or after July 1,
11 1967 but on or before June 30, 1971 shall be paid monthly and
12 shall be one-twelfth of a sum equal to one and one-half percent
13 of the first six thousand six hundred dollars (\$6,600) of the
14 member's average annual salary and one percent of the remainder
15 of the member's average annual salary multiplied by the number
16 of years of the member's total service credit.

17 C. Retirement benefits for a member retired
18 pursuant to the Educational Retirement Act on or after July 1,
19 1971 but on or before June 30, 1974 shall be paid monthly and
20 shall be one-twelfth of a sum equal to one and one-half percent
21 of the member's average annual salary multiplied by the number
22 of years of the member's total service credit.

23 D. Retirement benefits for a member retired
24 pursuant to the Educational Retirement Act on or before
25 June 30, 1974 but returning to employment on or after July 1,

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1 1974 for a cumulation of one or more years shall be computed
2 pursuant to Subsection E of this section. Retirement benefits
3 for a member retired pursuant to the Educational Retirement Act
4 on or before June 30, 1974 but returning to employment on or
5 after July 1, 1974 for a cumulation of less than one year shall
6 be computed pursuant to Subsection A of this section if the
7 member's date of last retirement was on or before June 30, 1967
8 or pursuant to Subsection B of this section if the member's
9 date of last retirement was on or after July 1, 1967 but not
10 later than June 30, 1971 or pursuant to Subsection C of this
11 section if the member's date of last retirement was on or after
12 July 1, 1971 but not later than June 30, 1974.

13 E. Retirement benefits for a member age sixty or
14 over, retired pursuant to the Educational Retirement Act on or
15 after July 1, 1974 but not later than June 30, 1987, shall be
16 paid monthly and shall be one-twelfth of a sum equal to:

17 (1) one and one-half percent of the member's
18 average annual salary multiplied by the number of years of
19 service credit for:

20 (a) prior employment; and
21 (b) allowed service credit for service
22 performed prior to July 1, 1957, except United States military
23 service credit purchased pursuant to Paragraph (3) of
24 Subsection A of Section 22-11-34 NMSA 1978; plus

25 (2) two percent of the member's average annual

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1 salary multiplied by the number of years of service credit for:

2 (a) contributory employment;

3 (b) allowed service credit for service
4 performed after July 1, 1957; and

5 (c) United States military service
6 credit for service performed prior to July 1, 1957 and
7 purchased pursuant to Paragraph (3) of Subsection A of Section
8 22-11-34 NMSA 1978.

9 F. Retirement benefits for a member age sixty or
10 over, retired pursuant to the Educational Retirement Act on or
11 after July 1, 1987 but not later than June 30, 1991, shall be
12 paid monthly and shall be one-twelfth of a sum equal to two and
13 fifteen hundredths percent of the member's average annual
14 salary multiplied by the number of years of the member's total
15 service credit; provided that this subsection shall not apply
16 to any member who was retired in any of the four quarters
17 ending on June 30, 1987 without having accumulated not less
18 than 1.0 years earned service credit after June 30, 1987.

19 G. Retirement benefits for a member age sixty or
20 over, retired pursuant to Section 22-11-23 NMSA 1978 on or
21 after July 1, 1991, shall be paid monthly and shall be one-
22 twelfth of a sum equal to two and thirty-five hundredths
23 percent of the member's average annual salary multiplied by the
24 number of years of the member's total service credit; provided
25 that this subsection shall not apply to any member who was

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1 retired in any of the four consecutive quarters ending on June
2 30, 1991 without having accumulated at least one year earned
3 service credit beginning on or after July 1, 1991.

4 H. Except as provided in Subsection I of this
5 section, retirement benefits for a member, retired pursuant to
6 Section 22-11-23.1 NMSA 1978, shall be paid monthly and shall
7 be one-twelfth of a sum equal to two and thirty-five hundredths
8 percent of the member's average annual salary multiplied by the
9 number of years of the member's total service credit; provided
10 that the benefit for a member retiring pursuant to Paragraph
11 (3) of Subsection A of Section 22-11-23.1 NMSA 1978 shall be
12 reduced by:

13 (1) six-tenths of one percent for each one-
14 fourth, or portion thereof, year that retirement occurs prior
15 to the member's sixty-fifth birthday but after the sixtieth
16 birthday; and

17 (2) one and eight-tenths percent for each one-
18 fourth, or portion thereof, year that retirement occurs prior
19 to the member's sixtieth birthday.

20 I. Retirement benefits for a member, retired
21 pursuant to Section 22-11-23.1 NMSA 1978, who was not a retired
22 member or a member on December 31, 2013 shall be as determined
23 by act of the legislature after receiving the actuarial study
24 required by Section 22-11-30.2 NMSA 1978.

25 [~~I.~~] J. Except as provided in Subsection K of this

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1 section, a member's average annual salary, pursuant to this
2 section, shall be computed on the basis of the last five years
3 for which contribution was made or upon the basis of any
4 consecutive five years for which contribution was made by the
5 member, whichever is higher; provided, however, that lump-sum
6 payments made after July 1, 2010 of accrued sick leave or
7 annual leave shall be excluded from the calculation of salary.

8 K. The average annual salary for a member who was
9 not a retired member or a member on December 31, 2013 is the
10 greatest aggregate amount of salary paid a member for four
11 consecutive years; provided that lump-sum payments of accrued
12 sick leave or annual leave shall be excluded from the
13 calculation of salary.

14 [~~J~~] L. Unless otherwise required by the provisions
15 of the Internal Revenue Code of 1986, members shall begin
16 receiving retirement benefits by age seventy and six months, or
17 upon termination of employment, whichever occurs later."

18 **SECTION 9.** A new section of the Educational Retirement
19 Act, Section 22-11-30.2 NMSA 1978, is enacted to read:

20 "22-11-30.2. [NEW MATERIAL] ACTUARIAL STUDY REQUIRED--
21 REPORT TO LEGISLATURE.--Taking into account the appropriate
22 retirement eligibility requirements, the local administrative
23 unit contribution rate, the member contribution rate, the
24 method for determining final average salary and the method for
25 determining cost-of-living adjustments, the board shall conduct

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1 an actuarial study to determine the annuity amount for members
2 covered who will not be retired members or members on December
3 31, 2013. The report shall be submitted to the appropriate
4 legislative interim committee no later than August 1, 2012 and
5 to the legislature no later than December 1, 2012."

6 SECTION 10. Section 22-11-31 NMSA 1978 (being Laws 1979,
7 Chapter 333, Section 2, as amended) is amended to read:

8 "22-11-31. COST-OF-LIVING ADJUSTMENT--ADDITIONAL
9 CONTRIBUTIONS.--

10 A. For the purposes of this section:

11 (1) "adjustment factor" means a multiplicative
12 factor computed to provide an annuity adjustment pursuant to
13 the provisions of Subsection B of this section;

14 (2) "annuity" means any benefit payable under
15 the Educational Retirement Act or the Public Employees
16 Retirement Reciprocity Act as a retirement benefit, disability
17 benefit or survivor benefit;

18 (3) "calendar year" means the full twelve
19 months beginning January 1 and ending December 31;

20 (4) "consumer price index" means the average
21 of the monthly consumer price indexes for a calendar year for
22 the entire United States for all items as published by the
23 United States department of labor;

24 (5) "next preceding calendar year" means the
25 full calendar year immediately prior to the preceding calendar

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1 year; and

2 (6) "preceding calendar year" means the full
3 calendar year preceding the July 1 on which a benefit is to be
4 adjusted.

5 B. On or after July 1, 1984, each annuity shall be
6 adjusted annually and cumulatively commencing on July 1 of the
7 year in which a member attains the age of sixty-five or on July
8 1 following the year a member retires, whichever is later. The
9 annuity shall be adjusted by applying an adjustment factor that
10 results in an adjustment equal to one-half of the percentage
11 increase of the consumer price index between the next preceding
12 calendar year and the preceding calendar year, except that the
13 adjustment shall not exceed four percent, in absolute value,
14 nor be less than two percent, in absolute value. In the event
15 that the percentage increase of the consumer price index is
16 less than two percent, in absolute value, the adjustment factor
17 shall be the same as the percentage increase of the consumer
18 price index. Annuities shall not be decreased in the event
19 that there is a decrease in the consumer price index between
20 the next preceding calendar year and the preceding calendar
21 year.

22 C. A retired member whose benefit is subject to
23 adjustment under the provisions of the Educational Retirement
24 Act in effect prior to July 1, 1984 shall have the member's
25 annuity readjusted annually and cumulatively under the

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1 provisions of that act in effect prior to July 1, 1984 until
2 July 1 of the year in which the member attains the age of
3 sixty-five, when the member shall have the annuity readjusted
4 annually and cumulatively under the provisions of this section.

5 A member who retires after attaining the age of sixty-five
6 shall have the member's annuity adjusted annually and
7 cumulatively commencing on July 1 of the year following the
8 member's retirement.

9 D. A retired member who returns to work shall be
10 subject to the provisions of this section as they exist at the
11 time of the member's final retirement.

12 E. Benefits of a member who is on a disability
13 status in accordance with Section 22-11-35 NMSA 1978 or a
14 member who the board certifies was disabled at regular
15 retirement shall be adjusted in accordance with Subsections B
16 and C of this section, except that the benefits shall be
17 adjusted annually and cumulatively commencing on July 1 of the
18 third full year following the year in which the member was
19 approved by the board for disability or retirement.

20 F. The board shall adjust the benefits of each
21 person receiving an annuity as of June 30, 1999. The
22 adjustment shall be made on July 1, 1999 on the basis of an
23 increase of two dollars (\$2.00) per month for each year since
24 the member's last retirement plus an increase of one dollar
25 (\$1.00) per month for each year of credited service at the time

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1 of the last retirement.

2 G. The provisions of this section do not apply to
3 members who were not retired members or members on December 31,
4 2013. The cost-of-living adjustment for those members shall be
5 determined pursuant to Section 22-11-31.1 NMSA 1978."

6 SECTION 11. A new section of the Educational Retirement
7 Act, Section 22-11-31.1 NMSA 1978, is enacted to read:

8 "22-11-31.1. [NEW MATERIAL] COST-OF-LIVING ADJUSTMENT FOR
9 NEW MEMBERS.--

10 A. The amount of annuity payable to a qualified
11 annuity recipient shall be increased three percent each July 1.
12 The amount of the increase shall be determined by multiplying
13 the amount of annuity inclusive of all prior adjustments by
14 three percent.

15 B. A qualified annuity recipient is:

16 (1) a normal retired member who has been
17 retired for at least two full calendar years from the effective
18 date of the latest retirement prior to July 1 of the year in
19 which the annuity is being adjusted;

20 (2) a normal retired member who has attained
21 age sixty-five years and been retired for at least one full
22 calendar year from the effective date of the latest retirement
23 prior to July 1 of the year in which the annuity is being
24 adjusted;

25 (3) a disability retired member who has been

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1 retired for at least one full calendar year from the effective
2 date of the latest retirement prior to July 1 of the year in
3 which the annuity is being adjusted;

4 (4) a survivor beneficiary who has received a
5 survivor annuity for at least two full calendar years; or

6 (5) a survivor beneficiary of a deceased
7 retired member who otherwise would have been retired at least
8 two full calendar years from the effective date of the latest
9 retirement prior to July 1 of the year in which the annuity is
10 being adjusted.

11 C. A qualified annuity recipient may decline an
12 increase in an annuity by giving the association written notice
13 of the decision to decline the increase at least thirty days
14 prior to the date the increase would take effect."

15 SECTION 12. EFFECTIVE DATES.--

16 A. The effective date of the provisions of Sections
17 5 and 9 of this act is July 1, 2011.

18 B. The effective date of the provisions of Sections
19 1 through 4, 6 through 8, 10 and 11 of this act is January 1,
20 2014.