

REPORTS OF STANDING COMMITTEES

MR. SPEAKER:

The Committee on **Financial Institutions and Pensions** recommends **SB 205**, as amended by Senate Committee, be amended on page 5, following line 43, by inserting:

"Sec. 3. K.S.A. 74-4959 is hereby amended to read as follows: 74-4959. (1) Upon the death from service-connected causes as defined in this act, of an active contributing member prior to retirement, the following benefits shall be payable if a report of the event, in a form acceptable to the board, is filed in the office of the executive director of the board within 200 days after the date of the act of duty causing such death and an application for such benefits, in such form and manner as prescribed by the board, is filed in the office of the executive director of the board within two years of the date of death, but the board may waive such time limits for a reasonable period if in the judgment of the board the failure to meet these limits was due to lack of knowledge or incapacity:

(a) To the member's spouse, if lawfully wedded to the member at the time of the member's death, an annual spouse's benefit equal to 50% of the member's final average salary; or, for deaths occurring on or after July 1, 2016, the greater of: (i) 50% of the member's final average salary; or (ii) the amount that would have been paid had the member elected the option provided for in K.S.A. 74-4964(5)(B), and amendments thereto, and retired as of the first day of the month coinciding with or following the date of death, ~~which~~. Such spouse's benefit shall accrue from the first day of the month coinciding with or following the member's death and shall end on the first day of the month in which the spouse's death occurs. Commencing on the effective date of this act, any surviving spouse, who was receiving benefits pursuant to this

section and who had such benefits terminated by reason of such spouse's remarriage, shall be entitled to once again receive benefits pursuant to this section, except that such surviving spouse shall not be entitled to recover any benefits not received after the termination of benefits by reason of such surviving spouse's remarriage but before the effective date of this act.

(b) Subject to the provisions of K.S.A. 74-49,123, and amendments thereto, to the member's children under the age of 18 years or under the age of 23 years, if such children are full-time students as provided in K.S.A. 74-49,117, and amendments thereto, an annual children's benefit equal to 10% of the member's final average salary for each such child, which shall accrue from the first day of the month coinciding with or following the member's death and shall end on the last day of the month in which such child attains the age of 18 years or dies, whichever occurs earlier or in which such child attains the age of 23 years, if such child is a full-time student as provided in K.S.A. 74-49,117, and amendments thereto, except that if there is no eligible spouse, or if upon the death of the spouse there remain one or more children under the age of 18 years or under the age of 23 years, if such children are full-time students as provided in K.S.A. 74-49,117, and amendments thereto, the annual spouse's benefit shall be paid in equal shares to such children and each child's share shall end on the last day of the month in which such child attains the age of 18 years or dies, whichever occurs earlier or in which such child attains the age of 23 years, if such child is a full-time student as provided in K.S.A. 74-49,117, and amendments thereto. Commencing on the effective date of this act, any child who was receiving benefits pursuant to this section and who had such benefits terminated by reason of such child's marriage, shall be entitled to once again receive benefits pursuant to this section subject to the limitations contained in this section, except that such child shall not be entitled to recover any benefits not received after the termination of benefits by reason of such child's marriage but before the effective date of this act.

(c) In no case shall benefits payable under the provisions of ~~paragraphs (a) and (b) of this~~

subsection (1)(a) and (b) exceed ~~75%~~ 90% of the member's final average salary.

(2) Pursuant to the provisions of K.S.A. 74-49,128, and amendments thereto, upon the death from causes not service-connected of an active contributing member prior to retirement, the member's spouse, if lawfully wedded to the member at the time of the member's death, shall receive immediately a lump-sum benefit equal to 100% of the member's final average salary and shall be entitled to receive an annual death benefit equal to the member's retirement benefit calculated as if the member had retired on the member's normal retirement date, but based upon the member's final average salary and years of credited service on the date of death but not to exceed ~~the amount of the annual spouse's benefit provided in paragraph (a) of subsection (1)~~ an amount equal to 50% of the member's final average salary. An application for such benefits in such form and manner as prescribed by the board must be filed in the office of the executive director of the board within two years of the date of death, but the board may waive such time limit for a reasonable period if in the judgment of the board the failure to meet this limit was due to the lack of knowledge or incapacity. On and after July 1, 1993, the annual spouse's benefit under this subsection (2) shall accrue from the first day of the month coinciding with or following the member's death and shall continue until the spouse's death. Commencing on the effective date of this act, any surviving spouse, who was receiving benefits pursuant to this section and who had such benefits terminated by reason of such spouse's remarriage, shall be entitled to once again receive benefits pursuant to this section, except that such surviving spouse shall not be entitled to recover any benefits not received after the termination of benefits by reason of such surviving spouse's remarriage but before the effective date of this act. If there is no eligible spouse or if after the death of the spouse there remain one or more children of the member under the age of 18 years or one or more children of the member under the age of 23 years, if such children are full-time students as provided in K.S.A. 74-49,117, and amendments thereto, the spouse's benefit shall be payable, subject to the provisions of K.S.A. 74-49,123, and amendments thereto, in equal shares to such children and each

child's share shall end on the last day of the month in which such child attains the age of 18 years or dies, whichever occurs earlier or in which such child attains the age of 23 years, if such child is a full-time student as provided in K.S.A. 74-49,117, and amendments thereto. Commencing on the effective date of this act, any child who was receiving benefits pursuant to this section and who had such benefits terminated by reason of such child's marriage, shall be entitled to once again receive benefits pursuant to this section subject to the limitations contained in this section, except that such child shall not be entitled to recover any benefits not received after the termination of benefits by reason of such child's marriage but before the effective date of this act.

(3) Upon the death of a member prior to retirement, if no benefits are payable under the provisions of subsection (1) or (2), the sum of the following shall be paid to the member's beneficiary:

(a) The member's accumulated contributions; and (b) a lump sum death benefit equal to 100% of the member's current annual salary reduced by the sum of the member's accumulated contributions paid as provided by this section.

(4) All payments due under this section to a minor shall be made to a legally appointed conservator of such minor as provided in ~~subsection (7) of~~ K.S.A. 74-4902(7), and amendments thereto.

Sec. 4. K.S.A. 2016 Supp. 74-4914 is hereby amended to read as follows: 74-4914. (1) The normal retirement date for a member of the system shall be the first day of the month coinciding with or following termination of employment with any participating employer not followed by employment with any participating employer within 60 days and without any prearranged agreement for employment with any participating employer, and the attainment of age 65 or, commencing July 1, 1993, age 62 with the completion of 10 years of credited service or the first day of the month coinciding with or following the date that the total of the number of years of credited service and the number of years of attained age of the member is equal to or more than 85. In no event shall a normal

retirement date for a member be before six months after the entry date of the participating employer by whom such member is employed. A member may retire on the normal retirement date or on the first day of any month thereafter upon the filing with the office of the retirement system of an application in such form and manner as the board shall prescribe. Such application shall contain a certification by the member that the member will not be employed with any participating employer within 60 days of retirement and the member has not entered into a prearranged agreement for employment with any participating employer. Nothing herein shall prevent any person, member or retirant from being employed, appointed or elected as an employee, appointee, officer or member of the legislature. Elected officers may retire from the system on any date on or after the attainment of the normal retirement date, but no retirement benefits payable under this act shall be paid until the member has terminated such member's office.

(2) No retirant shall make contributions to the system or receive service credit for any service after the date of retirement.

(3) Any member who is an employee of an affiliating employer pursuant to K.S.A. 74-4954b, and amendments thereto, and has not withdrawn such member's accumulated contributions from the Kansas police and firemen's retirement system may retire before such member's normal retirement date on the first day of any month coinciding with or following the attainment of age 55.

(4) Any member may retire before such member's normal retirement date on the first day of any month coinciding with or following termination of employment with any participating employer not followed by employment with any participating employer within 60 days and the attainment of age 55 with the completion of 10 years of credited service, but in no event before six months after the entry date, upon the filing with the office of the retirement system of an application for retirement in such form and manner as the board shall prescribe. The member's application for retirement shall contain a certification by the member that the member will not be employed with any participating employer

within 60 days of retirement and the member has not entered into a prearranged agreement for employment with any participating employer.

(5) Except as provided in subsection (7), on or after July 1, 2006, for any retirant who is first employed or appointed in or to any position or office by a participating employer other than a participating employer for which such retirant was employed or appointed during the final two years of such retirant's participation, and, on or after April 1, 2009, for any retirant who is employed by a third-party entity who contracts services with a participating employer other than a participating employer for which such retirant was employed or appointed during the final two years of such retirant's participation to fill a position covered under K.S.A. 72-5410(a), and amendments thereto, with such retirant, such participating employer shall pay to the system the actuarially determined employer contribution and the statutorily prescribed employee contribution based on the retirant's compensation during any such period of employment or appointment. If a retirant is employed or appointed in or to any position or office for which compensation for service is paid in an amount equal to \$20,000 or more in any one such calendar year, or \$25,000 or more in any one calendar year between July 1, 2016, and July 1, 2020, by any participating employer for which such retirant was employed or appointed during the final two years of such retirant's participation, and, on or after April 1, 2009, by any third-party entity who contracts services to fill a position covered under K.S.A. 72-5410(a), and amendments thereto, with such retirant with a participating employer for which such retirant was employed or appointed during the final two years of such retirant's participation, such retirant shall not receive any retirement benefit for any month for which such retirant serves in such position or office. The participating employer who employs such retirant whether by contract directly with the retirant or through an arrangement with a third-party entity shall report to the system within 30 days of when the compensation paid to the retirant is equal to or exceeds any limitation provided by this section. Any participating employer who contracts services with any such third-party entity to fill a position covered

under K.S.A. 72-5410(a), and amendments thereto, shall include in such contract a provision or condition which requires the third-party entity to provide the participating employer with the necessary compensation paid information related to any such position filled by the third-party entity with a retirant to enable the participating employer to comply with provisions of this subsection relating to the payment of contributions and reporting requirements. The provisions and requirements provided for in amendments made in this act which relate to positions filled with a retirant or employment of a retirant by a third-party entity shall not apply to any contract for services entered into prior to April 1, 2009, between a participating employer and third-party entity as described in this subsection. Any retirant employed by a participating employer or a third-party entity as provided in this subsection shall not make contributions nor receive additional credit under such system for such service except as provided by this section. Upon request of the executive director of the system, the secretary of revenue shall provide such information as may be needed by the executive director to carry out the provisions of this act. The provisions of this subsection shall not apply to retirants employed as substitute teachers or officers, employees or appointees of the legislature. The provisions of this subsection shall not apply to members of the legislature prior to January 8, 2000. The provisions of this subsection shall not apply to any other elected officials prior to the term of office of such elected official which commences on or after July 1, 2000. The provisions of this subsection shall apply to any other elected official, except an elected city or county officer as further provided in this subsection, on and after the term of office of such other elected official which commences on or after July 1, 2000. Notwithstanding any provisions of law to the contrary, when an elected city or county officer is retired under the provisions of subsection (1) or (4) of this section and is paid an amount of compensation of \$25,000 or more in any one calendar year between July 1, 2016, and July 1, 2020, such officer may receive such officer's salary, and still be entitled to receive such officer's retirement benefit pursuant to the provisions of K.S.A. 74-4915 et seq., and amendments thereto. Except as otherwise provided, commencing January

8, 2001, the provisions of this subsection shall apply to members of the legislature. For determination of the amount of compensation paid pursuant to this subsection, for members of the legislature, compensation shall include any amount paid as provided pursuant to K.S.A. 46-137a(a), (b), (c) and (d), and amendments thereto, or pursuant to K.S.A. 46-137b, and amendments thereto. Notwithstanding any provision of law to the contrary, when a member of the legislature is paid an amount of compensation of \$20,000 or more in any one calendar year, the member may continue to receive any amount provided in K.S.A. 46-137a(b) and (d), and amendments thereto, and still be entitled to receive such member's retirement benefit. Commencing July 1, 2005, the provisions of this subsection shall not apply to retirants who either retired under the provisions of subsection (1), or, if they retired under the provisions of subsection (4), were retired more than 30 days prior to the effective date of this act and are licensed professional nurses or licensed practical nurses employed by the state of Kansas in an institution as defined in K.S.A. 76-12a01(b) or K.S.A. 38-2302~~(f)~~(k), and amendments thereto, the Kansas soldiers' home or the Kansas veterans' home. Nothing in this subsection shall be construed to create any right, or to authorize the creation of any right, which is not subject to amendment or nullification by act of the legislature. The participating employer of such retirant shall pay to the system the actuarially determined employer contribution based on the retirant's compensation during any such period of employment.

(6) For purposes of this section, any employee of a local governmental unit which has its own pension plan who becomes an employee of a participating employer as a result of a merger or consolidation of services provided by local governmental units, which occurred on January 1, 1994, may count service with such local governmental unit in determining whether such employee has met the years of credited service requirements contained in this section.

(7) (a) Except as provided in K.S.A. 74-4937(3), (4), or (5), and amendments thereto, and the provisions of this subsection, commencing July 1, 2016, and ending July 1, 2020, any retirant who is

employed or appointed in or to any position by a participating employer or a third-party entity who contracts services with a participating employer to fill a position, without any prearranged agreement with such participating employer and not prior to 60 days after such retirant's retirement date, shall not receive any retirement benefit for any month in any calendar year in which the retirant receives compensation in an amount equal to \$25,000 or more, pursuant to this subsection. The provisions of this subsection shall apply to members of the legislature.

(b) The provisions of this subsection shall not apply, except as specifically provided in this subsection, to retirants ~~that~~ who are:

(i) Licensed professional nurses or licensed practical nurses employed by the state of Kansas in an institution as defined in K.S.A. 76-12a01(b) or 38-2302~~(f)~~(k), and amendments thereto, the Kansas soldiers' home or the Kansas veterans' home. The participating employer of such retirant shall pay to the system the actuarially determined employer contribution based on the retirant's compensation and the statutorily prescribed employee contribution during any such period of employment;

(ii) employed by a school district in a position as provided in K.S.A. 74-4937(3), (4) or (5), and amendments thereto. Any retirant employed by a school district in a position under K.S.A. 74-4937(3), (4) or (5), and amendments thereto, shall be subject to the provisions of subsection (7)(h) which relate to a limitation on the total term of employment with any participating employer in which a retirant may receive such retirant's full retirement benefit;

(iii) certified law enforcement officers employed by the law enforcement training center. Such law enforcement officers shall receive their benefits notwithstanding this subsection. The law enforcement training center shall pay to the system the ~~actuarial~~ actuarially determined employer contribution and the statutorily prescribed employee contribution based on the retirant's compensation during any such period of employment;

(iv) members of the Kansas police and firemen's retirement system pursuant to K.S.A. 74-4951 et seq., and amendments thereto, ~~or~~ members of the retirement system for judges pursuant to K.S.A. 20-2601 et seq., and amendments thereto, or members of the state board of regents retirement plan pursuant to K.S.A. 74-4925 et seq., and amendments thereto;

(v) employed as substitute teachers or officers, employees or appointees of the legislature;

(vi) a poll worker hired to work an election day for a county election officer responsible for conducting all official elections held in the county; and

(vii) employed by, or have accepted employment from, a participating employer prior to May 1, 2015. Any break in continuous employment by a retirant or move to a different position by a retirant during the effective period of this subsection shall be deemed new employment and shall subject the retirant to the provisions of this subsection.

(c) The participating employer shall enroll all retirants and report to the system when compensation is paid to a retirant as provided in this subsection. Such report shall contain a certification by the appointing authority of the participating employer that any hired retirant has not been employed by the participating employer within 60 days of such retirant's retirement and that there was no prearranged agreement for employment between the participating employer and the hired retirant. Upon request of the executive director of the system, the participating employer shall provide such information as may be needed by the executive director to carry out the provisions of this subsection. Any participating employer who hires a retirant covered by this subsection shall pay to the system the statutorily prescribed employer contribution rate for such retirant, without regard to whether the retirant is receiving benefits. No retirant shall receive credit for service while employed under the provisions of this subsection.

(d) A participating employer may employ a retirant without regard to the compensation limitation in this subsection for a period of one calendar year or one school year, as the case may be, if

the following requirements are met:

(i) The employer certifies to the board that the position being filled has been vacated due to an unexpected emergency or the employer has been unsuccessful in filling the position;

(ii) the employer pays to the system a 30% employer contribution based on the retirant's compensation during any such period of employment. On or before July 1, 2019, and at least every three years thereafter, the board, in consultation with the system's consulting actuary, shall evaluate the plan's experience with employment of such retirants and the corresponding employer contribution rate to assess whether the employer contribution rate can be expected to fund adverse experience or higher liabilities accruing under the system in connection with employment of such retirants, to the extent that such liability can be ascertained or estimated. Based on this evaluation of the plan's experience, the board may certify to the division of the budget, in the case of the state, and to the agent for each other participating employer, a new rate if needed to more fully fund such adverse experience or additional liabilities, but such rate shall not be less than 30%; and

(iii) the employer maintains documentation of its efforts to fill the position with a non-retirant and provides such documentation to the joint committee on pensions, investments and benefits upon request of the committee.

(e) An employer may submit a written assurance protocol to the system to extend the exception provided for in subsection (7)(d) by one-year increments for a total extension not to exceed three years. A written assurance protocol shall be submitted to the system for each one-year increment extension. If a school district submits a written assurance protocol, such written assurance protocol shall be signed by the superintendent and the board president of such school district. If a municipality, as defined in K.S.A. 75-1117, and amendments thereto, other than a school district, submits a written assurance protocol, such written assurance protocol shall be signed by the governing body or such governing body's designee for such municipality. Such written assurance protocol shall 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:

(i) No applications were submitted for the position;

(ii) if applications were submitted, none of the applicants met the reference screening criteria of the employer; or

(iii) if applications were submitted, none of the applicants possessed the appropriate licensure, certification or other necessary credentials for the position.

(f) On July 1, 2021, and at least every five years thereafter, the joint committee on pensions, investments and benefits shall study the issue of whether the compensation limitation prescribed in this subsection should be adjusted. The committee shall consider the effect of inflation and data on member retirement benefits and active employee compensation.

(g) Nothing in this subsection shall be construed to create any right, or to authorize the creation of any right, which is not subject to amendment or nullification by act of the legislature.

(h) Any retirant hired by any participating employer under the provisions of subsection (7)(d) or K.S.A. 74-4937(3), (4) or (5), and amendments thereto, may continue to receive such retirant's full retirement benefit so long as, commencing July 1, 2016, such retirant's total term of employment with all participating employers under one or more of such provisions does not exceed 48 months or four school years, whichever is less. After such period, such retirant shall not receive any retirement benefit for any month in any calendar year in which such retirant receives compensation in an amount equal to \$25,000 or more in such calendar year.

(8) If determined by the retirement system that a retirant entered into a prearranged agreement for employment with a participating employer prior to such retirant's retirement and prior to the end of the subsequent 60-day waiting period, the monthly retirement benefit of such retirant shall be suspended during the period that begins on the month in which the retirant is re-employed and ends six

months after the retirant's termination of such employment. The retirant shall repay to the retirement system all monthly retirement benefits paid to the retirant by the retirement 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 internal revenue service and indemnify the system for any cost incurred by the system to defend any action brought by the internal revenue service based on in-service distributions which are a result of any determined prearranged agreement and for any cost incurred by the system to collect any monthly retirement benefit required to be repaid by such retirant pursuant to this subsection.

(9) For the purposes of this section 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.

Sec. 5. K.S.A. 2016 Supp. 74-49,123 is hereby amended to read as follows: 74-49,123. (a) This section applies to the Kansas public employees retirement system and to all other public retirement plans administered by the board of trustees.

(b) As used in this section:

(1) "Federal internal revenue code" means the federal internal revenue code of 1954 or 1986, as amended and as applicable to a governmental plan as in effect on July 1, 2008; and

(2) "retirement plan" includes the Kansas public employees retirement system and all other Kansas public retirement plans and benefit structures, which are administered by the board.

(c) In addition to the federal internal revenue code provisions otherwise noted in each retirement plan's law, and in order to satisfy the applicable requirements under the federal internal revenue code, the retirement plans shall be subject to the following provisions, notwithstanding any other provision of the retirement plan's law:

(1) The board shall distribute the corpus and income of the retirement plan to the members and their beneficiaries in accordance with the retirement plan's law. At no time prior to the satisfaction of all liabilities with respect to members and their beneficiaries shall any part of the corpus and income be used for, or diverted to, purposes other than the exclusive benefit of the members and their beneficiaries.

(2) Forfeitures arising from severance of employment, death or for any other reason may not be applied to increase the benefits any member would otherwise receive under the retirement plan's law. However, forfeitures may be used to reduce an employer's contribution.

(3) All benefits paid from the retirement plan shall be distributed in accordance with a good faith interpretation of the requirements of section 401(a)(9) of the federal internal revenue code and the regulations under that section. Notwithstanding any other provision of these rules and regulations, effective on and after January 1, 2003, the retirement plan is subject to the following provisions:

(A) Benefits must begin by the required beginning date, which is the later of April 1 of the calendar year following the calendar year in which the member reaches 70^{1/2} years of age or April 1 of the calendar year following the calendar year in which the member terminates employment. If a member fails to apply for retirement benefits by April 1 of the calendar year following the calendar year in which such member reaches 70^{1/2} years of age or April 1 of the calendar year following the calendar year in which such member terminates employment, whichever is later, the board will begin distributing the benefit as required by this section.

(B) The member's entire interest must be distributed over the member's life or the lives of the member and a designated beneficiary, or over a period not extending beyond the life expectancy of the member or of the member and a designated beneficiary. Death benefits must be distributed in accordance with section 401(a)(9) of the federal internal revenue code, including the incidental death benefit requirement in section 401(a)(9)(G) of the federal internal revenue code, and the regulations

implementing that section.

(C) The life expectancy of a member, the member's spouse or the member's beneficiary may not be recalculated after the initial determination for purposes of determining benefits.

(D) If a member dies after the required distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution before the member's death and no longer than the remaining period over which distributions commenced.

(E) If a member dies before required distribution of the member's benefits has begun, the member's entire interest must be either:

(i) In accordance with federal regulations, distributed over the life or life expectancy of the designated beneficiary, with the distributions beginning no later than December 31 of the calendar year immediately following the calendar year of the member's death; or

(ii) distributed by December 31 of the calendar year containing the fifth anniversary of the member's death.

(F) The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of the federal internal revenue code.

(G) The death and disability benefits provided by a retirement plan are limited by the incidental benefit rule set forth in section 401(a)(9)(G) of the federal internal revenue code and treasury regulation 1.401-1(b)(1)(i).

(4) Distributions from the retirement plans may be made only upon retirement, separation from service, disability or death.

(5) The board or its designee may not:

(A) Determine eligibility for benefits;

(B) compute rates of contribution; or

(C) compute benefits of members or beneficiaries, in a manner that discriminates in favor of members who are considered officers, supervisors or highly compensated, as prohibited under section 401(a)(4) of the federal internal revenue code.

(6) Subject to the provisions of this subsection, benefits paid from, and employee contributions made to, the retirement plans shall not exceed the maximum benefits and the maximum annual additions, respectively, permissible under section 415 of the federal internal revenue code.

(A) Before January 1, 1995, a member may not receive an annual benefit that exceeds the limits specified in section 415(b) of the federal internal revenue code, subject to the applicable adjustments in that section. Beginning January 1, 1995, a participant may not receive an annual benefit that exceeds the dollar amount specified in section 415(b)(1)(A) of the federal internal revenue code, subject to the applicable adjustments in section 415 of the federal internal revenue code.

(B) Notwithstanding any other provision of law to the contrary, the board may modify a request by a participant to make a contribution to the retirement plans if the amount of the contribution would exceed the limits under section 415(c) or 415(n) of the federal internal revenue code subject to the following:

(i) Where the retirement plan's law requires a lump-sum payment, for the purchase of service credit, the board may establish a periodic payment plan in order to avoid a contribution in excess of the limits under section 415(c) or 415(n) of the federal internal revenue code.

(ii) If the board's option under ~~subdivision~~ clause (i) will not avoid a contribution in excess of the limits under section 415(c) or 415(n) of the federal internal revenue code, the board shall reduce or deny the contribution.

(C) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if an active member makes one or more contributions to purchase permissive service credit under a retirement plan, then the requirements of this section shall be treated as met only

if:

(i) The requirements of section 415(b) of the federal internal revenue code are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of such section; or

(ii) the requirements of section 415(c) of the federal internal revenue code are met, determined by treating all such contributions as annual additions for purposes of such section. For purposes of applying ~~subparagraph clause~~ (i) a retirement plan shall not fail to meet the reduced limit under section 415(b)(2)(C) of the federal internal revenue code solely by reason of this ~~paragraph subparagraph~~ (C), and for purposes of applying ~~subparagraph clause~~ (ii), a retirement plan shall not fail to meet the percentage limitation under section 415(c)(1)(B) of the federal internal revenue code solely by reason of this paragraph.

(iii) For purposes of this ~~paragraph clause~~, the term "permissive service credit" means service credit:

(a) Specifically recognized by a retirement plan's law for purposes of calculating a member's benefit under that retirement plan;

(b) which such member has not received under a retirement plan; and

(c) which such member may receive under a retirement plan's law only by making a voluntary additional contribution, in an amount determined under the retirement plan's law and procedures established by the board, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

(iv) A retirement plan shall fail to meet the requirements of this ~~paragraph clause~~ if the retirement plan's law specifically provides for a purchase of nonqualified service purchase, and if:

(a) More than five years of nonqualified service credit are taken into account for purposes of this ~~paragraph subclause~~; or

(b) any nonqualified service credit is taken into account under this ~~paragraph~~ subclause before the member has at least five years of participation under a retirement plan. For purposes of this ~~paragraph~~ subclause, effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means the same as provided in section 415(n)(3)(C) of the federal internal revenue code.

(v) In the case of a trustee-to-trustee transfer after December 31, 2001, to which section 403(b)(13)(A) or 457(e)(17)(A) of the federal internal revenue code applies, without regard to whether the transfer is made between plans maintained by the same employer:

(a) The limitations of ~~subparagraph~~ clause (iv) shall not apply in determining whether the transfer is for the purchase of permissive service credit; and

(b) the distribution rules applicable under federal law to a retirement plan shall apply to such amounts and any benefits attributable to such amounts.

(vi) For an eligible member, the limitation of section 415(c)(1) of the federal internal revenue code shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of the statute as in effect on August 5, 1997. For purposes of this ~~subparagraph~~ clause, an eligible member is an individual who first became a member in the retirement plan before January 1, 1998.

(D) Subject to approval by the internal revenue service, the board shall maintain a qualified governmental excess benefit arrangement under section 415(m) of the federal internal revenue code. The board shall establish the necessary and appropriate procedures for the administration of such benefit arrangement under the federal internal revenue code. The amount of any annual benefit that would exceed the limitations imposed by section 415 of the federal internal revenue code shall be paid from this benefit arrangement. The amount of any contribution that would exceed the limitations imposed by section 415 of the federal internal revenue code shall be credited to this benefit

arrangement. The qualified excess benefit arrangement shall be a separate portion of the retirement plan. The qualified excess benefit arrangement is subject to the following requirements:

(i) The benefit arrangement shall be maintained solely for the purpose of providing to participants in the retirement plans that part of the participant's annual benefit otherwise payable under the terms of the act that exceeds the limitations on benefits imposed by section 415 of the federal internal revenue code; and

(ii) participants do not have an election, directly or indirectly, to defer compensation to the excess benefit arrangement.

(E) For purposes of applying these limits only and for no other purpose, the definition of compensation where applicable shall be compensation actually paid or made available during a limitation year, except as noted below and as permitted by treasury regulation section 1.415(c)-2. Specifically, compensation shall be defined as wages within the meaning of section 3401(a) of the federal internal revenue code and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under sections 6041(d), 6051(a)(3) and 6052 of the federal internal revenue code. Compensation shall be determined without regard to any rules under section 3401(a) of the federal internal revenue code that limit the remuneration included in wages based on the nature or location of the employment or the services performed, such as the exception for agricultural labor in section 3401(a)(2) of the federal internal revenue code.

(i) However, for limitation years beginning after December 31, 1997, compensation shall also include amounts that would otherwise be included in compensation but for an election under sections 125(a), 402(e)(3), 402(h)(1)(B), 402(k) or 457(b) of the federal internal revenue code. For limitation years beginning after December 30, 2000, compensation shall also include any elective amounts that are not includable in the gross income of the employee by reason of section 132(f)(4) of the federal

internal revenue code.

(ii) The definition of compensation shall exclude employee contributions picked up under section 414(h)(2) of the federal internal revenue code.

(iii) For limitation years beginning on and after January 1, 2007, compensation for the limitation year will also include compensation paid by the later of two and a half months after an employee's severance from employment or the end of the limitation year that includes the date of the employee's severance from employment if:

(a) The payment is regular compensation for services during the employee's regular working hours or compensation for services outside the employee's regular working hours, such as overtime or shift differential, commissions, bonuses or other similar payments, and absent a severance from employment, the payments would have been paid to the employee while the employee continues in employment with the employer;

(b) the payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued; or

(c) for limitation years beginning on and after January 1, 2012, the payment is made pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid to the member at the same time if the member had continued employment with the employer and only to the extent that the payment is includable in the member's gross income.

(iv) Any payments not described in ~~paragraph~~ clause (iii) are not considered compensation if paid after severance from employment, even if they are paid within two and a half months following severance from employment, except for payments to the individual who does not currently perform services for the employer by reason of qualified military service, within the meaning of section 414(u) (1) of the federal internal revenue code, to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer

rather than entering qualified military service.

(v) An employee who is in qualified military service, within the meaning of section 414(u)(1) of the federal internal revenue code, shall be treated as receiving compensation from the employer during such period of qualified military service equal to: (a) The compensation the employee would have received during such period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the employer but for the absence during the period of qualified military service; or (b) if the compensation the employee would have received during such period was not reasonably certain, the employee's average compensation from the employer during the twelve-month period immediately preceding the qualified military service, or if shorter, the period of employment immediately preceding the qualified military service.

(vi) Back pay, within the meaning of treasury regulation section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(7) On and after January 1, 2009, for purposes of applying the limits under section 415(b) of the federal internal revenue code, the following shall apply:

(A) A member's applicable limit shall be applied to the member's annual benefit in the first limitation year without regard to any automatic cost-of-living increases;

(B) to the extent the member's annual benefit equals or exceeds such limit, the member shall no longer be eligible for cost-of-living increases until such time as the benefit plus the accumulated increases are less than such limit;

(C) thereafter, in any subsequent limitation year, the member's annual benefit including any automatic cost-of-living increase applicable shall be tested under the then applicable benefit limit including any adjustment to the dollar limit under section 415(b)(1)(A) or 415(d) of the federal internal revenue code and the regulations thereunder; and

(D) in no event shall a member's annual benefit payable from a retirement plan in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to section 415(d) of the federal internal revenue code and the regulations thereunder. If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity, then the preceding sentence is applied by reducing the limit under section 415(b) of the federal internal revenue code applicable at the annuity starting date to an actuarially equivalent amount determined using the assumptions specified in treasury regulation section 1.415(b)-1(c)(2)(ii) that take into account the death benefits under the form of benefit. This subsection applies to distributions made on and after January 1, 1993. A distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a transfer made from the retirement system.

(i) An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: (a) Any distribution that is one of a series of substantially equal periodic payments, not less frequently than annually, made for the life or the life expectancy of the distributee or the joint lives or joint life expectancies of the distributee and the distributee's designated beneficiary or for a specified period of 10 years or more; (b) any distribution to the extent such distribution is required under section 401(a)(9) of the federal internal revenue code; (c) the portion of any distribution that is not includable in gross income; and (d) any other distribution that is reasonably expected to total less than \$200 during the year. Effective January 1, 2002, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includable in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the federal internal revenue code, or to a qualified defined contribution plan described in section 401(a) of the federal internal revenue code or to

a qualified plan described in section 403(a) of the federal internal revenue code, that agrees to separately account for amounts so transferred and earnings on such amounts, including separately accounting for the portion of the distribution that is includable in gross income and the portion of the distribution that is not so includable, or on or after January 1, 2007, to a qualified defined benefit plan described in section 401(a) of the federal internal revenue code or to an annuity contract described in section 403(b) of the federal internal revenue code, that agrees to separately account for amounts so transferred and earnings thereon, including separately accounting for the portion of the distribution that is includable in gross income and the portion of the distribution that is not so includable.

(ii) An eligible retirement plan is any of the following that accepts the distributee's eligible rollover distribution:

(a) An individual retirement account described in section 408(a) of the federal internal revenue code;

(b) an individual retirement annuity described in section 408(b) of the federal internal revenue code;

(c) an annuity plan described in section 403(a) of the federal internal revenue code;

(d) a qualified trust described in section 401(a) of the federal internal revenue code;

(e) effective January 1, 2002, an annuity contract described in section 403(b) of the federal internal revenue code;

(f) effective January 1, 2002, a plan eligible under section 457(b) of the federal internal revenue code that is maintained by a state, political subdivision of a state or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into the plan from a retirement plan; or

(g) effective January 1, 2008, a roth IRA described in section 408(A) of the federal internal revenue code.

(iii) Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a domestic relations order, as defined in section 414(p) of the federal internal revenue code.

(iv) A distributee includes an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the federal internal revenue code. Effective July 1, 2007, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by section 401(a)(9)(E) of the federal internal revenue code. However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

(v) A direct rollover is a payment by the retirement system to the eligible retirement plan specified by the distributee.

(8) Notwithstanding any law to the contrary, the board may accept a direct or indirect eligible rollover distributions for the purpose of the purchase of service credit. In addition, the board may accept a direct trustee to trustee transfer from a deferred compensation plan under section 457(b) of the federal internal revenue code or a tax sheltered annuity under section 403(b) of the federal internal revenue code for: (A) The purchase of permissive service credit, as defined under section 415(n)(3)(A) of the federal internal revenue code; or (B) a repayment to which section 415 of the federal internal revenue code does not apply pursuant to section 415(k)(3) of the federal internal revenue code. Any such transfer shall be allowed as provided in this subsection to the extent permitted by law, subject to any conditions, proofs or acceptance established or required by the board or the board's designee.

(9) Where required by the act, an employer shall pick up and pay contributions that would

otherwise be payable by members of a retirement plan in accordance with section 414(h)(2) of the federal internal revenue code as follows:

(A) The contributions, although designated as employee contributions, are being paid by the employer in lieu of contributions by the employee;

(B) the employee must not have been given the option of receiving the amounts directly instead of having them paid to the retirement plan; and

(C) the pickup shall apply to amounts that a member elects to contribute to receive credit for prior or participating service if the election is irrevocable and applies to amounts contributed before retirement.

(10) (A) Notwithstanding any provision of this plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with section 414(u) of the federal internal revenue code and the uniformed services employment and reemployment rights act of 1994.

(B) Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service, as defined in chapter 43 of title 38, United States code, to the extent required by section 401(a)(37) of the federal internal revenue code, survivors of a member in the system, are entitled to any additional benefits that the system would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed. A deceased member's period of qualified military service must be counted for vesting purposes.

(C) Effective with respect to deaths or disabilities, or both, occurring on or after January 1, 2007, while a member is performing qualified military service, as defined in chapter 43 of title 38, United States code, to the extent permitted by section 414(u)(9) of the federal internal revenue code, for the benefit accrual purposes and in the case of death, for vesting purposes, the member will be treated

as having earned years of service for the period of qualified military service, having returned to employment on the day before the death or disability, or both, and then having terminated on the date of death or disability. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

(D) Beginning January 1, 2009, to the extent required by section 414(u)(12) of the federal internal revenue code, an individual receiving differential wage payments, as defined under section 3401(h)(2) of the federal internal revenue code, from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under section 415(c) of the federal internal revenue code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

(11) Upon the complete or partial termination of a retirement plan, the rights of members to benefits accrued to the date of termination, to the extent funded, or to the amounts in their accounts are nonforfeitable, and amounts in their accounts may be distributed to them.

(d) The plan year for the retirement plan begins on July 1.

(e) The limitation year for purposes of section 415 of the federal internal revenue code is the calendar year.

(f) The board may not engage in a transaction prohibited by section 503(b) of the federal internal revenue code.

(g) (1) For purposes of determining an "actuarial equivalent" or of an "actuarial computation" for members hired prior to July 1, 2009, the board shall use the following:

(A) The applicable mortality table is specified in revenue ruling 2001-62 or revenue ruling 2007-67, as applicable; and

(B) the applicable interest factor is ~~8% per year~~ the actuarially assumed rate of return established by the board.

(2) For purposes of determining an "actuarial equivalent" or an "actuarial computation" for members hired on or after July 1, 2009, the board shall use the following:

(A) The applicable mortality table is the $^{50}/_{50}$ male/female blend of the RP 2000 health annuitant mortality table, projected to 2025; and

(B) the applicable interest factor is ~~8% per year~~ the actuarially assumed rate of return established by the board.

(3) For converting amounts payable under the partial lump sum option, the board shall use the following:

(A) The applicable mortality table is a $^{50}/_{50}$ male/female blend of the 1983 group annuity mortality table; and

(B) the applicable interest factor is ~~8% per year~~ the actuarially assumed rate of return established by the board.

(4) For benefit testing under section 415(b) of the federal internal revenue code, the factors required by treasury regulations shall be used. The applicable mortality table is specified in revenue ruling 2001-62 for years prior to January 1, 2009, and notice 2008-85 for years after December 31, 2008.";

On page 6, in line 1, by striking "and" and inserting a comma; also in line 1, after "74-4956" by inserting "and 74-4959 and K.S.A. 2016 Supp. 74-4914, 74-4914f and 74-49,123";

And by renumbering sections accordingly;

On page 1, in the title, in line 3, after the semicolon by inserting "providing certain death benefits to surviving spouses; exempting state board of regents retirement plan members from certain employment after retirement provisions; determining actuarial equivalent or actuarial computation interest factor;"; also in line 3, by striking the first "and" and inserting a comma; also in line 3, after "74-4956" by inserting "and 74-4959 and K.S.A. 2016 Supp. 74-4914 and 74-49,123"; in line 4, after

"sections" by inserting "; also repealing K.S.A. 2016 Supp. 74-4914f"; and the bill be passed as amended.

_____Chairperson