

2018 Regular Session

HOUSE BILL NO. 40

BY REPRESENTATIVE IVEY

RETIREMENT/FIREFIGHTERS: Allows members of the Firefighters' Retirement System to allocate Deferred Retirement Option Plan funds between two separate interest bearing accounts

1 AN ACT

2 To amend and reenact R.S. 11:2257(E) through (K) and to enact R.S. 11:2257(G), relative  
3 to the Firefighters' Retirement System; to provide relative to the Deferred Retirement  
4 Option Plan; to provide relative to accounts into which plan funds are placed; and to  
5 provide for related matters.

6 Notice of intention to introduce this Act has been published  
7 as provided by Article X, Section 29(C) of the Constitution  
8 of Louisiana.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 11:2257(E) through (K) is hereby amended and reenacted and R.S.  
11 11:2257(G) is hereby enacted to read as follows:

12 §2257. Deferred Retirement Option Plan

13 \* \* \*

14 E. Upon the effective date of the commencement of participation in the plan,  
15 membership in the system shall terminate and neither employee nor employer  
16 contributions shall be payable. For purposes of this Section, compensation and  
17 creditable service shall remain as they existed on the effective date of  
18 commencement of participation in the plan. The monthly retirement benefits that  
19 would have been payable, had the member elected to cease employment and receive

1 a service retirement allowance, shall be paid into the ~~deferred retirement option plan~~  
2 Deferred Retirement Option Plan account. Upon termination of employment,  
3 deferred benefits shall be payable as provided by Subsection H of this Section.

4 F.~~(1)~~ A person who participates in this ~~program plan~~ shall not be eligible to  
5 receive a cost-of-living increase from the retirement system while participating and  
6 shall not be eligible until his employment which makes him eligible to be a member  
7 of this system has been terminated for at least one full year.

8 ~~(2)(a) G.(1)~~ With respect to any individual For a member who was eligible  
9 to participate in the Deferred Retirement Option Plan before January 1, 2004, after  
10 ~~a person who participates in the plan~~ plan participant has terminated the employment  
11 which made him eligible to be a member of this system and prior to accepting funds  
12 as provided by Subsection H of this Section, his individual account balance in the  
13 plan shall earn interest at a rate equal to the percentage rate of return of the system's  
14 investment portfolio, less the cost of merger notes, as certified by the actuary in his  
15 ~~yearly evaluation~~ annual valuation report, less the cost of administering the Deferred  
16 Retirement Option Plan to be determined annually by the board of trustees. This  
17 interest shall be credited to the retiree's individual account balance on an annual  
18 basis. However, if such an individual returns to employment which makes him  
19 eligible to be a member of this system, his individual account balance in the plan  
20 shall not earn interest while he remains so employed.

21 ~~(b) (2)~~ With respect to any individual For a member who becomes eligible  
22 to participate in the Deferred Retirement Option Plan on or after January 1, 2004,  
23 ~~and except as provided in Subparagraph (d) of this Paragraph,~~ all amounts ~~which that~~  
24 remain credited to the ~~individual's~~ plan participant's subaccount after termination of  
25 participation in the plan and prior to accepting funds as provided by Subsection H  
26 of this Section shall ~~be placed~~ be administered as follows:

27 (a) Unless the plan participant makes the election provided for in  
28 Subparagraph (b) of this Paragraph, the board of trustees shall place the credited  
29 amounts in liquid asset money market investments chosen at the discretion of the

1 board of trustees. Such account balances shall be credited with interest at the actual  
2 rate of return earned on such account balance investments less one-fourth of one  
3 percent per annum; ~~or at the option of the system, the funds may be credited to~~  
4 ~~subaccounts as herein established.~~

5 (i) ~~The contributing period shall mean that time period when funds are being~~  
6 ~~credited to the participant's subaccount which is maintained by the system.~~

7 (ii) ~~After the contributing period ends, the balance of the subaccount may~~  
8 ~~then be transferred to a self-directed subaccount. The period after the contributing~~  
9 ~~period ends shall be known as the investment period. Both subaccounts shall be~~  
10 ~~within the Deferred Retirement Option Plan established in this Section. Management~~  
11 ~~of the funds shall be by the system during the contributing period. When the funds~~  
12 ~~are transferred to the self-directed subaccount for the investment period, the system~~  
13 ~~is authorized to hire a third-party provider. The third-party provider shall act as an~~  
14 ~~agent of the system for purposes of investing balances in the self-directed~~  
15 ~~subaccounts of the participant as directed by the participant. The participant shall~~  
16 ~~be given such options as comply with federal law for self-directed plans.~~

17 (c) ~~The participant in the self-directed portion of this plan agrees that the~~  
18 ~~benefits payable to the participant are not the obligations of the state or the system~~  
19 ~~and that any returns and other rights of the plan are the sole liability and~~  
20 ~~responsibility of the participant and the designated provider to which contributions~~  
21 ~~have been made. Furthermore, each participant, in accordance with this provision,~~  
22 ~~shall expressly waive his rights as set forth in Article X, Section 29(A) and (B) of the~~  
23 ~~Louisiana Constitution as it relates to his subaccount in the self-directed portion of~~  
24 ~~the plan. By participating in the self-directed portion of the plan, the participant~~  
25 ~~agrees that he and the provider shall be responsible for complying with all applicable~~  
26 ~~provisions of the Internal Revenue Code. The participant also agrees that if any~~  
27 ~~violation of the Internal Revenue Code occurs as a result of the participant's~~  
28 ~~participation in the self-directed portion of the plan, it shall be the sole responsibility~~  
29 ~~and liability of the participant and the provider, not the state or the system. There~~

1       ~~shall be no liability on the part of and no cause of action of any nature shall arise~~  
2       ~~against the state, the system, or its agents or employees, for any action taken by the~~  
3       ~~participant for choices the participant makes in relationship to the funds in which he~~  
4       ~~chooses to place his subaccount balance.~~

5               ~~(d)(i)~~ (b)(i) ~~Notwithstanding the provisions of Subparagraphs (b) and (c) of~~  
6       ~~this Paragraph, any individual who becomes eligible to participate in the Deferred~~  
7       ~~Retirement Option Plan on or after January 1, 2004; Prior to the end of the specified~~  
8       ~~participation period, the plan participant may make an irrevocable written election~~  
9       ~~to waive his rights as set forth in Article X, Section 29 of the Louisiana Constitution~~  
10       ~~as it relates to the interest earned by his Deferred Retirement Option Plan account.~~  
11       ~~After he has terminated the employment which made him eligible to be a member~~  
12       ~~of this system, his individual account balance in the plan shall earn interest at a rate~~  
13       ~~equal to the percentage rate of return of the system's investment portfolio, less the~~  
14       ~~cost of merger notes as certified by the actuary in his yearly valuation report, less the~~  
15       ~~cost of administering the Deferred Retirement Option Plan to be determined annually~~  
16       ~~by the board of trustees. However, by as a precondition of making such an election,~~  
17       ~~the ~~person~~ plan participant shall expressly acknowledge that his account shall be~~  
18       ~~debited in the event and the value of his account balance may be permanently~~  
19       ~~reduced if the system's investment portfolio experiences a negative earnings rate.~~  
20       ~~The member shall further expressly acknowledge his consent to having the value of~~  
21       ~~his account balance permanently reduced as a result of the devaluation of system~~  
22       ~~assets caused by such a negative earnings rate. As a precondition of making this~~  
23       ~~election, the member shall expressly acknowledge his understanding of the~~  
24       ~~possibility of such account reductions.~~

25               (ii) The provisions of this Subparagraph shall apply prospectively only,  
26       beginning effective July 1, 2006. Waivers executed during the 2006 calendar year  
27       shall be applicable to interest that is posted effective on or after January 1, 2007.

28               (iii) ~~Any individual who becomes eligible to participate in the Deferred~~  
29       ~~Retirement Option Plan on or after January 1, 2004, and who does not elect to waive~~

1 his rights pursuant to Item (i) of this Subparagraph, shall continue to be governed by  
2 the provisions of Subparagraphs (b) and (c) of this Paragraph.

3 (iv) Should any participant's waiver executed pursuant to the provisions of  
4 Item (i) of this Subparagraph be declared null, void, inapplicable, or unenforceable,  
5 the participant's individual account shall be treated as though he had not executed  
6 such waiver, and the balance therein shall be adjusted to reflect such treatment.

7 (3)(a) A member who becomes eligible to participate in the Deferred  
8 Retirement Option Plan on or after January 1, 2019, upon termination of  
9 participation in the plan, may allocate the balance of his individual account into  
10 either or both of the subaccounts provided for in Subparagraphs (2)(a) or (b) of this  
11 Subsection. Prior to allocating funds to the subaccount provided for in Subparagraph  
12 (2)(b) of this Subsection, the member shall comply with the requirements of that  
13 Subparagraph.

14 (b) Such allocation shall be a one-time, irrevocable event. If the participant  
15 fails to choose an allocation within the period prescribed by the board of trustees, the  
16 entire balance of his account shall be irrevocably allocated into the subaccount  
17 provided for in Subparagraph (2)(a) of this Subsection.

18 H. ~~Upon~~ After termination of employment ~~at the end of the specified period~~  
19 ~~of participation, a participant in the plan, the plan participant~~ shall receive, at his  
20 option, a lump sum payment from ~~the~~ his account or accounts equal to the payments  
21 to the account or accounts, or a true annuity based upon the balance of his account  
22 or accounts, or he may elect any other method of payment if approved by the board  
23 of trustees. The monthly benefits that were being paid into the fund during the  
24 period of participation shall begin being paid to the retiree. Payment from any  
25 account shall not be made until employment is terminated. The plan participant may  
26 not change the optional allowance selected for his original benefit pursuant to R.S.  
27 11:2259.

28 I.~~(1)~~ If a participant dies during the period of participation in the ~~program~~  
29 plan, a lump sum payment equal to his account balance shall be paid to his named

1 beneficiary or, if none, to his estate; ~~in addition, and~~ normal survivor's benefits  
2 payable to survivors of retirees shall be payable as provided in this Chapter.

3 (2) ~~If a participant terminates employment prior to the end of the specified~~  
4 ~~period of participation he shall receive, at his option, a lump sum payment from the~~  
5 ~~account equal to the payments to the account, or a true annuity based upon his~~  
6 ~~account balance, or he may elect any other method of payment if approved by the~~  
7 ~~board of trustees.~~

8 (3) ~~The monthly benefits that were paid into the fund during the period of~~  
9 ~~participation shall begin being paid to the retiree.~~

10 J.(1) ~~If employment is not terminated at the end of the period specified for~~  
11 ~~participation,~~ At the end of the specified participation period, payments into the  
12 Deferred Retirement Option Plan account shall cease.

13 (2) ~~Payment from the account shall not be made until employment is~~  
14 ~~terminated, nor shall the monthly benefits being paid into the fund during the period~~  
15 ~~of participation be payable to the individual until he terminates employment.~~

16 (3) ~~Upon termination of employment a member shall receive, at his option,~~  
17 ~~a lump sum payment from the account equal to the payments to the account, or a true~~  
18 ~~annuity based upon his account balance, or he may elect any other method of~~  
19 ~~payment if approved by the board of trustees.~~

20 K.(1) If employment is not terminated at the end of the period specified for  
21 participation, ~~he~~ the plan participant shall resume active contributing membership  
22 in the system;.

23 (2) ~~Upon termination of employment, the monthly benefits which were being~~  
24 ~~paid to the fund shall begin to be paid to him. He may not change the option which~~  
25 ~~was originally selected.~~

26 (3) ~~Upon termination of employment,~~ and upon termination of employment,  
27 he shall receive an additional retirement benefit based on his additional service  
28 rendered since termination of participation in the fund, using the normal method of  
29 computation of benefit, subject to the following:

1 (a) If his period of additional service is less than thirty-six months, the  
2 average compensation figure used to calculate the additional benefit shall be that  
3 used to calculate his original benefit.

4 (b) If his period of additional service is thirty-six or more months, the  
5 average compensation figure used to calculate the additional benefit shall be based  
6 on his compensation during the period of additional service.

7 (c) The ~~option used~~ optional allowance applied to the additional retirement  
8 benefit shall be that applicable to the same optional allowance selected in accordance  
9 with R.S. 11:2259 for the original benefit.

10 (d) In no event shall the additional benefit exceed an amount which, when  
11 combined with the original benefit, equals one hundred percent of the average  
12 compensation figure used to compute the additional benefit.

13 ~~(4)~~(2) If ~~he~~ the plan participant dies or acquires a disability during the period  
14 of additional service, he shall be considered as having retired on the date of death or  
15 commencement of disability.

16 Section 2. Any Deferred Retirement Option Plan participant who became eligible  
17 to participate in the Deferred Retirement Option Plan between January 1, 2004, and  
18 December 31, 2018, who has a balance credited to his subaccount may, after termination of  
19 participation in the plan or within six months after the effective date of this Act, whichever  
20 is later, make a one-time, irrevocable election to allocate the balance in the same manner as  
21 provided for by R.S. 11:2257(G)(3) as enacted by this Act.

22 Section 3. Any Deferred Retirement Option Plan participant who has a balance  
23 credited to his Deferred Retirement Option Plan subaccount on December 31, 2018, may,  
24 after termination of participation in the plan and at any time within six months after the  
25 effective date of this Act, make a one-time, irrevocable election to convert the balance of his  
26 subaccount to a true annuity subject to the provisions of R.S. 11:2257 as amended by this  
27 Act.

- 1           Section 4. This Act shall become effective on July 1, 2018; if vetoed by the governor  
 2   and subsequently approved by the legislature, this Act shall become effective on July 1,  
 3   2018, or on the day following such approval by the legislature, whichever is later.

### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 40 Engrossed

2018 Regular Session

Ivey

**Abstract:** Provides the option to allocate Deferred Retirement Option Plan (DROP) account funds between a system rate account and money market account to members of the Firefighters' Retirement System (FRS) eligible to participate in DROP on or after Jan. 1, 2019, and eliminates board option to place certain funds in a self-directed account.

Present law allows a member of FRS with at least 20 years of service who is eligible for retirement to elect to participate in DROP. Upon entering DROP, the participant's membership in the system terminates and employer and employee contributions are no longer paid. The monthly retirement benefits that would have been payable had the participant entered retirement shall be paid into a DROP account. Upon termination of employment, the participant may not change the option elected for his original benefit.

For a member who was eligible to participate in DROP before Jan. 1, 2004, present law provides that after the participant terminates employment, his DROP account balance shall earn the same interest rate as the system's investment portfolio, less the cost of merger notes and administrative costs. The account balance may not be diminished or impaired.

For a member who was eligible to participate in DROP on or after Jan. 1, 2004, present law provides that after leaving DROP, the participant may irrevocably elect for his individual account balance to earn the same interest rate as the system's investment portfolio, less the cost of merger notes and administrative costs, provided he waives the protection afforded by present law prohibiting the diminishment or impairment of retirement benefits (system rate account). If the participant does not elect to place his DROP balance in a system rate account, his balance shall be placed in money market investments chosen by the FRS board, to be credited with interest at the actual rate of return earned by the account, less 1/4% (money market account), or the FRS board may choose to place the funds in a self-directed account. Proposed law requires that the member's election be made prior to the end of the participation period.

Proposed law eliminates the self-directed account as an option available to the board.

For a member eligible to participate in DROP on or after Jan. 1, 2019, proposed law provides that after leaving DROP, the participant may allocate the balance of his DROP account between a system rate account and a money market account, pursuant to all other conditions of present law. Provides that such allocation shall be a one-time, irrevocable event. If the participant fails to choose an allocation within a prescribed period, the entire balance of his DROP account shall be irrevocably allocated to a money market account.

Proposed law provides that a member eligible to participate in DROP between Jan. 1, 2004, and Dec. 31, 2018, and has a balance in his DROP account may elect to allocate the balance of his DROP account as provided by proposed law upon the earlier of retirement or within six months of the effective date of this Act.



Proposed law provides that a member with a balance in his DROP account as of Dec. 31, 2018, may convert the balance to a true annuity as provided by present law within six months of the effective date of this Act.

Effective July 1, 2018.

(Amends R.S. 11:2257(E)-(K); Adds R.S. 11:2257(G))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Retirement to the original bill:

1. Add requirement that election to earn the system's investment interest be made prior to the end of the participation period.
2. Reinstate present law requirement that plan participant may not change his original benefit option election.
3. Allow a current or past DROP participant to allocate the balance of his account as provided by proposed law.
4. Allow a current or past DROP participant to convert his account balance to a true annuity as provided by present law.
5. Add an effective date.