ENROLLED

Regular Session, 2011

ACT No. 399

HOUSE BILL NO. 569

BY REPRESENTATIVE ARNOLD

AN ACT

To amend and reenact R.S. 11:185(C), 3685.1(A)(2) and (B)(2)(a), 3685.2(B) and (C), 3688(A)(8), (9), (10), and (11), (B), (C), and (D), 3690, and 3695 and to enact R.S. 11:185(D), 3685.2(D) and (E), 3688(A)(12) and (E), 3696, 3697, and 3698, and to repeal R.S. 11:3694, relative to the Harbor Police Retirement System for the Port of New Orleans; to provide with respect to financing, contributions, benefits, administration, and board of trustee education; to provide an effective date; and to provide for related matters.

Notice of intention to introduce this Act has been published as provided by Article III, Section 13 and Article X, Section 29(C) of the Constitution of Louisiana.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 11:185(C), 3685.1(A)(2) and (B)(2)(a), 3685.2(B) and (C), 3688(A)(8), (9), (10), and (11), (B), (C), and (D), 3690, and 3695 are hereby amended and reenacted and R.S. 11:185(D), 3685.2(D) and (E), 3688(A)(12) and (E), 3696, 3697, and 3698 are hereby enacted to read as follows:

§185. Educational requirements for members of retirement system boards of trustees

* * *

C. The provisions of this Section shall apply to the following local retirement system: Harbor Police Retirement System.

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~~C.~~D.(1) For purposes of this Section "actuarial science" means the application of mathematical and statistical methods to estimate future payment for benefits, to set forth an orderly and convenient way to provide the funds necessary to make those future payments, to determine the effects of asset and liability experience on pension fund costs, and to study the demographics of plan members, particularly in relation to long-term risk assessments, mortality, and morbidity.

(2) For each system to which the provisions of this Section apply, every member of the board of trustees shall complete continuing education or professional development training during each twelve-month period from September first to August thirty-first as provided in this Subsection. By October fifteenth of each year, the board of trustees of ~~each state and statewide retirement system~~ system to which this Section applies shall submit to the House and Senate committees on retirement a letter stating whether or not each member of that board has met the requirements of this Section in the previous twelve-month period and giving the date or dates upon which the required training hours were completed by each member.

(3) Each year, any member to whom this Section applies shall attend at least eight hours of investment training, two hours of actuarial science information education, one hour of education regarding the laws, rules, and regulations applicable to his system, and one hour of instruction on fiduciary duty and ethics. These training hours may be conducted by the staff of the respective retirement systems or by outside experts. Two or more systems may combine any such training. Any member who is elected or appointed to the board for the first time on or after June first shall only be required to comply with the provisions of Paragraph (4) of this Subsection.

(4) Except as otherwise provided by the constitution or in R.S. 42:3.1, no board member to whom this Section applies shall receive per diem during any calendar year unless and until he has completed the fiduciary and ethics requirement and at least one hour each of investment, actuarial science, and legal education in the current twelve-month cycle. The system shall submit evidence of training in

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compliance with this Paragraph to the speaker of the House of Representatives and the president of the Senate within fourteen days after the completion thereof.

(5) Additionally, no new board member to whom this Section applies shall be permitted to vote on any matter until he has completed one hour of education in each of the four required areas.

* * *

§3685.1. Limitations on payment of benefits

A.

* * *

(2) If the member is married and his spouse survives him, the designated beneficiary for at least a qualified joint and survivor annuity and fifty percent of the Deferred Retirement Option Plan Account shall be his spouse, unless such spouse has consented to the contrary in writing before a notary public. <u>For purposes of this Paragraph, "spouse" shall mean that person who is married to the member under a legal regime of community of acquets and gains on his effective date of retirement or effective date of participation in the DROP, whichever is earlier.</u>

* * *

B.

* * *

(2) However, the provisions of Paragraph (1) of this Subsection shall not apply:

(a) To any portion of a member's benefit which is payable to or for the benefit of a designated beneficiary, over the life of or over the life expectancy of such beneficiary, provided that such distributions begin no later than one year after the date <u>of the member's death, or in the case of the member's surviving spouse, the date</u> the member would have attained the age of seventy years and six months. ~~If the designated beneficiary is the member's surviving spouse and if the surviving spouse dies before the distribution of benefits commences, then Paragraph (1) of this Subsection shall be applied as if the surviving spouse were the member.~~ If the designated beneficiary is a child of the member, for purposes of satisfying the

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requirement of Paragraph (1) of this Subsection, any amount paid to such child shall be treated as if paid to the member's surviving spouse if such amount would become payable to such surviving spouse, if alive, upon the child's reaching age eighteen or, if later, upon the child's completing a designated event. For purposes of this Subparagraph, a designated event shall be the later of the date the child is no longer disabled or the date the child ceases to be a full-time student or attains age twenty-three, if earlier.

* * *

§3685.2. Computation of retirement benefits

* * *

B.~~(1) If a member is a member or participant in more than one defined benefit pension plan maintained by the state, its agencies, or its political subdivisions, then such member's benefit, considered in the aggregate after taking into account the benefits provided by all such retirement plans, shall not exceed the limitations provided in this Subsection.~~

~~(2) The benefits payable with respect to a participant under any defined benefit plan shall be deemed not to exceed the limitations of Section 415(b) of the Internal Revenue Code if:~~

~~(a) The retirement benefits payable with respect to such participant under such plan and under all other defined benefit plans of the employer do not exceed ten thousand dollars for the plan year or for any prior plan years.~~

~~(b) The employer has not at any time maintained a defined contribution plan in which the participant participated.~~

The annual retirement benefit of any member of the retirement system who is not a qualified participant, as defined by Paragraph (2) of Subsection A of this Section, and which is not attributable to the member's after-tax employee contribution, cannot exceed the lesser of ninety thousand dollars or one hundred percent of such member's average compensation. For purposes of determining whether a member's benefit exceeds those limitations, the following shall apply:

(1) Adjustment if benefit not single life annuity.

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(a) 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 or percent limitations outlined in this Section.

(b) No adjustment is required for the following:

(i) Qualified joint and survivor annuity benefits.

(ii) Pre-retirement disability benefits.

(iii) Pre-retirement death benefits.

(iv) Post-retirement medical benefits.

(2) Adjustment if benefit commences before social security retirement age. If benefit distribution commences before social security retirement age, the actual retirement benefit shall not exceed the lesser of one hundred percent of the member's average compensation or 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 Social Security Act, of ninety thousand dollars commencing at social security retirement age. For purposes of this adjustment, survivor benefits, that portion of a joint and survivor annuity which is the survivor benefit, and any other ancillary benefits shall not be taken into account.

(3) Adjustment if benefit commences after social security retirement age. If benefit distribution commences after social security retirement age, the dollar limitation shall be increased to the equivalent of ninety thousand dollars commencing at social security retirement age.

(4) Social security retirement age defined. For purposes of this Subsection, the term "social security retirement age" means the age used as the retirement age under 42 U.S.C. §416(1) of the Social Security Act, except that such Section shall be applied:

(a) Without regard to the age increase factor.

(b) As if the early retirement age under 42 U.S.C. §416 were sixty-two.

~~(3)~~(5) The interest rate used for adjusting the maximum limitations of Section 415(b) of the Internal Revenue Code shall be as follows:

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(a) For benefits commencing before social security retirement age and for forms of benefits other than straight life annuity, the greater of five percent or the rate used to determine the actuarial equivalent.

(b) For benefits commencing after social security retirement age, the lesser of five percent or the rate used to determine actuarial equivalent.

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

(a) If retirement system benefits are payable under this retirement system to a member who has less than ten years of participation in the retirement system, the dollar limitation referred to in the Introductory Paragraph of this Subsection shall be multiplied by a fraction, the numerator of which is the member's number of years of participation in the system, not greater than ten, and the denominator of which is ten.

(b) If retirement benefits are payable under this retirement system to a member who has less than ten years of service with the employer, the percentage limitation referred to in the Introductory Paragraph of this Subsection and the dollar limitation referred to in Paragraph (9) of this Subsection shall be multiplied by a fraction, the numerator of which is the member's number of years of service with the employer, not greater than ten, and the denominator of which is ten.

(7) Annual adjustment. The ninety thousand dollar limitation provided in this Subsection shall be adjusted annually to the maximum dollar limits allowable by the secretary of the Treasury of the United States under Section 415(d) of the Internal Revenue Code, such adjustments to take effect on the first day of each fiscal year following December 31, 1987. The adjustment shall not exceed the adjustment in effect for the calendar year in which the fiscal year of the system begins. The adjusted earlier limitation is applicable to employees who are members of the system and to members who have retired or otherwise terminated their service under the system with a nonforfeitable right to accrued benefits, regardless of whether they have actually begun to receive benefits. This system shall be considered specifically to provide for such post-retirement adjustments. For any limitation year beginning after separation from service occurs, the annual adjustment factor is a fraction, the numerator of which is the adjusted dollar limitation for the limitation year in which

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the compensation limitation is being adjusted and the denominator of which is the adjusted dollar limitation for the limitation year in which the member separated from service. No adjustment shall be permitted with respect to post October 14, 1987, limitations.

(8) If a member is a member or participant in more than one defined benefit pension plan maintained by the state, its agencies, or its political subdivisions, then such member's benefit, considered in the aggregate after taking into account the benefits provided by all such retirement plans, shall not exceed the limitations provided in this Subsection.

(9) The benefits payable with respect to a participant under any defined benefit plan shall be deemed not to exceed the limitations of Section 415(b) of the Internal Revenue Code if:

(a) The retirement benefits payable with respect to such participant under such plan and under all other defined benefit plans of the employer do not exceed ten thousand dollars for the plan year or for any prior plan years.

(b) The employer has not at any time maintained a defined contribution plan in which the participant participated.

~~(4)~~(10) No benefit shall be considered to have exceeded the limitation provisions of this Section if the amount of the initial benefits did not exceed the limitations of Section 415(b) of the Internal Revenue Code, nor exceed any comparable provision in effect at the time of the initial payment, and the amount of any subsequent benefits payable in any year did not exceed the amount of the initial benefits, except for allowable cost-of-living adjustments.

C. The board of trustees shall make no actuarial adjustment under this Section by reason of the member's retirement after normal retirement age.

D. The board of trustees shall adopt rules for the administration of the limits provided in this Section and the limitations under Section 415 of the Internal Revenue Code including adjustments in the annual dollar limitation to reflect any cost-of-living adjustments authorized by the Internal Revenue Code.

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~~C~~ E.(1) The provisions of this Section shall apply if any member is covered, or has been covered, by another plan maintained by the employer, including a qualified plan or a welfare benefit plan as defined in Internal Revenue Code Section 419(e), or an individual medical account as defined by Internal Revenue Code Section 415(l)(2).

(2) If a member is or has ever been covered under more than one defined benefit plan maintained by the employer, the sum of the members annual benefit from all such plans shall not exceed the maximum amount permissible.

(3)(a) 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 by Internal Revenue Code Section 415(l)(2), the sum of the member's defined contribution fraction and defined benefit fraction shall not exceed one percent in any limitation year and the annual benefit otherwise payable to the member under this system shall be limited in order to satisfy such limitations. This provision shall no longer be effective for plan years beginning after December 31, 1999.

* * *

§3688. Administration

A. Board of Trustees.

* * *

(8) The Board of Trustees shall elect from its membership a Chairman and shall by a unanimous vote appoint a Secretary who shall be one of its members. ~~The Board of Trustees shall engage such actuarial and other services as shall be required to transact the business of the retirement system. The compensation of all persons engaged by the Board of Trustees, and all other expenses of the Board necessary for the operation of the retirement system shall be paid at such rates and in such amounts as the Board of Trustees shall approve.~~

(9) The Board of Trustees shall engage such actuarial and other services as shall be required to transact the business of the retirement system. The

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compensation of all persons engaged by the Board of Trustees, and all other expenses of the board necessary for the operation of the retirement system shall be paid at such rates and in such amounts as the Board of Trustees shall approve.

~~(9)~~(10) The Board of Trustees shall keep in convenient form such data as shall be necessary for actuarial valuation of the various funds of the retirement system, and for checking the experience of the system.

~~(10)~~(11) The Board of Trustees shall keep a record of all of its proceedings which shall be open to public inspection. It shall publish annually a report showing the fiscal transactions of the retirement system for the preceding fiscal year, the amount of the accumulated cash and securities of the system, and the last balance sheet showing the financial condition of the system by means of an actuarial valuation of the assets and liabilities of the retirement system.

~~(11)~~(12)(a) ~~Notwithstanding any other provisions of law to the contrary, the~~ The members of the board of trustees of the Harbor Police Retirement System shall receive for attendance at meetings of the board a per diem of seventy-five dollars per meeting, provided funds are available for this purpose and Civil Service rules are followed.

(b) The members of the board of trustees shall receive a per diem for each meeting of the board. However, no member of the board shall be eligible for a per diem for more than six board meetings in any year.

B. Legal advisor. The Attorney General shall be the legal advisor of the Board of Trustees.

C. Medical ~~board~~ advisor. The Board of Trustees ~~shall~~ may designate a ~~Medical Board to be composed of three~~ group of licensed medical professionals to provide medical advice to the trustees related to disability and other medical determinations. The trustees will obtain the advice of physicians not eligible to participate in the retirement system to provide such advice. If required, other physicians may be employed to report on special cases. The board of trustees may use ~~Medical Board shall~~ the medical advisor firm to provide physicians to arrange for and pass upon all medical examinations required under the provisions of this

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Subpart, and the physicians approved by the trustees shall investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement, and shall report in writing to the Board of Trustees its conclusion and recommendations upon the matters referred to it.

D. Actuary; duties and actuarial assumptions. (1) The Board of Trustees and the Board of Commissioners of the Port of New Orleans shall jointly designate an actuary who shall be the technical advisor of the Board of Trustees on actuarial matters regarding the operation of the fund created by the provisions of this Subpart, and shall perform such other duties as are required in connection therewith.

(2) ~~Immediately after the establishment of the retirement system, the actuary shall make such investigation of the mortality, service and compensation experience of the members of the system as he shall recommend and the Board of Trustees shall authorize, and on the basis of such investigation he shall recommend for adoption by the Board of Trustees such tables and such rates as are required in Subparagraphs (3)(a) and (b) of this Section.~~ The Board of Trustees shall adopt all actuarial tables, assumptions, and ~~certify~~ rates~~, and as soon as practicable thereafter the~~. The actuary shall make ~~a valuation~~ valuations and determinations based on such tables, assumptions, and rates ~~of the assets and liabilities of the funds created by this Subpart~~.

(3) ~~In the year of nineteen hundred seventy-two, and at~~ At least once in each five-year period ~~thereafter~~, and upon approval of the Board of Trustees, the actuary shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries of the retirement ~~system,~~ system. ~~and shall make a valuation of the assets and liabilities of the funds of the system, and taking into account the result of such investigation and valuation, the~~ The Board of Trustees shall~~:~~

~~(a) Adopt~~ adopt for the retirement system such mortality, service, and other tables and actuarial assumptions as shall be deemed necessary.

~~(b) Certify the rates of contribution payable by the employer on account of new entrants.~~

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(4) On the basis of such tables and actuarial assumptions as the Board of Trustees shall adopt, the actuary shall make an annual valuation of the assets and liabilities of the funds of the system created by this Subpart.

(5)(a) Unless different actuarial assumptions are formally adopted and disclosed, the following assumptions shall be used in determining actuarial equivalents:

(i) Interest shall be compounded annually at the rate of seven percent per annum.

(ii) Annuity rates shall be determined on the basis of the ~~1971 Group Annuity Unisex Mortality Tables.~~ most current mortality table recommended by the Society of Actuaries for retirement systems.

(iii) Effective July 1, 2011, interest for calculating transfers into the Harbor Police Retirement System and for buying back refunded service shall be eight and one-quarter percent per annum.

(b) The ~~board of trustees~~ Board of Trustees may authorize the use of interest and mortality rates in determining the actuarial equivalents which are different from the actuarial assumptions used for other purposes in this Subpart. Any change in such actuarial assumptions shall be considered a part of this retirement system and shall be considered an amendment to the provisions of this Section. In order to be effective, such change must be formally adopted by the board of trustees and disclosed to members of the retirement system.

E. All service providers including the certified public accountant, actuary, legal consultant, bank custodian, investment advisor, and plan administrator shall be selected jointly by the board of trustees and the Board of Commissioners of the Port of New Orleans.

* * *

§3690. Method of financing

~~A. All of the assets of the retirement system shall be credited according to the purpose for which they are held to one of four funds, namely, the Annuity~~

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~~Savings Fund, the Annuity Reserve Fund, the Pension Accumulation Fund, and the Expense Fund.~~

~~B. Annuity savings fund. The Annuity Savings Fund shall be the fund in which shall be accumulated contributions from the compensation of members to provide for their annuities. Contributions to the Annuity Savings Fund shall be made as follows:~~

A. Employee contributions.

(1) The port commission shall make deductions from any salary or wages paid by them to any member of this fund equal to ~~seven~~ nine percent of the compensation paid him in each and every payroll ~~after August 1, 1971~~.

(2) The deductions provided for herein shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt for his full salary or compensation, and payment of salary or compensation less said deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided under this Subpart. The employer shall certify to the ~~Board of Trustees~~ board of trustees on each and every payroll or in such other manner as the ~~Board of Trustees~~ board may prescribe, the amounts to be deducted; and each of said amounts shall be deducted, and when deducted shall be paid into said Annuity Savings Fund, and shall be credited to the individual account of the member from whose compensation said deduction was made.

~~C. Annuity reserve fund. The Annuity Reserve Fund shall be the fund in which shall be held the reserves on all annuities in force and from which shall be paid all annuities and all benefits in lieu of annuities, payable as provided in this Subpart. Should a beneficiary retired on account of disability be restored to active service with a compensation not less than his average final compensation at the time of his last retirement, his annuity reserve shall be transferred from the Annuity~~

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~~Reserve Fund to the Annuity Savings Fund and credited to his individual account therein.~~

~~D. Pension accumulation fund. The Pension Accumulation Fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and other benefits payable from contributions made by employers. Contributions to and payments from the Pension Accumulation Fund shall be made as follows:~~

~~(1) On account of each member there shall be paid annually into the Pension Accumulation Fund for the preceding fiscal year an amount equal to a certain percentage of the earnable compensation of each member to be known as the "Normal Contribution", and an additional amount equal to a percentage of his earnable compensation to be known as the "Accrued Liability Contribution". The rate per centum of such contributions shall be fixed on the basis of the liabilities of the retirement system as shown by actuarial valuation; subject to the limitation of Paragraph D(8).~~

~~(2) The total amount that shall be contributed annually to the pension accumulation fund shall be equal to the amount obtained by applying the total rate ("normal contribution" plus "accrued liability contribution") to the earnable compensation of all members. This amount shall be paid as provided in Paragraphs D(3) and (4).~~

B. Employer contributions.

~~(3)~~(1) The Port Commission shall annually contribute an amount equal to the rate per centum determined herein in accordance with Paragraphs ~~D(4) and (8)~~ (2) and (3) of this Subsection. ~~The first contribution under this Subpart shall begin with the fiscal year beginning July 1, 1971 and shall be made annually thereafter.~~ Contributions shall be made monthly based on the same salary or wages used to calculate the members' contributions.

~~(4)~~(2) ~~On the basis of regular interest and of such mortality and other tables as shall be adopted by the Board of Trustees, the actuary engaged by the Board to make each valuation required by this Subpart during the period over which the accrued liability contribution is payable, immediately after making such valuation,~~

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~~shall determine the uniform and constant percentage of the compensation of the average new entrant, which if contributed on the basis of compensation of such new entrant throughout the entire period of active service would be sufficient to provide for the payment of any pension payable on his account. The rate per centum so determined shall be known as the "normal contribution" rate. After the accrued liability contribution has ceased to be payable, the~~ The normal contribution rate shall be the rate per centum of the earned salary of all members obtained by deducting from the total liabilities of the ~~Pension Accumulation Fund~~ fund the amount of the funds in hand to the credit of ~~that~~ the fund and dividing the remainder by one percentum of the present value of the prospective future salaries of all members as computed on the basis of the mortality and service tables adopted by the ~~Board of Trustees~~ board of trustees and ~~regular~~ interest as set forth in R.S. 11:3688(D)(5)(a)(i). The normal rate of contributions shall be determined by the actuary after each valuation.

~~(5) Immediately succeeding the first valuation the actuary engaged by the Board of Trustees shall compute the rate per centum of the total annual compensation of all members which is necessary to liquidate the amount of the total pension liability on account of all members and beneficiaries which is not dischargeable by the aforesaid normal contribution made on account of such members during the remainder of the active service. The rate per centum originally so determined shall be known as the "Accrued Liability Contribution" rate.~~

~~(6) The total amount payable in each year to the Pension Accumulation Fund shall be not less than the sum of the rate per centum known as the "Normal Contribution Rate" and the "Accrued Liability Contribution Rate" of the total compensation earned by all members during the preceding year and shall not exceed the limitation set forth in Paragraph D(8).~~

~~(7) The accrued liability contributions shall be discontinued as soon as the accumulated reserve in the Pension Accumulation Fund shall equal the present value, as actuarially computed and approved by the Board of Trustees, of the total liability of such fund less the present value, computed on the basis of the normal contribution~~

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~~rate then in force, of the prospective normal contributions to be received on account of all persons who are at that time members.~~

~~(8)~~(3) The maximum contribution by the employer, Board of Commissioners of the Port of New Orleans, shall not exceed ~~thirteen~~ twenty percent of the earned compensation of the members in any one year. There shall be no contribution by employer other than the percentage of earned compensation of the members as provided in this Subpart, and subject to the maximum stated above, even in the event that the payment by employer should not be sufficient, when combined with the amount in the fund, to provide the retirement allowances and other benefits payable out of the fund.

~~(9)~~ C. Court fines.

All fines collected by any court, official or agency from violators of ordinances of the City of New Orleans applicable to the wharves, landings and river front of the city or ordinances of the Board of Commissioners of the Port of New Orleans, as provided for in R.S. 34:25, shall be transmitted to the board of trustees of this system. Such funds shall be used by the board solely for the payment of the retirement allowances ~~provided for in Subsections B, C, and D of this Section~~, and such funds shall be supplemented by such other funds as are now or may be hereafter paid into the system on account of members of the harbor police department of the Port of New Orleans.

~~(10) All pensions, and benefits in lieu thereof, with the exception of those payable on account of members who receive no prior service allowance, payable from contributions of employees, shall be paid from the Pension Accumulation Fund to the Annuity Reserve Fund.~~

~~(11) Upon the retirement of a member not entitled to credit for prior service, an amount equal to his pension reserve shall be transferred from the Pension Accumulation Fund to the Annuity Reserve Fund.~~

~~(12)~~ D. Annual expenses.

The ~~Board of Trustees~~ board of trustees may ~~transfer annually from the Pension Accumulation Fund to the Expense Fund~~ incur annual expenses up to a sum

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not to exceed one and one-half percent of the total assets of the system as shown by the balance sheet at the end of the last fiscal year.

~~E. Expense fund. The Expense Fund shall be the fund from which the expenses of the retirement system shall be paid, exclusive of amount payable as retirement allowances and other benefits provided therein. Contributions shall be made to the Expense Fund as follows. The Board of Trustees shall determine annually the amount required to defray such expenses for the ensuing fiscal year and shall have the right to transfer the amount required to defray the cost of expenses of administration from the amount transferred from the Pension Accumulation Fund.~~

~~F~~ E. Collections of contributions.

~~(1) The collection of members' contributions shall be as follows:~~

~~(a)~~ The Port Commission shall cause to be deducted on each and every payroll of a member ~~for each and every payroll period subsequent to the date of establishment of the retirement system~~ the contributions payable by such member as provided in this Subpart.

~~(b) The Treasurer, or other officer authorized to issue warrants, shall make deductions from salaries of members as provided in this Subpart, and shall transmit monthly the amount specified to be deducted to the Secretary-Manager of the Board of Trustees. The Secretary-Manager of the Board of Trustees after making a record of all such receipts shall deposit them in a bank or banks selected by the Board of Trustees.~~

~~(2) The collection of employers' contributions, if and when assessed or required, shall be as follows. Upon the basis of each actuarial valuation provided herein, the Board of Trustees shall annually prepare a statement of the total amount necessary for the ensuing fiscal year to the Pension Accumulation and Expense Funds as provided under Subsections D and E of this Section.~~

* * *

§3695. Direct rollover

A. Notwithstanding any other provision of law to the contrary that would otherwise limit a member's election under this Section, a member may elect, at the

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time and in the manner prescribed by the board of trustees, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the member in a direct rollover.

B. ~~This Section shall apply to all eligible rollover distributions by the system made on or after January 1, 1993.~~ An "eligible rollover distribution" is any distribution of all or any portion of the balance to the credit of a member, except that an eligible rollover distribution does not include:

(1) 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 member, or the joint lives or joint life expectancies of the member and the member's designated beneficiary, or for a specified period of ten years or more.

(2) Any distribution to the extent that such distribution is required under Section 401(a)(9) of the Internal Revenue Code.

C. An "eligible retirement plan" shall mean any of the following:

(1) An individual retirement account described in Section 408(a) of the Internal Revenue Code.

(2) An individual retirement annuity described in Section 408(b) of the Internal Revenue Code.

(3) An annuity plan described in Section 403(a) of the Internal Revenue Code.

(4) A qualified trust as described in Section 401(a) of the Internal Revenue Code, provided that such trust accepts the member's eligible rollover distribution.

(5) An eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code that is maintained by an eligible governmental employer, provided the plan contains provisions to account separately for amounts transferred into such plan.

(6) An annuity contract described in Section 403(b) of the Internal Revenue Code.

D. A "distributee" as provided for in this Section shall include:

(1) A member or former member.

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(2) The member's or former member's surviving spouse, or the member's or former member's former spouse with whom a benefit or a return of employee contributions is to be divided pursuant to R.S. 11:291(B), with reference to an interest of the member or former spouse.

(3) The member's or former member's non-spouse beneficiary, provided the specified distribution is to an eligible retirement plan as defined in Subsection C of this Section.

§3696. Errors and omissions

Should any change or error in the records result in any member or beneficiary receiving from the retirement system more or less than he would have been entitled to receive had the records been correct, the board of trustees shall correct such error, and as far as practicable, shall adjust the payment in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid.

The corrected benefit amount shall be paid prospectively. When considering corrections to the account of members for past erroneous benefit payments, the collection of overpayments or payment of underpayments may be waived if (1) it is deemed by the trustees to not be cost-effective for the system, in relation to the amount of the overpayment or underpayment, to attempt to locate the beneficiary or estate of such members and collect the overpayment or pay the underpayment or (2) if it is deemed by the trustees to cause an extreme hardship on the member or beneficiary.

§3697. Effective dates

All benefit changes shall be prospective only unless stated otherwise in the Act. Statutory benefit changes shall not apply to members who have already retired.

§3698. Unusual Benefit Adjustments

A. Should it be discovered through an audit or review for statutory compliance and benefit payment calculations to be concluded in 2011, that unusual errors in benefit determinations and calculations were made, such errors shall be

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adjusted pursuant to the requirements of R.S. 11:3683 and 3685 and the following provisions:

(1) For members who were hired on July 9, 1957, January 3, 1959, June 28, 1961, June 21, 1969, and September 23, 1970, and whose retirement eligibility determination erroneously included unused annual leave and unused sick leave as creditable service in determining eligibility for retirement, the use of such leave shall be allowed. This adjustment shall be effective for the designated members only and only in determining the amount of the correct benefit payments going forward.

(2) For members hired on August 29, 1990, and April 4, 1994, who were over the age of eligibility for membership and erroneously allowed to become a member and for whom all normal member and employer contributions have been made, whether the member is still employed or retired from the system, the member shall be considered as a fully qualified member of the system. This adjustment shall be effective for the designated members only and only in determining the amount of the correct benefit payments going forward.

(3) For members hired on July 1, 1947, November 8, 1956, July 9, 1957, January 3, 1959, June 28, 1961, February 20, 1967, July 3, 1968, December 2, 1968, January 1, 1969, March 25, 1969, April 21, 1969, June 21, 1969, October 4, 1969, November 15, 1969, and September 23, 1970, who were granted military credit eligibility in accordance with R.S. 11:3684 but who did not purchase such eligible military credit in accordance with R.S. 29:251.2(B) and such unpurchased credit was erroneously used in determining their eligibility for retirement and/or erroneously used in their retirement benefit calculation, the use of such military credit shall be allowed. When a member hired on September 22, 1948, who had been granted military credit eligibility by another retirement system in accordance with R.S. 11:143 but who did not purchase such eligible credit in the Harbor Police Retirement System as required by R.S. 11:143 and such unpaid credit was erroneously used in determining his eligibility for retirement and/or was erroneously used in his benefit calculation, the use of such military credit shall be allowed. When a member who was hired on September 23, 1970, and who resigned on July 31, 1971, and was

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rehired on September 23, 1971, and who therefore was not a member on August 1, 1971, and therefore not eligible for military service credit in accordance with R.S. 11:3684, but who was erroneously granted eligibility for such military credit and who did not purchase such eligible military credit in accordance with R.S. 29:251.2(B) and such unpurchased credit was erroneously used in determining eligibility for retirement and/or erroneously used in the retirement benefit calculation, the use of such military credit shall be allowed. This adjustment shall be effective for the designated members only and only in determining the amount of the correct benefit payments going forward.

(4) Act 474 of the 1985 Regular Session of the Legislature increased the service benefit of three percent per year of service to three and one-third percent per year of service and stipulated that "This Act shall become effective upon approval of the Board of Commissioners of the Port of New Orleans." Although no formal approval was given by the Board of Commissioners of the Port of New Orleans, the increase was implemented by the Harbor Police Retirement System upon the Act's signature by the governor. The benefits shall be calculated as if the required Board of Commissioners of the Port of New Orleans approval had been given on the effective date of the Act. This Act applies to all members who retired after the date of the act and the increased rate applies to all years of service credit. This adjustment shall be effective only for members currently employed on July 1, 2011, and retired as of July 1, 2011, and only in determining the amount of the correct benefit payments already paid to retirees and the correct benefit payments going forward.

(5) The increase in service benefit in Act 474 of the 1985 Regular Session of the Legislature from three percent to three and one-third percent, as well as the increase from two and one-half percent to three percent in 1975, were implemented without containing language that stipulated for what years the increase was to apply, such as for all past years of service for active members, or for all future years of service for all active members, or for all past and future years of service for all active members. Instead of a "blended rate" wherein the rates in effect when the service

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credit was earned are used in the retirement benefit calculation, the increases were implemented as if each increase applied to all past and future years of service for all active members and such implementation shall apply for these adjustments. This adjustment shall be effective only for members currently employed on July 1, 2011, and retired members and only in determining the amount of the correct benefit payments already paid to retirees and the correct benefit payments going forward relative to the herein specified percentage changes.

(6) Any member hired on November 8, 1976, who completed a period of DROP participation prior to July 1, 2008, and who is still employed on July 1, 2008, shall be subject to R.S. 11:3864(E)(2). This adjustment shall be effective for the designated member only and only in determining the amount of the correct benefit payment going forward.

(7) Any cumulative net overpayment error will be forgiven in its entirety and any cumulative net underpayment error will be paid in its entirety in a lump sum.

(8) For members hired on November 8, 1956, March 25, 1960, June 28, 1961, September 29, 1966, April 5, 1967, March 27, 1968, July 3, 1968, December 2, 1968, December 3, 1968, June 21, 1969, July 28, 1969, October 4, 1969, September 23, 1970, March 30, 1971, and July 8, 1971, who transferred into the Harbor Police Retirement System when the system was started on August 1, 1971, thereby transferring service credit from the Louisiana State Employees' Retirement System which was earned at a benefit factor of two and one-half percent per year and for a member hired on May 3, 1983, who transferred prior service credit from the Louisiana State Employees' Retirement System which was earned at a benefit factor of two and one-half percent per year, all of whom retired from the Harbor Police Retirement System and were paid benefits at the higher benefit factor of three percent per year or three and one-third percent per year for all years of service, including the transferred years, instead of the benefit factor from the transferring system of two and one half percent as specified in R.S. 11:1423, the higher percentage factor shall be allowed. This adjustment shall be effective for the

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designated members only and only in determining the amount of the correct benefit payments going forward.

B. The adjustments authorized by this Section are not to be considered a waiver of any statute provision governing this system. The provisions of this Section shall be null and void and removed from the statute on July 1, 2012.

Section 2. R.S. 11:3694 is hereby repealed in its entirety.

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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