



A Fiduciary Obligation to Protect Confidential Member Account Information

The passage of **House Bill 8** (2021 Regular Session) provided a much-needed change to the outdated method of calculating the annual Kentucky Employees Retirement System (KERS) Nonhazardous employer contribution. The new calculation method requires each KERS Nonhazardous employer to begin paying their own portion of the total KERS Nonhazardous unfunded pension liability, regardless of their current covered payroll, as determined by the Systems' actuary.

Unfortunately, House Bill 8 has also revealed a fundamental misunderstanding among some legislators and employers about the Systems' fiduciary obligation to its members and retirees. At issue is whether KERS employers should be given access to the confidential member information used by GRS, the Systems' actuary, in order to attempt to independently calculate their portion of the unfunded liability.

State law says the actuary is responsible for determining each employer's liability. GRS calculates the liability by using special algorithms that take into account confidential information such as each employee's prior employment history, prior compensation amounts, and information on any purchased service credits.

Understandably, when faced with the prospect of paying a higher contribution rate based on previous employees, employers want to know that their liability calculation is correct. But some legislators and employers mistakenly believe the liability can be accurately calculated by their own staff or auditing firms, if only KPPA would be "more transparent" and release this archived member information.

This is simply not the case. Moreover, even if it were possible to accurately calculate the liability, the Systems would still be obligated to deny access to this information for two reasons:

- First, [long-standing state law \(KRS 61.661\) requires the Systems to protect the confidentiality of member accounts](#). Further, the concept of "least privilege" is a basic and internationally accepted best practice in cyber security. The idea is simply that access to data should be limited to only those who have a specific, legitimate business need to have the information. The KPPA implementation of KRS 61.661 is in keeping with this best practice to limit access to data according to business need. Current employers do not have an employee's prior information because they have no regular, legitimate business need to have it.
- Second, the statutes require employers to accept the actuary's cost calculation as long as the members used in that calculation "belong" to that employer. Regardless, employers were given until July 1, 2021 to appeal the actuary's calculated cost for their agency. Forty-seven (47) employers exercised this option, and KPPA is currently auditing each of those appeals as to their validity.

So, how can an employer trust the final liability determination? The answer is that the actuary calculation has been audited by another actuary. The individual liability calculation used by the KPPA actuary, GRS, for the HB 8 liability is the same calculation used for the annual valuation. [The annual valuation was recently audited by Segal, and the results were presented to the Board of Trustees on December 2, 2020.](#) Segal found GRS' methodologies to be accurate and was able to repeat their calculations within 1% variation.

Criticism of the Systems' obligation to abide by state law is unwarranted and misguided. KPPA is doing what it has done for more than 60 years: acting as responsible stewards of our members' contributions and their confidential information.