

## CHAPTER 11

## (SB 65)

AN ACT relating to Kentucky Teachers' Retirement System and declaring an emergency.

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

➔Section 1. KRS 161.540 is amended to read as follows:

- (1) Effective July 1, 1988, each member shall contribute to the retirement system nine and eight hundred fifty-five thousandths percent (9.855%) of annual compensation, except that university ***employees who participate in the Kentucky Teachers' Retirement System***~~faculty members~~ shall contribute eight and three hundred seventy-five thousandths percent (8.375%) of annual compensation. Payments authorized by statute that are made to retiring members for not more than sixty (60) days of unused accrued annual leave shall be considered as part of the member's annual compensation, and shall be used only for the member's final year of active service. The contribution of members shall not exceed these applicable percentages on annual compensation. When a member retires, if it is determined that he has made contributions on a salary in excess of the amount to be included for the purpose of calculating his final average salary, any excess contribution shall be refunded to him in a lump sum at the time of the payment of his first retirement allowance. In the event a member is awarded a court-ordered back salary payment the employer shall deduct and remit the member contribution on the salary payment, plus interest to be paid by the employer, to the retirement system unless otherwise specified by the court order.
- (2) Each public board, institution, or agency listed in KRS 161.220(4) shall, solely for the purpose of compliance with Section 414(h) of the United States Internal Revenue Code, pick up the member contributions required by this section for all compensation earned after August 1, 1982, and the contributions so picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code and KRS 141.010(10). The picked-up member contribution shall satisfy all obligations to the retirement system satisfied prior to August 1, 1982, by the member contribution, and the picked-up member contribution shall be in lieu of a member contribution. Each employer shall pay these picked-up member contributions from the same source of funds which is used to pay earnings to the member. The member shall have no option to receive the contributed amounts directly instead of having them paid by the employer to the system. Member contributions picked-up after August 1, 1982, shall be treated for all purposes of KRS 161.220 to 161.714 in the same manner and to the same extent as member contributions made prior to August 1, 1982.

➔Section 2. KRS 161.568 is amended to read as follows:

- (1) Eligibility to participate in the optional retirement plan shall be determined by the board of regents of each of the state public postsecondary education institutions identified in KRS 161.220(4)(b). The employees of these institutions of higher education who are initially employed on or after the implementation date of the optional retirement plan may make an election to participate in the optional retirement plan within thirty (30) days after their employment date. This election shall be irrevocable except as otherwise provided in this subsection. No member of the Kentucky Teachers' Retirement System who terminates employment and is subsequently reemployed by the same or another public postsecondary education institution which participates in the Kentucky Teachers' Retirement System may be eligible to elect to participate in the optional retirement plan unless the date of reemployment is at least six (6) months after the date of termination. ***All elections made under this subsection shall be in writing and shall be filed with the appropriate officer of the employer institution. Persons who originally elected to participate in the optional retirement plan may later change their elections only as follows:***
  - (a) Any person ***otherwise eligible for membership in the Kentucky Teachers' Retirement System***~~who previously elected to participate in the optional retirement plan~~ may irrevocably elect one (1) time during his or her lifetime to change his or her election and to prospectively participate in the Kentucky Teachers' Retirement System. This election to change from the optional retirement plan to Kentucky Teachers' Retirement System shall be effective beginning on the first day of the first month immediately following the date that written application for the election is received in the retirement system's office on forms prescribed by the system. ***Any person exercising this election shall not be entitled to purchase as service credit in the Kentucky Teachers' Retirement System any prior service with his or her postsecondary education institution employer.***

- (b) *Any person otherwise eligible for membership in the Kentucky Teachers' Retirement System who previously elected to participate in the optional retirement plan may irrevocably elect one (1) time within his or her first six (6) years and six (6) months of continuous service in any one (1) or more of the institutions identified in subsection (4)(b) of KRS 161.220, to change his or her election and to prospectively participate in the Kentucky Teachers' Retirement System and also become eligible to purchase as service credit his or her prior service with his or her postsecondary education employer. This election to change from the optional retirement plan to the Kentucky Teachers' Retirement System shall be effective beginning on the first day of the first month immediately following the date that written application for the election is received in the retirement system's office on forms prescribed by the retirement system. Persons electing to change from the optional retirement plan to the Kentucky Teachers' Retirement System may purchase service credit only for their prior years of service for a postsecondary education institution identified under subsection (4)(b) of KRS 161.220 during which they participated in the optional retirement plan. The election to purchase prior service as service credit shall be received in the retirement system's office on forms prescribed by the retirement system within the six (6) year and six (6) month period provided to make the election to begin participation in the Kentucky Teachers' Retirement System. The cost of purchasing this service shall be calculated by adding both the employer and member contributions that would have been paid to the Kentucky Teachers' Retirement system had the individual purchasing this service participated in the Kentucky Teachers' Retirement System instead of the optional retirement plan, less the amount contributed to the Kentucky Teachers' Retirement System by the postsecondary education institution as provided by subsection (5) of Section 3 of this Act, or subsection (5)(a)2. of Section 3 of this Act as it existed on June 30, 2007. Interest at Kentucky Teachers' Retirement System's actuarially assumed rate shall be paid on these net contributions by the person electing to change to the Kentucky Teachers' Retirement System from the optional retirement plan. These payments shall not be picked up as described in subsection (2) of Section 1 of this Act. Persons who elect to change from the optional retirement plan to the Kentucky Teachers' Retirement System may elect to purchase as service credit, beginning with the most recent years, any portion of their prior years of service during which time they participated in the optional retirement plan, or none of those years. Members may purchase service credit for prior years of service by rolling over funds from their optional retirement plan account as provided under KRS 161.5461, or by rolling over or transferring other plan funds as permitted by the rules set forth in the Internal Revenue Code, or by making an after-tax lump-sum cash payment.*
- (c) *Effective July 1, 2008, persons otherwise eligible for membership in the Kentucky Teachers' Retirement System may irrevocably elect one (1) time to change their election and to prospectively participate in the Kentucky Teachers' Retirement System and purchase service credit for their prior years of service during which they participated in the optional retirement plan. This election shall be filed in writing with the Kentucky Teachers' Retirement System no later than December 31, 2008. Persons who change their election prior to July 1, 2008, to prospectively participate in the Kentucky Teachers' Retirement system may purchase service credit for their prior years of service during which they participated in the optional retirement plan. The purchase of prior years of service under this paragraph shall be subject to the same conditions and purchase costs as described in paragraph (b) of this subsection, except that the election to purchase service credit shall be on file with the Kentucky Teachers' Retirement system no later than December 31, 2008.*
- (d) *Persons electing to change to the Kentucky Teachers' Retirement System under paragraphs (a), (b), and (c) of this subsection shall be eligible to participate, based upon their age and allowable service credit, in the disability, survivorship, and medical insurance programs under the conditions and in the degree as they exist on the date that they file their election with the retirement system, but shall be subject to any changes to those programs from that date forward, including any changes that may affect their eligibility for or degree of participation in those programs. Prior service purchased as service credit as permitted under paragraphs (b) and (c) of this subsection shall not be considered for meeting eligibility requirements or determining the extent of participation in these programs. Persons electing to change to the Kentucky Teachers' Retirement System shall not be eligible for the survivorship or disability programs based upon medical conditions that existed prior to the filing of their elections. ~~These elections shall be made in writing and filed with the appropriate officer of the employer institution.~~*

- (2) Elections of eligible employees hired on or after the implementation date of the optional retirement plan at their employer institution shall be effective on the date of their employment. If an eligible employee hired subsequent to the implementation date at the employer institution fails to make the election provided for in this section, *the employee*~~[he]~~ shall become a member of the regular retirement plan of the Kentucky Teachers' Retirement System.

➔Section 3. KRS 161.569 is amended to read as follows:

- (1) Any person electing to participate in the optional retirement plan shall be ineligible for membership in the regular retirement plan of the Kentucky Teachers' Retirement System for as long as *the participant*~~[he]~~ is employed in a position for which the optional retirement plan is available, except as provided in KRS 161.568(1).
- (2) Any person electing to participate in the optional retirement plan shall acknowledge in writing that the benefits payable to participants are not the obligation of the Commonwealth of Kentucky or the Kentucky Teachers' Retirement System, and that these benefits and other rights of the optional retirement plan are the liability and responsibility solely of the designated companies to which contributions have been made.
- (3) Benefits shall be payable to optional retirement plan participants or their beneficiaries by the designated companies in accordance with the contracts issued by each company and the retirement plan provisions adopted by each public institution.
- (4) Annuity contracts issued under the optional retirement plan and all rights of a participant in the optional retirement plan shall be exempt from any state, local, or municipal tax; assessment for the insolvency of any life, health, or casualty insurance company; any levy or sale, garnishment, or attachment; or any process whatsoever, and shall be unassignable except as otherwise specifically provided by the contracts offered under the optional retirement plan adopted by the respective public institutions of higher education. Except contracts issued and rights accrued in the optional retirement plan on or after January 1, 1998, shall be subject to the tax imposed by KRS 141.020, to the extent provided in KRS 141.010 and 141.0215.
- (5)~~[(a)]~~ Each institution shall contribute *for each payroll period of each fiscal year* ~~[on behalf of each participant in its optional retirement program the following:~~
1. ~~To the designated company or companies, an amount equal to the amount that would have been payable to the Kentucky Teachers' Retirement System if the member had elected to participate in that plan instead of the optional retirement plan, less the amount contributed to the Kentucky Teachers' Retirement System pursuant to subparagraph 2. of this paragraph; and~~
  2. ~~]to the Kentucky Teachers' Retirement System, an amount equal to *five and one-tenth percent (5.1%) of the total salaries of all persons who elect or elected to participate in the optional retirement plan instead of the Kentucky Teachers' Retirement System*~~[the contribution which would have been payable to the Kentucky Teachers' Retirement System on account of the unfunded liability if the member had elected to participate in that plan instead of the optional retirement plan. The rate of contribution shall be determined annually by the Kentucky Teachers' Retirement System actuary]. This payment shall continue to be made~~~~[on behalf of all participants in the optional retirement plan]~~ until July 1, ~~2048~~~~[2018, the current amortization period of the Kentucky Teachers' Retirement System.~~~~
- ~~(b) Each participant shall contribute an amount equal to the present member contribution to the Kentucky Teachers' Retirement System. Employee contributions to the optional retirement plan shall be made by salary reduction under either Section 403(b) or 414(h) of the Internal Revenue Code of 1986].~~

➔Section 4. Whereas it is necessary for personnel to be adequately informed prior to the beginning of FY 2008-2009 and for the Kentucky Teachers' Retirement System to have adequate time to implement the provisions of this Act, 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.

**Signed by Governor April 7, 2008.**