

## HOUSE BILL No. 2626

By Representative Stone

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AN ACT concerning retirement; relating to the purchase of service credit; rollover of distributions; amending K.S.A. 2001 Supp. 74-49,123 and repealing the existing section.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 2001 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, 1998; 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 the requirements of section 401(a)(9) of the federal internal revenue code and the regulations under that section. In order to meet these requirements, the retirement plan shall be administered in

1 accordance with the following provisions: (A) Distribution of a member's  
2 benefit must begin by the later of the April 1 following the calendar year  
3 in which a participant attains age 70½ or the April 1 of the year following  
4 the calendar year in which the member retires;

5 (B) the life expectancy of a member or the member's spouse may not  
6 be recalculated after the benefits commence;

7 (C) if a member dies before the distribution of the member's benefits  
8 has begun, distributions to beneficiaries must begin no later than Decem-  
9 ber 31 of the calendar year immediately following the calendar year in  
10 which the member died, except as provided in subsection (6) of K.S.A.  
11 74-4918 and amendments thereto; and

12 (D) the amount of benefits payable to a member's beneficiary may  
13 not exceed the maximum determined under the incidental death benefit  
14 requirement of the federal internal revenue code.

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

17 (5) The board or its designee may not:

18 (A) determine eligibility for benefits;

19 (B) compute rates of contribution; or

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

24 (6) Subject to the provisions of this subsection, benefits paid from,  
25 and employee contributions made to, the retirement plans shall not ex-  
26 ceed the maximum benefits and the maximum annual additions, respec-  
27 tively, permissible under section 415 of the federal internal revenue code.

28 (A) Beginning January 1, 1995, a participant may not receive an an-  
29 nual benefit that exceeds the dollar amount specified in section  
30 415(b)(1)(A) of the federal internal revenue code, subject to the appli-  
31 cable adjustments in section 415 of the federal internal revenue code,  
32 except as provided in clause (C) of this subsection.

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

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

42 (ii) An eligible participant in a retirement plan, as defined by section  
43 1526 of the federal taxpayer relief act of 1997, may purchase service credit

1 without regard to the limitations of section 415 (c)(1) of the federal in-  
2 ternal revenue code as provided by state law in effect on August 5, 1997.

3 If the board's option under subdivision (i) will not avoid a contribution  
4 in excess of the limits under section 415(c) or 415(n) of the federal in-  
5 ternal revenue code, the board shall reduce or deny the contribution.

6 (C) Subject to approval by the internal revenue service, the board  
7 shall maintain a qualified governmental excess benefit arrangement under  
8 section 415(m) of the federal internal revenue code. The board shall es-  
9 tablish the necessary and appropriate procedures for the administration  
10 of such benefit arrangement under the federal internal revenue code.  
11 The amount of any annual benefit that would exceed the limitations im-  
12 posed by section 415 of the federal internal revenue code shall be paid  
13 from this benefit arrangement. The amount of any contribution that  
14 would exceed the limitations imposed by section 415 of the federal in-  
15 ternal revenue code shall be credited to this benefit arrangement. The  
16 qualified excess benefit arrangement shall be a separate portion of the  
17 retirement plan. The qualified excess benefit arrangement is subject to  
18 the following requirements:

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

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

26 (D) Prior to January 1, 1998, the definition of compensation, wages,  
27 salary or other similar term when used for purposes of determining com-  
28 pliance with section 415 of the federal internal revenue code does not  
29 include the amount of any elective deferral, as defined in section  
30 402(g)(3) of the federal internal revenue code, or any contribution which  
31 is contributed or deferred by the employer at the election of the employee  
32 and which is not includable in the gross income of the employee by reason  
33 of section 125 or 457 of the federal internal revenue code.

34 (7) The board may not engage in a transaction prohibited by section  
35 503(b) of the federal internal revenue code.

36 (8) To the extent required by section 401(a)(31) of the federal inter-  
37 nal revenue code, the board shall allow members and qualified benefi-  
38 ciaries to elect a direct rollover of eligible distributions to another eligible  
39 retirement plan. Notwithstanding any law to the contrary, the board may  
40 accept a direct *or indirect* rollover of eligible distributions for the purpose  
41 of the purchase of service credit. *In addition, the board may accept a*  
42 *direct trustee to trustee transfer from a deferred compensation plan under*  
43 *section 457(b) of the federal internal revenue code or a tax sheltered an-*

1 *nuitiy under section 403(b) of the federal internal revenue code for: (A)*  
2 *The purchase of permissive service credit, as defined under section*  
3 *415(n)(3)(A) of the federal internal revenue code; or (B) a repayment to*  
4 *which section 415 of the federal internal revenue code does not apply*  
5 *pursuant to section 415(k)(3) of the federal internal revenue code. Any*  
6 *such transfer shall be allowed as provided in this subsection to the extent*  
7 *permitted by law, subject to any conditions, proofs or acceptance estab-*  
8 *lished or required by the board or the board's designee.*

9 (9) Where required by the act, an employer shall pick up and pay  
10 contributions that would otherwise be payable by members of a retire-  
11 ment plan in accordance with section 414(h)(2) of the federal internal  
12 revenue code as follows:

13 (A) The contributions, although designated as employee contribu-  
14 tions, are being paid by the employer in lieu of contributions by the  
15 employee;

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

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

22 (10) Notwithstanding any provision of this plan to the contrary, con-  
23 tributions, benefits and service credit with respect to qualified military  
24 service will be provided in accordance with section 414(u) of the federal  
25 internal revenue code.

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

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

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

33 Sec. 2. K.S.A. 2001 Supp. 74-49,123 is hereby repealed.

34 Sec. 3. This act shall take effect and be in force from and after its  
35 publication in the Kansas register.

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