

**CHAPTER 140****( SB 224 )**

AN ACT relating to retirement funds of urban-county governments and declaring an emergency.

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

➔Section 1. KRS 67A.360 is amended to read as follows:

Words and phrases, wherever used in KRS 67A.360 to 67A.690, unless a different meaning is clearly indicated by the context, shall have the following meanings:

- (1) "Fund" shall mean the "***Police and Fire***~~{Policemen's and Firefighter's}~~ Retirement Fund of the .... Urban-County Government";
- (2) "Government" shall mean the governmental unit of any urban-county government in the Commonwealth of Kentucky, including the governmental unit of any former urban-county government which changes its form of government, class or other status;
- (3) "Department" shall mean the police department or the fire department of a government;
- (4) "Board" shall mean the board of trustees provided in KRS 67A.360 to 67A.690 as the agency responsible for the direction and operation of the affairs and business of the fund. The board shall hold title to all assets of the fund;
- (5) "Member" shall mean any member of the police or fire department who is included in the membership of the fund;
- (6) "Service" shall mean actual employment in a department of a government, or a city existing within the boundaries of the government immediately prior to the establishment of an urban-county government, for salary or compensation, or service otherwise creditable as herein provided;
- (7) "Prior service" shall mean service rendered prior to the date of establishment of the fund or the fund of a city existing within the boundaries of the government immediately prior to the establishment of an urban-county government;
- (8) "Membership service" shall mean service rendered on or after the date of establishment of the fund or the fund of a city existing within the boundaries of the government immediately prior to the establishment of an urban-county government;
- (9) "Total service" shall mean prior service, membership service, and service credit purchased by a member as provided in KRS 67A.402;
- (10) "Regular interest" shall mean such rate of interest as shall be fixed by the board, provided that for the first five (5) years of operation of the fund the rate shall be not less than three percent (3%) per annum, compounded annually;
- (11) "Occupational disability" shall mean disability due to occupational causes, including but not limited to injury or disease. The presumption of contracting disease "while on active duty as a result of strain or the inhalation of noxious fumes, poisons or gases" created by KRS 79.080 shall be a presumption of "occupational disability" hereunder;
- (12) "Occupational death" shall mean death due to occupational causes, including but not limited to injury or disease;
- (13) "Average salary" shall mean the highest average annual salary of the member for any three (3) consecutive years of service within the total service of the member, including employee contributions picked up after August 1, 1982 pursuant to KRS 67A.510(2);
- (14) The masculine pronoun, wherever used, shall include the feminine pronoun; and widow shall include widower;
- (15) The fiscal year of the fund shall date from July 1 of any year to June 30 of the next year following;
- (16) "Total disability" shall mean a disability which substantially precludes a person from performing with reasonable regularity the substantial and material parts of any gainful work or occupation in the service of the

department that he would be competent to perform were it not for the fact that the impairment is founded upon conditions which render it reasonably certain that it will continue indefinitely;

- (17) "Minor child" includes, as applicable, a child under the age of twenty-three (23) still engaged in full-time education;
- (18) "Mayor," "commissioner of finance," "commissioner of public safety," and "director of human resources" shall mean the persons holding the office or job most closely resembling the ordinary meaning of such terms, in the event that a government does not have an office so described;
- (19) "Salary" means the member's actual base rate of pay and any other compensation that the government chooses to include. "Salary" shall include longevity pay, training incentive pay, ~~and~~ hazardous duty and special duty pay, **and salary credited as provided by subsection (1)(d) of Section 5 of this Act**, but shall exclude uniform and equipment allowances, uniform maintenance allowances, education incentive pay, annual payments for excess accumulated sick leave credit, compensation for overtime work, except for scheduled overtime of fire department members, and any other compensation excluded by the government;
- (20) "Participation date" means the date the member was hired by the government in a position eligible to participate in the fund; ~~and~~
- (21) "Actuarial funding level" means the actuarial value of assets divided by the actuarially accrued liability expressed as a percentage that is determined and reported by the actuary in the annual actuarial valuation of the fund; **and**
- (22) **"Surviving spouse" means a person legally married to an active or retired member of the fund on the date of the active or retired member's death and who satisfies any length of marriage requirements for entitlement to benefits under KRS 67A.360 to 67A.690.**

➔Section 2. KRS 67A.345 is amended to read as follows:

- (1) All members of the ~~{police men's and firefighters' retirement} fund~~ ~~{of the urban county government,}~~ operated pursuant to KRS 67A.360 to 67A.690, and all members of the urban-county government city employees pension fund who retired prior to July 1, 1999, and who did not terminate their participation in the group health insurance plan provided by the urban-county government before that date, and all members who retire on or after July 1, 1999, or who withdrew from service on a certificate prior to September 18, 2002, or who withdraw on a certificate as provided by KRS 67A.410(3)(a) or (b), shall continue to be eligible to participate, at the member's cost, in a group health insurance plan approved by the urban-county council for such retirees.
- (2) The urban-county government shall provide, on behalf of all eligible members of the ~~{police men's and firefighters' retirement} fund~~ **operated pursuant to KRS 67A.360 to 67A.690** and city employees pension, the following benefits:
  - (a) A sum equal to the single premium for the plan coverage selected by the retiree, but not more than one hundred percent (100%) of the urban-county government's contribution to the health insurance component of the benefit pool for current urban-county government employees; and
  - (b) Upon the death of a member of the ~~{police men's and firefighters' retirement} fund~~ **operated pursuant to KRS 67A.360 to 67A.690 that is** due to occupational causes, the urban-county government shall pay to the approved provider of the group health insurance plan one hundred percent (100%) of the cost of the family medical coverage for the member's surviving spouse and dependent children as long as they remain eligible for a monthly retirement allowance from the retirement fund.
- (3) No benefits shall be available under this section to retired members who were not, immediately prior to July 1, 1999, participants in the group health insurance plan coverage provided to urban-county government employees and retirees or who retire on or after July 1, 1999, and, at the time of their retirement, do not elect to participate in the group health insurance plan coverage provided pursuant to subsection (1) of this section.
- (4) Benefits shall be available under this section to members of the ~~{police men's and firefighters' retirement} fund~~ **operated pursuant to KRS 67A.360 to 67A.690** who:
  - (a) Prior to September 18, 2002, withdrew from service on a certificate when they attain the age of forty-six (46) years if, at the time they withdrew from service, they elected to participate in the group health insurance plan coverage provided pursuant to subsection (1) of this section upon attaining age forty-six (46);

- (b) Withdraw on a certificate entitling them to a pension benefit at the age of forty-one (41) as provided by KRS 67A.410(3)(a) if, at the time they withdraw from service, they elect to participate in the group health insurance plan coverage provided pursuant to subsection (1) of this section upon attaining age forty-one (41); or
  - (c) Withdraw on a certificate entitling them to a pension benefit at the age of fifty (50) as provided by KRS 67A.410(3)(b) if, at the time they withdraw from service, they elect to participate in the group health insurance plan coverage provided pursuant to subsection (1) of this section upon attaining age fifty (50).
- (5) All payments shall be made to the approved provider of the group health insurance plan, not to the retiree, and the retiree shall not be entitled to receive any portion of the government contribution remaining after payment is made to the approved provider.
- (6) Group rates under the group health insurance plan approved by the urban-county council under subsection (1) of this section shall be made available to the spouse, dependents, and disabled children, regardless of the disabled child's age, of a qualified and participating retiree, if the premium for the spouse, dependent, or disabled child is paid by the retired member, spouse, dependent, or disabled child, by payroll deduction or similar method.

→Section 3. KRS 67A.370 is amended to read as follows:

There is hereby established in urban-county governments, a retirement and benefit fund for members of the police and fire departments, their dependents and beneficiaries. The fund shall be known as the "***Police and Fire***~~[Policemen's and Firefighters']~~ Retirement Fund of the ... Urban-County Government." In such name all of its business shall be transacted, all of its moneys invested and all of its accumulated reserves consisting of cash, securities, and other property shall be held.

→Section 4. KRS 67A.655 is amended to read as follows:

The legislative body in an urban-county government may issue the appropriate order, pursuant to KRS 78.530(1), directing participation for policemen and firefighters in the County Employees Retirement System. All new employees who would have been granted membership in the ~~[policemen's and firefighter's retirement] fund [of the urban-county government]~~ shall be members of the County Employees Retirement System. All active members of the ~~[policemen's and firefighter's retirement] fund [of the urban-county government]~~ at the time of transition to the County Employees Retirement System may choose membership in the County Employees Retirement System or may retain membership in the local retirement fund, but the legislative body may withdraw its order prior to the effective date if the number of active members choosing to transfer is not sufficient to fully fund the balance of the cost of transition after available local pension assets are included. The urban-county government shall elect the alternate participation plan, pursuant to KRS 78.530(3), for active members who transfer to the County Employees Retirement System. Notwithstanding the provisions of KRS 78.530(3)(b), the urban-county government may, at its option, extend the payment period for the cost of alternate participation to a maximum of thirty (30) years with the interest at the rate actuarially assumed by the County Employees Retirement System board. The urban-county government shall have the right to use assets in the local pension fund, other than those assets, as determined by actuarial valuation, necessary to pay benefits to the remaining active members of the local retirement fund and retirees and their survivors, to assist in the payment of the annual installment cost of alternate participation. The County Employees Retirement System employee contribution shall be made as a deduction from salary, and payment to the member of salary less this deduction shall constitute a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by the member during the period covered by the payment. All policemen and firefighters who become members of the County Employees Retirement System pursuant to this section shall be granted hazardous duty coverage.

→Section 5. KRS 67A.430 is amended to read as follows:

- (1) (a) For a member whose participation date in the fund is prior to March 14, 2013, the rate of retirement annuity shall be two and one-half percent (2.5%) of average salary, as defined in KRS 67A.360(13), for each year of total service.
- (b) For a member whose participation date in the fund is on or after March 14, 2013, the rate of retirement annuity shall be two and one-quarter percent (2.25%) of average salary, as defined in KRS 67A.360(13), for each year of total service.

- (c) Fractional periods of service shall be considered in the calculation of such annuities according to the rate provided by paragraph (a) or (b) of this subsection, based upon the participation date of the member.
- (d) **1. *Solely for purposes of calculating average salary under this subsection, a member who is receiving worker's compensation benefits from the government shall be credited with any salary the member would have otherwise been paid while receiving worker's compensation benefits if the member voluntarily elects to pay to the fund an amount equivalent to the employee contribution established by KRS 67A.510 on the salary the member did not receive during the period worker's compensation benefits were paid.***
- 2. *If the member elects to make the employee contribution payment to the fund authorized by this paragraph, the government shall pay to the fund an amount equivalent to the employer contribution required by KRS 67A.520 on the salary the member did not receive during the period worker's compensation benefits were paid.***
- 3. *The provisions of this paragraph shall be retroactive and shall apply to all active members of the fund who have not retired and to any member who retired on or after January 1, 2021.***
- (2) Any retiree or surviving spouse who, as of July 1, 2005, was receiving a monthly annuity of less than one thousand two hundred fifty dollars (\$1,250) shall have the pension increased to one thousand two hundred fifty dollars (\$1,250). Such increase shall be retroactive to July 1, 2005, and the retiree or surviving spouse shall receive a lump-sum payment equal to the difference between the amount of the monthly annuities received between July 1, 2005, and July 15, 2006, and the amount that would have been received had the monthly annuity been increased on July 1, 2005. The board shall increase this annuity at the same rate as annually provided by KRS 67A.690(1), and such increase shall be determined and granted annually thereafter by the board.

➔Section 6. KRS 67A.460 is amended to read as follows:

- (1) If a total and permanent occupational disability occurs, the member shall receive an annuity calculated pursuant to subsection (2) of this section. This benefit shall begin at the time the member's salary ceases, and shall be paid during his or her entire lifetime. At the member's death, his or her eligible surviving spouse, if any, shall receive the benefits as provided under KRS 67A.492, and his or her minor children, if any, shall receive benefits as provided under KRS 67A.440.
- (2) The minimum annuity rate for a total and permanent occupational disability shall be:
- (a) Fifty percent (50%) of the member's last rate of salary if the member's rate of disability is less than twenty percent (20%) and the disablement is the direct result of documented occupational injuries for service to the department that occurred on or after July 1, 2013;
- (b) Sixty percent (60%) of the member's last rate of salary if the member's rate of disability is less than twenty percent (20%) and the disablement is the direct result of documented occupational injuries for service to the department that occurred prior to July 1, 2013; or
- (c) Sixty percent (60%) of the member's last rate of salary if the member's rate of disability is equal to twenty percent (20%) or more. The minimum annuity rate provided by this paragraph shall be increased by one half (1/2) of the amount by which the member's percentage of disability exceeds twenty percent (20%), but this increase shall be not more than fifteen percent (15%) of the member's last rate of salary and the member's total annuity shall not be greater than seventy-five percent (75%) of his or her last rate of salary.
- (3) The member's percentage of disability shall be the average of the impairment rating determined by two (2) physicians selected by the board under KRS 67A.480, using the "Guides to the Evaluation of Permanent Impairment".
- (4) (a) If a member is eligible for a service retirement annuity under KRS 67A.410 and the amount of the member's service retirement annuity would exceed the amount of his or her total and permanent occupational disability annuity, as determined by the board under this section, then the member may elect to receive an additional service retirement annuity payment equal to the amount by which the member's service retirement annuity would have exceeded the amount of his or her total and permanent occupational disability annuity, in addition to the member's disability annuity, by filing with the board the application required by KRS 67A.410.

- (b) ***Effective July 1, 2022, any member who is approved by the board to convert a service retirement to a disability retirement shall be precluded from requesting to revert back to a service retirement. The provisions of this paragraph shall apply to any member who begins receiving disability retirement on or after July 1, 2022, or any member who has been approved for a disability retirement prior to July 1, 2022, but has not yet reverted back to a service retirement.***

➔Section 7. KRS 67A.480 is amended to read as follows:

- (1) For the purpose of KRS 67A.360 to 67A.690, a member shall be considered totally and permanently disabled after the board has received written certification by at least two (2) licensed and practicing physicians selected by the board that the member is totally and likely to be permanently disabled for the further performance of the duties of any assigned position in the service of the department.
- (2) ***For members who make an application for total and permanent occupational disability, at least two (2) licensed and practicing physicians selected by the board must also certify in writing that the member's disability is due to an occupational cause. If such physicians do not concur as to whether the member's disability is due to an occupational cause, the board may, with the consent of the member, grant the member a disability retirement due to a cause other than occupational disability under the provisions of KRS 67A.470.***
- (3) If upon consideration of the report of such physicians ***as provided by subsections (1) and (2) of this section*** and such other evidence as shall have been presented to it by the member or others interested therein, the board finds the member to be totally and permanently disabled, it shall grant him a disability retirement annuity upon written certification that the member has been separated from the service of the government because of total disability of such nature as to reasonably prevent further service for the employer, and as a consequence is not entitled to compensation from the government.
- (4) ***Nothing contained in this section shall be construed to limit the ability of a member to seek a rehearing in accordance with KRS 67A.660 or judicial review in accordance with KRS 67A.670 of a disability determination or calculation of a disability retirement annuity by the board.***

➔Section 8. KRS 67A.320 is amended to read as follows:

- (1) Any urban-county government in which there existed a municipality which had in effect an employees' pension fund prior to its merger into the urban-county form of government shall provide by comprehensive plan or ordinance for the maintenance of the pension fund for those employees covered by the pension fund, and shall in each case provide for the payment to the pension fund in each month of the sum necessary to maintain the fund in accordance with the actuarial principles established by the actuarial studies described in this section, and may assess monthly the amount or percent of the salary of the employees as determined on a fair actuarial basis, and in any case not in excess of nine percent (9%) of the monthly salary of each employee unless a higher rate was charged prior to the merger of governments, in which case the higher rate may be charged, the assessment to be deducted from the employees' salaries or picked up pursuant to subsection (2) of this section and paid in cash into the pension fund. Within six (6) months after the effective date of the urban-county form of government, or within six (6) months after June 21, 1974, whichever shall be later, the trustees of the board shall, at the expense of the pension fund, provide for the performance of an actuarial valuation, which shall be completed within six (6) months thereafter, and shall describe the amounts necessary to be contributed by the urban-county government or other sources to fund on an actuarially sound basis the benefits promised or described in the fund, including any payments required to bring the fund to an actuarially sound position if it was not so at the time of the performance of the valuation. The legislative body shall determine a reasonable period over which additional funding, if any, shall be made, which period shall not exceed thirty (30) years. A similar valuation shall be arranged by the board at the cost of the urban-county government at least once in every three (3) year to five (5) year period thereafter as prescribed by KRS 65.156. If the fund created by this section is extended to cover employees not described in the first sentence of this section, the actuarial valuation shall determine the required payments necessary to keep the expanded fund on an actuarially sound basis, and the urban-county government shall maintain the fund, and shall assess against the additional covered employees the same monthly contribution as required for other government employees.
- (2) The urban-county government shall, solely for the purpose of compliance with Section 414(h) of the United States Internal Revenue Code, pick up the employee contributions required by this section for all compensation earned after August 1, 1982, and the contributions picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code and KRS 141.010. However, the urban-county government shall continue to withhold federal and state income taxes based upon

these contributions and hold them in a separate account until the Internal Revenue Service or the federal courts rule that, pursuant to Section 414(h) of the United States Internal Revenue Code, these contributions shall not be included as gross income of the employee until such time as the contributions are distributed or made available to the employee. The picked-up employee contribution shall satisfy all obligations to the retirement fund satisfied prior to August 1, 1982, by the employee contribution, and the picked-up employee contribution shall be in lieu of an employee contribution. The urban-county government shall pay these picked-up employee contributions from the same source of funds which is used to pay earnings to the employee. The employee shall have no option to receive the contributed amounts directly instead of having them paid by the urban-county government to the fund. Employee contributions picked up after August 1, 1982, shall be treated for all purposes of this section in the same manner and to the same extent as employee contributions made prior to August 1, 1982.

- (3) The pick up of employee contributions by the employer shall not be construed to reduce the final salary or the average salary upon which the employee retirement benefit is based.
- (4) There is hereby created a board for the existing employees' pension fund and trustees of that board. Trustees from the pension fund board shall consist of the mayor, four (4) members of the legislative body of the urban-county government selected by the legislative body, the secretary of the Finance and Administration Cabinet, the director of the Division of Personnel, and three (3) civil service employees or retirees to be elected to the board by those employees and retirees covered by the employees' pension fund. ***If no employee, retiree, or beneficiary is able or willing to serve on the board resulting in one (1) or more vacancies of the three (3) elected positions, any such vacancy shall be filled by appointment by the mayor subject to the approval of the legislative body.*** In the event that there is no position in the urban-county government denominated secretary of the Finance and Administration Cabinet and/or director of the Division of Personnel, the appointed office of the urban-county government exercising the functions most closely resembling such office shall serve as trustee.
- (5) Temporary employees appointed without examination shall not be compelled to contribute to any pension fund and shall not be eligible to benefits.
- (6) In no year shall the contribution by the urban-county government to the pension fund, in the manner provided in this section, be less than the total amount assessed upon and deducted from the salary of the employees.
- (7) The trustees of the pension fund shall, at least once every three (3) months, report in writing to the mayor the receipts, expenditures, and financial status of the pension fund, stating the places of deposit of funds, or the character of investments made, and the mayor shall cause copies of the report to be posted in at least three (3) places where urban-county employees frequent and report.
- (8) If the urban-county government issues the appropriate order allowing participation in the County Employees Retirement System alternate participation plan pursuant to KRS 78.530(3) and 78.531(2), the urban-county government shall have the right to use assets in the local pension fund, other than assets necessary to pay benefits to the remaining active members of the local pension fund and to retirees and their survivors as determined by actuarial valuation and other than assets payable to the County Employees Retirement System pursuant to KRS 78.531(2), to assist in the payment of both the employee's and employer's costs of alternate participation pursuant to KRS 78.530(3)(d).
- (9) If all liabilities to all individuals entitled to benefits from the employees' pension fund have been satisfied, any ordinances established for creation or maintenance of the fund may be repealed by the majority vote of the duly elected members of the entire legislative body of the urban-county government. If repealed, the fund's board of trustees shall, within sixty (60) days of repeal, proceed with the liquidation of any residual assets of the fund. All residual assets liquidated pursuant to this subsection shall be distributed by the board of trustees to the urban-county government's general fund which shall then contribute the entire distribution received into the policemen's and firefighters' retirement fund as a supplemental contribution, so long as the return of assets complies with federal and state law governing the distribution of assets. The supplemental contribution provided to the policemen's and firefighters' retirement fund under this subsection shall be in addition to the contributions required by KRS 67A.360 to 67A.690 and shall not be used to offset any other contributions required to be paid to the fund under the provisions of KRS 67A.360 to 67A.690. Within thirty (30) days following the distribution of residual assets, the board of trustees of the fund shall as its last act file a complete report with the legislative body of the urban-county government of the actions taken to terminate the fund and liquidate residual assets of the fund. Upon completion of the provisions specified by this subsection, the provisions of KRS 67A.320 to 67A.330 as it relates to the employees' pension fund shall be void.

➔Section 9. Whereas ensuring the timely receipt of benefits impacts members of the fund, an emergency is declared to exist and this Act takes effect on July 1, 2022.

**Signed by Governor April 8, 2022.**