



LASERS

Louisiana State Employees'
Retirement System

Supplemental Law Book

Current through **2018 Regular Legislative Session**

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LOUISIANA ADMINISTRATIVE CODE (LASERS Rules)

TITLE 58—RETIREMENT

Part I. Louisiana State Employees' Retirement System

Chapter 1. General Provisions

§101. Definitions

A. Wherever in these regulations the masculine is used, it includes the feminine and vice versa. Wherever the singular is used, it includes the plural and vice versa. The following definitions shall apply to all regulations promulgated under Part I, unless the usage clearly indicates another meaning.

Active Member—a member of the Louisiana State Employees' Retirement System who is in state service.

Active Member Trustees—those members of the board of trustees of the Louisiana State Employees' Retirement System who are active employees, or participating in DROP.

Board of Trustees or Board—the board of trustees of the Louisiana State Employees' Retirement System.

Director—the executive director of the Louisiana State Employees' Retirement System.

DROP—Deferred Retirement Option Plan.

Inactive Member—a member who is out of state service but is not retired and has left his contributions in the system.

LASERS—the Louisiana State Employees' Retirement System.

Retired Member Trustee—those members of the board of trustees of the Louisiana State Employees' Retirement

System who are retired, but not those members who are participating in DROP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 24:120 (January 1998), amended LR 43:89 (January 2017).

§103. Petitions for Adoption, Amendment, or Repeal of Rules; Form and Procedure

Repealed.

§105. Petitions for Declaratory Rulings on the Applicability of Agency Statutes, Rules or Orders

Repealed.

§107. Appeal to the Board of Trustees

Repealed.

§109. Waiver of the Electronic Funds Transfer Requirement

A. LASERS may, at its option, issue paper checks in lieu of an Electronic Funds Transfer (EFT) to surviving minor children under R.S. 11:471 et seq., in order to avoid overpayments or other administrative issues associated with the payment of such benefits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515 and 11:479.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the State Employees' Retirement System, LR 31:1611 (July 2005).

§111. Contributions by Electronic Funds Transfer or Certified Check

A. Under circumstances as determined by the executive director, LASERS may require agencies to submit employee and employer contributions by electronic funds transfer ("EFT") or certified check.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury,

Board of Trustees of the State Employees' Retirement System, LR 33:2468 (November 2007).

§113. Rollover of Refunds

A. Qualified rollovers of accumulated employee contributions to be refunded may be made to two different accounts with a minimum of \$500 to each account. Refunds of funds totaling less than \$500 shall be limited to a single account.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 34:97 (January 2008).

§115. Plan Year

A. The plan year for LASERS shall be July 1-June 30.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 39:120 (January 2013).

§117. Limitations Year

A. The limitations year for LASERS shall be January 1-December 31.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 39:120 (January 2013).

Chapter 3. Election of Active Member Trustees

§301. Eligible Candidates

[Formerly §303.A]

A. An active member candidate for a position on the board of trustees must be an active member of the system with at least 10 years of credited service (excluding any military service credit) as of the date on which nominations close. Optional retirement plan participants do not acquire service credit and are prohibited from running for trustee positions by §307 of this Chapter.

B. A participant in the Deferred Retirement Option Plan who has not yet terminated state service and who is still employed by the state is eligible to run as an active member candidate for election to the board of trustees, so long as he qualifies under Subsection A of this Section.

C. A rehired retiree who has selected Option 2 of R.S. 11:416 or Option 2 of R.S. 11:416.1 is eligible to run as an active member candidate for election to the board of trustees, so long as he qualifies under Subsection A of this Section.

D. A disability retiree who has returned to work under either R.S. 11:224 or R.S. 11:225 is eligible to run as an active member candidate for election to the board of trustees, so long as he qualifies under subsection A of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 23:996 (August 1997), LR 25:1278 (July 1999), LR 26:2633 (November 2000), LR 31:946 (April 2005), LR 34:446 (March 2008), LR 37:1614 (June 2011).

§303. Nomination Process

[Formerly §303.A]

A. The board of trustees shall accept the name and final four digits of the Social Security number of every candidate nominated by petition of 25 or more active members of the system and shall place the name of such candidates on the ballot, provided each such candidate meets the requirements for trustee. Those active members signing the petition shall also supply the final four digits of their Social Security number. When returning the nominating petition, the candidate should include his qualifications, platform and photograph for inclusion in the election brochure circulated by LASERS. In years where a special election is held, a candidate shall clearly state in his petition whether he is running for a four-year term or for the unexpired portion of the term that is the subject of the special election.

B. The printed name of those persons signing the nominating petition must be legible for purposes of verification. Unverifiable signatories shall not count toward the required total of 25 and may disqualify the petition.

C. In years where a special election is held, a candidate shall clearly state in his petition whether he is running for a four-year term or for the unexpired portion of the term that is the subject of the special election.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 23:996 (August 1997), LR 25:1278 (July 1999), LR 26:2633 (November 2000), LR 31:946 (April 2005), LR 34:446 (March 2008), LR 37:1615 (June 2011).

§305. Vacancies; Special Elections

A. The board shall appoint a member to fill any active member vacancy created on the board. The appointee shall possess the necessary qualifications under R.S. 11:511 for the active

member position. The board may give due consideration to the runners-up in the previous election, if those members are willing to serve and the appointment does not violate law or these regulations.

B. The appointment shall be valid only until January 1 of the year following the next election.

C. When the unexpired term for the vacancy is greater than two years, a special election shall be held to fill the vacancy simultaneous with the election ordinarily held in odd number years. The ballot for the special election may be the same as that used in the regular election. Candidates for four year terms may not also be candidates to complete unexpired terms.

D. The deadlines and procedures for special elections shall be identical to those for elections normally held in years ending with odd numbers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511, R.S. 11:512 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 23:997 (August 1997), LR 35:271 (February 2009), LR 37:1615 (June 2011).

§307. Optional Retirement Plan Participants

A. Because optional retirement plan participants do not acquire service credit for purposes of determining eligibility under R.S. 11:511(4), these participants are not eligible to vote in the trustee elections or run for a position on the board of trustees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 26:2633 (November 2000), amended LR 37:1615 (June 2011).

Chapter 4. Rules Common to the Election of Both Active and Retired Member Trustees

§401. General Schedule of Elections

[Formerly §§301 and 501.B]

A. Elections shall be held in years ending with an odd number.

1. Three active member trustees shall be chosen in each election and shall serve a four-year term.

2. Beginning in 1995 and continuing thereafter every four years, two retired member trustees shall be chosen in an election and shall serve a four year term. Beginning in 1997 and continuing thereafter every four years, a single retired trustee shall be chosen in an election and shall serve a four year term.

B. The schedule for elections shall be as follows:

1. first day in March: nominations shall be opened;

2. second Tuesday in July: nominations shall be closed. All nominating petitions must be received by the close of business (4:30 p.m. Central time);

3. Monday following second Tuesday in July: a drawing shall be held to determine candidate positions on a ballot;

4. fourth Friday in September: the final day that information on candidates and ballots may be mailed;

5. fourth Friday in October: all ballots or electronic votes must be received by the close of business (4:30 p.m. central time). No faxed ballots shall be accepted;

6. Wednesday following fourth Friday in October: all ballots and electronic votes shall be tallied and verified by this date;

7. regular November meeting: the board shall be presented with the certified ballot count, and if it is accepted, shall authorize publication of results;

8. January following election: newly elected members receive orientation; oaths shall be taken prior to the regular January meeting.

C. In order to facilitate the election process, in the event of a disaster or emergency declared by executive order or proclamation of the governor, the executive director may change the election schedule. Such a schedule change shall be in effect for a single election cycle only, after which the schedule shall return to that set forth in Subsection B of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 23:996, 997 (August 1997), LR 25:1278 (July 1999), LR 26:2633 (November 2000), LR 33:1151 (June 2007), LR 34:446, 447 (March 2008), LR 37:1615 (June 2011), LR 39:119 (January 2013).

§403. Receipt of Nominating Petitions

A. Signed nominating petitions will be accepted if received by facsimile or emailed by the date nominations are closed so long as original nominating petitions are received by 4:30 p.m. central time on the first Friday following the close of nominations. If originals are not received by that deadline, the person in whose name they are submitted shall not be qualified as a candidate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11: 511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 37:1616 (June 2011).

§405. Election Process

[Formerly §§303.C-I and 503.C-J]

A. Active Members. Ballots or election brochures shall be distributed to each active member by the fourth Friday in September. This includes active members who are not deemed by LASERS to be retired before July 1 of the year

in which the election is to take place and participants in the DROP program who have not terminated service.

B. Retired Members. Ballots or election brochures shall be distributed to each retired member by the fourth Friday in September. A member who is deemed by LASERS to be retired before July 1 of the year in which the election is to take place shall be considered a retired member for the purposes of this Section.

C. There shall be a drawing as set forth in LAC 58:1.401 in the retirement systems building, 8401 United Plaza Boulevard, Baton Rouge, LA, to determine the position each candidate shall have on the ballot or election brochure.

D. Each active member may vote for three candidates.

E. Each retiree may vote for two candidates during the election when two retiree members are up for election, but may only vote for one candidate during the election where only one retiree member is up for election. If electronic voting methods are utilized, members shall follow the instructions on the election brochure for registering their votes.

F. If electronic voting methods are utilized, members shall follow the instructions on the election brochure for registering their votes. Votes shall be confidential. Ballots or electronic votes received after the close of business on the fourth Friday in October (4:30 p.m. central time) shall be rejected. Ballots must be returned to the address set forth in the instructions on the election brochure.

G. Votes shall be tallied in accordance with the general schedule of elections.

H. The executive director shall submit a written report of the election results to the board of trustees no later than the regular November meeting of the board of trustees.

I. Upon receipt of the results of the election, the board of trustees shall timely promulgate the election and notify the successful candidates of their election and the secretary of state, so as to allow the candidates sufficient time to take and file the oath of office with the Secretary of State within the time specified by law.

AUTHORITY NOTE: Promulgated in accordance with R.S.11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 23:996, 997 (August 1997), LR 25:1278 (July 1999), LR 26:1490 (July 2000), LR 26:2633 (November 2000), LR 31:946, 947 (April 2005), LR 34:446, 447 (March 2008), LR 37:1616 (June 2011), LR 39:119 (January 2013), LR 41:1772 (September 2015).

§407. Winning Candidates

[Formerly §§303.B & G; 501.A and 503.H]

A.1.Active Members—the three candidates who receive the most votes shall be declared successful candidates and presented to the board.

2. Retired Members—beginning in 1995 and continuing thereafter every four years, the two retired member candidates who receive the most votes shall be declared successful candidates and presented to the board. Beginning in 1997 and continuing thereafter every four years, the retired member candidate who receives the most votes shall be declared the successful candidate and presented to the board.

B. Ties affecting elected positions shall be decided by a coin toss held by the executive director in the presence of the candidates affected or the representative they designate.

C. No department in the executive branch of state government may have more than two active trustees serving on the board at the same time. *Ex officio* trustees and their designees do not count toward this limit.

D. If, after the conclusion of the nomination process, the number of candidates does not exceed or is fewer than the number of open positions for which election is being held, no election shall be held for those positions, and those candidates that are nominated and are qualified shall be deemed successful candidates and presented to the board.

1. Active Member Trustees' Elections. Any remaining open positions shall be filled in accordance with Title 58, Part I, Chapter 3, §305 of the *Louisiana Administrative Code*.

2. Retired Member Trustees' Elections. Any remaining open positions shall be filled in accordance with Title 58, Part I, Chapter 5, §505 of the *Louisiana Administrative Code*.

E. Subsection D shall apply to both active member trustee elections and retired member trustee elections.

F. For all relevant purposes, those candidates elected under Subsection D shall be considered to have received the maximum number of votes possible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 23:996, 997 (August 1997), LR 25:1278 (July 1999), LR 26:1490 (July 2000), LR 26:2633 (November 2000), LR 31:946, 947 (April 2005), LR 34:446, 447 (March 2008), LR 37:1616 (June 2011), LR 39:119 (January 2013), LR 41:1773 (September 2015).

§409. Candidates Withdrawing Prior to Election

A. A candidate may withdraw his candidacy at any time. If he withdraws prior to the deadline for voting, all votes cast for him shall not be counted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 37:1616 (June 2011).

§411. No Solicitation

[Formerly §303.J and §503.K]

A. Candidates for election to the LASERS board of trustees shall not solicit employees of LASERS to participate in their campaigns, and LASERS' employees cannot participate, or give assistance to any member who is running for election or re-election to the board. Candidates shall not solicit or have contact with any vendor or employee of a vendor who is providing LASERS with products or services related to elections of the LASERS board of trustees. LASERS employees are free to sign nominating petitions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 23:996, 997 (August 1997), LR 25:1278 (July 1999), LR 26:1490 (July 2000), LR 26:2633 (November 2000), LR 31:946, 947 (April 2005), LR 34:446, 447 (March 2008), LR 37:1616 (June 2011).

Chapter 5. Election of Retired Member Trustees

§501. Eligible Candidates

[Formerly §503.A]

A. A candidate for a position of retired member trustee on the board of trustees must be a retired member of the system who has been on retired status (not including retired status under the Deferred Retirement Option Plan) by the date on which nominations close.

B. A rehired retiree who selected either Option 1 or Option 3 of R.S. 11:416 or Option 1, Option 3 or Option 4 of R.S. 11:416.1 is eligible to run as a candidate for a position of retired member trustee on the board of trustees.

C. A participant in the Deferred Retirement Option Plan who has not yet terminated state service and who is still employed by the state is not eligible to run for board election as a retired member candidate.

D. A disability retiree who has returned to work under either R.S. 11:224 or R.S. 11:225 is not eligible to run as a retired member candidate for election to the board of trustees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 23:997 (August 1997), LR 25:1278 (July 1999), LR 26:1490 (July 2000), LR 26:2633 (November 2000), LR 31:947 (April 2005), LR 34:447 (March 2008), LR 37:1617 (June 2011).

§503. Nomination Process

A. The board of trustees shall accept the name and final four digits of the Social Security number of every candidate nominated by petition of 25 or more retired members of the system and shall place the name of such candidates on the ballot, provided each such candidate meets the requirements for trustee. Those retired members signing the

petition shall also supply the final four digits of their Social Security number. When returning the nominating petition, the candidate should include his qualifications, platform and photograph for inclusion in the election brochure circulated by LASERS.

B. The printed name of those persons signing the nominating petition must be legible for purposes of verification. Unverifiable signatories shall not count toward the required total of 25 and may disqualify the petition.

C. In years where a special election is held, a candidate shall clearly state in his petition whether he is running for a four-year term or for the unexpired portion of the term that is the subject of the special election.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 37:1617 (June 2011).

§505. Vacancies; Special Elections

[Formerly §507]

A. The Executive Board of the Retired State Employees Association shall appoint a member to fill any retired member vacancy created on the board. The appointee shall possess the necessary qualifications under R.S. 11:511 for the retired member position.

B. The appointment shall be valid only until January 1 of the year following the next election.

C. When the unexpired term for the vacancy is greater than two years, a special election shall be held to fill the vacancy simultaneously with the election ordinarily held in odd number years. The ballot for the special election may be the same as that used in the regular election.

D. The deadlines and procedures for special elections shall be identical to those for elections normally held in years ending with odd numbers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511, R.S. 11:512 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the State Employees' Retirement System, LR 23:998 (August 1997), amended LR 37:1617 (June 2011).

Chapter 7. Purchase of Military Service

§701. Purchase of Military Service

A. A maximum of four years of credit for military service may be purchased by members who rendered military service in accordance with R.S. 11:153, provided the member received a discharge other than dishonorable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515 and R.S. 11:153.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 26:1490 (July 2000), amended by the Department of Treasury, Board of Trustees of the Louisiana State Employees' Retirement System, LR 43:1987 (October 2017).

§703. Requirements for Application to Purchase Military Service

A. In order to apply for purchase of the service, an active member shall:

1. make application to LASERS;
2. provide a copy of military form DD 214;
3. certify that he is not drawing a regular retirement benefit based on the military service calculated on the basis of age and service (This restriction does not apply to disability benefits based on 25 percent or less disability received as a result of military service); and
4. certify that he has not received credit for the service in any other public retirement system;
5. pay for the calculation of the actuarial calculation to determine the cost to purchase the service.

B. The active member shall pay the actuarial cost to receive the service credit. Upon receipt of the items listed above, LASERS shall issue an invoice to the active member. The invoice is void if not paid within 90 days after the date issued. Payment shall be made in a lump sum.

C. The payment of the cost shall be credited to the member's account. If the member later separates from state employment and requests a refund of contributions, the amount paid shall be refunded along with other employee contributions.

D. Repealed.

E. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515 and R.S. 11:153.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 32:265 (February 2006), LR 43:1987 (October 2017)

Chapter 9. Retirement Credit for Active Members of the Military Reserves

§901. Requirements

A. In order to qualify for retirement credit for military service, at the time the individual was called to active military service, he or she shall have been:

1. a state employee in a position that is other than temporary including, but not limited to, probational and permanent Civil Service positions;
2. an active member of the Louisiana State Employees' Retirement System;
3. a member of the Army National Guard of the United States, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air National Guard of the United States, Air Force Reserve, or the Coast Guard Reserve (hereinafter called reservist) called to active duty; and
4. shall have been released from active duty after satisfactory completion of military duty, in accordance with the provisions of 50 U.S.C. §459. Release shall have been other than dishonorable.

B. The member, at his option, shall pay the required employee contributions to the retirement system during his period of service in the uniformed service, or if he chooses not to make such payment during his military duty, he is entitled to purchase such credit in accordance with §901 herein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:411 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996).

§903. Exclusions

A. Employees who were in temporary positions such as, but

not limited to, restricted appointments, job appointments, provisional appointments, and student workers are not eligible for retirement credit. Elected officials and appointed officials in positions established by the constitution or laws of the state are eligible for retirement credit. Reservists who were participating in the Deferred Retirement Option Plan at the time of military service are not eligible to receive service credit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:411, R.S. 29:415.1 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996).

§905. Limitations

A. Members may receive no more than a total of five years of military service credit in the retirement system for military service rendered in accordance with R.S. 29:411 et seq., and the Uniformed Services Employment and Reemployment Rights Act (USERRA).

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:411 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended by the Department of Treasury, Board of Trustees of the Louisiana State Employees' Retirement System, LR 43:1987 (October 2017).

§907. Credit for Eligibility or Benefit Purposes

A. In accordance with provisions of USERRA, a member shall receive credit for purposes of determining eligibility for retirement at no cost to the individual or agency. In order to receive credit for purposes of calculating the retirement benefit, contributions shall be paid to the retirement system in accordance with section 414(u) of the *Internal Revenue Code*. If the employee was on paid leave during the period of active military service, the employee has received retirement credit for that service and no additional information need be furnished to the retirement system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:411 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended by the Department of Treasury, Board of Trustees of the Louisiana State Employees' Retirement System, LR 43:1987 (October 2017).

§909. Certification of Military Service

A. In order to receive retirement credit for eligibility or benefits purposes, the employee shall provide:

1. discharge or release notice (Form DD214) and any other pertinent documentation from the appropriate military entity which provides the inclusive dates of active service or discharge from hospitalization incidental to the military service;
2. documentation from the agency certifying that the reservist was employed in a position other than temporary on the date the active duty began; and
3. certification from the agency that the reservist applied for reemployment within 90 days of release from military service or discharge from hospitalization incidental to the military service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:411 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996).

§911. Differential Payments Made by the Agencies

A. Many reservists active duty base pay may be less than their state base pay. The reservist may elect to pay contributions on the entire amount of state earnings that would have been received in order to receive retirement credit for benefit purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:411 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996).

§913. Payment of Contributions after Military Service Is Completed

A. The employer shall pay the employer contribution.

B. The amount of contributions is based upon the amount of earnings the employee would have received if still employed. This includes any increases in compensation the employee would have received if he or she had remained in employment during the period of military service. If the employee's compensation varies, such as for legislators, the average monthly earnings for the 12 months preceding the active military service shall be used to determine the amount of contributions.

C. The employer shall determine the amount of earnings that would have been earned and compute the employee and employer's contributions that are due.

D. The employee shall pay the employee contributions to the agency. The agency shall remit the employee and employer contributions to LASERS within 30 days after the employee has paid his or her portion. The agency shall provide a monthly breakdown of the earnings and contributions for each member and the certification documents to LASERS.

E. Payment for military service shall be made in accordance with section 414(u) of the *Internal Revenue Code*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:414 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended by the Department of Treasury, Board of Trustees of the Louisiana State Employees' Retirement System, LR 43:1987 (October 2017).

§915. Death and Survivor Benefits

A. The period of military service received under the provisions of Chapter 9 shall be counted as creditable service for determining eligibility for death and survivor benefits. The amount of survivor benefits payable shall be calculated as provided for in R.S. 11:471 et seq.

B. The final average compensation used for the calculation shall be based on the actual earnings of the member. In order for the estimated earnings during the period of military service to be used in the determination of the final average compensation, the employee and employer's contributions shall be paid for the period of military service.

C. If a member dies before completing payment for military service under this Chapter, a beneficiary or survivor has the right to pay the required contributions as set forth in R.S. 29:415, except that the applicable time limit within which payment must be made is that set forth in section 414(u) of the *Internal Revenue Code*. If the beneficiary or survivor chooses not to pay the member's contribution, the computation of death and survivor benefits shall be based on the actual service credit of the member, excluding his or her military service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:414, R.S. 29:415 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended by the Department of Treasury, Board of Trustees of the Louisiana State Employees' Retirement System, LR 43:1987 (October 2017).

Chapter 11. Voluntary Deductions from Retiree Benefits Payroll

§1101. Application Process for Voluntary Payroll Deduction

A. Application shall be made by the company, corporation, or organization which is the provider of coverage, product, service, or recipient of monies and shall be signed by two officers of the applicant company, corporation, or organization. The completed application shall be submitted to LASERS.

B. The following type providers of services shall be considered for approval:

1. the State Group Benefits program;
2. the group insurance plan administered by the Department of Employment and Training;
3. the Retired State Employees' Association;
4. general insurance companies and other providers that are included on the annual listing maintained by the Office of State Uniform Payroll;
5. credit unions formed for the primary purpose of serving state employees that have a payroll deduction for employees of the members' agencies;
6. other member or retiree associations approved by the board of trustees;
7. vendors receiving payment through voluntary deductions on the effective date of these rules; and
8. other insurance companies approved by the executive director.

C. Applicant shall designate a coordinator to act as primary contact with LASERS for resolution of invoicing, refund, and

reconciliation problems and resolving claims problems for retirees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 18:1417 (December 1992), amended LR 22:373 (May 1996), LR 33:676 (April 2007), LR 34:1639 (August 2008).

§1103. Applicant and Vendor Requirements

A. Authority for payroll deductions shall be governed by this Chapter. General insurance deduction vendors shall meet the following requirements.

1. Foreign companies shall:

a. have a current rating in A.M. Best of B+ or better, unless:

i. notwithstanding any other law, rule, or regulation to the contrary, and if they are in good standing with the Department of Insurance, and subject to the other applicable provisions of this Section, a foreign company which has participated in the Office of State Uniform Payroll deduction system for a period of at least ten years and has a rating in A.M. Best of B, may continue to market and sell insurance policies through payroll deduction until the beginning of the next open enrollment period following the four-year anniversary date from the date of the issuance of the B rating by A.M. Best, provided they have maintained a rating of B or better for the entire four-year period. Thereafter, in the event that the foreign insurer has maintained a rating of B by A.M. Best and that rating is increased from B to a B+ or better and they meet the other applicable requirements of this Section and other applicable rules and regulations, they may resume marketing and selling insurance through the payroll deduction system; or

ii. notwithstanding any other law, rule, or regulation to the contrary, if a foreign company has been participating in the Office of State Uniform Payroll deduction system for a

period of at least ten years, and they have a rating in A.M. Best of B, they may maintain and administer indefinitely those policies purchased through payroll deduction as long as they maintain a rating by A.M. Best of no less than a B, are in good standing with the Department of Insurance, and comply with other applicable rules, and regulations, and laws and the provisions of this Section;

b. have been doing business under the same name for not less than three years;

c. offer like product, service, or coverage to citizens of Louisiana;

d. be in compliance with all procedural, accounting, and reporting requirements governing employee deductions.

2. Domestic companies shall:

a. have a current rating in A.M. Best of B or better, or if the company is of insufficient size to obtain a rating by A.M. Best, has posted a bond with the division of administration in the amount of:

i. \$100,000, if the company is a member insurer of the Louisiana Life and Health Insurance Guaranty Association; or

ii. \$250,000, if the company is not a member insurer of the Louisiana Life and Health Insurance Guaranty Association, or if the product for which the deductions are proposed is not covered under the Louisiana Life and Health Guaranty Association Act;

b. have been doing business under the same name for not less than three years;

c. provide like product, service, or coverage to citizens of Louisiana;

d. be in compliance with all procedural, accounting, and reporting requirements of all rules and requirements governing employee deductions.

3. Vendors offered through other state agencies or political subdivisions, if approved by the executive director.

B. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 18:1417 (December 1992), amended LR 22:373 (May 1996), LR 33:676 (April 2007), LR 34:1639 (August 2008), LR 35:2477 (November 2009).

§1105. Notification, Implementation and Transition

A. LASERS shall notify applicant whether applicant is approved as a vendor.

B. Vendors shall enroll retirees for a monthly deduction amount.

C. Participation shall be at least 30 or more retirees, if approved by the executive director.

D. If a vendor falls below the participation level approved by the executive director, LASERS has the right to discontinue the payroll deduction immediately.

E. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 18:1417 (December 1992), amended LR 22:373 (May 1996), LR 35:2478 (November 2009).

§1107. Deduction Authorization

A. Vendors shall be responsible for obtaining and maintaining appropriate deduction authorizations from individual retirees. Copies shall be made available to LASERS upon request.

B. Any disclaimer, contract, or term of participation agreement between the retiree and the vendor or provider shall not be binding on LASERS.

C. A retiree shall have only one monthly deduction (which may cover more than one benefit) for a single vendor effective at any one time.

D. Vendor is responsible for submitting a computer file of monthly deductions to LASERS by the twelfth day of the month preceding the deduction using the electronic format and specifications established by LASERS. All deductions for a single vendor shall be submitted on one monthly file.

E. A retiree may discontinue any voluntary payroll deduction amount by providing written notification of that intent to the vendor. Vendors shall remove these persons from the file.

F. A retiree cannot authorize total deductions which exceed the amount of the benefit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 18:1417 (December 1992), amended LR 22:373 (May 1996), LR 35:2478 (November 2009).

§1109. Solicitation of State Retirees

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 18:1417 (December 1992), amended LR 22:373 (May 1996), repealed LR 35:2478 (November 2009).

§1111. Vendor Responsibilities

A. Vendors shall not be authorized to submit any deduction which was obtained from a retiree for the purpose of transmitting any part of that deduction to a third party.

B. The vendor is responsible for refunding any amounts deducted in error to the individual retiree.

C. Any information received from LASERS shall be handled in accordance with the Louisiana Public Records law.

D. - K. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 18:1417 (December 1992), amended LR 22:373 (May 1996), LR 35:2478 (November 2009).

§1113. LASERS Responsibilities

A. LASERS shall be responsible for making the monthly deductions in the amount that are timely submitted by the vendor.

B. LASERS shall remit the amount deducted to the vendor and shall provide a listing of all exceptions.

C. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 18:1417 (December 1992), amended LR 22:373 (May 1996), LR 35:2478 (November 2009).

§1115. Reporting

A. Vendors shall report within 10 days of final approval any change in the name, address, company status, principal officers, or designated coordinator to LASERS.

B. - D. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 18:1417 (December 1992), amended LR 22:373 (May 1996), LR 35:2478 (November 2009).

§1117. Fees

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury,

Board of Trustees of the State Employees' Retirement System, LR 18:1417 (December 1992), amended LR 22:373 (May 1996), repealed LR 35:2478 (November 2009).

§1119. Termination of Payroll Deduction

A. Unethical conduct or practices of the vendor shall result in the termination of deduction authority for that vendor.

B. Payroll deduction authority may be revoked for any vendor that is removed from the annual listing maintained by the Office of State Uniform Payroll.

C. Payroll deduction authority may be revoked for any vendor that fails to comply with requirements of this rule.

D. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 18:1417 (December 1992), amended LR 22:373 (May 1996), LR 35:2478 (November 2009).

§1121. General Provisions

A. Payroll deduction authorization shall not be transferred.

B. Approval of an applicant in no way constitutes endorsement or certification of the applicant or vendor or its products or services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 18:1417 (December 1992), amended LR 22:373 (May 1996).

Chapter 13. Emergency Refunds

§1301. Conditions Giving Rise to an Emergency Refund

A. A refund of accumulated employee contributions may be made in less than 30 calendar days after the date of separation from state service in the following situations:

1. the refund results from the death of the member; or
2. the member has significant expenses for medical care for himself, spouse, or child; or
3. an emergency situation of the member, which shall consist of the foreclosure on a member's domicile, repossession of the member's vehicle, or eviction of the member from his or her apartment. A document filed in the official legal proceeding for foreclosure or repossession or a notice of eviction shall be required as proof to qualify under this provision.

B. The member shall provide a written request detailing the emergency situation and the executive director shall approve or disapprove the request based on this written request.

C. Emergency refunds are available on a one-time basis only. Once a member has taken advantage of this single opportunity and has received a refund under the terms of this Chapter, that member shall no longer be eligible for an emergency refund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515 and R.S. 11:537(B).

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 23:1710 (December 1997), LR 31:107 (January 2005), LR 32:1466 (August 2006).

§1303. Procedure for an Emergency Refund

A. The member or beneficiary shall provide a copy of the death certificate, a doctor's statement of total and permanent disability, a copy of medical invoices, or copies of

other pertinent documentation to qualify for the emergency refund. Outstanding bills must be payable prior to the date the individual would otherwise receive the refund, or other like economic hardship must be shown to be considered sufficient reason for declaring an emergency situation.

B. Upon receipt of the documentation and approval by the executive director, the retirement system shall issue the refund at the next scheduled date for issuing refund checks. The refund amount shall include all employee contributions received from the employing agency and posted to the individual's account. Any additional contributions received at a later date from the agency shall be refunded to the individual after they are received and posted to the account.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515 and 537(B).

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996).

§1305. Responsibility for Overpayment of a Refund

A. If the amount that is refunded is greater than the amount actually due the individual, the agency paying the contributions shall be responsible for recouping any overpayment from the individual who was overpaid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515 and 11:537(B).

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 23:1711 (December 1997).

Chapter 15. Purchases and Transfers of Service

§1501. Purchases and Transfers of Service; Calculations; Costs

A. The purchase of service on an actuarial basis and the transfer of service from other public retirement systems into LASERS requires an actuarial calculation by the system actuary.

B. The cost of this calculation shall be paid by the member requesting the calculation. Payment must be made before the request for the calculation will be forwarded to the actuary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:424, 11:446 and 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 32:265 (February 2006).

§1503. Transfers of Service; Other Requirements

A. In order to transfer service credit from other public retirement systems into LASERS, the person seeking such a transfer must be:

1. an active member contributing to the LASERS at the time they apply for the transfer; or

2. an active member of a public retirement system maintained primarily for officers and employees of the state of Louisiana, or any political subdivision thereof, or of any district, board, commission, or other agency of either, or any other such public entity who has been a member of such system for at least six months and who has membership credit in such system shall have the option of transferring all of his credit from such system he is currently contributing to or to the system in which he last contributed. However, membership in a public retirement system cannot be changed to another public retirement system, and any person participating in

DROP cannot transfer any service credit into or out of that retirement system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:143 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996).

Chapter 17. Purchases of Service by Reinstated Employees

§1701. Purchases of Service by Reinstated Employees

A. When an employee is reinstated to a position in state government by the Department of Civil Service or a court of law, the employee is entitled to receive retirement service credit for the period of time that is reinstated provided payment of employee and employer contributions, plus interest, is made to the retirement system within 60 days of the reinstatement.

B. If reinstated, the employee shall pay an amount equal to the current employee's contributions based on the earned compensation for the period of time that was reinstated. The employing agency shall pay the employer contributions that would have been due plus compound interest at the actuarial valuation rate for all contributions payable from the date the contribution was due until paid.

C. When a reinstated employee is entitled to back pay from the employing agency, the agency shall remit the employer and employee's contributions that would have been due if the employee had been employed during that time, plus interest. The agency shall also provide LASERS with a report of earnings on a monthly basis for the period for which the individual was reinstated.

D. If a member has received a refund of contributions after a wrongful termination, he must repay the refund not later than the sixtieth day following the first day the member returns to work after reinstatement is ordered for the member's retirement status and service credit to be fully restored.

E. Any costs to the retirement system associated with these procedures shall be paid by the employing agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 25:2466 (December 1999).

§1703. Effect of Reinstatement

A. Employees reinstated into state government shall be entitled to purchase service credit as provided in this Chapter, and the employee shall be treated as if he was a member during this period of purchased service credit, except that the reinstated employee will not be entitled to partial repurchase provisions for the service credit that is reinstated through legal action.

B. The reinstated employee's date of hire prior to the wrongful termination shall be used for retirement purposes, if any contribution refund that the member received is repaid not later than the sixtieth day following the first day the member returns to work after reinstatement is ordered. If the member repays all or any portion of such contribution refund after the sixtieth day following the first day the member returns to work after reinstatement is ordered, the repayment shall be treated in the same manner as a payment for any other refund and the date of hire for retirement purposes shall be the first day the member returns to work after reinstatement is ordered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 25:2466 (December 1999).

§1705. Service Credit for Dual Employment

A. Any active member who qualifies to purchase service credit under the provisions of R.S. 11:191.B may purchase the service credit to which he would have been entitled in the system had he been an active contributing member of the retirement system during the full term of his employment by paying to the system an amount that totally offsets the actuarial cost of the receipt of the service credit.

B. The employer for that employee may pay one-half of the actuarial cost of the receipt of the service credit, thereby reducing the member's cost to one-half of the actuarial cost

of the service credit. If the employer pays one-half of the actuarial cost for one employee, it shall be obligated to pay one-half of the actuarial cost of all employees who qualify to purchase this service credit.

C. The full amount must be received by the system, whether the member is paying the full cost, or the employer is paying one-half and the member one-half, prior to any service credit being attributed to a member's account. The amount must be paid in a lump sum.

D. A fee of at least \$75 (to be set by the system's actuary) must be paid to the system's actuary by the individual requesting the calculation. Payment must be made before the request for calculation will be forwarded to the actuary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996).

§1707. Repayment of Refund of Contributions

A. A member who received a refund of employee contributions may repay the refund after the member has returned to state service and contributed to the system for a minimum of 18 months, by paying to the system the employee contribution refund plus interest compounded annually at the actuarial valuation rate for all contributions payable from the date the refund was issued until paid in one lump sum, or by partial repayment in accordance with the following Section.

B. Repayment of refunds must be completed prior to retirement or beginning participation in DROP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 25:2467 (December 1999).

§1709. Partial Repayment of Refund of Contributions

A. If a member elects to repay part of a refund, he must repay the contributions for the most recent service credit first. For example, if a member received a refund for service from January 1, 1991 through December 31, 1993, and elects to repay one year of service, he/she must repay the contributions for 1993 first.

B. Partial payments must be made in increments based on service within a calendar year with the most recent year(s) repaid first. Example: A member worked from June 1, 1990 through April 30, 1993 then received a refund. The refund may be repaid in the following order:

1. January 1, 1993 through April 30, 1993;
2. January 1 through December 31, 1992;
3. January 1 through December 31, 1991; then
4. June 1 through December 31, 1990.

C. If a member has both full time and part time service credit that was refunded, the years of full time service must be repaid first. When there is both full time and part time service within the calendar year(s), LASERS shall have the authority to determine the calendar year of service credit that must be repaid first. As a general rule, the year(s) with the most full time service must be repaid before the year(s) with more part time service.

D. Upon receipt of the partial payment, the service credit for the calendar year repaid will be restored to the member.

E. A member may receive three invoices in a 12-month period at no cost. Each additional invoice within the 12-month period will cost \$75 each.

F. Interest at the actuarial rate will be calculated from the date of the refund was issued to the date of the repayment. Interest will be compounded on an annual basis.

G. The partial repayment must be made in a single payment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 25:2467 (December 1999), amended LR 29:2859 (December 2003).

Chapter 19. Survivors' Benefits

§1901. Application for Benefits

A. Survivors' benefits are payable only upon application therefor, but the benefit becomes effective as of the day following the death of the member.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:471 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996).

§1903. Qualified Survivors

A. The following individuals qualify for survivors' benefits:

1. surviving spouse with minor children;
2. handicapped or mentally retarded children;
3. surviving minor child not in custody of surviving spouse;
and
4. surviving spouse without minor child.

B. The survivors' benefit is a single benefit payable to multiple qualifying groups. If more than one individual qualifies for the benefit, the benefit shall be prorated between or among the qualified individuals in accordance with law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:472, R.S. 11:473, R.S. 11:474, R.S. 11:475, R.S. 11:480 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996).

§1905. Proof of Entitlement to a Survivors' Benefit

A. Each survivor benefit recipient shall present proof to LASERS upon application, and annually or at such other times LASERS feels necessary, that he is legally entitled to the survivor's benefit. If the applicant for the benefit fails to present such proof to LASERS, LASERS shall deny

such benefit to the applicant or discontinue the benefit if the recipient fails to provide such proof upon reasonable request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:477 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the Louisiana State Employees' Retirement System, LR 22:373 (May 1996).

§1907. Qualification for Benefit to Handicapped Children

A. Totally physically disabled or mentally handicapped children of deceased members who are not dependent upon the surviving spouse of the member or some other legal guardian and who do not also receive state assistance are eligible under the provisions of Chapter 19.

B. In order to cover this area not addressed by the statute, it will be the policy of the Louisiana State Employees' Retirement System to pay survivor's benefits to otherwise qualified physically disabled or handicapped children of deceased members who have neither a surviving parent or legal guardian if such child, or a person holding a power of attorney or other legal authority to act on behalf of such child, provides to the system adequate annual documentation demonstrating that benefit payments will be used exclusively for the support and care of the child.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996).

§1909. Children of Previous Marriage

A. If a married member has major children of a prior marriage and no minor children of the present marriage, that member may direct LASERS to divide the benefit for a surviving spouse without minor children between the member's current spouse and the children of the prior marriage on a pro rata basis with the interest of the current spouse based on the

ratio of the length of the current marriage to the total state service of the member. For this benefit to be effective, the member must notify LASERS, in writing, that the member desires this benefit. LASERS must receive this notification prior to the member's death.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:475 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996).

Chapter 21. Credit for Part-Time Service and Service in Multiple Positions

§2101. Credit for Part-Time Service and Service in Multiple Positions

A. Members of the Louisiana State Employees' Retirement System shall receive service credit, up to a maximum of one year of service per calendar year, for all service which is rendered for an employer agency, as defined in R.S. 11:403(12), and which is state service, as defined in R.S. 11:403(28).

B. All compensation for such service, which meets the criteria of R.S. 11:403, shall be recognized by the system, and employer and employee contributions must be paid thereon.

C. Any employee who is part-time, seasonal, or temporary, as defined in 26 CFR 31:312(b)(7)-2, or in any successor regulation, shall not be or become a member of the system, except membership for these employees shall be mandatory if the employee has 10 or more years' creditable service in the system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996).

Chapter 23. Renunciation of Benefit

§2301. Terms and Conditions of Renunciation of Benefit

A. Any person eligible to receive, or receiving, a benefit from the Louisiana State Employees' Retirement System may renounce such benefit under the following terms and conditions.

1. The renunciation shall be unconditional and irrevocable. Once a benefit is renounced, LASERS shall have no further obligation or liability with respect to that benefit, and the person renouncing the benefit shall, under no circumstances, be eligible to receive that benefit.

2. A base benefit may be renounced in whole or in part. An adjustment to a base benefit (cost-of-living adjustment, adjustment for inflation, or one-time supplemental payment) may only be renounced in its entirety. If an adjustment is renounced, the base benefit need not be renounced.

3. If more than one person is entitled to receive a particular survivor benefit, each person entitled to a portion of the benefit may renounce his entitlement. The person or persons who continue to have an entitlement in that benefit shall receive the benefit to which they are entitled without consideration of the person who becomes ineligible through renunciation. Any adjustment shall be prospective only.

4. If the party making the renunciation is married, the spouse must join in the renunciation.

5. If the person making the renunciation is subject to an executed and effective community property settlement, only that portion of the benefit due the person making the renunciation may be renounced, except as provided for in R.S. 11:446.E.

6. If the person making the renunciation is legally separated or divorced, but is not subject to an executed and effective community property settlement, the renunciation must be

approved by the court having jurisdiction over the separation or divorce.

7. If the person making the renunciation is retired and has named a joint and survivor beneficiary, the renunciation cannot affect the joint and survivors' beneficiary or benefit, including adjustments to the joint and survivor benefit.

8. If a benefit is renounced by a member prior to receipt by the member of a sum equal to his or her accumulated contributions, the balance of the accumulated contributions will be paid to the member.

9. A renunciation must be made on a form provided by LASERS, and must be executed before a notary public and two witnesses, neither of whom may be a spouse nor presently named beneficiary. The renunciation is effective and irrevocable when received by LASERS.

10. A person revoking or participating in renunciation of a benefit must hold LASERS harmless from such action.

11. A renunciation may not be used to terminate active participation in LASERS.

12. Amounts credited to a DROP account cannot be renounced.

13. A benefit or portion of a benefit that has been renounced may be used to recoup benefits or refunds of accumulated contributions paid by administrative error or mistake.

14. Only those persons who have selected the maximum benefit or Option 1 under R.S. 11:441 may renounce their entire monthly benefit.

B. LASERS makes no representation with respect to the effect of a renunciation on a person's eligibility for receipt of any state or federal benefits, or for participation in any private, local, state, or federal program. Eligibility for or

participation in such programs, or eligibility for or receipt of such benefits, is an issue for which the person making the renunciation is solely responsible. Ineligibility for or termination of participation in such programs or benefits shall not affect the irrevocable character of the renunciation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:452 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 33:112 (January 2007).

Chapter 25. Procedures for Processing Disability Applications

§2501. Application for Disability Retirement

A. Applications for disability retirement shall be submitted in accordance with instructions provided to the applicant or applicant's employer by LASERS, and shall be reviewed as follows.

1. Upon receipt of a disability application, LASERS shall verify applicant's eligibility within five business days of receipt of the application.

2. The application, examining physician's report, the disability report by immediate supervisor, and report by applicant's human resource administrator shall be reviewed for completeness.

3. If the application or any of the required forms are incomplete or missing, the applicant shall be notified in writing, and will have 10 business days to furnish the requested information. If the applicant fails to comply with this request the application shall be rejected as ineligible.

B. Whether the applicant is determined to be eligible or ineligible to apply for disability, the applicant shall be notified in writing by LASERS within 10 business days of the determination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 24:1957 (October 1998), LR 27:1580 (September 2001).

§2503. Disability Board Physician's Recommendation

A. LASERS shall determine the appropriate State Medical Disability Board physician to perform the initial medical review, based on the area of medical specialty most closely related to applicant's disability.

B. If the State Medical Disability Board does not have a physician practicing in the requisite specialty, LASERS shall appoint a physician who practices in the requisite specialty to the board or as an alternate physician to perform the initial medical review.

C. The State Medical Disability Board physician shall determine from his review whether to conduct a medical examination of the applicant, or waive the medical examination because obvious and overwhelming medical evidence of disability exists to his satisfaction.

D. State Medical Disability Board physician shall determine that a medical examination is needed to determine whether an applicant is eligible for a disability retirement, LASERS shall schedule an appointment with the appropriate board physician. The applicant shall be notified of the appointment date and time in writing. The initial examination shall be completed within six weeks of the date the completed disability application is received and eligibility is verified by LASERS.

E. LASERS shall pay the cost of the initial medical examination, including cost of laboratory tests, X-rays, and other direct examination procedures. If the applicant fails to appear for this medical examination and the physician charges a cancellation fee, the applicant shall be responsible for this fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 24:1958 (October 1998), LR 27:1580 (September 2001).

§2505. Final Determination

A. 1. LASERS shall review the State Medical Disability Board physician's recommendation and, based on that recommendation, either approve or disapprove the application. An applicant shall be considered as certified

totally disabled when the State Medical Disability Board physician declares the applicant to be totally incapacitated for the further performance of the normal duties of the job and states that such incapacity is likely to be permanent. In all cases, the examining physician shall make a recommendation if the application should be approved or disapproved. If the physician's recommendation is unclear, the file shall be forwarded to the disability manager for review. The disability manager shall contact the physician for clarification of the recommendation.

2. If a correction officer, probation or parole officer, or security officer of the Department of Public Safety and Corrections, or an employee of the enforcement division in the Department of Wildlife and Fisheries is found to be permanently totally or partially disabled the applicant shall be entitled to a disability retirement benefit in accordance with either R.S. 11:212(B) or 214, as applicable.

B. If the disability manager cannot make a clear determination, the file shall be sent to LASERS' executive director, who shall contact the examining physician for clarification, or another State Medical Disability Board physician for consultation, or an appointed alternate physician shall be consulted when necessary.

C. Any unusual applications shall immediately be presented to the executive director for his review and determination on how it should best be handled.

D. When the final determination is made, the applicant shall be notified in writing and a copy shall be forwarded to applicant's agency.

E. A final determination shall be made within 120 days from the date the completed application is verified by LASERS.

F. Disability benefits shall accrue from the date the application was filed or from the day following exhaustion of all sick leave or annual leave claimed by applicant, whichever is later. If

an applicant elects to remain on unused sick or annual leave past the 120 days necessary to complete his application, a waiver shall be signed by the applicant and a re-exam shall be scheduled at LASERS' expense after one year from date of application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 24:1958 (October 1998), LR 27:1580 (September 2001).

§2507. Contesting Board Physician's Determination

A. If the certification of the examining physician is contested by either the applicant or LASERS, the contesting party shall have the right to a second medical examination if a written appeal is filed within 30 days of notification of the initial determination.

B. The second examination shall be performed by a State Disability Board Physician, or appointed alternate physician. LASERS shall schedule the appointment and notify the applicant of the time and place of the second examination in writing.

C. The cost of the second examination shall be paid by the contesting party. If the applicant fails to appear for this examination and the physician charges a cancellation fee, the applicant shall be responsible for this fee.

D. If the second physician concurs in the findings and recommendations of the first physician, the original decision shall stand as final and binding on the parties.

E. If the second physician disagrees with the first physician's finding and recommendation, the two physicians shall select a third physician to conduct another examination. The findings and recommendations of the third physician shall be binding, and the cost of the third physician shall be paid by LASERS if the applicant is certified disabled, or by the

applicant if the disability claim is denied. If the applicant fails to appear for this examination and the physician charges a cancellation fee, the applicant shall be responsible for this fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 24:1958 (October 1998), LR 27:1581 (September 2001).

§2509. Judicial Appeal

A. The applicant has the right to appeal the decision that applicant is not entitled to a disability retirement to the Nineteenth Judicial District Court, Parish of East Baton Rouge. This appeal shall be filed within 30 days of the receipt of the final medical decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 24:1959 (October 1998), LR 27:1581 (September 2001).

§2511. Certification of Continuing Eligibility

A. LASERS may require a disability retiree to complete an annual attending physician statement ("AAPS") once each year during the first five years following the disability retirement and once in every three years thereafter until the retiree has reached the equivalent age of regular retirement unless the medical evidence shows conclusively that the disability retiree cannot recover from the disability. The AAPS must be returned within 30 business days of the anniversary date of the accrual of retirement benefits by the disability retiree. Depending on the results of the AAPS LASERS may require a disability retiree to undergo a medical examination.

B. If a medical examination is required LASERS shall schedule the appointment with a state medical board or appointed alternate physician and notify the disability retiree

of the appointment time and place in writing. LASERS must pay the cost of this examination. If the retiree fails to appear for this examination and the physician charges a cancellation fee, the retiree shall be responsible for this fee.

C. The disability retiree shall be notified in writing of the physician's determination. If the physician does not recommend continuing disability, the disability retiree has the same appeal rights as the original applicant as set forth in §2507 herein.

D. If the disability retiree refuses to submit to the examination, or fails to submit the AAPS in the manner set out above, his benefit shall be discontinued until he agrees to the examination or submits the AAPS. The benefit will be discontinued 30 days after written notification to the disability retiree. If the refusal continues for one year, all of the retiree's rights in and to the disability benefit shall be revoked.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515 and R.S. 11:220.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 24:1959 (October 1998), LR 26:1490 (July 2000), LR 27:1581 (September 2001), LR 32:265 (February 2006), LR 38:836 (March 2012).

§2513. Limitation on Earnings

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 24:1959 (October 1998), LR 27:1581 (September 2001), LR 38:836 (March 2012), repealed LR 42:69 (January 2016).

§2515. Report to the Board of Trustees

A. The applicants' names and disposition of applications shall be provided to the board in addition to the monthly retirement supplement for the board's ratification.

B. The board shall receive a summary report of the number of applications received, the number approved, the number disapproved, a summary of the types of disabilities, the average age of approved applicants, the average number of years of state service, and the agencies of the applicants annually in March for the previous calendar year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 24:1959 (October 1998), LR 27:1582 (September 2001).

§2517. Appointment of Physicians to the State Medical Disability Board

A. Physicians may be appointed to the State Medical Disability Board or as an alternate physician by the executive director. Such appointments shall be subject to ratification by the board of trustees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 24:1959 (October 1998), LR 27:1582 (September 2001).

§2519. Termination of Benefits

A. Upon receipt of a final medical determination that a disability retiree is no longer disabled as a result of the failure to obtain a certification of continuing eligibility the retiree shall have the right to appeal the medical determination under §2507 herein. The benefit shall continue during the appeal period.

B. The disability retiree has the right to appeal this decision to the Nineteenth Judicial District Court, Parish of East Baton Rouge. This appeal shall be filed within 30 days of the receipt of the board's decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury,

Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 24:1960 (October 1998), LR 27:1582 (September 2001).

§2521. Notices

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 24:1960 (October 1998), LR 27:1582 (September 2001), repealed LR 38:836 (March 2012).

§2523. Conversion to Regular Retirement

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 24:1960 (October 1998), LR 27:1582 (September 2001), repealed LR 38:836 (March 2012).

Chapter 27. DROP Program

Subchapter A. Participation

§2701. Eligibility

A. Eligibility for DROP shall be determined under the provisions of Part IV, Chapter One of Title 11 of the Louisiana Revised Statutes of 1950 (R.S. 11:441 et seq.).

B. Act 1110 of 1995, effective January 1, 1996, implemented a “new” DROP program; however, a member who is eligible for retirement on or before December 31, 1995 will continue to be eligible to enter the “old” DROP at any time. The provisions of the “old” DROP remain unchanged except for the elimination of the one year waiting period. Members eligible for the “old” DROP may also choose to enter the “new” DROP, unless they have been eligible for ordinary retirement more than three years and 60 days. If they elect not to enter either DROP program, they may elect the initial benefit option.

1. The provisions of “use it or lose it” for annual leave, by action of the board of directors, will cease being applied to “old” DROP participants beginning January 1, 1996. Thereafter, all DROP participants will be able to convert accrued leave to retirement credits, or actuarially reduced lump sum payment for accumulated leave.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees’ Retirement System, LR 22:373 (May 1996)

Subchapter B. "Old" DROP

§2703. Participation in Three-Year Program

A. Any eligible member entering DROP for the first time on or after July 1, 1993, may make a one time election to participate in DROP for a period not to exceed three years. Once specified, the period of participation may not be extended.

B. Any member in their initial DROP participation period between July 1, 1993, and September 1, 1993, who entered DROP prior to July 1, 1993 may extend their originally selected participation period by up to one additional year upon giving written notice to the retirement system.

C. Any member in their initial DROP participation period who entered DROP prior to July 1, 1993, and who elect after September 1, 1993, to extend their originally selected DROP participation period by up to one year may do so upon 30 days prior written notice to the retirement system.

D. Any member who has completed DROP participation prior to July 1, 1993, and who has remained in state service without a break, may reenter the DROP program for up to one additional year upon written notice to the retirement system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996).

§2705. Effects of Participation

A. When a person is in an extended DROP participation period, leave earned during that time can be converted to retirement credit if participation in DROP extends beyond January 1, 1996.

B. When a person is in an extended DROP participation period, interest shall not be credited to the DROP account.

C. When a member extends their DROP participation period, the monthly amount credited to the DROP account during the original participation period shall be the amount credited to the DROP account during the extended DROP participation period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996).

Subchapter C. Withdrawal

§2711. Methods of Withdrawal

A. When a participant in the Deferred Retirement Option Plan terminates state employment, the amount accumulated in the participant's DROP account may be withdrawn in any of the following methods.

1. Lump Sum Withdrawal

a. The participant may withdraw the entire balance in the DROP account; or

b. receive a one-time lump sum amount specified by participant;

c. if a participant dies and the designated beneficiary is not entitled to a monthly retirement benefit, the DROP account must be withdrawn within 90 days after notification of the death.

2. Monthly Withdrawal. The participant may receive a check each month until all the funds in the account are disbursed. The participant choosing monthly withdrawal shall select one of the following methods:

a. the participant may establish an amount to be withdrawn on a monthly basis; or

b. the retirement system can determine a level amount to be paid monthly over the expected lifetime of the individual. This method would be similar to an annuity payment; or

c. payments spread over a 10-year period.

3. Annual Withdrawal—Amount Established by Participant. The participant may establish an amount to be withdrawn once each year. The payments shall be made in December of each year. Changes in the amount shall be provided to LASERS, in writing, no later than November 15 of that year.

4. Delayed Withdrawal. The participant may choose not to withdraw the DROP account until some later date; however, the account must be disbursed within the time period shown in §2713.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 25:2465 (December 1999).

§2713. Time for Disbursement

A. The DROP account must be totally disbursed within the expected lifetime of the participant in accordance with federal laws. The expected lifetime is determined based on the age of the participant on the date of termination. All funds from the DROP account must be withdrawn in accordance with the Internal Revenue Services Guidelines.

B. Disbursements from the DROP accounts shall be made on the first day of each month; if the first is a weekend or holiday, the disbursement shall be made on the following workday.

C. When a retiree reaches age 70 1/2, mandatory annual distributions shall begin in accordance with IRS regulations. The amount of the distributions will be recalculated annually. The mandatory distribution is based on the retiree's age and DROP account balance using the table above.

D. Requested withdrawals from DROP accounts which would leave a balance in that account of \$500 or less shall be processed as a request for disbursement of the entire balance. All such withdrawal requests shall result in the closing of the account. LASERS may, at its option, conduct audits to identify DROP accounts with a balance of \$500 or less and may disburse the entire amount to the person in whose name the account exists or to their beneficiary after giving notice of at least 30 days prior to disbursement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 25:2466 (December 1999), LR 29:1121 (July 2003), LR 30:2079 (September 2004), LR 32:1070 (June 2006).

§2715. Interest

A. Interest shall not be credited to a participant's subaccount during the period of participation and shall be based on the balance of the account at the end of each month. All amounts which remain credited to the individual's subaccount after termination of participation in the plan, which is not transferred to a self-directed subaccount under R.S. 11:451.1, shall be credited with interest at the end of each plan year at a rate equal to the realized return on the system's portfolio for that plan year as certified by the system actuary in his actuarial report, less 1/2 of 1 percent.

B. Plan year shall mean fiscal year. The actual posting of interest shall not be performed until the system actuary's report is approved by the Public Retirement Systems Actuarial Committee.

C. Interest shall not be paid on funds transferring to the Self-Directed Plan. DROP participants who are vested under LAC 58:I.4103 who choose to transfer their funds to the SDP shall not be paid DROP interest under this Section beginning on the date LASERS receives the participant's request for transfer. DROP participants who were not vested under LAC 58:I.4103 shall not be paid DROP interest under this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 31:946 (April 2005), LR 32:1070 (June 2006).

§2717. Changes in Withdrawal

A. The type of withdrawal or the amount may be changed upon written notice. Requests for change received in the office of LASERS by the fifteenth of one month shall be effective the following month.

B. The participant must indicate whether federal income taxes should be withheld from the amount disbursed. The tax instructions must be provided by the participant before a disbursement can be made.

C. The forms for selecting the method of disbursement and the tax instructions shall be provided to the participant at the time of termination, or upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996).

Subchapter D. “New” DROP

EDITOR’S NOTE: To the extent that the above provisions are not impacted by the following Sections, they shall apply to the new DROP. Any of the above provisions which conflict with the following provisions under the new DROP, the following provisions shall control.

§2719. Eligibility

A. Members who become eligible for retirement on or after January 1, 1996 will only be eligible for the new DROP. Members who were eligible for retirement on or prior to December 31, 1995 will have the option of joining either DROP, unless they have been eligible for regular retirement in excess of three years and 60 days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees’ Retirement System, LR 22:373 (May 1996).

§2721. Participation in New DROP

A. A member will be eligible for DROP as soon as he is eligible for retirement.

B. DROP participation will be limited to three years.

C. The member must enter DROP within a “window” of time. If he does not enter DROP within the window, he loses his right to enter DROP.

D. The “window” begins 60 calendar days after his earliest date of eligibility for retirement and continues for three years and 60 days from the date of eligibility. In effect, the window sets an ending date for DROP participation. Eligibility to participate in DROP must end no later than three years and 60 days after the first retirement eligibility date. A member may enter DROP on the date he is eligible for regular retirement, without waiting 60 days to start DROP; however, he may only participate in DROP for three years.

E. If a member waits to enter DROP at some point after eligibility, the length of time he may participate in DROP is reduced. For example, if he enters DROP one year after first becoming eligible, he can stay in DROP for two years and 60 days.

F. The participant may not end DROP prior to the stated ending date unless he terminates employment. This is a change from the old DROP. Also, the stated participation period cannot be extended.

G. The participant may elect to continue working after DROP participation. The calculation of the retirement benefit will be the same as in the old DROP program, except for the conversion of unused leave.

H. The amount of unused sick and annual leave at the date of termination can be converted to retirement credit, including the leave that was earned during the DROP participation period. If the participant terminates at the end of DROP or works less than three years after DROP, the benefit based on the leave conversion will be calculated using the final average compensation at the beginning of DROP participation. If the participant works more than three years after DROP participation, the benefit based on the leave conversion will be calculated using the final average compensation for the period of employment after DROP.

I. The participant may choose to receive the actuarially reduced lump sum payment for unused leave in lieu of converting it to retirement credit.

J. Anyone who elects to participate in DROP cannot elect the initial benefit option (lump sum provision).

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996).

§2723. Initial Benefit Option

A. This option will be available on January 1, 1996. Only members who have not participated in DROP can select this option. Disability retirees cannot select this option.

B. This option may be selected at the time of retirement and will pay the retiree a lump sum amount at the time of retirement, and the future monthly retirement benefit will be reduced on an actuarial basis.

C. The retiree must select the retirement option first. He cannot select Option 1. He can then elect to receive part of his future retirement benefits in an actuarially reduced lump sum payment. The value of the lump sum cannot exceed 36 months of the maximum monthly retirement benefit. The retiree may elect to receive the maximum lump sum amount or any smaller amount.

D. The retiree may also elect to receive unused leave in a lump sum payment rather than converting it to retirement credit. This election must be made by the retiree before the initial benefit option can be calculated.

E. The monthly retirement benefit of both the retiree and beneficiary will be actuarially reduced to offset the cost of the initial benefit. If the retiree retires under the special provisions for wildlife agents or judges and he selects the initial benefit option, his monthly benefit will also be actuarially reduced.

F. The retiree can receive the “initial benefit” in a lump sum payment, or it can be deposited in an account like the DROP accounts. The interest earnings and withdrawals will be the same as for DROP accounts. The main difference is that it will be created at the time of retirement with a lump sum instead of accumulated over a DROP participation period. The account will begin accumulating interest at the time it is set up.

G. If a retiree selects the initial benefit and later changes, the retirement option to the maximum due to divorce or death

of the beneficiary, the maximum benefit will be actuarially reduced at that time.

H. A retiree who elects this option and later returns to work will be governed by the same rehired retiree provisions as other retirees.

I. Future COLAs will be based on the amount of the monthly reduced benefit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996).

Chapter 29. Spousal Consent

§2901. Spousal Consent to Retirement Option

A. If a member is married and wishes to elect to retire under either the maximum plan, Option I, or else choose from Options II, III or IV(B) while naming someone other than his spouse as his beneficiary, he must obtain the consent of his spouse in writing on a form provided by LASERS executed before a notary public.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:446, R.S. 11:477 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 33:2469 (November 2007).

§2903. Instances Where Spousal Consent Is Not Required

A. The following list sets out those instances where spousal consent is not necessary and will not be required:

1. the spouses are divorced, in which case LASERS needs a certified copy of a judgment of divorce;
2. the spouse is legally incompetent to give consent, in which case the spouse's legal guardian may give consent, even if the guardian is the member, in which case LASERS needs a certified copy of the court order appointing the guardian;
3. the spouse has abandoned the member, in which case the following shall be required:
 - a. a certificate by the local newspaper certifying that a legal notice has been run for at least three days requesting information from anyone knowing the whereabouts of the spouse; and
 - b. a notarized affidavit signed by the member stating that the spouse has abandoned him or her and outlining the steps that the member has taken to locate the spouse and obtain his or her signature; or

c. a certified copy of a court order indicating that the spouse is an absentee or has abandoned the member;

4. the spouses have entered into a matrimonial agreement establishing a regime of separation of property pursuant to La. C.C. Art. 2328 between them which remains in effect at the time of retirement, in which case LASERS needs:

a. a certified copy of the agreement; and

b. a notarized affidavit signed by the spouses affirming the existence of a matrimonial agreement as required by this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 26:1490 (July 2000), LR 34:1048 (June 2008).

Chapter 31. Excess Benefit Arrangement

§3101. Participation

A. All retired members and beneficiaries of the system whose retirement or survivor or beneficiary benefits from the system for a plan year have been limited by IRC §415 are participants in this plan. Participation in the plan is determined for each plan year. Participation in the plan will cease for any plan year in which the retirement benefit of a member of the system or a survivor or beneficiary is not limited by IRC §415.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 26:1490 (July 2000).

§3103. Benefit

A. A participant in the plan shall receive a monthly benefit equal to the difference between the participant's monthly retirement benefit otherwise payable from the system prior to any reduction or limitation of IRC §415 and the actual monthly retirement benefit payable from the system as limited by IRC §415. The monthly benefit shall be subject to withholding for any applicable income or employment taxes. The form of the benefit paid to a participant from the plan shall be the same as otherwise selected by the participant and payable by the system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 26:1490 (July 2000).

§3105. Contributions

A. The system shall determine the required contribution to pay plan benefits for each plan year. The required contribution for each plan year shall be the total amount

of benefits payable to all participants and their survivors or beneficiaries and such amount as determined by the system to pay the administrative expenses of the plan and the employer's share of any employment taxes on the benefits paid from the plan.

B. The required contributions as determined in the preceding Subsection shall be paid into the plan fund from an allocation of the employer contributions paid to the system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 26:1491 (July 2000).

§3107. Excess Plan Fund

A. Contributions to the plan shall be deposited on a monthly basis in a separate fund established and administered by the system. This fund is intended to be exempt from federal income tax under IRC §§115 and 415(m)(1).

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 26:1491 (July 2000).

§3109. Funding Assets

A. The benefit liabilities of the plan shall be funded on a month to month basis. The fund established hereunder shall not be accumulated to pay benefits payable in future months. Any assets of the fund not used for paying benefits for a current month shall be used, as determined by the system, for the payment of administrative expenses of the plan for future months or paid to the system as an additional employer contribution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury,

Board of Trustees of the State Employees' Retirement System, LR 26:1491 (July 2000).

§3111. Non-Assignability of Benefits

A. The benefits payable under the plan may not be assigned or alienated by a participant, except as otherwise permitted for benefits payable by the system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 26:1491 (July 2000).

§3113. Plan Administration

A. The system shall have the authority to administer the plan as provided at R.S. 11:454.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 26:1491 (July 2000).

§3115. Retirement Benefit

A. Any and all payments made pursuant to this plan shall be considered part of a retirement benefit as provided for any member, survivor or beneficiary of the system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 26:1491 (July 2000).

§3117. DROP Benefits

A. The DROP benefit of any member may not exceed the annual benefit authorized by Section 415(b) of the Internal Revenue Code. For purposes of determining whether a member's benefit exceeds the limitations of this Subsection, the following shall apply:

1. Adjustment if benefit not a straight life annuity.

a. If the form of benefit is other than a straight life annuity, such benefit shall be adjusted actuarially to the equivalent of a straight life annuity to determine whether the limitations set forth in this Subsection are met.

b. For the purposes of this Subsection, no adjustment shall be taken into account for any ancillary benefit which is not directly related to retirement income benefits.

2. Adjustment if benefit commences before age 62.

a. If the benefit distribution commences before age 62, the actual retirement benefit shall not exceed the adjusted dollar limitation. The adjusted dollar limitation shall be the equivalent, determined in a manner consistent with reduction of benefits for early retirement under Section 415(b)(2)(E) of the Internal Revenue Code, of \$160,000, as of January 1, 2002, adjusted annually pursuant to Section 415(d) of the Internal Revenue Code, commencing at age 62. For purposes of this adjustment, survivor benefits, that portion of a joint and survivor annuity which is the survivor benefit, and any other ancillary benefits shall not be taken into account.

b. No adjustment shall be required under this Subsection if the member is a "qualified participant" as that term is defined in Section 415(b)(2)(H) of the Internal Revenue Code.

c. No adjustment shall be required under this Subsection if the benefit is payable due to the member's disability or preretirement death.

3. If the benefit distribution commences after age 65, the adjusted dollar limitation shall be the equivalent, determined in a manner consistent with the adjustments under Section 415(b)(2)(E) of the Internal Revenue Code, of \$160,000, as of January 1, 2002, adjusted annually pursuant to Section 415(d) of the Internal Revenue Code, commencing at age

65. For purposes of this adjustment, survivor benefits, that portion of a joint and survivor annuity which is the survivor benefit, and any other ancillary benefits shall not be taken into account.

B. The maximum retirement benefit payable under this Section to any member who has completed less than 10 years of credited service shall be the number determined under Subsection A multiplied by a fraction, the numerator of which shall be the number of years of service, and the denominator of which shall be 10.

C. Notwithstanding the foregoing, the benefit payable to a member shall not be deemed to exceed the limits of Subsection A if the total benefits payable to a member under all defined benefit plans maintained by the state, its agencies, or its political subdivisions do not exceed \$10,000 and the state, its agencies, or its political subdivisions have never maintained a defined contribution plan in which the member has participated.

D. Any benefit that, as a result of an election made under R.S. 11:447(A), would exceed the limitations on benefits imposed by Section 415(b) of the Internal Revenue Code shall be paid into the excess benefit arrangement established under R.S. 11:454.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 36:2050 (September 2010).

Chapter 35. Optional Retirement Plan

§3501. Plan Year

A. The Plan Year for the Optional Retirement Plan (ORP) shall be July 1 through June 30.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 26:1491 (July 2000).

§3503. Participation

A. The following state employees shall be eligible to make an irrevocable election to participate in the optional retirement plan:

1. any unclassified state employee who is appointed by a statewide elected official and whose appointment is subject to confirmation by the Louisiana Senate;
2. any unclassified state employee who is a member of the immediate staff of any such employee described in Paragraph 1 of this Section;
3. the chief executive officer of the State Employee Group Benefits Program;
4. any member of the executive career service establishment by the State Civil Service Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 26:1491 (July 2000), amended LR 29:1121 (July 2003).

§3505. Repealed, LR 34:97 (January 2008).

§3507. Employee Contributions

A. Each participant in the ORP shall contribute monthly the same amount that a regular member would have contributed under R.S. 11:62(5)(e). This amount shall be forwarded to

the ORP provider, less an administrative cost that shall be established by LASERS. The initial administrative cost shall be set at 1 percent of employee earnings but may be adjusted annually in writing to reflect the actual cost incurred by LASERS to perform this function, but shall not exceed 1 percent without an amendment to this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 26:1491 (July 2000).

§3509. Employer Contributions

A. Each employer agency shall contribute to LASERS on behalf of each participant in the ORP the same amount that would have been contributed to the defined benefit plan. LASERS shall pay over to the ORP provider an amount equal to the employer's portion of the normal cost contributions as set forth in the actuarial valuation of the retirement system. LASERS shall maintain that portion of the employer's contribution, which applies to the unfunded accrued liability, which exceeds the employer's portion of the normal cost contribution. LASERS may also retain an additional portion of the employer contributions for any adverse actuarial impact as a result of employees participating in the ORP in accordance with R.S. 11:502.3.B.(3).

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 26:1491 (July 2000).

§3511. ORP Provider

A. The system shall provide no more than three providers, selected by a competitive process, for participants to utilize in selecting investment options for the employee and employer contributions that are provided for by the preceding Sections.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 26:1492 (July 2000).

§3513. Investment Options

A. The investment options available to participants shall be those as established by the ORP provider and selected by the ORP participant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 26:1492 (July 2000).

§3515. Benefit Obligations

A. All benefits payable to participants under the ORP shall be the sole obligation of the ORP provider to which contributions are made, and shall not be the obligation of LASERS. Payments to participants or their beneficiaries shall be made by the ORP provider and not LASERS in accordance with the contracts approved for use in the ORP. Participants in the ORP shall not be entitled to any benefits under the defined benefit plan, and once a choice is made by a participant to participate in the ORP, that individual will be ineligible to participate in the defined benefit plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 26:1492 (July 2000).

§3517. Distribution

A. Distribution from the ORP to participants shall only be made after termination of employment with the state of Louisiana in accordance with applicable Internal Revenue Code provisions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 26:1492 (July 2000).

Chapter 37. Leave Conversion to Retirement Credit or Cash Payment

§3701. Conversion of Leave to Retirement Credit

A. All annual and sick leave certified by the employee's employing agency to be accrued in accordance with the leave accrual rates established by the Department of State Civil Service and for which payment cannot be made in accordance with law at the time of retirement shall be credited to the employee and may be converted to retirement credit in accordance with R.S. 11:424.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 29:1122 (July 2003).

§3703. Lump Sum Payment of Leave

A. An employee, in lieu of conversion of leave to retirement credit, may request in writing that he be paid the actuarial value of such leave, as determined by the retirement system's actuary, in a lump sum cash payment. The employee shall be paid the actuarial value of the conversion of leave to cash. This lump sum cash payment shall be paid to the employee on the first of the month after all pertinent documentation is received from the employee's employing agency needed to finalize the employee's retirement benefit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 29:1122 (July 2003).

§3705. Tax Liability

A. The employee requesting the lump sum cash conversion of leave shall be solely responsible for any tax consequences of this decision, and the employee must acquire any tax advice from a private source (CPA or tax attorney) as

LASERS shall not be responsible for any tax liability that may impact the employee as a result of the decision to take a lump sum cash distribution of leave in lieu of converting leave to retirement credit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 29:1122 (July 2003)

Chapter 39. Public Safety Services Secondary Component

§3901. Additional Retirement Eligibility

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 29:2859 (December 2003), repealed LR 35:2477 (November 2009).

Chapter 41. Self-Directed Plan

§4101. SDP Provider

A. System shall procure a single provider, selected by a competitive process, for participants in the Self-Directed Plan (“SDP”) to utilize in providing investment options for the deposits made during the accumulation period in the Deferred Retirement Option Plan (“DROP”) or funds acquired through the Initial Benefit Option (“IBO”). The investment options shall not be available to the participants until the DROP funds are transferred to the SDP provider at the end of the accumulation period, or until after the IBO funds are so transferred.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees’ Retirement System, LR 30:1306 (June 2004).

§4103. Persons Vesting for DROP Prior to January 1, 2004

A. Persons who became eligible for regular retirement prior to January 1, 2004 are eligible for participation in the SDP. Those persons may make an irrevocable election to transfer their DROP funds into the SDP. The DROP or IBO participants electing to transfer their funds into the SDP must transfer their entire DROP or IBO balance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees’ Retirement System, LR 30:1306 (June 2004).

§4105. Eligibility for Transfer of Funds into SDP

A. The only funds which may be transferred into the SDP are LASERS DROP or IBO funds. Transfers or rollovers from other sources shall not be allowed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 30:1307 (June 2004).

§4107. Rollovers Out of SDP to Other Providers

A. At all times after becoming eligible to withdraw funds from the SDP, DROP participants may elect to rollover funds to eligible providers. Such rollovers shall be subject to applicable federal laws and the terms of the SDP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 30:1307 (June 2004).

§4109. Right to Recover Overpayments

A. In the event of overpayment of funds are made by LASERS, then LASERS retains the ability at all times to recall funds from member at provider or to reduce future benefits pursuant to R.S. 11:192 to recover any such overpayment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 30:1307 (June 2004).

§4111. Time to Transfer Funds

A. Except in emergency circumstances as determined by the executive director:

1. LASERS shall forward the entire deposit balance of a participant to the third party administrator within 10 working days from the end of the DROP accumulation period. LASERS may supplement or otherwise correct balances forwarded in those instances where there are errors, missing documents or incomplete reports submitted by agencies reporting earnings for the participant;

2. for participants in the Initial Benefit Option ("IBO") or for

those DROP participants whose accumulation period is less than six months, LASERS shall transfer 80 percent of the DROP/IBO balance within 45 days from the date of initial transfer into the SDP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 30:1307 (June 2004), amended LR 32:1070 (June 2006).

§4113. Spousal Consent

A. LASERS may halt the processing of a participant's request to enter the SDP until any spousal consent form required by law or proof of divorce has been presented to the system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 30:1307 (June 2004).

§4115. Completion of Notification Form

A. All DROP participants shall complete and submit a form (#9-2 or #9-2a) to inform LASERS that they are ending the accumulation period. This form shall be submitted at least 30 days prior to that date. Failure to submit this form could result in delaying access to DROP funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 30:1307 (June 2004).

§4117. Distributions

A. Distributions shall be in accordance with the provisions of Title 58, Part I, Chapter 27 of the Louisiana Administrative Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 30:1307 (June 2004).

§4119. No In-Service Distribution

A. Distributions prior to the date of termination from employment with the state of Louisiana are strictly prohibited in accordance with applicable Internal Revenue Code Provisions. The selected provider shall not make a distribution without a verification of termination from LASERS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 30:1307 (June 2004).

§4121. Civil Service Reinstatement

A. DROP participants who have been removed from state employment, then reinstated pursuant to a ruling by the Civil Service board, shall immediately notify LASERS in writing of their reinstatement, along with a projected date of retirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 30:1307 (June 2004).

§4123. Beneficiary

A. Each participant shall initially designate a beneficiary or beneficiaries to receive any amounts which may be distributed in the event of the death of the participant prior to the complete distribution of benefits. A participant may change the designation of beneficiaries at any time by filing a written notice on a form approved by LASERS. If no such designation is in effect at the time of participant's death, or if the designated beneficiary does not survive the participant by 30 days, his beneficiary shall be his surviving spouse, if any, and then his estate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 30:1307 (June 2004).

§4125. Investment Options

A. LASERS shall in its sole discretion select certain investment options to be used to determine income to be accrued on deferrals. These investment options may include specified life insurance policies, annuity contracts, or investment media issued by an insurance company. In any event, it shall be the sole responsibility of LASERS to ensure that all investment options offered under the plan are appropriate and in compliance with any and all state laws pertaining to such investments.

B. In the absence of a written directive from the participant, the provider shall automatically invest the participant's DROP funds in its discretion in an appropriate interim investment until specific investment directions are received. Such instructions regarding the delegation of investment responsibility shall remain in force until revoked or amended in writing by the participant. LASERS shall not be responsible for the propriety of any directed investment.

C. LASERS may, from time to time, change the investment options under the plan. If LASERS eliminates a certain investment option, all participants who had chosen that investment shall select another option. If no new option is selected by the participant, money remaining in the eliminated investment option shall be moved at the direction of LASERS. The participants shall have no right to require LASERS to select or retain any investment option. To the extent permitted by and subject to any rules or procedures adopted by the administrator, a participant may, from time to time, change his choice of investment option. Any change with respect to investment options made by LASERS or a participant, however, shall be subject to the terms and conditions (including any rules or procedural requirements) of the affected investment options and may affect only income to be accrued after that change.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 30:1307 (June 2004).

§4127. Participant Investment Direction

A. Participants shall have the option to direct the investment of their personal contributions and their share of any employer contributions among alternative investment options established as part of the overall SDP, unless otherwise specified by LASERS. A participant's right to direct the investment of any contribution shall apply only to making selections among the options made available under the SDP.

B. Each participant shall designate on the proper form or via website or telephone direction the investment that shall be used to determine the income to be accrued on amounts deposited. If the investment chosen by the participant experiences a gain, the participant's benefits under the SDP likewise shall reflect income for that period. If the investment chosen by a participant experiences a loss, or if charges are made under such investment, the participant's benefits under the SDP likewise shall reflect such loss or charge for that period.

C. Neither the state of Louisiana, LASERS, the administrator, nor any other person shall be liable for any losses incurred by virtue of following the participant's directions or with any reasonable administrative delay in implementing such directions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 30:1308 (June 2004).

§4129. Distributions from the Plan

A. The payment of benefits in accordance with the terms of the plan may be made by the trustee, or by any custodian or other person so authorized by LASERS to make such distribution. Neither LASERS, the trustee nor any other person shall be liable with respect to any distribution from the plan made at the direction of the employer or a person authorized by the employer to give disbursement direction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 30:1308 (June 2004).

§4131. Domestic Relations Orders

A. In all instances wherein a person participating in the SDP is a party to a Domestic Relations Order ("DRO"), properly worded and approved by LASERS, and such DRO is to divide DROP funds with the participant's former spouse, LASERS shall establish a means whereby the former spouse may choose the investment options for his or her portion of the SDP. Until such time as the portion belonging to the former spouse is placed in a separate SDP account in that person's name, those funds shall remain in a conservative fixed income investment vehicle within the SDP such as a stable value fund.

B. The selection of investment options shall be in accordance with §4125 of this Chapter.

C. Withdrawals from the SDP by either the member spouse (under whom all service credit accumulated) or the former spouse are prohibited until such time as the member spouse terminates state employment.

AUTHORITY NOTE: Promulgated in accordance with R.S.11:451.4 and 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 30:1308 (June 2004), amended LR 33:1150 (June 2007).

§4133. Disclaimer

A. LASERS makes no endorsement, guarantee or any other representation and shall not be liable to the plan or to any participant, beneficiary, or any other person with respect to:

1. the financial soundness, investment performance, fitness, or suitability (for meeting a participant's objectives, future obligations under the plan, or any other purpose) of any investment option in which amounts deferred under the plan are actually invested; or
2. the tax consequences of the plan to any participant, beneficiary or any other person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 30:1308 (June 2004).

§4135. No DROP Interest

A. Participants in the SDP shall not receive interest paid by LASERS on traditional DROP/IBO accounts under the provisions of LAC 58:I.2715.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 32:1070 (June 2006).

Chapter 43. Actuarial Calculations

§4301. Charges for Actuarial Calculations

A. The system shall collect a fee of \$150 from those persons requesting certain actuarial calculations which must be obtained from the actuarial firm with whom LASERS contracts actuarial services. Except as otherwise provided in R.S. 11:446.E, the fee must be payable to LASERS and will be forwarded to the actuarial firm.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 32:265 (February 2006).

Chapter 45. Effects of Act 75 of the 2005 Regular Session

§4501. Members Affected

A. This Chapter concerns those members of LASERS affected by Act 75 of the 2005 Regular Session of the Louisiana Legislature.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515 and R.S. 11:537.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the State Employees' Retirement System, LR 33:113 (January 2007).

§4503. Vesting Because of Prior State Employment

A. Members whose first employment making them eligible for membership in the system began on or before June 30, 2006 and who subsequent to that date cease such employment shall remain vested under the retirement eligibility provisions existing on that date, but only so long as they do not receive a refund of their accumulated employee contributions on or after July 1, 2006.

B. Upon application for and acceptance of a refund of accumulated contributions, all rights in the system are cancelled. For the purposes of this Section, a refund shall be considered accepted by the member upon the cashing or negotiating of a check or deposit by electronic funds transfer of an amount representing the bulk of the employee contributions deposited in his or her LASERS account based upon the period of their employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515 and R.S. 11:537.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the State Employees' Retirement System, LR 33:113 (January 2007).

AG Opinions Chronologically

La. Atty. Gen. Op. No. 76-599, 1977 WL 46031 (La.A.G.)

A retired state trooper receiving retirement benefits from the State Police Retirement System may at the same time be a member of the State Employees Retirement System.

La. Atty. Gen. Op. No. 76-1379, 1977 WL 39412 (La.A.G.)

Former police juror, presently member of State Employees Retirement System, may not purchase service credit in Parochial Employee Retirement System for purpose of transfer to the State Employee's Retirement System.

La. Atty. Gen. Op. No. 76-1752, 1977 WL 39424 (La.A.G.)

Discussion of possible refund members of State retirement system under Act 518 of 1976. Whether Deputy Judicial Administrators in the office of the Supreme Court who have been contributing members of the State Employees' Retirement System are entitled to a refund of contributions under Act 518 of 1976? It is our opinion that Deputy Judicial Administrators who were contributing members of the State Employees' Retirement System in the past should not be refunded their contributions upon availing themselves of the provisions of Act 518 of 1976.

La. Atty. Gen. Op. No. 77-26, 1977 WL 34406 (La.A.G.)

Whether Mrs. Frances C. Costello may receive credit in the Louisiana State Employees' Retirement System for her years of employment at Louisiana State University, New Orleans as well as credit for unused accumulated sick leave during her employment? State service cannot be purchased in the State Retirement System if social security was paid.

La. Op. Atty. Gen. 183, La. Atty. Gen. Op. No. 77-70, 1977 WL 34440 (La.A.G.)

Accumulated annual leave and unused sick leave may be converted to creditable service for the purpose of establishing minimum eligibility for survivor's benefits. It is clear that accumulated annual leave may be added to achieve minimum eligibility, La.R.S. 42:421(B). It is not clear whether the same is true concerning unused sick leave. La.R.S. 42:563. Due to the lack of clarity, both should be added. Groves vs. Board of Trustees (supra)

La. Atty. Gen. Op. No. 77-97, 1977 WL 34464 (La.A.G.)

Whether the Board of Trustees of the Louisiana State Employees' Retirement System has the legal authority to sell or exchange for securities real property on which it previously had a first mortgage loan and which it subsequently acquired at a sheriff's sale? La. State Employees' Retirement Sys. has authority to sell or exchange for securities real property acquired by foreclosure at sheriff's sale on which it previously held a mortgage.

La. Atty. Gen. Op. No. 77-208, 1977 WL 34546 (La.A.G.)

(1) Are the retirement systems in the state of Louisiana covered by the Reorganization as provided in Act 513 of 1976? Are they mandated to be under one of the twenty departments?

(2) Can the retirement systems in the state of Louisiana, by legislative act, be put under the Executive Branch?

(3) Can the retirement system in the state of Louisiana, by legislative act, be put under the Legislative Branch?

State retirement systems are within executive branch of state government and are to be included within final reorganization of Executive Branch of Legislature. It is our

opinion that, the retirement systems cannot be put under the Legislative Branch, as the functions performed by the system are not legislative in nature, and must be put in one of the twenty executive departments.

La. Atty. Gen. Op. No. 77-326, 1977 WL 34626 (La.A.G.)

Opinion on the termination for Cause of a mortgage servicing contract between the Retirement System (System) and Harris Mortgage Corporation (Harris). Whether certain acts or omissions of Harris constitute sufficient grounds to terminate the mortgage servicing contract without invoking the penalty clause? Sufficient grounds exist, if proved to terminate contract. LSA C.C. Art. 2033; Art. 1926; Art. 911(2) This office is of the opinion that these allegations, if proved, would constitute grounds for termination of the contract, either under the terms of the contract or by law. Failure to prove the facts alleged, however, will subject the System to liability. It will constitute termination without cause, invoking the penalties stipulation on Page 3, ¶ 1. of the mortgage servicing contract.

La. Atty. Gen. Op. No. 77-971, 1977 WL 33863 (La.A.G.)

If service as a member of a city, parish, or state Democratic Committee may be counted as time of creditable service under R.S. 24:36? Membership on a city, parish or state Democratic committee may be counted as creditable service toward retirement for legislators, governors and lieutenant governor under R.S. 24:36. Since a person holding public office is a public officer, it is our opinion service as a member of a political committee, specifically a member of a city, parish or state Democratic committee, may be counted as creditable service toward retirement under the provisions of R.S. 24:36 as amended by Act 222 of 1976.

La. Atty. Gen. Op. No. 77-1613, 1977 WL 34335 (La.A.G.)

The application of R.S. 42:572 and R.S. 42:691. Under, R.S. 42:572, this statute applies to members of the Louisiana State Employees' Retirement System. It provides for compulsory retirement at age sixty-five if eligible for regular retirement or upon attaining regular retirement eligibility. It also allows the appointing authority to extend employment for periods of one year. Under R.S. 42:691, in our opinion the compulsory retirement age of seventy found in R.S. 42:691 applies to all public employees except those excluded in the statute. It was not tacitly repealed by its deletion from R.S. 42:572 which only applies to members of the State Employees' Retirement System. Under both statutes the one year extensions by the employer begin at age sixty-five. In our opinion the one year extension could not be withdrawn by the employer. Otherwise the extension would not really be for one year but would only be an extension at the leisure of the employer. Since any extensions should start at age sixty-five an employee should not reach age seventy in the middle of an extension. In any event no extension should be granted past age seventy.

La. Atty. Gen. Op. No. 78-411, 1978 WL 31845 (La.A.G.)

Opinion from our office on whether a Judge is entitled to convert unused annual leave to retirement credit upon retirement from the Louisiana State Employees' Retirement System. We have researched this matter and it is our opinion that a District Court Judge is not an employee of the state or a state agency within the meaning of R.S. 42:421 and 563 but is a 'public officer.' Further, we have been unable to find any established leave regulations or requirement for attendance records which would apply to judges. We feel the provisions of R.S. 42:421 and 562 can only apply to employees who actually accrue annual leave as their employment progresses. Therefore, it is our opinion that elected judges cannot benefit by the provision of R.S. 42:421 and 563.

La. Atty. Gen. Op. No. 78-483, 1978 WL 31906 (La.A.G.)

Head of State Department may terminate employee who is being retained on staff beyond age 65 whether classified or unclassified by means of compulsory retirement in accordance with R.S. 42:691(A).

La. Atty. Gen. Op. No. 78-1097, 1978 WL 32302 (La.A.G.)

Discussion concerning commissions of state policemen cannot be retroactive. Also, membership in retirement fund. In our opinion, membership in the retirement system cannot be made retroactive prior to the time the person satisfactorily completed the training academy. Since the cadets who are in the wrong system should be placed in the proper system, they would not be covered by the provisions of the State Police Retirement Fund. House Bill 181 (Act 532 of 1978) only concerns the State Police Retirement Fund and therefore it can only apply to those persons who are legally members of the system. The present cadet class should not be members of the system and therefore Act 532 of 1978 does not apply to them.

La. Atty. Gen. Op. No. 78-1235, 1978 WL 32398 (La.A.G.)

Our office has researched the law governing the duties of employees of the Department of Wildlife and Fisheries and we find that the permanent status commissioned wildlife agents of the enforcement division must be considered law enforcement personnel as intended in the above statute. Other employees could not be considered law enforcement personnel under the statute. In our opinion the mandatory retirement age for wildlife agents employed by the enforcement division is age sixty-five, subject to the continuances as allowed by the statute. The mandatory retirement age for all other employees of the Department of Wildlife and Fisheries would be age seventy, subject to the continuances as allowed by the statute.

La. Atty. Gen. Op. No. 78-1464, 1978 WL 32772 (La.A.G.)

Discussion of minimum age for becoming a member of a state retirement system. Whether it is legal to prohibit individuals over the age of fifty-five from participating in the systems? The age fifty-five limitation upon joining a retirement system such as for the Louisiana State Employees' Retirement System (R.S. 42:553) was put into the retirement system law because of two factors. The first was that a member would have to have ten years of creditable service in order to become eligible for a retirement benefit. Second, the mandatory retirement age for a state employee was age sixty-five. Therefore, if a person could join after age fifty-five and had to retire at age sixty-five he could not draw a retirement benefit from the system because he could not achieve ten years of creditable service. All he would receive when his service terminated would be a refund of his contributions to the system without interest.

La. Atty. Gen. Op. No. 78-1499, 1978 WL 32798 (La.A.G.)

Review of Opinion #76-101 R.S. 42:697 applies to all members of all public retirement systems in the state. In our opinion, the legislature, by enacting and amending R.S. 42:697, intended to provide a uniform method for transfers between all members of all public retirement systems in the state. This would include legislators who are members of any public retirement.

La. Atty. Gen. Op. No. 78-1572, 1978 WL 32837 (La.A.G.)

Whether the employees of the LaSalle Parish Hospital Service District No. 2 could be eligible for membership in the Louisiana State Employees' Retirement System? In order for employees to be members of the state system they must be employees of the state or one of its boards, commissions, departments or agencies. We feel that employees of a parish hospital service district are parish employees and not

state employees within the meaning of the law governing the Louisiana State Employees' Retirement System. Therefore, Parish Hospital Service District employees are not eligible for membership in State Employees' Retirement System.

La. Atty. Gen. Op. No. 79-705, 1979 WL 38345 (La.A.G.)

Opinion regarding the purchase of creditable service in the state employee's retirement system. Where former member of Registrar of Voters retirement system withdrew contributions and was later employed by state and became a member of State Employee's Retirement System, member could purchase prior service credit. R.S. 42:562, 42:697; R.S. 18:270.701D

La. Atty. Gen. Op. No. 79-880, 1979 WL 38475 (La.A.G.)

Whether the Board of Trustees of the Louisiana State Employees' Retirement System may grant the widow a monthly allowance on the account of her deceased husband? Board of Trustees may grant monthly allowance to widow of member who would have had the required years of service if he had not received a pay adjustment to his salary. 92-A-2(b)-LSA R. S. 42:605-LSA R. S. 42:561(c)

La. Atty. Gen. Op. No. 79-957, 1979 WL 39087 (La.A.G.)

Whether the Board of Trustees exceeded their scope of authority in limiting the number of elected members that a department of state government may have, especially, in the area of the six (6) members who are elected by the membership of the system. Board of Trustees may not promulgate rules and regulation pertaining to board membership which conflict with state law. The authority for the Board to adopt rules and regulations is procedural, that is, the manner in which the election is conducted, and is not authority for the Board to establish qualifications for

membership on the Board. Therefore, it is the opinion of this office that the rules and regulations adopted by the Board pertaining to membership on the Board are in conflict with state law and null and void.

La. Atty. Gen. Op. No. 79-985, 1979 WL 39111 (La.A.G.)

If cost-of-living increases provided for in Acts 10 and 521 of 1979 should be made on gross benefits, the amount currently received by retirees and referred to in Act 521, or on base benefits, the amount received by retirees at retirement and referred to in Act 10? Increased retirement benefits must be calculated upon base benefits as provided for in the General Appropriations Bill, Act 10 of 1979.

La. Atty. Gen. Op. No. 79-1071, 1979 WL 38094 (La.A.G.)

Public employees who were over the age of 55 years at the time of their employment and are not yet 60 must, as a condition of employment, become members of the applicable state retirement system.

La. Atty. Gen. Op. No. 79-1072, 1979 WL 38095 (La.A.G.)

Opinion from this office concerning the rights of illegitimate children to survivor benefits from the Louisiana State Employees' Retirement System. Illegitimate children are entitled to survivor benefits upon showing of actual parent/child relationship with member of retirement system.

La. Atty. Gen. Op. No. 79-1210, 1979 WL 38186 (La.A.G.)

Whether the Assessors' Retirement Fund in this situation is obligated to transfer only the creditable service and employee contribution or is it also obligated to transfer the employer contribution and, if so, what is to be considered as the

employer contribution? Based on the above quoted statutory language, it is the opinion of this office that upon request by the judge in question, the Assessors' Retirement Fund must transfer to the Louisiana State Employees' Retirement System the judge's total accredited years of service and the total of the employee and employer contributions held in the judge's account. In computing the employer contribution due to be transferred for each year it is our opinion that the employer percentage is to be computed by relation of total funds paid into the retirement system by all state sources for that year (i.e. excluding employee contributions and any self generated interest) and total salaries paid to all members of the fund for that year. Further, the employer contribution to be transferred should be computed for each individual year of creditable service to be transferred.

La. Atty. Gen. Op. No. 79-1248, 1979 WL 38213 (La.A.G.)

Opinion from this office relative to Act 727 of 1978 and to what extent, if any, disability retirement payments should be adjusted in view of other benefits being received by the individual based upon his disability? Social Security and Workmen's Compensation disability benefits should be included in determining whether a disability retiree is receiving more than his average final compensation and, thus, whether his state retirement disability pension should be modified pursuant to R.S. 42:705(E).

La. Atty. Gen. Op. No. 80-156, 1980 WL 115721 (La.A.G.)

In the event that a person with 9 years of service in LASER and 6 years service in PERS would leave state service, and leave his funds on deposit, would he be 'vested' in both systems and entitled to deferred retirement benefits upon attaining normal retirement age? Person with approximately 9 years service in LASER and 6 years service in PERS would be vested in PERS and may receive deferred retirement

benefits from both systems upon reaching highest age and years of service requirements of both systems if he leaves state service.

La. Atty. Gen. Op. No. 80-239, 1980 WL 115787 (La.A.G.)

Whether certain documents, contained within the files of active, disability retiree and regular members, are exempted from public inspection? Disability retirement application disapproved but it must still be disclosed as a public record. The contents of the application are also considered public records.

La. Atty. Gen. Op. No. 80-343, 1980 WL 115859 (La.A.G.)

How it could be determined what amount the City of Bogalusa is obligated to pay towards the retirement benefits due Judge A. J. Jones? If there was any way that our office could compel the Retirement System to properly comply with the applicable statute? Attorney General cannot perform actuarial services or compel State Employees' Retirement System to comply with an A. G. Opinion.

La. Atty. Gen. Op. No. 80-566, 1980 WL 116028 (La.A.G.)

Who should pay the 'employer's portion' when a member of your retirement system purchases credit for educational leave with stipend pursuant to La. R.S. 42:564(B)? When member of State Employees Retirement System applies to purchase credit for educational leave with stipend, the employer's portion must be paid by agency by whom member is employed at time of applying to purchase such credit.

La. Atty. Gen. Op. No. 80-888, 1980 WL 116285 (La.A.G.)

Whether the normal requirement that newly enrolled members of the system be under the age of sixty may be waived by your board of trustees for persons who were over the age of sixty when they commenced their present state employment but, if permitted to join and establish credit for state service rendered prior to their sixtieth birthday, could then obtain a minimum of ten years credit by the end of the fiscal year in which they attain the age of seventy? Board of trustees may not waive requirement that newly enrolled members be under 60 for person who was over 60 when beginning present state employment even if person could obtain 10 years credit by reaching age 70.

La. Atty. Gen. Op. No. 80-1071, 1980 WL 116421 (La.A.G.)

Opinion of this office concerning Louisiana Act 567 of the Regular Session of 1979, as a result of the following action:

The Louisiana House Retirement Committee instructed the Board of Trustees of the Louisiana State Employees' Retirement System (LASER) to discontinue accepting employer checks for its pro rata share of the purchase of prior credit by employees for time served as an employee of the State. The Board of LASER, on July 9, 1980, officially resolved to refuse to accept employer's checks for their pro rata share of the prior credit to be purchased.

LASER cannot refuse receipt of state appropriated funds for the employer's share for the purchase of prior state service. LA.R.S. 42:697.6; 42:562(C)

La. Atty. Gen. Op. No. 80-1605, 1981 WL 148972 (La.A.G.)

Opinion regarding Act 526 of 1979 as it enacted La.R.S. 42:570.2. Employee must pay both employee and employer contributions when purchasing service credit pursuant to La.R.S. 42:570.2; employer may not pay employer's share.

The word “inducted” as used in R.S. 42:2 means to have satisfied all requirements established by law for the particular office in question, as set forth in R.S. 42:141.

La. Atty. Gen. Op. No. 81-99, 1981 WL 155183 (La.A.G.)

Opinion concerning the eligibility of several of your employees to purchase prior service credit in the Louisiana State Employees’ Retirement System. There are two provisions of the law which allow for the purchase of prior service credit—R.S. 42:697.6 and R.S. 42:562. The employees in question became members of the System more than a year ago, and furthermore, they were not forced to join the retirement system by the mandates of this Statute, R.S. 42:697.6. They may not, therefore, purchase prior service credit, pursuant to R.S. 42:697.6. R. S. 42:562 allows members to purchase creditable State service for ‘any full-time state service for which no social security was paid, and for which the member has not received credit’. Because this Statute only allows the purchase of service credit where the State has not paid Social Security, the employees in question are unable to purchase prior credit.

La. Atty. Gen. Op. No. 81-103, 1981 WL 155185 (La.A.G.)

Discussion concerning mandatory membership in State Employees’ Retirement System. It is the opinion of this office that the person in question should have been placed in the State Employees’ Retirement System on April 21, 1969 as a condition of employment and therefore should be allowed to purchase and establish service credit from April 21, 1969 through November of 1972 in the Louisiana State Employees’ Retirement System.

La. Atty. Gen. Op. No. 81-124, 1981 WL 155202 (La.A.G.)

Whether per diem income received by retirees of the System must be considered in the application of Louisiana R.S. 42:574. Per diem income received by retirees of LSERS may be excluded from application of La. R.S. 42:574.

La. Atty. Gen. Op. No. 81-577, 1981 WL 154613 (La.A.G.)

Answering your first question, it is our opinion that the System must not accept checks covering the employer portion that are drawn on the agency's checking account when service credit is purchased pursuant to La. R.S. 42:570.2. Our opinion is based, first, on the mandatory language of the statute itself ('the member shall pay') and, second, the requirement that the payment be made in one lump sum.

In answer to your second question, it is our opinion that, pursuant to the powers granted to the Board of Trustees by La. R.S. 42:646, the Board does have the authority to reopen or reconsider previous purchases of service credit under the authority of R.S. 42:570.2 in which the employer contribution was paid by the employer instead of the member. However, it is also our opinion that in any case in which the employer paid the employer's share and the member has since then retired, the Board has the authority only to determine whether the incorrect payment has been rectified either by the member reimbursing the employer or by the System refunding the payment to the employer upon receipt by the System of a like amount from the retiree; no benefits which have already been paid pursuant to the good faith mistake may be recouped.

La. Atty. Gen. Op. No. 81-778, 1982 WL 190711 (La.A.G.)

What is the legally correct definition of the term "vested right" as used in the application of La.R.S. 42:563(C)?

Interpreting these statutes together, it is our opinion that a member who retires out of state service may not use unused sick and annual leave to extend service credit unless at the time he terminated state service he satisfied one of the three requirements for retirement eligibility set forth in R.S. 42:571.

La. Atty. Gen. Op. No. 81-933 (La.A.G.), 1982 WL 181669

Opinion of our office regarding the proper interpretation of a survivor benefits provision of the Harbor Police Retirement System, in particular, Section 5(2)(a) of Act 80 of 1971, as amended. In other words, to compute the monthly benefit to which the surviving spouse is entitled, you first compute the regular retirement allowance for which the deceased member would have been eligible at the time of death based on the actual number of the member's years of service credit disregarding the deceased member's age, and then award fifty percent of that amount to the surviving spouse.

La. Atty. Gen. Op. No. 81-935, 1981 WL 154874 (La.A.G.)

Opinion of our office regarding a recent cost of living adjustment granted to certain retired state employees or their survivors by the Board of Trustees (Board) of the Louisiana State Employees' Retirement System (System). If Board of Trustees of La. State Employees' Retirement System grants a cost of living adjustment, they may not restrict the grant to certain retirees and beneficiaries, but must make the grant applicable to all retirees and beneficiaries of record on July 1st of the immediately preceding calendar year. The Board may suspend payment of a cost of living adjustment beyond a specified annual amount by establishing a maximum amount which each retiree or beneficiary may receive.

La. Atty. Gen. Op. No. 81-969, 1981 WL 154897 (La.A.G.)

Whether Mr. Hebert is eligible for free military service credit

for military service rendered during World War II. You state that Mr. Hebert requested such credit on June 1, 1981, claiming that he was entitled to the free credit pursuant to Act 52 of 1950. Since the provisions of law governing receipt of creditable service for military service as enacted by Act 52 of 1950 have been repealed and reenacted by subsequent legislation, it is our opinion that credit in the retirement system for military service may be granted only in accord with the most recent expression of the Legislature (i.e. La. R.S. 42:565 as reenacted by Act 135 of 1972 and Act 240 of 1976). Military credit may not now be granted pursuant to the obsolete provisions of Act 52 of 1950.

La. Atty. Gen. Op. No. 81-1323, 1981 WL 155093 (La.A.G.)

Whether the LASERS could legally invest in up to \$100,000,000 of proposed Single Family Mortgage Revenue Bonds, Series 1981, to be issued by the Louisiana Housing Finance Agency (the 'Agency')? La. State Employees' Retirement System may invest in \$100,000,000 of proposed Single Family Mortgage Revenue Bonds, Series 1981 of the La. Housing Finance Authority. R.S. 42:713; 40:600.18; 42:647

La. Atty. Gen. Op. No. 83-130, 1983 WL 177747 (La.A.G.)

Question regarding effect of preexisting condition on application for disability retirement. It is our opinion that the following rule should govern consideration of applications for disability retirement in those situations where a question arises concerning a preexisting condition:

(1) The Board's decision should be based upon medical evidence, except in those situations in which needed medical evidence is unavailable.

(2) A finding that there was a preexisting condition (i.e. a condition that existed prior to the applicant's employment

by the state) should not result in a denial of the application for disability retirement unless the preexisting condition was clearly the proximate cause of the disability.

(3) The statute must be liberally construed in favor of the applicant.

La. Atty. Gen. Op. No. 83-298, 1983 WL 177684 (La.A.G.)

You have requested the opinion of this office regarding the proper application of various provisions of Act 769 of the 1982 Regular Session to judges. Specifically, you ask three questions:

1. What is the employee contribution rate that a judge must pay in order to obtain credit for military service?
2. At retirement, what benefit formula applies to a judge's credit for military service?
3. What constitutes 'base pay' for judges upon which the computation for contributions is made?

It is our opinion that the employee contribution rate to be used in computing the amount a judge must pay to obtain credit for his military service is eleven percent. It is our opinion that the 3 1/2 percent benefit formula applies to the military service credit purchased by a judge pursuant to Act 769 of 1982. It is our opinion that the above definition should be used in interpreting the term 'base pay' found in Act 769 of 1982 and that, accordingly, the term 'base pay' includes all compensation received by a judge from any governmental entity, regardless of whether the payment of such compensation was mandatory or not.

La. Atty. Gen. Op. No. 83-464, 1983 WL 177842 (La.A.G.)
Opinion as to the legality of an agreement with a private

association for the use of certain electronic equipment through 'soft dollar payments' to enable more effective placement of orders with brokerage firms for the purchase and/or sale of common stock. In Attorney General's Opinion No. 79-1439, an agreement whereby a state hospital provided limited manpower to a private corporation in exchange for use of certain computer software was considered a valid cooperative endeavor. The opinion stated that if the value of the software to the state was equal to or exceeded the value of the manpower provided by the state pursuant to the agreement, that such a cooperative endeavor would be permitted. If the value of the use of the electronic equipment to the retirement system equals or exceeds the \$5000 commission volume with the brokerage firm, the agreement in this situation would be a valid cooperative endeavor.

La. Atty. Gen. Op. No. 83-549, 1983 WL 177362 (La.A.G.)

Opinion of this office regarding the method by which the employee contributions of the Port Director of the Greater Jefferson Port Commission are paid to the Louisiana State Employees' Retirement System. Current method by which employee contributions of Port Director of the Greater Jefferson Port Commission are computed and paid to La. State Employees' Retirement System not in accord with applicable law.

La. Atty. Gen. Op. No. 83-638, 1983 WL 177416 (La.A.G.)

Opinion of this office regarding the status in the Louisiana State Employees' Retirement System of two state stewards of racing employed by the Racing Commission. Whether these two employees should not have joined the retirement system when they first became employed by the Commission and, if so, should not they be allowed to purchase and establish credit in the system for that service rendered prior to joining the system? We are unable to answer the first section of

your question because that discretionary determination may be made only by the Board of Trustees of the retirement system. The Legislature has vested the authority to answer such questions with the Board. Responding to the second section of your question, the answer necessarily depends on the classification of employment of the two stewards. If classified as regular full-time employees, it is our opinion that LSA-R.S. 42:562 governs. On the other hand, if classified as job appointment, it is our opinion that LSA-R.S. 42:570.2 governs.

La. Atty. Gen. Op. No. 84-424, 1984 WL 195363 (La.A.G.)

Whether retirees of the New Orleans City Park Improvement Association were, prior to retirement, eligible to participate in the Louisiana State Employees' Retirement System? The retirees of the New Orleans City Park Improvement Association were not, prior to retirement, eligible to participate in the Louisiana State Employees' Retirement System.

La. Atty. Gen. Op. No. 85-492, 1985 WL 203364 (La.A.G.)

Opinion of this office relative to the authority of the Board of Trustees to effect a settlement and compromise of a lawsuit arising out of a contractual dispute involving the System. Board of Trustees has the authority to settle and compromise a lawsuit that arose as a result of a disagreement over the terms of a contract to which the System is a party, using System Funds.

La. Atty. Gen. Op. No. 86-544, 1986 WL 236982 (La.A.G.)

Opinion of this office regarding Act 144 of 1986. Section 6 of the Louisiana State Employees Retirement System early retirement incentive program is unconstitutional. As a result 1986-8 fiscal year costs will be provided by the retirement system general fund. All other sections, 1 thru

5, are constitutional. Regarding section 2, members who subsequent to April 21, 1986, terminate employment without withdrawing accumulated contributions are eligible for retirement. Also this system does apply to LSU Members.

La. Atty. Gen. Op. No. 86-768, 1986 WL 237180 (La.A.G.)

Opinion regarding payments for accrued leave to a state employee. State employee is entitled up to maximum of \$1,200 payment of terminal accrued annual leave upon transferring governmental employment, or he may elect to apply accrued time towards retirement credit.

La. Atty. Gen. Op. No. 87-116, 1987 WL 288730 (La.A.G.)

Determining rehired retiree status under Act 3 of 1986. It is the opinion of this office that a member of the Louisiana State Employees' Retirement System (hereinafter "System") who retired pursuant to Act 3 with less than the number of years of service required by LSA-R.S. 42:571 for normal retirement is eligible to become reemployed pursuant to LSA-R.S. 42:574. It is the opinion of this office that the joint prior authorization of the commissioner of administration and the director of the Department of State Civil Service is required before any executive branch position vacated by a retirement pursuant to Act 3 may be reestablished, regardless of whether the position vacated is a classified civil service, unclassified civil service, or appointed position. It is the opinion of this office that if a member of the System who was employed as a classified civil service employee from 1959 through February, 1984, and as an appointed Assistant Secretary of a state department from March, 1984, through January, 1987, retired pursuant to Act 3, that person would be considered to have retired from the appointed Assistant Secretary position for purposes of Section 6 of Act 3. It is the opinion of this office that if an Assistant Secretary of the Department of Health and Human Resources retired

pursuant to Act 3, that person must be reappointed by the governor and, eventually, reconfirmed by the Senate before becoming reemployed as an Assistant Secretary.

Question two's real issue is whether the subject actually retired and it is of this opinion that subject-employee has not and is not retired. In regards to question four, this office declined to answer due to possible litigation.

La. Atty. Gen. Op. No. 87-498, 1987 WL 288448 (La.A.G.)

Particular question concerning eligibility of individual for refund of employee retirement contributions. LSA-R.S. 42:657 provides for refunds of accumulated employee retirement contributions to members of the Retirement System who leave the state service. That statute does not contain any type of qualification or restriction which would operate to cause Mr. Berthelot to be ineligible for a refund. Therefore, it is the opinion of this office that Mr. Berthelot is eligible for a refund of his accumulated employee retirement system contributions. Although we understand your contention that Mr. Berthelot's salary was paid under fraudulent pretenses and should not have been paid, that salary was, nevertheless, paid to and received by him.

La. Atty. Gen. Op. No. 88-316, 1988 WL 428245 (La.A.G.)

Questions the Deputy Secretary of Public Safety Services entitlement to terminal leave upon retirement in light of Executive Order No. EWE 84-30 and in conjunction with a previous opinion of this office, Opinion No. 84-88. Deputy Secretary of Public Safety Services is entitled to 300 hours accrued annual leave upon retirement and separation.

La. Atty. Gen. Op. No. 90-396, 1990 WL 544743 (La.A.G.)

Whether a District Judge who has served on the bench since 1964; has not opted to join or contributed to the State Retirement Plan and who elects not to seek re-election in the up-coming 1990 Judicial Election is entitled to retire at full pay under recently passed legislation, which is now Act 723? Whether a District Judge under similar facts and circumstances could retire with full pay under the provisions of the laws on Judge's retirement, wherein a Judge has served at least 22 years and is over the age of 65? To receive full pay, the judge must have served twenty years, otherwise the retiring judge with fewer than twenty years service may receive a proportion of his pay which his number of years of service bears to twenty. Where the district judge is presently in office and has served for either twenty-two years or twenty-six years he may opt to retire at the end of his current term and receive full pay for life pursuant to R.S. 13:30(B)(5) provided that he does not seek election of any judicial office.

La. Atty. Gen. Op. No. 91-249, 1991 WL 575293 (La.A.G.)

Whether an employee of a state retirement board is legally permitted to enter into a consulting or professional services contract with a state executive branch agency? State retirement board employees are state employees pursuant to R.S. 36:769. R.S. 39:1498(4) precludes state employees from participating in consulting or professional services contracts with state executive branch agencies.

La. Atty. Gen. Op. No. 91-388, 1991 WL 575231 (La.A.G.)

Is a person allowed to obtain credit in the Louisiana State Employee's Retirement System for time served as a Federal Employee, if the person has been a member of the Louisiana System for at least eighteen months and if the person had at least eighteen months service in the Federal Retirement System and provided the person pays the amount to the

Louisiana System totally offsetting the actuarial costs? Individuals with service credit a Louisiana State University, while that university had a non-funded university retirement plan or while those university employees were covered under a federal retirement plan, may transfer those credits to the State Employees Retirement System upon meeting the statutory requirements.

La. Atty. Gen. Op. No. 91-486, 1992 WL 610700 (La.A.G.)

Whether the Louisiana State Employees Retirement System may attempt to recover a retiree's excess earnings after expiration of the 12 months immediately following receipt by the retirement system of the employers report? Whether the Retirement System may recover more money from the retiree than was paid by the retirement system in benefits during the fiscal year? Louisiana State Employees Retirement System is limited to the 12 months immediately following receipt of report for reduction of retiree's benefits due to excess earnings by the retiree. The system may not recover from the retiree more than the system is obligated to pay in a 12 month period.

La. Atty. Gen. Op. No. 91-529, 1991 WL 575316 (La.A.G.)

(1) Whether LASERS board rule for calculating benefits "is wrong when it uses 'the average highest 36 months' ", and whether this rule is thus in conflict with Act 1063;

(2) Whether the employee contributions stop once a judge's percentage of pay equals 100%; and

(3) Whether the LASERS board rules are correct in providing that these statutory provisions are outside the regular retirement program, and that judges retiring under these provisions are therefore NOT eligible for participation in DROP.

Judges retiring under Act 1063 of the 1991 Regular Session are affected as follows: (1) their base benefit is 4% for each year of service calculated on their annual judicial pay, as it exists on the date of their retirement; (2) the supplemental benefits for judges who are members of the Louisiana State Employees' Retirement System is calculated on their average annual earned compensation for the three highest years of creditable service; (3) their employee contributions stop once their percentage of retirement pay equals 100%; and (4) judges who are members of the Louisiana State Employees' Retirement System are eligible for participation in the deferred retirement option plan (DROP).

La. Atty. Gen. Op. No. 92-732 (La.A.G.), 1993 WL 185078

Opinion of this office as to whether Act 579 of 1989 is substantive or procedural and whether it is prospective or retroactive. Court decisions have viewed enactments of the legislature which pertain to retirement systems as "remedial", and when those provisions provide a benefit for the employee-retiree they may be construed liberally in his favor and thus retrospectively. However, in this case the retrospective application would not prove beneficial to the individual and we have applied the amendment to apply prospectively. We are unaware of any law or jurisprudence that would entitle the retiree to be immune from any subsequent amendments to conditions such as those made by Act 579.

La. Atty. Gen. Op. No. 93-135, 1993 WL 212383 (La.A.G.)

Opinion of the Attorney General regarding Act 518 of the 1992 Regular Session of the Louisiana Legislature. Reducing benefits of rehired retirees based on new earnings. Act 518 of 1992 providing enhanced retirement benefits to elected officials is constitutional and does not violate state and federal equal protection clauses. It is not within the

province of this office to decide whether the legislature's formulation of retirement benefits under Act 518 best fulfills the overall goals of LASERS that Louisiana might ideally expose. Although the classifications established by Act 518 may seem questionable to those excluded, they do not affect fundamental rights, nor do they proceed along suspect lines. Further, and crucial to our determination that Act 518 is constitutional, said classifications are supported by a rational basis.

La. Atty. Gen. Op. No. 93-399, 1993 WL 271414 (La.A.G.)

Whether the transfer of funds by the Treasurer to the various boards is constitutionally permissible? Constitution and statutes grant State Treasurer the authority to withhold and transfer funds directly to the Boards of Trustees of retirement systems. Recalls Op. No. 89-455

La. Atty. Gen. Op. No. 93-544, 1993 WL 526316 (La.A.G.)

Opinion of this office regarding the purchase of prior creditable service in the Louisiana State Employees' Retirement System (the "System") on behalf of a judicial employee, in accordance with R.S. 42:566, which was redesignated as R.S. 11:427 by Act No. 74 of the 1991 Regular Session. Contributions to retirement systems on behalf of court personnel can be made from the court fund, as such expenses are "in the operation of the court". However, a contribution for prior creditable service for the years when individual was employed by the Pontchartrain Levee District, and not in service to the court, would be subject to constitutional challenge under La. Const. (1974) Art. VII, Sec. 14.

La. Op. Atty. Gen. 314, La. Atty. Gen. Op. No. 93-676, 1993 WL 792400 (La.A.G.)

Discussion of the legal status of the state and statewide retirement systems, and state oversight of those systems. Whether the systems “are state agencies, or some type of private corporation”? In our opinion, the state and statewide retirement systems, are each a “state board”, “agency” or “other entity” as contemplated by this definition, and are therefore subject to the provisions of the Administrative Procedure Act. The boards exercise investment and expenditure policy regarding the assets of the systems “pursuant to...statutes of Louisiana”. In accordance with the decision rendered in *Louisiana State Retirement System v. State, Dept. of Justice*, supra, we are constrained to determine that the state and statewide retirement systems are not subject to the Public Contracts Law. Although the Public Contracts law applies to “...any agency, board, commission, department or public corporation of the state, created by the constitution or statute or pursuant thereto” [R.S. 38:2211(10)], the Public Contracts law only applies to public works and purchases “to be paid out of public funds” [R.S. 38:2212A.(1)(a)]. As previously noted, the *Louisiana State Retirement System v. State, Dept. of Justice* decision held that the funds administered by LASERS are not public funds.

La. Atty. Gen. Op. No. 93-723, 1993 WL 526728 (La.A.G.)

Discussion of Judges eligibility for entering DROP and retirement.

1. Under the provisions of R.S. 11:558(A)(5)-(b), are judges who would be eligible to retire either now or at some future date under the DROP plan required to exercise the DROP option before Nov. 21, 1993, or is this provision solely applicable to judges subject to paragraph (A)(5)(a)(i);

2. If the Nov. 21, 1993 cut off date is applicable only to judges

subject to paragraph (5)(a)(i), then what are the requirements for entry into DROP program for a judge who is eligible or intends to retire at some future date under paragraphs (A) (1)-(4); and may such judges withdraw their application to enter the DROP program prior to entering the same or is the exercise of the option irrevocable; and

3. Does entry into the DROP program preclude all judges who so enter from seeking another judicial office, or is this prohibition applicable only to judges who retire subject to paragraph (AA)(5)(a)(i).

With regard to your questions we find that the November 21, 1993 cut off date is applicable only to judges subject to paragraph (5)(a)(i), and the requirements for a judge who intends to retire under R.S. 11:558(A)(1)-(4) to enter DROP is set forth in R.S. 11:447 et seq.

In answer to your question whether a judge may withdraw his application to enter the DROP program prior to entering the same, in accordance with R.S. 11:451 once participation in the DROP plan commences, the election to participate is irrevocable. It follows, until the participation commences, a judge may withdraw his application. Upon the effective date of commencement in the plan, membership in the retirement system shall cease.

In your last question you ask if entry into the DROP program precludes all judges who so enter from seeking another judicial office or if the prohibition is applicable only to judges who retire under (A)(5)(a)(i). We find this prohibition is applicable only to judges who retire under the provisions of R.S. 11:558(A)(5).

La. Atty. Gen. Op. No. 95-194, 1995 WL 653840 (La.A.G.)

1. Is the Louisiana State Employees' Retirement System (LASERS) an "agency" as defined by R.S. 39:321?

2. If it is such an “agency”, are R.S. 39:321 and the rules and regulations promulgated by the Division of Administration applicable to LASERS?

From this string of Constitutional and statutory provisions it is clear that LASERS is a state agency and, as such, is subject to the provisions of R.S. 39:321-330, and the rules and regulations promulgated pursuant to the statute regarding property control and disposition.

La. Atty. Gen. Op. No. 95-331-A, 1995 WL 874265 (La.A.G.)

Your request for reconsideration of Attorney General Opinion Number 95-331, regarding an interpretation of Act 130 of the 1995 Regular Session of the Louisiana Legislature. After further consideration, we hereby recall our earlier opinion, number 95-331, and opine that the restrictions of Act 130 of 1995 regarding the abolishment and subsequent re-establishment of vacated positions apply only to retirements effected pursuant to the **early** retirement provisions of the act, for the reasons set forth herein. Therefore, after further consideration of the act and its effect, it is our opinion that the restrictions of the act regarding the abolishment and subsequent re-establishment of vacated positions apply only to retirements effected pursuant to the **early** retirement provisions of the act. Our conclusion as to the second part of Opinion Number 95-331 remains unchanged, i.e. that the permanent payroll reduction and abolition provisions of the act apply only to “state employment” of “state employees”, and are not applicable to those persons who are employed outside of the three branches of government.

La. Atty. Gen. Op. No. 96-17, 1996 WL 109533 (La.A.G.)

Opinion of the Attorney General relative to the impact of Act 999 of 1995 on Atty. Gen. Op. No. 92-849 relative to legislators being able to purchase service credit as an

elected public official to gain eligibility for retirement. It is clear that the Legislature intended to overrule the opinion of the Attorney General which concluded that Subsections J, K, and L were not to be read as modifying Paragraph C(1) or (2) and to overrule the conclusion that a Legislator could obtain credit of years of service as an elected public official for additional benefits but could not obtain or include such service to acquire the necessary years of creditable service toward eligibility for retirement.

Accordingly, we must conclude as mandated by the legislator that Subsections J, K, and L of R.S. 24:36 “shall modify, condition, and supplement the provisions of Subsection C of R.S. 24:36.”

La. Atty. Gen. Op. No. 96-271, 1996 WL 456827 (La.A.G.)

Whether action taken by LASERS pursuant to a change in the law made by Act 556 (1995) was proper? The recent appointment by the retired state employees’ association relative to the new retiree trustee position to LASERS is in conformity with the law.

La. Atty. Gen. Op. No. 97-172, 1997 WL 409065 (La.A.G.)

Whether a full-time employee with one state agency holding a part-time position with another state agency must be placed in overtime pay status or may that individual be classified as a part-time employee of the other state agency for the purposes of the Louisiana State Employees’ Retirement System? The law does not mandate the Board of Trustees of LASERS to conclude that a full-time employee from one agency working a part-time position in another agency must be placed in overtime pay status for the part-time service in order to determine the member’s compensation for retirement.

La. Atty. Gen. Op. No. 01-320, 2001 WL 1398765 (La.A.G.)

Opinion of this office concerning Act No. 844 of the 2001 Regular Session of the Louisiana Legislature (“Act 844”). State employee for purposes of Act 844 of 2001 includes officers and employees of the executive, legislative and judicial branches of government.

La. Atty. Gen. Op. No. 02-0082, 2002 WL 927831 (La.A.G.)

Opinion of this office concerning whether the Louisiana State Employees’ Retirement System (“LASERS”) and the Teachers’ Retirement System of Louisiana (“TRSL”) have the authority to debit the Deferred Retirement Option Plan (“DROP”) accounts administered by LASERS and TRSL. Retirement Systems cannot diminish retirement benefits, including DROP Accounts.

La. Atty. Gen. Op. No. 02-0329, 2002 WL 31239786 (La.A.G.)

(1) Whether a non-paid trustee must report per diem as income for federal and state income tax purposes. (2) Whether a board trustee of state and statewide retirement systems can be reimbursed or paid for their service on the board. (a) If so, whether per diem can be considered as salary for purposes of retirement contribution. Pertains to the compensation received by the trustees of the state and statewide retirements systems, their compensation, and their retirement contributions and benefits. Amounts received by trustees as “per diem” cannot be considered as “salary” for the purpose of calculating retirement contributions and benefits, because salary and per diem are two distinct and separate forms of compensation.

La. Atty. Gen. Op. No. 02-0403, 2002 WL 31942547 (La.A.G.)

Baton Rouge Housing Authority may pay 100% of retirement contributions on behalf of its employees for a supplemental retirement plan.

La. Atty. Gen. Op. No. 03-0087, 2003 WL 21358492 (La.A.G.)

Whether a state or statewide retirement system board or the members of such a board, may expend system funds to lobby the legislature? Members of the board of a state or statewide retirement system may not use system funds to lobby the legislature.

La. Atty. Gen. Op. No. 03-0143, 2003 WL 21358500 (La.A.G.)

Opinion regarding the interpretation of LSA-R.S. 11:601 through 606, which provisions of law were enacted by Act No. 746 ("Act 746") of the 2001 Regular Legislative Session. Act 746 created a new "retirement component" within the Louisiana State Employees' Retirement System ("LASERS") for "wardens, correctional officers, probation and parole officers, and security personnel who are employed by the Department of Public Safety and Corrections" ("Public Safety Employees"). LSA-R.S. 11:602(A) was intended to provide a retirement option for Public Safety Employees in addition to those provided in LSA-R.S. 11:441. LSA-R.S. 11:602(A) was not intended to provide the exclusive retirement option available to Public Safety Employees.

La. Att'y. Gen. Op. No. 03-0266, 2003 WL 21940071 (La.A.G.)

In accordance with LSA-R.S. 11:423, Department of Education may not pay the interest accrued on and attributable to employee's portion of contributions necessary for employee to receive prior service retirement credit.

La. Att'y. Gen. Op. No. 04-0119, 2004 WL 1557074 (La.A.G.)

Whether a current state employee who has been a participant in the Deferred Retirement Option Plan ("DROP") of the Louisiana State Employees Retirement System ("LASERS") for over a year, is eligible for appointment to an unclassified position by the governor, without a suspension or reduction of retirement benefits. Current state employee who is a DROP participant cannot be considered to be retired. If appointed to an unclassified position by the governor such an employee, not having been "retired for at least one year", will not be able to take advantage of the provisions of LSA-R.S. 11:416A(3)(b), and will not be exempt from increases, suspensions or reductions of retirement benefits received from LASERS.

La. Att'y. Gen. Op. No. 06-0259, 2006 WL 3616641 (La.A.G.)

Whether the increased retirement benefits granted to peace officers (other than state troopers) at the Department of Public Safety and Corrections ("DPS") under Act 835 of the 2006 Regular Session of the Louisiana Legislature apply to all retirement service credit in Louisiana State Employees Retirement System ("LASERS") or just to service credit as a peace officer in LASERS. The plain language of Act 835 provides that DPS peace officers are to be paid not only for those years of service as peace officers, but "for every year of creditable service" in the retirement system. Even if the language of the statute is ambiguous, a review of the legislative history shows that the law demands

that benefits be paid to peace officers at the maximum retirement allowance equal to three and one-third percent of average compensation, for every year of creditable service in LASERS, not only for service as a peace officer. Although the general rule of statutory construction provides that statutes are to be applied prospectively, the White case indicates that pension and retirement statutes are remedial in nature and given retroactive effect.

La. Atty. Gen. Op. No. 07-0175, 2007 WL 2276709 (La.A.G.)
Retirees rehired by the Department of Revenue into WAE positions are not eligible for membership in LASERS.

La. Atty. Gen. Op. No. 08-0009, 2008 WL 3889494 (La.A.G.)
La. R.S. 11:405 prohibits a creditor from garnishing a debtor's checks from LASERS unless it is to satisfy a court ordered child support obligation. Based on the United States Fifth Circuit Court of Appeal's decision in *In re Sinclair*, the disposable earnings exemption found in La. R.S. 13:3881 (1)(a) may not protect wages once they have been deposited into a bank account.

La. Atty. Gen. Op. No. 09-0070, 2009 WL 3331795 (La.A.G.)
The Louisiana School Retirement System does not fall under the jurisdiction of the Louisiana Property Assistance Agency for purposes of La. R.S. 39:321 et. seq.

La. Atty. Gen. Op. No. 12-0139, 2012 WL 3306967 (La.A.G.)
A new employee of the 19th JDC who has 19 years of service in the Louisiana School Employees' Retirement System ("LSERS") may elect to remain a contributing member of that retirement system in lieu of joining the Louisiana State

Employees' Retirement System as long as he files a written notice of election to remain in LSERS with the LSERS board of trustees within thirty days of his employment with the 19th JDC.

La. Atty. Gen. Op. No. 13-0068, 2013 WL 4779949 (La.A.G.)

A court reporter who was formerly a member of the Clerks' of Court Retirement System and Relief Fund was correctly placed in the Louisiana State Employees' Retirement System for her rehire.

Jurisprudence

Messersmith v. Messersmith

229 La. 495, 86 So. 2d 169 (1956)

Appellant sought review of order of Louisiana state district court distributing martial property with appellee. After appellant wife sought separation from appellee husband, plus temporary care, custody and control of minor child and award of alimony pendente lite for maintenance and support of herself and child, and appellee husband countersued for separation, the trial court held for the husband. Thereafter each party sought divorce, with appellee husband again prevailing on all matters except custody. No appeal was taken, with the parties entering into written stipulation agreeing to an amicable liquidation and partition of the martial estate, with certain contested matters to be decided by trial court. When appellant wife was dissatisfied with distribution, she appealed. The appellate court affirmed in part and reversed in part, holding, inter alia, that (a) employee stock ownership must be equally split, as state law deemed it community property; (b) life insurance certificate, though currently worthless, is nonetheless community property; and (c) husband must compensate wife for one-half of post-separation cash dividends received. Judgment affirmed in part and reversed in part, with reversals due to trial court's failure to recognize effect of state laws demanding equal division of martial property upon divorce.

Laffitte v. Laffitte

253 So. 2d 120 (La. Ct. App. 1971)

Plaintiff former wife sought review of a judgment of the district court (Louisiana), which vacated and rescinded a lower court order that directed defendant former husband to appear and be examined as a judgment debtor. A former wife filed a petition to examine her former husband as a judgment debtor. She alleged that a money judgment was rendered in her favor against her former husband by the trial court which recognized the former wife as the owner

of an undivided one-half interest in the account credited to the former husband in the employees' profit sharing plan of the company for which he worked. The lower appellate court held that the former wife's interest in the profit sharing plan account was subject to all of the conditions under which the account was established, and that the former wife's interest in the account was not a money judgment against the former husband. On review the court agreed and found that the former wife had all the same rights as her former husband had under the terms of the retirement plan. She did not, however, have any greater rights and neither party was entitled to any of the funds in the account until death or retirement of the former husband. The court affirmed the judgment of the district court that vacated and rescinded a lower court order that favored the former wife in an action for a debt judgment that she brought against her former husband.

T.L. James & Co, Inc. v. Montgomery
332 So. 2d 834 (La. 1975)

Applicants, a decedent's wife and his son, sought review of the judgment of the Court of Appeal, First Circuit, Parish of Tangipahoa (Louisiana), which, in consolidated proceedings, affirmed the trial court and held that the proceeds of the decedent's retirement plan, profit-sharing plan, and group life insurance were payable to the designated beneficiary, respondent elder son born of the decedent's first marriage to respondent former wife. During marital discord, the decedent designated his elder son as the beneficiary of profit-sharing and retirement plans and his group insurance policy. When his wife commenced a divorce suit, he committed suicide. His wife, as administratrix, filed suit to recover the insurance proceeds, which suit was consolidated with a concursus proceeding filed by the decedent's employer to determine entitlement to the retirement and profit-sharing plans. The wife appealed the trial court's adverse judgments, which

were affirmed. On further appeal, the wife argued that the contested assets were community property. In reversing in part, the court held that the profit-sharing and retirement proceeds were principally the decedent's earnings and the produce of the reciprocal industry and labor of both husband and wife under La. Civ. Code art. 2402, and, thus, community assets. The court ruled that the decedent's change of beneficiary constituted dispositions mortis causa and were required by La. Civ. Code Ann. art. 1570 to be made by testament, which did not include the change of beneficiary form. The court ruled, however, that the term insurance was not part of the decedent's estate. The court reversed the lower court's judgment in the concursus proceeding, ordered payment of the profit-sharing and retirement plans to the decedent's estate for division in shares of one-half to the decedent's wife and one-fourth to each of his sons, subject to an accounting to the first wife and the forced heirs for the plans' value during the first marriage. The court affirmed the lower court's judgment in the suit for the insurance.

Sims v. Sims

358 So. 2d 919 (La. 1978)

Defendant wife sought review of a judgment of the court of appeal (Louisiana), which affirmed a decision of the trial court that held the wife's interest in plaintiff husband's pension rights was limited to one-half its cash withdrawal value at the date of dissolution of the community. The parties were divorced. The federal government employed the husband and, during the existence of the community, he had acquired certain federal pension rights as a result of his employment. The parties agreed that the retirement plan, or at least the funds contributed by the husband to it, were community assets, but differed as to what interest the wife acquired. The trial and appellate courts ruled in favor of the husband. They held that the wife's interest in the pension plan was limited to the return of one-half of the community funds contributed to it, as if the husband had resigned his job and had elected this option on the date the community was dissolved. The

wife sought further review. On appeal, the court reversed and rendered judgment for the wife. The court held that if this method of fictitious valuation had been appropriate, it overlooked that the contributions which established the pension rights, under the actual circumstance of continued employment, included not only the employee's contributions but also the matching contributions by the employer, which the court had previously held represented an asset acquired by community earning and efforts. The court reversed the judgments of the appellate and trial courts and rendered judgment in favor of the wife.

Moise v. LASERS

366 So. 2d 1054 (La. Ct. App. 1978)

Defendant Louisiana State Employees' Retirement System sought review of a judgment of the Nineteenth Judicial District Court, Parish of East Baton Rouge, Louisiana, which ruled that plaintiff deputy judicial administrator, who worked for the Louisiana Supreme Court, was an eligible person under La. Rev. Stat. Ann. § 13:13 who had validly exercised his option as provided in § 13:14. The administrator brought a declaratory judgment petition against the retirement system, contending that he could have retired upon satisfying the eligibility requirements of La. Rev. Stat. Ann. § 42:571 and have had the survival benefits specified in § 13:20. The declaratory judgment was sought to determine the rights, status, and other legal relations existing between the parties because the retirement system had evidenced a contrary position. The trial court held for the administrator and the retirement system sought review. On appeal, the court affirmed the judgment on the grounds that the plain meaning of § 13:26, when read with the other provisions of §§ 13:11-26, was that where the retirement plan for judges and officers of the court was silent, then the provisions of § 42:10 applied. The court ruled that the administrator could have received benefits under both retirement plans. The court affirmed the judgment that ruled for the administrator.

**La. State Employees' Ret. Sys. v. State,
423 So. 2d 73 (La. Ct. App. 1982)**

Appellant, the Attorney General of the State of Louisiana, challenged a judgment from the Nineteenth Judicial District Court, East Baton Rouge Parish, Louisiana, which held that La. Const. art. 7, § 14(A) was not applicable to appellees, various State employees' retirement systems, and that the retirement systems could invest funds belonging to their respective retirement systems in common stocks. The retirement systems were expressly authorized, pursuant to La. Rev. Stat. Ann. §§ 42:647, 17:671, 17:961, and 17:1288, to invest in common stocks. The Attorney General rendered an opinion wherein he concluded that the purchase of common stock by the retirement systems was prohibited by La. Const. art. 7, § 14(A). The retirement systems brought suit for declaratory judgment seeking to resolve the question of their authority to invest the funds. The trial court held that La. Const. art. 7, § 14(A) was not applicable to the retirement systems because the retirement system funds were not public/state funds and the retirement boards were not political subdivisions. On appeal, the court affirmed. The funds belonged to the members of the systems and consisted of contributions made by the individual members of the retirement systems and matching contributions by the State. The State contributions were in the nature of fringe benefits or additional compensation. Neither the State nor the general public had any proprietary interest in the funds, which were not public/state funds as contemplated by La. Const. art. 7, § 14(A). The retirement systems could invest the funds in common stocks. The court affirmed that the retirement systems could invest funds belonging to their respective retirement systems in common stocks.

Succession of Sims

464 So. 2d 991 (La. Ct. App. 1985)

Appellant former wife and appellant administratrix of a succession both disputed a judgment of the Nineteenth Judicial District Court in and for the Parish of East Baton Rouge (Louisiana). The issues were whether the wife was entitled to a retirement benefit based on the decedent's employment by the federal government and whether the succession owed her half of his contributions to the federal retirement system made during their marriage. When the decedent died, he was still employed. On appeal, the court held that because the former wife's demand was for a thing or object different from that litigated in the divorce proceeding between her and the decedent, her plea of *res adjudicata* as to the claim by the decedent's present wife had no merit. The court held that, as used in federal statutes and regulations, which preempted state law, the terms "retirement annuity" or "retirement benefit" were not synonymous with the term "survivor annuity." Because the decedent had neither retired nor applied for retirement benefits as of the time of his death, no retirement benefit was payable to anyone. Only the survivor annuity was authorized and was properly being paid to the decedent's present wife. That benefit was not divisible; a deceased federal employee could have only one surviving spouse. 5 U.S.C.S. § 8341(h) was enacted too late to aid the former wife and she did not meet the requirements for retroactive application. Based on the decision in the divorce proceeding, the former wife had a right to reimbursement of half the decedent's contribution of community assets to the retirement system during their marriage. The court affirmed.

Frazier v. Harper

582 So. 2d 868 (La. Ct. App. 1991)

Appellant ex-wife challenged, by way of a writ of certiorari, the judgment from the Court of Appeal, Fifth Circuit Parish of Jefferson, affirming a trial court's judgment dismissing

the ex-wife's action for supplemental partition of community interest in appellee ex-husband's pension. The ex-wife contended that she was entitled to the pension after the employer had substituted a new plan for its old one. The ex-husband's employer transferred the ex-husbands pension plan to a new company plan subsequent to the ex-husbands divorce from his ex-wife. The ex-wife brought a supplemental partition of the community, seeking recovery of her share of the new pension plan. The trial court denied the claim, holding that the ex-wife had no interest in the new plan. The appellate court affirmed. On review, the court found that although the old plan, in which the ex-wife had a community interest, had been unilaterally terminated, the ex-wife still had a community interest in the new plan. The court reasoned that a novation took place when, by the implied agreement of the employer and the ex-husband, a new plan or set of pension rights and obligations was substituted for that previously existing between the parties under La. Civ. Code Ann. arts. 1879-1887. The court found that although the ex-husband and his employer were not authorized to act for his former spouse in exchanging the entire pension right under the old plan for the new one, the ex-spouse ratified the transaction by consenting to the obligation and accepting its benefits under La. Civ. Code Ann. art. 1843 (1984). The court reversed the judgment of the appellate court and remanded the case to the trial court for further proceedings.

Hare v. Hodgins

586 So. 2d 118 (La. 1991)

Plaintiff non-employee spouse sought review of a judgment from the Court of Appeal, Fifth Circuit Parish of Jefferson (Louisiana), which amended a trial court's order by awarding the pension plan to defendant retiree spouse and granting plaintiff a lump sum based on the termination of employment provisions in the retirement plan. The appellate court had rendered a judgment that amended a trial court's order by

awarding the pension plan to defendant retiree spouse and granted plaintiff non-employee spouse a lump sum based on the termination of employment provisions in the retirement plan. On appeal, the court found the appellate court had erred in basing its distribution to plaintiff upon a valuation of the pension right as of the termination of the community in 1975. Pursuant to La. Rev. Stat. Ann. § 9:2801(4)(a), a court partitioning community property was required to value the assets as of the time of the trial on the merits. Because the pension right ascribable to the community was not partitioned prior to its maturity in 1988, each spouse was entitled to a distribution based on the actual value of the fully matured pension. However, the trial court did not abuse its discretion by choosing a fixed percentage approach to partition the community interest in the pension right. The court vacated the appellate court's judgment partitioning the pension plan, and remanded for a determination of whether the fixed percentage should have been adjusted. The court vacated the appellate court's judgment, which amended a trial court's order by awarding the pension plan to defendant retiree spouse and granting plaintiff non-employee spouse a lump sum. The appellate court erred in basing its distribution to plaintiff upon a valuation of the pension right as of the termination of the community in 1975. The court remanded for further determination on the partition award.

Edwards v. Trustees of LASERS
600 So. 2d 1353 (La. Ct. App. 1992)

Defendant Louisiana State Employees' Retirement System (LASERS) sought review of a judgment from the Nineteenth Judicial District Court, Parish of East Baton Rouge (Louisiana), which declared that retirement under the judges' contributory retirement plan, La. Rev. Stat. Ann. § 11:558, was "regular retirement" within the meaning of the deferred retirement option plan (DROP), La. Rev. Stat. Ann. § 11:447, in plaintiff judge's declaratory action. The

trial court further declared that the DROP option should be made available to the judge, a member of the retirement system. The court affirmed the judgment of the trial court, finding that nothing in the LASERS plan prior to DROP excluded a judge-member of LASERS from the benefits of the LASERS plan that were more advantageous to him than those provided by the judges' contributory plan. The court found that a judge-member of the LASERS could claim whatever combination of retirement eligibility requirements and benefits that were the most advantageous to him in either or both the judges' contributory plan and the LASERS plan. Further, the court found nothing in DROP that directed a contrary result. The court determined that DROP clearly stated that, in lieu of accepting a retirement allowance, any member of the retirement system who had been eligible for regular retirement for at least one year could elect to participate in DROP. Because the judge had fulfilled the statutory requirements for "regular retirement," the judge became eligible for the extra credits and resulting benefits under DROP. The court affirmed, as amended, the judgment in the judge's action for declaratory relief. The court amended the judgment to decree that the judge's exercise of the DROP option by written notifications to LASERS was a timely exercise of the option.

Brant v. Brant

26508 (La. App. 2 Cir 01/25/95), 649 So. 2d 111

Appellant former wife sought review from the Fourth Judicial District Court for the Parish of Ouachita (Louisiana), which rendered judgment in favor of appellee former husband and held that disability payments received by the former husband since the divorce were his separate property, even though the disability policy had been purchased with community funds. During the parties' marriage, they purchased a policy of disability income insurance, and all premiums paid on the policy were paid during the marriage with community

funds. During the marriage, the former husband became ill and began receiving the monthly disability benefit. A divorce occurred, which terminated the community property. The former wife then asserted that she was entitled to one-half of monthly disability benefit based on the fact that the premiums were paid with community funds. The lower court found against the former wife and she appealed. On review, the court concluded that the disability benefits were true disability payments that represented compensation that the former husband would have earned if not for his illness, rather than deferred compensation such as retirement or pension income. The court ruled that, under the circumstances presented, the trial court was correct in its determination that the disability benefits payable subsequent to dissolution of the community property regime were the separate property of the former husband. The judgment in favor of the former husband and against the former wife concerning her quest for the former's disability payments was affirmed.

Harrison v. LASERS

95-0048 (La. App. 1 Cir 10/06/95), 671 So. 2d 385

Appellant Louisiana State Employees' Retirement System (LASERS) sought review of a judgment from the Nineteenth Judicial District Court, Parish of East Baton Rouge (Louisiana), rendered in appellee judge's action seeking a declaratory judgment regarding his entitlement to certain retirement benefits. The judgment declared the benefit factor applicable to certain transferred credits to be three percent. The judge transferred several years of service credit from the District Attorneys' Retirement System (DARS) to LASERS when he became a judge. LASERS asserted that the trial court erred in setting the retirement percentage rate in excess of two and one-half percent. The parties conceded that at the time of the transfer in question, the law specifically provided that service credit could be transferred from DARS to LASERS, but that it did not specifically provide whether the benefit

factor of the transferring system or the receiving system should be applied in calculating the retirement benefits. The court affirmed the judgment, concluding as a matter of law that the applicable retirement benefit percentage factor was three percent. The court found that the statutory scheme was ambiguous and that it did not reveal a legislative intent that required the court to apply one specific factor. Thus, the court concluded that the judge was entitled to have LASERS calculate the applicable benefits using the factor employed by DARS pursuant to La. Rev. Stat. Ann. § 16:1042 rather than the benefits factor employed by the LASERS' plan pursuant to La. Rev. Stat. Ann. § 42:575. The court affirmed the judgment that declared the benefits factor applicable to the judge's transferred credits to be three percent.

Bonfanti v. Percy

95-1189 (La. App. 1 Cir 04/04/96), 672 So. 2d 415

Defendant decedent's mother appealed from a judgment of the Nineteenth Judicial District Court in and for the Parish of East Baton Rouge (Louisiana), which granted plaintiff decedent's wife's motion for summary judgment in the mother's action to require the wife to account to the community for receipt of survivor's benefits. The decedent bequeathed one-third of his residuary interest in the community property to his mother and the remaining two-thirds to his wife. The wife was the named beneficiary of the decedent's state retirement benefits. The wife filed an action for declaratory judgment seeking a judgment that she was entitled to the survivor's benefits and that they were not a community asset for probate purposes. The mother answered and alleged that the pension fund was a community asset and asserted a claim against the estate for one-third of the decedent's one-half interest in the fund. The trial court granted the wife's motion for summary judgment and the mother appealed. The court held that there was a distinction between retirement benefits, which

were community property, and survivor's benefits, which were not. The court held that survivor's benefits were to go to the named beneficiary and noted that the benefits were exempt from levy, sale, or attachment. The court affirmed the judgment of the trial court.

Chance v. Chance

29591 (La. App. 2 Cir 05/07/97), 694 So. 2d 613

Appellant ex-wife sought review of a judgment of the First Judicial District Court of the Parish of Caddo (Louisiana) that partitioned the community of acquets and gains with her ex-husband after a divorce. The trial court, *inter alia*, allowed the ex-husband reimbursement for loan payments made from his separate property after termination of the community but before distribution on a pick-up truck that had been community property. The ex-wife and the ex-husband were involved in partition litigation post-divorce. The trial court decided property issues relating to aspects not stipulated to by the parties. The ex-wife appealed raising a number of issues. The parties agreed at partition that the ex-husband would retain a truck. He had made payments on the truck's loan after termination of the community. The ex-wife contended that it was error to give him credit for payments made after termination with his separate property. The court disagreed. On another issue, the court ruled that the ex-wife's claim for rent for the time the ex-husband solely occupied the marital residence came too late because it did not come before the partition hearing; an award of rent had to be made at the time of the award of use and occupancy. The court found no error in the trial court's conclusion that the ex-husband's expert used a method that gave a more reliable indication of the value of the ex-husband's medical practice or in the trial court's acceptance of the expert opinion for the ex-husband on the practice's use of accounts receivable or the use of average-collection ratios in valuing those accounts receivable. Ruling in favor of the ex-husband

and against the ex-wife, the court affirmed the trial court's judgment at the ex-wife's costs.

Johnson v. Wetherspoon

96-0744 (La. 05/20/97), 694 So. 2d 203

Plaintiff first wife married a member of the Teacher's Retirement System of Louisiana (TRSLA). They divorced. He married defendant second wife. The trial court found that the TRSLA benefits were the second wife's alone; the first wife had no right to them as they did not constitute community property. On appeal, the Louisiana First Circuit Court of Appeal reversed; they were community property. The second wife petitioned for a writ of review. The second wife argued that "other benefits payable by a retirement plan," was incorrectly interpreted to include all survivor or death benefits. The court found that prior decisions declined to distinguish between retirement and survivor benefits and it declined to treat the payment of retirement and survivor benefits differently. The second wife also argued that applying a rule concerning retirement benefits accrued by an employee spouse during a community regime was incorrect when the benefits at issue were not part of any benefits accrued by the member of the retirement plan, but were survivor benefits authorized by La. Rev. Stat. Ann. 11:762(D). On appeal, the court noted that survivor benefits were calculated in the same manner as retirement benefits under option 2, with one exception. Both retirement benefits and survivor benefits were calculated using the number of years of creditable service. The member's employment during his first marriage contributed eight years to his creditable service. The court concluded that the legislature did not intend to exempt survivor benefits payable by TRSLA from the claims of a former spouse in community. The court affirmed the judgment of the court of appeal. The court concluded that the legislature did not intend to exempt survivor benefits payable by TRSLA from the claims

of a former spouse in community. The court of appeal correctly overruled the second wife's motion for summary judgment and remanded the case to the trial court for further proceedings.

Bailey v. Bailey

97-1178 (La. 02/06/98), 708 So. 2d 354

Plaintiff ex-wife sought review of a judgment of the Court of Appeal, Third Circuit, Parish of Rapides (Louisiana), which affirmed the trial court's partition of defendant ex-husband's retirement account as community property. The ex-husband had a retirement account as an employee of the state and a member of the Louisiana State Employees Retirement System (LASERS). The parties disputed the portion of the deferred retirement option plan (DROP) account attributable to funds credited by LASERS to the account after the termination of the community. The court held that (1) the Sims formula for division of property must have been applied as of the date of the ex-husband's entry into the DROP program because that was the date the base amount of the eventual monthly retirement benefits was fixed, and the ex-husband earned no further credit toward the retirement benefits while in the DROP program; (2) the amount of the base retirement benefits that the ex-husband will receive upon actual retirement was fixed as of the date he entered the DROP program, and the ex-wife was entitled to her Sims formula percentage of that fixed amount; and (3) the ex-wife was not entitled to any portion of the supplemental benefits he would receive upon retirement, because those benefits were attributable to the ex-husband's employment after the termination of the community. That portion of the judgments of the lower courts declaring the funds credited to the DROP account between the date of the termination of the community and the date of the completion of the DROP program to be the ex-husband's separate property was set aside. Judgment was rendered declaring the funds to be community property to the extent of 53.65 percent.

Succession of Silbernagel

96-2755 (La. App. 1 Cir 02/20/98), 708 So. 2d 485

Appellant widow sought review from a judgment of the Twenty-Second Judicial District Court in and for the Parish of St. Tammany (Louisiana), which awarded appellee former wife a 17 percent community interest in her former husband's police retirement benefits. On appeal, the widow argued that the former wife was not entitled to any portion of the deceased husband's retirement benefits since they were analogous to term life insurance proceeds and, therefore, were not an asset of the deceased husband's estate. The court disagreed and stated that retirement and survivor benefits should be treated synonymously when determining the interest in said benefits of a former spouse in community. The court also rejected the claim that the language of the retirement plan provided that only the current wife would receive benefits. The court held that the provisions of the retirement plan provided that a former spouse in community did have a claim for survivor benefits. The court therefore affirmed the judgment of the trial court but amended it in that the retirement plan was not a party to the action so it was error to order it to pay a percentage of the benefits to the former wife. The court held that the widow was ordered to pay the former wife the 17 percent that she was entitled to. The court affirmed the judgment of the lower court as it amended it to order the widow to pay the former wife her share of the retirement benefits.

Schlosser v. Behan

98-280 (La. App. 5 Cir 11/25/1998), 722 So. 2d 1129

Appellant wife sought review of an order of the 24th Judicial District Court Parish of Jefferson, State of Louisiana, which set her one-half interest in appellee husband's pension in accord with a certain method, and which ruled that she was not entitled to funds in the husband's deferred retirement option plan (DROP). The parties were married

for eight years. The husband worked as a police officer for 28 years, including three post-retirement years under the DROP program, in which his retirement salary was deferred. The wife appealed from the ruling of the trial court, which awarded her interest in her husband's pension under the Hare method, and which ruled that she could not collect under her husband's DROP plan. The court affirmed the judgment and held that the method of determining the wife's share of the pension was supported by the evidence. The husband had begun his career as a police officer one month before their divorce, his promotions were due to meritorious individual effort and were definitely not related to seniority or longevity, and, under Hare, the husband proved that the elevated increment was not due to non-personal factors, such as cost of living raises, but came about because of his exceptional service and accomplishments. As to the DROP plan, the husband did not enter the DROP program until 17 years after termination of the community he shared with the wife, so the trial judge did not err in excluding her from the benefits. The court affirmed the trial court's award of the husband's pension and its denial to the wife of benefits under the husband's DROP program.

Blanchard v. Blanchard

97-232 (La. 01/20/99), 731 So. 2d 175

Defendant, plaintiff's former husband, appealed a judgment of the Court of Appeal, Fifth Circuit, Parish of Jefferson (Louisiana), which ruled in favor of plaintiff that the division of the marital community's only two assets, one to each party, was improper. Plaintiff, defendant's former wife, argued that the trial court's allocation of the family home to defendant and of her pension to her was inequitable under La. Rev. Stat. Ann. § 9:2801, because of the different "natures" of the assets, her pension being an expectancy only and the home being a presently marketable, tangible piece of immovable property that could be mortgaged or

sold. The court agreed, noting first that La. Rev. Stat. Ann. § 9:2801(4)(c) required an asset's "nature" to be considered in determining its allocation. Explaining, the court ruled that the trial court's allocation was simply inequitable as it worked an unnecessary hardship upon plaintiff. Use of present cash valuation to divide the community interest in an unmatured pension could not be justified when plaintiff's interests were not taken into account, the court stated. Plaintiff was divested of her share of the home, the only semi-liquid asset of any consequence, while being left with an asset that would do her no good for some time to come. The community property was simply composed of insufficient assets to ensure that present cash valuation of the pension would not cause plaintiff undue hardship. Judgment affirmed that the division of a marital community's only two assets, one to each party, was improper, because the use of the cash value method to allocate the assets, a home to defendant and a pension to plaintiff, was inequitable, as the nature of the assets -- an expectancy only in the pension and a tangible, marketable home -- worked an undue hardship on plaintiff, considering the pension provided no benefit for some time to come.

Bordes v. Bordes

98-1004 (La. 04/13/99), 730 So. 2d 443

"Under La. Civ. Code Ann. art. 2344, respondent ex-husband appealed the decision of the Court of Appeal, Fifth Circuit, Parish of Jefferson (Louisiana), affirming the trial court's determination that respondent's disability retirement benefits from the state parochial employees' retirement system were community property which applicant ex-wife was entitled to share. Respondent ex-husband and applicant ex-wife divorced. Later, respondent became totally disabled and began receiving disability retirement benefits from the state parochial employees' retirement system. The benefits initially were paid from an annuity savings account to which applicant ex-wife contributed during the marriage, but the

benefits came from a general pension fund once the annuity was depleted. Applicant petitioned to partition the parties' property. The trial court determined that applicant was entitled to share respondent's disability retirement benefits because they were community property. The appellate court affirmed. Respondent appealed. The court reversed and remanded, holding that the disability retirement benefits were not community property under La. Civ. Code Ann. art. 2344 because they were more in the nature of compensation for lost earnings in that they would terminate if respondent returned to work, and they automatically converted to a normal retirement benefit upon respondent's reaching the retirement age of sixty. Affirmation of the determination that applicant ex-wife was entitled to share respondent ex-husband's disability retirement benefits because they were community property was reversed and remanded because the benefits were more in the nature of compensation for lost earnings, which applicant was not entitled to share."

Karno v. LASERS

98-1335 (La. App. 1 Cir 09/24/99), 757 So. 2d 696

Plaintiffs, seven judiciary members, appealed the decision of the 19th Judicial District Court Parish of East Baton Rouge, Louisiana, which granted summary judgment to defendants, trustees of the Louisiana State Employees' Retirement System, in an action for declaratory ruling that defendants had misinterpreted the law involving computation of plaintiffs' retirement benefits. Plaintiffs, seven members of the Louisiana judiciary, sought a declaratory judgment that the defendants, trustees of the Louisiana State Employees' Retirement System, had improperly computed their retirement benefits. The district court granted summary judgment for defendants and denied the plaintiffs' motion for summary judgment. The district court found that defendants had properly calculated plaintiffs' retirement based on their salaries when they enrolled in the deferred retirement

option plan, rather than their salaries when judicial service ended. Plaintiffs appealed. The court found that under La. Rev. Stat. Ann. §§ 11:448, 11:558(A)(5), those taking a deferred retirement would have a pension based on the salary when they opted for the deferred plan. The plaintiffs qualified for retirement under that law. The court held that the district court did not err in granting defendants' motion for summary judgment, as defendants had correctly applied the law in fixing plaintiffs' base retirement benefits as of the date each enrolled, rather than the date judicial service was terminated. Thus, the court affirmed the decision below. The court affirmed the ruling below that defendants had properly calculated plaintiffs' retirement based on their salaries when they enrolled in the deferred retirement plan rather than their salaries on termination of their judicial positions.

Heuszel v. Woldow

99-370 (La. App. 3 Cir 11/03/99), 747 So. 2d 181

Appellant sought review of a ruling of the Fourteenth Judicial District Court, Parish of Calcasieu (Louisiana) on her motion to traverse appellee's omission of retirement benefits from the descriptive list of community assets filed in succession proceedings. Appellant sought review of the lower court's denial of her motion to traverse appellee administratrix's omission of teacher's retirement benefits from the descriptive list of community assets filed in succession proceedings. The court affirmed, holding that the lower court correctly concluded that the retirement plan selected by appellee's deceased and appellee was a contractual agreement, personal to the parties who signed the agreement and not heritable. The court found that the interest was one of community property and not separate property. That classification, however, was irrelevant. The Teachers' Retirement System of Louisiana plan itself, as well as the law governing the payment of benefits from that plan, state that the community interest in the plan cannot be inherited. Consequently, appellee had no

obligation to include that community interest in the detailed descriptive list filed in her husband's succession. The court affirmed the lower court's denial of appellant's motion to traverse because appellee's retirement benefits distributed under the Teachers' Retirement System of Louisiana were not heritable by operation of law and by the terms of the benefit contract. Appellee was not required to include them on the descriptive list.

Sanders v. Sanders

34089 (La. App. 2 Cir 11/01/00), 780 So. 2d 390

Appellant former husband sought review of the judgment of the Fourth Judicial District Court for the Parish of Ouachita, Louisiana, which partitioned the community property of the parties and ordered payment to appellee former wife of appellant's share of the community portion of appellant's retirement benefits through December 1, 2005. Appellant former husband retired from state employment with 30.15 years of service, 25.71 years of which was attributable to his employment during the community regime. The trial court ordered a payment to appellee former wife of \$ 58,056, as both an equalizing payment and a reimbursement. To assure payment of this amount to appellee, the trial court ordered the Teacher's Retirement System of Louisiana to pay the full community share appellant's retirement benefits to appellee beginning November 1, 1999 and continuing through December 1, 2005. Appellant sought review, contending that the trial court ordered a seizure of his share of the retirement benefits in violation of La. Rev. Stat. Ann. § 13:3881(D)(1), which exempted pensions from liability for any debt except alimony and child support. Judgment was reversed and remanded because La. Rev. Stat. Ann. § 11:291 permitted the retirement system to divide a benefit with the former spouse of a retiree who was due his or her community interest, but it did not permit garnishment of the retiree's interest to satisfy a debt owed to the former spouse.

Judgment ordering payment of appellant's share of his retirement benefits to appellee was reversed and remanded because the statutes permitted the retirement system to divide a benefit with the former spouse of a retiree who was due his or her community interest, but they did not permit garnishment of the retiree's interest to satisfy a debt owed to the former spouse.

Sullivan v. Sullivan

01-0006 (La. App. 3 Cir 06/13/01), 801 So. 2d 1093

The Fourteenth Judicial District, Parish of Calcasieu (Louisiana), entered an order holding appellant was not entitled to appellee's, her former husband's, state retirement benefits. Appellant challenged the ruling. The parties were divorced and agreed appellant wife was entitled to 31 percent of appellee husband's state retirement benefits. Seven years later, appellee qualified for retirement, but elected to continue working at his regular job while he accumulated money in an individual deferred retirement option plan (DROP) account based on the amount he would have received as a monthly retirement benefit had he in fact retired. Appellant filed suit claiming she had an interest in the DROP funds. The trial court held appellant did not have any such interest because it was inequitable to allow her to participate with him in receiving DROP benefits after the termination of the community. On appeal the court reversed, holding state retirement benefits diverted to a DROP account were apportionable between community property and an employee spouse's separate property, even where employee enrolled in plan following termination of community. The judgment of the trial court was reversed and judgment rendered in favor of appellant for 31 percent of the deferred retirement option plan funds accrued by appellee.

Zalfen v. Albright**2000-1225 (La. App. 4 Cir 07/18/01), 791 So. 2d 800**

After the parties' divorce, the former community property was partitioned. Appellant husband filed an action seeking an amended judgment decreeing that deferred retirement option plan funds were his separate property. The Civil District Court, Orleans Parish, Louisiana, determined that appellee wife was entitled to a percentage of the retirement funds as being her share of the community. The husband appealed. On review, the appellate court held that the trial court correctly found that the deferred retirement option plan lump sum distribution paid to the husband was community property and that the wife was entitled to the percentage of those funds as her share of the community as the trial court calculated under the Sims formula. The trial court's judgment was affirmed.

Knighten v. Knighten**809 So. 2d 324 (La. Ct. App. 2001)**

The 19th Judicial District Court, Parish of East Baton Rouge (Louisiana), partitioned plaintiff former husband and defendant former wife's community property. It also ordered him to reimburse certain expenses she incurred regarding the family residence, valued the parties' marital residence, held his life insurance annuity policy was community property, and classified her retirement benefits as separate property. The former husband appealed. The former wife began working for the state and began participating in its retirement system. Many years thereafter, the former husband filed for divorce. The community property regime was terminated retroactive to the date the divorce petition was filed. Between that time and the time the divorce was granted, the former wife found it necessary to make repairs and improvements to the family residence. The trial court ordered the former husband to reimburse the former wife for one-half the expenses she incurred after finding the work

was necessary and enhanced the property's value. It also valued the family residence, found his life insurance annuity policy was community property, and classified her deferred retirement option plan (DROP) funds as separate property. After judgment was entered, the appellate court found the reimbursement order was supported by the evidence, no error occurred in valuing the family residence, and the annuity policy was properly classified. However, it found the trial court erred in classifying all the DROP account funds as separate property and provided a formula to identify the funds in that account to which the former husband was entitled. That part of the judgment ordering the former husband to reimburse the former wife for expenses regarding the marital residence, valuation of that residence, and valuation of his annuity policy was affirmed. That part of the judgment classifying the former wife's DROP benefits as her separate property was reversed, and the judgment was amended and rendered to provide the formula for dividing those benefits.

Carter v. Carter

35788 (La. App. 2 Cir 04/03/02), 813 So. 2d 1237

Appellee husband and appellee wife signed consent judgments purporting to terminate their legal matrimonial regime and partition the community. He died leaving his property to his children by another. The succession executor intervened to enforce the judgment as to her pension benefits. The First Judicial District Court for the Parish of Caddo, Louisiana, awarded the succession half the pension. She appealed. The parties married in Washington, a community property state, where she worked for the state. Her public pension plan was a defined benefit plan. She was the member and he was beneficiary. She retired, and they elected an allowance of the full benefit for her lifetime with no retirement benefit payments to him after her death except the balance of accumulated contributions over retirement benefits previously received, payable in a lump sum. They

moved to Louisiana. Their partition included halving the plan benefits. He died three days after she sent him a check for his first one-half amount. The appellate court found that the disputed pension was not property of the succession. While the husband did not contractually relinquish his right to claim his community property interest in the benefits during his lifetime, he had acknowledged that, on his death, the benefits would go solely to his wife for her lifetime. Thus his receipt of an “undivided half interest” in the pension via the partition did not change his prior directive to the Washington retirement department. The contractual directive could be honored upon his death. The judgment was reversed.

Lodrigue v. Lodrigue

01-1630 (La. App. 3 Cir 05/08/02), 817 So. 2d 466

The Tenth Judicial District Court, Parish of Natchitoches, Louisiana, awarded appellee wife a percentage of appellant husband’s accumulated retirement benefits following a divorce. The husband appealed. The husband asserted that the trial court erred in concluding that the wife should share the retirement option plan benefits in the same percentage as his retirement benefits. The appellate court found that the husband’s retirement option plan benefits credited to his account prior to the termination of the community regime were community property and subject to division. The wife argued that the trial court erred in not crediting the two years of military service as part of the community of acquets and gains in applying the formula for division. The appellate court found that the military service occurred prior to the establishment of the community between the parties. However, the husband was required by former La. Rev. Stat. Ann. § 33:2374(D) to purchase the prior service credit, which purchase occurred during the marriage. There was no evidence that the husband used separate funds to purchase the prior service credit. There was a presumption under La. Civ. Code Ann. art. 2340 that a thing in the possession

of a spouse during the existence of the community was community property and because property acquired with community things was considered community. The judgment was affirmed as to the wife's award of a percentage of the husband's retirement benefits and reversed as to the failure to credit the military service as part of the community of acquets and gains.

Sparcello v. Heno

2002-317 (La. App. 5 Cir 01/14/03), 848 So. 2d 610

Appellee husband filed for divorce from appellant wife. The Twenty-fourth Judicial District Court, Parish of Jefferson, Louisiana, divided the accumulated annual and sick leave due to husband upon his retirement by allocating 24.488 percent of the accumulated sick leave benefits to the wife. The wife appealed. The husband and wife were divorced in 1986. In June 1994, the parties entered into a settlement of community property agreement that was made the judgment of the court. As part of this settlement, the parties agreed that the husband would remit payment to the wife representing one-half of all accumulated annual and sick leave acquired by him during the existence of the community as a result of his employment with the city. The wife contended that the trial court erred in awarding her 24.488 percent of the all accumulated annual and sick leave. The trial court divided the benefits based upon the proceeds accumulated during their marriage through the date of the final decree. The wife claimed she was entitled to one half of the proceeds to which the husband was entitled upon retirement which was in 1999. The instant court affirmed the property distribution ordered by the court and found that nothing in the original agreement indicated that the wife was entitled to the apply the increase in the husband's daily pay after the termination of the community to value the amount accumulated during the existence of the community. The judgment of the trial court was affirmed.

Smith v. Board of Trustees of LASERS

2002-2161 (La. 06/27/03), 851 So. 2d 1100

Defendant Board of Trustees of the Louisiana State Employees Retirement System (LASERS) appealed a decision of the Nineteenth Judicial District Court (Louisiana), which found that La. Rev. Stat. Ann. § 11:416.1, which pertained to reemployment packages available to plaintiffs, retired state employees who had been reemployed, was violative of the United States Constitution and the Louisiana Constitution. The state legislature amended La. Rev. Stat. Ann. § 11:416 to permit a reemployed retiree to receive a salary plus full retirement benefits after a 12-month waiting period, regain membership in LASERS, and earn a supplemental benefit, if reemployed for over 36 months. The following year, the legislature repealed the amendment and enacted La. Rev. Stat. Ann. § 11:416.1, which applied specifically to the retirees who retired and been rehired during the 10-month interim period under the amended statute. Plaintiffs, who retired and been rehired during the interim period, asserted, and the trial court agreed, that § 11:416.1 was unconstitutional, as it impaired their vested and contract rights. In reversing the trial court's decision, the court held that § 11:416.1 did not violate La. Const. art. X, § 29(E)(5), which prohibited the impairment of accrued benefits of members of any state retirement system, or the Contracts Clauses of the U.S. Constitution and the Louisiana Constitution. The court held that, because the law was changed prior to the time plaintiffs fulfilled the 12-month waiting period or were reemployed for 36 months, no accrued or vested rights were impaired. The court reversed and remanded.

La. State Emples. Ret. Sys. (LASERS) v. McWilliams,

06-2191 (La. 12/02/08), 996 So. 2d 1036

Plaintiff, the Louisiana State Employees Retirement System (LASERS), invoked a concursus proceeding regarding a deceased employee's survival benefits, against respondents,

the employee's widow, his former wife, and his child. The Court of Appeal, First Circuit, Parish of East Baton Rouge (Louisiana), held that the former wife was only entitled to recover a portion of the employee's contributions during the marriage. The former wife appealed. The former wife had obtained a decree at the time of her divorce which entitled her to one half of any payments from LASERS. The district court held that survivor benefits were governed solely by La. Rev. Stat. Ann. § 11:471, pursuant to which only the widow and child were entitled to the benefits. The appellate court agreed that the former wife was not entitled to survival benefits but decided that she was entitled to recover a portion of the employee's contributions to LASERS during the marriage. The court rejected both approaches, holding that the exclusion of the former spouse from the list of persons to whom survivor benefits were to be distributed under § 11:471 could not operate to deprive the former wife of her community property interest in these benefits, which had been previously recognized by the court as community property under La. Civ. Code Ann. art. 2338 and which had been awarded to her in a valid community property judgment. The widow and minor child's benefit was required to be split with the former wife under La. Rev. Stat. Ann. § 11:291(B). Although the former wife had died during the proceedings, her estate was entitled to recover. The court reversed the judgment of the court of appeal and remanded the case to the trial court for further proceedings.

**Slaughter v. La. State Employees' Ret. Sys.,
2014-0324 (La. 10/14/15), 180 So. 3d 279**

The lower courts erred in finding that the state retirement system failed to prove it followed the procedure set forth in La. Rev. Stat. Ann. § 11:407 before initiating action to reduce and recoup a retiree's retirement benefits because, while the court of appeal properly rejected the retiree's arguments of res judicata where a prior concursus proceeding did not

involve the underlying issue of whether or not there was an overpayment of retirement benefits to the retiree or whether his supplemental pay should have been considered in the calculation of those benefits, the case was governed by La. Rev. Stat. Ann. § 11:192, which only required the board of trustees to notify the retiree of the amount of overpayment in benefits and the amount of the adjustment in benefits, 30 days prior to any reduction, and it was undisputed that the retiree was notified of the adjustment 30 days prior to the reduction.

Fontenot v. LASERS

2015-0553 (La. App. 1 Cir 12/23/15), 186 So. 3d 163

The trial court erred in granting summary judgment in favor of a retired state employee and in ordering the Louisiana State Employees' Retirement System to recalculate the employee's retirement benefit using the 36 month average under La. Rev. Stat. Ann. § 11:403(5)(a)(i), instead of the 60 month average in La. Rev. Stat. Ann. § 11:403(5)(b) (i), because, under La. Rev. Stat. Ann. § 11:537A, D, E, a refund canceled all of the rights the employee accumulated in the retirement system prior to September 30, 1983; his employment beginning in 2009 was his first employment making him eligible for membership in the system; and, while the repayment of the refund restored the employee's creditable service, it did not restore any other prior eligibility rights in the system, including the right to have his average compensation determined based upon a 36 month average.

Hall v. LASERS

2017-1329 (La. App. 1 Cir 02/21/18)

The Nineteenth Judicial District Court vacated a decision by the appellant, Louisiana State Employees' Retirement System (LASERS), to deny eligibility of the appellee, Bessie J. Hall (Hall), to apply for disability retirement benefits. In the hearing on the motion for summary judgment, LASERS

argued that La. C.C. art. 13 requires laws of the same subject matter to be read together; therefore, Ms. Hall is not eligible to apply for retirement benefits under La. R.S. 11:212 because she had not yet reached twenty years of state service to become eligible for disability retirement under La. R.S. 11:217. According to LASERS, La. R.S. 11:217 sets the standard for eligibility to **5 apply, while La. R.S. 11:212(C) is an exception for those applicants still in state service. The trial court disagreed with LASERS's interpretation of the statutes, stating that La. R.S. 11:217 does not address the presumption contained in La. R.S. 11:212(C); rather, La. R.S. 11:212 deals exclusively with state employees becoming disabled during state service. Louisiana Revised Statutes 11:217 provides that LASERS members who have attained twenty years of state service, who have not yet vested in regular retirement benefits, may apply for disability retirement benefits. The statute makes no distinction between whether the member incurred the disability during state service or not, and thus La. R.S. 11:217 does not create a rebuttable presumption as to when the disability incurred. The statute makes no reference to La. R.S. 11:212, and neither does La. R.S. 11:212 make reference to La. R.S. 11:217. The plain reading of both statutes makes it clear that La. R.S. 11:217 is not applicable to Ms. Hall's circumstance because she has not attained twenty years of state service. Since Ms. Hall has between ten and twenty years of state service, La. R.S. 11:212 is the statute applicable to her circumstance. Ms. Hall is entitled to apply for disability retirement benefits under La. R.S. 11:212. The appeal before us only pertains to her right to apply, and in no way affects the merits of her claim to those benefits.

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