

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

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

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

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

7 (1) For purposes of this section:

8 (a) "Active member" means a member who is participating in the system;

9 (b) "Employer" means the governing body of a department, as defined by KRS
10 61.510, or a county as defined by KRS 78.510;

11 (c) "Employer's effective cessation date" means the last day of the system's plan
12 year in the year in which the employer has elected to cease participation in the
13 system, provided the employer has met the requirements of this section and
14 has given the Kentucky Retirement Systems sufficient notice as provided by
15 administrative regulations promulgated by the systems; and

16 (d) "Inactive member" means a member who is not participating with the system;

17 (2) Any employer participating in the Kentucky Employees Retirement System or the
18 County Employees Retirement System on July 1, 2015, except as limited by
19 subsection (6) of this section, may:

20 (a) Voluntarily cease participation in its respective retirement system subject to
21 the requirements and restrictions of this section; or

22 (b) Be required to involuntarily cease participation in the system under the
23 provisions of this section if the board has determined the employer is no
24 longer qualified to participate in a governmental plan or has failed to comply
25 with the provisions of KRS 61.510 to 61.705 or 78.510 to 78.852;

26 (3) (a) If an employer desires to voluntarily cease participation in the Kentucky
27 Employees Retirement System or the County Employees Retirement System

1 as provided by subsection (2)(a) of this section:

- 2 1. The employer shall adopt a resolution requesting to cease participation
3 in the system and shall submit the resolution to the board for its
4 approval;
- 5 2. The cessation of participation in the system shall apply to all employees
6 of the employer;
- 7 3. The employer shall pay for all administrative costs of an actuarial study
8 to be completed by the Kentucky Retirement Systems' consulting actuary
9 and for any other administrative costs for discontinuing participation in
10 the system as determined by the board and as provided by this section;
- 11 4. The employer shall provide an alternative retirement program for
12 employees who will no longer be covered by the system, which may
13 include a voluntary defined contribution plan;~~and~~
- 14 5. *If the alternative retirement program established by the employer*
15 *meets the qualification requirements under 26 U.S.C. sec. 401(a) and*
16 *is capable of accepting trustee-to-trustee transfers of both pre-tax and*
17 *post-tax contributions, employees of the employer ceasing*
18 *participation may seek to transfer his or her account balance to the*
19 *employer's qualified alternate retirement program within sixty (60)*
20 *days of the employer's effective cessation date. An employee's election*
21 *to transfer his or her account balance within sixty (60) days of the*
22 *employer's effective cessation date is an irrevocable waiver of the right*
23 *to obtain service credits in the system for the time worked for the*
24 *employer ceasing participation; and*
- 25 6. The employer shall pay *by lump sum* to the system the full actuarial cost
26 of the benefits accrued by its current and former employees in the
27 system as determined separately for the pension fund and the insurance

1 fund by the actuarial study required by subparagraph 3. of this
2 paragraph. The full actuarial cost shall not include any employee who
3 seeks a transfer~~[refund]~~ of his or her account balance within sixty (60)
4 days of the employer's effective cessation date as provided by
5 subparagraph 5. of this paragraph. ~~[An employee's election to receive~~
6 ~~a refund of his or her account balance within sixty (60) days of the~~
7 ~~employer's effective cessation date is an irrevocable waiver of the right~~
8 ~~to obtain service credits for the time worked for the employer ceasing~~
9 ~~participation. The full actuarial cost may be paid by lump sum payment~~
10 ~~or in installment payments to the system.]~~The actuarial cost shall be
11 fixed, and the employer shall not be subject to any increases or
12 subsequent adjustments, once the lump sum is paid,~~[or the first~~
13 ~~installment payment is made. If the employer elects to pay the full~~
14 ~~actuarial cost in installment payments, the employer shall, as determined~~
15 ~~by the board:~~

16 a. ~~Pay installment payments over a time period determined by the~~
17 ~~board, not to exceed twenty (20) years;~~

18 b. ~~Be charged interest over the life of the installment period, at the~~
19 ~~actuarially assumed rate of return; and~~

20 c. ~~Provide adequate security in any relevant real estate, chattel paper,~~
21 ~~deposit accounts, documents, goods covered by documents,~~
22 ~~instruments, investment property, letters of credit rights, and~~
23 ~~money. In order to ensure security provided is adequate:~~

24 i. ~~A detailed financing statement shall be provided to the~~
25 ~~Kentucky Retirement Systems board listing all assets to be~~
26 ~~used as security and the value certified by a licensed~~
27 ~~attorney;~~

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

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

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

10 (b) If the board determines an employer must involuntarily cease participation in
 11 the system as provided by subsection (2)(b) of this section:

12 1. The cessation of participation in the system shall apply to all employees
 13 of the employer;

14 2. The employer shall pay for all administrative costs of an actuarial study
 15 to be completed by the Kentucky Retirement Systems' consulting actuary
 16 and for any other administrative costs for discontinuing participation in
 17 the system as determined by the board and as provided by this section;
 18 and

19 3. The employer shall pay ***by lump sum*** to the system the full actuarial cost
 20 of the benefits accrued by its current and former employees in the
 21 system as determined separately for the pension fund and the insurance
 22 fund by the actuarial study required by subparagraph 2. of this
 23 paragraph. ~~The full actuarial cost shall not include any employee who~~
 24 ~~seeks a refund of his or her account balance within sixty (60) days of the~~
 25 ~~employer's effective cessation date. An employee's election to receive a~~
 26 ~~refund of his or her account balance within sixty (60) days of the~~
 27 ~~employer's effective cessation date is an irrevocable waiver of the right~~

1 ~~to obtain service credits for the time worked for the employer ceasing~~
2 ~~participation. The full actuarial cost may be paid by lump sum payment~~
3 ~~or in installment payments to the system.]~~The actuarial cost shall be
4 fixed, and the employer shall not be subject to any increases or
5 subsequent adjustments, once the lump sum is paid~~[or the first~~
6 ~~installment payment is made. If the employer elects to pay the full~~
7 ~~actuarial cost in installment payments, the employer shall, as determined~~
8 ~~by the board:~~

9 a. ~~Pay installment payments over a time period determined by the~~
10 ~~board, not to exceed twenty (20) years;~~

11 b. ~~Be charged interest over the life of the installment period at the~~
12 ~~actuarially assumed rate of return; and~~

13 c. ~~Provide adequate security in any relevant real estate, chattel paper,~~
14 ~~deposit accounts, documents, goods covered by documents,~~
15 ~~instruments, investment property, letters of credit rights, and~~
16 ~~money. In order to ensure security provided is adequate:~~

17 i. ~~A detailed financing statement shall be provided to the~~
18 ~~Kentucky Retirement Systems board listing all assets to be~~
19 ~~used as security and the value certified by a licensed~~
20 ~~attorney;~~

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

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

26 ~~—The board may file an action in the Franklin Circuit Court to collect~~
27 ~~money owed and to attach so much of the general fund or adequate~~

1 ~~security of the delinquent employer as is necessary to ensure payment of~~
2 ~~any installment payments owed under this section];~~

3 (4) Any employee hired on or after the employer's effective cessation date by an
4 employer who has ceased participation in the system as provided by this section
5 shall not, regardless of his or her membership date in the systems administered by
6 Kentucky Retirement Systems, be eligible to participate in the Kentucky Employees
7 Retirement System or the County Employees Retirement System through the
8 employer that ceased participation for the duration of his or her employment with
9 that employer;

10 (5) If an employer has ceased participation in the system as provided by this section:

11 (a) The rights of recipients and the vested rights of inactive members accrued as
12 of the employer's effective cessation date shall not be impaired or reduced in
13 any manner as a result of the employer ceasing participation in the system; and

14 (b) Employees of the employer ceasing participation shall accrue benefits through
15 the employer's effective cessation date but shall not accrue any additional
16 benefits in the Kentucky Employees Retirement System or the County
17 Employees Retirement System, including earning years of service credit
18 through the ceased employer, after the employer's effective cessation date for
19 as long as they remain employed by the employer. The day after the
20 employer's effective cessation date, each employee described by this
21 paragraph shall be considered an inactive member with respect to his or her
22 employment with the employer that ceased participation and, subject to the
23 provisions and limitations of KRS 61.510 to 61.705 and 78.510 to 78.852,
24 shall:

25 1. Retain his or her accounts with the Kentucky Employees Retirement
26 System or the County Employees Retirement System and have those
27 accounts credited with interest in accordance with KRS 61.510 to

- 1 61.705 and 78.510 to 78.852;
- 2 2. Retain his or her vested rights in accordance with paragraph (a) of this
- 3 subsection; **and**
- 4 3. Be eligible to take a refund of his or her accumulated account balance in
- 5 accordance with KRS 61.625 or any other available distribution if
- 6 eligible; ~~and~~
- 7 4. ~~Except for federal tax purposes, be treated as if his or her employment~~
- 8 ~~terminated as of the employer's effective cessation date, unless otherwise~~
- 9 ~~prohibited by applicable federal tax authority];~~
- 10 (6) (a) Kentucky Employees Retirement System employers who are county attorney
- 11 offices, Commonwealth's attorney offices, local and district health
- 12 departments governed by KRS Chapter 212, master commissioners, executive
- 13 branch agencies whose employees are subject to KRS 18A.005 to 18A.200,
- 14 state-administered retirement systems, state-supported universities and
- 15 community colleges, property valuation administration offices, or employers
- 16 in the legislative or judicial branch of Kentucky state government, shall not be
- 17 eligible to voluntarily discontinue participation in the Kentucky Employees
- 18 Retirement System unless the employer is a nonstock nonprofit corporation
- 19 organized under KRS Chapter 273.
- 20 (b) Only the employers in the County Employees Retirement System who are a
- 21 nonstock nonprofit corporation organized under KRS Chapter 273 may
- 22 voluntarily cease participation in the County Employees Retirement System;
- 23 (7) For purposes of this section, the full actuarial cost shall be determined by the
- 24 Kentucky Retirement Systems' consulting actuary separately for the pension fund
- 25 and the insurance fund using the assumptions **and methodology** established by the
- 26 system **specifically for determining the full actuarial cost of ceasing participation**
- 27 as of the **employer's effective cessation date. For purposes of determining the full**

1 actuarial cost, the assumed rate of return used to calculate the cost shall be the
 2 lesser of the assumed rate of return utilized in the system's most recent actuarial
 3 valuation or the yield on a thirty (30) year United States treasury bond as of the
 4 employer's effective cessation date, but shall in no case be lower than the
 5 assumed rate of return utilized in the system's most recent actuarial valuation
 6 minus three and one-half percent (3.5%)~~[most recently completed actuarial~~
 7 ~~valuation and based upon the following methodology:~~

8 ~~(a) For each fund, the systems' consulting actuary shall determine the assets at~~
 9 ~~market value that are held in the Kentucky Employees Retirement System or~~
 10 ~~the County Employees Retirement System, as applicable, to cover employer-~~
 11 ~~financed accrued liabilities. The market value of assets of each fund, to the~~
 12 ~~extent sufficient, will be allocated to categories in the following order:~~

- 13 1. ~~Inactive member accumulated account balances;~~
- 14 2. ~~Active member accumulated account balances;~~
- 15 3. ~~Recipient liabilities;~~
- 16 4. ~~Employer financed inactive member liabilities; and~~
- 17 5. ~~Employer financed active member liabilities;~~

18 ~~(b) The systems' consulting actuary shall apportion the market value of assets in~~
 19 ~~each fund for each category listed in paragraph (a) of this subsection to the~~
 20 ~~employer ceasing participation based on the employer's share of each~~
 21 ~~category's liabilities in the fund that are represented by the members and~~
 22 ~~recipients of the employer ceasing participation;~~

23 ~~(c) The systems' consulting actuary shall determine the amount of the employer-~~
 24 ~~financed accrued liabilities separately for each fund for all members and~~
 25 ~~recipients of the employer ceasing participation; [and]~~

26 ~~(d) The full actuarial cost for each fund shall be equal to the amount by which~~
 27 ~~paragraph (c) of this subsection exceeds paragraph (b) of this subsection];~~

1 (8) The Kentucky Retirement Systems shall promulgate administrative regulations
2 pursuant to KRS Chapter 13A to administer this section; and

3 (9) Any employer who voluntarily ceases participation, or who is required to
4 involuntarily cease participation as provided in this section, shall hold the
5 Commonwealth harmless from damages, attorney's fees and costs from legal claims
6 for any cause of action brought by any member or retired member of the departing
7 employer.

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

16 ➔Section 3. Whereas ensuring that employers pay the appropriate actuarial cost
17 for ceasing participation is important to the financial stability of the Kentucky Retirement
18 Systems and to the overall welfare of the Commonwealth of Kentucky, an emergency is
19 declared to exist, and this Act takes effect upon its passage and approval by the Governor
20 or upon its otherwise becoming law.