

**CHAPTER 28****( HB 587 )**

AN ACT relating to internal audit functions at public pension funds.

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

➔Section 1. KRS 61.505 is amended to read as follows:

- (1) There is created an eight (8) member Kentucky Public Pensions Authority whose purpose shall be to administer and operate:
  - (a) A single personnel system for the staffing needs of the Kentucky Retirement Systems and the County Employees Retirement System;
  - (b) A system of accounting that is developed by the Authority for the Kentucky Retirement Systems and the County Employees Retirement System;
  - (c) Day-to-day administrative needs of the Kentucky Retirement Systems and the County Employees Retirement System, including but not limited to:
    1. Benefit counseling and administration;
    2. Information technology and services, including a centralized Web site for the Authority, the Kentucky Retirement Systems, and the County Employees Retirement System;
    3. Legal services;
    4. Employer reporting and compliance;
    5. Processing and distribution of benefit payments, and other financial, investment administration, and accounting duties as directed by the Kentucky Retirement Systems board of trustees or the County Employees Retirement System board of trustees;
    6. All administrative actions, orders, decisions, and determinations necessary to carry out benefit functions required by the Kentucky Retirement Systems and the County Employment Retirement System statutes, including but not limited to administration of reduced and unreduced retirement benefits, disability retirement, reemployment after retirement, service purchases, computation of sick-leave credit costs, correction of system records, qualified domestic relations orders, and pension spiking determinations; and
    7. Completing and compiling financial data and reports;
  - (d) Any jointly held assets used for the administration of the Kentucky Retirement Systems and the County Employees Retirement System, including but not limited to real estate, office space, equipment, and supplies;
  - (e) The hiring of a single actuarial consulting firm who shall serve both the Kentucky Retirement Systems and the County Employees Retirement System;
  - (f) The hiring of a single external certified public accountant who shall perform audits for both the Kentucky Retirement Systems and the County Employees Retirement System;
  - (g) The promulgation of administrative regulations as an authority or on behalf of the Kentucky Retirement Systems and the County Employees Retirement System, individually or collectively, provided such regulations are not inconsistent with the provisions of this section and KRS 16.505 to 16.652, 61.505, 61.510 to 61.705, and 78.510 to 78.852, necessary or proper in order to carry out the provisions of this section and duties authorized by KRS 16.505 to 16.652 and 61.510 to 61.705;
  - (h) A system of contracting management for administrative services; and
  - (i) Other tasks or duties as directed solely or jointly by the boards of the Kentucky Retirement Systems or the County Employees Retirement System.
- (2) The eight (8) member Kentucky Public Pensions Authority shall be composed of the following individuals:
  - (a) The chair of the Kentucky Retirement Systems board of trustees;

- (b) The chair of the County Employees Retirement System board of trustees;
  - (c) The investment committee chair of the Kentucky Retirement Systems board of trustees, unless the investment committee chair is also the chair of the board of trustees in which case the chair of the Kentucky Retirement Systems shall appoint an individual who serves on the investment committee;
  - (d) The investment committee chair of the County Employees Retirement System board of trustees, unless the investment committee chair is also the chair of the County Employees Retirement System board of trustees in which case the chair of the County Employees Retirement System shall appoint an individual who serves on the investment committee;
  - (e) Two additional (2) trustees of the Kentucky Retirement Systems board of trustees selected by the chair of the Kentucky Retirement Systems board of trustees of which one (1) shall be a trustee who was elected by the membership of one (1) of the systems administered by Kentucky Retirement Systems and one (1) shall be a trustee of Kentucky Retirement Systems who was appointed by the Governor; and
  - (f) Two additional (2) trustees of the County Employees Retirement System board of trustees selected by the chair of the County Employees Retirement System board of trustees of which one (1) shall be a trustee who was elected by the membership of the County Employees Retirement System and one (1) shall be a trustee of the County Employees Retirement System who was appointed by the Governor.
- (3) The Kentucky Public Pensions Authority is hereby granted the powers and privileges of a corporation, including but not limited to the following powers:
- (a) To sue and be sued in its corporate name;
  - (b) To make bylaws not inconsistent with the law and in accordance with its duties as provided by this section;
  - (c) To conduct the business and promote the purposes for which it was formed;
  - (d) To carry out the obligations of the Authority subject to KRS Chapters 45, 45A, 56, and 57;
  - (e) To purchase fiduciary liability insurance; and
  - (f) The Kentucky Public Pensions Authority shall reimburse any Authority member, officer, or employee for any legal expense resulting from a civil action arising out of the performance of his or her official duties. The hourly rate of reimbursement for any contract for legal services under this paragraph shall not exceed the maximum hourly rate provided in the Legal Services Duties and Maximum Rate Schedule promulgated by the Government Contract Review Committee established pursuant to KRS 45A.705, unless a higher rate is specifically approved by the secretary of the Finance and Administration Cabinet or his or her designee.
- (4) Any vacancy which may occur in an appointed position on the Kentucky Public Pensions Authority shall be filled in the same manner which provides for the selection of the particular member of the Authority. No person shall serve in more than one (1) position as a member of the Authority and if a person holds more than one (1) position as a member of the Authority, he or she shall resign a position.
- (5)
- (a) Membership on the Authority shall not be incompatible with any other office unless a constitutional incompatibility exists. No Authority member shall serve in more than one (1) position as a member of the Authority.
  - (b) An Authority member shall be removed from office upon conviction of a felony or for a finding of a violation of any provision of KRS 11A.020 or 11A.040 by a court of competent jurisdiction.
  - (c) A current or former employee of the County Employees Retirement System, Kentucky Retirement Systems, or the Kentucky Public Pensions Authority shall not be eligible to serve as a member of the Authority.
- (6) Kentucky Public Pensions Authority members who do not otherwise receive a salary from the State Treasury shall receive a per diem of eighty dollars (\$80) 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, except that the members shall not receive a per diem or receive reimbursements on the same day they receive a per diem or reimbursements for service to the Kentucky Retirement Systems board of trustees or County Employees Retirement Systems board of trustees.

- (7) (a) The Authority shall meet at least once in each quarter of the year and may meet in special session upon the call of the chair or the executive director of the Authority.
- (b) The Authority shall elect a chair and a vice chair. The chair shall not serve more than four (4) consecutive years as chair or vice chair of the Authority. The vice chair shall not serve more than four (4) consecutive years as chair or vice chair of the Authority. A member who has served four (4) consecutive years as chair or vice chair of the Authority may be elected chair or vice chair of the Authority after an absence of two (2) years from the positions.
- (c) A majority of the Authority members shall constitute a quorum and all actions taken by the Authority shall be by affirmative vote of a majority of the Authority members present.
- (d) The Authority shall post on the Authority's Web site and shall make available to the public:
1. All meeting notices and agendas of the Authority. Notices and agendas shall be posted to the Authority's Web site at least seventy-two (72) hours in advance of the Authority's meetings, except in the case of special or emergency meetings as provided by KRS 61.823;
  2. All Authority minutes or other materials that require adoption or ratification by the Authority. The items listed in this subparagraph shall be posted within seventy-two (72) hours of adoption or ratification of the Authority;
  3. All bylaws, policies, or procedures adopted or ratified by the Authority; and
  4. A listing of the members of the Authority and membership on each committee established by the Authority.
- (8) (a) The Kentucky Public Pensions Authority shall appoint or contract for the services of an executive director **and an internal auditor** and fix the compensation and other terms of employment for **these positions**~~[this position]~~ without limitation of the provisions of KRS Chapter 18A, 45A, and KRS 64.640. The executive director shall be the chief administrative officer of the Authority, the Kentucky Retirement Systems board of trustees, and the County Employees Retirement System board of trustees. **The internal auditor shall report directly to the trustees of the Kentucky Public Pensions Authority to perform internal audit functions as directed by the Authority.** The executive director **and internal auditor** shall work cooperatively with the chief executive officers of the Kentucky Retirement Systems and the County Employees Retirement System. The Authority shall annually conduct a performance evaluation of the executive director **and internal auditor**.
- (b) The Kentucky Public Pensions Authority shall authorize the executive director, **or the internal auditor in the case of employees under the direct supervision of the internal auditor**, to appoint the employees deemed necessary to transact the duties of the Authority for the purposes outlined in subsection (1) of this section. After April 14, 2022, approval by the Authority shall be required for a petition to the secretary of the Personnel Cabinet for the creation of any new unclassified position pursuant to KRS 18A.115(1)(e), (g), (h), and (i).
- (c) Effective April 1, 2021, the Kentucky Public Pensions Authority shall assume responsibility of administering the staff of the Kentucky Retirement Systems in order to provide the services established by this section.
- (d) 1. All employees of the Kentucky Public Pensions Authority, except for the executive director and no more than six (6) unclassified employees of the Office of Investments employed pursuant to KRS 18A.115(1)(e), (g), (h), and (i), shall be subject to the state personnel system established pursuant to KRS 18A.005 to 18A.204 and shall have their salaries determined by the secretary of the Personnel Cabinet.
2. The employees exempted from the classified service under this paragraph shall not be subject to the salary limitations specified in KRS 64.640(2) and (3).
3. The Kentucky Public Pensions Authority shall adopt a written salary and classification plan fixing a range of compensation and written terms of employment for any of the unclassified employees of the Office of Investments it authorizes under this paragraph. The Authority shall authorize the executive director to appoint up to six (6) unclassified employees of the Office of Investments subject to the compensation ranges and terms of employment the Authority has

established. The Authority may amend the written salary and classification plan adopted under this paragraph at any time.

- (e) The Authority shall annually review, approve, and submit a report to the Public Pension Oversight Board detailing the number of employees of the Authority, the salary paid to each employee, and the change in the salaries of each individual employed by the Authority over the prior year.
  - (f) The Authority shall require the executive director and the employees as it thinks proper to execute bonds for the faithful performance of their duties notwithstanding the limitations of KRS Chapter 62.
  - (g) Notwithstanding any other provision of statute to the contrary, including but not limited to any provision of KRS Chapter 12, the Governor shall have no authority to change any provision of this section by executive order or action, including but not limited to reorganizing, replacing, amending, or abolishing the membership of the Kentucky Public Pensions Authority.
- (9) All employees of the Authority shall serve during its will and pleasure. Notwithstanding any statute to the contrary, employees shall not be considered legislative agents under KRS 6.611.
- (10) The Attorney General, or an assistant designated by him or her, may attend each meeting of the Authority and may receive the agenda, board minutes, and other information distributed to Authority members upon request. The Attorney General may act as legal adviser and attorney for the Authority, and the Authority may contract for legal services, notwithstanding the limitations of KRS Chapter 12 or 13B.
- (11) (a) 1. All expenses incurred by or on behalf of the Kentucky Public Pensions Authority shall be paid by the systems administered by the Kentucky Retirement Systems or the County Employees Retirement System and shall be prorated, assigned, or allocated to each system as determined by Kentucky Public Pensions Authority.
2. Until June 30, 2024, any additional initial costs determined by the Authority to be attributable solely to establishing a separate County Employees Retirement System board and the Kentucky Public Pensions Authority as provided by this section and KRS 78.782 shall be paid by the County Employees Retirement System. Until June 30, 2024, any additional ongoing annual administrative and investment expenses that occur after the establishment of a separate County Employees Retirement System board and the Kentucky Public Pensions Authority that are determined by the Authority to be a direct result of establishing a separate County Employees Retirement System board and the Kentucky Public Pensions Authority shall be paid by the County Employees Retirement System. Beginning on and after July 1, 2024, any annual administrative and investment expenses shall be prorated, assigned, or allocated to each system as determined by the Kentucky Public Pensions Authority as provided by subparagraph 1. of this paragraph but without attribution to the establishment of a separate County Employees Retirement System board and the Kentucky Public Pensions Authority.
3. In order to evaluate the results of establishing a separate County Employees Retirement System board and the Kentucky Public Pensions Authority, on or before November 15, 2022, and on or before November 15 following the close of each successive fiscal year, the Kentucky Public Pensions Authority shall report to the Public Pensions Oversight Board the annual administrative and investment expenses of the Kentucky Retirement Systems and the County Employees Retirement System. The report shall include but not be limited to the process or manner the Authority used to prorate, assign, or allocate to each system its share of the expenses, the amount of expenses prorated, assigned, or allocated to each system itemized by category, and any efforts by the systems or the Authority to reduce administrative costs and staffing needs.
- (b) Any other statute to the contrary notwithstanding, authorization for all expenditures relating to the administrative operations of the Kentucky Public Pensions Authority, the Kentucky Retirement Systems, and the County Employees Retirement System shall be contained in the biennial budget unit request, branch budget recommendation, and the financial plan adopted by the General Assembly pursuant to KRS Chapter 48. The Kentucky Public Pensions Authority shall approve the biennial budget unit request prior to its submission by the Authority. The request from the Kentucky Public Pensions Authority shall include any specific administrative expenses requested by the Kentucky Retirement Systems board of trustees or the County Employees Retirement System board of trustees pursuant to KRS 61.645(13) or 78.782(13), as applicable, that are not otherwise expenses specified by paragraph (a) of this subsection.

- (12) (a) An Authority member shall discharge his or her duties as a member of the Authority, including his or her duties as a member of a committee of the Authority:
1. In good faith;
  2. On an informed basis; and
  3. In a manner he or she honestly believes to be in the best interest of the County Employees Retirement System and the Kentucky Retirement Systems, as applicable.
- (b) An Authority member discharges his or her duties on an informed basis if, when he or she makes an inquiry into the business and affairs of the Authority, system, or systems or into a particular action to be taken or decision to be made, he or she exercises the care an ordinary prudent person in a like position would exercise under similar circumstances.
- (c) In discharging his or her duties, an Authority member may rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:
1. One (1) or more officers or employees of the Authority whom the Authority member honestly believes to be reliable and competent in the matters presented;
  2. Legal counsel, public accountants, actuaries, or other persons as to matters the Authority member honestly believes are within the person's professional or expert competence; or
  3. A committee of the Authority of which he or she is not a member if the Authority member honestly believes the committee merits confidence.
- (d) An Authority member shall not be considered as acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by paragraph (c) of this subsection unwarranted.
- (e) Any action taken as a member of the Authority, or any failure to take any action as an Authority member, shall not be the basis for monetary damages or injunctive relief unless:
1. The Authority member has breached or failed to perform the duties of the member's office in compliance with this section; and
  2. In the case of an action for monetary damages, the breach or failure to perform constitutes willful misconduct or wanton or reckless disregard for human rights, safety, or property.
- (f) A person bringing an action for monetary damages under this section shall have the burden of proving by clear and convincing evidence the provisions of paragraph (e)1. and 2. of this subsection, and the burden of proving that the breach or failure to perform was the legal cause of damages suffered by the Kentucky Retirement Systems or County Employees Retirement System, as applicable.
- (g) In discharging his or her administrative duties under this section, an Authority member shall strive to administer the systems in an efficient and cost-effective manner for the taxpayers of the Commonwealth of Kentucky and shall take all actions available under the law to contain costs for the trusts, including costs for participating employers, members, and retirees.

**Signed by Governor March 20, 2023.**