

Regular Session, 2012

ACT No. 523

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

BY REPRESENTATIVE PEARSON

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
24 through the twenty-fourth month does not exceed one hundred ten percent of the
25 total of non-state compensation for the first through twelfth month, and that non-state

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

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

16 * * *

17 §1588. Amendment of provisions of retirement system

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

25 B. No amendment to the retirement system shall operate to deprive any
 26 member of a benefit to which he is entitled. In the case of any merger or
 27 consolidation with or transfer of assets or liabilities to any other retirement system,
 28 each member in the retirement system shall, if the retirement system is then
 29 terminated, receive a benefit immediately after the merger, consolidation, or transfer
 30 which is equal to or greater than the benefit he would have been entitled to receive

1 immediately before the merger, consolidation, or transfer if the retirement system
2 had then terminated.

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

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

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

17 * * *

18 §1612. Employees of Louisiana District Attorneys' Association; prior service credit

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

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

6 * * *

7 §1614. Service on which retirement allowances are based

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

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

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

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

1 the employer and employee amount plus interest that would have been withheld and
 2 paid into the system for that period based upon his total salary for such period. He
 3 shall accrue a supplemental retirement benefit based on his service rendered after
 4 reemployment. If the member continues employment after retirement for a period
 5 of less than ~~thirty-six~~ sixty months, his supplemental monthly retirement benefit
 6 shall equal the benefit accrued under R.S. 11:1632 or 1633, whichever is applicable,
 7 based on the lesser of his average final compensation at his original retirement date
 8 or his average compensation during the period of his subsequent reemployment. If
 9 the member continues in employment after retirement for a period of ~~thirty-six~~ sixty
 10 months or more, his supplemental monthly retirement benefit shall equal the benefit
 11 accrued under R.S. 11:1632 or 1633, whichever is applicable, based on his average
 12 final compensation during his period of reemployment. Upon retirement subsequent
 13 to reemployment, his benefit shall be equal to the benefits he was receiving
 14 immediately prior to reemployment plus the supplemental benefit earned during his
 15 reemployment.

* * *

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

20 §1632. Retirement eligibility; benefits at three percent

* * *

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

28 (2) The retirement benefit of any member that is not attributable to employee
 29 contributions, when expressed as an annual benefit, may not exceed two hundred
 30 thousand dollars per year, as adjusted for increases in the cost of living pursuant to

1 26 U.S.C. 415(d). For purposes of determining whether a member's benefit exceeds
2 this limitation, if the normal form of benefit is other than a single life annuity, such
3 form shall be adjusted actuarially to the equivalent of a single life annuity. This
4 single life annuity shall not exceed the maximum dollar limitation outlined in this
5 Paragraph. No adjustment is required for qualified joint and survivor annuity
6 benefits, preretirement disability benefits, or preretirement death benefits.

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

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

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

19 (i) For benefits commencing before the member has reached age sixty-two
20 and for forms of benefit other than straight life annuity, the member's benefit shall
21 be the lesser of the benefit computed using an interest rate of five percent and the
22 applicable mortality table and the benefit computed using the defined benefit dollar
23 limit at age sixty-two, multiplied by the ratio of the annual amount of the
24 immediately commencing straight life annuity to the annual amount of the straight
25 life annuity commencing at age sixty-two, with both amounts determined without the
26 limitations of this Section.

27 (ii) For benefits commencing after the member has reached age sixty-five,
28 the member's benefit shall be the lesser of the benefit computed using an interest rate
29 of five percent and the applicable mortality table and the benefit computed using the
30 defined benefit dollar limit at age sixty-five, multiplied by the ratio of the annual

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

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

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

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

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

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

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

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

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

1 D.(1) For purposes of this Section and R.S. 11:1633 and 1634, average
2 compensation shall include any amounts properly considered as regular rate of pay
3 of the member, as defined in R.S. 11:231, and unreduced by amounts excluded from
4 income for federal income tax purposes by reason of 26 U.S.C. 125, 132(f),
5 402(e)(3), 402(h)(1)(B), 403(b), 414(h), or 457 or any other provision of federal law
6 of similar effect.

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

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

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

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

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

30 (a) Employer contributions.

1 **(b) Employee contributions.**

2 **(c) Forfeitures.**

3 **(d) Amounts allocated to an individual medical account as defined in 26**
4 **U.S.C. 415(l)(2) that is a part of a pension or annuity plan maintained by the**
5 **employer are treated as annual additions to a defined contribution plan.**
6 **Additionally, amounts derived from contributions paid or accrued in taxable years**
7 **ending after December 31, 1985, which are attributable to postretirement medical**
8 **benefits allocated to the separated account of a key employee as defined in 26 U.S.C.**
9 **419A(d)(3) or under a welfare benefit fund as defined in 26 U.S.C. 419(e)**
10 **maintained by the employer are treated as annual additions to a defined contribution**
11 **plan.**

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

16 **(5) The amount of annual additions that may be credited to the member's**
17 **account for any limitation year shall not exceed the maximum permissible amount.**
18 **Contributions and benefits under any other plan of the employer, to the extent that**
19 **an adjustment is required to satisfy the requirements of this Section in the aggregate,**
20 **shall be limited or reduced to the extent necessary to satisfy such requirements**
21 **without reducing accrued benefits; however, only after such other plans have been**
22 **modified shall the benefits and contributions under this plan be reduced. As soon as**
23 **it is administratively feasible after the end of the limitation year, the maximum**
24 **permissible amount for the limitation year shall be determined on the basis of the**
25 **member's actual compensation for the limitation year. If there is an excess amount,**
26 **the excess shall be disposed of as follows:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (3) "Eligible retirement plan" means an individual retirement account
19 described in 26 U.S.C. 408(a), an individual retirement annuity described in 26
20 U.S.C. 408(b), an annuity plan described in 26 U.S.C. 403(a), or a qualified trust
21 described in 26 U.S.C. 401(a), that accepts the distributee's eligible rollover
22 distribution. However, in the case of an eligible rollover distribution to the surviving
23 spouse, an eligible retirement plan is an individual retirement account or individual
24 retirement annuity. "Eligible retirement plan" shall also mean an annuity contract
25 described in 26 U.S.C. 403(b) and an eligible plan under 26 U.S.C. 457(b) that is
26 maintained by the state or any political subdivision or instrumentality thereof
27 agreeing to account separately for amounts transferred into such plan from this
28 system. A distribution to a surviving spouse or to a spouse or former spouse who is
29 the alternate payee under a qualified domestic relations order shall not make the
30 retirement plan ineligible.

1 (4) "Eligible rollover distribution" means any distribution of all or any
2 portion of the balance to the credit of the distribution, except that an eligible rollover
3 distribution does not include any distribution that is one of a series of substantially
4 equal periodic payments, not less frequently than annually, made for the life or life
5 expectancy of the distributee or the joint lives or joint life expectancies of the
6 distributee and the distributee's designated beneficiary, or for a specified period of
7 ten years or more; any distribution to the extent such distribution is required under
8 26 U.S.C. 401(a)(9); and the portion of any distribution that is not includable in gross
9 income, determined without regard to the exclusion for net unrealized appreciation
10 with respect to employer securities. A portion of a distribution shall not fail to be an
11 eligible rollover distribution merely because the portion consists of after-tax
12 employee contributions which are not includable in gross income; however, such
13 portion may be paid only to an individual retirement account or annuity described
14 in 26 U.S.C. 408(a) or (b), or to a qualified defined contribution plan described in 26
15 U.S.C. 401(a) or 403(a) that agrees to account separately for amounts so transferred,
16 including accounting separately for the portion of such distribution which is
17 includable in gross income and the portion of such distribution which is not
18 includable. The system shall accept member rollover contributions, direct rollovers
19 of distributions made after December 31, 2011, or both, from the following types of
20 plans: individual retirement accounts or annuities or plans qualified under 26 U.S.C.
21 401(a) or 403(a), governmental deferred compensation arrangements defined in 26
22 U.S.C. 457(b), or tax sheltered annuities or other arrangements under 26 U.S.C.
23 403(b), beginning on the effective date specified; but only for the purposes of
24 repaying prior distributions or purchasing service credits permitted under 26 U.S.C.
25 415(k)(3) and 415(n).

26 E. The board of trustees may adopt provisions of the system that carry out
27 the requirements of Subsections B, C, and D of this Section, and the board of trustees
28 may adopt provisions as required to maintain the qualified status of the system under
29 26 U.S.C. 401(a).

1 §1636. Survivors' benefits

2 * * *

3 C.(1) If a survivor benefit is payable to a specified person or persons or if a
4 benefit is payable at death under an option elected pursuant to R.S. 11:1637, the
5 member shall be considered to have designated such person as a designated
6 beneficiary hereunder. If there is more than one such person, then the oldest such
7 person shall be considered to have been so designated, or, if none, the oldest person
8 entitled to receive a survivor benefit shall be considered to have been so designated.
9 The designation of a designated beneficiary hereunder shall not prevent payment to
10 multiple beneficiaries but shall only establish the permitted period of payments.

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

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

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

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

23 * * *

24 §1638. Cost-of-living increase of benefits

25 * * *

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

28 * * *

1 §1645. Excess benefit arrangement

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

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

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

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

23 E. The benefit payable under this Section shall be paid from contributions
24 that otherwise would be made to the trust fund under this Chapter. In lieu of deposit
25 in the trust account, an amount determined by the retirement system to be necessary
26 to pay benefits under this Section shall be paid monthly to the credit of a separately
27 dedicated account maintained only for the excess benefit arrangement. The account
28 may include amounts needed to pay reasonable and necessary expenses of
29 administering this arrangement. The monthly amounts to be paid to the credit of the
30 account shall be transferred to the account prior to the date of a monthly

1 disbursement under this Section. No assets of the system shall be used to provide
2 such benefits.

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

11 §1646. Reversion of funds prohibited

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

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

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

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____