SESSION OF 2016

CONFERENCE COMMITTEE REPORT BRIEF
HOUSE SUBSTITUTE FOR SENATE BILL NO. 168

As Agreed to April 28, 2016

Brief*

House Sub. for SB 168 would revise provisions of the Kansas Public Employee Retirement System (KPERS) statutes pertaining to working after retirement, the calculation of final average salary, and certain reporting requirements. The bill also would make technical and clarifying amendments to statutes pertaining to death and disability contributions, Tier 3 members, the tax status of 457 Roth accounts, optional 401(a) plans for local public employers, retirement income planning, and the Deferred Retirement Option Program (DROP).

Working After Retirement

When filing an application for retirement, an employee would certify to KPERS that the individual will not be employed by a participating employer within 60 days of ending employment and there is no prearranged agreement for employment with any participating employer. The bill would define the term "prearranged agreement for employment" to mean one where the fact and circumstances of the situation indicate that the employer and employee reasonably anticipated further services would be performed after the employee's retirement. When hiring a retirant, the appointing authority of a participating employer would certify to KPERS there was no prearranged agreement for

---

*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 employment. If KPERS determines a retirant entered into a prearranged employment agreement with a participating employer, the retirant's monthly benefit would be suspended for the duration of the reemployment period plus six months after the termination of the employment. The retirant would pay to KPERS all monthly retirement benefits paid since the prearranged employment began. A participating employer that prearranged an employment agreement would be required to indemnify KPERS for legal costs and any costs imposed by the Internal Revenue Service.

The bill would extend the current exceptions to the earnings cap by three years, from July 1, 2017, to July 1, 2020, for licensed school professionals who retired prior to May 1, 2015.

The bill would repeal the authority of the Joint Committee on Pensions, Investments and Benefits to approve certain working-after-retirement appeals. Instead, the participating employer would file an assurance protocol with KPERS to extend the exception by one year. For hardship positions, the exception could be extended in one-year increments for a total extension not to exceed three years. The filing of an assurance protocol would be required for each one-year extension. The protocol would state the position was advertised on multiple platforms for a minimum of 30 days and that one or more of the following conditions occurred:

- No applications were submitted for the position;
- If applications were submitted, none of the applicants met the employer's reference screening criteria; or
- If applications were submitted, none of the applicants possessed the appropriate licensure, certification, or other necessary credentials for the position.

If submitted by a school district, the superintendent and board president would sign the protocol. If submitted by a municipality, which would be defined by statutory reference, the governing body or its designee would sign the protocol. The Joint Committee would continue to have the authority to review extensions.

Under current law, an individual who retired on or after May 1, 2015, may earn no more than $25,000 from a participating employer before deciding to either terminate employment or forgo monthly KPERS benefits until the end of the calendar year. For an exception period of three school years or 36 months, whichever is less, the earnings cap does not apply to certain hardship, special education, or hard-to-fill positions in school districts. The bill would extend the exception period to four school years or 48 months, whichever would be less. The extended exception period would apply to the individual's total term of employment with all employers under one or more of the hardship, special education, or hard-to-fill exceptions. The cap would then apply regardless of the employer or position filled. Participating employers would pay a 30 percent employer contribution to KPERS.

By July 1, 2019, and at least every three years thereafter, the KPERS Board of Trustees would evaluate the Retirement System's experience with employed retirants and would certify a new rate, which would not be less than 30 percent.

The bill would increase the earnings cap for retirants under the Kansas Police and Firemen's Retirement System from $15,000 to $25,000.

The bill would extend the deadline placed on the Joint Committee on Pensions, Investment and Benefits, from July1, 2016, to July 1, 2021, to study the compensation limitations place on retirants who work after retirement.

Technical and Clarifying Amendments

The bill would specify a moratorium on contribution amounts made for death and disability benefits, commencing on April 1, 2016, and ending on June 30, 2017.

The accidental service-connected death benefit would apply to KPERS Tier 3 members. This would allow surviving spouses or dependents to receive a lump sum payment of $50,000 and a monthly, lifetime benefit equal to 50 percent of the deceased member’s final average salary, which would be based on an average of the member’s final three years of compensation. The annuity interest rate for Tier 3 members who take early retirement would be adjusted from 6 percent to the actuarially assumed investment rate of return, which would be established by the KPERS Board of Trustees, minus 2 percent. This provision would make the annuity rates consistent across all retirement options for Tier 3 members.

The bill would clarify the tax status of contributions and distributions associated with Roth accounts within KPERS’ deferred compensation 457 plan. Under federal tax law, Roth 457 contributions are taxable in the year in which they are contributed, and qualified distributions are not taxed. The state would tax the contributions and distributions in the same manner as the federal government.

KPERS would be allowed to establish an optional 401(a) plan for local participating employers who adopt the KPERS 457 plan. In 2002, the Legislature granted KPERS the authority to establish a 401(a) defined contribution plan for state employees, but KPERS has not created that plan. Under a 401(a) plan, an employer is not required to pay Social Security taxes on employer contributions.

KPERS would be allowed to share pension data for 457 plan participants with the plan’s record keeper for the purpose of retirement income planning.

Members of the Kansas Highway Patrol who participate in the DROP Plan, which is a voluntary pilot deferral program that was authorized in 2015, would be allowed to have their retirement benefits recalculated, taking into account any payments of the member's accumulated sick and annual leave compensation made at retirement. If the member's recalculated final average salary would be higher than the final average salary used in the calculating the member's monthly DROP accrual, then after DROP participation has been completed, which under current law may be for three to five years, the member's retirement benefit would be based on the recalculated amount. The difference between a member's monthly DROP accrual and recalculated monthly retirement benefit would be credited as a non-interest bearing lump sum to the member's account prior to ending participation in the DROP Plan.

The bill would exempt retirants who work as election poll workers from having KPERS contributions deducted from their compensation.

Conference Committee Action

The Conference Committee agreed to:

- Retain the provisions of House Sub. for SB 168, as passed by the House;
- Add the language contained in HB 2489, as amended by the House Committee of the Whole, pertaining to technical and clarifying amendments; and
- Further amend the bill to:
  - Define "prearranged agreement for employment";
  - Indemnify KPERS for costs incurred by the system relating to participating employers

who have been found to have hired a retirant using a preexisting arrangement;

- ○ Delete the newly proposed exception on the earnings cap for teachers who are age 62 or older;
- ○ Extend the deadline placed on the Joint Committee on Pensions, Investment and Benefits to study compensation limits;
- ○ Clarify provisions of the DROP Plan;
- ○ Clarify provisions of working after retirement as they apply to election poll workers;
- ○ Clarify the working-after-retirement exemptions for teachers that are scheduled to sunset in 2020 may be utilized for no more than four years; and
- ○ Add additional technical amendments.

Background

The bill, as recommended by the Conference Committee, contains the language of House Sub. for SB 168 and HB 2489, which also contains the language of HB 2541. The following summarizes the background of those three bills.

House Sub. for SB 168

The House Committee on Pensions and Investments deleted the language of SB 168, which was introduced during the 2015 Legislative Session and pertained to the authorization of pension obligation bonds, and inserted the amended contents of HB 2700. The following is the background of that bill and amendments made to those provisions.

HB 2700. The House Committee on Taxation introduced the bill at the request of Representative Edmonds, who testified in support of the legislation during the hearing before the House Committee on Pensions and Benefits, stating the bill would provide a good faith effort to comply with federal tax law, demonstrating a *bona fide* separation of employment prior to a retirant returning to work in the public sector.

Representatives from KPERS provided neutral testimony, explaining discussions of employment and employment agreements, whether verbal or in writing, are prohibited between employers and a KPERS member before and during the member's 60-day waiting period following the commencement of retirement. KPERS plans to provide employers with an electronic means to check whether job applicants are KPERS retirees. All KPERS retirees would be subject to the bill, as introduced.

The House Committee amended the bill to:

- Extend the sunset on the grandfather exemption for certain retired school personnel from July 1, 2017, to July 1, 2020 [*Note:* The Conference Committee report includes this provision.];
- Repeal the Joint Pensions Committee's authority to approve exemption extensions and institute an assurance protocol that would be filed with KPERS [*Note:* The Conference Committee report includes this provision.];
- Limit the application of certain exceptions to a maximum of four years and increase the contribution surcharge from 8 percent to 30 percent, authorizing the KPERS Board of Trustees to adjust the surcharge in the future [*Note:* The Conference Committee report includes this provision.];

- Create a working-after-retirement exception for licensed school retirants who retire at age 62 or older [*Note:* The Conference Committee report omits this provision.];

- Increase the KP&F earnings cap from $15,000 to $25,000 [*Note:* The Conference Committee report includes this provision.]; and

- Strike language the Committee found to be obsolete. [*Note:* The Conference Committee report includes this provision.]

The fiscal note on the bill as introduced is no longer applicable. Revised administrative and actuarial estimated costs were not available when the House Committee adopted the above amendments.

HB 2489

The bill contains the language of HB 2489 and HB 2541, which were both introduced by the House Committee on Pensions and Benefits at the request of the KPERS Board of Trustees.

HB 2489. Representatives of KPERS testified before the House Pensions and Benefits Committee. The bill would provide KPERS Tier 3 members with a service-connected death benefit based on an average of their final three years of compensation, making the death benefit consistent for all KPERS members. The annuity rate for the Tier 3 cash balance plan would be made consistent among all retirement options for Tier 3 members. The death and disability language would mirror the appropriations approved during the 2015 Legislative Session. There was no opponent or neutral testimony.

HB 2541. Representatives of KPERS testified before the House Pensions and Benefits Committee, stating participating employers and employees have requested Roth and 401(a) options in the 457 plan. By sharing pension data with KPERS' record keeper, members will be able to receive real-time snapshots of projected monthly retirement income needs, taking into consideration pension and Social Security benefits and personal savings. A future online system will be capable of making recommendations for meeting retirement goals and needs. A representative of the League of Kansas Municipalities also spoke in favor of the bill, stating the legislation would provide a greater array of options for retirement benefits. There was no opponent or neutral testimony.

The House Committee amended HB 2489 to add the language of HB 2541 and delete language the Committee determined to be obsolete.

The House Committee of the Whole amended HB 2489 to specify a moratorium on death and disability contributions would begin on April 1, 2016, which is the start of the fourth quarter of FY 2016, and ends on June 30, 2017, which is the end of FY 2017. The bill would reflect the appropriations made during the 2015 Legislative Session in House Sub. for SB 112 and the 2016 Legislative Session in House Sub. for SB 161.

According to the fiscal note prepared by the Division of the Budget, in consultation with KPERS, the provisions of HB 2489 would have no fiscal effect. According to the fiscal note on HB 2541, which was prepared in consultation with KPERS and the Department of Revenue, the expenses of the 457 Plan are equal to 0.04 percent of the value of assets in the deferred compensation accounts. KPERS anticipates the same percentage charge will be applied to Roth and 401(a) accounts. The costs for sharing member data with the 457 plan service provider would be negligible and absorbed within current expenses. According to the Department of Revenue, HB 2451 would have no effect on revenues to the State General Fund.

KPERS; KP&F; working after retirement; final average salary

ccrb_sb168_01_0000.odt