

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

1 AN ACT

2 To amend and reenact R.S. 11:1581(5), 1612, 1614, 1617, and 1635 and to enact R.S.  
3 11:1588, 1632(C), (D), (E), and (F), 1633(C), 1636(C) and (D), 1638(C), 1645, and  
4 1646, relative to the District Attorneys' Retirement System of Louisiana; to provide  
5 relative to federal tax qualification status of the system; to authorize changes to be  
6 made using the Administrative Procedure Act; and to provide for related matters.

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

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 11:1581(5), 1612, 1614, 1617, and 1635 are hereby amended and  
12 reenacted and R.S. 11:1588, 1632(C), (D), (E), and (F), 1633(C), 1636(C) and (D), 1638(C),  
13 1645, and 1646 are hereby enacted to read as follows:

14 §1581. Definitions

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

17 \* \* \*

18 (5)(a) "Average final compensation" shall mean the average monthly  
19 compensation earned by an employee during any period of thirty-six successive  
20 months of service as an employee during which the said earned compensation was  
21 the highest. The average monthly compensation shall include compensation not paid  
22 by the state, but only to the extent that non-state compensation for the thirteenth  
23 through the twenty-fourth month does not exceed one hundred ten percent of the

1 total of non-state compensation for the first through twelfth month, and that non-state  
 2 compensation for the final twelve months does not exceed one hundred ten percent  
 3 of the total of non-state compensation for the thirteenth through the twenty-fourth  
 4 month. Fees earned in connection with official duties shall not be included in  
 5 average final compensation. In the event of interruption of employment, the  
 6 thirty-six-month period shall be computed by joining employment periods  
 7 immediately preceding and succeeding the interruption.

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

17 \* \* \*

18 §1588. Amendment of provisions of retirement system

19 A. The provisions of the retirement system may be amended by action of the  
 20 legislature in the same manner as any other statute may be amended by the  
 21 legislature. In addition, action by the board of trustees with respect to the payment  
 22 of cost-of living adjustments, with respect to the payment of employee contributions,  
 23 with respect to actuarial assumptions, and with respect to other actions authorized  
 24 in this Section shall be considered amendments to the provisions of the retirement  
 25 system.

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

1 terminated, receive a benefit immediately after the merger, consolidation, or transfer  
2 which is equal to or greater than the benefit he would have been entitled to receive  
3 immediately before the merger, consolidation, or transfer if the retirement system  
4 had then terminated.

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

14 D. Upon termination or partial termination of the retirement system, a  
15 member's interest in the system shall be nonforfeitable to the extent funded.

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

19 \* \* \*

20 §1612. Employees of Louisiana District Attorneys' Association; prior service credit

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

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

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

8 \* \* \*

9 §1614. Service on which retirement allowances are based

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

15 B. If a member takes a leave of absence governed by the Uniformed Services  
16 Employment and Reemployment Rights Act (USERRA) and returns to employment  
17 covered by the retirement system, the member shall share in employer contributions  
18 in the same manner as other members and shall not be considered to have terminated  
19 employment or to have incurred a break in service during such leave of absence. The  
20 employer shall be permitted to make an employer contribution in satisfaction of the  
21 affected member's rights under USERRA. This Subsection does not apply to a  
22 member who does not return to employment covered by the retirement system.

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



1 §1632. Retirement eligibility; benefits at three percent

2 \* \* \*

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

9 (2) The retirement benefit of any member that is not attributable to employee  
10 contributions, when expressed as an annual benefit, may not exceed two hundred  
11 thousand dollars per year, as adjusted for increases in the cost of living pursuant to  
12 26 U.S.C. 415(d). For purposes of determining whether a member's benefit exceeds  
13 this limitation, if the normal form of benefit is other than a single life annuity, such  
14 form shall be adjusted actuarially to the equivalent of a single life annuity. This  
15 single life annuity shall not exceed the maximum dollar limitation outlined in this  
16 Paragraph. No adjustment is required for qualified joint and survivor annuity  
17 benefits, preretirement disability benefits, or preretirement death benefits.

18 (3)(a) If benefit distribution begins before the member has reached age  
19 sixty-two, the actual retirement benefit shall not exceed the adjusted dollar  
20 limitation. The adjusted dollar limitation shall be the equivalent, determined in a  
21 manner consistent with reduction of benefits for early retirement under the federal  
22 Social Security Act, of two hundred thousand dollars beginning at age sixty-two.

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

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

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

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

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

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

24          (5) The two hundred thousand dollar limitation provided in this Subsection  
25          shall be adjusted annually to the maximum dollar limits allowable as determined by  
26          the commissioner of the Internal Revenue Service under 26 U.S.C. 415(d).

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

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

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

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

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

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

13 D.(1) For purposes of this Section and R.S. 11:1633 and 1634, average  
14 compensation shall include any amounts properly considered as regular rate of pay  
15 of the member, as defined in R.S. 11:231, and unreduced by amounts excluded from  
16 income for federal income tax purposes by reason of 26 U.S.C. 125, 132(f),  
17 402(e)(3), 402(h)(1)(B), 403(b), 414(h), or 457 or any other provision of federal law  
18 of similar effect.

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

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

1           (2) If a member is or has ever been covered under more than one defined  
2           benefit plan maintained by the employer, the sum of the member's annual benefits  
3           from all such plans shall not exceed the maximum permissible benefit set forth in  
4           Subsection C of this Section.

5           (3) If the employer maintains or at any time maintained one or more  
6           qualified defined contribution plans covering any member in this system, a welfare  
7           benefit fund as defined in 26 U.S.C. 419(e), or an individual medical account as  
8           defined in 26 U.S.C. 415(1)(2), the member's annual additions for any year shall not  
9           exceed the maximum permissible amount, which is forty thousand dollars adjusted  
10          for increases in the cost of living pursuant to 26 U.S.C. 415(d).

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

13           (a) Employer contributions.

14           (b) Employee contributions.

15           (c) Forfeitures.

16           (d) Amounts allocated to an individual medical account as defined in 26  
17          U.S.C. 415(1)(2) that is a part of a pension or annuity plan maintained by the  
18          employer are treated as annual additions to a defined contribution plan.  
19          Additionally, amounts derived from contributions paid or accrued in taxable years  
20          ending after December 31, 1985, which are attributable to postretirement medical  
21          benefits allocated to the separated account of a key employee as defined in 26 U.S.C.  
22          419A(d)(d) or under a welfare benefit fund as defined in 26 U.S.C. 419(e)  
23          maintained by the employer are treated as annual additions to a defined contribution  
24          plan.

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

1           (5) The amount of annual additions that may be credited to the member's  
2           account for any limitation year shall not exceed the maximum permissible amount.  
3           Contributions and benefits under any other plan of the employer, to the extent that  
4           an adjustment is required to satisfy the requirements of this Section in the aggregate,  
5           shall be limited or reduced to the extent necessary to satisfy such requirements  
6           without reducing accrued benefits; however, only after such other plans have been  
7           modified shall the benefits and contributions under this plan be reduced. As soon as  
8           it is administratively feasible after the end of the limitation year, the maximum  
9           permissible amount for the limitation year shall be determined on the basis of the  
10           member's actual compensation for the limitation year. If there is an excess amount,  
11           the excess shall be disposed of as follows:

12           (a) Any nondeductible voluntary employee contribution to the extent it  
13           would reduce the excess amount shall be returned to the member.

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

17           (c) If after the application of Subparagraph (b) of this Paragraph an excess  
18           amount still exists and the member is covered by the plan at the end of the limitation  
19           year, the excess amount in the member's account shall be used to reduce employer  
20           contributions, including any allocation of forfeitures, for such member in the next  
21           limitation year if necessary.

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

28           (e) If a suspense account is in existence at any time during a limitation year  
29           pursuant to the provisions of this Section, it shall not participate in the allocation of

1 the trust's investment gains and losses. If a suspense account is in existence at any  
2 time during a particular limitation year, all amounts in the suspense account shall be  
3 allocated and reallocated to members' accounts before any employer or any  
4 employee contributions may be made to the plan for that limitation year. Excess  
5 amounts shall not be distributed to members or former members.

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

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

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

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

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

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

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

1 §1633. Retirement eligibility; benefits at three and one-half percent

2 \* \* \*

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

4 \* \* \*

5 §1635. Return of accumulated contributions

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

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

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

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

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

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

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

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

3           (2) "Distributee" means a member or former member. In addition, the  
4           member's or former member's surviving spouse, or the member's spouse or former  
5           member's spouse with whom a benefit or return of employee contributions is to be  
6           divided pursuant to R.S. 11:291(B) are distributees with reference to an interest of  
7           the member or former spouse.

8           (3) "Eligible retirement plan" means an individual retirement account  
9           described in 26 U.S.C. 408(a), an individual retirement annuity described in 26  
10           U.S.C. 408(b), an annuity plan described in 26 U.S.C. 403(a), or a qualified trust  
11           described in 26 U.S.C. 401(a), that accepts the distributee's eligible rollover  
12           distribution. However, in the case of an eligible rollover distribution to the surviving  
13           spouse, an eligible retirement plan is an individual retirement account or individual  
14           retirement annuity. "Eligible retirement plan" shall also mean an annuity contract  
15           described in 26 U.S.C. 403(b) and an eligible plan under 26 U.S.C. 457(b) that is  
16           maintained by the state or any political subdivision or instrumentality thereof  
17           agreeing to account separately for amounts transferred into such plan from this fund.  
18           A distribution to a surviving spouse or to a spouse or former spouse who is the  
19           alternate payee under a qualified domestic relations order shall not make the  
20           retirement plan ineligible.

21           (4) "Eligible rollover distribution" means any distribution of all or any  
22           portion of the balance to the credit of the distribution, except that an eligible rollover  
23           distribution does not include any distribution that is one of a series of substantially  
24           equal periodic payments, not less frequently than annually, made for the life or life  
25           expectancy of the distributee or the joint lives or joint life expectancies of the  
26           distributee and the distributee's designated beneficiary, or for a specified period of  
27           ten years or more; any distribution to the extent such distribution is required under  
28           26 U.S.C. 401(a)(9); and the portion of any distribution that is not includable in gross  
29           income, determined without regard to the exclusion for net unrealized appreciation



1       The designation of a designated beneficiary hereunder shall not prevent payment to  
2       multiple beneficiaries but shall only establish the permitted period of payments.

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

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

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

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

15                               \*       \*       \*

16       §1638. Cost-of-living increase of benefits

17                               \*       \*       \*

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

20                               \*       \*       \*

21       §1645. Excess benefit arrangement

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

28               B. The board of trustees shall be responsible for the administration of the  
29       arrangement provided for in this Section. Except as otherwise provided by this

1        Section, the board has the same rights, duties, and responsibilities concerning the  
2        excess benefit arrangement as it has to the trust fund and may adopt rules and  
3        regulations necessary to administer this arrangement in accordance with the  
4        Administrative Procedure Act and in compliance with 26 U.S.C. 415(m).

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

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

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

24               F. The board may amend, terminate, or reestablish the arrangement at any  
25       time. Such amendment or termination may be retroactive to the extent that the board  
26       deems such action necessary to maintain the tax qualified status of the pension plan  
27       or the status of this arrangement as an excess benefit arrangement or to avoid  
28       jeopardizing the funded status of the pension plan. In addition, the arrangement may  
29       be amended or terminated to eliminate all benefits with respect to any member or

1 other person who has not become eligible to participate in an excess benefit plan  
2 arrangement as of the date of such amendment or termination.

3 §1646. Reversion of funds prohibited

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

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

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

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

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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 Jan. 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)