PUBLIC PENSION OVERSIGHT BOARD

Minutes of the 1st Meeting
of the 2022 Interim

February 23, 2022

Call to Order and Roll Call

The 1st meeting of the Public Pension Oversight Board was held on Wednesday, February 23, 2022, at 11:00 AM, in Room 131 of the Capitol Annex. Representative Jim DuPlessis, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Jimmy Higdon, Co-Chair; Representative Jim DuPlessis, Co-Chair; Senators Christian McDaniel, Robby Mills, Dennis Parrett, and Mike Wilson; Representatives Derrick Graham, Jerry T. Miller, James Tipton, Russell Webber, and Buddy Wheatley; Joseph Fawns, Mike Harmon, John Hicks, and Sharon Mattingly.

Guests: Steve Shannon, Executive Director, Kentucky Association of Regional Programs; Aaron Thompson, President, and Travis Powell, Vice President, Kentucky Council on Post-Secondary Education; Dr. Timothy Caboni, President, Western Kentucky University; and David Eager, Executive Director, Rebecca Adkins, Deputy Executive Director, Michael Board, Executive Director, Office of Legal Services, and Erin Surratt, Executive Director, Office of Benefits, Kentucky Public Pensions Authority.

LRC Staff: Brad Gross, Jennifer Black Hans, and Angela Rhodes.

Representative DuPlessis commented that the reason for meeting was to discuss issues from House Bill 8 enacted during the 2021 Regular Session (HB 8). Last year, the General Assembly passed HB 8 to help put the Kentucky Public Pensions Authority (KPPA) back on track of being properly funded. Section 7 of the bill was intended to incentivize agencies with contract employees to return those employees back into the retirement system to help system funding. To date, there have been disagreements regarding how Section 7 is to be implemented. The Public Pension Oversight Board was meeting to hear from some of the affected parties and KPPA on the issues they are having.

Approval of Minutes

Representative Tipton moved that the minutes of the December 20, 2021, meeting be approved. Representative Webber seconded the motion, and the minutes were approved without objection.

HB 8 Reporting Requirements

Steve Shannon, Executive Director, Kentucky Association of Regional Programs (KARP), described KARP as an association of 11 out of the 14 regional community health centers. Out of the 11 centers, 9 participate in the Kentucky Employees Retirement System (KERS) nonhazardous plan. The 14 community mental health centers serve about 175,000 people a year, employ about 7,500, and are led by over 300 dedicated volunteer community leaders on their board of directors. Mr. Shannon stated that KARP has 7 categories of concerns relating to Section 7 of HB 8.

The most pressing concern is how the 60/80 percent employee to contractor threshold is determined, how does their business model impact the calculation, does it allow KPPA to impact private corporations, 501(c)3 nonprofit corporations, and staffing patterns.

Mr. Shannon discussed employees who have never participated in KPPA and asked if the impact of HB 8 will result in those employees enrolling for the first time even though some do not wish to participate. He discussed the traditional contract positions, such as psychiatrist positions. He stated that any agreement a psychiatrist wants, KARP will agree to because psychiatrists are hard to find. He added that KARP is also expanding to primary care and could possibly see the same issues for those medical professions.

Mr. Shannon discussed grant-funded new hires. There are four centers with two of them modeled as a certified community behavioral health center, which employs many new employees and is a two-year demonstration grant.

In response to a question from Representative DuPlessis, Mr. Shannon stated that it is part of the hiring patterns, but there are a lot of grant-funded spots.

Mr. Shannon discussed the supports for community living (SCL) and Michelle P. waiver programs, in which an individual can opt to have a participant-directed service and hire their own service provider as an independent contractor. There are thousands of individuals hired under this format. KARP is the fiscal intermediary, but these individuals are not employees and should not be included in the ratio.

Mr. Shannon discussed the family home provider/adult foster care waiver program. He stated that the contracted person lives in someone's home and receives a per diem or monthly rate to provide support. These workers are not hourly employees.

Mr. Shannon discussed concerns that there is no appeal process for KPPA's determination regarding whether individuals are employees or contractors.

Aaron Thompson, President, Kentucky Council on Post-Secondary Education (CPE) offered a presentation on behalf of colleges and universities. Mr. Thompson stated that HB 8 was needed for the regional institutions who are within the KERS and KCTCS, and level dollar amortization is truly the right approach. However, over the last many years, the CPE has had to come up with a business model that gave sufficiency and effectiveness to outsourcing.

Dr. Timothy Caboni, President, Western Kentucky University (WKU), started by saying that there is need for a stable pension system, and universities are willing and expect to pay their share of the unfunded liability. As a challenge from CPE, universities have made the best use of taxpayer dollars through external partnerships for services that are nonessential to the core business, such as, dinning services, bookstores, maintenance, ground services, and health services. Legislation encouraging them to bring those nonessential services back in house with the threat of losing the KERS subsidy would not be in the best interest of these institutions and would create a significant financial burden. He stated that universities have employees in KERS, Kentucky Teachers' Retirement System (TRS), and optional retirement plans. He stated that their KERS populations are smaller because most employees providing core business services (e.g. professors, instructors) are enrolled in TRS or in the optional retirement plan. WKU has 1,710 employees that participate in various retirement programs and of those, 339 are in KERS nonhazardous, 619 in TRS, and 729 are in optional retirement plans. He stated that requiring universities to grow a KERS employee base within two years will be a difficult task. Mr. Caboni stated that universities feel that it is inappropriate for KPPA to have full authority over who they deem to be an employee for purposes of the calculation. Mr. Caboni requests that third party oversight be provided over the implementation of HB 8 and interactions between KPPA and participating employers.

Mr. Thompson added that he is concerned that creating this situation with HB 8 will detract from the universities focus on student success, making sure the necessary work force is provided for, and that campuses are able to continue putting money towards scholarships.

Travis Powell, Vice President, Kentucky Council on Post-Secondary Education, added, when looking at the percentages, it is important that only those employees that could be in KERS are considered. Essentially, the distinction on campuses is if the position requires a bachelor's degree, then it is a TRS position that would have the option to join TRS or the optional retirement plan.

In response to a question from Representative DuPlessis, Dr. Caboni discussed that WKU made decisions for cost saving purposes and stated it was not the most efficient use of taxpayer dollars and student tuition dollars to reverse these contracts. He continued that the contract employees do wear WKU branded uniforms because WKU wants every student to know that no matter the employment relationship with the university, the service is designed to support the student in their experience, whether it is core or tangential to WKU's core mission. He added that if WKU has to bring these positions back into the system, it will cost millions of dollars that will be borne by families and students.

Mr. Powell stated that he agrees with Mr. Caboni that there is no reason, at this point with the level dollar approach that is in place, to avoid the retirement system for any reason.

David Eager, Executive Director, KPPA, began his presentation stating that there are 100 agencies affected by the 60/80 percent subsidy requirement of HB 8. He discussed the reporting methods of KERS nonhazardous employers, exceptions to reporting methods, and also, the KRS 61.510(21) definition of regular full-time employee.

Rebecca Adkins, Deputy Executive Director, KPPA, discussed the HB 8 contract employee reporting timeline. She stated that on February 21, 2022, an email notification was sent to affected employers outlining the process; April 15, 2022, is the deadline for submission of Form 6756; June 30, 2022, is the deadline for Form 6756 reporting any employees hired after the form deadline of April 16-June 30; and on August 29, 2022, KPPA will send a list of non-contributing employees, which meet the criteria of the common law factors applied by the IRS to LRC and the Office of the State Budget Director.

Ms. Adkins discussed the four page Annual Employer Certification of Non-Contributing Service Providers (Form 6756). She provided an overview of the information needed from the employers, which includes employer information, non-contributing service providers, independent contractors, third parties, independent contractors and leased employees, and employer certification.

Michael Board, Executive Director, KPPA, discussed Section 7 of HB 8, and what is an employee versus an independent contractor.

In response to a question from Representative DuPlessis, Mr. Board stated the current interpretation of the “historically been provided by an employee” section of the law is determined by whether the professional services have ever been provided by a direct employee of the employer since the employer’s participation date in KERS.

Mr. Board continued discussing the 20 common law factors applied by the IRS independent contractor or employee evaluation. KPPA is currently drafting a regulation to implement this portion of HB 8.

In response to a question asked by Mr. Shannon during his presentation regarding how the percentage is calculated, Ms. Adkins quoted from subsection (3)(c) of Section 7, which states: “A percentage computed by dividing the number of employees reported in paragraph (a) of this subsection (*or the number reported during the prior fiscal year*) by the combined sum of the number of employees and persons reported in paragraphs (a) and (b) of this subsection.”

In response to a question from Representative DuPlessis, Ms. Adkins stated that the historical aspect is related to job classification.

In response to a question asked earlier in the meeting regarding how to calculate the employees of universities specifically because they report to KERS, TRS, or the optional retirement plan and whether all of those employees in all three plans would be considered, Erin Surratt, Executive Director, Office of Benefits, KPPA, stated that KPPA is only considering those employees that would be reported to KERS, not the total of KERS, TRS, or the optional retirement plan.

Senator McDaniel commented that if KPPA and the quasi-governmental agencies want a legislative fix, they need to come together with an easy solution for this committee or Senator McDaniel will push for elimination of all subsidies that are going to these organizations. He added he will not support changes that reduce accountability or increase burden on the general fund.

Representative DuPlessis commented that while he was in much agreement with Senator McDaniel, a distinction has to be made for those contracts where entire core services are being replaced by contract employees and contracts for services the university or CMCH cannot provide or cannot provide to the same level of expertise or quality.

Dr. Caboni commented that he believes this is public policy that is causing tension between him and the job he has been charged with at WKU, which is taking care of students versus trying to get additional people into the pension system to shore it up.

Representative DuPlessis commented that he encourages KPPA to reach out to quasi-governmental agencies to figure out a plan so the legislators do not have to get involved.

With no further business, the meeting was adjourned.