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MEMORANDUM

To: Chairman King and Members of the Joint Committee on Pensions, Investments and Benefits

From: David Wiese, Assistant Revisor

Date: 9/12/2016

Subject: Review of House Substitute for Senate Bill No. 168

Executive Summary:

House Substitute for Senate Bill No. 168 amends several provisions relating to working after retirement for KPERS retirants. The bill:

- Replaces the appeal to the joint committee on pensions, investments and benefits process with the filing of an assurance protocol with KPERS to extend certain working after retirement exemptions. Assurance protocols must be filed in one-year increments, for a maximum exemption of four years.
- Prohibits prearranged agreements between employers and retirants to return to work and provides penalties against employers and retirants who engage in prearranged agreements.
- Adds a new exemption for county poll workers hired to work an election day.
- Raises the annual earnings cap for retirants of the Kansas police and firemen's retirement system from \$15,000 to \$25,000.
- Institutes a 30% employer contribution rate when employing retirants under certain working after retirement exemptions with a review of such rate at least once every three years.
- Limits a retirant's total term of employment under all special exemptions to 48 months or four school years, whichever is less.
- Places a sunset date of June 30, 2020, for all special working after retirement exemptions.
- Requires the joint committee on pensions, investments and benefits to study the issue of whether the working after retirement compensation limitation should be adjusted at least every five years beginning July 1, 2021.

House Substitute for Senate Bill No. 168 also:

- Provides for a moratorium for KPERS death and disability contributions for the last quarter of FY 2016 and all of FY 2017.
- Adds language to apply the accidental death benefit in K.S.A. 74-4916 to members of the cash balance plan.
- Adjusts the annuity interest rate in K.S.A. 74-49,313(b) for those who take early retirement to be consistent with the rate in subsection (a) for normal retirement.
- Provides the proper statutory reference relating to beneficiary payments under KPERS.
- Allows for the sharing of a KPERS 457 plan participant's KPERS retirement account information with the KPERS 457 plan contracting party for the purpose of facilitating the participant's comprehensive retirement income planning.
- Provides for the tax treatment of Roth 457 plans under the Kansas public employees deferred compensation act.
- Allows the KPERS board to establish a 401(a) plan under which local employers participating in the deferred compensation plan may contribute a specified amount to such plan.
- Provides for a recalculation of a DROP member's final average salary at the time of retirement to include any payments such member's accumulated sick and annual leave compensation made at retirement.

Detailed Summary:

Working After Retirement Provisions

1. Requires certification by both the member upon application for retirement and the appointing authority of a participating employer upon hiring a retirant that no prearranged agreement for employment has occurred. The bill also provides a penalty if the retirement system determines that a retirant entered into a prearranged agreement for employment. The retirant's retirement benefit is suspended during the period that begins on the month in which retirant is reemployed and ends six months after the retirant's termination of such employment. The retirant also is

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required to repay all retirement benefits paid to the retirant by the system that the retirant received after such employment began. The participating employer which hired such retirant shall be required to pay to the system any fees, fines, penalties or any other cost imposed by the IRS and indemnify the system for any cost incurred by the system to defend any action brought by the IRS due to a prearranged agreement and for any cost incurred by the system to collect any monthly retirement benefit required to be repaid by such retirant. A prearranged agreement for employment may be determined by whether the facts and circumstances of the situation indicate that the employer and employee reasonably anticipated that further services would be performed after the employee's retirement. *Section 2; K.S.A. 74-4914(1), (4), (8) and (9) and Sec. 3; K.S.A. 74-4937(1), (2), (3), (4)(a), (5)(a), (6) and (8)*

2. Adjusts the employer contribution rate when hiring a retirant into a hardship, special-education or hard-to-fill position from the actuarially required contribution rate plus 8% to a rate of 30%. On or before July 1, 2019, and at least every three years thereafter, the KPERS board, in consultation with the system's actuary, shall evaluate the plan's experience with employment of such retirants and the corresponding contribution rate and certify a new rate if necessary to more fully fund such experience, but such rate shall not be less than 30%. For grandfathered licensed school personnel who retired prior to May 1, 2015, the employer contribution rate remains at ARC plus 8%. *Section 2; K.S.A. 74-4914(7)(d)(ii) and Sec. 3; K.S.A. 74-4937(3), (4)(b) and (5)(b)*

3. Replaces the procedure for an appeal to the joint committee on pensions, investments and benefits to obtain an extension of the exception for hardship, special-education and hard-to-fill school positions with the filing of a written assurance protocol with the retirement system. For hardship positions, the exception may be extended by one-year increments for a total extension not to exceed three years, with an assurance protocol required to be filed for each one-year increment extension. The assurance protocol must state that the position was advertised on multiple platforms for a minimum of 30 calendar days and that at least one of the following conditions occurred:
 - A. No applications were submitted for the position;

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B. If applications were submitted, none of the applicants met the reference screening criteria of the employer; or

C. If applications were submitted, none of the applicants possessed the appropriate licensure, certification or other necessary credentials for the position.

The assurance protocol must be signed by superintendent and the board president if submitted by a school district and by the governing body or the governing body's designee if submitted by a municipality. *Section 2; K.S.A. 74-4914(7)(e) and Sec. 3; K.S.A. 74-4937(4)(d) and (5)(d)*

4. Limits the total term of employment for a retirant hired under the hardship, special-education or hard-to-fill positions exceptions by any participating employer to 48 months or four school years, whichever is less. After such period, such retirant would be subject to the \$25,000 annual compensation limitation. *Section 2; K.S.A. 74-4914(7)(h) and Sec. 3; K.S.A. 74-4937(7)*
5. Extends the sunset date on the special working after retirement exception for grandfathered licensed school personnel from July 1, 2017, to June 30, 2020. All special working after retirement exemptions shall expire on July 1, 2020. *Section 2; K.S.A. 74-4914(5) and 7(a) and Sec. 3; K.S.A. 74-4937(3), (4)(f) and (5)(f)*
6. Mandates that the joint committee on pensions, investments and benefits, beginning July 1, 2021, and at least every five years thereafter, study the issue of whether the working after retirement compensation limitation should be adjusted. The committee shall consider the effect of inflation and data on member retirement benefits and active employee compensation. *Section 2; K.S.A. 74-4914(7)(f)*
7. Increases the annual compensation limitation for retirants under the Kansas police and firemen's retirement system from \$15,000 to \$25,000 before such retirant would have to either stop receiving such retirant's retirement benefit or stop working in a position or office with a participating employer. *Section 4; K.S.A. 74-4957(5) and Sec. 5; K.S.A. 74-4957a(4)*
8. Makes technical amendments to remove certain old dates.

Additional KPERS provisions:

9. Provides a moratorium on employer contributions to the KPERS death and disability group insurance fund for the period commencing April 1, 2016, and ending on June 30, 2017, to amend the statute to reflect the policy enacted in section 96 of 2016 House Substitute for Senate Bill No. 161, the appropriations bill. **Section 7; K.S.A. 74-4927(4)(A)**
10. Adds language to apply the accidental death benefit in K.S.A. 74-4916 to members of the cash balance plan. The bill also provides the proper statutory reference relating to beneficiary payments under KPERS. **Section 6; K.S.A. 74-4916(2)(a)**
11. Adjusts the annuity interest rate in K.S.A. 74-49,313(b) for those who take early retirement to be consistent with the rate in subsection (a) for normal retirement. **Section 11; K.S.A. 74-49,313(b)**
12. Allows for the sharing of a KPERS 457 plan participant's KPERS retirement account information with the KPERS 457 plan contracting party for the purpose of facilitating the participant's comprehensive retirement income planning. **Section 12; K.S.A. 74-49b10(e)**
13. Provides for the tax treatment of Roth 457 plans under the Kansas public employees deferred compensation act. Amounts contributed to a Roth 457 plan shall be subject to state withholding and income taxes for the year in which such sum is contributed, but shall not be subject to state income taxes for the year in which distributions are received by the employee. **Section 12; K.S.A. 74-49b10(f) and Sec. 14; K.S.A. 74-49b15(b)**
14. Allows the KPERS board to establish a 401(a) plan under which local employers participating in the deferred compensation plan may contribute a specified amount to such plan. **Section 13; K.S.A. 74-49b14(b)**
15. Provides for a recalculation of a DROP member's final average salary at the time of retirement to include any payments such member's accumulated sick and annual leave compensation made at retirement. Any recalculation shall be credited as a lump sum to the DROP account at retirement. No interest shall be credited to such lump sum amount. **Section 8; K.S.A. 74-4986o**