

2018 Regular Session

HOUSE BILL NO. 41

BY REPRESENTATIVE IVEY

RETIREMENT/FIREFIGHTERS: Provides relative to the fiduciary relationship between the Firefighters' Retirement System and its investment advisors

1 AN ACT

2 To enact R.S. 11:2261.1 and Code of Criminal Procedure Articles 573.3 and 575.1, relative
3 to the Firefighters' Retirement System; to provide for the fiduciary relationship
4 between the system and its investment advisors; to provide for contractual terms; to
5 provide relative to criminal and civil prescriptive periods; to require disclosure of
6 judicial and regulatory proceedings; 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. 11:2261.1 is hereby enacted to read as follows:

12 §2261.1. Investment consultants and money managers; fiduciary relationship;
13 contractual terms; prescription

14 A.(1) Each of the following shall be a fiduciary of the system and shall be
15 subject to R.S. 11:263:

16 (a) Any person who agrees by written contract to exercise any discretionary
17 authority or discretionary control with respect to the management of system funds
18 or assets, including money managers.

1 (b) Any person who agrees by written contract to render investment advice
2 or services for compensation, direct or indirect, with respect to system funds or
3 assets, including investment consultants.

4 (2) The written contract governing the relationship between any person
5 described in Paragraph (1) of this Subsection and this system shall contain a
6 provision whereby the person described in Paragraph (1) of this Subsection expressly
7 agrees to and acknowledges the following:

8 (a) The provisions of this Section are applicable to the person.

9 (b) The person shall act with the care, skill, prudence, and diligence under
10 the circumstances prevailing that a prudent institutional investor acting in a like
11 capacity and familiar with such matters would use in the conduct of an enterprise of
12 a like character and with like aims.

13 (c) The exclusive, original jurisdiction for any proceeding involving this
14 Section shall be the Nineteenth Judicial District Court of Louisiana and the person
15 consents to such personal and subject matter jurisdiction and that such proceeding
16 is not removable to any federal court without the express written consent of the board
17 of trustees of this system.

18 B. Notwithstanding any other provision of law to the contrary, any judicial
19 or regulatory proceeding or action initiated by this system pursuant to this Section
20 shall be a personal action subject to the liberative prescription of ten years.

21 C. Notwithstanding any other provision of law to the contrary, a civil lawsuit
22 filed by this system shall suspend the running of prescription for the institution of
23 criminal prosecution for the following criminal charges arising from the same facts
24 and circumstances upon which the civil lawsuit is based until the date that a final,
25 non-appealable judgment has been rendered in the civil lawsuit:

26 (1) A charge based on the misappropriation of any money or thing of value,
27 or any theft or fraud committed relative thereto, by any person described in
28 Paragraph (A)(1) of this Section who by virtue of his office, employment, or

1 fiduciary relationship with this system had been entrusted with or had control of such
2 money or thing of value.

3 (2) A charge of false accounting committed by a person or agent of a person
4 described in Paragraph (A)(1) of this Section.

5 D. Any person described in Paragraph (A)(1) of this Section shall disclose
6 in any written or verbal communication with any trustee or employee of this system
7 any judicial or regulatory proceeding relative to the management of funds or assets
8 or investment advice or services in which such person was or is a deponent, witness,
9 named party, or employee of a named party. Failure to make such disclosure shall
10 result in nullification of any contract or agreement existing between this system and
11 such person or employer of such person.

12 Section 2. Code of Criminal Procedure Articles 573.3 and 575.1 are hereby enacted
13 to read as follows:

14 Art. 573.3. Running of time limitations; exception; crimes against the Firefighters'

15 Retirement System

16 The time limitations established by this Chapter shall not commence to run
17 as to a crime described in R.S. 11:2261.1(C) and committed against the Firefighters'
18 Retirement System until the crime is discovered by the Firefighters' Retirement
19 System.

20 * * *

21 Art. 575.1. Suspension of time limitations; crimes against the Firefighters'

22 Retirement System

23 The periods of limitation established by this Chapter shall be suspended when
24 a civil suit is filed as provided in R.S. 11:2261.1(C).

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 41 Reengrossed

2018 Regular Session

Ivey

Abstract: Makes investment consultants and money managers fiduciaries of the Firefighters' Retirement System (FRS), requires contractual terms between the parties, provides for jurisdiction and venue for civil suits and for the suspension of time limitations on criminal prosecution for certain crimes against FRS.

Present law requires fiduciaries of the state and statewide retirement systems to act with the care, skill, prudence, and diligence under the circumstances prevailing as would a prudent institutional investor acting in a like capacity and familiar with the like aims (prudent-man rule). Present law further requires fiduciaries to take certain factors into consideration when contemplating an investment action or asset allocation.

Proposed law expressly makes investment consultants and money managers fiduciaries of FRS, subject to the prudent-man rule. Requires these fiduciaries to agree to the exclusive, original jurisdiction of the 19th Judicial District Court of La. for any proceeding involving their fiduciary duty and requires that such suit may not be removed to federal court without the FRS board's written consent. Provides that any such suit is subject to liberative prescription of 10 years. Requires that a civil suit filed by FRS suspend prescription for the institution of criminal prosecution for charges based on the misappropriation of money or thing of value, theft or fraud relative thereto, or a charge of false accounting arising from the same facts and circumstances as the civil suit until the date a final, nonappealable judgment is rendered in the civil suit. Provides that the time limitations provided by present law for prosecution of these crimes shall not commence to run until the crime is discovered by FRS.

Proposed law requires investment consultants and money managers to disclose in any communication with a FRS trustee or employee any proceeding relative to the management of funds or assets or investment advice or services in which such person was or is a deponent, witness, named party, or employee of a named party. Failure to do so results in nullification of any contract or agreement with the person.

(Adds R.S. 11:2261.1 and C.Cr.P. Art. 573.3 and 575.1)

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Add that the time limitations for prosecution provided by present law shall not begin to run on a crime committed against FRS until the crime is discovered by FRS.