I. INTRODUCTION

In August 2012, the SURS Article of the Pension Code was amended to add a new provision which significantly limits the ability of community colleges and other SURS-covered employers to employ or re-employ SURS annuitants. The legislation requires SURS to recoup the amount of an individual’s retirement annuity when that individual continues to work for a SURS-covered employer and earn compensation greater than 40 percent of the annuitant’s highest rate of earnings prior to retirement. This drastic measure is aimed at protecting the funded status of SURS, which as of June 30, 2011 was only 44.3% funded.¹ The amendment does not preclude the employment of SURS annuitants, but employers who choose to employ annuitants must proceed cautiously to avoid incurring significant cost.

II. TWO-PART TEST FOR IDENTIFYING AN “AFFECTED ANNUITANT”

A. Affected Annuitants

1. SURS employers who employ “affected annuitants” after August 1, 2013, will be charged an employer contribution equal to the annuitant’s annual retirement annuity.

2. A SURS annuitant becomes an “affected annuitant” on the first day of the academic year following the academic year in which the annuitant first meets both of the following conditions:

   a. Employed on or after August 1, 2013 by one or more SURS employers for a total of more than 18 paid weeks (inclusive of all employers in the same academic year). A “paid week” is defined as any calendar week in which the annuitant works at least one paid day; and

   b. Received compensation on or after August 1, 2013 that is greater than 40 percent of the highest annual rate of earnings earned prior to retirement.²

¹ See SURS 2011 Annual Report.

² The Act includes a narrow exception for compensation paid from federal, corporate, foundation, or trust funds or grants of State funds. Any periods of employment for which the annuitant is compensated solely from such sources will be excluded for determining whether the annuitant meets the 18 paid week’s condition. Similarly, any compensation received from one of these sources will be excluded for purposes of determining whether the annuitant meets the 40 percent condition.

Although the information contained herein is considered accurate, it is not, nor should it be construed to be legal advice. If you have an individual problem or incident that involves a topic covered in this document, please seek a legal opinion that is based upon the facts of your particular case.
3. Once an annuitant meets both conditions and becomes an “affected annuitant”, the annuitant will remain an “affected annuitant” unless and until the annuitant suspends his or her retirement annuity and becomes a participant again in SURS, making all required contributions.

4. These new limitations operate independently of the existing SURS “return to work” restrictions for annuitants that impose a reduction in the annuity amount.3

III. REQUIRED EMPLOYER CONTRIBUTION FOR EMPLOYING AN AFFECTED ANNUITANT

A. Contribution Calculation

If a SURS-covered employer employs an “affected annuitant”, the employer’s contribution to SURS will be equal to the affected annuitant’s annualized retirement annuity payable on the day in which the employer has employed the “affected annuitant”. In other words, the contribution will be calculated by multiplying by twelve the amount of the monthly annuity received by the annuitant in the first month of employment.

B. Notification

The Act requires SURS to notify the employer and certify the amount of the contribution whenever it determines that an employer is liable for an employer contribution. Employers will be required to pay the required contribution within one year after receipt of the certification from SURS. If a SURS-covered employer employs an “affected annuitant” for multiple academic years, that employer is required to make the contribution for each academic year of employment. If multiple employers concurrently employ an “affected annuitant” in the same academic year, then the required contribution will be allocated among the employers in proportion to the compensation paid by each.

C. Penalty

If SURS determines that an employer has failed to identify an “affected annuitant”, or has failed to notify SURS of any required information, the employer will make a payment to SURS in an amount equal to double the required contribution for employing an “affected annuitant”, i.e. twice the annual annuity.

IV. EMPLOYER NOTICE AND CERTIFICATION OBLIGATIONS

A. The Notice Requirement

Under the Act, the employer is obligated to identify whether an annuitant is an “affected annuitant” and to notify SURS when an “affected annuitant” is employed. Beginning August 1, 2013, employers will be required to notify SURS within 60 days of employing any SURS annuitant. The notice must include the following information:

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3 See section 15-139 of the Pension Code. 40 ILCS 5/15-139.
1. A copy of the annuitant’s employment contract, or if no contract exists, the anticipated length of employment and rate of pay;

2. whether or not the annuitant will be paid from federal, foundation, trust, or corporate funds, or state grants in which the principal investigator is named; and

3. the employer’s determination as to whether the annuitant is already an “affected annuitant”. By definition, the earliest academic year in which an annuitant will qualify as an “affected annuitant” will be 2014-2015.

B. Certification

In addition to providing such notice, employers must certify to SURS the following information:

- the number of paid days and paid weeks worked by the annuitant in the current academic year; and

- the amount of compensation paid to the annuitant in the academic year. 4

The Act authorizes SURS to specify the time, form, and manner of providing the required determinations, notifications, certification, and documentation required by the new law. The Act also empowers SURS to audit employers beginning with the 2013-2014 academic year to ensure compliance with the new limitations and notice requirements.

V. RECOMMENDATIONS

A. Current Annuitants

We recommend that SURS employers review their existing workforce to determine whether any SURS annuitants are currently employed. If those annuitants will be employed during the 2013-2014 academic year and subsequent years, employers will be required to notify SURS and certify all days worked and compensation provided to the annuitant during the 2013-2014 year. While only days worked and compensation provided to a SURS annuitant after August 1, 2013 will be used for determining whether such annuitant is considered an “affected annuitant”, employers should begin considering the impact of this new legislation. 5

By initiating this review process immediately, employers will ensure that they have adequate time to prepare and plan appropriately in advance of the 2014-2015 academic year, which is the first academic year in which an employer contribution may be imposed for employing an “affected annuitant”. In order to

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4 Including amounts paid from federal, foundation, trust, or corporate funds, or state grants in which the principal investigator is named.

5 While the Act does not specify, we do not believe that an individual who retired from SURS as a participant in the Self Managed Plan would qualify as an “affected annuitant.”
avoid incurring the contribution, employers will need to carefully monitor an
annuitant’s schedule and compensation throughout the 2013-2014 academic
year to ensure that one or both of the qualifying conditions for becoming an
“affected annuitant” are not satisfied.

B. Planning for Future Hiring

In addition to this initial review process, employers should also begin planning
and preparing for the notice requirement which will be effective beginning August
1, 2013. Employers may wish to amend their standard employment application to
require applicants to indicate whether he/she is presently a SURS annuitant.
Applicants should also be required to disclose all employment (present and past)
for a SURS covered employer.

Employers may also consider requiring any employed SURS annuitants to
complete a certification form at the beginning of their employment that details
their SURS-covered employment and identifies their highest rate of earnings
prior to retirement. While the Act creates a process whereby the annuitant can
request certification from SURS, employers have not been granted authorization
to request such information directly from SURS. Accordingly, employers will be
required to rely upon employees to obtain and provide this information. A
certification form provides documentation of the information relied on by the
employer in making the employment decision regarding a SURS annuitant.

By taking these recommended steps and planning appropriately, employers can
limit their potential exposure for incurring the employer contribution as a result of
employing an affected annuitant.