

2021 Regular Session

HOUSE BILL NO. 25

BY REPRESENTATIVE VILLIO

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

RETIREMENT/DISTRICT ATTY: Provides relative to compensation considered in the calculation of contributions and benefits for the District Attorneys' Retirement System

1 AN ACT

2 To amend and reenact R.S. 11:233(B)(3) and 1581(5) and to enact R.S. 11:233(A)(5) and
3 (B)(4)(c) and 1589, relative to the District Attorneys' Retirement System; to provide
4 relative to retirement benefits; to provide relative to compensation considered in the
5 calculation of contributions and benefits; to provide for the correction of errors and
6 recovery of overpayments; to provide for an effective date; and to provide for related
7 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. 11:233(B)(3) and 1581(5) are hereby amended and reenacted and
13 R.S. 11:233(A)(5) and (B)(4)(c) and 1589 are hereby enacted to read as follows:

14 §233. Earnable compensation

15 A. The provisions of this Section shall apply to the following public
16 retirement or pension systems, funds, and plans:

17 * * *

18 (5) District Attorneys' Retirement System

19 B.

20 * * *

1 (3) Notwithstanding the provisions of Subparagraph (2)(g) of this Subsection
 2 amounts deducted for deferred salary shall be included to calculate the amount of
 3 contributions payable by an employer and employee and to compute average
 4 compensation with respect to the Firefighters' Retirement System, the Sheriffs'
 5 Pension and Relief Fund, ~~and~~ the Parochial Employees' Retirement System of
 6 Louisiana, and the District Attorneys' Retirement System.

7 (4)

8 * * *

9 (c) To the extent there is a conflict between the provisions of this Subsection
 10 and R.S. 11:1581 as to "earnable compensation", the provisions of R.S. 11:1581 shall
 11 prevail.

12 * * *

13 §1581. Definitions

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

16 * * *

17 (5)(a) For a member eligible to receive an unreduced retirement benefit as
 18 provided in R.S. 11:1632(B)(1) or 1633(B)(1), before July 1, 2021, "Average
 19 average final compensation" shall mean the average monthly compensation earned
 20 by an employee during any period of sixty successive months of service as an
 21 employee during which the ~~said~~ earned compensation was the highest. The average
 22 monthly compensation shall include compensation not paid by the state, but only to
 23 the extent that nonstate compensation for the thirteenth through the twenty-fourth
 24 month does not exceed one hundred ten percent of the total of nonstate compensation
 25 for the first through twelfth month, and that nonstate compensation for the twenty-
 26 fifth through the thirty-sixth month does not exceed one hundred ten percent of the
 27 total of nonstate compensation for the thirteenth through the twenty-fourth month,
 28 and that nonstate compensation for the thirty-seventh through the forty-eighth month
 29 does not exceed one hundred ten percent of the total of nonstate compensation for

1 the twenty-fifth through thirty-sixth month, and that nonstate compensation for the
2 forty-ninth through the sixtieth month does not exceed one hundred ten percent of
3 the total of nonstate compensation for the thirty-seventh through forty-eighth month.
4 Fees and compensation excluded by R.S. 11:233(B)(2) earned in connection with
5 official duties shall not be included in average final compensation. In the event of
6 interruption of employment, the sixty-month period shall be computed by joining
7 employment periods immediately preceding and succeeding the interruption.

8 (b) Except as provided in Subparagraph (a) of this Paragraph, "average final
9 compensation" shall mean the average monthly compensation earned by an
10 employee during any period of sixty successive months of service as an employee
11 during which the earned compensation was highest. The average monthly
12 compensation shall include all compensation, but only to the extent that
13 compensation for the thirteenth through the twenty-fourth month does not exceed
14 one hundred ten percent of the total compensation for the first through twelfth
15 month, and compensation for the twenty-fifth through the thirty-sixth month does not
16 exceed one hundred ten percent of the total compensation for the thirteenth through
17 the twenty-fourth month, and compensation for the thirty-seventh through the forty-
18 eighth month does not exceed one hundred ten percent of the total compensation for
19 the twenty-fifth through thirty-sixth month, and compensation for the forty-ninth
20 through the sixtieth month does not exceed one hundred ten percent of the total
21 compensation for the thirty-seventh through forty-eighth month. Fees and
22 compensation excluded by R.S. 11:233(B)(2) earned in connection with official
23 duties shall not be included in average final compensation. In the event of
24 interruption of employment, the sixty-month period shall be computed by joining
25 employment periods immediately preceding and succeeding the interruption.

26 (c) Compensation of a member in excess of two hundred thousand dollars,
27 as adjusted for increases in the cost-of-living under 26 U.S.C. 401(a)(17)(B) for
28 years beginning after January 1, 2002, shall not be taken into account. This
29 limitation may be adjusted by rules promulgated by the board of trustees in

1 accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et
2 seq. For purposes of compliance with the requirements for qualification under 26
3 U.S.C. 401(a), the board of trustees may promulgate rules further defining
4 "compensation" and "section 415 compensation" in accordance with the
5 Administrative Procedure Act.

6 * * *

7 §1589. Overpayment of benefits; corrections; repayment

8 A. The director may correct any administrative error and make all
9 adjustments relative to such correction as provided in Subsection C of this Section.
10 The director shall correct such error based solely on sufficient documentation, which
11 shall be submitted to the board of trustees for approval at the next board meeting
12 after receipt of such documentation, whether such administrative error was
13 committed by the system or otherwise.

14 B. If an underpayment of benefits is due to an administrative error committed
15 by system staff, the correction of the error pursuant to Subsection A of this Section
16 may include the payment of interest at a rate not to exceed the system's valuation
17 interest rate or the judicial interest rate, whichever is lower.

18 C. If an amount is paid to a retiree, beneficiary, or survivor which is not due
19 him, the board of trustees shall adjust the amount payable to the correct amount, and
20 the board may recover any overpayment by reducing the corrected benefit such that
21 the overpayment will be repaid within twelve months. The director or board of
22 trustees shall notify the retiree, beneficiary, or survivor of the amount of
23 overpayment in benefits and the amount of the adjustment in benefits at least thirty
24 days prior to any reduction from the benefit amount without the overpayment.

25 D. The right to collect any benefit paid to a retiree, beneficiary, or survivor
26 which is not due him, due to administrative error by the system, applies only to
27 amounts paid during the thirty-six month period immediately preceding the date on
28 which notice of such error is sent to the member, except in the case of fraud. This
29 right to collect is subject to a liberative prescription of ten years. This prescription

1 commences to run from the date the system has actual knowledge of the error in
2 payment.

3 E. Notwithstanding the provisions of Subsection D of this Section, if the
4 individual received a payment because of a fraud against the system, the right to
5 collect such fraudulent payment shall extend to the entire amount of overpayment
6 obtained through fraud. This right to collect is subject to a liberative prescription of
7 ten years. This prescription commences to run from the date the system has actual
8 knowledge of the error in payment.

9 Section 2. This Act shall become effective on July 1, 2021; if vetoed by the governor
10 and subsequently approved by the legislature, this Act shall become effective on July 1,
11 2021, or on the day following such approval by the legislature, whichever is later.

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)]

HB 25 Reengrossed

2021 Regular Session

Villio

Abstract: Relative to the District Attorneys' Retirement System (DARS), provides relative to income used in calculation of contributions and benefits and provides for corrections of benefit payments.

Present law applicable to the retirement systems for firefighters, sheriffs, and parish employees, provides that for purposes of calculation of contributions and benefits, compensation means the full amount earned by an employee for a given pay period. However, provides that the following are not included as compensation:

- (1) Overtime unless it is required to be worked in the employee's regular tour of duty.
- (2) Operating expenses.
- (3) Use of automobile or motor vehicles.
- (4) The cost of any insurance paid by the employer.
- (5) Any allowance for expenses incurred as an incident of employment.
- (6) Payments made in lieu of unused annual or sick leave.
- (7) Bonuses, terminal pay, severance pay, or any other type of irregular or nonrecurring payment.

Proposed law makes present law applicable to DARS.

Present law provides that in calculating benefits for a member of DARS, compensation received from the local government is subject to year over year increase limits. Proposed law retains present law for members who become eligible to receive a regular retirement benefit before July 1, 2021. For all other members, proposed law provides that the year over year increase limits are applicable to all compensation.

Present law provides that when a retirement system pays a benefit which is not due to a person, the board of trustees shall adjust the amount payable to the correct amount. Authorizes the board to recover any overpayment by reducing the corrected benefit such that the overpayment will be repaid within a reasonable number of months. Requires the board to notify the person of the amount of overpayment and the amount of the adjustment in benefits 30 days prior to any reduction.

Proposed law retains applicability of present law to DARS except to specify that an overpayment may be recovered over 12 months or less and to provide that the director or the board shall notify the person of any reduction.

Proposed law authorizes the director of DARS to correct administrative errors in benefit payments and to make adjustments relative to such corrections. Requires that documentation of such corrections be submitted to the board of trustees for approval. Authorizes payment of interest on any underpayment of benefits that was due to an administrative error committed by system staff.

For benefits paid due to administrative error, proposed law limits the benefits that DARS may recover to those paid during the 36 month period immediately preceding the date on which notice of such error is sent. For benefits paid due to fraud, proposed law authorizes DARS to recover the entire amount of overpayment. Proposed law provides for a 10 year prescription period, from the date the system has knowledge of the error, on any such recovery.

(Amends R.S. 11:233(B)(3) and 1581(5); Adds R.S. 11:233(A)(5) and (B)(4)(c) and 1589)