

SESSION OF 2017

**CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE SUBSTITUTE FOR SENATE BILL NO. 21**

As Agreed to May 16, 2017

**Brief\***

House Sub. for SB 21 would make changes to the Kansas Public Employees Retirement System (KPERS or Retirement System) pertaining to working after retirement.

Under current law, KPERS retirees may return to work for employers who participate in the Retirement System if there has been a *bona fide* separation in employment of a minimum of 60 days with no pre-existing arrangement to return to work. For most newly retired individuals, the law caps annual earnings at \$25,000. When a retiree earns that amount, the person must decide either to stop working or stop receiving KPERS benefits for the remainder of the calendar year. Several groups of retirees—such as nurses at certain state institutions, individuals covered by the Kansas Police and Firemen’s Retirement System or the Retirement System for Judges, local government officials, and individuals employed with a participating employer prior to May 1, 2015—are exempt from the cap. Certain licensed school district employees are also exempt. Participating employers who hire retirees are required to contribute to KPERS at varying rates, which can be as great as 30 percent of the retirees’ compensation, depending on the circumstances.

The bill would establish a new working-after-retirement rule, which would take effect on January 1, 2018. For retirees under the age of 62, there would be a 180-day waiting period

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before returning to work. If the retiree is 62 or older, the current 60-day waiting period would apply. The current prohibition placed upon prearrangement for employment would continue to apply. For covered positions, the employer would pay the statutory contribution rate on the first \$25,000 of compensation and, for that portion of compensation greater than \$25,000, the contribution rate would be equal to 30 percent of the compensation. Covered positions for non-school employees are those that are not seasonal or temporary and whose employment requires at least 1,000 hours of work per year; covered positions for school employees are those that are not seasonal or temporary and whose employment requires at least 630 hours of work per year or at least 3.5 hours a day for at least 180 days. For non-covered positions, the employer would not make contributions. The provisions in this paragraph would not sunset.

Starting on January 1, 2018, all retirees who had retired prior to that date in state, local, and licensed or unlicensed school positions would not be subject to an earnings limitation. Employers would pay the statutory contribution rate on the first \$25,000 of compensation and, for that portion of compensation greater than \$25,000, the contribution rate would be equal to 30 percent for retirees employed in covered positions. The employer would not make contributions for non-covered positions. This provision would apply to:

- Retirees who returned to work on or after May 1, 2015, or who have lost grandfathered status since that date due to a break in service or a change of jobs or employers;
- Retirees in licensed school positions who retire after May 1, 2015, or took early retirement after March 2009;
- Retirees who are currently covered by a grandfathering provision (*i.e.*, returned to work

before May 1, 2015, and have not lost grandfather status);

- Retirees in licensed school professional positions who are currently covered by a grandfathering provisions (*i.e.*, retired before May 1, 2015, or took early retirement before March 2009); and
- “Great-grandfathered” retirees who returned to work for either the same or different employer before July 1, 2006.

### ***Exemption Changes, Effective July 1, 2017***

The bill would clarify the working-after-retirement exemption would cover any substitute teacher working without a contract. Retirees who retired before January 1, 2018, and who returned to work in licensed school professional positions would be covered by the current provisions for grandfathered licensed school professionals. The exemption would be expanded to include state-wide elected officials and legislators, exempting them from both earnings limits and employer contributions; there would be a 30-day waiting period following retirement before taking office, which would not apply in the case of filling a vacant office. Working-after-retirement provisions would apply to retirees employed as independent contractors or employed by third parties; however, retirees who are independent contractors or are employed by third parties would be excluded from the working-after-retirement provisions if:

- The contractual relationship was not created to allow the retiree to continue employment in a position similar to the one the retiree held before retiring;
- The retiree’s activities are not normally performed exclusively by employees of the KPERS participating employer; and

- The retiree meets the statutory criteria for an independent contractor or, if employed by a third-party contractor, the activities are on a limited-term basis and the third party is not itself a KPERS participating employer.

### ***Exemption Changes, Effective January 1, 2018***

The exemptions for licensed school professionals and hardship, hard-to-fill, and special education positions would be eliminated.

### **Conference Committee Action**

The Conference Committee agreed to the provisions of House Sub. for SB 21, as recommended by the House Committee on Financial Institutions and Pensions, and further agreed to amend the bill with certain working-after-retirement provisions as follows:

- Inserted a new working-after-retirement rule for those retirements on and after January 1, 2018, which would:
  - Specify a 180-day waiting period before returning to work if retiring before age 62, and a 60-day waiting period for those 62 and older;
  - State there would be no earning limit for these new retirees;
  - Specify no prearrangement to return to work between employer and retiree is allowed; and
  - Specify an employer would not pay any employer contributions on the pay of retirees in non-covered positions, but the employer would pay the statutory contribution rate on

the first \$25,000, and 30 percent thereafter on the pay of retirees in covered positions;

- Specified the earnings cap would not apply to certain retirees who work either as independent contractors or for third parties if certain conditions are met;
- Inserted language to clarify the substitute teacher exemption covers any retiree working as a substitute teacher without a contract;
- Added language exempting all state and local elected officials from working-after-retirement restrictions and clarified the waiting period;
- Eliminated the exemptions for licensed school professionals and hardship, hard-to-fill, and special education positions;
- Updated the eligibility date for grandfathered licensed school exemptions; and
- Inserted language concerning the non-licensed grandfather status and contribution rates.

## **Background**

The bill contains provisions of House Sub. for SB 21, SB 138, and HB 2268.

### ***House Sub. for SB 21—Sunsetting and Collapsing Special Exemptions and Modifying Certain Other Working After Retirement Provisions***

The contents of SB 21, as amended and passed by the Senate, to amend provisions of the Kansas Money Transmitter Act, were included in SB 20 by the House

Committee on Financial Institutions and Pensions. SB 20 was approved by the Governor on April 18, 2017.

The House Committee held a series of hearings and subcommittee meetings on the working-after-retirement provisions enacted in 2015 and 2016. Representatives from various participating employers including school districts and local units of government explained the consequences of working after retirement. Representatives of KPERS provided information about the number of retirees who have returned to work. The result of those discussions led to the substitute bill recommended by the House Committee.

Following the House Committee's recommendation, KPERS identified the elimination of the requirement that employers pay the statutory contribution rate on all retirees who return to work under the \$25,000 earnings cap as the most significant change in the bill. For the first six months of FY 2017, total contributions at the statutory rate were \$1.02 million (approximately \$2.0 million, if annualized). Had the substitute bill been existing law, no contributions would have been made, except to the extent that retirees subject to the basic rule exceeded the \$25,000 earnings cap and continued working. In addition, the contribution amount would have been expected to increase over time as the statutory rate for the State-School group of employers rises in future fiscal years and the proportion of retirees returning to work under the basic rule grows.

The changes likely will require some changes to KPERS information technology system. It is expected the changes can be made within existing resources.

***SB 138—Exempting KPERS Licensed School Retirants  
from the Working-After-Retirement Earnings  
Limitation***

During the hearing before the Senate Committee on Financial Institutions and Insurance, the Chairperson of the

State Board of Education spoke in favor of SB 138, stating the legislation would provide school districts with the flexibility to fill vacant positions with qualified individuals. A representative of the Kansas Association of Special Education Administrators and a school superintendent from Southern Lyon County USD 252 also spoke in favor of the bill, stating the legislation would reduce the complexity of working after retirement.

No opponent testimony was provided.

Representatives of the United School Administrators of Kansas, the Kansas School Superintendents Association, the Kansas National Education Association, and the Wichita Public Schools provided neutral testimony, describing the demographics of an experienced workforce, which may result in teacher shortages.

Representatives of KPERS provided neutral testimony, explaining the history of working after retirement. Limitations on working after retirement have been focused on an earnings cap, depending upon whether the retiree worked for the same employer from which the member retired, and employer contributions, depending upon whether the retiree worked for a different employer. During calendar year 2015, 1,180 grandfathered retirees worked in licensed school positions without an earnings limit; of that number, 428 individuals retired before July 1, 2009, and 752 individuals retired on or after that date.

The Senate Committee amended the bill to:

- Create a new working-after-retirement provision for KPERS members who retire in 2018 or later, requiring [*Note:* The Conference Committee retained this amendment.]:
  - A waiting period of 180 days for individuals who retire before age 62; or

- A waiting period of 60 days for individuals who retire at age 62 or older;
- Delete references to substitute teacher in the working-after-retirement statutes [*Note*: The Conference Committee did not retain this amendment.];
- Repeal assurance protocols [*Note*: The Conference Committee did not retain this amendment.]; and
- Specify the types of compensation for elected officials that would be included in the earnings cap and the corresponding employer contribution rate [*Note*: The Conference Committee did not retain this amendment.].

The Senate Committee of the Whole amended the bill to:

- Sunset the hardship, special education, and hard-to-fill exemptions on January 1, 2018 [*Note*: The Conference Committee retained this amendment.];
- Delete the date July 1, 2009, which limits the licensed school professional exemption to retirees who retired on or after that date, allowing retirees who retired before July 1, 2009, and work in licensed school positions to remain in their existing grandfathered status under the exemption [*Note*: The Conference Committee retained this amendment.]; and
- Add a technical amendment to the appropriate KPERS Tier 2 statute relating to normal retirement to reflect the new 180-day waiting period for retirees who retire on or after January 1, 2018, at an age of less than 62 [*Note*: The Conference Committee retained this amendment.].

Following the Senate Committee amendments to the bill, KPERS states the projections of actuarial liabilities and calculations of the actuarial contribution rates needed to fund those liabilities are built on actuarial assumptions, such as the proportion of eligible members who are expected to retire at certain ages. To the extent the proportion of members retiring is higher than the assumptions, actuarial liabilities and the actuarial contribution rate may then increase, with the converse applying to changes in retirement patterns and behaviors that result in fewer retirements than expected.

SB 138, as amended, would expand the ability of retirees to return to work without an earnings limit, which can increase incentives for members to retire earlier than they might otherwise. For members retiring on or after January 1, 2018, who are younger than age 62, a longer, 180-day waiting period would apply before returning to work. For this group of retirees, the longer waiting period may introduce an incentive to delay retirement, offsetting to some degree the effect of eliminating the earnings limit. However, KPERS is not able to project the extent or net impact of changes in retirement patterns, and a precise cost cannot be calculated as the degree of the impact is dependent on the number of retirees affected and the demographic characteristics of the employees (e.g., age, earnings, gender, and years of service).

The changes will likely require some changes to the KPERS information technology system. It is expected the changes can be made within existing resources.

***HB 2268—Extending the Sunset Date on Certain Working-After-Retirement Exemptions***

HB 2268, as introduced, would have extended the sunset on current working-after-retirement provisions by one year. A subcommittee of the House Committee on Financial Institutions and Pensions was appointed to discuss working-after-retirement issues. The subcommittee heard testimony

and commentary from individual retirees and representatives of various school administrator, school district, and law enforcement officers' organizations, the Board of Regents, and the League of Kansas Municipalities as to the administrative implications of working-after-retirement provisions enacted in 2015 and 2016.

After removing the provision related to the one-year extension of current working-after-retirement provisions proposed in the bill [*Note*: The Conference Committee did not retain this amendment.], the House Committee on Financial Institutions and Pensions amended the bill to:

- Specify the earnings cap would not apply to certain retirees who work either as independent contractors or for third parties if certain conditions are present [*Note*: The Conference Committee retained this amendment.];
- Exempt members of the Board of Regents' Retirement Plan from the earnings cap [*Note*: This language was inserted into SB 205.];
- Add a technical amendment regarding the actuarial assumed rate of return [*Note*: The Conference Committee did not retain this amendment.];
- Combine current special exemptions into one special working-after-retirement exemption [*Note*: The Conference Committee retained this amendment.];
- Exempt from the earnings cap individuals who retire at age 62 or older, on or after July 1, 2017, and require their participating employers to make a 30.0 percent contribution to KPERS [*Note*: The Conference Committee did not retain this amendment.]; and

- Specify the types of legislative compensation that would be included in the earnings cap [*Note*: The Conference Committee did not retain this amendment.].

The fiscal note for HB 2268, as introduced, is no longer applicable. Representatives of KPERS have indicated administrative costs to implement the bill would be met from existing resources. The bill in its current form would have an actuarial impact on the Retirement System, but the net impact is not quantifiable.

working after retirement; Kansas Public Employees Retirement System

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