

## CHAPTER 104

## ( HB 351 )

AN ACT relating to Kentucky Retirement Systems agency participation and declaring an emergency.

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

➔Section 1. KRS 61.522 is amended to read as follows:

Notwithstanding any other provision of KRS 61.510 to 61.705 or 78.510 to 78.852 to the contrary:

- (1) For purposes of this section:
  - (a) "Active member" means a member who is participating in the system;
  - (b) "Employer" means the governing body of a department, as defined by KRS 61.510, or a county as defined by KRS 78.510;
  - (c) "Employer's effective cessation date" means the last day of the system's plan year in the year in which the employer has elected to cease participation in the system, provided the employer has met the requirements of this section and has given the Kentucky Retirement Systems sufficient notice as provided by administrative regulations promulgated by the systems; and
  - (d) "Inactive member" means a member who is not participating with the system;
- (2) Any employer participating in the Kentucky Employees Retirement System or the County Employees Retirement System on July 1, 2015, except as limited by subsection (6) of this section, may:
  - (a) Voluntarily cease participation in its respective retirement system subject to the requirements and restrictions of this section; or
  - (b) Be required to involuntarily cease participation in the system under the provisions of this section if the board has determined the employer is no longer qualified to participate in a governmental plan or has failed to comply with the provisions of KRS 61.510 to 61.705 or 78.510 to 78.852;
- (3) (a) If an employer desires to voluntarily cease participation in the Kentucky Employees Retirement System or the County Employees Retirement System as provided by subsection (2)(a) of this section:
  1. The employer shall adopt a resolution requesting to cease participation in the system and shall submit the resolution to the board for its approval;
  2. The cessation of participation in the system shall apply to all employees of the employer;
  3. The employer shall pay for all administrative costs of an actuarial study to be completed by the Kentucky Retirement Systems' consulting actuary and for any other administrative costs for discontinuing participation in the system as determined by the board and as provided by this section;
  4. The employer shall provide an alternative retirement program for employees who will no longer be covered by the system, which may include a voluntary defined contribution plan;~~and~~
  5. *If the alternative retirement program established by the employer meets the qualification requirements under 26 U.S.C. sec. 401(a) and is capable of accepting trustee-to-trustee transfers of both pre-tax and post-tax contributions, employees of the employer ceasing participation may seek to transfer his or her account balance to the employer's qualified alternate retirement program within sixty (60) days of the employer's effective cessation date. An employee's election to transfer his or her account balance within sixty (60) days of the employer's effective cessation date is an irrevocable waiver of the right to obtain service credits in the system for the time worked for the employer ceasing participation; and*
  6. The employer shall pay *by lump sum* to the system the full actuarial cost of the benefits accrued by its current and former employees in the system as determined separately for the pension fund and the insurance fund by the actuarial study required by subparagraph 3. of this paragraph. The full actuarial cost shall not include any employee who seeks a *transfer*~~refund~~ of his or her account balance within sixty (60) days of the employer's effective cessation date *as provided by*

*subparagraph 5. of this paragraph.* ~~{An employee's election to receive a refund of his or her account balance within sixty (60) days of the employer's effective cessation date is an irrevocable waiver of the right to obtain service credits for the time worked for the employer ceasing participation. The full actuarial cost may be paid by lump sum payment or in installment payments to the system.}~~ The actuarial cost shall be fixed, and the employer shall not be subject to any increases or subsequent adjustments, once the lump sum is paid. ~~{or the first installment payment is made. If the employer elects to pay the full actuarial cost in installment payments, the employer shall, as determined by the board:~~

- a. ~~Pay installment payments over a time period determined by the board, not to exceed twenty (20) years;~~
- b. ~~Be charged interest over the life of the installment period, at the actuarially assumed rate of return; and~~
- e. ~~Provide adequate security in any relevant real estate, chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letters of credit rights, and money. In order to ensure security provided is adequate:~~
  - i. ~~A detailed financing statement shall be provided to the Kentucky Retirement Systems board listing all assets to be used as security and the value certified by a licensed attorney;~~
  - ii. ~~Security interest shall be a perfected interest in accordance with provisions set forth in KRS Chapter 355 and subject to approval of the board; and~~
  - iii. ~~The perfected security interest shall attach until the amount owed is paid in full.~~

~~— The board may file an action in the Franklin Circuit Court to collect money owed and to attach so much of the general fund or adequate security of the delinquent employer as is necessary to ensure payment of any installment payments owed under this section.}~~

- (b) If the board determines an employer must involuntarily cease participation in the system as provided by subsection (2)(b) of this section:
  - 1. The cessation of participation in the system shall apply to all employees of the employer;
  - 2. The employer shall pay for all administrative costs of an actuarial study to be completed by the Kentucky Retirement Systems' consulting actuary and for any other administrative costs for discontinuing participation in the system as determined by the board and as provided by this section; and
  - 3. The employer shall pay *by lump sum* to the system the full actuarial cost of the benefits accrued by its current and former employees in the system as determined separately for the pension fund and the insurance fund by the actuarial study required by subparagraph 2. of this paragraph. ~~{The full actuarial cost shall not include any employee who seeks a refund of his or her account balance within sixty (60) days of the employer's effective cessation date. An employee's election to receive a refund of his or her account balance within sixty (60) days of the employer's effective cessation date is an irrevocable waiver of the right to obtain service credits for the time worked for the employer ceasing participation. The full actuarial cost may be paid by lump sum payment or in installment payments to the system.}~~ The actuarial cost shall be fixed, and the employer shall not be subject to any increases or subsequent adjustments, once the lump sum is paid ~~{or the first installment payment is made. If the employer elects to pay the full actuarial cost in installment payments, the employer shall, as determined by the board:~~
    - a. ~~Pay installment payments over a time period determined by the board, not to exceed twenty (20) years;~~
    - b. ~~Be charged interest over the life of the installment period at the actuarially assumed rate of return; and~~
    - e. ~~Provide adequate security in any relevant real estate, chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letters of credit rights, and money. In order to ensure security provided is adequate:~~
      - i. ~~A detailed financing statement shall be provided to the Kentucky Retirement~~

~~Systems board listing all assets to be used as security and the value certified by a licensed attorney;~~

~~ii. Security interest shall be a perfected interest in accordance with provisions set forth in KRS Chapter 355 and subject to approval of the board; and~~

~~iii. The perfected security interest shall attach until the amount owed is paid in full.~~

~~—The board may file an action in the Franklin Circuit Court to collect money owed and to attach so much of the general fund or adequate security of the delinquent employer as is necessary to ensure payment of any installment payments owed under this section};~~

- (4) Any employee hired on or after the employer's effective cessation date by an employer who has ceased participation in the system as provided by this section shall not, regardless of his or her membership date in the systems administered by Kentucky Retirement Systems, be eligible to participate in the Kentucky Employees Retirement System or the County Employees Retirement System through the employer that ceased participation for the duration of his or her employment with that employer;
- (5) If an employer has ceased participation in the system as provided by this section:
- (a) The rights of recipients and the vested rights of inactive members accrued as of the employer's effective cessation date shall not be impaired or reduced in any manner as a result of the employer ceasing participation in the system; and
  - (b) Employees of the employer ceasing participation shall accrue benefits through the employer's effective cessation date but shall not accrue any additional benefits in the Kentucky Employees Retirement System or the County Employees Retirement System, including earning years of service credit through the ceased employer, after the employer's effective cessation date for as long as they remain employed by the employer. The day after the employer's effective cessation date, each employee described by this paragraph shall be considered an inactive member with respect to his or her employment with the employer that ceased participation and, subject to the provisions and limitations of KRS 61.510 to 61.705 and 78.510 to 78.852, shall:
    1. Retain his or her accounts with the Kentucky Employees Retirement System or the County Employees Retirement System and have those accounts credited with interest in accordance with KRS 61.510 to 61.705 and 78.510 to 78.852;
    2. Retain his or her vested rights in accordance with paragraph (a) of this subsection; *and*
    3. Be eligible to take a refund of his or her accumulated account balance in accordance with KRS 61.625 or any other available distribution if eligible; ~~and~~
    4. ~~Except for federal tax purposes, be treated as if his or her employment terminated as of the employer's effective cessation date, unless otherwise prohibited by applicable federal tax authority};~~
- (6) (a) Kentucky Employees Retirement System employers who are county attorney offices, Commonwealth's attorney offices, local and district health departments governed by KRS Chapter 212, master commissioners, executive branch agencies whose employees are subject to KRS 18A.005 to 18A.200, state-administered retirement systems, state-supported universities and community colleges, property valuation administration offices, or employers in the legislative or judicial branch of Kentucky state government, shall not be eligible to voluntarily discontinue participation in the Kentucky Employees Retirement System unless the employer is a nonstock nonprofit corporation organized under KRS Chapter 273.
- (b) Only the employers in the County Employees Retirement System who are a nonstock nonprofit corporation organized under KRS Chapter 273 may voluntarily cease participation in the County Employees Retirement System;
- (7) For purposes of this section, the full actuarial cost shall be determined by the Kentucky Retirement Systems' consulting actuary separately for the pension fund and the insurance fund using the assumptions *and methodology* established by the system *specifically for determining the full actuarial cost of ceasing participation* as of the *employer's effective cessation date*. *For purposes of determining the full actuarial cost, the assumed rate of return used to calculate the cost shall be the lesser of the assumed rate of return utilized in the system's most recent actuarial valuation or the yield on a thirty (30) year United States*

*treasury bond as of the employer's effective cessation date, but shall in no case be lower than the assumed rate of return utilized in the system's most recent actuarial valuation minus three and one-half percent (3.5%)*~~most recently completed actuarial valuation and based upon the following methodology:~~

- (a) ~~For each fund, the systems' consulting actuary shall determine the assets at market value that are held in the Kentucky Employees Retirement System or the County Employees Retirement System, as applicable, to cover employer financed accrued liabilities. The market value of assets of each fund, to the extent sufficient, will be allocated to categories in the following order:~~
- ~~1. Inactive member accumulated account balances;~~
  - ~~2. Active member accumulated account balances;~~
  - ~~3. Recipient liabilities;~~
  - ~~4. Employer financed inactive member liabilities; and~~
  - ~~5. Employer financed active member liabilities;~~
- (b) ~~The systems' consulting actuary shall apportion the market value of assets in each fund for each category listed in paragraph (a) of this subsection to the employer ceasing participation based on the employer's share of each category's liabilities in the fund that are represented by the members and recipients of the employer ceasing participation;~~
- (c) ~~The systems' consulting actuary shall determine the amount of the employer financed accrued liabilities separately for each fund for all members and recipients of the employer ceasing participation; [and]~~
- (d) ~~The full actuarial cost for each fund shall be equal to the amount by which paragraph (c) of this subsection exceeds paragraph (b) of this subsection];~~
- (8) The Kentucky Retirement Systems shall promulgate administrative regulations pursuant to KRS Chapter 13A to administer this section; and
- (9) Any employer who voluntarily ceases participation, or who is required to involuntarily cease participation as provided in this section, shall hold the Commonwealth harmless from damages, attorney's fees and costs from legal claims for any cause of action brought by any member or retired member of the departing employer.

➔Section 2. Notwithstanding the provisions of Section 1 of this Act, any employer who has filed the paperwork to voluntarily cease participation prior to the effective date of this Act shall have their full actuarial cost calculated based upon the assumptions and methodology established by the Kentucky Retirement Systems' board, except that the assumed investment return assumption, which is also the rate used to discount liabilities, shall be four and five-tenths percent for employers paying by lump-sum and four percent for employers paying by installments, and such employers electing to pay by installments shall be eligible to pay the full actuarial cost in installments over a period of time determined by the board, not to exceed 20 years, with interest at the actuarially assumed rate of return.

➔Section 3. Notwithstanding KRS 61.661, Kentucky Retirement Systems shall provide the employer ceasing participation as provided by Section 2 of this Act, an individual member breakdown of the actuarial cost attributable to each current and former employee of the employer for purposes of allocating the costs among organizational units of the employer.

➔Section 4. Whereas ensuring that employers pay the appropriate actuarial cost for ceasing participation is important to the financial stability of the Kentucky Retirement Systems and to the overall welfare of the Commonwealth of Kentucky, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

**Signed by Governor March 21, 2017.**