

PUBLIC PENSION OVERSIGHT BOARD

Minutes

May 20, 2024

Call to Order and Roll Call

The 4th meeting of the Public Pension Oversight Board was held on May 20, 2024, at 1:00 PM in Room 149 of the Capitol Annex. Senator Jimmy Higdon, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative DJ Johnson Co-Chair; Senator Jimmy Higdon Co-Chair; Senators Robby Mills, Gerald A. Neal, and Michael J. Nemes; Representatives David Hale, Robert Duvall, Ken Fleming, Derrick Graham, Jason Petrie, Phillip Pratt, and James Tipton; Allison Ball, Auditor of Public Accounts, John Hicks, Victor Maddox.

Guests: Erin Surratt, Executive Director, Office of Benefits, and Carrie Bass, Staff Attorney Supervisor, Kentucky Public Pensions Authority; Steve Shannon, Executive Director, Kentucky Association of Regional Programs.

LRC Staff: Brad Gross, Michael Clancy, and Angela Rhodes.

Senator Higdon recognized David Eager on his retirement from the Kentucky Public Pensions Authority. The Co-Chairs prepared a citation of appreciation on his work accomplishments over the past 8 years. A motion was made and approved by voice vote on the citation.

Approval of Minutes

Representative Graham moved that the minutes of the April 22, 2024, meeting be approved. Representative Tipton seconded the motion, and the minutes were approved without objection.

KERS Nonhazardous Agency Participation/House Bill 8 Reporting Requirements

Erin Surratt, Executive Director, Office of Benefits, Kentucky Public Pensions Authority (KPPA) began with an overview of House Bill 8, which applies to the employer contribution rate for the Kentucky Employees Retirement System (KERS) nonhazardous system. House Bill 8 addressed decreasing payroll due to downsizing, outsourcing and contract employment by moving the Actuarial Accrued Liability Contribution (AALC),

which pays off the unfunded liability, from a percentage of covered payroll to a set dollar amount for each employer based upon their share of the liability as of 2019. Under the new calculation, employers pay the normal cost as a percentage of payroll and the AALC as a dollar amount.

Part of House Bill 8, codified as KRS 61.5991, requires certain KERS nonhazardous employers receiving retirement subsidy incentives to report all independent contractors or leased employees annually to KPPA. KPPA reports this data to the Office of State Budget Director (OSBD) and the Legislative Research Commission (LRC). KPPA is required to audit 5 percent of the employers who are required to report under KRS 61.5991. The 5 percent was set by the Kentucky Retirement System Board. The legislation introduced the concept of utilizing subsidy incentives for employers to reduce the number of contract and leased employees.

Ms. Surratt discussed the list of employers that are required to do the additional reporting, the timeline of the reporting requirements, the reporting requirements, and the data reported to LRC and OSBD.

Ms. Surratt provided information on the compliance of reporting by employers in fiscal years 2022, 2023, and 2024. Two agencies which are not reporting are inactive and are involved in active litigation. One agency disagreed with KPPA's determination that over 1,000 of its contract or leased employees should have been reported as employees and did not report those employees.

In response to questions from Representative Tipton, Ms. Surratt stated that KPPA will follow-up to provide the actual projected costs and noted that all agencies are complying with monthly AALC payments except for four of them, two of which are currently involved in ongoing litigation. In response to a follow-up regarding disputes, Carrie Bass, Staff Attorney Supervisor, KPPA, stated that KPPA has a couple of options still under review to pursue noncompliant employers. In response to another follow-up, Ms. Bass stated that the two employers have been in long-standing litigation, including a decade-long dispute with Seven Counties, and that the KPPA hopes to find a resolution as soon as possible.

In response to questions from Senator Higdon, Ms. Surratt stated she believes one of the noncompliant agencies is receiving a subsidy from the General Assembly but she will need to double check to confirm. In response to a follow-up regarding employee participation increases since the implementation of House Bill 8, Ms. Surratt stated there are no specific numbers, but KPPA has seen an increase in payroll. In response to

another follow-up, Ms. Surratt stated that Seven Counties is not currently making any contributions to KPPA.

In response to questions from Representative Petrie, Ms. Bass stated there are a couple of options for the noncompliant employers. Some options are protected under attorney/client privilege but there is a statutory option of involuntary cessation of noncompliant employers under KRS 61.522. There are also other legal options that are grounded in statute. In response to an additional follow-up, Ms. Bass stated there is no timeline for a resolution of litigation with the outstanding employers and that one case is in federal court and the other is in state court. Ms. Bass also stated that she would follow-up and provide what information she could regarding the cases as it becomes available.

In response to a question from Representation Johnson, Ms. Surratt stated KPPA will follow-up at a later date regarding whether it will have any potential future legislation requests.

In response to questions from Senator Higdon, Ms. Surratt stated that the subsidy language in KRS 61.5991(6) has been suspended in the last budget cycles, and that KPPA will follow-up with additional information regarding the subsidy suspension. In response to a follow-up question regarding the amount of the subsidy being paid as it relates to employer contribution, Ms. Surratt stated she did not have that information with her and would follow-up with the board.

Ms. Surratt also noted there has been a lot of discussion on across-the-board raises and how they are applied to pension spiking. There was a bill last session that addressed the Court of Appeals ruling that did not pass. KPPA is trying to work through implementation of the court decision through a regulation, and once the regulation is finalized, KPPA will most likely seek to have the language codified.

Representative Petrie commented that a regulation will help clarify the pension spiking court decision and that there is a much better chance of getting the language codified if any potential legislation is presented and vetted well before the beginning of next session.

Steve Shannon, Executive Director, Kentucky Association of Regional Programs (KARP), began his presentation on the quasi-governmental reporting requirements as outlined in KRS 61.5991. The participating Community Mental Health Centers (CMHCs) and the other quasi-governmental employers greatly appreciate the subsidy included in the enacted budgets the past four fiscal years. The subsidy allows CMHCs to continue to

provide behavioral health public safety net services and support to over 155,000 individuals annually.

The participating CMHCs, which are members of KARP, shall commit to meeting all reporting requirements and timelines as delineated by KPPA in 105 KAR 1:451 as currently written or, if applicable, as amended. It has been reported that during the past several reporting cycles staff have become more familiar with the process so it is not as onerous as the initial reporting periods. The reporting requirement is an administrative function and, like all organizations, CMHCs focus upon reducing administrative costs as much as possible and therefore, would like the reporting process to remain as it is currently formatted. Mr. Shannon reported that, as stated in KRS 61.5991, the CHMCs shall increase or maintain participation in KERS system. In conclusion, Mr. Shannon stated that House Bill 8 helped cap pension costs for CHMCs and that they are committed to reporting as required and cooperating with KPPA and greatly appreciate the subsidies provided by the General Assembly.

In response to a question from Representation Johnson, Mr. Shannon stated KARP will follow-up at a later date with any potential future legislation requests.

Senator Higdon announced there will be no meeting in June.

Adjournment

There being no further business, the meeting was adjourned.