SESSION OF 1998

EXPLANATORY NOTE ON SENATE BILL NO. 11

As Amended by Conference Committee
May 3, 1998

Brief*

S.B. 11, as amended, would address many general public employer and employee retirement and disability benefit items, including a 3.0 percent COLA. The provisions included in the bill would:

1. **COLA Provision**. The Conference Committee recommends an ad hoc 3.0 percent cost-of-living adjustment for all persons who retired or started receiving disability benefits prior to July 1, 1997. This COLA is permanent in the sense that it increases the base monthly retirement benefit payment by 3.0 percent and continues throughout the lifetime of the member, as well as any disabled member or beneficiary that shares in the member's benefit. The Conference Committee recommends that a portion of the state's actuarial costs be paid in FY 1999 since the increase in benefits would be effective on July 1, 1998. Currently, the average KPERS monthly benefit payment for the pre-1997 group is approximately $670, and a 3.0 percent COLA would provide an average increase of $20 per month.

   Fiscal Note: The actuarial cost for this proposal is $108.0 million. The actuarial state cost is estimated at $83.6 million all funds. The actuarial local cost would be $24.4 million. State financing would be apportioned between the State General Fund (SGF) and the System's unfunded liability as follows: An appropriation of $20 million SGF would pay a portion of the actuarial cost in FY 1999 of the KPERS School, KPERS TIAA, KP&F State, and Judges plans. The remaining liability would be added to the System's unfunded liability. Under this Conference Committee proposal, the liability would be paid over 15 years. In FY 1999, the increased benefit

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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.ink.org/public/legislative/fulltext-bill.html.

payments for 47,146 retired members and other beneficiaries would increase $11.4 million. An additional $612,000 would be added to disability benefit payments in FY 1999. Based on the 15-year repayment schedule, the total deferred cost of this 3.0 percent COLA is estimated at $207.5 million, including the $20.0 million paid by the state in FY 1999. Beginning in FY 2001 for the state and CY 2001 for local units, the first year increased employer contributions are estimated at $9.83 million. The state's portion in FY 2001 would be $7.13 million, of which $6.1 million would be from the SGF. Local units would be assessed $2.7 million in CY 2001. *Sections 26, 50, 51.*

2. **KSRS COLA Increase**. This provision would grant Kansas School Retirement System (KSRS) members with 25 or more years of service a monthly benefit increase of $100, effective July 1, 1998, for anyone who had retired under KSRS prior to January 1, 1971. This increase would impact 336 KSRS retirants (as of October 1, 1997) and the additional first year benefits would cost $403,200 if paid for 12 months to all 336 people. Because this is an older group, the KPERS actuary has indicated there would be a negligible actuarial cost since the mortality rate annually would reduce the size of this closed group. The provision was included in **H. B. 2963** that originally was recommended for introduction by the Joint Committee on Pensions, Investments and Benefits. *Section 48.*

3. **Require Separate Employer Contribution Rates for New KPERS Participating Employers.** This provision would require new participating employers to pay their own prior service liability rather than the current practice of having the System as a whole absorb the new, additional liability. *Sections 14, 26.*

4. **Make Employers Pay Member Arrearages.** Current law places the burden on employees if the employer fails to comply with notifying KPERS when eligibility occurs. Since employers have an obligation to continually monitor the eligibility status of their employees, this provision would shift responsibility from employee to employer for payment of arrearage when an eligible employee is not enrolled when first eligible. This change would not be applicable to the first year of service for those employees. Also clarify that school

districts shall be considered the participating employer. *Sections 32, 44.*

5. **Raise Post-Retirement Earnings Limit and Require Employer Reporting on Retirants Exceeding Limit**. The original provision as introduced contained a new reporting requirement. Employers are not currently required to report those retired members they have reemployed who earn in excess of the statutory earnings limitation. If the present statutory maximum of $11,280 is exceeded, current law requires that the retired member's benefits be suspended for the remainder of that calendar year. The new reporting requirement is intended to allow KPERS to monitor those earning more than the limit in the future. The Conference Committee amended this section to raise earning limits to $15,000, effective for CY 1998. The provision also clarifies that both KPERS and KP&F members would be covered by this limit. *Sections 17, 36, 71.*

6. **Suspend Retirement Benefits for Retired Judges Elected or Appointed to a Judgeship.** Current law permits a retired judge who is reelected or reappointed after an initial retirement from the bench to continue to draw full retirement benefits and a full salary while accruing additional service credit and future benefits. The new provision would eliminate the possibility of drawing retirement benefits under these circumstances by suspending payments until a judge stops working. *Section 5.*

7. **Reduce Eligibility for KSRS Retirement Benefits to Ten Years.** Current law provides that a school employee must have worked 12 years prior to 1938 to receive a benefit under the old Kansas School Retirement System. The change would reduce the vesting period to ten years which corresponds with the vesting requirement under KPERS School. There would be a negligible actuarial impact as most of these individuals would be aged 90 or older. *Section 8.*

8. **Allow KPERS Board To Appoint Benefit Appeal Hearing Officers.** This item would authorize KPERS Board to appoint and compensate someone other than a Board member or a KPERS employee as a hearing officer. *Section 10.*

9. **Address Abuse of Inflating Final Average Salary.** This change would require KPERS participating employers to pay any actuarial liability incurred when reporting termination pay that increases a member's final average salary by 15.0 percent or more when computing retirement benefits. Also clarify that school districts shall be considered the participating employer. *Sections 32, 52.*

10. **Increase Certain Judges' Multiplier**. This provision would allow District Magistrate Judges serving prior to June 30, 1987, who elected to purchase that service under the Kansas Retirement System for Judges, to have the first ten years of service credited at 5.0 percent. Any actuarial cost to purchase this additional 1.5 percent shall be paid by the employee in order to increase from 3.5 to 5.0 percent the value of the purchased service credit. *Sections 5, 6.*

11. **Technical Amendments**. These provisions are considered technical clean up amendments to current law and were requested in 1997 by the KPERS Board of Trustees. The provisions would:

    a. *Provide survivor benefits upon the death of disabled correctional officers.* Disabled correctional employees were intended to have the same survivor provisions as disabled Tier I KP&F members. The appropriate language was never included in prior legislation. *Section 18.*

    b. *Clarify prior service.* Allow a member to receive credit for broken periods of prior service if employed on March 15 of the year preceding the participating employer's entry date. *Sections 9, 16.*

    c. *Clarify definition of a member.* Expand definition to include inactive, nonvested members in the five-year protection period. *Section 9.*

    d. *Add separate definitions for "beneficiary" and "payments to a beneficiary."* Current definition commingles how benefits are to be paid with the definition of who is to be paid. *Sections 1, 9, 53.*

    e. *Allow "year of service" purchase at 4.0 percent.* Allow employees who had to wait a year to become a member to purchase this year within 12 months at 4.0 percent of compensation. *Section 20.*

f. *Define compensation and salary as related to the IRS code.* This would allow the Retirement System to more specifically define KPERS' compensation as the IRS code evolves. *Section 9.*

g. *Allow certain benefits to be paid under the Uniform Transfer to Minors Act.* There are currently no provisions to pay benefits for minors to anyone other than a conservator. *Section 53.*

h. *Provide that U.S. Public Health Service, as included in the definition of military service, only includes the commissioned corps.* This change would correct 1994 legislation and narrow current law to cover only the commissioned corps. *Sections 9, 21.*

12. **Correct Statutory Language about Calculation of Judges' Retirement Benefits**. Current law needs to be corrected in order for the correct calculation to be in statute. KPERS has been making the correct calculation. This item was requested by the Board of Trustees. *Section 5.*

13. **Unclassify KPERS Deputy Secretary.** The Executive Secretary indicates that other key positions at KPERS have been unclassified in recent years and that the Deputy Secretary position, which is currently in the classified service, should be placed in the same category as other senior KPERS staff. *Section 13.*

14. **Provide Authority to Require Application for and Offset of Estimated Social Security Disability Payments During Pendency of Application and Appeal Process.** Under current law, KPERS disability benefits are offset by Social Security disability payments. Current practice implements an estimated offset during the pendency of the Social Security application and appeal process. This change provides statutory authority for current practice. The change also requires application for Social Security benefits. The provisions also were applied to KP&F members by Committee amendment. *Section 29, 42.*

15. **Provide Total Offset for Workers Compensation.** Under current law, KPERS disability benefits are reduced by a 50 percent offset for workers compensation. When coupled with the 66.67 percent benefit paid under KPERS, there is a potential for significantly greater benefits than are paid under other statewide disability benefit programs. This change would authorize a 100 percent offset for members of KPERS if they also receive Workers Compensation benefits. *Section 29.*

16. **Change the Salary Assumption for KPERS and KP&F Disabled Members**. Currently, the annual adjustment rate for progressing estimated salary earnings during the incapacitated period is statutorily set at 5.0 percent for disabled members until they reach retirement age. This change would index the annual adjustment rate to the Consumer Price Index (CPI) minus 1.0, with a cap of 4.0 percent. *Sections 4, 29, 39.*

17. **Increase Judges Disability Benefit.** This provision would increase the minimum disability benefit from 25 to 50 percent payable under the Judges Retirement System. *Section 4.*

18. **Establish New Membership Criteria.** Allow any member of a county commission, city council, or city commission whose compensation is $5,000 or more annually to be a member of KPERS regardless of whether the public employment requires at least 1,000 hours of work per year. The amendment was requested specifically to provide local elected officials with KPERS retirement membership in order to eliminate the necessity of keeping hourly records for work to establish the 1,000-hour annual requirement was met. *Section 9.*

19. **Modify Qualifications for Serving on KPERS Board.** The Legislature changed the statutory requirements to make clear that only active and retired members would be eligible to be elected as a Trustee. However, clarification needs to be added that if an elected Board of Trustees member becomes inactive due to a change in employment status while serving on the Board, that member would no longer be eligible to serve. Under current law, the Board would select a replacement member for that elected position. *Section 11.*

20. **Criminal Penalty.** The provisions passed by the Senate as **S.B. 618** are also included in this bill and would add a criminal penalty for making false statements pertaining to KPERS matters. The proposed change would delete references to "misdemeanor" and "$500," and would substitute language providing that such a person is "subject to the provisions of K.S.A. 21-3904" which is the criminal code section governing the presenting of a false claim. K.S.A. 21-3904 defines presenting a false claim as knowingly and with intent to defraud, presenting a false claim or demand to a public officer or body authorized to pay such claim, and provides a graduated level of severity depending upon the dollar amount of the fraud. Current law provides that a person who knowingly makes a false statement for the purpose of committing fraud shall be guilty of a misdemeanor and upon conviction subject to a fine of up to $500. *Section 28.*

21. **Restriction Rescinded.** This provision would allow pre-July 1, 1995, members participating in a KPERS administered plan who wish to retire under one system, and to continue working under a second system administered by KPERS, to seek administrative relief from the KPERS Board of Trustees. Current law passed in 1995 requires that if a person uses credit from one plan in order to retire under a different plan, then the person must retire from both plans in order to collect retirement benefits. KPERS staff estimates that 546 individuals could be affected by the issue of retiring under two systems, but that most active employees (80 percent) would not be involved in the fiscal consequences. An estimated 126 of those presently working under one plan (regular KPERS) and inactive under another plan (KP&F) could be affected. *Section 43.*

    Based on this amendment, notwithstanding provisions of K.S.A. 74-4988, and not earlier than six months prior to attaining eligibility for retirement under a plan administered by the Kansas Public Retirement System (KPERS) in which a person became an inactive member prior to July 1, 1995, any active member participating in another plan administered by KPERS may apply to the System's Board of Trustees for retirement under the plan in which the member is inactive. The Board of Trustees shall establish procedures and criteria to determine whether an individual member has been adversely impacted financially by 1995 amendments to K.S.A. 74-4988. If upon determination that a member has suffered significant financial disadvantages due to 1995 changes in K.S.A. 74-4988, then the Board of Trustees may grant the individual's application for retirement under the inactive plan and the individual may elect to continue working and accruing service credit under another plan without having to retire from the active membership plan. In such a case, the provisions of K.S.A. 74-4988 shall not apply after the Board of Trustees has certified that a member is adversely affected financially if required to retire simultaneously from both plans.

22. **Service Credit Purchases.** A provision was included that would authorize all service credit purchases of 1.0 percent to be purchased optionally at 1.75 percent. This item also is included in **S.B. 619**. The Joint Committee on Pensions, Investments and Benefit studied this issue during the 1997 interim and recommended introduction of the bill which was assigned to the Senate for first consideration. The proposal would allow all KPERS service credit purchases currently based on a 1.0 percent multiplier to be acquired by the individual at the actuarial cost for either the present 1.0 percent multiplier, or an enhanced 1.75 percent multiplier. A House floor amendment would allow active members who previously purchased service credit at 1.0 percent to buy an additional 0.75 percent as a lump sum purchase for the actuarial cost. *Sections 22, 23, 24, 25, 30.*

23. **In-state Service.** A new category of in-state non-federal service credit is added at 1.0 percent, with the option to buy at 1.75 percent. *Section 54.*

24. **Technical Amendments.** The following provisions requested by the KPERS Board of Trustees originally were included in 1998 **S.B. 620**, which was recommended for introduction by the Joint Committee on Pensions, Investments and Benefits to include these items. *Fiscal Note*: There is no administrative impact noted by KPERS.

    a. Provide regulatory authority for the Judges' Retirement System. *Section 2.*

    b. Clarify the definition of a KPERS employee. *Section 9.*

c. Clarify an elected official's membership date. *Sections 15, 45.*

d. Address returning from military service. *Section 16.*

e. Provide for rebuttable presumption under KP&F for disability benefits. *Section 33.*

f. Allow the crediting of one-for-two KP&F prior nonservice work. *Section 35.*

g. Distinguish between a disabled and active KP&F member. *Sections 38, 39.*

h. Allow use of a workers' compensation report in determining a disability for KP&F. *Sections 38.*

i. Clarify references to the KPERS Act and the definition of Act. *Sections 9, 46.*

25. **Purchase of Miliary Service Credit**. A provision is included that would allow judges and justices to purchase credit for military service. Current law allows members under both KPERS and KP&F to buy military credits. This change would make such purchases uniform across plans. This provision was included in **S.B. 512** and **H.B. 2615.** *Section 47.*

26. **Enhanced Service Credit**. The provision would provide that any KPERS member who was a court reporter working for a Magistrate Judge prior to July 1, 1975, and was a full-time court reporter on July 1, 1998, would be granted benefits under provisions of the old Court Reporter Retirement System upon retirement. This item originally was introduced in **S.B. 627**. *Fiscal Note*: The KPERS actuary indicates a negligible actuarial cost because so few people would be eligible. No administrative costs are cited. *Section 49.*

27. **Eliminate Investment Restrictions.** The bill would remove three real estate restrictions on KPERS investments. The KPERS Board requested the bill to eliminate certain of the investment constraints, specifically ones that apply to real estate investments. These constraints include requirements in K.S.A. 74-4921, section (5)(c)(i - viii) that the System:

a. own no more than a 20 percent interest in any new investments;

b. participate in new investments only if two other sophisticated co-investors also invest; and

c. take positions in commingled funds only to the extent that they do not individually exceed 20 percent of the total real estate portfolio.

These provisions originally were included in **H.B. 2542.** *Fiscal Note*: No administrative costs for KPERS are indicated in the fiscal note. *Section 27.*

28. **Assignment of Space**. This amendment would eliminate assignment of KPERS' office location in the Capitol Complex by the Secretary of Administration. This provision was introduced as **H.B. 2889**. *Fiscal Note*: No impact is indicated by KPERS. *Section 12.*

29. **Definition of Public Safety Officers**. A provision is included that would define a policeman and fireman. The provision would change the definition of a policeman to require that they be certified by the Kansas Law Enforcement Training Commission which initially requires 320 hours of accredited instruction at the Training Center and 40 hours of instruction annually thereafter. The Senate Committee modified the proposed amendment to clarify that a one-year waiting period would be allowed if a newly hired officer did not receive training for up to 12 months. As firemen currently do not receive the same type of training, their definition is being changed to require that their principal duties are engagement in the fighting and extinguishment of fires. This amendment would not affect anyone who is already a KP&F member. The current definition of "policeman and fireman" in the KP&F statutes, includes a person who is ". . . in support thereof and who is specifically designated, appointed, commissioned or styled as such by the governing body or city manager of the participating employer . . . ." The proposal originally was introduced as **H.B. 2890** by the Joint Committee on Pensions, Investments and Benefits. A House floor amendment in the proposed new definition would add a proviso relative to law

enforcement officers that would allow city or county corrections officers to be certified as eligible for KP&F if so designated by a city or county governmental unit or official. In addition, a study by the Joint Committee on Pensions, Investments and Benefits would be mandated in statute to review and make recommendations relating to inclusion of city and county correctional officers as eligible members of KP&F. *Sections 7, 33.*

30. **Final Average Salary.** This provision would establish a statutory basis for determining the final average salary to be used when computing KPERS retirement benefits for Regents unclassified personnel who presently are covered by a defined contribution plan implemented by the Board of Regents, but who previously had service recognized under KPERS. *Fiscal Note*: The item should reflect any cost to be added to the end of the plan period which is scheduled currently to pay off the unfunded actuarial liability by 2004. Estimated actuarial cost is $6.4 million in 2005. KPERS estimates that 334 people have been identified in this group who currently are working under the Regents defined contribution plan and who also have service under KPERS. Since the Regents institutions already budget an annual amount for paying the KPERS assessment, no additional funding will be required. Any reallocation within Regents budgets of this funding or the elimination of this KPERS assessment funding, that originally could have occurred in 2004, would be delayed for one year if this funding provision is implemented. *Sections 9, 26.*

31. **Purchases of Forfeited Service**. The provision would allow judges to purchase forfeited KPERS and KP&F service. The provision would allow purchases of service by payroll deductions to be made by the modified double or triple payroll deduction method. Under current law, this service can only be purchased in a single lump-sum payment. This measure was introduced as **H.B. 2938.** *Section 3.*

32. **EFT Remittances.** KPERS requested legislation to amend current law regarding the timing of employer and employee contribution remittances by electronic funds transfers (EFT) and improving the timely remittance by participating employers of contributions. The Senate Committee clarified that the amendment would require all participating employers to remit electronically regardless of present requirements that

some units of government pay only by warrant. *Fiscal Note*: No administrative costs were noted by KPERS. *Section 26.*

33. **Third KP&F Election**. Presently, there are 1,092 Tier I KP&F members, and 5,025 Tier II members. This proposal would allow Tier I members another election to decide if switching to Tier II which has more favorable early retirement provisions would be preferred to remaining in Tier I which has advantageous disability benefits. Tier I members would be required to pay the full actuarial cost of this change, if elected. The proposed change in law would include a proviso that KPERS would seek a letter ruling from the Internal Revenue Service to determine if a third election would adversely affect the tax exempt status of KPERS. If the ruling is favorable, then KPERS would schedule an election with a 90-day window for a third election. *Section 34.*

34. **30-Day Waiting Period**. A provision would be amended into current KPERS law providing that after separation from a participating employer, an employee must wait at least 30 days either for withdrawing retirement contributions or for working after retirement for the same participating employer. This item is considered a trailer amendment for **S.B. 362** that passed the Senate earlier in the 1998 Session. *Fiscal Note*: No administrative costs were noted by KPERS. *Sections 3, 17, 19, 31, 36, 37, 40, 41.*