*SESSION OF 2021*

# CONFERENCE COMMITTEE REPORT BRIEF
# HOUSE BILL NO. 2243

As Agreed to April 6, 2021

## Brief*

HB 2243 would make several changes to law governing the Kansas Public Employees Retirement System (KPERS or the Retirement System) pertaining to a study performed by the KPERS Board of Trustees, authorization of the allotment for the KPERS Death and Disability Program and a moratorium on payments in FY 2021 by all employers, provisions in the Kansas Deferred Retirement Option Program (DROP) Act relating to participating members' election and extension of their DROP periods, and administration of certain KPERS benefits and the application of certain federal Internal Revenue Code provisions on the Retirement System ("guidepost" section)

### *Actuarial Experience Study*

The bill would change the frequency of the actuarial experience and cost study performed by the KPERS Board of Trustees (Board) from once every three years to once every four years. This change would begin with the latest study completed prior to July 1, 2021.

In its fiduciary duty to act in the best interests of the Retirement System, the Board would have the discretion to adjust the frequency of the study from the four years specified

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*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 in the bill to not any more frequent than once every three years and not any less frequent than once every five years.

### *Death and Disability Payment Moratorium*

The bill would authorize the Governor's allotment for the KPERS Death and Disability Program and institute a moratorium on all payments made by KPERS employers for FY 2021.

### *Kansas Deferred Retirement Option Program Act—DROP Period Changes*

The bill would amend provisions in the Kansas Deferred Retirement Option Program Act relating to participating members' election and extension of their DROP periods. The bill would remove a requirement that makes a member's election choice irrevocable.

The bill would allow an enrolled member who previously elected a DROP period of less than five years to revoke such election, with the employer's authorization, and extend their DROP period to an aggregate maximum of five years upon making an application to the system. The bill would provide the aggregate total DROP period must be consecutive.

Under current law, a member makes a one-time, irrevocable election upon entering the DROP to continue working for three, four, or five years, a term known as the DROP period.

### *Technical Updates—KPERS Guidepost Section*

The bill would amend provisions in the law governing KPERS benefits and the application of certain federal Internal Revenue Code provisions on the Retirement System ("guidepost" section).

The bill would amend a provision pertaining to the deferred compensation plan's distribution of benefits to require a member receive such benefits from retirement accounts beginning at the age of 72. The bill would also maintain the age for required minimum distributions at 70½ for members born before July 1, 1949. (Under current law, this required distribution of benefits to members occurs at the later of April 1 of the calendar year following the calendar year in which the member reaches the age of 70½ or April 1 of the calendar year following the calendar year in which the member terminates employment.)

**Conference Committee Action**

The Conference Committee agreed to amend HB 2243, as amended by the Senate Committee on Financial Institutions and Insurance, to:

- Delete the effective date of upon publication in the *Kansas Register*;
- Add the contents of SB 86, which pertain to technical updates to conform the KPERS guidepost section with federal law, but delete the effective date of upon publication in the *Kansas Register*;
- Add the contents of SB 265, which pertain to authorization of the death and disability payment moratorium for FY 2021; and
- Add the contents of HB 2064, which pertain to DROP period changes, including a member's election and extension of the DROP period, but delete the effective date of upon publication in the *Kansas Register*.

All bill versions included in this Conference Committee report reflect an effective date of upon publication in the statute book.

## Background

The bill contains provisions of HB 2243, as recommended by the House Committee on Insurance and Pensions; SB 86, as recommended by the Senate Committee on Financial Institutions and Insurance (technical changes, KPERS guidepost section); SB 265, as recommended by the Senate Committee on Financial Institutions and Insurance (death and disability payment moratorium); and HB 2064, as amended by House Committee on Insurance and Pensions (DROP period changes).

The background of the bills discussed above follows.

### *HB 2243 (Actuarial Experience Study)*

HB 2243 was introduced by the House Committee on Insurance and Pensions at the request of Representative Steven Johnson. [*Note:* The bill is identical, with technical updates, to 2020 HB 2619, as recommended by the House Committee on Financial Institutions and Pensions.]

#### *House Committee on Insurance and Pensions*

In the House Committee hearing, a representative of KPERS presented neutral information regarding the use of actuarial experience studies, a common practice, for large public pensions plans. The study examines the economic and demographic assumptions and methods used in the actuarial valuation. Economic assumptions include the inflation rate, investment return assumption, and general wage growth. Demographic assumptions include mortality, retirement rates, termination rates, and benefit selections. Actuarial methods include the amortization method for the unfunded actuarial liability, the asset valuation method, and the actuarial cost method (*i.e.*, how the costs of benefits are allocated throughout a member’s career). A triennial study has been conducted since 1962, a year after the Retirement System was established.

The conferee indicated that changing to a four-year schedule would provide an additional year of data in evaluating the actual experience, thus improving the credibility of the results for certain demographic assumptions.

No other testimony was provided.

*Senate Committee on Financial Institutions and Insurance*

In the Senate Committee hearing, a representative of KPERS provided information on the bill. No other testimony was provided.

The Senate Committee amended the bill to change its effective date to upon publication in the *Kansas Register*. [*Note:* The Conference Committee did not retain this amendment.]

*Fiscal Information*

According to the fiscal note prepared by the Division of the Budget on HB 2243, as introduced, KPERS notes the cost to complete an actuarial experience study is built into the contract for actuarial services. The enactment of the bill would not change any budgeted expenditures in FY 2021 or FY 2022. However, KPERS notes the bill allows the Board to delay the next experience study by one year, which is currently scheduled to be completed in FY 2023 at an estimated cost of $55,000.

### *SB 86 (Technical Updates—KPERS Guidepost Section)*

SB 86 was prefiled for introduction by the Joint Committee on Pensions, Investments and Benefits. The Joint

Committee reviewed policy recommendations from the KPERS Board of Trustees at its annual meeting and requested the introduction of legislation to address changes in federal law regarding distribution of certain retirement funds.

*Senate Committee on Financial Institutions and Insurance*

In the Senate Committee hearing, a representative of KPERS provided **proponent** testimony, indicating the KPERS Board of Trustees was advised by its tax and compliance counsel of changes in two recent federal laws (the Setting Every Community Up for Retirement Enhancement [SECURE] Act and the Coronavirus Aid, Relief, and Economic Security [CARES] Act) that required changes in Kansas law. Both federal laws included provisions relating to the required minimum distributions from retirement plans that affected the KPERS 457 plan. The counsel advised the Board that the Internal Revenue Service (IRS) "guidepost" section to be amended by the bill (KSA 74-49,123) needed to be updated during the 2021 Session to align with all requirements of the IRS. In addition, the counsel advised updating the 457 plan's 401(a) plan language that was affected by provisions of the SECURE Act. The KPERS conferee further stated, to maintain compliance with federal law, the Kansas IRS guidepost section would need to be updated to match the new minimum distribution levels established in the SECURE Act and the CARES Act as provided in this bill.

No other testimony was provided.

*House Committee on Insurance and Pensions*

In the House Committee hearing, a representative of KPERS provided **proponent** testimony on the bill. No other testimony was provided.

The House Committee amended the bill to change its effective date to upon publication in the *Kansas Register*. [*Note:* The Conference Committee did not retain this amendment.]

*Fiscal Information*

According to the fiscal note prepared by the Division of the Budget on SB 86, as introduced, KPERS states the changes contained in the bill are technical and would have no fiscal effect.

***SB 265 (Death and Disability Payment Moratorium)***

SB 265 was introduced by the Senate Committee on Ways and Means at the request of Senator Hawk.

The Governor's July 2020 State General Fund Allotment Plan included a moratorium on the State employer contributions to the KPERS Death and Disability Trust Fund for all of FY 2021. The allotment applies to both State and school employers. The allotment authority of the Governor does not apply to local employers.

*Senate Committee on Financial Institutions and Insurance*

In the Senate Committee hearing, a representative of KPERS provided neutral information regarding the KPERS Death and Disability Plan, noting this plan provides basic life insurance and long-term disability benefits to all KPERS members. All KPERS employers contribute a statutory 1.0 percent of pay for the plan; there is no employee contribution. The plan is currently funded as a pay-as-you-go plan. The representative noted, however, the 1.0 percent employer contribution rate generates enough contributions for the balance of the Death and Disability Trust Fund to slowly increase over time, which allows this fund to maintain a balance during periods of employer contribution moratoria. The representative indicated, in order for the moratorium to be applied consistently to the entire KPERS group, which would be consistent with past moratoria, additional statutory language is needed.

No other testimony was provided.

*Fiscal Information*

According to the fiscal note prepared by the Division of the Budget, SB 265 would statutorily authorize the Governor's allotment for the Death and Disability Program for payments for state agencies in FY 2021. The normal cost for participating KPERS employers for the Death and Disability Program is 1.0 percent of payroll each year. The Division of the Budget estimates that, during FY 2021, total payments to the Group Insurance Reserve Fund, before the Governor's July 2020 allotment plan was implemented, was estimated to be $60,070,659 from all funding sources, including $47,438,029 from the State General Fund (SGF). The Governor's allotment plan suspended these Death and Disability Program payments to the fund and KPERS re-certified the employer contribution rates for all state agencies by reducing employer contributions by 1.0 percent for FY 2021. However, because the Governor's allotment authority only allows the Governor to reduce SGF appropriations for the Executive Branch, the Governor's plan reduced SGF appropriations totaling $46,687,965 for the Death and Disability Program costs of the Executive Branch. The remaining SGF reductions of $525,289 for the Judicial Branch and $224,775 for the Legislative Branch were included as overall FY 2021 revised expenditures in *The FY 2022 Governor's Budget Report*.

The fiscal note also outlines the effect on local employers, indicating the bill would reduce employer contributions to KPERS for the Death and Disability Program by 1.0 percent, from July 1, 2021, to June 30, 2022. KPERS estimates that the bill would save approximately $20.0 million for these local KPERS employers during this period.

### *HB 2064 (DROP Period Changes)*

HB 2064 was prefiled for introduction by the Joint Committee on Pensions, Investments and Benefits. The Joint Committee reviewed the September 2020 evaluation of the DROP program conducted by the Legislative Division of Post Audit, which indicated DROP has 39 participants (35 Kansas Highway Patrol members and 4 Kansas Bureau of Investigation members). The audit reviewed the DROP's effectiveness in recruitment and retention and provided the comparative experience in four other programs in other states.

*House Committee on Insurance and Pensions*

In the House Committee hearing, a representative of KPERS provided neutral information about the DROP Act and DROP benefit structure. The conferee discussed enactment of the DROP Act as a 2015 pilot program for Kansas Highway Patrol troopers, who were able to enter the DROP upon retirement eligibility. The conferee stated both members and employers continue to make regular contributions to KPERS during the DROP period, and this amount accumulates in an account to be disbursed in a lump sum to the member at the end of their DROP period. The conferee also discussed the election decisions of current DROP participants, indicating 31 made a 5-year election, 6 made a 3-year election, and 2 made a 4-year election.

The conferee also presented policy considerations, indicating the bill does not clearly state whether employer authorization would be required to approve a DROP extension (such authorization is required at the initial entry into the DROP). The conferee also indicated the bill, as introduced, would not explicitly require the DROP extension to be consecutive with the initial DROP period, which could result in a gap of service that would violate the principle of "in-service distribution" under the Internal Revenue Code.

No other testimony was provided.

The House Committee amended the bill to require employer authorization before a member elects to extend the DROP period and to require the aggregated total of the DROP period be consecutive. [*Note:* The Conference Committee retained these amendments.]

*Senate Committee on Financial Institutions and Insurance*

In the Senate Committee hearing, a representative of KPERS provided information on the bill. No other testimony was provided.

The Senate Committee amended the bill to change its effective date to upon publication in the *Kansas Register*. [*Note:* The Conference Committee did not retain this amendment.]

*Fiscal Information*

According to the fiscal note prepared by the Division of the Budget on HB 2064, as introduced, KPERS indicated the potential actuarial cost associated with enactment of the bill would be negligible due to the limited term of the DROP period and required employer and employee contributions. KPERS also indicated it would have to update some agency publications and make minor changes to the agency's database, but these changes could be accomplished within existing resources.

Retirement; actuarial experience study; allotment; DROP; Group Insurance Reserve Fund; Kansas Deferred Retirement Option Program Act; KPERS Board of Trustees; KPERS Death and Disability program; state budget; CARES Act; SECURE Act