

As Amended by House Committee

Session of 2012

HOUSE BILL No. 2460

By Joint Committee on Pensions, Investments and Benefits

1-17

1 AN ACT concerning retirement and benefits; relating to the Kansas public  
2 employees retirement system and systems thereunder; employer  
3 affiliation, participation by certain employees and contribution rate;  
4 **applicability of certain federal internal revenue code provisions;**  
5 amending K.S.A. 74-4910 and K.S.A. 2011 Supp. 74-4920 and 74-  
6 **49,123** and repealing the existing sections.

7  
8 *Be it enacted by the Legislature of the State of Kansas:*

9 Section 1. K.S.A. 74-4910 is hereby amended to read as follows: 74-  
10 4910. (1) An eligible employer may join the system on January 1 of any  
11 year. Application for affiliation shall be in the form of a resolution  
12 approved by the governing or legislative body of the eligible employer or  
13 by any other body or officer authorized by law or recognized by the board  
14 to approve the action. *Such application may be for participation with*  
15 *regard to: (a) All employees who are employed by the participating*  
16 *employer on or after the employer's entry date; (b) all employees*  
17 *employed by the participating employer immediately prior to and on the*  
18 *employer's entry date; or (c) all individuals which are referred to in*  
19 *subsections (1)(a) and (1)(b). The application shall include a statement of*  
20 *the group or groups to be covered. Any such application, upon approval by*  
21 *the board of trustees, shall be irrevocable, except that extension of*  
22 *coverage to any of the employee groups referred to in subsections (1)(a) or*  
23 *(1)(b) not covered in the employer's initial application may be obtained by*  
24 *supplemental application to the board, in such form as may be provided by*  
25 *the board, with such coverage to be effective on January 1 of any*  
26 *succeeding year. No city or township shall become a participating*  
27 *employer except by the adoption of a resolution therefor, which shall be*  
28 *published once in the official city or township newspaper or, if there is*  
29 *none, in a newspaper of general circulation in the city or county. No such*  
30 *resolution shall take effect until 60 days after its final publication. If*  
31 *within 60 days of its final publication a petition signed by electors equal in*  
32 *number to not less than 10% of the electors who voted at the last preceding*  
33 *regular election in the township, in the case of townships, the last regular*  
34 *city election in the city, in the case of cities is filed in the office of the*  
35 *clerk of such city, or township demanding that such resolution be*  
36 *submitted to a vote of the electors, the resolution shall not take effect until*

1 submitted to a referendum and approved by a majority of the electors  
 2 voting thereon. A  $\frac{2}{3}$  vote of the members-elect of the governing body shall  
 3 be necessary for the affiliation of any eligible employer other than a city or  
 4 township. An application for affiliation with the system shall be filed with  
 5 the board not later than 30 days prior to the date participation is to begin,  
 6 except as such time limit may be extended by the board. Upon the filing of  
 7 a certified copy of such resolutions with the board an election pursuant to  
 8 this section shall be irrevocable, and the employer shall become a  
 9 participating employer on January 1 of the year immediately following the  
 10 filing of such election with the board.

11 (2) The state of Kansas in its capacity as an eligible employer, shall  
 12 become, by operation of law, a participating employer on the first entry  
 13 date. The Kansas turnpike authority shall not become a participating  
 14 employer nor shall its officers or employees be covered by the retirement  
 15 system until such time as its governing body by a  $\frac{2}{3}$  vote of the members  
 16 of such governing body adopts a resolution for affiliation and files the  
 17 same in the same manner and on the same conditions as in the case of an  
 18 eligible employer other than a city or township.

19 (3) If a participating employer is paying or has paid the salary or  
 20 other compensation of the judge, clerk or any other employee, whether  
 21 elective or appointive, such judge, clerk or other employee of such court or  
 22 courts, whether elective or appointive, shall be deemed an employee of the  
 23 participating employer. Such employee shall be governed by the  
 24 provisions governing other eligible employees of such participating  
 25 employer. Any participating employer which has not heretofore included  
 26 such employees as eligible employees under the retirement system shall on  
 27 the first day of the month coinciding with or following the effective date of  
 28 this act include such employees if otherwise eligible as eligible employees  
 29 under the retirement system. Such employees, whether elective or  
 30 appointive, if employed on the employer's entry date may elect to pay  
 31 ~~forthwith~~ the employee contributions from the employer's entry date and  
 32 thereby be governed by the provisions governing other employees  
 33 employed by the participating employer on entry date except that no such  
 34 employee shall be considered to be *a new employees employee* on the  
 35 first day of the month coinciding with or following the effective date of  
 36 this act and commence making employee contributions in compliance with  
 37 other provisions governing the retirement system and the participating  
 38 employer shall make the employer contributions in accordance with the  
 39 alternative elected by the employee and other provisions governing the  
 40 retirement system.

41 (4) Any employer whose employees are covered by social security  
 42 and who otherwise do not meet the provisions of subsection (13) of K.S.A.  
 43 74-4902, and amendments thereto, may elect to affiliate under this section

1 upon meeting the definition of a governmental entity or instrumentality as  
 2 determined by the system. If, subsequent to such determination, the  
 3 United States internal revenue service determines that such employer does  
 4 not meet the definition of a governmental entity or instrumentality, such  
 5 affiliation shall be null and void and all employee accrued rights  
 6 associated with such affiliation shall be null and void and the system shall  
 7 refund such amounts presently credited to each employee's account and an  
 8 equivalent amount to the employer for each employee. The provisions of  
 9 this subsection shall apply to current and future participating employers.

10 (5) For affiliations on and after January 1, 1999, any eligible  
 11 employer, prior to the filing of an application for affiliation under this  
 12 system, shall request the board of trustees to submit a proposal for such  
 13 affiliation including an estimate of the employer's contribution rate  
 14 necessary to comply with the actuarial standard of this system. Such  
 15 eligible employer shall furnish all necessary data from which such  
 16 proposal is prepared, and shall pay all costs involved.

17 Sec. 2. K.S.A. 2011 Supp. 74-4920 is hereby amended to read as  
 18 follows: 74-4920. (1) (a) Upon the basis of each annual actuarial valuation  
 19 and appraisal as provided for in subsection (3)(a) of K.S.A. 74-4908, and  
 20 amendments thereto, the board shall certify, on or before July 15 of each  
 21 year, to the division of the budget in the case of the state and to the agent  
 22 for each other participating employer an actuarially determined estimate of  
 23 the rate of contribution which will be required, together with all  
 24 accumulated contributions and other assets of the system, to be paid by  
 25 each such participating employer to pay all liabilities which shall exist or  
 26 accrue under the system, including amortization of the actuarial accrued  
 27 liability as determined by the board. The board shall determine the  
 28 actuarial cost method to be used in annual actuarial valuations, to  
 29 determine the employer contribution rates that shall be certified by the  
 30 board. Such certified rate of contribution, amortization methods and  
 31 periods and actuarial cost method shall be based on the standards set forth  
 32 in subsection (3)(a) of K.S.A. 74-4908, and amendments thereto, and shall  
 33 not be based on any other purpose outside of the needs of the system.

34 (b) (i) For employers affiliating on and after January 1, 1999, upon  
 35 the basis of an annual actuarial valuation and appraisal of the system  
 36 conducted in the manner provided for in K.S.A. 74-4908, and amendments  
 37 thereto, the board shall certify, on or before July 15 of each year to each  
 38 such employer an actuarially determined estimate of the rate of  
 39 contribution which shall be required to be paid by each such employer to  
 40 pay all of the liabilities which shall accrue under the system from and after  
 41 the entry date as determined by the board, upon recommendation of the  
 42 actuary. Such rate shall be termed the employer's participating service  
 43 contribution and shall be uniform for all participating employers. Such

1 additional liability shall be amortized as determined by the board. For all  
2 participating employers described in this section, the board shall determine  
3 the actuarial cost method to be used in annual actuarial valuations to  
4 determine the employer contribution rates that shall be certified by the  
5 board.

6 (ii) The board shall determine for each such employer separately an  
7 amount sufficient to amortize all liabilities for prior service costs which  
8 shall have accrued at the time of entry into the system. On the basis of  
9 such determination the board shall annually certify to each such employer  
10 separately an actuarially determined estimate of the rate of contribution  
11 which shall be required to be paid by that employer to pay all of the  
12 liabilities for such prior service costs. Such rate shall be termed the  
13 employer's prior service contribution.

14 (2) The division of the budget and the governor shall include in the  
15 budget and in the budget request for appropriations for personal services  
16 the sum required to satisfy the state's obligation under this act as certified  
17 by the board and shall present the same to the legislature for allowance and  
18 appropriation.

19 (3) Each other participating employer shall appropriate and pay to the  
20 system a sum sufficient to satisfy the obligation under this act as certified  
21 by the board.

22 (4) Each participating employer is hereby authorized to pay the  
23 employer's contribution from the same fund that the compensation for  
24 which such contribution is made is paid from or from any other funds  
25 available to it for such purpose. Each political subdivision, other than an  
26 instrumentality of the state, which is by law authorized to levy taxes for  
27 other purposes, may levy annually at the time of its levy of taxes, a tax  
28 which may be in addition to all other taxes authorized by law for the  
29 purpose of making its contributions under this act and, in the case of cities  
30 and counties, to pay a portion of the principal and interest on bonds issued  
31 under the authority of K.S.A. 12-1774, and amendments thereto, by cities  
32 located in the county, which tax, together with any other fund available,  
33 shall be sufficient to enable it to make such contribution. In lieu of levying  
34 the tax authorized in this subsection, any taxing subdivision may pay such  
35 costs from any employee benefits contribution fund established pursuant to  
36 K.S.A. 12-16,102, and amendments thereto. Each participating employer  
37 which is not by law authorized to levy taxes as described above, but which  
38 prepares a budget for its expenses for the ensuing year and presents the  
39 same to a governing body which is authorized by law to levy taxes as  
40 described above, may include in its budget an amount sufficient to make  
41 its contributions under this act which may be in addition to all other taxes  
42 authorized by law. Such governing body to which the budget is submitted  
43 for approval, may levy a tax sufficient to allow the participating employer

1 to make its contributions under this act, which tax, together with any other  
2 fund available, shall be sufficient to enable the participating employer to  
3 make the contributions required by this act.

4 (5) (a) The rate of contribution certified to a participating employer as  
5 provided in this section shall apply during the fiscal year of the  
6 participating employer which begins in the second calendar year following  
7 the year of the actuarial valuation.

8 (b) (i) Except as specifically provided in this section, for fiscal years  
9 commencing in calendar year 1996 and in each subsequent calendar year,  
10 the rate of contribution certified to the state of Kansas shall in no event  
11 exceed the state's contribution rate for the immediately preceding fiscal  
12 year by more than 0.2% of the amount of compensation upon which  
13 members contribute during the period.

14 (ii) Except as specifically provided in this subsection, for the fiscal  
15 years commencing in the following calendar years, the rate of contribution  
16 certified to the state of Kansas and to the participating employers under  
17 K.S.A. 74-4931, and amendments thereto, shall in no event exceed the  
18 state's contribution rate for the immediately preceding fiscal year by more  
19 than the following amounts expressed as a percentage of compensation  
20 upon which members contribute during the period: (A) For the fiscal year  
21 commencing in calendar year 2005, an amount not to exceed more than  
22 0.4% of the amount of the immediately preceding fiscal year; (B) for the  
23 fiscal year commencing in calendar year 2006, an amount not to exceed  
24 more than 0.5% of the amount of the immediately preceding fiscal year;  
25 and (C) for the fiscal year commencing in calendar year 2007 and in each  
26 subsequent calendar year, an amount not to exceed more than 0.6% of the  
27 amount of the immediately preceding fiscal year.

28 (iii) Except as specifically provided in this section, for fiscal years  
29 commencing in calendar year 1997 and in each subsequent calendar year,  
30 the rate of contribution certified to participating employers other than the  
31 state of Kansas shall in no event exceed such participating employer's  
32 contribution rate for the immediately preceding fiscal year by more than  
33 0.15% of the amount of compensation upon which members contribute  
34 during the period.

35 (iv) Except as specifically provided in this subsection, for the fiscal  
36 years commencing in the following calendar years, the rate of contribution  
37 certified to participating employers other than the state of Kansas shall in  
38 no event exceed the contribution rate for such employers for the  
39 immediately preceding fiscal year by more than the following amounts  
40 expressed as a percentage of compensation upon which members  
41 contribute during the period: (A) For the fiscal year commencing in  
42 calendar year 2006, an amount not to exceed more than 0.4% of the  
43 amount of the immediately preceding fiscal year; (B) for the fiscal year

1 commencing in calendar year 2007, an amount not to exceed more than  
 2 0.5% of the amount of the immediately preceding fiscal year; and (C) for  
 3 the fiscal year commencing in calendar year 2008 and in each subsequent  
 4 calendar year, an amount not to exceed more than 0.6% of the amount of  
 5 the immediately preceding fiscal year.

6 (v) As part of the annual actuarial valuation, there shall be a separate  
 7 employer rate of contribution calculated for the state of Kansas, a separate  
 8 employer rate of contribution calculated for participating employers under  
 9 K.S.A. 74-4931, and amendments thereto, a combined employer rate of  
 10 contribution calculated for the state of Kansas and participating employers  
 11 under K.S.A. 74-4931, and amendments thereto, and a separate employer  
 12 rate of contribution calculated for all other participating employers.

13 (vi) There shall be a combined employer rate of contribution certified  
 14 to the state of Kansas and participating employers under K.S.A. 74-4931,  
 15 and amendments thereto. There shall be a separate employer rate of  
 16 contribution certified to all other participating employers.

17 (vii) If the combined employer rate of contribution calculated for the  
 18 state of Kansas and participating employers under K.S.A. 74-4931, and  
 19 amendments thereto, is greater than the separate employer rate of  
 20 contribution for the state of Kansas, the difference in the two rates applied  
 21 to the actual payroll of the state of Kansas for the applicable fiscal year  
 22 shall be calculated. This amount shall be certified by the board for deposit  
 23 as additional employer contributions to the retirement benefit  
 24 accumulation reserve for the participating employers under K.S.A. 74-  
 25 4931, and amendments thereto.

26 (6) The actuarial cost of any legislation enacted in the 1994 session of  
 27 the Kansas legislature will be included in the June 30, 1994, actuarial  
 28 valuation in determining contribution rates for participating employers.

29 (7) The actuarial cost of the provisions of K.S.A. 74-4950i, *and*  
 30 *amendments thereto*, will be included in the June 30, 1998, actuarial  
 31 valuation in determining contribution rates for participating employers.  
 32 The actuarial accrued liability incurred for the provisions of K.S.A. 74-  
 33 4950i, *and amendments thereto*, shall be amortized over 15 years.

34 (8) Except as otherwise provided by law, the actuarial cost of any  
 35 legislation enacted by the Kansas legislature, except the actuarial cost of  
 36 K.S.A. 74-49,114a, and amendments thereto, shall be in addition to the  
 37 employer contribution rates certified for the employer contribution rate in  
 38 the fiscal year immediately following such enactment.

39 (9) Notwithstanding the provisions of subsection (8), the actuarial  
 40 cost of the provisions of K.S.A. 74-49,109 et seq., and amendments  
 41 thereto, shall be first reflected in employer contribution rates effective with  
 42 the first day of the first payroll period for the fiscal year 2005. The  
 43 actuarial accrued liability incurred for the provisions of K.S.A. 74-49,109

1 et seq., and amendments thereto, shall be amortized over 10 years.

2 (10) The cost of the postretirement benefit payment provided  
3 pursuant to the provisions of K.S.A. 2011 Supp. 74-49,114b, and  
4 amendments thereto, for retirants other than local retirants as described in  
5 subsection (11) or insured disability benefit recipients shall be paid in the  
6 fiscal year commencing on July 1, 2007.

7 (11) The actuarial accrued liability incurred for the provisions of  
8 K.S.A. 2011 Supp. 74-49,114b, and amendments thereto, for the KPERS  
9 local group and retirants who were employees of local employers which  
10 affiliated with the Kansas police and firemen's retirement system shall be  
11 amortized over 10 years.

12 (12) The cost of the postretirement benefit payment provided  
13 pursuant to the provisions of K.S.A. 2011 Supp. 74-49,114c, and  
14 amendments thereto, for retirants other than local retirants as described in  
15 subsection (13) or insured disability benefit recipients shall be paid in the  
16 fiscal year commencing on July 1, 2008.

17 (13) The actuarial accrued liability incurred for the provisions of  
18 K.S.A. 2011 Supp. 74-49,114c, and amendments thereto, for the KPERS  
19 local group and retirants who were employees of local employers which  
20 affiliated with the Kansas police and firemen's retirement system shall be  
21 amortized over 10 years.

22 (14) The board with the advice of the actuary may fix the contribution  
23 rates for participating employers joining the system after one year from the  
24 first entry date or for employers who exercise the option contained in  
25 K.S.A. 74-4912, and amendments thereto, at rates different from the rate  
26 fixed for employers joining within one year of the first entry date.

27 ~~(15) For employers affiliating on and after January 1, 1999, the rates~~  
28 ~~of contribution certified to the participating employer as provided in this~~  
29 ~~section shall apply during the fiscal year immediately following such~~  
30 ~~certification, but the rate of contribution during the first year following the~~  
31 ~~employer's entry date shall be equal to 7% of the amount of compensation~~  
32 ~~on which members contribute during the year. Any amount of such first~~  
33 ~~year's contribution which may be in excess of the necessary current service~~  
34 ~~contribution shall be credited by the board to the respective employer's~~  
35 ~~prior service liability.~~

36 ~~(16)~~ (15) Employer contributions shall in no way be limited by any  
37 other act which now or in the future establishes or limits the compensation  
38 of any member.

39 ~~(17)~~ (16) Notwithstanding any provision of law to the contrary, each  
40 participating employer shall remit quarterly, or as the board may otherwise  
41 provide, all employee deductions and required employer contributions to  
42 the executive director for credit to the Kansas public employees retirement  
43 fund within three days after the end of the period covered by the

1 remittance by electronic funds transfer. Remittances of such deductions  
2 and contributions received after such date are delinquent. Delinquent  
3 payments due under this subsection shall be subject to interest at the rate  
4 established for interest on judgments under subsection (a) of K.S.A. 16-  
5 204, and amendments thereto. At the request of the board, delinquent  
6 payments which are due or interest owed on such payments, or both, may  
7 be deducted from any other moneys payable to such employer by any  
8 department or agency of the state.

9 **Sec. 3. K.S.A. 2011 Supp. 74-49,123 is hereby amended to read as**  
10 **follows: 74-49,123. (a) This section applies to the Kansas public**  
11 **employees retirement system and to all other public retirement plans**  
12 **administered by the board of trustees.**

13 **(b) As used in this section:**

14 **(1) "Federal internal revenue code" means the federal internal**  
15 **revenue code of 1954 or 1986, as amended and as applicable to a**  
16 **governmental plan as in effect on July 1, 2008; and**

17 **(2) "retirement plan" includes the Kansas public employees**  
18 **retirement system and all other Kansas public retirement plans and**  
19 **benefit structures, which are administered by the board.**

20 **(c) In addition to the federal internal revenue code provisions**  
21 **otherwise noted in each retirement plan's law, and in order to satisfy**  
22 **the applicable requirements under the federal internal revenue code,**  
23 **the retirement plans shall be subject to the following provisions,**  
24 **notwithstanding any other provision of the retirement plan's law:**

25 **(1) The board shall distribute the corpus and income of the**  
26 **retirement plan to the members and their beneficiaries in accordance**  
27 **with the retirement plan's law. At no time prior to the satisfaction of**  
28 **all liabilities with respect to members and their beneficiaries shall any**  
29 **part of the corpus and income be used for, or diverted to, purposes**  
30 **other than the exclusive benefit of the members and their**  
31 **beneficiaries.**

32 **(2) Forfeitures arising from severance of employment, death or**  
33 **for any other reason may not be applied to increase the benefits any**  
34 **member would otherwise receive under the retirement plan's law.**  
35 **However, forfeitures may be used to reduce an employer's**  
36 **contribution.**

37 **(3) All benefits paid from the retirement plan shall be distributed**  
38 **in accordance with a *good faith interpretation* of the requirements of**  
39 **section 401(a)(9) of the federal internal revenue code and the**  
40 **regulations under that section. Notwithstanding any other provision of**  
41 **these rules and regulations, effective on and after January 1, 2003, the**  
42 **retirement plan is subject to the following provisions:**

43 **(A) Benefits must begin by the required beginning date, which is**



1 the later of April 1 of the calendar year following the calendar year in  
2 which the member reaches 70<sup>1</sup>/<sub>2</sub> years of age or April 1 of the calendar  
3 year following the calendar year in which the member terminates  
4 employment. If a member fails to apply for retirement benefits by  
5 April 1 of the calendar year following the calendar year in which such  
6 member reaches 70<sup>1</sup>/<sub>2</sub> years of age or April 1 of the calendar year  
7 following the calendar year in which such member terminates  
8 employment, whichever is later, the board will begin distributing the  
9 benefit as required by this section.

10 (B) The member's entire interest must be distributed over the  
11 member's life or the lives of the member and a designated beneficiary,  
12 or over a period not extending beyond the life expectancy of the  
13 member or of the member and a designated beneficiary. Death  
14 benefits must be distributed in accordance with section 401 (a)(9)  
15 of the federal internal revenue code, including the incidental death  
16 benefit requirement in section 401 (a)(9)(G) of the federal internal  
17 revenue code, and the regulations implementing that section.

18 (C) The life expectancy of a member, the member's spouse or the  
19 member's beneficiary may not be recalculated after the initial  
20 determination for purposes of determining benefits.

21 (D) If a member dies after the required distribution of benefits  
22 has begun, the remaining portion of the member's interest must be  
23 distributed at least as rapidly as under the method of distribution  
24 before the member's death and no longer than the remaining period  
25 over which distributions commenced.

26 (E) If a member dies before required distribution of the  
27 member's benefits has begun, the member's entire interest must be  
28 either:

29 (i) In accordance with federal regulations, distributed over the  
30 life or life expectancy of the designated beneficiary, with the  
31 distributions beginning no later than December 31 of the calendar  
32 year immediately following the calendar year of the member's death;  
33 or

34 (ii) distributed by December 31 of the calendar year containing  
35 the fifth anniversary of the member's death.

36 (F) The amount of an annuity paid to a member's beneficiary  
37 may not exceed the maximum determined under the incidental death  
38 benefit requirement of the federal internal revenue code.

39 (G) The death and disability benefits provided by a retirement  
40 plan are limited by the incidental benefit rule set forth in section  
41 401(a)(9)(G) of the federal internal revenue code and treasury  
42 regulation 1.401-1(b)(1)(i).

43 (4) Distributions from the retirement plans may be made only

1 upon retirement, separation from service, disability or death.

2 (5) The board or its designee may not:

3 (A) Determine eligibility for benefits;

4 (B) compute rates of contribution; or

5 (C) compute benefits of members or beneficiaries, in a manner  
6 that discriminates in favor of members who are considered officers,  
7 supervisors or highly compensated, as prohibited under section 401(a)  
8 (4) of the federal internal revenue code.

9 (6) Subject to the provisions of this subsection, benefits paid  
10 from, and employee contributions made to, the retirement plans shall  
11 not exceed the maximum benefits and the maximum annual additions,  
12 respectively, permissible under section 415 of the federal internal  
13 revenue code.

14 (A) Before January 1, 1995, a member may not receive an annual  
15 benefit that exceeds the limits specified in section 415(b) of the federal  
16 internal revenue code, subject to the applicable adjustments in that  
17 section. Beginning January 1, 1995, a participant may not receive an  
18 annual benefit that exceeds the dollar amount specified in section  
19 415(b)(1)(A) of the federal internal revenue code, subject to the  
20 applicable adjustments in section 415 of the federal internal revenue  
21 code.

22 (B) Notwithstanding any other provision of law to the contrary,  
23 the board may modify a request by a participant to make a  
24 contribution to the retirement plans if the amount of the contribution  
25 would exceed the limits under section 415(c) or 415(n) of the federal  
26 internal revenue code subject to the following:

27 (i) Where the retirement plan's law requires a lump-sum  
28 payment, for the purchase of service credit, the board may establish a  
29 periodic payment plan in order to avoid a contribution in excess of the  
30 limits under section 415(c) or 415(n) of the federal internal revenue  
31 code.

32 (ii) If the board's option under subdivision (i) will not avoid a  
33 contribution in excess of the limits under section 415(c) or 415(n) of  
34 the federal internal revenue code, the board shall reduce or deny the  
35 contribution.

36 (C) Effective for permissive service credit contributions made in  
37 limitation years beginning after December 31, 1997, if an active  
38 member makes one or more contributions to purchase permissive  
39 service credit under a retirement plan, then the requirements of this  
40 section shall be treated as met only if:

41 (i) The requirements of section 415(b) of the federal internal  
42 revenue code are met, determined by treating the accrued benefit  
43 derived from all such contributions as an annual benefit for purposes

1 of such section; or

2 (ii) the requirements of section 415(c) of the federal internal  
3 revenue code are met, determined by treating all such contributions as  
4 annual additions for purposes of such section. For purposes of  
5 applying subparagraph (i) a retirement plan shall not fail to meet the  
6 reduced limit under section 415(b)(2)(C) of the federal internal  
7 revenue code solely by reason of this paragraph (C), and for purposes  
8 of applying subparagraph (ii), a retirement plan shall not fail to meet  
9 the percentage limitation under section 415(c)(1)(B) of the federal  
10 internal revenue code solely by reason of this paragraph.

11 (iii) For purposes of this paragraph, the term "permissive service  
12 credit" means service credit:

13 (a) Specifically recognized by a retirement plan's law for  
14 purposes of calculating a member's benefit under that retirement  
15 plan;

16 (b) which such member has not received under a retirement plan;  
17 and

18 (c) which such member may receive under a retirement plan's  
19 law only by making a voluntary additional contribution, in an amount  
20 determined under the retirement plan's law and procedures  
21 established by the board, which does not exceed the amount necessary to  
22 fund the benefit attributable to such service credit.

23 (iv) A retirement plan shall fail to meet the requirements of this  
24 paragraph if the retirement plan's law specifically provides for a  
25 purchase of nonqualified service purchase, and if:

26 (a) More than five years of nonqualified service credit are taken  
27 into account for purposes of this paragraph; or

28 (b) any nonqualified service credit is taken into account under  
29 this paragraph before the member has at least five years of  
30 participation under a retirement plan. For purposes of this paragraph,  
31 effective for permissive service credit contributions made in limitation  
32 years beginning after December 31, 1997, the term "nonqualified  
33 service credit" means the same as provided in section 415(n)(3)(C) of  
34 the federal internal revenue code.

35 (v) In the case of a trustee-to-trustee transfer after December 31,  
36 2001, to which section 403(b)(13)(A) or 457(e)(17)(A) of the federal  
37 internal revenue code applies, without regard to whether the transfer  
38 is made between plans maintained by the same employer:

39 (a) The limitations of subparagraph (iv) shall not apply in  
40 determining whether the transfer is for the purchase of permissive  
41 service credit; and

42 (b) the distribution rules applicable under federal law to a  
43 retirement plan shall apply to such amounts and any benefits

1 attributable to such amounts.

2 (vi) For an eligible member, the limitation of section 415(c)(1) of  
3 the federal internal revenue code shall not be applied to reduce the  
4 amount of permissive service credit which may be purchased to an  
5 amount less than the amount which was allowed to be purchased  
6 under the terms of the statute as in effect on August 5, 1997. For  
7 purposes of this subparagraph, an eligible member is an individual  
8 who first became a member in the retirement plan before January 1,  
9 1998.

10 (D) Subject to approval by the internal revenue service, the board  
11 shall maintain a qualified governmental excess benefit arrangement  
12 under section 415(m) of the federal internal revenue code. The board  
13 shall establish the necessary and appropriate procedures for the  
14 administration of such benefit arrangement under the federal internal  
15 revenue code. The amount of any annual benefit that would exceed the  
16 limitations imposed by section 415 of the federal internal revenue code  
17 shall be paid from this benefit arrangement. The amount of any  
18 contribution that would exceed the limitations imposed by section 415  
19 of the federal internal revenue code shall be credited to this benefit  
20 arrangement. The qualified excess benefit arrangement shall be a  
21 separate portion of the retirement plan. The qualified excess benefit  
22 arrangement is subject to the following requirements:

23 (i) The benefit arrangement shall be maintained solely for the  
24 purpose of providing to participants in the retirement plans that part  
25 of the participant's annual benefit otherwise payable under the terms  
26 of the act that exceeds the limitations on benefits imposed by section  
27 415 of the federal internal revenue code; and

28 (ii) participants do not have an election, directly or indirectly, to  
29 defer compensation to the excess benefit arrangement.

30 (E) For purposes of applying these limits only and for no other  
31 purpose, the definition of compensation where applicable shall be  
32 compensation actually paid or made available during a limitation  
33 year, except as noted below and as permitted by treasury regulation  
34 section 1.415(c)-2. Specifically, compensation shall be defined as wages  
35 within the meaning of section 3401(a) of the federal internal revenue  
36 code and all other payments of compensation to an employee by an  
37 employer for which the employer is required to furnish the employee a  
38 written statement under sections 6041(d), 6051(a)(3) and 6052 of the  
39 federal internal revenue code. Compensation shall be determined  
40 without regard to any rules under section 3401(a) of the federal  
41 internal revenue code that limit the remuneration included in wages  
42 based on the nature or location of the employment or the services  
43 performed, such as the exception for agricultural labor in section

1 3401(a)(2) of the federal internal revenue code.

2 (i) However, for limitation years beginning after December 31,  
3 1997, compensation shall also include amounts that would otherwise  
4 be included in compensation but for an election under sections 125(a),  
5 402(e)(3), 402(h)(1)(B), 402(k) or 457(b) of the federal internal revenue  
6 code. For limitation years beginning after December 30, 2000,  
7 compensation shall also include any elective amounts that are not  
8 includable in the gross income of the employee by reason of section  
9 132(f)(4) of the federal internal revenue code.

10 (ii) The definition of compensation shall exclude employee  
11 contributions picked up under section 414(h)(2) of the federal internal  
12 revenue code.

13 (iii) For limitation years beginning on and after January 1, 2007,  
14 compensation for the limitation year will also include compensation  
15 paid by the later of ~~2~~<sup>2½</sup> two and a half months after an employee's  
16 severance from employment or the end of the limitation year that  
17 includes the date of the employee's severance from employment if:

18 (a) The payment is regular compensation for services during the  
19 employee's regular working hours or compensation for services  
20 outside the employee's regular working hours, such as overtime or  
21 shift differential, commissions, bonuses or other similar payments, and  
22 absent a severance from employment, the payments would have been  
23 paid to the employee while the employee continues in employment  
24 with the employer; or

25 (b) the payment is for unused accrued *bona fide* sick, vacation or  
26 other leave that the employee would have been able to use if  
27 employment had continued; or

28 (c) for limitation years beginning on and after January 1, 2012, the  
29 payment is made pursuant to a nonqualified unfunded deferred  
30 compensation plan, but only if the payment would have been paid to the  
31 member at the same time if the member had continued employment with  
32 the employer and only to the extent that the payment is includible in the  
33 member's gross income.

34 (iv) Any payments not described in paragraph (iii) are not considered  
35 compensation if paid after severance from employment, even if they are  
36 paid within two and a half months following severance from employment,  
37 except for payments to the individual who does not currently perform  
38 services for the employer by reason of qualified military service, within  
39 the meaning of section 414(u)(1) of the federal internal revenue code, to  
40 the extent these payments do not exceed the amounts the individual would  
41 have received if the individual had continued to perform services for the  
42 employer rather than entering qualified military service.

43 (v) An employee who is in qualified military service, within the

1 *meaning of section 414(u)(1) of the federal internal revenue code, shall be*  
 2 *treated as receiving compensation from the employer during such period*  
 3 *of qualified military service equal to: (a) The compensation the*  
 4 *employee would have received during such period if the employee were*  
 5 *not in qualified military service, determined based on the rate of pay the*  
 6 *employee would have received from the employer but for the absence*  
 7 *during the period of qualified military service; or (b) if the*  
 8 *compensation the employee would have received during such period was*  
 9 *not reasonably certain, the employee's average compensation from the*  
 10 *employer during the twelve-month period immediately preceding the*  
 11 *qualified military service, or if shorter, the period of employment*  
 12 *immediately preceding the qualified military service.*

13 **(iv)(vi) Back pay, within the meaning of treasury regulation**  
 14 **section 1.415(c)-2(g)(8), shall be treated as compensation for the**  
 15 **limitation year to which the back pay relates to the extent the back**  
 16 **pay represents wages and compensation that would otherwise be**  
 17 **included under this definition.**

18 **(7) On and after January 1, 2009, for purposes of applying the**  
 19 **limits under section 415(b) of the federal internal revenue code, the**  
 20 **following shall apply:**

21 **(A) A member's applicable limit shall be applied to the member's**  
 22 **annual benefit in the first limitation year without regard to any**  
 23 **automatic cost-of-living increases;**

24 **(B) to the extent the member's annual benefit equals or exceeds**  
 25 **such limit, the member shall no longer be eligible for cost-of-living**  
 26 **increases until such time as the benefit plus the accumulated increases**  
 27 **are less than such limit;**

28 **(C) thereafter, in any subsequent limitation year, the member's**  
 29 **annual benefit including any automatic cost-of-living increase**  
 30 **applicable shall be tested under the then applicable benefit limit**  
 31 **including any adjustment to the dollar limit under section 415(b)(1)**  
 32 **(A) or 415(d) of the federal internal revenue code and the regulations**  
 33 **thereunder; and**

34 **(D) in no event shall a member's annual benefit payable from a**  
 35 **retirement plan in any limitation year be greater than the limit**  
 36 **applicable at the annuity starting date, as increased in subsequent**  
 37 **years pursuant to section 415(d) of the federal internal revenue code**  
 38 **and the regulations thereunder. If the form of benefit without regard**  
 39 **to the automatic benefit increase feature is not a straight life annuity,**  
 40 **then the preceding sentence is applied by reducing the limit under**  
 41 **section 415(b) of the federal internal revenue code applicable at the**  
 42 **annuity starting date to an actuarially equivalent amount determined**  
 43 **using the assumptions specified in treasury regulation section**

1 **1.415(b)-1(c)(2)(ii)** that take into account the death benefits under the  
2 form of benefit. This subsection applies to distributions made on and  
3 after January 1, 1993. A distributee may elect to have any portion of  
4 an eligible rollover distribution paid directly to an eligible retirement  
5 plan specified by the distributee in a transfer made from the  
6 retirement system.

7 (i) An eligible rollover distribution is any distribution of all or  
8 any portion of the balance to the credit of the distributee, except that  
9 an eligible rollover distribution does not include: (a) Any distribution  
10 that is one of a series of substantially equal periodic payments, not less  
11 frequently than annually, made for the life or the life expectancy of the  
12 distributee or the joint lives or joint life expectancies of the distributee  
13 and the distributee's designated beneficiary or for a specified period of  
14 10 years or more; (b) any distribution to the extent such distribution is  
15 required under section 401(a)(9) of the federal internal revenue code;  
16 (c) the portion of any distribution that is not includable in gross  
17 income; and (d) any other distribution that is reasonably expected to  
18 total less than \$200 during the year. Effective January 1, 2002, a  
19 portion of a distribution shall not fail to be an eligible rollover  
20 distribution merely because the portion consists of after-tax employee  
21 contributions that are not includable in gross income. However, such  
22 portion may be transferred only to an individual retirement account  
23 or annuity described in section 408(a) or (b) of the federal internal  
24 revenue code, or to a qualified defined contribution plan described in  
25 section 401(a) of the federal internal revenue code or to a qualified  
26 plan described in section 403(a) of the federal internal revenue code,  
27 *that agrees to separately account for amounts so transferred and earnings*  
28 *on such amounts, including separately accounting for the portion of the*  
29 *distribution that is includible in gross income and the portion of the*  
30 *distribution that is not so includible* or on or after January 1, 2007, to a  
31 qualified defined benefit plan described in section 401(a) of the federal  
32 internal revenue code or to an annuity contract described in section  
33 403(b) of the federal internal revenue code, that agrees to separately  
34 account for amounts so transferred and earnings thereon, including  
35 separately accounting for the portion of the distribution that is  
36 includible in gross income and the portion of the distribution that is  
37 not so includible.

38 (ii) An eligible retirement plan is any of the following that accepts  
39 the distributee's eligible rollover distribution:

40 (a) An individual retirement account described in section 408(a)  
41 of the federal internal revenue code;

42 (b) an individual retirement annuity described in section 408(b)  
43 of the federal internal revenue code;

- 1 (c) an annuity plan described in section 403(a) of the federal  
2 internal revenue code;
- 3 (d) a qualified trust described in section 401(a) of the federal  
4 internal revenue code;
- 5 (e) effective January 1, 2002, an annuity contract described in  
6 section 403(b) of the federal internal revenue code;
- 7 (f) effective January 1, 2002, a plan eligible under section 457(b)  
8 of the federal internal revenue code that is maintained by a state,  
9 political subdivision of a state or any agency or instrumentality of a  
10 state or a political subdivision of a state that agrees to separately  
11 account for amounts transferred into the plan from a retirement plan;  
12 or
- 13 (g) effective January 1, 2008, a roth IRA described in section  
14 408(A) of the federal internal revenue code.
- 15 (iii) Effective January 1, 2002, the definition of eligible rollover  
16 distribution also includes a distribution to a surviving spouse, or to a  
17 spouse or former spouse who is an alternate payee under a domestic  
18 relations order, as defined in section 414(p) of the federal internal  
19 revenue code.
- 20 (iv) A distributee includes an employee or former employee. It  
21 also includes the employee's or former employee's surviving spouse  
22 and the employee's or former employee's spouse or former spouse who  
23 is the alternate payee under a qualified domestic relations order, as  
24 defined in section 414(p) of the federal internal revenue code. Effective  
25 July 1, 2007, a distributee further includes a nonspouse beneficiary  
26 who is a designated beneficiary as defined by section 401(a)(9)(E)  
27 of the federal internal revenue code. However, a nonspouse beneficiary  
28 may rollover the distribution only to an individual retirement account  
29 or individual retirement annuity established for the purpose of  
30 receiving the distribution and the account or annuity will be treated as  
31 an "inherited" individual retirement account or annuity.
- 32 (v) A direct rollover is a payment by the retirement system to the  
33 eligible retirement plan specified by the distributee.
- 34 (8) Notwithstanding any law to the contrary, the board may  
35 accept a direct or indirect eligible rollover distributions for the  
36 purpose of the purchase of service credit. In addition, the board may  
37 accept a direct trustee to trustee transfer from a deferred  
38 compensation plan under section 457(b) of the federal internal  
39 revenue code or a tax sheltered annuity under section 403(b) of the  
40 federal internal revenue code for: (A) The purchase of permissive  
41 service credit, as defined under section 415(n)(3)(A) of the federal  
42 internal revenue code; or (B) a repayment to which section 415 of the  
43 federal internal revenue code does not apply pursuant to section



1 415(k)(3) of the federal internal revenue code. Any such transfer shall  
2 be allowed as provided in this subsection to the extent permitted by  
3 law, subject to any conditions, proofs or acceptance established or  
4 required by the board or the board's designee.

5 (9) Where required by the act, an employer shall pick up and pay  
6 contributions that would otherwise be payable by members of a  
7 retirement plan in accordance with section 414(h)(2) of the federal  
8 internal revenue code as follows:

9 (A) The contributions, although designated as employee  
10 contributions, are being paid by the employer in lieu of contributions  
11 by the employee;

12 (B) the employee must not have been given the option of receiving  
13 the amounts directly instead of having them paid to the retirement  
14 plan; and

15 (C) the pickup shall apply to amounts that a member elects to  
16 contribute to receive credit for prior or participating service if the  
17 election is irrevocable and applies to amounts contributed before  
18 retirement.

19 (10) (A) Notwithstanding any provision of this plan to the  
20 contrary, contributions, benefits and service credit with respect to  
21 qualified military service will be provided in accordance with section  
22 414(u) of the federal internal revenue code and the uniformed services  
23 employment and reemployment rights act of 1994.

24 (B) *Effective with respect to deaths occurring on or after January 1,*  
25 *2007, while a member is performing qualified military service, as defined*  
26 *in chapter 43 of title 38, United States code, to the extent required by*  
27 *section 401(a)(37) of the federal internal revenue code, survivors of a*  
28 *member in the system, are entitled to any additional benefits that the*  
29 *system would provide if the member had resumed employment and then*  
30 *died, such as accelerated vesting or survivor benefits that are contingent*  
31 *on the member's death while employed. A deceased member's period of*  
32 *qualified military service must be counted for vesting purposes.*

33 (C) *Effective with respect to deaths or disabilities, or both, occurring*  
34 *on or after January 1, 2007, while a member is performing qualified*  
35 *military service, as defined in chapter 43 of title 38, United States code, to*  
36 *the extent permitted by section 414(u)(9) of the federal internal revenue*  
37 *code, for the benefit accrual purposes and in the case of death, for vesting*  
38 *purposes, the member will be treated as having earned years of service for*  
39 *the period of qualified military service, having returned to employment on*  
40 *the day before the death or disability, or both, and then having terminated*  
41 *on the date of death or disability. This provision shall be applied to all*  
42 *similarly situated individuals in a reasonably equivalent manner.*

43 (D) *Beginning January 1, 2009, to the extent required by section*

1 414(u)(12) of the federal internal revenue code, an individual receiving  
2 differential wage payments, as defined under section 3401(h)(2) of the  
3 federal internal revenue code, from an employer shall be treated as  
4 employed by that employer; and the differential wage payment shall be  
5 treated as compensation for purposes of applying the limits on annual  
6 additions under section 415(c) of the federal internal revenue code. This  
7 provision shall be applied to all similarly situated individuals in a  
8 reasonably equivalent manner.

9 **(11) Upon the complete or partial termination of a retirement**  
10 **plan, the rights of members to benefits accrued to the date of**  
11 **termination, to the extent funded, or to the amounts in their accounts**  
12 **are nonforfeitable, and amounts in their accounts may be distributed**  
13 **to them.**

14 **(d) The plan year for the retirement plan begins on July 1.**

15 **(e) The limitation year for purposes of section 415 of the federal**  
16 **internal revenue code is the calendar year.**

17 **(f) The board may not engage in a transaction prohibited by**  
18 **section 503(b) of the federal internal revenue code.**

19 **(g) (1) For purposes of determining an "actuarial equivalent" or**  
20 **of an "actuarial computation" for members hired prior to July 1,**  
21 **2009, the board shall use the following:**

22 **(A) The applicable mortality table is specified in revenue ruling**  
23 **2001-62 or revenue ruling 2007-67, as applicable; and**

24 **(B) the applicable interest factor is 8% per year.**

25 **(2) For purposes of determining an "actuarial equivalent" or an**  
26 **"actuarial computation" for members hired on or after July 1, 2009,**  
27 **the board shall use the following:**

28 **(A) The applicable mortality table is the 50/50 male/female blend**  
29 **of the RP 2000 health annuitant mortality table, projected to 2025;**  
30 **and**

31 **(B) The applicable interest factor is 8% per year.**

32 **(3) For converting amounts payable under the partial lump sum**  
33 **option, the board shall use the following:**

34 **(A) The applicable mortality table is a 50/50 male/female blend of**  
35 **the 1983 group annuity mortality table; and**

36 **(B) the applicable interest factor is 8% per year.**

37 **(4) For benefit testing under section 415(b) of the federal internal**  
38 **revenue code, the factors required by treasury regulations shall be**  
39 **used. The applicable mortality table is specified in revenue ruling**  
40 **2001-62 for years prior to January 1, 2009, and notice 2008-85 for years**  
41 **after December 31, 2008.**

42 ~~Sec. 3-~~ **4. K.S.A. 74-4910 and K.S.A. 2011 Supp. 74-4920 and 74-**  
43 **49,123 are hereby repealed.**

1        ~~Sec. 4.~~ **5.** This act shall take effect and be in force from and after its  
2        publication in the statute book.  
3