

MINUTES

JOINT COMMITTEE ON PENSIONS, INVESTMENTS, AND BENEFITS

January 9, 2009
Room 545-N—Statehouse

JAN 22 2009

Members Present

Senator Steve Morris, Chairperson
Representative Richard Carlson, Vice-Chairperson
Representative Geraldine Flaharty, Ranking Minority Member
Senator Anthony Hensley
Senator Laura Kelly
Senator Ruth Teichman
Senator Dwayne Umbarger
Representative Vaughn Flora
Representative Margaret Long
Representative Rob Olson
Representative Sharon Schwartz
Representative Arlen Siegfried

Staff

Julian Efird, Kansas Legislative Research Department
Mike Steiner, Kansas Legislative Research Department
Gordon Self, Office of the Revisor of Statutes
Melissa Doeblin, Office of the Revisor of Statutes
Gary Deeter, Committee Secretary

The Chairperson asked Legislative Research Department staff to address a proposal developed in his office on the previous date that would address those school districts that hire retired Kansas Public Employees Retirement System (KPERS) members either directly, with an individual contract, or indirectly through a contracting agency (Attachment 1). Staff reviewed current law for those KPERS members working after retirement, noting that a teacher who retires and is hired by the same school district faces a \$20,000 cap on salary; whereas, a teacher who is hired by a different school district has no salary cap. In the latter case, the school district must pay a KPERS surcharge of about 15.0 percent that is adjusted annually. However, if a retired KPERS member is employed through an independent contractor, and goes back to work for the same school district, the teacher avoids the salary cap. If the retired KPERS member goes to work for another school district as a contract employee, then the district does not have to pay a surcharge.

The proposed change would apply the same restrictions for a contract employee that must be followed by an individual KPERS retiree hired directly by a school board or who goes to work for another school district after retirement.

Members discussed extensively the ramifications of the proposal, including:

- The proposal is a short-term proposal. Further study is needed to address additional disparities and issues of working after retirement;
- Some small rural school districts that find it difficult to hire specialized employees, such as math teachers, may be disadvantaged if they have to pay a surcharge. A contract firm gives them more leverage in finding and affording such teachers;
- Doing nothing will make the problem worse;
- The use of contracted teachers creates two problems: 1) the contractor, not the school board, supervises the teacher, and the issue of liability is clouded by indefinite responsibility; and 2) KPERS is short-changed because contracted employees do not result in contributions to the retirement system; and
- The KPERS retirees who go back to work for the same school district from which they retired is not under the \$20,000 salary cap, like individually contracting teachers are.

Dale Dennis, Deputy Commissioner, Kansas State Department of Education, identified two concerns that impinge on a school district's function. He said some school districts do not want to pay the surcharge and would rather pay a contracting entity to supply school teachers, a procedure he called of doubtful but untested legality. Further, he noted the inequity of a teacher barred by a salary cap from working in a home district who can be hired by a neighboring district and avoid the salary cap.

Glenn Deck, Executive Director, KPERS, responded to members' questions. He replied that the trend in other states seems to be to allow using contractors to employ teachers and supply them to school districts. He noted three states that have imposed the same requirements on contracting firms that provide retired teachers to school districts and that apply to individual teachers and school districts in regard to working after retirement. He responded that under Kansas law it is illegal for a school district to refuse to pay a KPERS surcharge.

A motion was made by Representative Olson, seconded by Senator Kelly, to recommend the proposal identified in Attachment 1 to be introduced in the 2009 Kansas Legislature as a Senate bill. The motion passed.

Next, Representative Flora requested that the Committee introduce a new bill (based on 2008 HB 2971) to allow vocational-technical teachers to purchase KPERS credit (Attachment 2). Representative Flora made a motion to recommend introduction of the bill by the Committee. Senator Hensley seconded the motion. The motions carried. The bill will be referred to the House for introduction.

Prepared by Gary Deeter
Edited by Julian Efird

Approved by Committee on:

January 21, 2009

(Date)

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Current Law on Working after Retirement

	<u>Individual Retiree</u>	<u>Contracted Retiree</u>
Same KPERS Participating Employer	Example 1: \$20,000 cap on salary; No KPERS surcharge	Example 3: No salary cap; No KPERS surcharge
Different KPERS Participating Employer	Example 2: No salary cap; KPERS surcharge	Example 4: No salary cap; No KPERS surcharge

Current law on working after retirement distinguishes between individual KPERS retirees who return to work for the same participating employer from whom they retired, and those retirees who return to work for a different KPERS participating employer. The same law is silent about instances in which KPERS retirees work for a contractor and are assigned to work for any participating KPERS employer, regardless of whether it is the one from which they retired or a different participating employer.

Example 1. An individual KPERS retiree who goes back to work after retirement and works for the same school district is subject to an earnings limitation of \$20,000 in a calendar year under current law. The retiree must either decide to stop working when the \$20,000 threshold is reached, or KPERS will suspend the monthly benefit payments until the end of the calendar year.

Example 2. An individual KPERS retiree who goes back to work after retirement and works for a different school district is not subject to a statutory salary cap, but the school district must pay a surcharge to KPERS if a retired member is hired to work under current law.

Examples 3 and 4. Both in-state and out-of-state entities have been providing contract employees to school districts in recent years to fill teaching positions. Current law does not place a salary cap on such contracted employees if they work in the district from which they retired, nor does current law require school districts to pay a KPERS surcharge if the contract employees are KPERS retirees who worked for another participating employer before retirement.

Proposal. Any KPERS school district that uses a KPERS retiree will be subject to the provisions of current law regarding a salary cap or KPERS surcharge, regardless of whether the person filling a teaching position is an individual retiree or a contracted employee who retired from a KPERS participating employer. The proposal will modify the current law in the following manner:

Proposed Changes in Working after Retirement Law

	<u>Individual Retiree</u>	<u>Contracted Retiree</u>
Same KPERS Participating Employer	Example 1: \$20,000 cap on salary; No KPERS surcharge	<u>Example 3:</u> <u>\$20,000 salary cap;</u> <u>No KPERS surcharge</u>
Different KPERS Participating Employer	Example 2: No salary cap; KPERS surcharge	<u>Example 4:</u> <u>No salary cap;</u> <u>KPERS surcharge</u>

Background

Retirees and school districts are using different arrangements to re-employ retirees, including third-party contractor arrangements. Several private sector entities contract with school districts to provide "contract" teachers who have retired from KPERS. If these positions are not on the school district's payroll and function as "independent contractors" under the Internal Revenue Code, KPERS working-after-retirement restrictions do not apply. However, the degree of autonomy required to be an independent contractor would be unusual for teachers who function within a typical school structure.

A 2007 survey conducted by the State Department of Education found that out of 638 retired teachers who were re-employed with salaries over \$20,000, 33 of them were under a private contractor arrangement.

In September, the Committee began discussions about options to address this issue:

- Prohibiting school districts from contracting with third-party entities for teachers and school administrators; or
- Applying working-after-retirement restrictions to retirees who provide services to a participating employer through a third-party contractor.

KPERS staff is not aware of other states with a prohibition on third-party contracts for teachers and school administrators. However, several states have passed legislation imposing working-after-retirement restrictions and contribution rates that apply to third-party contract arrangements. The states include Texas, Georgia, and Montana.

Kansas Public Employees Retirement System
Legislative Data Sheet

2008 House Bill 2971

Sponsored by the Committee on Appropriations.

Effects of Bill

2008 House Bill 2971 allows the purchase of KPERS participating service credit for work experience that is necessary to obtain certain technical or vocational teacher certifications.

Prior to its revocation in 2003, a Department of Education regulation, K.A.R. 91-1-39, established requirements for minimum amounts of approved, directly related journeyman experience above the apprenticeship level as a condition for certification as an instructor of a day trade, personal service or public service program. HB 2971 would allow KPERS members to purchase up to two years of participating service credit for journeyman experience required by K.A.R. 91-1-39 that was obtained on or after January 1, 1962. Members could purchase this service by making additional contributions through payroll deductions or by a single lump-sum payment.

Fiscal Impact

Because the bill specifies that members would pay the full actuarial cost, HB 2971 would have no cost or fiscal impact for the Retirement System. The Retirement System could implement HB 2971 within currently approved staffing and operating expenditure levels.

Date: March 19, 2008



Attachment 2
JCPIB 1-9-09

HOUSE BILL No. 2971

By Committee on Appropriations

3-14

9 AN ACT concerning retirement and pensions; relating to the Kansas
10 public employees retirement system and systems thereunder; purchase
11 of service credit.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. Any member of the Kansas public employees retirement
15 system may purchase up to two years of participating service credit for
16 service as approved, directly related journeyman experience above the
17 apprenticeship as required by K.A.R. 91-1-39 prior to the revocation of
18 such regulation on June 30, 2003, for day trade, personal service and
19 public service teachers which commenced on or after January 1, 1962.
20 Such purchase of participating service credit shall be made in accordance
21 with the provisions of K.S.A. 74-49,123, and amendments thereto. The
22 benefit for each such period of service purchased by the member shall
23 be equal to 1.75% of the final average salary of any such member. Such
24 member may purchase such participating service credit by submitting
25 proof of such service acceptable to the board of trustees and by making
26 application therefor prior to the date of retirement of such member for
27 such purchase and to have such member's employee contributions de-
28 ducted from such member's compensation at an additional rate of con-
29 tribution, in addition to the employee's rate of contribution as provided
30 in K.S.A. 74-4919, and amendments thereto, based upon the member's
31 attained age at the time of purchase and using actuarial assumptions and
32 tables in use by the retirement system at such time of purchase for such
33 periods of service. Such additional rate of contribution shall commence
34 at the beginning of the quarter following the date upon which such mem-
35 ber made application for such purchase and shall remain in effect until
36 all of the full quarters of such service have been purchased. In lieu of the
37 deduction of employee contributions as provided in this section, any such
38 member may purchase such participating service credit by means of a
39 single lump-sum payment in an amount equal to the then present value
40 of benefits being purchased as determined by the actuary using the mem-
41 ber's attained age at the time of purchase, annual compensation at the
42 time of purchase and the actuarial assumptions and tables currently in
43 use by the system. The lump-sum payment shall be made immediately

1 upon being notified of the amount due under this purchase method. The
2 provisions of this section shall be part of and supplemental to the provi-
3 sions of K.S.A. 74-4901 et seq., and amendments thereto.
4 Sec. 2. This act shall take effect and be in force from and after its
5 publication in the statute book.