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MEMORANDUM

To: Chairman Johnson and members of the Joint Committee on Pensions, Investments and Benefits.

From: David Wiese, Assistant Revisor

Date: November 4, 2015

Subject: 2015 Senate Sub for HB 2095, working after retirement provisions.

Senate Substitute for House Bill No. 2095, passed during the 2015 session, amends provisions relating to working after retirement for KPERS members. The bill also adds certain duties to the joint committee on pensions, investments and benefits relating to working after retirement reports and appeals and allows the joint committee to appoint a subcommittee to carry out such duties.

General working after retirement provisions

Currently a retirant who returns to work for the same participating employer from which such retirant was employed or appointed during the final two years of such retirant's participation may only earn compensation in amount not to exceed $20,000 in a calendar year before such retirant's retirement benefit is suspended for the rest of the calendar year. Retirants who return to work for a different participating employer are not subject to a compensation limitation under current law; however, the employer is required to pay to the system the actuarially required contribution rate plus the statutorily prescribed employee contribution rate (6%) during the period of employment.

The bill increases the compensation limitation from $20,000 to $25,000 for a period commencing July 1, 2016 and ending July 1, 2021.

The bill, beginning on July 1, 2016, also eliminates the distinction between working for the same participating employer or working for a different participating employer. On and after July 1, 2016, a retirant who returns to work for any participating employer will be subject to the $25,000 compensation limitation unless such retirant meets one of the exceptions listed below.

The bill also requires the joint committee on pensions, investments and benefits on July 1, 2016, and at least every five years thereafter, to study the issue of whether or not the compensation limitation should be adjusted. The committee shall consider the effect of inflation and data on member retirement benefits and active employee compensation.

The bill **does not** change the 60-day waiting period before a retirant may return to work.

For the employment of any retirant, regardless of position, the employer shall enroll all retirants and report to the system when compensation is paid to a retirant. Upon request of the executive director of the system, the employer shall provide such information as may be needed by the executive director to carry out the new working after retirement provisions.

No retirant shall receive any service credit while employed.

Exceptions

The bill also provides several exceptions to the compensation limitation for retirants in certain positions. There are exceptions for retirants that are:

1. Licensed professional nurses or licensed practical nurses employed by the state in institutions, the Kansas soldier's home or the Kansas veterans' home.

2. Employed by a school district in special education or certified hard-to-fill positions as described below.

3. Certified law enforcement officers employed by the law enforcement training center.

4. Members of KP&F or the retirement system for judges.

5. Employed as substitute teachers or officers, employees or appointees of the legislature.

6. Employed by or accepted employment from a participating employer prior to May 1, 2015. Any break in continuous employment or move to a different position by a retirant shall be deemed new employment and shall subject such retirant to the new working after retirement provisions.

7. Elected city or county officers.

Hardship positions

An exception also exists for certain "hardship" positions. A participating employer, including a school employer, may employ a retirant without regard to the compensation limitation for a period of one calendar or one school year, if the following three requirements are met:

1. The employer certifies to the KPERS board that the position being filled has been vacated due to an unexpected emergency or the employer has been unsuccessful in filling the position.

2. The employer pays to the system the actuarially determined employer contribution rate plus 8% during any such period of employment. There is no employee contribution for hardship positions.

3. The employer maintains documentation of its efforts to fill the position with a non-retirant and provides such documentation to the joint committee upon request of the committee.

An employer may submit a written appeal to the joint committee to extend the hardship exception by one year. The appeal shall include documentation of the employer's efforts to fill the position with a non-retirant. Granting or denial of such extension shall be at the sole discretion of the committee.

Special exception for certain licensed school personnel

The bill also provides a special exception to the general working after retirement for certain licensed school personnel for a certain period of time. Currently, retirants who are return to work in a licensed position for the same district from which they retired are exempt from the compensation limitation. This bill extends the special exception until June 30, 2017, for those who were already retired and working before May 1, 2015. After such date, these grandfathered retirants would no longer receive an exception and would have to comply with the new working after retirement provisions.

On July 1, 2016 and ending July 1, 2011, the nature of the exception for school positions depends on the specific position in which a retirant is being employed.

1. Special education positions

For special education teacher positions, if the retirant retired prior to May 1, 2015, such retirant may continue to work after retirement under the existing exception provided in K.S.A. 74-4937(5). The existing exception will expire July 1, 2017, and after that date, special education retirants shall be under the same working after retirement provisions as other retirants.

- On and after July 1, 2016, a school district may hire a retired licensed professional to fill a special education teacher position if such retirant is not hired prior to 60 days after such retirant's retirement date and if there is no prearrangement with such school district.

- Each school district that utilizes retirants for special education positions shall maintain documentation describing their recruiting efforts to fill such positions with non-retirant employees. Upon request of the joint committee, a school district shall provide such documentation to the committee.

- If the committee finds that a school district has not made sufficient efforts to fill the position, or if the committee finds evidence of prearrangement, the three-year exception may be revoked. The committee shall notify the executive director within 30 days of making such a determination.

- Retirants hired under this provision may continue to receive full retirement benefits for a period not to exceed three school years or 36 months, whichever is less.

- The employer contribution rate would be the actuarially required contribution rate plus 8%.

- There is no employee contribution.

2. Certified hard-to-fill positions

The bill provides an additional exception for certain positions deemed by the state board of education to be "hard-to-fill."

- The state board of education shall annually certify the top five types of licensed positions that are hard to fill. A school district may hire a retirant in a hard-to-fill position if the employer is unable to permanently fill the position with an active member.

- Retirants hired under this provision may continue to receive full retirement benefits for a period not to exceed three school years or 36 months, whichever is less.

- Each school district that utilizes retirants for hard-to-fill positions shall maintain documentation describing their recruiting efforts to fill such positions with non-retirant employees. Upon request of the joint committee, a school district shall provide such documentation to the committee.

- If the committee finds that a school district has not made sufficient efforts to fill the position, or if the committee finds evidence of prearrangement, the three-year exception may be revoked. The committee shall notify the executive director within 30 days of making such a determination.

- An employer may submit a written appeal to the joint committee to extend the hard-to-fill exception by one year. Such written appeal shall include documentation of the employer's efforts to fill the position with a non-retirant. The granting or denial of such extension shall be at the sole discretion of the committee.

- The employer contribution rate would be the actuarially required contribution rate plus 8%.

- There is no employee contribution.

DROP act for members of the Kansas Highway Patrol

Senate Substitute for House Bill No. 2095 also establishes a deferred retirement option program or DROP for members of the Kansas highway patrol. The following is a brief summary of the DROP:

- The DROP is effective from January 1, 2016, until January 1, 2020.
- Troopers, examiners or officers of the Kansas highway patrol who have attained the KP&F normal retirement age are eligible to participate in the DROP. Such members may elect to participate in the DROP for a minimum of three years and a maximum of five years. A member who fails to meet the three year minimum forfeits all interest credits unless the member is retired due to disability. A member who remains in active service after the expiration of such member's DROP period shall not be eligible for any additional interest credits.
- The DROP member remains in the active service of the highway patrol, but is not eligible to earn or purchase additional service credit.
- During the DROP period, both employer and employee contributions are made to the KP&F system.
- The KPERS board shall calculate a monthly DROP accrual which is equal to the month retirement benefit the member would have received if they retired and the accrual shall be deposited in a DROP account which is created for each member.
- The DROP account shall be credited annually with interest. Interest may only be credited in a year in which the actual rate of return on the market value of the DROP investments reach the system's assumed investment rate of return. Such interest credit may not exceed 50% of the actual rate of return and is capped at a maximum of 3%.
- Upon the end of the DROP period, a member is entitled to a distribution of the member's DROP account and may select either a direct rollover to an eligible retirement plan or a lump-sum distribution.