

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, 1631(F)(1), and 1635 and to enact
3 R.S. 11:1588, 1631(G), 1632(C), (D), (E), and (F), 1633(C), 1636(C) and (D),
4 1638(C), 1645, and 1646, relative to the District Attorneys' Retirement System of
5 Louisiana; to provide relative to federal tax qualification status of the system; to
6 authorize changes to be made using the Administrative Procedure Act; and to
7 provide for related matters.

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

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 11:1581(5), 1612, 1614, 1617, 1631(F)(1), and 1635 are hereby
13 amended and reenacted and R.S. 11:1588, 1631(G), 1632(C), (D), (E), and (F), 1633(C),
14 1636(C) and (D), 1638(C), 1645, and 1646 are hereby enacted to read as follows:

15 §1581. Definitions

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

18 * * *

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

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

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

18 * * *

19 §1588. Amendment of provisions of retirement system

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

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

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

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

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

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

20 * * *

21 §1612. Employees of Louisiana District Attorneys' Association; prior service credit

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

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

1 contributions which would have been made had the employee been a member during
2 the period for which credit is claimed, plus five percent compound interest per
3 annum thereon from date of service until paid.

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

9 * * *

10 §1614. Service on which retirement allowances are based

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

16 B. If a member takes a leave of absence governed by the Uniformed Services
17 Employment and Reemployment Rights Act (USERRA), such member shall be
18 credited with service as provided under R.S. 11:153, provided that the member
19 makes employee contributions attributable to such service.

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

26 D. If a member dies or becomes disabled on or after January 1, 2007, while
27 performing qualified military service as defined in 26 U.S.C. 414(u), the member's
28 beneficiary is entitled to any additional benefits, other than benefit accruals relating
29 to the period of qualified military service, provided under the system as if the

1 employment, and he shall not be paid any benefits for the period covered by such
 2 employment. He shall, upon such reemployment, again become an active
 3 contributing member of the system, with the option of establishing service credit for
 4 any period of full-time employment as district attorney or assistant district attorney
 5 since returning to such employment following retirement by payment into the system
 6 the employer and employee amount plus interest that would have been withheld and
 7 paid into the system for that period based upon his total salary for such period. He
 8 shall accrue a supplemental retirement benefit based on his service rendered after
 9 reemployment. If the member continues employment after retirement for a period
 10 of less than ~~thirty-six~~ sixty months, his supplemental monthly retirement benefit
 11 shall equal the benefit accrued under R.S. 11:1632 or 1633, whichever is applicable,
 12 based on the lesser of his average final compensation at his original retirement date
 13 or his average compensation during the period of his subsequent reemployment. If
 14 the member continues in employment after retirement for a period of ~~thirty-six~~ sixty
 15 months or more, his supplemental monthly retirement benefit shall equal the benefit
 16 accrued under R.S. 11:1632 or 1633, whichever is applicable, based on his average
 17 final compensation during his period of reemployment. Upon retirement subsequent
 18 to reemployment, his benefit shall be equal to the benefits he was receiving
 19 immediately prior to reemployment plus the supplemental benefit earned during his
 20 reemployment.

21 * * *

22 G. Forfeitures resulting from a termination of employment or a withdrawal
 23 of a member's own contributions may not be used to increase benefits to remaining
 24 members.

25 §1632. Retirement eligibility; benefits at three percent

26 * * *

27 C.(1) The annual benefit otherwise payable to a member under the system
 28 at any time shall not exceed the maximum permissible benefit. If the benefit the
 29 member would otherwise accrue in a limitation year would produce an annual benefit

1 in excess of the maximum permissible benefit, then the benefit shall be limited or the
2 rate of accrual reduced to a benefit that does not exceed the maximum permissible
3 benefit.

4 (2) The retirement benefit of any member that is not attributable to employee
5 contributions, when expressed as an annual benefit, may not exceed two hundred
6 thousand dollars per year, as adjusted for increases in the cost of living pursuant to
7 26 U.S.C. 415(d). For purposes of determining whether a member's benefit exceeds
8 this limitation, if the normal form of benefit is other than a single life annuity, such
9 form shall be adjusted actuarially to the equivalent of a single life annuity. This
10 single life annuity shall not exceed the maximum dollar limitation outlined in this
11 Paragraph. No adjustment is required for qualified joint and survivor annuity
12 benefits, preretirement disability benefits, or preretirement death benefits.

13 (3)(a) If benefit distribution begins before the member has reached age
14 sixty-two, the actual retirement benefit shall not exceed the adjusted dollar
15 limitation. The adjusted dollar limitation shall be the equivalent of two hundred
16 thousand dollars beginning at age sixty-two.

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

23 (c) The interest rate and mortality table used for adjusting the maximum
24 limitations above shall be:

25 (i) For benefits commencing before the member has reached age sixty-two
26 and for forms of benefit other than straight life annuity, the member's benefit shall
27 be the lesser of the benefit computed using an interest rate of five percent and the
28 applicable mortality table and the benefit computed using the defined benefit dollar
29 limit at age sixty-two, multiplied by the ratio of the annual amount of the

1 immediately commencing straight life annuity to the annual amount of the straight
2 life annuity commencing at age sixty-two, with both amounts determined without the
3 limitations of this Section.

4 (ii) For benefits commencing after the member has reached age sixty-five,
5 the member's benefit shall be the lesser of the benefit computed using an interest rate
6 of five percent and the applicable mortality table and the benefit computed using the
7 defined benefit dollar limit at age sixty-five, multiplied by the ratio of the annual
8 amount of the immediately commencing straight life annuity to the annual amount
9 of the straight life annuity commencing at age sixty-five, with both amounts
10 determined without the limitations of this Section.

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

16 (4) If retirement benefits are payable under this system to a member who has
17 less than ten years of participation in the system, the dollar limitation referred to in
18 Paragraph (2) of this Subsection shall be multiplied by a fraction, not in excess of
19 one, the numerator of which is the member's number of years of participation in the
20 system and the denominator of which is ten.

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

24 (6) If a member is also a member in another defined benefit pension plan
25 maintained by the state or one of its political subdivisions, his benefit, considered in
26 the aggregate after taking into account the benefits provided by all such retirement
27 plans, shall not exceed the limits provided in this Subsection.

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

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

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

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

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

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

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

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

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

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

9 (a) Employer contributions.

10 (b) Employee contributions.

11 (c) Forfeitures.

12 (d) Amounts allocated to an individual medical account as defined in 26
13 U.S.C. 415(1)(2) that is a part of a pension or annuity plan maintained by the
14 employer are treated as annual additions to a defined contribution plan.
15 Additionally, amounts derived from contributions paid or accrued in taxable years
16 ending after December 31, 1985, which are attributable to postretirement medical
17 benefits allocated to the separated account of a key employee as defined in 26 U.S.C.
18 419A(d)(3) or under a welfare benefit fund as defined in 26 U.S.C. 419(e)
19 maintained by the employer are treated as annual additions to a defined contribution
20 plan.

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

25 (5) The amount of annual additions that may be credited to the member's
26 account for any limitation year shall not exceed the maximum permissible amount.
27 Contributions and benefits under any other plan of the employer, to the extent that
28 an adjustment is required to satisfy the requirements of this Section in the aggregate,
29 shall be limited or reduced to the extent necessary to satisfy such requirements

1 without reducing accrued benefits; however, only after such other plans have been
2 modified shall the benefits and contributions under this plan be reduced. As soon as
3 it is administratively feasible after the end of the limitation year, the maximum
4 permissible amount for the limitation year shall be determined on the basis of the
5 member's actual compensation for the limitation year. If there is an excess amount,
6 the excess shall be disposed of as follows:

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

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

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

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

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

1 annuity savings fund as he shall demand. Should a member die before retirement the
2 amount of his accumulated contributions standing to the credit of his individual
3 account shall be paid to his estate or to such person as he shall have nominated by
4 written designation, duly executed and filed with the board of trustees, unless
5 benefits are payable under R.S. 11:1636.

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

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

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

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

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

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

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

28 (3) "Eligible retirement plan" means an individual retirement account
29 described in 26 U.S.C. 408(a), an individual retirement annuity described in 26

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

12 (4) "Eligible rollover distribution" means any distribution of all or any
13 portion of the balance to the credit of the distribution, except that an eligible rollover
14 distribution does not include any distribution that is one of a series of substantially
15 equal periodic payments, not less frequently than annually, made for the life or life
16 expectancy of the distributee or the joint lives or joint life expectancies of the
17 distributee and the distributee's designated beneficiary, or for a specified period of
18 ten years or more; any distribution to the extent such distribution is required under
19 26 U.S.C. 401(a)(9); and the portion of any distribution that is not includable in gross
20 income, determined without regard to the exclusion for net unrealized appreciation
21 with respect to employer securities. A portion of a distribution shall not fail to be an
22 eligible rollover distribution merely because the portion consists of after-tax
23 employee contributions which are not includable in gross income; however, such
24 portion may be paid only to an individual retirement account or annuity described
25 in 26 U.S.C. 408(a) or (b), or to a qualified defined contribution plan described in 26
26 U.S.C. 401(a) or 403(a) that agrees to account separately for amounts so transferred,
27 including accounting separately for the portion of such distribution which is
28 includable in gross income and the portion of such distribution which is not
29 includable. The system shall accept member rollover contributions, direct rollovers

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

5 * * *

6 §1638. Cost-of-living increase of benefits

7 * * *

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

10 * * *

11 §1645. Excess benefit arrangement

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

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

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

28 D. A retiree is entitled to a monthly benefit under this Section in an amount
 29 equal to the amount by which the benefit otherwise payable by the retirement system

1 has been reduced by the limitation on benefits imposed by 26 U.S.C. 415(b)(1)(A).
2 The benefit payable by this arrangement is payable at the time and in the form that
3 the benefit payable under the trust fund is paid.

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

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

22 §1646. Reversion of funds prohibited

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

28 B. The amount of any contribution returned shall not exceed the difference
29 between the amount actually contributed and the amount which would have been

1 contributed had there been no mistake of fact and shall not include the earnings
 2 attributable to such contribution. The amount of the contribution returned shall be
 3 reduced by any losses attributable to the contribution, and no member shall have his
 4 benefit reduced by the return of the contribution to less than such benefit would have
 5 been had the contribution not been returned.

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

10 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 for a supplemental benefit if a member retires and then comes back to work in a covered position. His original benefit is suspended during the period of his reemployment, and if the member works less than 36 months, his supplemental benefit (benefit based on reemployed service) will be calculated using the lesser of his average final compensation at his original retirement date or his average compensation during the period of his reemployment. If the member works more than 36 months, his benefits shall be calculated using the average final compensation during his period of reemployment. Proposed law changes 36 months to 60 months.

Further provides that forfeitures in the system resulting from termination of employment or withdrawal of member contributions shall not result in augmented benefits to remaining members.

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. 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, 1631(F)(1), and 1635; Adds R.S. 11:1588, 1631(G), 1632(C), (D), (E), and (F), 1633(C), 1636(C) and (D), 1638(C), 1645, and 1646)

Summary of Amendments Adopted by House

House Floor Amendments to the engrossed bill.

1. Provides that military service may be credited toward the member's accrued service as provided in present law.
2. Provides for calculation of supplemental benefit for employment after retirement based on working more or less than 60 months rather than the 36 in present law.

3. Provides that excesses remaining in the system from forfeitures due a member terminating employment or withdrawing his contributions shall not be used to augment the benefits of remaining members.
4. Provides relative to the interest rate used in the calculation of retirement benefits.