SESSION OF 2017

SUPPLEMENTAL NOTE ON SENATE BILL NO. 138

As Amended by Senate Committee of the Whole

Brief*

SB 138, as amended, 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' earnings, depending on the circumstances.

The bill would exempt from the earnings cap those retirees who retired on July 1, 2009, or later; were retired for more than 60 days prior to July 1, 2017; and were subsequently hired in a school position requiring a license. Under current law, only retirees who retired prior to May 1,

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*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at http://www.kslegislature.org

2015, are eligible for this exemption. The special exemption, which is scheduled to sunset on July 1, 2020, would become permanent. The bill would repeal the 48-month or four school-year limit on the term of employment. The special exemptions for special education and certified hard-to-fill positions would be eliminated; the exemption for licensed school personnel would remain. The annual duty of the State Board of Education to certify the top five hard-to-fill positions would be repealed. Individuals who retired before July 1, 2009, and working currently in a licensed school professional position would retain their existing grandfathered status.

The bill would create new working-after-retirement provisions for individuals who retire in 2018 or later. If an individual retires before the age of 62, the retiree would be required to wait for 180 days before accepting employment with a KPERS participating employer. If the individual is age 62 or older, the waiting period would be 60 days. Prearranged agreements for employment between KPERS members and employers would continue to be prohibited. For a retiree hired into a KPERS covered position, there would be no earnings cap and the employer would pay to KPERS a contribution rate of 30 percent of the retiree's annual earnings. For a retiree hired into a non-covered position, there would be no compensation cap, and there would be no employer contribution.

Effective as of January 1, 2018, the bill would sunset the hardship, special education,and hard-to-fill exemptions and the assurance protocol procedures that participating employers must follow when employing a retiree. All references to substitute teachers would be deleted from the working-after-retirement statutes.

The bill would add a technical amendment to the appropriate KPERS Tier 2 statute relating to normal retirement to reflect the 180-day waiting period described above.

For retirees who are elected officials, the bill would specify that income taxable under federal tax law would be assessed towards meeting the earnings cap amount. Reimbursements for travel and living expenses, in most instances, would not count towards the earnings cap. The employer contribution rate for elected officials would be the statutorily prescribed employer contribution rate.

Background

During the hearing before the Senate Committee on Financial Institutions and Insurance, the Chairperson of the State Board of Education spoke in favor of the bill, stating the legislation would provide school districts with the flexibility to fill vacate 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.

There was no opponent testimony.

Representatives of the United School Administrators of Kansas, the Kansas School Superintendents Association, the Kansas 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:
  - 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;
- Repeal assurance protocols; and
- Specify the types of compensation for elected officials that would be included in the earnings cap and the corresponding employer contribution rate.

The Senate Committee of the Whole amended the bill to:

- Sunset the hardship, special education, and hard-to-fill exemptions on January 1, 2018;
- Delete the date July 1, 2009, which limits the licensed school professional exemption to retirees that 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; 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.

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.

The bill, 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.