

CHAPTER 74
HOUSE BILL No. 2385

AN ACT concerning retirement; relating to the Kansas public employees deferred compensation act; transferring certain powers, duties and functions thereunder to the board of trustees of the Kansas public employees retirement system; administration of deferred compensation plan; abolishing the administrative oversight committee on deferred compensation; amending K.S.A. 74-4909, 75-5528, 75-5529, 75-5529a and 75-5529b and K.S.A. 2006 Supp. 74-4911f, 75-5520a, 75-5521, 75-5523, 75-5524 and 75-5525 and repealing the existing sections; also repealing K.S.A. 2006 Supp. 75-5529c.

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

New Section 1. (a) Except as otherwise provided by subsection (b) and any other provision of this act, on January 1, 2008, all of the powers, duties, and functions of the director of accounts and reports, the secretary of administration, and the administrative oversight committee on deferred compensation relating to the deferred compensation plan established under the Kansas public employees deferred compensation act, K.S.A. 75-5520a et seq., and amendments thereto, and including those powers, duties and functions related to the provision of services to local units of government adopting the terms of the deferred compensation plan, are hereby transferred to and imposed upon the board of trustees of the Kansas public employees retirement system.

(b) All of the powers, duties and functions of the director of accounts and reports related to deferrals and deductions from the salary or compensation of state employees in each payroll period as part of the system of regular payroll deduction and the remittance of those moneys in accordance with K.S.A. 75-5524, and amendments thereto, shall not be transferred to the board and shall be retained by the director of accounts and reports.

(c) On January 1, 2008, the administrative oversight committee on deferred compensation is hereby abolished.

New Sec. 2. (a) The board of trustees of the Kansas public employees retirement system shall be the successor in every way to the powers, duties and functions of the director of accounts and reports, the secretary of administration and the administrative oversight committee on deferred compensation in which the same were vested prior to the effective date of this act and that are transferred pursuant to section 1, and amendments thereto. Every act performed in the exercise of such transferred powers, duties and functions by or under the authority of the board shall be deemed to have the same force and effect as if performed by the director of accounts and reports, the secretary of administration or the administrative oversight committee on deferred compensation in which such powers, duties and functions were vested prior to January 1, 2008.

(b) Whenever the director of accounts and reports, the secretary of administration, the administrative oversight committee on deferred compensation or words of like effect are referred to or designated by a statute, contract, memorandum of understanding, plan, grant, agreement or other document and such reference is in regard to any of the powers, duties or functions transferred to the board of trustees of the Kansas public employees retirement system pursuant to section 1, and amendments thereto, such reference or designation shall be deemed to apply to the board. Effective January 1, 2008, all contracts related to the deferred compensation plan are assigned to the board, and the director of accounts and reports, secretary of administration, administrative oversight committee on deferred compensation and the department of administration are released from any further performance obligation on any existing contracts entered into for the deferred compensation plan.

(c) All rules and regulations, orders, plan documents, agreements, contracts and directives of the director of accounts and reports, the secretary of administration or the administrative oversight committee on deferred compensation that relate to the functions transferred by section 1, and amendments thereto, and that are in effect on January 1, 2008, shall continue to be effective and shall be deemed to be rules and regulations, orders, plan documents, agreements, contracts and directives of the board until revised, amended, revoked or nullified pursuant to law.

New Sec. 3. On the effective date of this act, the balances of all funds or accounts thereof appropriated or reappropriated for the department of administration relating to the powers, duties and functions transferred

by section 1, and amendments thereto, are hereby transferred within the state treasury to the board of trustees of the Kansas public employees retirement system and shall be used only for the purpose for which the appropriation was originally made.

New Sec. 4. The board of trustees of the Kansas public employees retirement system shall succeed to all property, property rights and records that were used for or pertain to the performance of powers, duties and functions transferred to the board pursuant to section 1, and amendments thereto. Any conflict as to the proper disposition of property, personnel or records arising under this act shall be determined by the governor, whose decision shall be final.

New Sec. 5. (a) (1) All officers and employees of the department of administration who, immediately prior to January 1, 2008, are engaged in the exercise and performance of the powers, duties and functions transferred to the board of trustees of the Kansas public employees retirement system by section 1, and amendments thereto, are transferred to the board on January 1, 2008, or on a later date or dates determined by the secretary of administration and the board.

(2) All classified employees transferred under subsection (a) shall retain their status as classified employees. Thereafter, the board may convert vacant classified positions to positions that are not classified as otherwise provided by law.

(b) Officers and employees of the department of administration transferred by this order shall retain all retirement benefits and leave balances and rights that had accrued or vested prior to the date of transfer. The service of each such officer and employee so transferred shall be deemed to have been continuous. Any subsequent transfers, layoffs or abolition of classified service positions under the Kansas civil service act shall be made in accordance with the civil service laws and any rules and regulations adopted thereunder. Nothing in this order shall affect the classified status of any transferred person employed by the department of administration prior to the date of transfer.

New Sec. 6. (a) No suit, action or other proceeding, judicial or administrative, that is lawfully commenced or that could have been lawfully commenced, by or against any state agency or program mentioned in this act, or by or against any officer of the state in such officer's official capacity or in relation to the discharge of such officer's official duties, shall abate by reason of the governmental reorganization effected under the provisions of this act. The court may allow any such suit, action or other proceeding to be maintained by or against the successor of any such state agency or any officer affected.

(b) No criminal action that is commenced or that could have been commenced by the state shall abate by the taking effect of this act.

Sec. 7. K.S.A. 74-4909 is hereby amended to read as follows: 74-4909. (1) The board of trustees shall be responsible for the general administration of the system, subject to the provisions of this act.

(2) The board shall establish rules and regulations for the administration of the system and for the transaction of business consistent with law, which rules and regulations shall be filed in the office of the secretary of state.

(3) The board shall be responsible for the installation of a complete and adequate system of accounts and records. The board shall contract with the department of administration to provide such accounting services as are necessary to avoid duplication of efforts and promote efficiency. The board shall pay the department of administration an amount not exceeding the actual cost incurred in providing this service, which payments shall be deposited in the state treasury and then credited to the state general fund.

(4) All meetings of the board shall be open to the public. The board shall keep a record of all proceedings.

(5) The board may prescribe rules and regulations for the determination of the value of maintenance, board, lodging, laundry and other allowances to employees in lieu of money.

(6) The board may adopt all necessary actuarial tables to be used in the operation of the system as recommended by the actuary, and may compile such additional data as may be necessary for required actuarial valuations and calculations. Whenever the amount of any benefit is to be determined on the basis of actuarial assumptions, the assumptions specified by the board in a way that precludes employer discretion.

(7) Subject to the provisions of K.S.A. 74-49,123 and amendments thereto, the board or the investment committee may invest all cash not required for current payments in securities eligible for investment under this act. All actions of the investment committee shall be reported to the board at the first meeting of the board following the action of the investment committee.

(8) The board, as soon after the close of the fiscal year as practical, shall publish for distribution among members a financial statement showing the financial status of the system.

(9) All decisions of the board as to questions of fact shall be final and conclusive on all persons except for the right of review as provided by law and except for fraud or such gross mistake of fact as to have an effect equivalent to fraud.

(10) Each member's account and records shall be administered in a confidential manner and specific data regarding the member shall not be released unless authorized in writing by the member; however, the board may release information to the employer or to other state and federal agencies as the board deems necessary.

(11) The board shall develop and adopt a specific plan which outlines strategies, goals, procedures and related costs, including additional employees necessary to carry out the provisions of this subsection, to provide for the system's internal management of the investment and reinvestment of moneys of the fund as provided in K.S.A. 74-4921 and amendments thereto. Such internal management would replace the management of all or part of the fund by persons the board has contracted with as provided in subsection (7) of K.S.A. 74-4921 and amendments thereto. The board shall report such plan developed pursuant to this subsection to the legislature and the governor on or before January 1, 1993.

(12) The board shall adopt rules and regulations providing the requirements and procedures for the election of members of the board by members and retirants of the system as provided in subsection (a)(2) of K.S.A. 74-4905 and amendments thereto, and for the filling of any vacancy involving such elected member of the board.

(13) The board shall cooperate with and provide any assistance to the actuary, the legislative coordinating council and the joint committee on pensions, investments and benefits related to the independent actuarial audit and evaluation as provided in K.S.A. 74-4908a and amendments thereto.

(14) *The board shall be responsible for the administration of the Kansas public employees deferred compensation plan and all related functions as prescribed in K.S.A. 74-4911f, sections 1 through 6 and the Kansas public employees deferred compensation act.*

Sec. 8. K.S.A. 2006 Supp. 74-4911f is hereby amended to read as follows: 74-4911f. (a) Subject to procedures or limitations prescribed by the governor, any person who is not an employee and who becomes a state officer may elect to not become a member of the system. The election to not become a member of the system must be filed within 90 days of assuming the position of state officer. Such election shall be irrevocable. If such election is not filed by such state officer, such state officer shall be a member of the system.

(b) Any such state officer who is a member of the Kansas public employees retirement system, on or after the effective date of this act, may elect to not be a member by filing an election with the office of the retirement system. The election to not become a member of the system must be filed within 90 days of assuming the position of state officer. If such election is not filed by such state officer, such state officer shall be a member of the system.

(c) Subject to limitations prescribed by the ~~secretary of administration board~~, the state agency employing any employee who has filed an election as provided under subsection (a) or (b) and who has entered into an employee participation agreement, as provided in K.S.A. 75-5524, and amendments thereto, for deferred compensation pursuant to the Kansas public employees deferred compensation plan shall contribute to such plan on such employee's behalf an amount equal to 8% of the employee's salary, as such salary has been approved pursuant to K.S.A. 75-2935b, and amendments thereto, or as otherwise prescribed by law. With regard to a state officer who is a member of the legislature who has retired pursuant to the Kansas public employees retirement system and who files an election as provided in this section, employee's salary means per diem com-

pensation as provided by law as a member of the legislature.

(d) As used in this section and K.S.A. 74-4927k and amendments thereto, "state officer" means the secretary of administration, secretary on aging, secretary of commerce, secretary of corrections, secretary of health and environment, secretary of labor, secretary of revenue, secretary of social and rehabilitation services, secretary of transportation, secretary of wildlife and parks, superintendent of the Kansas highway patrol, secretary of agriculture, executive director of the Kansas lottery, executive director of the Kansas racing commission, president of the Kansas development finance authority, state fire marshal, state librarian, securities commissioner, adjutant general, members of the state board of tax appeals, members of the Kansas parole board, members of the state corporation commission, any unclassified employee on the staff of officers of both houses of the legislature, any unclassified employee appointed to the governor's or lieutenant governor's staff, any person employed by the legislative branch of the state of Kansas, other than any such person receiving service credited under the Kansas public employees retirement system or any other retirement system of the state of Kansas therefor, who elected to be covered by the provisions of this section as provided in subsection (e) of K.S.A. 46-1302, and amendments thereto, or who is first employed on or after July 1, 1996, by the legislative branch of the state of Kansas and any member of the legislature who has retired pursuant to the Kansas public employees retirement system.

(e) The provisions of this section shall not apply to any state officer who has elected to remain eligible for assistance by the state board of regents as provided in subsection (a) of K.S.A. 74-4925 and amendments thereto.

Sec. 9. K.S.A. 2006 Supp. 75-5520a is hereby amended to read as follows: 75-5520a. The provisions of *this section*, K.S.A. 75-5521 ~~through 75-5529a and K.S.A. 2006 Supp. 75-5520a and 75-5529c~~, 75-5523, 75-5524, 75-5525, 75-5528, 75-5529, 75-5529a, 75-5529b and 75-5529c, and amendments thereto shall be known and may be cited as the Kansas public employees deferred compensation act.

Sec. 10. K.S.A. 2006 Supp. 75-5521 is hereby amended to read as follows: 75-5521. (a) "*Act*" means the *Kansas public employees deferred compensation act*;

(b) "beneficiary" means any person designated to receive benefits under a deferred compensation plan;

~~(b)~~ (c) "*board*" means the *board of trustees of the Kansas public employees retirement system*;

(d) "deferred compensation plan" means a plan *for the benefit of current and former state employee participants that is developed and approved as provided in this act and in accordance with section 457 of the federal internal revenue code of 1986, and amendments thereto*, and under which a participant elects to defer, transfer or roll over amounts as permitted by the plan; *and*

~~(e)~~ "*Director*" means the *director of accounts and reports*.

~~(d)~~ (e) "state" means the state of Kansas and any state agency as defined in subsection (3) of K.S.A. 75-3701, and amendments thereto.

Sec. 11. K.S.A. 2006 Supp. 75-5523 is hereby amended to read as follows: 75-5523. (a) ~~The *director board* is authorized to establish a deferred compensation plan in accordance with section 457 of the federal internal revenue code of 1986, and amendments thereto, subject to the approval of the secretary of administration. Such plan shall be the Kansas public employees deferred compensation plan. All powers and duties heretofore conferred by such plan upon the advisory committee on deferred compensation are hereby transferred to the director of personnel services or the director's designees.~~

(b) ~~The *director board* may enter into an agreement or agreements with approved insurers, *investment managers* or other contracting parties whereby benefits or *investment services* under the Kansas public employees deferred compensation plan would be made available to participants. In addition, the *director board* may enter into an agreement with one or more qualified private firms for consolidated billing services, participant enrollment services, *communications* services, participant ~~accounts~~ *account recordkeeping services* and other services related to the administration of the Kansas public employees deferred compensation plan.~~

(c) No significant costs shall be incurred by the state as a result of

the administration of this act unless such costs are recovered by ~~charging and collecting one or both of the following means: (1) A service charge collected from all participants and in addition thereto or in lieu thereof, where the director has entered into; or (2) credit allowances or reimbursement of specified plan expenses as provided under agreements with one or more qualified private firms under entered into pursuant to subsection (b), are recovered from such firms.~~ The amount of any such significant costs incurred and to be recovered by the state shall be determined by the ~~director board.~~

(d) ~~Subject to the approval of the secretary of administration, the director~~ The board is authorized to negotiate and enter into contracts with qualified insurers, *investment managers* and other contracting parties for the purposes of ~~establishing a implementing and providing essential services for the~~ deferred compensation plan, including acquisition of actuarial, *investment, consulting, auditing* and other services necessary therefor. ~~The director shall advertise for deferred compensation proposals, shall negotiate with not less than three firms or other contracting parties submitting such proposals, and shall select from among those submitting such proposals the firm or firms or other contracting party or parties to contract with for purposes of establishing a deferred compensation plan.~~ Contracts entered into under this act shall *be negotiated in accordance with the provisions of K.S.A. 75-37,102 or K.S.A. 2006 Supp. 75-37,132, and amendments thereto, as applicable, and shall not be subject to the provisions of K.S.A. 75-3739, and amendments thereto.*

(e) *In addition to benefits or investment services offered pursuant to subsection (b), the board may provide deferred compensation plan investment options designed to replicate investment programs authorized in K.S.A. 74-4901 et seq., and amendments thereto, to the extent and in such manner as permitted by the deferred compensation plan.*

(f) *No person who serves on the board shall be employed for a period of two years commencing on the date the person no longer serves on the board and ending two years after such date with any organization in which moneys of the deferred compensation plan were invested, except that the employment limitation contained in this subsection shall not apply if such person's employment is with an organization whose stock or other evidences of ownership are traded on the public stock or bond exchanges.*

Sec. 12. K.S.A. 2006 Supp. 75-5524 is hereby amended to read as follows: 75-5524. (a) The ~~director board~~ is authorized to enter into a voluntary *participation* agreement with any employee of the state whereby ~~the director agrees to defer and deduct each payroll period a portion of the employee's salary or compensation from the state shall be deferred and deducted each payroll period~~ in accordance with *subsection (b) and the Kansas public employees deferred compensation plan.* Such *participation* agreement may require each participant to pay a service charge to defray all or part of any significant costs incurred and to be recovered by the state pursuant to subsection (c) of K.S.A. 75-5523, and amendments thereto, as a result of the administration of this act.

(b) Pursuant to this act and such *participation* agreements, the director ~~is authorized to deduct~~ of accounts and reports, as a part of the system of regular payroll deductions and using funds either appropriated or otherwise available for such purpose, shall establish a system for the following purposes: (1) *To defer each payroll period the amounts authorized in such participation agreements from the salary or compensation of such each employee each payroll period, as part of the system of regular payroll deduction. On and after July 1, 2002, who has entered into a participation agreement; and*

(2) *to remit these moneys in accordance with the Kansas public employees deferred compensation plan.*

(c) (1) Pursuant to section 401(a) of the federal internal revenue code, the ~~director board~~ may establish a qualified plan under which the state may contribute a specified amount, subject to appropriations, to the deferred compensation plan for state employees who have entered into a voluntary *participation* agreement with the ~~director board~~ under this section.

(b) ~~The minimum amount and the maximum amount which may be deferred in any one payroll period shall be established by rules and regulations adopted under K.S.A. 75-5520, and amendments thereto.~~

(2) *Any state agency that has on its payroll persons participating in*

any qualified plan established under subsection (c)(1), shall pay from any moneys available to the state agency for such purpose an amount specified in the qualified plan, subject to appropriations for that purpose.

~~(c)~~ (d) The Kansas public employees deferred compensation plan shall exist and be in addition to, and shall not be a part of any retirement or pension system for employees. The state shall not be responsible for any loss incurred by ~~a~~ any participant under the Kansas public employees deferred compensation plan established and approved pursuant to this act.

~~(d)~~ (e) Any amount of the employee's salary or compensation that is deferred under such authorized *participation* agreement shall continue to be included as regular compensation for all purposes of computing retirement and pension benefits earned by any such employee, but any sum deferred or deducted shall not be subject to any state or local income taxes for the year in which such sum is earned but shall be subject to applicable state and local income taxes for the year in which such sum is received by the employee.

~~(e)~~ (f) ~~The director is hereby authorized to establish~~ A deferred compensation clearing fund *shall be established* in the state treasury in which ~~shall be placed temporarily~~ all compensation deferred, deducted or contributed in accordance with this act; *and as provided for in any each participation agreement between a participant and the director shall be temporarily placed.*

Sec. 13. K.S.A. 2006 Supp. 75-5525 is hereby amended to read as follows: 75-5525. (a) All moneys ~~which that~~ are deferred, transferred or rolled-over in accordance with the provisions of the deferred compensation plan, and the provisions of this act, shall be held in trust in accordance with section 457 of the federal internal revenue code of 1986, and amendments thereto, for the exclusive benefit of participants and their beneficiaries, and shall be disposed of in accordance with the terms of the *participation* agreement ~~with the participant~~. No part of the assets of the plan may be used for, or diverted to, purposes other than for the exclusive benefit of participants and the participant's beneficiaries and for defraying reasonable expenses of the *deferred compensation* plan. *No part of the assets of the deferred compensation plan shall be joined with or commingled with the assets of any portion of the Kansas public employees retirement system established under the provisions of K.S.A. 74-4901 et seq., and amendments thereto, except for assets pooled for investment purposes as provided in subsection (e) of K.S.A. 75-5523, and amendments thereto.*

(b) Amounts payable to the deferred compensation plan pursuant to the plan shall not be subject to any premium tax or other charges arising under the insurance laws of this state. If any such tax or charge has been paid prior to the effective date of this act, the same shall be refunded.

Sec. 14. K.S.A. 75-5528 is hereby amended to read as follows: 75-5528. No participant or beneficiary shall have the right to commute, sell, assign or otherwise transfer or convey the rights to receive any payments under ~~agreements compensation plans~~ *a participation agreement* entered into pursuant to this act and such payments and rights are expressly declared to be and shall be unassignable.

Sec. 15. K.S.A. 75-5529 is hereby amended to read as follows: 75-5529. ~~The secretary of administration, upon the recommendation of the director, board may adopt rules and regulations, in the manner provided in K.S.A. 75-3706, and amendments thereto, for the implementation and administration of this act. The director board shall maintain such accounts and records as are necessary and appropriate to the efficient operation of this act.~~

Sec. 16. K.S.A. 75-5529a is hereby amended to read as follows: 75-5529a. ~~Subject to the approval of the secretary of administration, the director of accounts and reports may enter into agreements for the participation of local governments of the state of Kansas, which are defined as eligible employers by subsection (13) of K.S.A. 74-4902 and amendments thereto, and their employees, as defined by subsection (14) of K.S.A. 74-4902 and amendments thereto except that such employees need not be employed by a participating employer under the Kansas public employees retirement system, within~~ (a) *The board may enter into an agreement with any local government of the state of Kansas making the services under contracts entered into by the board under subsection (b) of K.S.A. 75-5523, and amendments thereto, available to the local*

government, subject to the terms and conditions of those contracts and the agreement entered into between the board and the local governmental unit, if the local governmental unit meets all of the following conditions:

(1) The local governmental unit meets the definition of eligible employer as defined in K.S.A. 74-4902, and amendments thereto;

(2) the governing body of the local governmental unit has enacted an ordinance or resolution adopting the terms of the deferred compensation plan for state employees established under K.S.A. 75-5523 and amendments thereto. ~~Such participation may include any such eligible employer and employees when authorized by the governing body of the eligible employer by ordinance or resolution as the local government deferred compensation plan for the employees of that local governmental unit; and~~

(3) the governing body certified that the local governmental unit will make such local government deferred compensation plan available to its employees and will administer it in accordance with the provisions of this act, section 457 of the federal internal revenue code of 1986, and amendments thereto, and the deferred compensation plan established by the board under K.S.A. 75-5523, and amendments thereto.

(b) ~~Except for such participation agreements agreement, the director of accounts and reports board or any other state officer or employee shall not be involved nor incur any expense in the administration of such plan as it applies to local governments or their employees a plan adopted by a local governmental unit under subsection (a), except to the extent that such costs are reimbursed under one or both of the methods identified in subsection (c) of 75-5523, and amendments thereto.~~

(c) ~~The state shall not be responsible for any loss incurred by any local governmental unit participant under a local government deferred compensation plan established as provided pursuant to subsection (a).~~

Sec. 17. K.S.A. 75-5529b is hereby amended to read as follows: 75-5529b. ~~The governing body of any local government of the state of Kansas, which is defined as an eligible employer by K.S.A. 74-4902 and which has agreed to participate in the Kansas public employees deferred compensation plan, (a) Subject to the agreement entered into under the provisions of K.S.A. 75-5529a, and amendments thereto, the governing body of a local government unit may establish such conditions as the governing body deems advisable to govern the terms of agreement for the voluntary participation of its employees in such plan the local government deferred compensation plan established by the local governmental unit under the provisions of K.S.A. 75-5529a, and amendments thereto.~~

(b) Any amount of an employee's salary or compensation that is deferred under such ~~agreement~~ plan shall continue to be included as regular compensation for all purposes of computing retirement and pension benefits earned by such employee, but any sum deferred or deducted shall not be subject to any state or local income tax for the year in which such sum is earned but shall be subject to applicable state and local income taxes for the year in which such sum is received by the employee.

Sec. 18. K.S.A. 74-4909, 75-5528, 75-5529, 75-5529a and 75-5529b and K.S.A. 2006 Supp. 74-4911f, 75-5520a, 75-5521, 75-5523, 75-5524, 75-5525 and 75-5529c are hereby repealed.

Sec. 19. This act shall take effect January 1, 2008, and be in force from and after its publication in the statute book.

Approved March 28, 2007.
