

## MINUTES OF THE SENATE EDUCATION COMMITTEE

The meeting was called to order by Chairman Jean Schodorf at 1:30 p.m. on March 9, 2009, in Room 545-N of the Capitol.

All members were present except:

Senator Anthony Hensley- absent  
Senator Dwayne Umbarger- excused  
Senator Chris Steineger- excused

Committee staff present:

Kristen Kellems, Office of the Revisor of Statutes  
Theresa Kiernan, Office of the Revisor of Statutes  
Matt Sterling, Office of the Revisor of Statutes  
Martha Dorsey, Kansas Legislative Research Department  
Sharon Wenger, Kansas Legislative Research Department  
Dorothy Gerhardt, Committee Assistant

Conferees appearing before the Committee:

Theresa Marcel Bush, Associate General Counsel, Kansas Board of Regents

Others attending:

See attached list.

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

Theresa Kiernan, Office of the Revisor of Statutes, presented a short summary of the provisions in **HB 2004** for the committee. This legislation was introduced by the Legislative Educational Planning Committee at the request of the State Board of Regents (Board). The bill amends K.S.A. 74-4925. The Board is required to sponsor a retirement plan under section 403(b) of the federal internal revenue code for persons employed by the Board or by a state educational institution. Under current law, a participant in the plan is allowed to continue participation in the plan when on a leave of absence from employment by the Board or an education institution and working for the executive branch of state government.

**HB 2004** would delete the authority which allows the continued participation while on leave of absence. The amendment is necessary to ensure that the retirement plan complies with federal regulations which do not allow participation by employees who do not work for or provide services to a state educational institution or educational system. The tax exempt status of the entire retirement plan may be invalidated if the plan does not comply with the federal regulations.

She stated that at this time there are no employees in the retirement plan who are on leave from a university in order to work in a non-university executive branch agency. The fiscal note states that the bill has no immediate fiscal effect.

Theresa Marcel Bush, Associate General Counsel, Kansas Board of Regents, (Attachment 1) testified in support of the legislation. She stated the proposed amendment would eliminate subsection (d)(5) of the statute. The language in question was added in 1988. 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..

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.

There were no opponents to testify.

The hearing on **HB 2004** was closed.

Following a short discussion, Senator Abrams moved the committee recommend **HB 2004** favorable for

CONTINUATION SHEET

Minutes of the Senate Education Committee at 1:30 p.m. on March 9, 2009, in Room 545-N of the Capitol.

passage. The motion was seconded by Senator Owens. Motion carried on a voice vote.

The next meeting is scheduled for March 10, 2009.

The meeting was adjourned at 2:20 p.m.

# SENATE EDUCATION COMMITTEE GUEST LIST

DATE: March 9, 2009

NAME	REPRESENTING
Theresa Maed Bush	KBOR
J. DeSimpone	D. Schmidt
Tom Kuba	KASB
Berend Koops	Hein Law Firm
JOB MEALY	KEARNEY & ASSOC.
Michelle Schweder	Damon Grant Relations
John Peterlin	PINEGAR - SMITH



# KANSAS BOARD OF REGENTS

1000 SW JACKSON • SUITE 520 • TOPEKA, KS 66612-1368

TELEPHONE – 785-296-3421  
FAX – 785-296-0983  
www.kansasregents.org

Senate Education Committee  
March 9, 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. The 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) not impact persons who continue to be employed by and still work for a University (e.g. some Legislators are also employees of a University), (3) help insure compliance with the 403(b) regulations and (4) protect the plan's tax exempt status. We therefore ask you to act favorably on HB 2004.

Senate Education  
3-9-09  
Attachment 1