

HB 358—Committee Substitute

AN ACT relating to the Kentucky Employees Retirement System, the Kentucky County Employees Retirement System, the Kentucky Teachers Retirement System, the Kentucky State Police Retirement System, the Kentucky Judicial Retirement System, and the Legislative Retirement System and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. Notwithstanding any other provision of KRS 61.565, 61.702, 2018 Ky. Acts ch. 169, Pt. IV, 5., and 2018 Ky. Acts ch. 203 to the contrary, the employer contribution rate from July 1, 2019, through June 30, 2020, shall be 49.47 percent, consisting of 41.06 percent for pension and 8.41 percent for health insurance for nonhazardous duty employees participating in the Kentucky Employees Retirement System who are employed by Mental Health/Mental Retardation Boards, Local and District Health Departments, domestic violence shelters, rape crisis centers, child advocacy centers, state supported universities and community colleges, and any other agency eligible to voluntarily cease participating in the Kentucky Employees Retirement System pursuant to KRS 61.522.

SECTION 2. Notwithstanding any other provision of Kentucky Acts or Statutes, as of July 1, 2020, the responsibility for making the employer's contribution (the actuarially determined employer contribution) on behalf of members and retirees of the Kentucky Teachers Retirement System shall pass from the General Assembly to the local school boards where such teachers are actually employed.

SECTION 3. Notwithstanding any other provision of Kentucky Acts or Statutes, as of July 1, 2020, in order to continue participation and membership in the Kentucky Employees Retirement System, the Kentucky County Employees Retirement System, the Kentucky Teachers Retirement System, the Kentucky State Police Retirement System, the Kentucky Judicial Retirement System, and the Legislative Retirement System, any employer which is eligible under Kentucky and federal law to file a Plan of Debt Adjustment under Chapter 9 of the Bankruptcy Act, 11 U.S.C. § 901, et seq., shall make a one-time payment to the respective retirement system of which it is a member in an amount sufficient to bring the funded status of such retirement system up to 110% of the actuarially accrued liabilities for its members, inactive members and retirees. For purposes of this Section and the one-time payment, the actuaries shall compute the liabilities (normal cost and unfunded liabilities) as of December 31, 2019 with an assumed rate of return and discount rate equal to the average of the preceding three months' ten (10) year U.S. Treasury bill rates.

SECTION 4. Recognizing that few, if any, such employers can or would be able to afford the one-time payment contemplated in Section 3, the General Assembly hereby creates a Public Pension Task Force empowered to explore the creation of a new risk-sharing pension system which would merge all existing retirement systems into one system and provide, to the maximum extent possible, uniform contribution rates on behalf of all members, with appropriately differing rates for certain hazardous duty employees or employees which do not participate in Social Security.

SECTION 5. The Public Pension Task Force shall report on its progress to the Public Pensions Oversight Board at all of its regularly scheduled meetings and coordinate with the Public Pensions Oversight Board and the Legislative Research Commission on the drafting of legislation to be submitted to the General Assembly for its consideration during the 2020 regular session.

SECTION 6. The Public Pension Task Force shall consist of representatives of local government and other governmental organizations, employees and retirees, as follows:

- Three representatives of the Kentucky County Judge/Executive Association;
- Two representatives of the Kentucky League of Cities;
- Two representatives of the Kentucky Association of Counties;
- One representative of the Kentucky Health Departments Association;
- One representative of the regional universities;
- Three representatives of the Kentucky School Boards Association;
- One representative of the Association of Chiefs of Police;
- One representative of the Kentucky Firefighters' Association;
- One representative of the Kentucky Education Association;
- One representative of the Jefferson County Teachers Association;
- One representative of the Kentucky Retired Teachers Association;
- One representative of the Kentucky Governments Retirees;
- One representative of the Kentucky Public Retirees;
- One representative of the Kentucky Association of State Employees;
- One representative of the Fraternal Order of Police;
- One representative of the AFSCME;
- One retired judge or justice; and
- Such other organizations or stakeholders as the Public Pensions Oversight Board may nominate.

SECTION 7. The organizations nominating representatives as specified above should consider persons respected and trusted by their organizations and who have a broad understanding of pensions generally. Expertise in finance, investments, math, law, public budgeting, and the like would also be desirable qualifications for such representatives. The representatives should be able to attend meetings of the Task Force in Frankfort, generally at the offices of the Retirement System or at such other location as may be available and suitable, as often as several days per week until the new legislation is developed.

SECTION 8. The Task Force, working in conjunction with the Public Pensions Oversight Board, may retain independent, non-conflicted expert consultants, including an independent actuarial firm to work with the incumbent actuaries for each retirement system. The independent actuarial firm must have demonstrated, substantial experience in the design and management of risk-sharing or target benefit pension systems (such as the Wisconsin Retirement System, the New Brunswick Public Service Shared Risk Plan, other Canadian pension plans, various church plans, and various European plans) and should not presently be employed as the actuary of a major American state public pension plan. The independent actuarial firm will be expected to sign a Personal Services Contract, and its services will terminate not later than the effective date of any legislation that may be proposed by the Public Pension Task Force and then adopted by the General Assembly, unless otherwise extended for purposes of assisting with the

transition. The Public Pension Task Force may request input from offices of the Commonwealth, including all the retirement systems and other repositories of knowledge and expertise. The Public Pension Task Force may also request assistance from nationally recognized experts, whether by teleconference, Skype, or otherwise. In addition, the Public Pension Task Force may seek epidemiological and/or biostatistics assistance from the University of Kentucky College of Public Health or other universities in the Commonwealth. Furthermore, the Public Pension Task Force may evaluate the proposals set forth by the American Federation of Teachers in its April 2011 report “Strengthening Retirement Security and Building a Better America”, especially the recommendation to consider including all public employees in Social Security.

SECTION 9. The mission of the Public Pensions Task Force is to produce a reform plan to present to the legislature which accomplishes at least the following objectives:

- Bases the pension calculation solely on base salary (thereby eliminating pension spiking as a common practice);
- Incorporates a cap of earnings which can be used for pension calculation purposes (much like the cap on maximum taxable earnings in social security);
- Achieves an acceptable replacement of the five highest years of substantial earnings over at least a full 35-year working career, subject to the cap on earnings and considering the likely range of social security benefits for the employee (thereby using the social security administration’s 35-year formula for calculating benefits);
- Moves away from end of career formulas, such as high-three or high-five, for purposes of calculating the pension benefit, thereby at least partially encouraging the expansion of partial employment options toward the end of one’s career;
- Extends working careers for non-public safety employees so that the normal retirement age coincides with social security retirement ages, possibly indexed to future longevity trends;
- Considers the best available evidence on physical decline and longevity after retirement for public safety employees, including any epidemiology and actuarial experience studies, for purposes of determining whether the normal age of retirement for such workers should be increased to, for example, age 60;
- Moves toward a proportional sharing of the contribution costs between employers and employees;
- Shares risks among employers (and taxpayers), employees and retirees through such means as contribution costs, cost of living adjustments based on portfolio performance and/or conditional inflation protection (such as the Ontario Teachers’ Pension Plan pioneered);
- Utilizes a discount rate much closer to a corporate bond index for purposes of computing the actuarial liabilities;
- Considers whether some form of stress testing, or stochastic modeling, could be employed to manage the portfolio and identify risky or underperforming assets or asset categories that should be eliminated in favor of more sustainable income streams;
- Evaluates best governance practices, especially those in world leaders, such as the Canadian or European plans;
- Improves intergenerational equity;

- Uses a much shorter amortization schedule (thereby moving toward correcting the current intergenerational equity imbalance), and
- Seeks to achieve a funded status of 110% of liabilities within a reasonable period (thereby providing a cushion for inevitable economic downturns).

SECTION 10. The Public Pension Task Force may also submit recommendations for a constitutional amendment and, consistent with actuarial projections for the proposed risk-sharing public pension plan, enhanced revenue.

SECTION 11. Because the responsibility for paying the actuarially determined employer contribution for teachers will be shifted as of July 1, 2020 to the local school boards, the Task Force should create a subcommittee (with possibly augmented stakeholder participation) to develop recommendations for revised, equitable, permanent educational funding from the General Assembly.

SECTION 12. The Public Pension Task Force shall have open meetings when receiving testimony and advice from outside experts and other persons. It shall develop, with the assistance of the Commonwealth, a website upon which to post its reading lists, information and comments and suggestions from members of the public. Because its deliberations will be in the nature of collective bargaining sessions between employers and employees/retirees, notwithstanding the provisions of the Open Meetings Act, the Open Records Act, and other provisions of Kentucky law, the deliberations of the Public Pension Task Force, at the discretion of the Task Force, may be conducted in closed sessions.

SECTION 13. Whereas ensuring the financial health of postsecondary education institutions and local and district health departments and other quasi-governmental entities is vital to the future of Kentucky, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.