

Regular Session, 2010

SENATE BILL NO. 594

BY SENATORS B. GAUTREAUX AND APPEL

RETIREMENT SYSTEMS. Relative to public retirement systems, provides relative to investments. (7/1/10)

1 AN ACT

2 To amend and reenact R.S. 11:263(D), to enact R.S. 11:267.1, and to repeal R.S. 11:263(E),  
3 267, and 268, relative to public retirement systems; to provide relative to the  
4 prudent-man rule, investment authority and restrictions, and asset allocation; to  
5 provide for an effective date; and to provide for related matters.

6 Notice of intention to introduce this Act has been published.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 11:263(D) is hereby amended and reenacted and R.S. 11:267.1 is  
9 hereby enacted to read as follows:

10 §263. Prudent-man rule; investments

11 \* \* \*

12 ~~D.(1) Notwithstanding the prudent-man rule, no governing authority of any system~~  
13 ~~or fund governed by this Subpart shall invest more than fifty-five percent of the total~~  
14 ~~portfolio in equities, except as provided in Paragraph (2) of this Subsection or in R.S.~~  
15 ~~11:267.~~

16 ~~(2) The governing authority of any system to which R.S. 11:267(A) is inapplicable~~  
17 ~~may invest more than fifty-five percent of the total portfolio in equities, so long as not more~~

1 ~~than sixty-five percent of the total portfolio is invested in equities and at least ten percent of~~  
2 ~~the total equity portfolio is invested in one or more index funds which seek to replicate the~~  
3 ~~performance of the chosen index or indices.~~ **The investment policies of the individual**  
4 **systems, plans, and funds shall be structured to preserve and enhance principal over**  
5 **the long term and provide adequate liquidity and cash flow for the payment of benefits.**  
6 **The investments shall be diversified to minimize the risk of significant losses unless it**  
7 **is clearly prudent not to do so.**

8 \* \* \*

9 **§267.1. Investment authority and restrictions; asset allocation**

10 **A. In order to achieve an acceptable risk return asset allocation, the**  
11 **provisions of this Section shall be applicable to every system, plan, and fund**  
12 **governed by this Subpart.**

13 **B. For purposes of this Subpart, the term "equities" shall not include**  
14 **alternative investments. As used in this Section, the term "alternative**  
15 **investments" shall include but shall not be limited to the following:**

16 **(1) Privately placed investment pools, including without limitation**  
17 **private investment funds.**

18 **(2) Leveraged buyout funds.**

19 **(3) Mezzanine funds.**

20 **(4) Workout funds.**

21 **(5) Debt funds.**

22 **(6) Venture capital funds.**

23 **(7) Merchant banking funds.**

24 **(8) Funds of funds and secondary funds.**

25 **(9) Distressed debt and equity investments, including without limitation**  
26 **cases in which the investor may take control of the issuer.**

27 **(10) Debt derivative and equity derivative instruments of all types.**

28 **C. At least fifteen percent of the portfolio of each system, plan, or fund**  
29 **shall be invested in core fixed-income securities with an average quality rating**

1 of "A" or better as rated by a nationally recognized rating agency.

2 D. No more than sixty-five percent of the total portfolio of a system, plan,  
3 or fund shall be invested in equities. At least ten percent of the total equity  
4 portfolio of each system, plan, or fund shall be invested in one or more index  
5 funds which seek to replicate the performance of the chosen index or indices.

6 E. No more than twenty percent of the portfolio of a system, plan, or  
7 fund shall be invested in alternative investments, inclusive of committed capital.

8 F. Each investment shall have a mechanism for exit, and the board of  
9 trustees shall be given notice of such mechanism prior to committing assets to  
10 any investment.

11 G. There shall be no use of financial leverage by a system, plan, or fund  
12 in the purchase of direct real estate. There shall be no new direct ownership of  
13 real estate after June 30, 2010, unless acquired for use as an office building for  
14 a system, plan, or fund for the convenient transaction of its own business, and  
15 any real estate adjacent to or associated with such office building. Portions of  
16 any building not used for the business of the system, plan, or fund may be  
17 rented by the system, plan, or fund to others. In no case shall the amount  
18 invested by a system, plan, or fund in office property exceed ten percent of the  
19 system assets.

20 H. Any system not in compliance with the limitations imposed by this  
21 Section on July 1, 2010, shall make a good faith effort to come into compliance  
22 within a transition period of two years and in any event as soon as practicable  
23 thereafter. During this transition period, the system, plan, or fund shall not  
24 increase the percentage of assets committed to be invested in alternative  
25 investments, however, it shall be permitted during such period to continue to  
26 make investments as required by the commitments of the system, fund, or plan  
27 to alternative investments existing before the enactment of this Section.

28 I. Each board of trustees of a system, plan, or fund shall adopt a code of  
29 ethics for the consideration of, investment in, and disposition of alternative

1           investments.

2           Section 2. R.S. 11:263(E), 267, and 268 are hereby repealed.

3           Section 3. This Act shall become effective on July 1, 2010; if vetoed by the governor  
4 and subsequently approved by the legislature, this Act shall become effective on July 1,  
5 2010, or on the day following such approval by the legislature, whichever is later.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Lauren B. Bailey.

#### DIGEST

Present law (R.S. 11:263(D)) authorizes certain La. public retirement or pension systems, plans, or funds to invest up to 55% of the individual system's total portfolio in equities. Specifies that these plans may invest more than 55% of the total portfolio in equities, so long as not more than 65% of the total portfolio is invested in equities and at least 10% of the total equity portfolio is invested in one or more index funds which seek to replicate the performance of the chosen index or indices. Present law applies to:

- (1) Clerks' of Court Retirement and Relief Fund
- (2) District Attorneys' Retirement System
- (3) Firefighters' Retirement System
- (4) Municipal Employees' Retirement System of Louisiana
- (5) Municipal Police Employees' Retirement System
- (6) Parochial Employees' Retirement System of Louisiana
- (7) Registrars of Voters Employees' Retirement System
- (8) Sheriffs' Pension and Relief Fund
- (9) State Police Pension and Retirement System
- (10) Harbor Police Retirement System

Present law (R.S. 11:267) requires certain La. public retirement or pension systems, plans, or funds to invest 10% of the equity portfolio, regardless of the amount of the system's allocation to such equities, in one or more index funds which seek to replicate the performance of the chosen index or indices. Allows the systems to invest up to 65% of the total portfolio in equities. Present law provides that, for purposes of present law, the term "equity" shall mean ownership of a corporation represented by shares that are publicly traded on a recognized exchange, including the National Association of Securities Dealers Automated Quotation (NASDAQ). Present law applies to:

- (1) Louisiana State Employees' Retirement System
- (2) Teachers' Retirement System of Louisiana

- (3) Louisiana School Employees' Retirement System
- (4) Assessors' Retirement Fund

Proposed law repeals present law divisions and definition. Proposed law provides for a single standard. Provides that each of the systems, plans, or funds may invest up to 65% of its portfolio in equities. Requires 10% of the total equity portfolio of each system, plan, or fund to be invested in one or more index funds which seek to replicate the performance of the chosen index or indices.

Present law provides that the prudent-man rule shall require each fiduciary of a retirement or pension system, plan or fund and each board of trustees acting collectively on behalf of each system, plan, or fund to act with the care, skill, prudence, and diligence under the circumstances prevailing that a prudent institutional investor acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. Present law further provides that this standard requires the exercise of reasonable care, skill, and caution, and is to be applied to investments not in isolation, but in the context of the trust portfolio, and as part of an overall investment strategy, which shall include an asset allocation study and plan for implementation thereof, incorporating risk and return objectives reasonably suitable to that trust.

Proposed law (R.S. 11:263(D)) adds to the prudent-man rule that the investment policies of the systems shall be structured to preserve and enhance principal over the long term and provide adequate liquidity and cash flow for the payment of benefits. Proposed law also provides that the investments shall be diversified to minimize the risk of significant losses unless it is clearly prudent not to do so.

Proposed law (R.S. 11: 267.1) provides specific investment authority and restrictions relative to the asset allocation of the state and statewide retirement systems, plans, and funds and the Harbor Police Retirement System.

Proposed law provides that the term "equities" shall not include alternative investments. Specifies that "alternative investments" include: (i) privately placed investment pools, including without limitation private investment funds; (ii) leveraged buyout funds; (iii) mezzanine funds; (iv) workout funds; (v) debt funds; (vi) venture capital funds; (vii) merchant banking funds; (viii) funds of funds and secondary funds; (ix) distressed debt and equity investments, including without limitation cases in which the investor may take control of the issuer; and (x) debt derivative and equity derivative instruments of all types.

Proposed law provides that no more than 20% of the portfolio shall be invested in "alternative investments," inclusive of committed capital.

Proposed law mandates at least 15% of the portfolio shall be invested in core fixed-income securities with an average quality rating of "A" or better as rated by a nationally recognized rating agency.

Proposed law provides that all investments shall have a mechanism for exit and the respective boards of trustees shall be given notice of such mechanism prior to committing assets to any investment.

Proposed law prohibits the use of financial leverage in the purchase of direct real estate. Proposed law further prohibits any new direct ownership of real estate unless acquired for use as a system's, plan's, or fund's office for the convenient transaction of its own business; provided that portions of such buildings not used for its own business may be rented by the system, plan, or fund to others; provided, further, that the amount invested by a system, plan, or fund in office property shall not exceed 10% of the assets.

Proposed law provides that any system, plan, or fund which is not in compliance with the limitations imposed shall make a good faith effort to come into compliance within a transition period of two years and in any event as soon as practicable. Proposed law provides that during the transition period the system, plan, or fund shall not increase the percentage of assets committed to be invested in alternative investments but shall be permitted to continue to make investments as required by the existing commitments of the system, fund, or plan to alternative investments made before the enactment of proposed law.

Proposed law requires the respective boards of trustees of the systems, funds or plans shall adopt a code of ethics for the consideration of, investment in, and disposition of alternative investments.

Proposed law repeals obsolete provisions of present law.

Effective July 1, 2010.

(Amends R.S. 11:263(D); adds R.S. 11:267.1; repeals R.S. 11:263(E), 267, and 268)