ENROLLED

Regular Session, 2011

ACT No. 364

HOUSE BILL NO. 481

BY REPRESENTATIVE BARRAS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

AN ACT

To amend and reenact R.S. 11:1402(6)(c) and (8), 1404(A), 1411(D), 1444(C) and (D), 1451, 1457(C), 1458(B)(1), (2)(a), (b), and (d), (3)(caption), and (4) and (E)(2) and (5)(c), to enact R.S. 11:1402(6)(d), 1444(E)(3), 1445(G), 1455(C), and 1458(A)(3), and to repeal R.S. 11:1404(E), 1457(B), 1458(B)(2)(c) and (E)(5)(d) and (e), relative to the Louisiana Assessors' Retirement Fund; to provide relative to compliance with applicable federal tax qualification requirements; to provide for an effective date; and to provide for related matters.

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

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 11:1402(6)(c) and (8), 1404(A), 1411(D), 1444(C) and (D), 1451, 1457(C), 1458(B)(1), (2)(a), (b), and (d), (3)(caption), and (4) and (E)(2) and (5)(c) are hereby amended and reenacted and R.S. 11:1402(6)(d), 1444(E)(3), 1445(G), 1455(C), and 1458(A)(3) are hereby enacted to read as follows:

§1402. Definitions

As used in this Chapter, the following words and phrases shall have the meanings ascribed to them unless the context clearly indicates otherwise:

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(6)

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(c) Compensation of a member in excess of one hundred fifty thousand dollars, as adjusted for increases in the cost of living under Section 401(a)(17)(B) of the Internal Revenue Code shall not be taken into account for years beginning on or after January 1, 1994, and ending before January 1, 2002. Compensation of a member in excess of two hundred thousand dollars as adjusted for increases in the cost of living under Section 401(a)(17)(B) of the Internal Revenue Code shall not be taken into account for years beginning on or after January 1, 2002. However, in determining monthly average final compensation for a member retiring on or after January 1, 2002, compensation which is permitted to be taken into account on or after January 1, 2002, but which occurred in a prior year that was included in the averaging period shall be taken into account. This limitation may be adjusted from time to time by rules promulgated by the board in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

(d) For purposes of compliance with federal tax-qualification requirements, the board may promulgate rules further defining "compensation" and "Section 415 compensation", in accordance with the provisions of the Administrative Procedure Act.

* * *

(8) "Actuarial equivalent" means a benefit of equivalent value to the accumulated contributions, annuity or benefits and regular interest, as the case may be, computed on the basis of such mortality and interest tables as shall be adopted by the board of trustees in accordance with the provisions of R.S. 11:1404. In the absence of resolution by the board, the following assumptions shall be used:

(a) Interest shall be compounded annually at a rate of seven and one-half percent per annum.

(b) Annuity rates shall be determined on the basis of ~~one hundred ten percent of~~ the ~~1971 Group Annuity Unisex Mortality Tables~~ mortality tables utilized for the latest system valuation approved by the Public Retirement Systems' Actuarial Committee.

* * *

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§1404. Amendment of provisions of retirement system

A. The provisions of the retirement system established by R.S. 11:1401 may be amended by action of the legislature in the same manner as any other statute may be amended by the legislature. In addition, action of the board with respect to the payment of cost-of-living adjustments, ~~with respect to~~ as provided in R.S. 11:241 through 248, the payment of employee contributions, ~~with respect to~~ actuarial assumptions~~,~~ as provided in R.S. 11:1402, and any changes required for conformity with requirements of the Internal Revenue Code, shall be considered amendments to the provisions of the retirement fund.

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§1411. Creditable service

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D. If a member takes a leave of absence governed by the Uniformed Services Employment and Reemployment Rights Act (USERRA), then upon his return to employment covered by the fund, the member shall share in employer contributions in the same manner as other members and shall not be considered to have terminated employment or to have incurred a break in service during such leave of absence. The employer shall be permitted to make an employer contribution in satisfaction of the affected employee's rights under USERRA. A member who does not return to employment shall not be affected by this provision. The board shall promulgate rules pursuant to the Administrative Procedure Act, which shall be part of the governing provisions of the fund, to implement the requirements of USERRA.

* * *

§1444. Limitation on payment of benefits

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C. If a survivor benefit is payable to a specified person or persons or if a benefit is payable at death under an option elected pursuant to R.S. 11:~~1932~~ 1423, the member shall be considered to have designated such person as a designated beneficiary hereunder. If there is more than one such person, then the oldest such person shall be considered to have been so designated, or, if none, then the oldest

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person entitled to receive a survivor benefit shall be considered to have been so designated. The designation of a designated beneficiary hereunder shall not prevent payment to multiple beneficiaries but shall only establish the permitted period of payments.

D. Distributions from the system shall be made in accordance with the requirements set forth in Section 401(a)(9) of the Internal Revenue Code, including the minimum distribution incidental benefit rules applicable thereunder. The board may promulgate rules in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., to carry out the requirements of this Subsection, and the board may adopt provisions that amend the other provisions of this Section.

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(3) The board may promulgate rules in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., regarding any change in the required beginning date necessary for compliance with federal tax-qualification requirements.

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§1445. Guaranteed return of accumulated contributions

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G. The board may promulgate rules in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., that specify the manner of distributions and the direct rollover of such distributions.

§1451. Conditions for payment of benefit

No regular, disability, survivor, or other benefit from the fund, including a refund of accumulated employee contributions and any optional benefit, shall be payable until and unless a written application therefor is filed with the board providing such information and in such form as the board may require and until and unless all contributions by or for the member or former member have been received by the board and until and unless the member or former member has terminated

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service. This Section shall not preclude the payment of benefits consistent with R.S. 11:1444 and any rules promulgated by the board thereunder.

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§1455. Withdrawal of accumulated employee contributions; repayment

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C. The board may promulgate rules in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., that permit the repayment from funds held for the member's benefit in another retirement plan or individual retirement account or annuity.

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§1457. Qualified plan; direct rollover; eligible retirement plan; election

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C. As used in this Section, the following terms shall mean the following:

(1) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.

(2) "Distributee" means a member or former member. In addition, the member's or former member's surviving spouse, or the member's spouse or former member's spouse with whom a benefit or return of employee contributions is to be divided pursuant to R.S. 11:291(B) are distributees with reference to an interest of the member or former spouse. The board may promulgate rules in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., that change this definition in order to conform to the provisions of the Internal Revenue Code and regulations thereunder.

(3) "Eligible retirement plan" means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Code, or a qualified trust described in Section 401(a) of the Internal Revenue Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual

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retirement annuity. "Eligible retirement plan" shall also mean an annuity contract described in Section 403(b) of the Internal Revenue Code and an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state agreeing to account separately for amounts transferred into such plan from this fund. A distribution to a surviving spouse or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order shall not make the retirement plan ineligible. The board may promulgate rules in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., that change this definition in order to conform to provisions of the Internal Revenue Code and regulations thereunder.

(4) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments, not less frequently than annually, made for the life or life expectancy of the distributee or the joint lives or joint life expectancies of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; and the portion of any distribution that is not includable in gross income, determined without regard to the exclusion for net unrealized appreciation with respect to employer securities. A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income; however, such portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Internal Revenue Code that agrees to account separately for amounts so transferred, including accounting separately for the portion of such distribution which is includable in gross income and the portion of such distribution which is not includable. The fund shall accept participant rollover contributions, direct rollovers

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of distributions made after December 31, 2001, or both, from the following types of plans: individual retirement accounts or annuities or plans qualified under Section 401(a) or Section 403(a) of the Internal Revenue Code, or governmental deferred compensation arrangements subject to Section 457(b) of the Internal Revenue Code or tax sheltered annuities or other arrangements under Section 403(b) of the Internal Revenue Code, beginning on the effective date specified; but only for the purposes of repaying prior distributions or purchasing service credits as permitted under Section 415(k)(3) and Section 415(n) of the Internal Revenue Code. The board may promulgate rules in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., that change this definition in order to conform to provisions of the Internal Revenue Code and regulations thereunder.

§1458. Computation of retirement benefits

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(3) The board may promulgate rules in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., for purposes of compliance with Section 415 of the Internal Revenue Code which modify the requirements hereunder.

B.(1) Maximum annual benefit. The retirement benefit of any member of the retirement system and which is not attributable to the member's after-tax employee contribution, when expressed as an annual benefit may not exceed one hundred sixty~~-five~~ thousand dollars per year, as adjusted for increases in the cost of living pursuant to Section 415 of the Internal Revenue Code. For purposes of determining whether a member's benefit exceeds this limitation, if the normal form of benefit is other than a single life annuity, such form shall be adjusted actuarially to the equivalent of a single life annuity. This single life annuity shall not exceed the maximum dollar limitation outlined in this Paragraph. No adjustment is required for qualified joint and survivor annuity benefits; pre-retirement disability benefits; or pre-retirement death benefits.

(2)(a) Adjustment if benefit begins ~~at age other than social security retirement age~~ before age sixty-two. If benefit distribution begins before age sixty-

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two, the actual retirement benefit shall not exceed the adjusted dollar limitation. The adjusted dollar limitation shall be the equivalent, determined in a manner consistent with reduction of benefits for early retirement under the federal Social Security Act, ~~of one hundred sixty-five thousand dollars~~ of one hundred sixty thousand dollars, as adjusted. ~~, or, if greater, for a benefit beginning on or after age fifty-five, seventy-five thousand dollars per year. For benefits beginning before age fifty-five, the dollar limitation shall not exceed the actuarial equivalent of seventy-five thousand dollars per year beginning at age fifty-five.~~

(b) Adjustment if benefit begins after ~~social security retirement age~~ age sixty-five. If benefit distribution begins after ~~social security retirement age~~ age sixty-five, the dollar limitation shall be increased to the equivalent of one hundred sixty~~-five~~ thousand dollars beginning at social security retirement age, as adjusted for increases in the cost of living pursuant to Section 415 of the Internal Revenue Code.

* * *

(d) Interest assumption. The interest rate used for adjusting the maximum limitations above shall be:

(i) For benefits commencing before ~~social security retirement age and for forms of benefit other than straight life annuity~~ age sixty-two, the greater of five percent~~,~~ or the rate ~~used to determine actuarial equivalence for other purposes of this retirement system.~~ specified under the fund.

(ii) For benefits commencing after ~~social security retirement age~~ age sixty-five, the lesser of five percent~~,~~ or the rate ~~used to determine actuarial equivalence for other purposes under this retirement system.~~ specified under the fund.

(iii) For purposes of adjusting benefits for those benefits payable in a form other than a straight life annuity, the greater of five and one-half percent, the rate specified under the fund, and the rate that provides a benefit of not more than one hundred five percent of the benefit that would be provided if the applicable interest rate under Section 417(e)(3) of the Internal Revenue Code were the rate being used.

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(3) Adjustment for less than ten years of participation ~~or service~~.

* * *

(4) Annual adjustment. The one hundred sixty~~-five~~ thousand dollar limitation ~~and seventy-five thousand dollar limitation~~ provided in this Subsection shall be adjusted annually to the maximum dollar limits allowable as determined by the commissioner of the Internal Revenue Service under Section 415(d) of the Internal Revenue Code.

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(2) ~~If the employer maintains or at any time maintained one or more qualified defined contribution plans covering any member in this system, a welfare benefit fund as defined in Internal Revenue Code Section 419(e), or an individual medical account as defined in Internal Revenue Code Section 415(l)(2), the sum of the member's defined contribution fraction and defined benefit fraction shall not exceed 1.0 in any limitation year, and the annual benefit otherwise payable to the member under this system shall be limited in order to satisfy such limitation. This provision shall no longer be effective for plan years beginning after December 31, 1999.~~ If the employer maintains one or more qualified defined contribution plans covering a member of the fund, the amount allocated as an annual addition to a member shall not exceed the defined contribution dollar limitation. The board may promulgate rules in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., that determine how such aggregation shall take place, what portion of the fund shall be considered a defined contribution plan, and what benefits generated by member contributions shall be considered attributable to a defined contribution plan.

* * *

(5) The amount of annual additions which may be credited to the member's account for any limitation year shall not exceed the maximum permissible amount. Contributions and benefits under any other plan of the employer, to the extent that

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an adjustment is required to satisfy the requirements of this Section in the aggregate, shall be limited or reduced to the extent necessary to satisfy such requirement without reducing accrued benefits; however, only after such other plans have been modified shall the benefits and contributions under this plan be reduced. As soon as it is administratively feasible after the end of the limitation year, the maximum permissible amount for the limitation year shall be determined on the basis of the member's actual compensation for the limitation year. If there is an excess amount, the excess shall be disposed of as follows:

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(c) ~~If, after the application of Subparagraph (b) of this Paragraph, an excess amount still exists, and the member is covered by the plan at the end of the limitation year, the excess amount in the member's account shall be used to reduce employer contributions, including any allocation of forfeitures, for such member in the next limitation year if necessary.~~ For a limitation year beginning on or after July 1, 2007, excess amounts allocated to a member shall be corrected through the Employee Plans Compliance Resolution System or such other method permitted by the secretary of the treasury.

* * *

Section 2. R.S. 11:1404(E), 1457(B), and 1458(B)(2)(c) and (E)(5)(d) and (e) are hereby repealed.

Section 3. This Act shall become effective on July 1, 2011; if vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on July 1, 2011, or on the day following such approval by the legislature, whichever is later.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

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