Working After Retirement; Technical and Clarifying Revisions; House Sub. for SB 168

House Sub. for SB 168 revises statutes of the Kansas Public Employee Retirement System (KPERS) pertaining to working after retirement. The bill also makes 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 will 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 defines 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 will certify to KPERS there was no prearranged agreement for employment. If KPERS determines a retirant entered into a prearranged employment agreement with a participating employer, the retirant's monthly benefit shall be suspended for the duration of the reemployment period plus six months after the termination of the employment. That retirant must pay to KPERS all monthly retirement benefits paid since the prearranged employment began. A participating employer that prearranged an employment agreement must indemnify KPERS for legal costs and any costs imposed by the Internal Revenue Service.

The bill extends 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 repeals the authority of the Joint Committee on Pensions, Investments and Benefits to approve certain working-after-retirement appeals. Instead, the participating employer files 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 will be required for each one-year extension. The protocol must 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 will sign the protocol. If submitted by a municipality, which is defined broadly using a statutory reference, the governing body or its designee will sign the protocol. The Joint Committee continues to have the authority to review extensions.

Under continuing 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. Previously, for an exception period of three school years or 36 months, whichever is less, the earnings cap did not apply to certain hardship, special education, or hard-to-fill positions in school districts. The bill extends the exception period to four school years or 48 months, whichever would be less. The extended exception period applies 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 then applies regardless of the employer or position filled. Participating employers pay a 30 percent employer contribution to KPERS.

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

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

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

Technical and Clarifying Amendments

The bill places 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 applies to KPERS Tier 3 members. This allows 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 will 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 is adjusted from 6 percent to the actuarially assumed investment rate of return, which will be established by the KPERS Board of Trustees, minus 2 percent. This provision makes the annuity rates consistent across all retirement options for Tier 3 members.

The bill clarifies 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 taxes the contributions and distributions in the same manner as the federal government.

KPERS may 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 may 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, may 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 is 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 continuing law may be for three to five years, the member's retirement benefit is based on the recalculated amount. The difference between a member's monthly DROP accrual and recalculated monthly retirement benefit is credited as a non-interest bearing lump sum to the member's account prior to ending participation in the DROP Plan.

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