Regular Session, 2012

HOUSE BILL NO. 1202 (Substitute for House Bill No. 58 by Representative Pearson)

BY REPRESENTATIVE PEARSON

RETIREMENT/DISTRICT ATTY: Relative to the District Attorneys' Retirement System

AN ACT

To amend and reenact R.S. 11:1581(5), 1612, 1614, 1617, and 1635 and to enact R.S. 11:1588, 1632(C), (D), (E) and (F), 1633(C), 1636(C) and (D), 1638(C), 1645, and 1646, relative to the District Attorneys' Retirement System of Louisiana; to provide relative to federal tax qualification status of the system; to authorize changes to be made using the Administrative Procedure Act; 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. 11:1581(5), 1612, 1614, 1617, and 1635 are hereby amended and reenacted and R.S. 11:1588, 1632(C), (D), (E) and (F), 1633(C), 1636(C) and (D), 1638(C), 1645, and 1646 are hereby enacted to read as follows:

§1581. Definitions

The following words and phrases, as used in this Chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

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(5)<u>(a)</u> "Average final compensation" shall mean the average monthly compensation earned by an employee during any period of thirty-six successive months of service as an employee during which the said earned compensation was the highest. The average monthly compensation shall include compensation not paid by the state, but only to the extent that non-state compensation for the thirteenth through the twenty-fourth month does not exceed one hundred ten percent of the total of non-state compensation for the first through twelfth month, and that non-state compensation for the final twelve months does not exceed one hundred ten percent of the total of non-state compensation for the thirteenth through the twenty-fourth month. Fees earned in connection with official duties shall not be included in average final compensation. In the event of interruption of employment, the thirty-six-month period shall be computed by joining employment periods immediately preceding and succeeding the interruption.

(b) Compensation of a member in excess of two hundred thousand dollars, as adjusted for increases in the cost-of-living under 26 U.S.C. 401(a)(17)(B) for years beginning after January 1, 2002, shall not be taken into account. This limitation may be adjusted by rules promulgated by the board of trustees in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et. seq. For purposes of compliance with the requirements for qualification under 26 U.S.C. 401(a), the board of trustees may promulgate rules further defining "compensation" and "section 415 compensation" in accordance with the Administrative Procedure Act.

* * *

§1588 Amendment of provisions of retirement system

A. The provisions of the retirement system 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 by the board of trustees with respect to the payment of cost-of living adjustments, with respect to the payment of employee contributions, with respect to actuarial assumptions, and with respect to other actions authorized in this Section shall be considered amendments to the provisions of the retirement system.

B. No amendment to the retirement system shall operate to deprive any member of a benefit to which he is entitled. In the case of any merger or consolidation with or transfer of assets or liabilities to any other retirement system, each member in the retirement system shall, if the retirement system is then

<u>terminated, receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer if the retirement system had then terminated.</u>

<u>C. Upon the termination or partial termination of the retirement system, the board of trustees shall reevaluate and redetermine the benefit of each member, and the entire benefit of each member may be paid or commence to be paid and distributed to such member, or if he dies before such distribution, to the beneficiary or beneficiaries designated by the member. However, if the member is still employed and the system is partially terminated, payment shall not be made until retirement or termination and shall be held until payment is otherwise due under the provisions of the retirement system. A member's right to his benefit is not conditioned upon a sufficiency of assets in the event of termination.</u>

<u>D. Upon termination or partial termination of the retirement system, a member's interest in the system shall be nonforfeitable to the extent funded.</u>

<u>E. The retirement system is intended to qualify under 26 U.S.C. 401(a). Accordingly, any amendments to the provisions of the retirement system shall be designed to maintain this qualification.</u>

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§1612. Employees of Louisiana District Attorneys' Association; prior service credit

<u>A.</u> Any employee of the Louisiana District Attorneys' Association shall be eligible to receive prior service credit for all service rendered as such an employee prior to the date as of which such employees become eligible to be included in the membership of this system. In order to obtain such credit, any such employee, prior to the date of application for retirement, shall make application to the board of trustees for such credit and shall furnish a detailed statement of all service for which credit is claimed in such form as the board may require. In addition, each such employee shall pay into the system an amount equal to the employee and employer contributions which would have been made had the employee been a member during

the period for which credit is claimed, plus five percent compound interest per annum thereon from date of service until paid.

B. The system shall accept as the member's payment of amounts payable by the member under this Section any assets held in an individual retirement account or annuity or a plan qualified under 26 U.S.C. 401(a) or under 26 U.S.C. 403(a), a governmental deferred compensation arrangement subject to 26 U.S.C. 457(g), or a tax sheltered annuity or other arrangement under 26 U.S.C. 403(b).

* * *

§1614. Service on which retirement allowances are based

A. Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the membership service rendered by him since he last became a member, and, also, if he has a prior service certificate which is in full force and effect, the amount of service certified on his prior service certificate.

B. If a member takes a leave of absence governed by the Uniformed Services Employment and Reemployment Rights Act (USERRA) and returns to employment covered by the retirement system, 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 member's rights under USERRA. This Subsection does not apply to a member who does not return to employment covered by the retirement system.

C. The system shall accept as the member's payment of amounts payable by the member under this Section the direct transfer of any assets held for the benefit of the member in an individual retirement account or annuity, including a Roth account, or in a plan qualified under 26 U.S.C. 401(a) or 403(a), or in a governmental deferred compensation arrangement subject to 26 U.S.C. 457(g), or in a tax sheltered annuity or other arrangement under 26 U.S.C. 403(b).

<u>D. If a member dies or becomes disabled on or after January 1, 2007 while performing qualified military service as defined in 26 U.S.C. 414(u), the member's beneficiary is entitled to any additional benefits, other than benefit accruals relating to the period of qualified military service, provided under the system as if the member had resumed and then terminated employment on account of death or disability. Also, the system will credit the member's qualified military service as service for vesting purposes as though the member had resumed employment under USERRA immediately prior to the member's death or disability.</u>

<u>E. If a member is receiving differential wage payments while performing qualified military service as defined in 26 U.S.C. 414(u), the member shall be treated as an employee of the employer making the payment and the differential wage payment will be treated as compensation pursuant to 26 U.S.C. 414(u)(12)(A).</u>

<u>F. The board of trustees shall adopt procedures which shall be part of the governing procedures of the system that shall implement the requirements of USERRA and the Heroes Earnings Assistance and Relief Tax Act of 2008.</u>

§1617. Service credit resulting from age discrimination

<u>A.</u> Any person who retired from this system and was reemployed in a capacity as a district attorney or assistant district attorney but was denied membership in this system based on provisions of law regarding age requirements shall have the option of establishing credit for the full-time service in that capacity by paying into the system the employer and employee amount plus interest that would have been withheld and paid into the system for such service based on the member's gross salary for the period of such reemployment.

<u>B. The system shall accept as the member's payment of amounts payable by the member under this Section any assets held in an individual retirement account or annuity or a system qualified under 26 U.S.C. 401(a) or 26 U.S.C. 403(a), a governmental deferred compensation arrangement subject to 26 U.S.C. 457(g) or a tax sheltered annuity or other arrangement under 26 U.S.C. 403(b).</u>

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§1632. Retirement eligibility; benefits at three percent

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C. (1) The annual benefit otherwise payable to a member under the system at any time shall not exceed the maximum permissible benefit. If the benefit the member would otherwise accrue in a limitation year would produce an annual benefit in excess of the maximum permissible benefit, then the benefit shall be limited or the rate of accrual reduced to a benefit that does not exceed the maximum permissible benefit.

(2) The retirement benefit of any member that is not attributable to employee contributions, when expressed as an annual benefit, may not exceed two hundred thousand dollars per year, as adjusted for increases in the cost of living pursuant to 26 U.S.C. 415(d). 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.

(3)(a) If benefit distribution begins before the member has reached age sixty-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 two hundred thousand dollars beginning at age sixty-two.

(b) If the annuity starting date for the member's benefit is after he has reached age sixty-five, the defined benefit dollar limitation for the member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation adjusted for years of participation less than ten pursuant to Paragraph (4) of this Subsection.

(c) The interest rate used for adjusting the maximum limitations above shall be:

(i) For benefits commencing before the member has reached age sixty-two and for forms of benefit other than straight life annuity, the member's benefit shall be computed using an interest rate of five percent and the mortality table or other tabular factor used for actuarial equivalence for early retirement benefits under the system, expressing the member's age based on completed calendar months, as of the annuity starting date.

(ii) For benefits commencing after the member has reached age sixty-five, the member's benefit shall be computed using an interest rate of five percent and the mortality table or other tabular factor used for actuarial equivalence for postretirement benefits under the system, expressing the member's age based on completed calendar months, as of the annuity starting date.

(iii) Notwithstanding the other requirements of this Subsection, no adjustment shall be made to the defined benefit dollar limitation to reflect the probability of a member's death between the annuity starting date and age sixty-two, or between age sixty-five and the annuity starting date, as applicable, if benefits are not forfeited upon the death of the member prior to the annuity starting date.

(4) If retirement benefits are payable under this system to a member who has less than ten years of participation in the system, the dollar limitation referred to in Paragraph (1) of this Subsection shall be multiplied by a fraction, not in excess of one, the numerator of which is the member's number of years of participation in the system and the denominator of which is ten.

(5) The two hundred 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 26 U.S.C. 415(d).

(6) If a member is a also a member in another defined benefit pension plan maintained by the state or one of its political subdivisions, his benefit, considered in

the aggregate after taking into account the benefits provided by all such retirement plans, shall not exceed the limits provided in this Subsection.

(7) That portion of the benefit that is attributable to member contributions shall be determined in accordance with Treasury Regulations § 1.415(b)-1(b)(2)(iii).

(8) Notwithstanding the provisions of this Subsection, the benefits payable with respect to a participant under any defined benefit plan shall be deemed not to exceed the limitations of Subsection E of this Section if both of the following apply:

(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 year.

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

D.(1) For purposes of this Section and R.S. 11:1633 and 1634, average compensation shall include any amounts properly considered as regular rate of pay of the member, as defined in R.S. 11:231, and unreduced by amounts excluded from income for federal income tax purposes by reason of 26 U.S.C. 125, 132(f), 402(e)(3), 402(h)(1)(B), 403(b), 414(h), or 457 or any other provision of federal law of similar effect.

(2) For years beginning on or after January 1, 2002, the annual compensation limitation shall not exceed two hundred thousand dollars, as adjusted for cost-of-living increases under 26 U.S.C. 401(a)(17)(B). If compensation for an earlier period is taken into account in determining an employee's benefits accruing in the current plan year, the compensation for the earlier period shall be subject to the compensation limit for the current year

E.(1) The provisions of this Section shall apply if any member is covered or has ever been covered by another plan maintained by the employer, including a qualified plan, a welfare benefit fund as defined in 26 U.S.C. 419(e), or an individual medical account as defined in 26 U.S.C. 415(l)(2) that provides an annual addition as described in Paragraph (4) of this Subsection.

(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 member's annual benefits from all such plans shall not exceed the maximum permissible benefit set forth in Subsection C of this Section.

(3) 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 26 U.S.C. 419(e), or an individual medical account as defined in 26 U.S.C. 415(l)(2), the member's annual additions for any year shall not exceed the maximum permissible amount, which is forty thousand dollars adjusted for increases in the cost-of-living pursuant to 26 U.S.C. 415(d).

(4) "Annual additions" of a member for the year shall mean the sum of the following amounts credited to a member's account for the year:

(a) Employer contributions.

(b) Employee contributions.

(c) Forfeitures.

(d) Amounts allocated to an individual medical account as defined in 26 U.S.C. 415(l)(2) that is a part of a pension or annuity plan maintained by the employer are treated as annual additions to a defined contribution plan. Additionally, amounts derived from contributions paid or accrued in taxable years ending after December 31, 1985, which are attributable to post-retirement medical benefits allocated to the separated account of a key employee as defined in 26 U.S.C. 419A(d)(d) or under a welfare benefit fund as defined in 26 U.S.C. 419(e) maintained by the employer are treated as annual additions to a defined contribution plan.

(e) The employee contribution shall be deemed to be a defined contribution plan. If a member has made employee contributions pursuant to the provisions of this retirement system, the amount of such contributions shall be treated as an annual addition to a qualified defined contribution plan for purposes of this Section.

(5) The amount of annual additions that 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 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 requirements 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:

(a) Any non-deductible voluntary employee contribution to the extent it would reduce the excess amount shall be returned to the member.

(b) If after the application of Subparagraph (a) of this Paragraph an excess amount still exists, then any non-deductible mandatory contribution to the extent it would reduce the excess amount shall be returned to the member.

(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.

(d) If after the application of Subparagraph (c) of this Paragraph an excess amount still exists and the member is not covered by the plan at the end of the limitation year, the excess amount shall be held unallocated in a suspense account. The suspense account shall be applied to reduce the future employer contributions for all remaining members in the next limitation year and each succeeding limitation year if necessary.

(e) If a suspense account is in existence at any time during a limitation year pursuant to the provisions of this Section, it shall not participate in the allocation of the trust's investment gains and losses. If a suspense account is in existence at any time during a particular limitation year, all amounts in the suspense account shall be allocated and reallocated to members' accounts before any employer or any employee contributions may be made to the plan for that limitation year. Excess amounts shall not be distributed to members or former members.

(6) "Excess Amounts" of a member for a limitation year shall mean the excess of the member's annual additions for the limitation year over the maximum permissible amount.

(7) The "limitation year" shall be the calendar year or the twelve consecutive month period determined by the board of trustees.

(8)(a) The "maximum permissible amount" for a member for a limitation year shall be the maximum annual addition that may be contributed or allocated to a member's account under the plan for any limitation year and shall not exceed the lesser of:

(i) Forty thousand dollars, as adjusted after 2001 for changes in the cost of living in accordance with 26 U.S.C. 415(d).

(ii) One hundred percent of the member's compensation for the limitation year.

(b) The compensation limitation provided for in Item (a)(ii) of this Paragraph shall not apply to any contribution for medical benefits within the meaning of 26 U.S.C. 401(h) or 419A(f)(2) that is otherwise treated as an annual addition pursuant to 26 U.S.C. 415(l) or 419A(d)(2).

F. The board of trustees may adopt provisions of the system that will carry out the requirements of Subsections C, D, and E of this Section, and the board of trustees may adopt provisions as required for the system to maintain its qualified status under 26 U.S.C. 401(a).

§1633. Retirement eligibility; benefits at three and one-half percent

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C. The limitations of R.S. 11:1632(C) and (E) shall apply to this Section.

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§1635. Return of accumulated contributions

A. Should a member cease to be an employee except by death or retirement under the provisions of this Chapter, he shall be paid such part of the amount of the accumulated contributions standing to the credit of his individual account in the annuity savings fund as he shall demand. Should a member die before retirement the amount of his accumulated contributions standing to the credit of his individual account shall be paid to his estate or to such person as he shall have nominated by written designation, duly executed and filed with the board of trustees, unless benefits are payable under R.S. 11:1636.

B. Notwithstanding any other provision of law of the contrary that would otherwise limit a member's election under this Section, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

C. If a distribution is one to which 26 U.S.C. 401(a)(11) and 417 do not apply, the distribution may commence fewer than thirty days after the notice required under 26 U.S.C. 1.411(a)-11(c) is given, if both of the following apply:

(1) The plan administrator clearly informs the participant that the participant has a right to a period of at least thirty days after receiving the notice to consider the decision of whether or not to elect a distribution and, if applicable, a particular distribution option.

(2) The participant, after receiving the notice, affirmatively elects a distribution.

D. 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.

(3) "Eligible retirement plan" means an individual retirement account described in 26 U.S.C. 408(a), an individual retirement annuity described in 26 U.S.C. 408(b), an annuity plan described in 26 U.S.C. 403(a), or a qualified trust described in 26 U.S.C. 401(a), 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 retirement annuity. "Eligible retirement plan" shall also mean an annuity contract described in 26 U.S.C. 403(b) and an eligible plan under 26 U.S.C. 457(b) that is maintained by the state or any political subdivision or instrumentality thereof 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.

(4) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distribution, 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 26 U.S.C. 401(a)(9); 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 26 U.S.C. 408(a) or (b), or to a qualified defined contribution plan described in 26 U.S.C. 401(a) or 403(a) 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 of distributions made after December 31, 2011, or both, from the following types of plans: individual retirement accounts or annuities or plans qualified under 26 U.S.C. 401(a) or 403(a), or governmental deferred compensation arrangements subject to 26 U.S.C. 457(b) or tax sheltered annuities or other arrangements under 26 U.S.C. 403(b), beginning on the effective date specified; but only for the purposes of repaying prior distributions or purchasing service credits permitted under 26 U.S.C. 415(k)(3) and 415(n).

E. The board of trustees may adopt provisions of the system that carry out the requirements of Subsections B, C, and D of this Section, and the board of trustees may adopt provisions as required to maintain the qualified status of the system under 26 U.S.C. § 401(a).

§1636. Survivors' benefits

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C.(1) 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. 11:1637, 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, the oldest 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.

(2) Distributions from the retirement system shall be made in accordance with the requirements set forth in 26 U.S.C. 401(a)(9), including the minimum distribution incidental benefit rules applicable thereunder.

(3) A member's benefits shall be made or shall commence to be paid on or before the required beginning date.

(4) The required beginning date shall be April first of the calendar year following the later of the calendar year in which the member attains seventy and one-half years of age, or the calendar year in which the employee retires.

D. The board of trustees may adopt provisions of the system that will carry out the requirements of Subsection C of this Section, and the board of trustees may adopt provisions as required to maintain the qualified status of the system under 26 U.S.C.§ 401(a).

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§1638. Cost-of-living increase of benefits

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C. No increase in benefits pursuant to Subsection A of this Section shall apply if the resulting benefit would exceed the limitations of R.S. 11:1632(C).

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§1645. Excess benefit arrangement

A. A separate, nonqualified, unfunded excess benefit arrangement is hereby created outside the trust fund of the retirement system. This excess benefit arrangement shall be administered as a governmental excess benefit arrangement under 26 U.S.C. 415(m). The purpose of the excess benefit arrangement is to pay to retirees of the retirement system benefits otherwise payable by the retirement system that exceed the limitations on benefits imposed by 26 U.S.C. 415(b)(1)(A).

B. The board of trustees shall be responsible for the administration of the arrangement provided for in this Section. Except as otherwise provided by this Section, the board has the same rights, duties, and responsibilities concerning the excess benefit arrangement as it has to the trust fund and may adopt rules and regulations necessary to administer this arrangement in accordance with the Administrative Procedure Act and in compliance with 26 U.S.C. 415(m).

C. Benefits under this Section are exempt from execution to the same extent as provided by R.S. 11:1583, subject to the exceptions in R.S. 11:291 and 292, and the benefits are completely unassignable. Contributions to this arrangement are not held in trust and may not be commingled with other funds of the retirement system.

D. A retiree is entitled to a monthly benefit under this Section in an amount equal to the amount by which the benefit otherwise payable by the retirement system has been reduced by the limitation on benefits imposed by 26 U.S.C. 415(b)(1)(A). The benefit payable by this arrangement is payable at the time and in the form that the benefit payable under the trust fund is paid.

E. The benefit payable under this Section shall be paid from contributions that otherwise would be made to the trust fund under this Chapter. In lieu of deposit in the trust account, an amount determined by the retirement system to be necessary to pay benefits under this Section shall be paid monthly to the credit of a separately dedicated account maintained only for the excess benefit arrangement. The account may include amounts needed to pay reasonable and necessary expenses of administering this arrangement. The monthly amounts to be paid to the credit of the account shall be transferred to the account prior to the date of a monthly disbursement under this Section. No assets of the trust system shall be used to provide such benefits.

F. The board may amend, terminate, or reestablish the arrangement at any time. Such amendment or termination may be retroactive to the extent that the board deems such action necessary to maintain the tax qualified status of the pension plan or the status of this arrangement as an excess benefit arrangement or to avoid jeopardizing the funded status of the pension plan. In addition, the arrangement may be amended or terminated to eliminate all benefits with respect to any member or other person who has not become eligible to participate in an excess benefit plan arrangement as of the date of such amendment or termination.

§1646. Reversion of funds prohibited

A. Plan assets shall not be used for, or diverted to, any person or purpose other than for the exclusive benefit of the members and their beneficiaries, except that contributions made by the employer may be returned to the employer if the contribution was made due to a mistake of fact and the contribution is returned within one year of the mistaken payment of the contribution.

B. The amount of any contribution returned shall not exceed the difference between the amount actually contributed and the amount which would have been contributed had there been no mistake of fact and shall not include the earnings attributable to such contribution. The amount of the contribution returned shall be reduced by any losses attributable to the contribution, and no member shall have his benefit reduced by the return of the contribution to less than such benefit would have been had the contribution not been returned.

C. Notwithstanding the provisions of Subsections A and B of this Section, if the retirement system is terminated and all obligations under the retirement system are fully funded and provided for, any excess funds held by the system shall be returned to the employer.

Section 2. This Act shall become effective on January 1, 2013.

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)]

Pearson HB No. 1202

Abstract: Relative to the District Attorneys' Retirement System (DARS): provides relative federal tax qualification status of the system.

Proposed law provides for compliance by DARS with applicable federal tax qualification requirements of the Internal Revenue Code and federal regulations as follows:

Present law provides for the calculation of the average final compensation of a member which is used to calculate his retirement benefit.

Proposed law provides that average final compensation shall not take into account compensation in excess of $200,000, but provides that this cap is subject to cost-of-living adjustments in accordance with federal law.

Present law provides for purchase of service credit under specified circumstances.

Proposed law requires the system to accept as payment for such service credit funds from various federally qualified retirement and annuity accounts and governmental deferred compensation arrangements.

Present law provides that a retirement benefit is based on the member's years of service.

Proposed law provides that if a member takes a leave of absence for certain military service and returns to employment, he shall share in employer contributions made during his military service and shall be allowed to make the employee contributions that he would have made during that time. Requires the system to accept direct transfers from specified federally qualified accounts or arrangements in satisfaction of the member's payment. Further provides that if a member dies or becomes disabled on or after Jan. 1, 2007 while performing qualified military service, the member's beneficiary is entitled to any additional benefits, other than benefit accruals relating to the period of qualified military service, provided under the system as if the member had resumed and then terminated employment on account of death or disability. Requires the system to credit the member's qualified military service as service for vesting purposes.

Proposed law provides that the maximum benefit a retiree may receive that is not attributable to employee contributions is $200,000 as adjusted for cost of living increases in accordance with federal law and adjusted annually to the maximum dollar limits allowable as determined by the commissioner of the Internal Revenue Service. Requires this maximum amount also be adjusted in accordance with the Social Security Act if the member begins receiving a benefit before age 62. If the annuity starting date for the member's benefit is after he has reached age 65, the limitation is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation adjusted for years of participation less than 10. Proposed law requires the board of trustees of the system to administer a separate, nonqualified, unfunded excess benefit arrangement from which retirees may be paid benefits in excess of the limitation provided by proposed law.

Proposed law further provides for calculation of aggregate contribution and benefit limits for members also covered by other plans maintained by the employer.

Present law provides that if a member ceases to be an employee except by death or retirement, he shall be paid the accumulated contributions that have been credited to him. If a member dies before retirement, his accumulated contributions shall be paid to his estate or to his designee.

Proposed law requires that the member or other recipient of such funds be allowed to have the funds distributed as a direct rollover to a qualified retirement plan.

Present law provides for payment of survivor benefits upon the death of an active contributing member with at least five years of service or any member with at least 23 years of service who has not retired Proposed law requires such distributions to survivors be made in accordance with federal law.

Effective January 1, 2013.

(Amends R.S. 11:1581(5), 1612, 1614, 1617, and 1635; Adds R.S. 11:1588, 1632(C), (D), (E), and (F), 1633(C), 1636(C) and (D), 1638(C), 1645, and 1646)