

Regular Session, 2014

SENATE BILL NO. 283

BY SENATORS BROWN AND GUILLORY

RETIREMENT BENEFITS. Creates a portable retirement savings plan for private sector employees. (7/1/14)

1 AN ACT

2 To create the Louisiana Retirement Savings Plan; to provide legislative findings; to specify  
3 the purpose of the Plan; to establish a board of trustees; to provide for employer and  
4 employee rights and responsibilities under the Plan; to provide for provider selection;  
5 to provide for timing, amount, and methods of benefit payment; to provide for an  
6 effective date; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. The Legislature of Louisiana finds that retirement security is of great  
9 importance to individuals and to society as a whole. While social security provides some  
10 income replacement for the elderly, the disabled, and survivors, it is considered only one leg  
11 of a three-legged stool. If the social security payments are not supported by personal savings  
12 and some other source of monthly payments, the annuitant risks a reduced standard of living,  
13 possibly falling into poverty, and becoming reliant on aid from other people or government  
14 services. Personal savings rates are down. Even for those with some savings, it is difficult  
15 to accumulate sufficient wealth to assure a steady stream of livable income. Due to  
16 investment risk and fee schedules for individual investors, the net savings in specialized  
17 retirement accounts does not increase at a rate comparable to pooled investments managed

1 by experts. Additionally, the current wealth accumulation instruments available to private-  
2 sector employees, while providing for "roll-overs" or trustee-to-trustee transfers, are not  
3 seamlessly portable from one employer to another.

4 Section 2.(A) The Louisiana Retirement Savings Plan ("Plan") is established as a  
5 private entity, charged with overseeing the investment of the pool of assets accumulated  
6 through the contributions provided for in this Act. The purpose of the Plan is to provide  
7 retirement and death benefits to the participants while affording the maximum portability  
8 of these benefits for the participants.

9 (B) All assets, proceeds, or income of the Plan, and all contributions and payments  
10 made to the Plan to provide for retirement and related benefits shall be held, invested as  
11 authorized by law, or disbursed as in trust, for the exclusive purpose of providing such  
12 benefits, withdrawals, and administrative expenses and shall not be encumbered for or  
13 diverted to any other purpose.

14 Section 3.(A) There is hereby established the Louisiana Retirement Savings Plan  
15 Board of Trustees ("Board") to manage the funds of the Plan. The Board shall have five  
16 members, as follows:

17 (1) One member appointed by the governor from a list of six nominees submitted  
18 by the Louisiana Association of Business and Industry.

19 (2) One member appointed by the governor from a list of six nominees submitted  
20 by the AFL-CIO.

21 (3) One member appointed by the speaker of the House of Representatives and one  
22 member appointed by the president of the Senate from a list of six names submitted by the  
23 Louisiana Association of Chamber of Commerce Executives.

24 (4) The treasurer, ex officio, or his designee.

25 (B) On or before September 2, 2014, each nominating entity shall submit the initial  
26 list of nominees to the appointing authority. On or before October 1, 2014, the appointing  
27 authority shall notify the treasurer of the appointment. On or before November 3, 2014, the  
28 treasurer shall convene the initial meeting of the Board. The term of office of the initial  
29 board members shall expire concurrent with the expiration of the current governor's term.

1 (C) Beginning in 2016 and every four years thereafter, each nominating entity shall  
2 submit a list of nominees to the appointing authority by the fifteenth day of January. The  
3 appointing authority shall notify the treasurer of the appointment by the thirtieth day of  
4 January. The treasurer shall convene the first meeting of the Board for that term on or before  
5 the third Monday in February.

6 (D) The Board shall elect annually from its membership a chairman and such other  
7 officers as the Board deems necessary and appropriate.

8 (E) Within sixty days of a vacancy on the Board, the nominating entity shall submit  
9 a list of six nominees for the position to the appropriate appointing authority. The  
10 appointing authority shall notify the chairman of the Board of the appointment within  
11 seventy-five days of the vacancy.

12 (F) Each member of the Board, and the Board acting collectively on behalf of the  
13 Plan, shall act with the care, skill, prudence, and diligence under the circumstances  
14 prevailing that a prudent institutional investor acting in a like capacity and familiar with such  
15 matters would use in the conduct of an enterprise of a like character and with like aims.

16 Section 4.(A) The Board shall select no fewer than three companies to manage the  
17 pool of Plan assets attributable to the Plan participants selecting that provider. In setting the  
18 criteria for this selection, the Board shall consider, among other things, the following:

19 (1) The ability of the company to reduce individual risk and fees through the pooled  
20 asset management approach the company proposes to provide to Plan participants.

21 (2) The nature and extent of the rights and benefits to be provided for participating  
22 employees and their beneficiaries.

23 (3) The relation of the rights and benefits to the amount of the contributions to be  
24 made pursuant to the provisions of this Act.

25 (4) The suitability of the rights and benefits to the needs and interests of  
26 participating employees and their employers.

27 (5) The ability of the designated company or companies to provide the rights and  
28 benefits under this Act.

29 (B) The Board shall require the providers to manage the Plan assets with the

1 objective of providing each participant with a cost-effective stream of income in retirement  
2 and reducing benefit level volatility, particularly for those approaching retirement.

3 Section 5.(A) Except as provided in Subsection F of this Section, each private  
4 employer operating within the state of Louisiana that does not offer any other type of  
5 employer-sponsored retirement savings plan shall inform all employees of the provisions of  
6 this Act within thirty days after the effective date. Thereafter, each employer to which this  
7 Section applies shall inform each new employee of the provisions of this Act within thirty  
8 days of the hire date.

9 (B) Within a reasonable period of time before the first day of December before the  
10 beginning of each calendar year, the employer shall notify each employee eligible to  
11 participate in the Plan of each of the following:

12 (1) The payments that may be elected or treated as elected under the Plan.

13 (2) The opportunity to make the election to terminate participation in the Plan.

14 (3) The opportunity to make the election under the Plan to have contributions made  
15 at a different percentage or in a different amount.

16 (4) The opportunity under the Plan to modify the manner in which such amounts are  
17 invested for the upcoming calendar year.

18 (C) Each participating employer shall designate a provider for its employees. In the  
19 absence of an affirmative selection of a provider by the employee, contributions on behalf  
20 of the employee shall be made to the provider designated by the employer.

21 (D) An employer shall not be a fiduciary with respect to the selection, management,  
22 or administration of the Plan solely because such employer makes the Plan available;  
23 however, employers shall be responsible for meeting the enrollment requirements and  
24 transmitting contributions, as required under this Act.

25 (E) An employer that fails to comply with the provisions of this Act shall be subject  
26 to penalties.

27 (F) The provisions of this Act shall not mandate action by any church, any employer  
28 that has been in existence for fewer than nine months, or any employer with fewer than five  
29 employees; however, such an employer may voluntarily comply with the provisions of this

1 Act in order to provide the benefits to its employees.

2 Section 6.(A)(1) An employee is deemed to have elected to participate in the Plan  
3 unless he opts out on a form provided by the Board and transmitted to the Board by his  
4 employer. An employee's election not to participate in the Plan shall expire after two years.  
5 After such two-year period and absent a new election, the employee shall be treated as  
6 having made the election to participate with the minimum contribution to the employer's  
7 designated provider.

8 (2) An employee who elects to participate in the Plan, or who is deemed to have  
9 elected to participate, shall have a minimum of three percent of his gross wages withheld by  
10 his employer each pay period.

11 (3) Employers may, in addition to contributions an employee elects or is treated as  
12 having elected to have made, make a contribution of up to five thousand dollars per year to  
13 the Plan on behalf of each employee eligible to participate in the Plan, provided such  
14 contributions are made in a uniform manner and are not intended to benefit solely highly  
15 compensated employees.

16 (4) The employer shall forward no less than monthly to the Board, and the Board to  
17 the selected provider, all employee contributions together with any funds the employer  
18 chooses to contribute on the employee's behalf. The payments shall be made on or before  
19 the last day of the month following the month in which the compensation otherwise would  
20 have been payable to the employee.

21 (5) The Board may promulgate rules to ensure the contribution limitations do not  
22 conflict with federal law.

23 (B) The employee contributions shall not be subject to taxation by the state of  
24 Louisiana.

25 (C) An employee may elect to terminate participation in the Plan at any time, subject  
26 to a requirement for reasonable notice as established by the Board.

27 (D) A Plan participant may at any time withdraw his funds from his provider by  
28 terminating participation in the Plan as provided in Subsection C of this Section and subject  
29 to reasonable notice as established in the provider's agreement with the participant. The

1 withdrawal shall be subject to any applicable fees, penalties, and taxes.

2 Section 7.(A) A provider shall pay benefits in accordance with one of the following:

3 (1) In the case of a participant who does not die before the annuity starting date, the  
4 benefit payable to such participant shall be provided in the form of a qualified joint and  
5 survivor annuity as defined in Section 205(d)(1) of the Employee Retirement Income  
6 Security Act of 1974 (29 U.S.C. 1055(d)(1)).

7 (2) In the case of a participant who dies before the annuity starting date and who has  
8 a surviving spouse, a qualified preretirement survivor annuity as defined in Section  
9 205(d)(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1055(d)(2))  
10 shall be provided to the surviving spouse of such participant.

11 (B) A participant may elect the time to start receiving benefit payments from the  
12 Plan, except that a participant may not elect to receive benefit payments before reaching the  
13 age of sixty and must begin receiving benefit payments before the age of seventy-two.

14 Section 8. When the federal government provides for a tax-qualified plan structure  
15 that, if applied to the Plan, would allow the participants' contributions to be exempt from  
16 federal taxation, the Board shall take any action necessary to secure tax-qualified status for  
17 the Plan, including proposing amendments to this Act.

18 Section 9. The Board is hereby authorized to receive any appropriation or loan the  
19 legislature may provide for advancing the purposes of this Act.

20 Section 10. The state of Louisiana shall have no authority over the monies in the  
21 Plan trust. The state shall have no liability for and does not guarantee the funds or benefits  
22 of this Plan.

23 Section 11. This Act shall become effective upon signature by the governor or, if not  
24 signed by the governor, upon expiration of the time for bills to become law without signature  
25 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
26 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
27 effective on the day following such approval.

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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Laura Gail Sullivan.

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DIGEST

Brown (SB 283)

Proposed law creates the Louisiana Retirement Savings Plan (Plan), a retirement savings plan for certain private sector employees, for the purpose of providing portable retirement and death benefits.

Proposed law provides for legislative findings on the importance of retirement security.

Proposed law provides for a five-member board of trustees with terms of office concurrent with the governor:

- (1) The treasurer, ex officio, or his designee.
- (2) One member appointed by the governor from a list of six nominees submitted by the Louisiana Association of Business and Industry.
- (3) One member appointed by the governor from a list of six nominees submitted by the AFL-CIO.
- (4) One member appointed by the speaker of the House of Representatives and one member appointed by the Senate president from a list of six nominees submitted by the Louisiana Association of Chamber of Commerce Executives.

Proposed law provides that the board shall select no fewer than three companies to be providers for the Plan. Specifies that the providers shall manage assets with the objective of providing a cost-effective stream of retirement income for each participant.

Proposed law requires each private employer in the state that does not offer another employer-sponsored retirement savings plan to inform employees of the existence and details of the Plan provided in proposed law. Specifies that the mandate does not apply to churches or to new or small businesses.

Proposed law provides for employee and employer contributions to the Plan, selection of Plan providers, termination of participation in the Plan, withdrawal of funds, and annuitization of benefits.

Proposed law provides that Louisiana is not liable for and does not guarantee the funds or benefits of the Plan.

Effective upon signature of the governor or lapse of time for gubernatorial action.