SESSION OF 2008

CONFERENCE COMMITTEE REPORT BRIEF
HOUSE SUBSTITUTE FOR SENATE BILL NO. 309

As Agreed to April 2, 2008

Brief*

House Sub. for SB 309, as amended by the Conference Committee, contains provisions related to public retirement plans, including the Kansas Public Employees Retirement System (KPERS) plans and the Washburn University retirement plan. The bill would:

- Remove a June 30, 2008 sunset date for an exemption in the KPERS law regarding working after retirement. The exemption would apply at certain state institutions to nurses who would be exempt from the statutory $20,000 salary cap on retirees who return to work for the same KPERS participating employer from which they retired. The state institutions that would continue include Osawatomie State Hospital, Larned State Hospital, Parsons State Hospital, Rainbow Mental Health Facility, Kansas Neurological Institute, the Kansas Soldiers' Home, and the Kansas Veterans' Home. The bill also would add juvenile correctional facilities at Atchison, Beloit, Larned, and Topeka;

- Make a series of technical amendments to various statutes pertaining to the KPERS law, including the current plans and the authorized new plan that will be effective on July 1, 2009; and

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*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at http://www.kslegislature.org/klrd

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- Exempt retirement benefits from Kansas income tax for the retired employees of Washburn University who were covered by the university's 403(b) retirement plan.

Conference Committee Action

The Conference Committee deleted provisions in House Sub. for SB 309 that would have transferred responsibility for the training and certification of nurse aides (CNAs), medication aides (CMAs), home health aides (HHAs), and paid nutrition assistants (PNAs) from the Kansas Department of Health and Environment (KDHE) to the Board of Nursing. The Board of Nursing would be responsible for the Kansas Nurse Aide Registry and the criminal record check requirements for nursing positions. The Conference Committee recommended that these provisions be added to another Senate bill in the House Appropriations Committee for further action this Session.

The Conference Committee retained the House passed provisions to continue an exemption for nurses at state institutions and to add Juvenile Justice Authority facilities to the state institutions that could hire retired nurses who would not be subjected to a $20,000 limit on earnings after retirement.

The Conference Committee also agreed to add provisions from SB 662, as passed by the Senate, including a number of KPERS technical amendments and a state income tax exemption for retirement benefits of retired employees from Washburn University.

Background

SB 309, as passed by the Senate during the 2007 Session, originally contained recommendations pertaining to the Kansas Health Policy Authority that required a report on or before November 1, 2007. The House Committee on Appropriations deleted these provisions and recommended House Sub. for SB 309 that contained the provisions of HB

2671 pertaining to training and certification of health care positions.

The House Committee of the Whole amended the bill to include HB 2673 as introduced to remove a sunset date on an exemption from the KPERS working after retirement provision for nurses at state institutions and to add nurses at the Juvenile Justice Authority facilities to the state institutions eligible to hire KPERS retirees who could earn more than $20,000 in annual salaries.

Working After Retirement Provisions

The 2005 Legislature approved a three-year exemption to the earnings limitation for certain KPERS members (nurses) who retired and returned to work for the same participating employer from whom they retired. At that time the limit on earnings after retirement was $15,000. The 2006 Legislature raised the cap to $20,000 which is the current KPERS limit on working after retirement.

Representatives of the Department of Social and Rehabilitation Services, Osawatomie State Hospital, and the Juvenile Justice Authority appeared in support of the HB 2673.

The fiscal note on HB 2673 as introduced indicated that participating employers who rehire KPERS retirees will continue to be required to pay an actuarial amount to KPERS in order to reduce the impact on the financing of the retirement plan. The actuarial rate that will be paid in FY 2008 is 6.99 percent, compared with the statutory contribution rate of 6.37 percent that participating employers such as state institutions pay for regular state employees who have not retired. The retired KPERS members will make no employee contributions to KPERS after retirement, nor do they gain additional retirement benefits or years of service credit.

Washburn University Retirement Provisions

The Conference Committee recommends an exemption from state income tax for retirees of Washburn University. Originally, the Senate Subcommittee on KPERS Issues recommended a state income tax exemption item pertaining to the Washburn University retirement plan to be included a KPERS bill. A member of the Subcommittee suggested the provision. The Senate Ways and Means Committee added the provision to Substitute for SB 662, along with three KPERS technical bills described in the next section.

Under current federal law, 403(b) retirement plan contributions made by employees are not taxed, and Kansas conforms to federal law in this matter. Both the Kansas Board of Regents institutions and Washburn University offer 403(b) retirement plans. Under current law, KPERS employees' contributions are added back to adjusted federal gross income and subject to Kansas income tax. There is no Kansas income tax add-back provision for Washburn employees or Regents unclassified employees because they are covered by a 403(b) retirement plan. Because Regents unclassified employees are considered state employees, their retirement benefits are exempt from Kansas income tax, just as KPERS retired employees do not pay Kansas income tax on their retirement benefits. Under current law, Washburn retired employees' retirement benefits are subject to Kansas income tax. The proposed statutory change would exempt retirement benefits from state income tax for retired employees of Washburn University.

No fiscal note was available for this provision, but estimates provided by the Department of Revenue indicated a potential loss of revenue to the State General Fund in FY 2009 could be $140,000 if this provision were enacted. Because individual tax filings are confidential and year-to-year state income tax filings tend to be variable because of individual decisions varying from year to year, any estimate based on past filings may be subject to considerable variation.

Technical Amendments

The Conference Committee recommends a series of technical amendments that passed the Senate in 2008 SB 662 that contained three bills (2007 HB 2077 as introduced, 2008 SB 662 as introduced, and 2008 SB 663 as introduced). All three bills were requested by the KPERS Board of Trustees and each would make a series of technical amendments to the KPERS statutes. The Joint Committee on Pensions, Investments and Benefits recommended all three bills for introduction. The Executive Director of KPERS testified in support of each bill as introduced. A Senate Subcommittee on KPERS Issues recommended to the Senate Ways and Means Committee that the three bills, as introduced, be combined into a Substitute for SB 662.

KPERS estimates no fiscal impact for enactment of the technical amendments. However, if the amendments are not adopted by the 2008 Legislature, current law may not conform to federal requirements, according to legal counsel employed by KPERS. A compliance letter request must be submitted by KPERS to the federal Internal Revenue Service (IRS) by January 31, 2009, asking to continue tax-exempt status for the various plans that KPERS administers

Summary of Technical Amendments

The amendments pertaining to the new KPERS plan for future members that is effective July 1, 2009, would:

- Clarify that employees covered under the new plan, who have forfeited prior and participating service credit under the existing plan due to termination of employment and withdrawal of contributions, may purchase that service credit under the new plan;

- Clarify the rules of service and a service credit portability between the current plan and the new plan to determine membership applicability and vested benefits;

- Expand the definition of "employee" for new plan members to distinguish what elements of the current definition of "employee" are applicable, or not, to new plan members;

- Preserve membership in the existing plan for employees who experience temporary breaks in service but return to covered positions with participating employers within established time frames;

- Amend early retirement provisions for the state correctional officers group to clarify that retirement benefits are actuarially reduced for members taking an early retirement option before their normal retirement date; and

- Allow non-vested members of the existing plan, who complete five or more years of service and remain employed without termination in a non-covered position with the same participating employer, to be granted a vested benefit.

The amendments pertaining to IRS compliance would:

- Update references to the Internal Revenue Code (IRC) and other pertinent federal laws (such as the Uniformed Services Employment and Reemployment Rights Act (USERRA)) as they currently are in effect;

- Incorporate IRS model language, such as model language provided by the IRS regarding minimum distributions under IRC Section 401(a)(9); and

- Reflect recent changes to IRS regulations, such as the final regulations issued by the IRS regarding maximum benefits and contributions under IRC Section 415(b) and 415(c).

The amendments to statutes governing certain withdrawals of contributions and service credit shared between retirement plans would:

- Provide that members may retain the funds from improper withdrawals and forfeit service credit related to the withdrawal. Members would have the option of reinvesting the withdrawn funds at any time by purchasing the withdrawn service, and

- Require members retiring (using credit from two systems) to withdraw their Kansas Police and Firemen's Retirement System (KP&F) account balance during the month immediately following retirement, allowing members to access their funds and eliminating the necessity for maintaining these accounts until the member's death.

retirement, tax, post-retirement work