

MEMORANDUM

To: House Pensions and Benefits Committee

From: Alan D. Conroy, Executive Director *ADC.*

Date: February 17, 2016

Subject: HB 2700; Prohibiting Prearrangements

As has been reported to this Committee in the past, the federal Internal Revenue Service (IRS) requires that a bona fide retirement and separation from service has occurred before employees begin receiving pension benefits from a qualified plan. One indication of a genuine separation is evidenced by the statutory requirement that KPERS members complete a 60-day waiting period during which the member is not employed by a KPERS affiliated employer.

The IRS also has issued a private letter ruling specifying that "[E]mployees who "retire" on one day in order to qualify for a benefit under the Plan, with the explicit understanding between the employee and employer that they are not separating from service with the employer, are not legitimately retired." In addition, the private letter ruling indicated that a System could be liable for allowing prearrangements to occur.

The 2015 legislation on working after retirement (2015 Senate Substitute for HB 2095) included a prohibition on pre-arrangements. HB 2700 would further address these issues by requiring members to sign an affirmation on their application for retirement that they will not be employed with any participating employer within 60 days of retirement and that they have no prearrangement to return to work with any KPERS affiliated employer.

At the point of rehiring a KPERS retiree, the hiring employer's appointing authority (i.e. school board president, agency head, etc.) and the retiree would also have to sign an affirmation that the retiree has not been employed by the participating employer within 60 days of the retirement and that there was no prearranged agreement for employment.

Under HB 2700, if a member is found to have entered into a prearranged agreement to return to work before retirement, the retiree's benefit will be suspended starting in the month the retiree returned to work and ending six months after the retiree ends employment.

KPERS' understanding is that the affirmation at retirement and at reemployment required by HB 2700 may provide additional documentation of the System's good-faith efforts to ensure compliance with the IRS requirement for a bona fide retirement.



Administrative Implementation of HB 2700

As KPERS understands the 2015 legislation on working after retirement (2015 Senate Substitute for HB 2095), as further amended by HB 2700, the prohibition on prearrangements would be applied as follows:

- Discussions of employment and employment agreements, whether verbal or in writing, are prohibited between employers (whether the same or different) and a member before retirement through the member's 60-day waiting period following retirement.
- To facilitate employers' good-faith compliance with the prohibition on pre-arrangements, KPERS will provide a means for employers to electronically check whether applicants for their vacancies are KPERS retirees.
- All KPERS retirees are subject to HB 2700's requirements. A certification by the employer and retiree of compliance with the 60-day waiting period and no pre-arrangement would be needed for each retiree returning to work, including otherwise exempt retirees such as daily call substitutes and legislative staff.

Estimated Costs

HB 2700 would require some modifications to the KPERS' information technology system and database to assist employers and archive the new forms. However, it is anticipated that these costs can be funded within existing resources.

Additional staff responsibilities for communications and services to retirees and employers subject to working after retirement provisions, reporting and payment functions, and other administrative duties are expected with HB 2700. In combination with 2015 HB 2095, the administration of working after retirement rules is growing in complexity. While KPERS anticipates absorbing the additional workload, further consideration of appropriate staffing levels may be required in the future as KPERS' gains experience with the administrative impact of the new rules.

I hope this information is helpful, I would be happy to answer any questions the Committee may have.