

## MINUTES OF THE HOUSE HIGHER EDUCATION COMMITTEE

The meeting was called to order by Chairman Terrie Huntington at 1:30 p.m. on February 5, 2009, in Room 786 of the Docking State Office Building.

All members were present.

## Committee staff present:

Renae Jefferies, Office of the Revisor of Statutes  
Mary Galligan, Kansas Legislative Research Department  
Kay Scarlett, Committee Assistant

## Conferees appearing before the committee:

Jerry Boettcher, Member, Kansas Board of Regents  
Theresa Marcel Bush, Associate General Counsel, Kansas Board of Regents

## Others attending:

See attached list.

As there were no corrections or additions, the minutes of January 13, 14, 20, 21 and 22 were approved as presented.

**Hearing on - HB 2004 - Regents institutions; participation in mandatory retirement plans, conditions**

Chairman Huntington opened the hearing on **HB 2004**. Renae Jefferies, Office of the Revisor of Statutes, explained that this bill on pages 3 and 4 amends state statutes to remove the option of a participant in the retirement plan of the State Board of Regents who takes a leave of absence and accepts a position in the executive branch of government from continuing to participate in the State Board of Regents' retirement plan. The fiscal note reports no immediate fiscal effect, but indicates that in future years universities could realize a small savings when an employee takes a leave of absence. (Attachment 1)

Jerry Boettcher, Member, Kansas Board of Regents, appeared in support of **HB 2004**. He said this change was necessary to ensure compliance with federal 403(b) regulations and to protect the plan's tax exempt status. He noted that this would not impact any current employees.

Theresa Marcel Bush, Associate General Counsel, Kansas Board of Regents, testified in support of **HB 2004** explaining that the KBOR retirement plan is subject to a section of the federal tax code that specifically applies to retirement plans of educational institutions, section 403(b). Stating that compliance with the federal tax code and regulations is imperative in order to qualify for and retain the KBOR retirement plan's tax exempt status. New 403(b) regulations went into effect on January 1, 2009. She explained that they have been informed by KBOR's retirement plan consultants that the arrangement allowed in statute violates the new IRS rules for 403(b) retirement plans. This is based upon the part of the federal tax law that requires persons participating in such retirement plans to in fact be providing services to the educational institution or system. Thus to protect the KBOR Mandatory Retirement Plan's tax status, she asked that **HB 2004** be passed. (Attachment 2)

There being no other conferees, the hearing on **HB 2004** was closed.

Mr. Boettcher asked that the committee give careful consideration to passage of **HB 2007** to allow state universities, with the Board of Regents' approval, to waive partial tuition for both undergraduate and graduate nonresident students. This bill was heard in committee on February 3. He referred the committee to the Legislative Post Audit Report: *Postsecondary Educational Institutions: Reviewing Tuition Rates Being Charged to Non-Resident Students in Kansas*, December 2006. The report is available from the Legislative Division of Post Audit or on its Website: [www.kslegislature.org/postaudit](http://www.kslegislature.org/postaudit)

The meeting adjourned at 2:15 p.m. The next meeting of the House Higher Education Committee is scheduled for February 6, 2009.

# HOUSE HIGHER EDUCATION COMMITTEE GUEST LIST

DATE February 5, 2009

NAME	REPRESENTING
David Boucher	Intern - Rep Mah
Theresa Marcel Bush (Terry)	KBOR - Ass Gen Couns.
Jaroid Boettcher	K's BA Request
HOWARD SMITH	PITTSBURG STATE UNIVERSITY

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MEMORANDUM

To: House Committee on Higher Education  
From: Renae Jefferies, Assistant Revisor  
Date: February 5, 2009  
Subject:: House Bill No. 2004

HB 2004 amends K.S.A. 2008 Supp. 74-4925 on pages three and four of the bill to remove the option of a participant in the retirement plan of the state board of regents who takes a leave of absence and accepts a position in the executive branch of government from continuing to participate in the state board of regents' retirement plan.

The fiscal note reports no immediate fiscal effect but indicate that in future years universities could realize a small savings when an employee takes a leave of absence.



# KANSAS BOARD OF REGENTS

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**House Higher Education Committee  
February 5, 2009**

***Amendments to Kansas Board of Regents Retirement Statute, HB 2004  
By Theresa Marcel Bush, Associate General Counsel***

Ms. Chairman and members of the Committee, my name is Theresa Marcel Bush, and I am the Associate General Counsel for the Kansas Board of Regents (KBOR) on whose behalf I am appearing. I am here to provide you with information related to the proposed amendment to K.S.A. 2008 Supp. 74-4925.

K.S.A. 2008 Supp. 74-4925 deals with the retirement plan for faculty and unclassified professional staff of the Kansas Board of Regents (KBOR) and the six governed universities. This proposed amendment would eliminate subsection (d)(5) of the statute. The language in question was added in 1988, pursuant to L.1988, Ch.302. It allows KBOR Mandatory Retirement Plan participants to continue participating in the KBOR Retirement Plan, even if they are on leave of absence from their educational institution, in order to work for the Executive branch of state government. Currently, there are no employees utilizing this provision. We believe only a handful of employees have ever taken advantage of this specific subsection.

The KBOR retirement plan is subject to a section of the federal tax code that specifically applies to retirement plans of educational institutions, section 403(b). Compliance with the applicable federal tax code and regulations is imperative in order to qualify for and retain the KBOR retirement plan's tax exempt status.

New 403(b) regulations went into effect on January 1, 2009. We have been informed by KBOR retirement plan consultants, who are experts in tax law, that the arrangement allowed by the pertinent subsection violates the new IRS rules for 403(b) retirement plans. This is based upon the part of the federal tax law that requires persons participating in such retirement plans to in fact be providing services to the educational institution or system.

Thus, to protect the KBOR Mandatory Retirement Plan's tax status, we ask that the Legislature eliminate the provision that allows participation in that plan by any state employee who either does not work for a University or provide services to the educational system, because they are "on loan" to the state executive branch. Removal of subsection (d)(5) will (1) not impact any current employees, (2) help insure compliance with the 403(b) regulations and (3) protect the plan's tax exempt status.

We therefore ask you to act favorably on HB 2004.

House Higher Education Committee  
February 5, 2009  
Attachment 2