

**ACT No. 139**

2021 Regular Session

HOUSE BILL NO. 25

BY REPRESENTATIVE VILLIO

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 \* \* \*

21 (3) Notwithstanding the provisions of Subparagraph (2)(g) of this Subsection  
22 amounts deducted for deferred salary shall be included to calculate the amount of  
23 contributions payable by an employer and employee and to compute average  
24 compensation with respect to the Firefighters' Retirement System, the Sheriffs'

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

1 Pension and Relief Fund, ~~and~~ the Parochial Employees' Retirement System of  
2 Louisiana, and the District Attorneys' Retirement System.

3 (4)

4 \* \* \*

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

8 \* \* \*

9 §1581. Definitions

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

12 \* \* \*

13 (5)(a) For a member eligible to receive an unreduced retirement benefit as  
14 provided in R.S. 11:1632(B)(1) or 1633(B)(1), before July 1, 2021, "Average  
15 average final compensation" shall mean the average monthly compensation earned  
16 by an employee during any period of sixty successive months of service as an  
17 employee during which the ~~said~~ earned compensation was the highest. The average  
18 monthly compensation shall include compensation not paid by the state, but only to  
19 the extent that nonstate compensation for the thirteenth through the twenty-fourth  
20 month does not exceed one hundred ten percent of the total of nonstate compensation  
21 for the first through twelfth month, and that nonstate compensation for the twenty-  
22 fifth through the thirty-sixth month does not exceed one hundred ten percent of the  
23 total of nonstate compensation for the thirteenth through the twenty-fourth month,  
24 and that nonstate compensation for the thirty-seventh through the forty-eighth month  
25 does not exceed one hundred ten percent of the total of nonstate compensation for  
26 the twenty-fifth through thirty-sixth month, and that nonstate compensation for the  
27 forty-ninth through the sixtieth month does not exceed one hundred ten percent of  
28 the total of nonstate compensation for the thirty-seventh through forty-eighth month.  
29 Fees ~~and compensation excluded by R.S. 11:233(B)(2)~~ earned in connection with  
30 official duties shall not be included in average final compensation. In the event of

1 interruption of employment, the sixty-month period shall be computed by joining  
 2 employment periods immediately preceding and succeeding the interruption.

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

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

30 \* \* \*

1           §1589. Overpayment of benefits; corrections; repayment

2           A. The director may correct any administrative error and make all  
3           adjustments relative to such correction as provided in Subsection C of this Section.

4           The director shall correct such error based solely on sufficient documentation, which  
5           shall be submitted to the board of trustees for approval at the next board meeting  
6           after receipt of such documentation, whether such administrative error was  
7           committed by the system or otherwise.

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

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

19          D. The right to collect any benefit paid to a retiree, beneficiary, or survivor  
20          which is not due him, due to administrative error by the system, applies only to  
21          amounts paid during the thirty-six month period immediately preceding the date on  
22          which notice of such error is sent to the member, except in the case of fraud. This  
23          right to collect is subject to a liberative prescription of ten years. This prescription  
24          commences to run from the date the system has actual knowledge of the error in  
25          payment.

26          E. Notwithstanding the provisions of Subsection D of this Section, if the  
27          individual received a payment because of a fraud against the system, the right to  
28          collect such fraudulent payment shall extend to the entire amount of overpayment  
29          obtained through fraud. This right to collect is subject to a liberative prescription of

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

3           Section 2. This Act shall become effective on July 1, 2021; if vetoed by the governor  
 4           and subsequently approved by the legislature, this Act shall become effective on July 1,  
 5           2021, or on the day following such approval by the legislature, whichever is later.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_