

CHAPTER 125

(SB 104)

AN ACT relating to prospective retirement benefits and declaring an emergency.

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

➔SECTION 1. A NEW SECTION OF KRS 6.500 TO 6.577 IS CREATED TO READ AS FOLLOWS:

- (1) *For purposes of this section, "bona fide promotion or career advancement":*
 - (a) *Means a professional advancement in substantially the same line of work held by the member in the four (4) years immediately prior to the final five (5) annual years preceding retirement or a change in employment position based on the training, skills, education, or expertise of the member that imposes a significant change in job duties and responsibilities to clearly justify the increased compensation to the member; and*
 - (b) *Does not include any circumstance in which a legislator participating in the Legislators' Retirement Plan takes a position of employment with an employer participating in any of the other state-administered retirement systems.*
- (2)
 - (a) *For members retiring on or after January 1, 2018, the plan shall, for each of the retiring member's last five (5) annual years of service in the General Assembly or with any employer participating in any of the state-administered retirement systems, identify any annual year in which the creditable compensation used to calculate benefits in the Legislators' Retirement Plan increased at a rate of ten percent (10%) or more annually over the immediately preceding annual year's creditable compensation.*
 - (b) *Except as limited or excluded by subsections (3) and (4) of this section, any amount of increase in creditable compensation for an annual year identified under paragraph (a) of this subsection that exceeds ten percent (10%) more than the member's creditable compensation from the immediately preceding annual year shall not be included in the creditable compensation used to calculate the member's monthly pension benefits. If the creditable compensation for a specific annual year identified under paragraph (a) of this subsection as exceeding the ten percent (10%) increase limitation is not used to calculate the retiring member's monthly pension benefits, then no reduction in creditable compensation shall occur for that annual year. Reductions to creditable compensation as provided by this paragraph shall include any creditable compensation used to calculate the retiring members' benefits, including creditable compensation earned in another state-administered retirement system.*
 - (c) *If the creditable compensation of the retiring member is reduced as provided by paragraph (b) of this subsection, the retirement system shall, notwithstanding KRS 21.460 and as applicable, refund the member contributions attributable to the reduction in creditable compensation.*
- (3) *In order to ensure the prospective application of the limitations on increases in creditable compensation contained in subsection (2) of this section, only the creditable compensation earned by the retiring member on or after July 1, 2017, shall be subject to reduction under subsection (2) of this section. Creditable compensation earned by the retiring member prior to July 1, 2017, shall not be subject to reduction under subsection (2) of this section.*
- (4) *Subsections (2) and (3) of this section shall not apply to increases that are the direct result of a bona fide promotion or career advancement.*
- (5) *The Judicial Form Retirement System board of trustees shall determine whether increases in creditable compensation during the last five (5) annual years of employment prior to retirement constitute a bona fide promotion or career advancement and may promulgate administrative regulations in accordance with KRS Chapter 13A to administer this section. All state-administered retirement systems shall cooperate to implement this section.*
- (6) *This section shall not apply to employees participating in the hybrid cash balance plan as provided by KRS 21.402.*

➔SECTION 2. A NEW SECTION OF KRS 21.345 TO 21.580 IS CREATED TO READ AS FOLLOWS:

- (1) *For purposes of this section:*
- (a) *"Bona fide promotion or career advancement":*
1. *Means a professional advancement in substantially the same line of work held by the member in the four (4) years immediately prior to the final sixty (60) months preceding retirement or a change in employment position based on the training, skills, education, or expertise of the member that imposes a significant change in job duties and responsibilities to clearly justify the increased compensation to the member, including any circumstance when a member is elected or appointed to another court within the Court of Justice; and*
 2. *Does not include any circumstance where a judge or justice participating in the Judicial Retirement Plan takes a position of employment with an employer participating in any of the other state-administered retirement systems; and*
- (b) *"Year" has the same meaning as in KRS 21.345(3).*
- (2) (a) *For members retiring on or after January 1, 2018, the plan shall identify any consecutive year utilized in determining the member's final compensation in which the member's compensation increased at a rate of ten percent (10%) or more over the member's compensation in the immediately preceding year.*
- (b) *Except as limited or excluded by subsections (3) and (4) of this section, any amount of increase in compensation for a year identified under paragraph (a) of this subsection that exceeds ten percent (10%) more than the member's compensation from the immediately preceding year shall not be used in the calculation of the member's final compensation for the purposes of determining the member's monthly pension benefit under KRS 21.400.*
- (c) *If the member's final compensation is reduced for the purposes of determining the member's pension benefit under KRS 21.400 as provided by paragraph (b) of this subsection, the retirement system shall, notwithstanding KRS 21.460 and as applicable, refund the member contributions attributable to the reduction in creditable compensation.*
- (3) *In order to ensure the prospective application of the potential reduction in pension benefits as provided in subsection (2) of this section, only the compensation earned by the retiring member on or after July 1, 2017, shall be subject to reduction under subsection (2) of this section. Compensation earned by the retiring member prior to July 1, 2017, shall not be subject to reduction under subsection (2) of this section.*
- (4) *Subsections (2) and (3) of this section shall not apply to increases that are the direct result of a bona fide promotion or career advancement or to compensation used in accordance with KRS 61.680(7) in which the member does not have sixty (60) months of service in the Judicial Retirement Plan.*
- (5) *The Judicial Form Retirement System board of trustees shall determine whether increases in compensation during the final sixty (60) months preceding retirement constitute a bona fide promotion or career advancement and may promulgate administrative regulations in accordance with KRS Chapter 13A to administer this section. All state-administered retirement systems shall cooperate to implement this section.*
- (6) *This section shall not apply to employees participating in the hybrid cash balance plan as provided by KRS 21.402.*

➔Section 3. KRS 61.598 is amended to read as follows:

- (1) For purposes of this section, "bona fide promotion or career advancement":
- (a) Means a professional advancement in substantially the same line of work held by the employee in the four (4) years immediately prior to the final five (5) fiscal years preceding retirement or a change in employment position based on the training, skills, education, or expertise of the employee that imposes a significant change in job duties and responsibilities to clearly justify the increased compensation to the member; and
- (b) Does not include any circumstance where an elected official participating in the Kentucky Employees Retirement System or the County Employees Retirement System takes a position of employment with a different employer participating in any of the state-administered retirement systems.
- (2) (a) *For employees retiring from the Kentucky Employees Retirement System, the County Employees Retirement System, or the State Police Retirement System on or after January 1, 2018, the systems shall, for each of the retiring employee's last five (5) fiscal years of employment, identify any fiscal*

year in which the creditable compensation increased at a rate of ten percent (10%) or more annually over the immediately preceding fiscal year's creditable compensation. The employee's creditable compensation in the fiscal year immediately prior to the employee's last five (5) fiscal years of employment shall be utilized to compare the initial fiscal year in the five (5) fiscal year period.

- (b) *Except as limited or excluded by subsections (3) and (4) of this section, any amount of increase in creditable compensation for a fiscal year identified under paragraph (a) of this subsection that exceeds ten percent (10%) more than the employee's creditable compensation from the immediately preceding fiscal year shall not be included in the creditable compensation used to calculate the retiring employee's monthly retirement allowance. If the creditable compensation for a specific fiscal year identified under paragraph (a) of this subsection as exceeding the ten percent (10%) increase limitation is not used to calculate the retiring employee's monthly retirement allowance, then no reduction in creditable compensation shall occur for that fiscal year.*
- (c) *If the creditable compensation of the retiring employee is reduced as provided by paragraph (b) of this subsection, the retirement systems:*
 - 1. *Shall refund the employee contributions and interest attributable to the reduction in creditable compensation; and*
 - 2. *Shall not refund the employer contributions paid but shall utilize those funds to pay down the unfunded liability of the pension fund in which the retiring employee participated.*
- (3) *In order to ensure the prospective application of the limitations on increases in creditable compensation contained in subsection (2) of this section, only the creditable compensation earned by the retiring employee on or after July 1, 2017, shall be subject to reduction under subsection (2) of this section. Creditable compensation earned by the retiring employee prior to July 1, 2017, shall not be subject to reduction under subsection (2) of this section.*
- (4) *Subsection (2) of this section shall not apply to:*
 - (a) *A bona fide promotion or career advancement as defined by subsection (1) of this section;*
 - (b) *A lump-sum payment for compensatory time paid to an employee upon termination of employment;*
 - (c) *A lump-sum payment made pursuant to an alternate sick leave program under KRS 78.616(5) that is paid to an employee upon termination of employment;*
 - (d) *Increases in creditable compensation in a fiscal year over the immediately preceding fiscal year, where in the immediately preceding fiscal year the employer reported the employee as being on leave without pay for any reason, including but not limited to sick leave without pay, maternity leave, leave authorized under the Family Medical Leave Act, and any period of time where the employee received workers' compensation benefit payments that were not reported to the plan as creditable compensation;*
 - (e) *Increases in creditable compensation directly attributable to an employee's receipt of compensation for overtime hours worked while serving as a participating employee under any state or federal grant, grant pass-through, or similar program that requires overtime as a condition or necessity of the employer's receipt of the grant; and*
 - (f) *Increases in creditable compensation directly attributable to an employee's receipt of compensation for overtime performed during a state of emergency declared by the President of the United States or the Governor of the Commonwealth of Kentucky.*
- (5) (a) *For employees retiring on or after January 1, 2014, but prior to July 1, 2017, the last participating employer shall be required to pay for any additional actuarial costs resulting from annual increases in an employee's creditable compensation greater than ten percent (10%) over the employee's last five (5) fiscal years of employment that are not the direct result of a bona fide promotion or career advancement. The cost shall be determined by the retirement systems ~~and the system may promulgate administrative regulations in accordance with KRS Chapter 13A to administer this section.~~*
- (b) *Lump-sum payments for compensatory time paid to an employee upon termination of employment shall be exempt from this subsection.*

- (c) *Kentucky Retirement Systems shall be required to answer inquiries from participating employers regarding this subsection. Upon request of the employer prior to the employee's change of position or hiring, the systems shall make a determination that is binding to the systems as to whether or not a change of position or hiring constitutes a bona fide promotion or career advancement.*
- (d) *For any additional actuarial costs charged to the employer under this subsection, the systems shall allow the employer to pay the costs without interest over a period of one (1) year from the date of receipt of the employer's final invoice.*
- (6){(3)(a)} The Kentucky Retirement Systems shall determine whether increases in creditable compensation during the last five (5) fiscal years of employment prior to retirement constitute a bona fide promotion or career advancement *and may promulgate administrative regulations in accordance with KRS Chapter 13A to administer this section. All state-administered retirement systems shall cooperate to implement this section.*
- (7) ~~{(b) Lump sum payments for compensatory time paid to an employee upon termination of employment shall be exempt from the provisions of this section.~~
- (4) ~~Kentucky Retirement Systems shall be required to answer inquiries from participating employers regarding this section. Upon request of the employer prior to the employee's change of position or hiring, the systems shall make a determination that is binding to the systems as to whether or not a change of position or hiring constitutes a bona fide promotion or career advancement.~~
- (5) ~~Any employer who disagrees with a determination made by the system in accordance with this section regarding whether an increase in compensation constitutes a bona fide promotion or career advancement for purposes of subsection (5) of this section may request a hearing and appeal the decision in accordance with KRS 61.645(16). The systems shall not charge interest, or consider the costs due under this section as delinquent contributions, during the pendency of the hearing process and appeal.~~
- (6) ~~For any additional actuarial costs charged to the employer under this section, the systems shall allow the employer to pay the costs over a period, not to exceed one (1) year, without interest.~~
- (8) *For the fiscal year beginning July 1, 2017, and subsequent years, the Kentucky Retirement Systems shall provide a means for employers to separately report the specific exceptions provided in subsection (4) of this section within the reporting system utilized by the employers for making employer reports under Section 10 of this Act, KRS 61.675, and Section 11 of this Act. The Kentucky Retirement Systems shall continually provide communication, instructions, training, and educational opportunities for employers regarding how to appropriately report exemptions established by subsection (4) of this section.*
- (9) *This section shall not apply to employees participating in the hybrid cash balance plan as provided by KRS 16.583 and 61.597.*

➔SECTION 4. A NEW SECTION OF KRS 21.345 TO 21.580 IS CREATED TO READ AS FOLLOWS:

Notwithstanding KRS 6.500 to 6.577 and 21.345 to 21.580:

- (1) *Subject to the provisions of this section, any member who began participating in the Legislators' Retirement Plan or the Judicial Retirement Plan prior to January 1, 2014, may in lieu of the benefits he or she is currently eligible to receive under the plans, elect to receive the benefits and rights provided to members who began participating in the Legislators' Retirement Plan or the Judicial Retirement Plan on or after January 1, 2014, including participating in the hybrid cash balance plan created pursuant to Section 5 of this Act;*
- (2) *The election provided by this section shall be made in writing and on a form prescribed by the Judicial Form Retirement System board;*
- (3) *For each member who makes an election provided by this section:*
 - (a) *Any service credit the member has accrued prior to January 1, 2014, shall be considered as service credit earned on or after January 1, 2014, for purposes of determining benefits under KRS 6.500 to 6.577 and 21.345 to 21.580;*
 - (b) *On the member's effective election date, the value of the member's accumulated contributions, less any interest, shall be deposited into the member's hybrid cash balance account as provided by Section 5 of this Act and considered part of the member's accumulated account balance;*

- (c) *On the member's effective election date, an employer pay credit as provided by Section 5 of this Act shall be added to the member's accumulated account balance for each month the member contributed to the Legislators' Retirement Plan or the Judicial Retirement Plan prior to his or her effective election date; and*
- (d) *Interest credits as provided by Section 5 of this Act shall only be applied for periods occurring on or after the member's effective election date;*
- (4) *Before accepting an election provided by this section, the Judicial Form Retirement System board shall provide the member with information detailing the potential results of the member's election;*
- (5) *An election made pursuant to this section shall be irrevocable; and*
- (6) (a) *A member of the Legislators' Retirement Plan or the Judicial Retirement Plan shall not be eligible to make an election prescribed by this section until the Judicial Form Retirement System receives a favorable private letter ruling from the Internal Revenue Service regarding this section.*
- (b) *If the Internal Revenue Service denies the request for a private letter ruling as provided by paragraph (a) of this subsection, this section shall be void.*
- (c) *The Judicial Form Retirement System may promulgate administrative regulations under KRS Chapter 13A in order to carry out this section.*

➔Section 5. KRS 21.402 is amended to read as follows:

- (1) A member of the Legislators' Retirement Plan or the Judicial Retirement Plan, whose participation in the Legislators' Retirement Plan or the Judicial Retirement Plan begins on or after January 1, 2014, ***or a member making an election pursuant to Section 4 of this Act***, shall receive the retirement benefits provided by this section in lieu of the retirement benefits provided under KRS 6.520 and 21.400. The retirement benefit provided by this section shall be known as the hybrid cash balance plan and shall operate as another benefit tier within the Legislators' Retirement Plan and the Judicial Retirement Plan.
- (2) The hybrid cash balance plan shall provide a retirement benefit based upon the member's accumulated account balance, which shall include:
 - (a) Contributions made by the member as provided by KRS 6.500 to 6.577 and 21.345 to 21.580, except for employee contributions prescribed by KRS 6.505(1)(d)2.b. and 21.360(1)(a)3.b.;
 - (b) An employer pay credit of four percent (4%) of the creditable compensation earned by the employee for each month the employee is contributing to the hybrid cash balance plan provided by this section; and
 - (c) Interest credits added annually to the member's accumulated account balance as provided by this section.
- (3) (a) Member contributions and employer pay credits as provided by subsection (2)(a) and (b) of this section shall be credited to the member's account monthly as contributions are reported and posted to the plan.
- (b) Interest credits, as provided by subsection (2)(c) of this section, shall be credited to the member's account annually on June 30 of each fiscal year, as determined by subsection (4) of this section.
- (4) (a) On June 30 of each fiscal year, the plan shall determine if the member contributed to the hybrid cash balance plan during the fiscal year.
- (b) If the member contributed to the hybrid cash balance plan during the fiscal year, the interest credit added to the member's account for that fiscal year shall be determined by multiplying the member's accumulated account balance on June 30 of the preceding fiscal year by a percentage increase equal to:
 - 1. Four percent (4%); plus
 - 2. Seventy-five percent (75%) of the plan's geometric average net investment return in excess of a four percent (4%) rate of return.
- (c) If the member did not contribute to the hybrid cash balance plan during the fiscal year, the interest credit added to the member's account for that fiscal year shall be determined by multiplying the member's accumulated account balance on June 30 of the preceding fiscal year by four percent (4%).
- (d) For purposes of this subsection, "plan's geometric average net investment return":

1. Means the annual average geometric investment return, net of administrative and investment fees and expenses, over the last five (5) fiscal years as of the date the interest is credited to the member's account; and
 2. Shall be expressed as a percentage and based upon the plan in which the member has an account.
- (5) (a) Upon termination of employment, a member who has less than five (5) years of service credited under the Legislators' Retirement Plan or the Judicial Retirement Plan, who elects to take a refund of his or her accumulated account balance as provided by KRS 21.460, shall forfeit the accumulated employer credit, and shall only receive a refund of his or her accumulated contributions.
 - (b) Upon termination of employment, a member who has five (5) or more years of service credited under the Legislators' Retirement Plan or the Judicial Retirement Plan, who elects to take a refund of his or her accumulated account balance as provided by KRS 21.460, shall receive a full refund of his or her accumulated account balance.
- (6) A member participating in the hybrid cash balance plan provided by this section may retire:
 - (a) Upon reaching normal retirement age, provided he or she has earned five (5) or more years of service credited under the Legislators' Retirement Plan or the Judicial Retirement Plan, or another state-administered retirement system; or
 - (b) If the member is at least age fifty-seven (57) and has an age and years of service total of at least eighty-seven (87) years. The years of service used to determine eligibility for retirement under this paragraph shall only include years of service credited under the Legislators' Retirement Plan or the Judicial Retirement Plan, or another state-administered retirement system.
 - (7) A member eligible to retire under subsection (6) of this section may elect to:
 - (a) Receive a monthly retirement allowance payable for life by having his or her accumulated account balance annuitized by the retirement plan in accordance with the actuarial assumptions and actuarial methods adopted by the board and in effect on the member's retirement date;
 - (b) Receive the actuarial equivalent of his or her retirement allowance calculated under paragraph (a) of this subsection payable under one (1) of the options set forth in KRS 21.420(8)(b); or
 - (c) Take a refund of his or her accumulated account balance as provided by KRS 21.460.
 - (8) The board of the Judicial Form Retirement System shall establish individual members' accounts for each member participating in the hybrid cash balance plan as provided by this section. The Judicial Form Retirement System may promulgate administrative regulations in accordance with KRS Chapter 13A to administer the provisions of this section.
 - (9) The provisions of this section shall not apply to members who began participating in the Legislators' Retirement Plan or the Judicial Retirement Plan prior to January 1, 2014, *except for those members making an election pursuant to Section 4 of this Act.*

➔SECTION 6. A NEW SECTION OF KRS 61.510 TO 61.705 IS CREATED TO READ AS FOLLOWS:

Notwithstanding KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852:

- (1) *Subject to the provisions of this section, any member who began participating in the Kentucky Employees Retirement System, the County Employees Retirement System, or the State Police Retirement System prior to January 1, 2014, may in lieu of the benefits he or she is currently eligible to receive from the systems, elect to receive the benefits and rights provided to members who began participating in the systems on or after January 1, 2014, including participating in the hybrid cash balance plan created pursuant to Section 7 of this Act for members in nonhazardous duty positions or pursuant to Section 8 of this Act for members in hazardous duty positions, as applicable;*
- (2) *The election provided by this section shall be made in writing and on a form prescribed by the Kentucky Retirement Systems board;*
- (3) *For each member who makes an election provided by this section:*
 - (a) *Any service credit the member has accrued prior to January 1, 2014, shall be considered as service credit earned on or after January 1, 2014, for purposes of determining benefits under KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852;*

- (b) *On the member's effective election date, the value of the member's accumulated contributions, less any interest, shall be deposited into the member's hybrid cash balance account as provided by Section 7 or 8 of this Act, as applicable, and considered part of the member's accumulated account balance;*
- (c) *On the member's effective election date, an employer pay credit as provided by Section 7 or 8 of this Act, as applicable, shall be added to the member's accumulated account balance for each month the member contributed to the Kentucky Employees Retirement System, the County Employees Retirement System, or the State Police Retirement System prior to his or her effective election date; and*
- (d) *Interest credits as provided by Section 7 or 8 of this Act, as applicable, shall only be applied for periods occurring on or after the member's effective election date;*
- (4) *Before accepting an election provided by this section, the Kentucky Retirement Systems board shall provide the member with information detailing the potential results of the member's election;*
- (5) *An election made pursuant to this section shall be irrevocable;*
- (6) (a) *A member of the Kentucky Employees Retirement System, the County Employees Retirement System, or the State Police Retirement System shall not be eligible to make an election prescribed by this section until the Kentucky Retirement Systems receives a favorable private letter ruling from the Internal Revenue Service regarding this section.*
- (b) *If the Internal Revenue Service denies the request for a private letter ruling as provided by paragraph (a) of this subsection, this section shall be void.*
- (c) *The Kentucky Retirement Systems may promulgate administrative regulations under KRS Chapter 13A in order to carry out this section; and*
- (7) *This section shall not apply to retirees who were reemployed on or after September 1, 2008, and who are not eligible to participate in the systems during reemployment.*

➔Section 7. KRS 61.597 is amended to read as follows:

- (1) A member of the Kentucky Employees Retirement System or County Employees Retirement System who is not participating in a hazardous duty position as provided by KRS 61.592, whose participation in the systems begins on or after January 1, 2014, **or a member making an election pursuant to Section 6 of this Act**, shall receive the retirement benefits provided by this section in lieu of the retirement benefits provided under KRS 61.559 and 61.595. The retirement benefit provided by this section shall be known as the hybrid cash balance plan and shall operate as another benefit tier within the Kentucky Employees Retirement System and the County Employees Retirement System.
- (2) The hybrid cash balance plan shall provide a retirement benefit based upon the member's accumulated account balance, which shall include:
 - (a) Contributions made by the member as provided by KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852, except for employee contributions prescribed by KRS 61.702(2)(b);
 - (b) An employer pay credit of four percent (4%) of the creditable compensation earned by the employee for each month the employee is contributing to the hybrid cash balance plan provided by this section; and
 - (c) Interest credits added annually to the member's accumulated account balance as provided by this section.
- (3) (a) Member contributions and employer pay credits as provided by subsection (2)(a) and (b) of this section shall be credited to the member's account monthly as contributions are reported and posted to the system in accordance with KRS 61.675 and 78.625.
- (b) Interest credits, as provided by subsection (2)(c) of this section, shall be credited to the member's account annually on June 30 of each fiscal year, as determined by subsection (4) of this section.
- (4) (a) On June 30 of each fiscal year, the system shall determine if the member contributed to the hybrid cash balance plan during the fiscal year.
- (b) If the member contributed to the hybrid cash balance plan during the fiscal year, the interest credit added to the member's account for that fiscal year shall be determined by multiplying the member's accumulated account balance on June 30 of the preceding fiscal year by a percentage increase equal to:

1. Four percent (4%); plus
 2. Seventy-five percent (75%) of the system's geometric average net investment return in excess of a four percent (4%) rate of return.
- (c) If the member did not contribute to the hybrid cash balance plan during the fiscal year, the interest credit added to the member's account for that fiscal year shall be determined by multiplying the member's accumulated account balance on June 30 of the preceding fiscal year by four percent (4%).
- (d) For purposes of this subsection, "system's geometric average net investment return":
1. Means the annual average geometric investment return, net of administrative and investment fees and expenses, over the last five (5) fiscal years as of the date the interest is credited to the member's account; and
 2. Shall be expressed as a percentage and based upon the system in which the member has an account.
- (e) No employer pay credits or interest credits shall be provided to a member who has taken a refund of contributions as provided by KRS 61.625 or who has retired and annuitized his or her accumulated account balance as prescribed by this section.
- (5) (a) Upon termination of employment, a member who has less than five (5) years of service credited under KRS 16.543(1), 61.543(1), and 78.615(1), who elects to take a refund of his or her accumulated account balance as provided by KRS 61.625, shall forfeit the accumulated employer credit, and shall only receive a refund of his or her accumulated contributions.
- (b) Upon termination of employment, a member who has five (5) or more years of service credited under KRS 16.543(1), 61.543(1), and 78.615(1), who elects to take a refund of his or her accumulated account balance as provided by KRS 61.625, shall receive a full refund of his or her accumulated account balance.
- (6) A member participating in the hybrid cash balance plan provided by this section may retire:
- (a) At his or her normal retirement date, provided he or she has earned five (5) or more years of service credited under KRS 16.543(1), 61.543(1), 78.615(1), or another state-administered retirement system; or
 - (b) If the member is at least age fifty-seven (57) and has an age and years of service total of at least eighty-seven (87) years. The years of service used to determine eligibility for retirement under this paragraph shall only include years of service credited under KRS 16.543(1), 61.543(1), 78.615(1), or another state-administered retirement system.
- (7) A member eligible to retire under subsection (6) of this section may elect to:
- (a) Receive a monthly retirement allowance payable for life by having his or her accumulated account balance annuitized by the retirement systems in accordance with the actuarial assumptions and actuarial methods adopted by the board and in effect on the member's retirement date;
 - (b) Receive the actuarial equivalent of his or her retirement allowance calculated under paragraph (a) of this subsection payable under one (1) of the options set forth in KRS 61.635, except for the option provided by KRS 61.635(11); or
 - (c) Take a refund of his or her account balance as provided by KRS 61.625.
- (8) The provisions of this section shall not apply to members who began participating in the Kentucky Employees Retirement System or the County Employees Retirement System prior to January 1, 2014, ***except for those members making an election pursuant to Section 6 of this Act.***

➔Section 8. KRS 16.583 is amended to read as follows:

- (1) A member of the State Police Retirement System, a member of the Kentucky Employees Retirement System in a hazardous duty position covered by this section, or a member of the County Employees Retirement System in a hazardous duty position covered by this section, whose participation begins on or after January 1, 2014, ***or a member making an election pursuant to Section 6 of this Act,*** shall receive the retirement benefits provided by this section in lieu of the retirement benefits provided under KRS 16.576 and 16.577. The retirement benefit provided by this section shall be known as the hybrid cash balance plan and shall operate as another

benefit tier within the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System.

- (2) The hybrid cash balance plan shall provide a retirement benefit based upon the member's accumulated account balance, which shall include:
 - (a) Contributions made by the member as provided by KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852, except for employee contributions prescribed by KRS 61.702(2)(b);
 - (b) An employer pay credit of seven and one-half percent (7.5%) of the creditable compensation earned by the employee for each month the employee is contributing to the hybrid cash balance plan provided by this section; and
 - (c) Interest credits added annually to the member's accumulated account balance as provided by this section.
- (3)
 - (a) Member contributions and employer pay credits as provided by subsection (2)(a) and (b) of this section shall be credited to the member's account monthly as contributions are reported and posted to the system in accordance with KRS 61.675 and 78.625.
 - (b) Interest credits, as provided by subsection (2)(c) of this section, shall be credited to the member's account annually on June 30 of each fiscal year, as determined by subsection (4) of this section.
- (4)
 - (a) On June 30 of each fiscal year, the system shall determine if the member contributed to the hybrid cash balance plan during the fiscal year.
 - (b) If the member contributed to the hybrid cash balance plan during the fiscal year, the interest credit added to the member's account for that fiscal year shall be determined by multiplying the member's accumulated account balance on June 30 of the preceding fiscal year by a percentage increase equal to:
 1. Four percent (4%); plus
 2. Seventy-five percent (75%) of the system's geometric average net investment return in excess of a four percent (4%) rate of return.
 - (c) If the member did not contribute to the hybrid cash balance plan during the fiscal year, the interest credit added to the member's account for that fiscal year shall be determined by multiplying the member's accumulated account balance on June 30 of the preceding fiscal year by four percent (4%).
 - (d) For purposes of this subsection, "system's geometric average net investment return":
 1. Means the annual average geometric investment return, net of administrative and investment fees and expenses, over the last five (5) fiscal years as of the date the interest is credited to the member's account; and
 2. Shall be expressed as a percentage and based upon the system in which the member has an account.
 - (e) No employer pay credits or interest credits shall be provided to a member who has taken a refund of contributions as provided by KRS 61.625 or who has retired and annuitized his or her accumulated account balance as prescribed by this section.
- (5)
 - (a) Upon termination of employment, a member who has less than five (5) years of service credited under KRS 16.543(1), 61.543(1), and 78.615(1), who elects to take a refund of his or her accumulated account balance as provided by KRS 61.625, shall forfeit the accumulated employer credit, and shall only receive a refund of his or her accumulated contributions.
 - (b) Upon termination of employment, a member who has five (5) or more years of service credited under KRS 16.543(1), 61.543(1), and 78.615(1), who elects to take a refund of his or her accumulated account balance as provided by KRS 61.625, shall receive a full refund of his or her accumulated account balance.
- (6) A member participating in the hybrid cash balance plan provided by this section may retire:
 - (a) At his or her normal retirement date, provided he or she has earned five (5) or more years of service credited under KRS 16.543(1), 61.543(1), or 78.615(1), or another state-administered retirement system; or

- (b) At any age, provided he or she has earned twenty-five (25) or more years of service credited under KRS 16.543(1), 61.543(1), or 78.615(1) or another state-administered retirement system.
- (7) A member eligible to retire under subsection (6) of this section may elect to:
 - (a) Receive a monthly retirement allowance payable for life by having his or her accumulated account balance annuitized by the retirement systems in accordance with the actuarial assumptions and actuarial methods adopted by the board and in effect on the member's retirement date;
 - (b) Receive the actuarial equivalent of his or her retirement allowance calculated under paragraph (a) of this subsection payable under one (1) of the options set forth in KRS 61.635, except for the option provided by KRS 61.635(11); or
 - (c) Take a refund of his or her account balance as provided by KRS 61.625.
- (8) The provisions of this section shall not apply to members who began participating in the Kentucky Employees Retirement System, the County Employees Retirement System, or the State Police Retirement System prior to January 1, 2014, *except for those members making an election pursuant to Section 6 of this Act.*

➔Section 9. KRS 6.525 is amended to read as follows:

The Legislators' Retirement Plan shall be governed by KRS 21.560 and by provisions identical in terms with those provided in *Section 4 of this Act*, KRS 21.345(1), 21.345(3) to (6), 21.357, 21.360(1), 21.370 to 21.410, 21.420, 21.425, 21.450, 21.460, 21.470, 21.480, 21.525, 21.540, and 61.552 for the Judicial Retirement Plan, except that:

- (1) Five (5) years of service as a legislator will be sufficient for vesting; and
- (2) (a) A member of the Legislators' Retirement Plan may combine his service credit with his service credit in the Teachers' Retirement System, Kentucky Employees Retirement System, County Employees Retirement System, and State Police Retirement System at the time of his retirement, according to the procedure of KRS 61.680(2)(a), except that the salary used to determine final compensation, if applicable, shall be based on the creditable compensation in KRS 61.510(13) for service while a member of the General Assembly whether or not a member of the Legislators' Retirement Plan.
- (b) For members contributing on or after June 20, 2005 but prior to January 1, 2014: Upon retirement, a member's accounts under the Legislators' Retirement Plan, State Police Retirement System, Kentucky Employees Retirement System, County Employees Retirement System, and Teachers' Retirement System shall be consolidated for the purpose of determining eligibility and amount of benefits as provided in KRS 61.680(2)(a) and in the same manner as for the other retirement systems using the highest salary regardless of the system in which it was earned. For purposes of this paragraph, "retirement" means the month in which the member elects to begin receiving benefits or benefits become payable due to the member's death.
- (c) A member who has an account in the Legislators' Retirement Plan and the Judicial Retirement Plan may combine his service in both plans for purposes of determining:
 - 1. Eligibility and the amount of benefits; and
 - 2. Final compensation, provided the member began participating in the Legislators' Retirement Plan prior to January 1, 2014.
- (d) A member who began participating in the Legislators' Retirement Plan prior to January 1, 2014, may retire at the completion of twenty-seven (27) or more years of combined service credit, so long as at least fifteen (15) years of such credit were earned after January 1, 1960, and there shall be no reduction in the retirement allowance because of retirement before the age of sixty-five (65).
- (e) For the purposes of this section, any reference in the KRS sections listed above to the Judicial Retirement Plan shall also be read as a reference to the Legislators' Retirement Plan, and any reference to the Legislators' Retirement Plan shall also be read as a reference to the Judicial Retirement Plan.
- (3) Any other statute to the contrary notwithstanding, a member of any state-administered retirement system who has ceased to qualify for membership but subsequently returns to a qualified status, shall, for the purposes of determining the date of entry into the state-administered retirement system for the subsequent period or periods of service, be deemed to have never left the retirement system.

➔Section 10. KRS 16.645 is amended to read as follows:

The following subjects shall be administered in the same manner subject to the same limitations and requirements as provided for the Kentucky Employees Retirement System as follows:

- (1) Cessation of membership, as provided for by KRS 61.535;
- (2) Medical examiners and hearing procedures, as provided for by KRS 61.665;
- (3) Actuarial bases, as provided for by KRS 61.670;
- (4) Duties of the employer, as provided for by KRS 61.675;
- (5) Exemption of benefits of the system for taxation and qualified domestic relations orders, as provided for by KRS 61.690;
- (6) Retirement allowance increase, as provided for by KRS 61.691;
- (7) Calculation of retirement allowance, as provided for by KRS 61.599;
- (8) Beneficiaries to be designated by member, change, rights, as provided for by KRS 61.542;
- (9) Year of service credit, as provided for by KRS 61.545;
- (10) Refund of contributions, death after retirement, as provided by KRS 61.630;
- (11) Custodian of fund, payments made, when, as provided for by KRS 61.660;
- (12) Credit for service prior to membership date, as provided for by KRS 61.526;
- (13) Member's account, confidential, as provided for by KRS 61.661;
- (14) Cessation of membership, loss of benefits, as provided for by KRS 61.550;
- (15) Correction of errors in records, as provided for by KRS 61.685;
- (16) Maximum disability benefit, as provided for by KRS 61.607;
- (17) Retirement application procedure, effective retirement date, as provided for by KRS 61.590;
- (18) Employer contributions, as provided for by KRS 61.565;
- (19) Reinstatement of lost service credit, purchase of service credit, interest paid, and delayed contribution and installment payments, as provided for by KRS 61.552;
- (20) Reciprocal arrangement between systems, as provided by KRS 61.680;
- (21) Refund of contributions, conditions, as provided by KRS 61.625;
- (22) Hospital and medical insurance plan, as provided by KRS 61.702;
- (23) Death benefit, as provided by KRS 61.705;
- (24) Disability retirement allowance, reduction, and discontinuance, as provided by KRS 61.615;
- (25) Service credit, Armed Forces, as provided by KRS 61.555;
- (26) Reinstated employee, contributions on creditable compensation, as provided for by KRS 61.569;
- (27) Statement to be made under oath, good faith reliance, as provided for in KRS 61.699;
- (28) Retirement of persons in hazardous positions, as provided for by KRS 61.592;
- (29) Direct deposit of recipient's retirement allowance as provided in KRS 61.623;
- (30) Purchase of service credit effective July 1, 2001, as provided in KRS 61.5525;
- (31) Payment of small amounts upon death of member, retiree, or recipient without formal administration of the estate as provided in KRS 61.703;
- (32) Suspension of retirement payments on reemployment, reinstatement, recomputation of allowance, waiver of provisions in certain instances, reemployment in a different position, as provided for by KRS 61.637;
- (33) Medical examination and financial review after disability retirement, staff review, as provided in KRS 61.610;~~and~~

- (34) Employer payment of increases in creditable compensation *and adjustments to creditable compensation* during the last five (5) years of employment as provided by KRS 61.598; *and*
- (35) ***Benefit election for members of the Kentucky Retirement Systems who began participating prior to January 1, 2014, as provided by Section 6 of this Act.***

➔Section 11. KRS 78.545 is amended to read as follows:

The following matters shall be administered in the same manner subject to the same limitations and requirements as provided for the Kentucky Employees Retirement System as follows:

- (1) Cessation of membership, conditions, as provided for by KRS 61.535;
- (2) Statement of member and employer, as provided for by KRS 61.540;
- (3) Beneficiary to be designated by member, change, rights, as provided for by KRS 61.542;
- (4) Service credit determination, as provided for by KRS 61.545;
- (5) Cessation of membership, loss of benefits, as provided for by KRS 61.550;
- (6) Service credit, Armed Forces, as provided for by KRS 61.555;
- (7) Normal and early retirement eligibility requirements, as provided for by KRS 61.559;
- (8) Retirement allowance increases as provided for by KRS 61.691;
- (9) Retirement application procedure, effective retirement date, as provided for by KRS 61.590;
- (10) Disability retirement, conditions, as provided for by KRS 61.600;
- (11) Disability retirement, allowance, as provided for by KRS 61.605;
- (12) Medical examination after disability retirement, as provided for by KRS 61.610;
- (13) Disability retirement allowance, reduction, as provided for by KRS 61.615;
- (14) Determination of retirement allowance, as provided for by KRS 61.595;
- (15) Refund of contributions, conditions, as provided for by KRS 61.625;
- (16) Refund of contributions, death after retirement, as provided for by KRS 61.630;
- (17) Optional retirement plans, as provided for by KRS 61.635;
- (18) Suspension of retirement payments on reemployment, reinstatement, as provided for by KRS 61.637;
- (19) Death before retirement, beneficiary's options, as provided for by KRS 61.640;
- (20) Board of trustees, conflict of interest, as provided for by KRS 61.655;
- (21) Custodian of funds, payments made, when, as provided for by KRS 61.660;
- (22) Medical examiners and hearing procedures, as provided for by KRS 61.665;
- (23) Actuarial bases, as provided for by KRS 61.670;
- (24) Employer's administrative duties, as provided for by KRS 61.675;
- (25) Correction of errors in records, as provided for by KRS 61.685;
- (26) Exemptions of retirement allowances, and qualified domestic relations orders, as provided for by KRS 61.690;
- (27) Credit for service prior to membership date, as provided for by KRS 61.526;
- (28) Creditable compensation of fee officers, as provided for by KRS 61.541;
- (29) Members' account, confidential, as provided for by KRS 61.661;
- (30) Retirement plan for employees determined to be in a hazardous position, as provided for by KRS 61.592;
- (31) Maximum disability benefit, as provided for by KRS 61.607;
- (32) Consent of employees to deductions and reciprocal arrangement between systems, as provided for by KRS 61.680;

- (33) Employer contributions, as provided for by KRS 61.565;
- (34) Recontribution and delayed contribution payments, purchase of service credit, interest, and installment payments, as provided for by KRS 61.552;
- (35) Hospital and medical insurance plan, as provided by KRS 61.702;
- (36) Death benefit, as provided by KRS 61.705;
- (37) Reinstated employee, contributions on creditable compensation, as provided for by KRS 61.569;
- (38) Statement to be made under oath, good faith reliance, as provided for in KRS 61.699;
- (39) Disability procedure for members in hazardous positions as provided for in KRS 16.582;
- (40) Direct deposit of recipient's retirement allowance as provided for in KRS 61.623;
- (41) Death or disability from a duty-related injury as provided in KRS 61.621;
- (42) Purchase of service credit effective July 1, 2001, as provided in KRS 61.5525;
- (43) Payment of small accounts upon death of member, retiree, or recipient without formal administration of the estate as provided in KRS 61.703;
- (44) Hybrid cash balance plan provided to new members as provided by KRS 61.597;
- (45) Employer payment of increases in creditable compensation *and adjustments to creditable compensation* during the last five (5) years of employment as provided by KRS 61.598;
- (46) Calculation of retirement allowance, as provided by KRS 61.599;~~and~~
- (47) Voluntary and involuntary cessation of participation by a participating agency as provided by KRS 61.522;
and
- (48) *Benefit election for members of the Kentucky Retirement Systems who began participating prior to January 1, 2014, as provided by Section 6 of this Act.*

➔Section 12. If any section, any subsection, or any provision of this Act is found by a court of competent jurisdiction in a final, unappealable order to be invalid or unconstitutional, the decision of the courts shall not affect or impair any of the remaining sections, subsections, or provisions of this Act.

➔Section 13. Whereas participating employers are facing various legal and financial issues regarding pension-spiking charges and prospective retirement benefit election is a matter of significant importance to state employees, state agencies, and the taxpayers of the Commonwealth, 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 27, 2017.