

CHAPTER 111**(SB 79)**

AN ACT relating to the Kentucky Public Employees Deferred Compensation Authority plans.

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

➔Section 1. KRS 18A.230 is amended to read as follows:

As used in KRS 18A.230 to 18A.275, unless the context requires otherwise:

- (1) "Employee" means a person holding an office, position or employment in state government and agencies thereof and also includes persons in the public school system;
- (2) "Income" means earnings of a person while an employee of the state and agencies thereof or public school system;
- (3) "Asset" means any owned physical object or right having a monetary value;
- (4) "Trust fund" means a fund consisting of assets received and held by a government unit or its designated custodian to be expended or invested in accordance with conditions of the trust;
- (5) "Deferred compensation" means a method which allows employees to authorize income to be deducted from their current earning and set aside to be paid at a later date;
- (6) "Board" means the board of trustees as established by KRS 18A.245;~~and~~
- (7) "Authority" means the Kentucky Public Employees' Deferred Compensation Authority~~;~~ **and**
- (8) ***"Financial planning" means the process of determining whether and how a participant can meet retirement goals through the proper management of financial resources.***

➔Section 2. KRS 18A.245 is repealed, reenacted, and amended to read as follows:

- (1) The authority shall be administered by a board of trustees composed of seven (7) members, who shall be as follows:
 - (a) Secretary, Finance and Administration Cabinet, ex officio;
 - (b) Secretary of personnel, ex officio;
 - (c) The state controller, ex officio;
 - (d) The State Treasurer, ex officio; and
 - (e) Three (3) at-large members appointed by the Governor, who do not have a conflict of interest as provided by KRS 18A.262, one (1) of whom shall have at least five (5) years of investment or banking experience and one (1) of whom shall be a representative of a nonstate government employer.
- (2) The members of the board appointed by the Governor shall serve for a period of four (4) years and the ex officio members of the board shall serve only for the period of their term of office. Each ex officio member may designate a proxy by written notice to the authority prior to call of order of each meeting, and the proxy shall be entitled to participate as a full voting member.
- (3) Any vacancy which may occur shall be filled in the same manner provided for the selection of the particular member for a full term. Vacancies shall be filled for the unexpired term only.
- (4) Membership on the board of trustees shall not be incompatible with any other office unless a constitutional incompatibility exists, and no member shall be subject to removal from office, except upon conviction of a felony, or of a misdemeanor involving moral turpitude.
- (5) Board members who do not otherwise receive a salary or compensation from the State Treasury shall receive a per diem of one hundred dollars (\$100) for each day they are in session or on official duty, and they shall be reimbursed for their actual and necessary expenses in accordance with state administrative regulations and standards applicable to state employees.

- (6) The board shall meet at least once in each quarter of the year, and may meet in special session upon the call of the chairman. It shall elect a chairman and a vice chairman. A majority of the members shall constitute a quorum, and all actions taken by the board shall be by affirmative vote of a majority of the members present.
- (7) The authority shall be attached to the Personnel Cabinet for administrative purposes only. The board may take but is not limited to the following actions:
- (a) Appoint such employees as it deems necessary and fix the compensation for all employees of the board, subject to the approval of the secretary. The authority shall be headed by an executive director who shall be appointed by the board of directors of the authority without the limitations imposed by KRS 12.040 and KRS Chapter 18A. The executive director of the authority and employees appointed by the board shall serve at its will and pleasure. All other staff of the authority shall be employed under KRS 18A.005 to 18A.200;
 - (b) Require such employees as it thinks proper to execute bonds for the faithful performance of their duties;
 - (c) Establish a system of accounting;
 - (d) Contract for such services as may be necessary for the operation or administration of deferred compensation plans authorized in KRS 18A.230 to 18A.275, including annual audits;
 - (e) Do all things, take all actions, and adopt plans for participation consistent with federal law and with the provisions of KRS 18A.230 to 18A.275, including but not limited to:
 1. Amending the board's plan for the Kentucky Public Employees 401(k) Deferred Compensation Plan or the Kentucky Employees 457 Deferred Compensation Plan, or both such plans, to adopt, maintain, and terminate a deemed IRA program under Internal Revenue Code Section 408;
 2. Amending the board's plan for the Kentucky Public Employees 401(k) Deferred Compensation Plan to adopt, maintain, and terminate a qualified Roth contribution program under Internal Revenue Code Section 402A; **and**
 3. Adopting, maintaining, and terminating an Internal Revenue Code Section 403(b) plan for qualified employees; and
 - ~~4. Upon the request of the Kentucky Retirement Systems board of trustees, establishing an investment program for the 401(a) defined contribution plan as provided by KRS 61.5956; and~~
 - (f) Contract with persons or companies duly licensed by the state of Kentucky and applicable federal regulatory agencies, at the cost of the trust fund **or individual participant accounts**, to provide investment advice **and financial planning** to participants in the plans, with respect to their selection of ~~permitted~~ investments ~~in the plans~~. **The board may promulgate administrative regulations for provision of financial planning to participants in the plans.**
- (8) The Attorney General, or an assistant designated by him, may act as legal adviser and attorney for the board. The board may also appoint legal counsel in accordance with KRS Chapter 12.
- (9) The board shall prepare an annual financial report showing all receipts, disbursements, assets, and liabilities and shall submit a copy to the Governor and the Legislative Research Commission. All board meetings and records shall be open for inspection by the public.
- ➔Section 3. KRS 18A.250 is amended to read as follows:
- (1) The authority shall establish and maintain a deferred compensation plan for the employees of the State of Kentucky. Participation in such plan shall be by agreement between such employees and the authority and shall provide for the deferral of such amount of compensation as requested by the employee. Participating employees must authorize that such deductions be made from their wages for the purpose of participation in such program.
 - (2) The board is directed to develop and obtain, for the benefit of employees, a qualified employee plan that includes a qualified cash or deferred arrangement as described in Section 401(k) of the Internal Revenue Code. The board is directed to develop a program for participants to borrow from their account or accounts in the plan. The plan shall be in addition to other plans offered by the board, and shall be offered to employees upon receipt of appropriate approval of the Internal Revenue Service or on January 1, 1985, whichever occurs later.
 - (3) Notwithstanding the provisions of KRS 337.060, agreements to participate and plan elections made by employees pursuant to subsections (1) and (2) of this section may be made in writing or by electronic record,

signature, or contract as determined by the authority and in accordance with the provisions of KRS 369.101 to 369.120. Agreements and elections, including but not limited to hardship withdrawal applications, loan applications, beneficiary designations, and withdrawal requests made by participating employees under the plan, shall not be denied legal effect or enforceability if made electronically to the extent permitted by the authority.

- (4) Notwithstanding KRS 337.060 and subsections (1) to (3) of this section:~~†~~
- (a) Each full-time employee of the executive, judicial, and legislative branches of Kentucky state government hired on or after July 1, 2019, shall be automatically enrolled in the 401(k) plan established pursuant to this section, and the employee's compensation shall be reduced by thirty dollars (\$30) per month and contributed as a pre-tax deferral to the 401(k) plan unless and until the employee makes a deferral election under the terms of the 401(k) plan. ***Full-time status shall be determined by an employee's employer. The authority shall not be responsible or liable for any cost or liabilities resulting from such eligibility determinations made by an employer;***
 - (b) ***Each new member of the General Assembly elected or appointed on or after July 1, 2021, upon taking office, shall be automatically enrolled in the 401(k) plan established pursuant to this section, and the member's compensation shall be reduced by thirty dollars (\$30) per month and contributed as a pre-tax deferral to the 401(k) plan unless and until the member makes a deferral election under the terms of the 401(k) plan;***
 - (c) ***Each new justice of the Supreme Court and each new regular judge of the Court of Appeals, Circuit Court, District Court, and Family Court elected or appointed on or after July 1, 2021, upon taking office, shall be automatically enrolled in the 401(k) plan, and the justice's or judge's compensation, as applicable, shall be reduced by thirty dollars (\$30) per month and contributed as a pre-tax deferral to the 401(k) plan unless and until the justice or judge, as applicable, makes a deferral election under the terms of the 401(k) plan. This section shall not apply to special judges appointed under KRS 26A.020; and***
 - (d) The automatic enrollment shall begin as of the employee's first paycheck or as soon as administratively feasible thereafter. The board shall select a default investment fund or funds, pursuant to applicable federal law, for investment of an employee's deferrals into the employee's account until the employee makes an investment election. The board shall amend the 401(k) plan for the implementation and administration of employee automatic enrollment, and the board shall have authority to implement automatic enrollment consistent with applicable requirements of the Internal Revenue Code of 1986, as amended. ***The board may promulgate administrative regulations for implementation of automatic enrollment.***

➔Section 4. KRS 18A.255 is amended to read as follows:

- (1) Notwithstanding any other provision of KRS 18A.230 to 18A.275, funds held for the State of Kentucky public employees deferred compensation trust fund pursuant to agreement between the state and participating employees may be invested in such investments as are deemed appropriate by the trustees, including but not limited to annuity contracts. Agreements may be made in writing or by electronic record, signature, or contract as determined by the authority in accordance with the provisions of KRS 369.101 to 369.120 and shall not be denied legal effect or enforceability if made electronically to the extent permitted by the authority.
- (2) Funds deposited to the credit of the trust fund from payroll deductions made pursuant to KRS 18A.250 shall be temporarily invested as provided in KRS 42.500 until such funds are invested pursuant to the deferred compensation agreements between the state and participating employees and actually credited to accounts for plan participants. Notwithstanding KRS 42.500, interest earned from such temporary investments shall be used to defray the expenses of administering the deferred compensation system.
- (3) Neither the authority nor the board shall be liable for any losses or claims due to a participant's actions in connection with the investment advice ***or financial planning*** provided to the participant by operation of KRS 18A.245(7)(f) or otherwise. The authority and board shall have no duty or obligation to monitor, review, or assess the specific investment advice ***or financial planning*** provided to a participant.

➔Section 5. KRS 18A.262 is repealed and reenacted to read as follows:

- (1) No trustee or employee of the board or authority shall:

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- (a) Have any interest, direct or indirect, in the gains or profits of any investment or any other legal, business, or financial transaction made by the board or authority, except that any such trustee or employee may be a member, employee, or beneficiary of the plans administered by the board or authority;
 - (b) Directly or indirectly, for himself or herself or as an agent, use the assets of the plans administered by the board or authority, except to make current and necessary payments authorized by the board or authority;
 - (c) Become an endorser or surety or in any manner an obligor for moneys loaned by or borrowed from the board or authority;
 - (d) Have a contract or agreement with the board or authority, individually or through a business owned by the trustee or the employee;
 - (e) Use his or her official position with the board or authority to obtain a financial gain or benefit or advantage for himself or herself or a family member;
 - (f) Use confidential information acquired during his or her tenure with the board or authority to further his or her own economic interests or that of another person; or
 - (g) Hold outside employment with, or accept compensation from, any person or business with which he or she has involvement as part of his or her official position with the board or authority. The provisions of this paragraph shall not prohibit a trustee from serving as an employee of an agency participating in the plans.
- (2) No trustee or employee of the board or authority, who has served as a trustee or employee of the board or authority on or after July 1, 2017, shall have any interest, direct or indirect, in the gains or profits of any investment or any other legal, business, or financial transaction made by the board or authority for a period of five (5) years following termination of his or her position, except that any such trustee or employee may be a member, employee, or beneficiary of the plans administered by the board or authority.
- (3) (a) No person who is serving as a member of the General Assembly or is a public servant as defined by KRS 11A.010(9) shall have any interest, direct or indirect, in the gains or profits of any investment or any other legal, business, or financial transaction made by the board or authority, except that any such trustee or public servant may be a member, employee, or beneficiary of the plans administered by the board or authority.
- (b) No person who was serving as a member of the General Assembly on or after July 1, 2017, or was serving as a public servant as defined by KRS 11A.010(9) on or after July 1, 2017, shall have any interest, direct or indirect, in the gains or profits of any investment or any other legal, business, or financial transaction made by the board or authority for a period of five (5) years following termination of his or her position, except that any such member or public servant may be a member, employee, or beneficiary of the plans administered by the board or authority.

Signed by Governor March 24, 2021.