

SESSION OF 2008

**SUPPLEMENTAL NOTE ON  
SUBSTITUTE FOR SENATE BILL NO. 662**

As Amended by Senate Committee of the Whole

**Brief\***

Sub. for SB 662, as amended, would make technical amendments in three areas: first, relating to the new plan design for future Kansas Public Employees Retirement System (KPERs) members approved by the 2007 Session; second, relating to Internal Revenue Service (IRS) compliance matters in the KPERs statutes; and third, relating to certain withdrawals of contributions and service credit shared between retirement systems. The bill also would add an exemption of retirement benefits from Kansas income tax for the retired employees of Washburn University who are covered by the university's 403(b) retirement plan.

The amendments pertaining to the new plan for future KPERs members that is effective July 1, 2009, would:

- Clarify that employees covered under the new plan, who have forfeited prior and participating service credit under the existing plan due to termination of employment and withdrawal of contributions, may purchase that service credit under the new plan;
- Clarify the rules of service and a service credit portability between the current plan and the new plan to determine membership applicability and vested benefits;
- Expand the definition of "employee" for new plan members to distinguish what elements of the current definition of "employee" are applicable, or not, to new plan members;

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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>

- Preserve membership in the existing plan for employees who experience temporary breaks in service but return to covered positions with participating employers within established time frames;
- Amend early retirement provisions for the state correctional officers group to clarify that retirement benefits are actuarially reduced for members taking an early retirement option before their normal retirement date; and
- Allow non-vested members of the existing plan, who complete five or more years of service and remain employed without termination in a non-covered position with the same participating employer, to be granted a vested benefit.

The amendments pertaining to IRS compliance would:

- Update references to the Internal Revenue Code (IRC) and other pertinent federal laws (such as the Uniformed Services Employment and Reemployment Rights Act (USERRA)) as they currently are in effect;
- Incorporate IRS model language, such as model language provided by the IRS regarding minimum distributions under IRC Section 401(a)(9); and
- Reflect recent changes to IRS regulations, such as the final regulations issued by the IRS regarding maximum benefits and contributions under IRC Section 415(b) and 415(c).

The amendments to statutes governing certain withdrawals of contributions and service credit shared between retirement systems would:

- Provide that members may retain the funds from improper withdrawals and forfeit service credit related to the withdrawal. Members would have the option of reinvesting the withdrawn funds at any time by purchasing the withdrawn service, and

- Require members retiring (using credit from two systems) to withdraw their Kansas Police and Firemen's Retirement System (KP&F) account balance during the month immediately following retirement, allowing members to access their funds and eliminating the necessity for maintaining these accounts until the member's death.

The bill also contains an item that would exempt retirement benefits from Kansas income tax for the retired employees of Washburn University who were covered by the university's 403(b) retirement plan.

## **Background**

Sub. for SB 662 contains three bills (2007 HB 2077 as introduced, 2008 SB 662 as introduced, and 2008 SB 663 as introduced). All three bills were requested by the KPERS Board of Trustees and each would make a series of technical amendments to the KPERS statutes. The Joint Committee on Pensions, Investments and Benefits recommended all three bills for introduction. A Subcommittee of the Senate Ways and Means Committee recommended that the three bills, as introduced, be combined into a Senate substitute bill. The Executive Director of KPERS testified in support of each bill as introduced. The Subcommittee also recommended the state income tax exemption item pertaining to the Washburn University retirement plan also be included in the substitute bill.

The Senate Committee adopted the Subcommittee Report on KPERS Issues and recommended that the three bills plus the state income tax exemption item be included in Sub. for SB 662.

Under current law, 403(b) retirement plan contributions made by employees are not taxed by state governments. Both the Kansas Board of Regents institutions and Washburn University offer 403(b) retirement plans. Under current law, KPERS employees' contributions are added back to adjusted

federal gross income and subject to Kansas income tax. There is no Kansas income tax add-back provision for Washburn employees or Regents unclassified employees because they are covered by a 403(b) retirement plan. Because Regents unclassified employees are considered state employees, their retirement benefits are exempt from Kansas income tax, just as KPERS retired employees do not pay Kansas income tax on their retirement benefits. Under current law, Washburn retired employees' retirement benefits are subject to Kansas income tax.

**Summary of Current Law.** For the three groups of public employees:

- KPERS covered employees (state, school, and local government) pay Kansas income tax on contributions, but not on retirement benefits.
- Washburn University 403(b) covered employees do not pay Kansas income tax on contributions, but do pay Kansas income tax on retirement benefits.
- Regents 403(b) covered unclassified employees do not pay Kansas income taxes on either their contributions or on their retirement benefits.

The Senate Committee of the Whole amendments are technical in nature and were suggested by the staff of the Office of the Revisor of Statutes.

The fiscal note for the items in the three bills as introduced (SB 662, SB 663 and HB 2077) would be negligible, according to KPERS. The fiscal note for the retirement benefit exemption would be a \$140,000 reduction of Kansas income taxes in FY 2009 collected for the State General Fund, according to the Department of Revenue, with increasing amounts in future years as additional employees retire.