2022 LEGISLATION SUMMARY

Prepared by the KPPA Communications Division

The following is an overview of the most significant bills and resolutions passed this Session that will have an impact on the retirement systems operated by the Kentucky Public Pensions Authority (KPPA). Please click on the hyperlink to read each bill in its entirety.

2022 Regular Session Bills

Click the bill number below to be taken to the description of that bill in this document. Click the bill number in the description to be taken to bill language on the Legislative Research Commission's (LRC) website.

House Bill 297 – KPPA housekeeping bill
House Bill 1 – State Executive Branch budget bill
House Bill 604 – Additional allocation to KERS Nonhazardous unfunded liability
House Bill 49 – Pension spiking exclusion for mandatory overtime during a declared emergency
House Bill 76 – Enhances the frequency and scope of actuarial studies for the state's pension plans; expands service credit purchase eligibility
Senate Bill 25 – Temporary revision of retired-reemployed law for school board employees
Senate Bill 27 – Adjustment to retirement eligibility for part-time Kentucky Fire Commission adjunct instructors
Senate Bill 205 – Requirements for not doing business with financial companies that engage in boycotts of fossil-fuel based energy companies
Senate Bill 209 - Increases non-Medicare eligible retiree health subsidy for career members of KERS, CERS, and SPRS
House Bill 259 – Increases pay for State Troopers; outlines conversion of unused sick leave.
House Bill 668 - Exempts contracts for services through a non-core services independent contractor used by a KERS quasi-governmental employer from the reporting requirements; requires KERS to provide employers with actuarial information related to prorating employer pension liabilities per HB 8 (2021).
House Bill 777 - Creates the Kentucky Board of Emergency Medical Services
Senate Resolutions confirming Gubernatorial Appointments to CERS and KRS Boards: Pamela F. Thompson, Martin I. Milkman, E. Lynn Hampton

1. Passage of House Bill 297 Allows KPPA to Comply with Court Decision Regarding Federal Law

House Bill 297 (sponsored by Rep. Jerry Miller), the KPPA Housekeeping bill, included language allowing Kentucky Retirement Systems (KRS) and the County Employees Retirement System (CERS) to provide health insurance coverage through the Kentucky Employees Health Plan (KEHP) for reemployed retirees who are Medicare-eligible and affected by the federal Medicare Secondary Payer Act (MSPA). Currently, KPPA does not offer a plan for these retirees to participate in.

Medicare Secondary Payer Act (MSPA) issue: Based on guidance from outside legal counsel and from the Centers for Medicare and Medicaid Services (CMS) received prior to April 1, 2021, Kentucky Retirement Systems, as the agency administering retirement systems for state and local workers and state police was then called, was told it could not provide insurance through its Medicare Advantage (MA) plans to retired members who are reemployed with a participating employer in a position entitling them to health insurance benefits through the participating employer, as this would be deemed by CMS as a violation of the MSPA and could result in substantial penalties against KRS (now KPPA).

A lawsuit was filed in Franklin Circuit Court on June 12, 2017 challenging KRS' administration of the MSPA.

On June 8, 2021, the United States Court of Appeals for the Sixth Circuit issued an opinion rejecting KRS' application of the MSPA. As a result, House Bill 297 included language allowing more than 300 current retired members and any future retirees who may fall into this category to participate through KPPA in the KEHP plans offered by state Department for Employee Insurance (DEI). Passage of this bill allows the most effective way for KPPA to comply with the Court's Ruling.

Flexibility in attracting, hiring, and retaining investment professionals: House Bill 297 also gives KPPA needed flexibility to compete with other public pension plans in attracting, hiring, and retaining key investment positions. The bill allows KPPA to hire a total of six (6) unclassified investment specialists who would not be subject to the salary limitations of the state personnel system.

Investment expertise is in high demand in today's job market, and allowing KPPA to hire a limited number of investment employees at competitive salaries is crucial to KPPA's ability to fill those positions with qualified investment professionals. Four members of KPPA's current investment staff are covered under this provision, so the bill would allow the hiring of two additional investment professionals.

In addition to the traditional "cleanup" of current statutes and administrative issues that gives a "housekeeping bill" its name, House Bill 297 also requires KPPA to conduct an annual performance evaluation of the executive director, pre-approve future unclassified positions, and approve an annual personnel report before submission to the Public Pension Oversight Board; and it requires KPPA to approve the biennial budget unit request before submitting it.

Veto Override: House Bill 297 was vetoed by Governor Andy Beshear on April 11 over concerns about excluding the six investment professionals from the state personnel system. However, the Veto of the 201-page bill, which passed both chambers unanimously with a vote of 97-0 in the House and 35-0 in the Senate, was overridden by the General Assembly on April 13.

The bill has an EMERGENCY clause, meaning it took effect after it was signed by the presiding officer of each chamber and delivered to the Secretary of State on April 14.

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2. State Executive Branch Budget Bill, House Bill 1

One of the most significant parts of **House Bill 1 (State/Executive Branch Budget bill),** sponsored by Representative Jason Petrie, *et al*, is that it **allocates an additional $485 million in General Fund dollars to the systems**. This amount includes $215 million in FY 2021-2022 (the CURRENT fiscal year) for the State Police Retirement System (SPRS) pension fund to be applied to the unfunded liability, which is expected to lower the SPRS contribution rate from the planned 146.06% to 99.43%. The rest of the $485 million will consist of $135 million in each fiscal year of the biennium (2022-23 and 2023-24) for the Kentucky Employees Retirement System (KERS) Nonhazardous pension fund to be applied to the unfunded liability.

Employer Contribution Rates: House Bill 1 set the Employer Contribution rates for July 1, 2022 - June 30, 2024 at the Actuarially Determined Rate as approved by the KRS Board of Trustees. (The entity now called KRS oversees the KERS and SPRS pension and insurance trust funds.) The upcoming contribution rate for **KERS Hazardous will be 31.82%** (all 31.82% to pension, 0% to insurance). The rate for the **SPRS will be 99.43%** (85.32% to pension, 14.11% to insurance).

The **KERS Nonhazardous rate** for Executive Branch employers will once again be determined by the State Budget Director in accordance with House Bill 8 from the 2021 Regular Session. The rate will be unique to each agency and will consist of the normal cost contribution of 9.97%, plus a prorated amount of the actuarially accrued liability calculated for each individual nonhazardous employer. This method of determining the rate helps ensure each agency only pays the portion of the system's unfunded liability owed by that agency.

Quasi-State Agency Subsidy Distributions: House Bill 1 includes $89 million in FY 2022-23 and $84.6 million in FY 2023-24 to assist with the anticipated increase in retirement costs over each quasi-state agency employer's fiscal year 2019-2020 baseline contribution per House Bill 8 from the 2021 Regular Session. Groups included under this subsidy include County Attorneys, Non-P-1 agencies, Regional Mental Health Units and health departments, and several universities (Eastern Kentucky University, Kentucky State University, Morehead State University, Murray State University, Western Kentucky University, and the Kentucky Community and Technical College System (KCTCS)).

Kentucky Permanent Pension Fund: The bill allocates $200 million to the Kentucky Permanent Pension Fund in FY 2023-24. This Fund was created by the 2016 General Assembly to address the unfunded liabilities of the Commonwealth's public employee pension funds (the systems operated by KPPA as well as the Teachers' and Judicial/Legislator Retirement Systems).

Finally, the **bill does NOT include a Cost of Living Adjustment (COLA) for retirees**.

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3. House Bill 604 provides additional money to the Systems

In a surprise move on the last day of the Session, **House Bill 604** (sponsored by Rep. Kimberly Moser, *et al*) was amended by a Senate Committee Substitute to allocate $105 million in each fiscal year to be applied to the unfunded liability of the KERS Nonhazardous pension fund.

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4. New Pension Spiking Exclusion for First 100 Hours of Mandatory Overtime & During Emergency Declarations

House Bill 49 (sponsored by Rep. Jerry Miller, *et al*) addresses an issue that had occurred with some Louisville Metro Police Department (LMPD) officers who retired after May 2020. These officers had been required to work large amounts of overtime during spring 2020's civil unrest, and the overtime had caused their pensions to spike.

Pension spiking occurs when a higher salary artificially inflates, or "spikes," the pension payments owed to the retiree and results in a larger retirement benefit than they would otherwise be entitled to receive. It is prohibited by state law. Overtime pay can increase a person's salary and cause a spike in benefits, but some employees such as first responders don't have a choice about working overtime: it's an expected part of the job.

The issue addressed by House Bill 49 began in May, 2020 when Louisville's Mayor declared an emergency in response to the civil unrest that occurred after the Breonna Taylor shooting earlier that same month. The emergency required LMPD officers to work extraordinary amounts of overtime.

The pension spiking provisions in [Kentucky Revised Statute 61.598] already included allowances for an official state of emergency that requires large amounts of overtime, but only if the president or governor declares the state of emergency. Governor Beshear did not declare an emergency in Louisville, but he did mobilize the National Guard to help law enforcement.

House Bill 49 changes the law to say if the local government leader, such as a mayor, declares a state of emergency and the governor calls in the National Guard, the pension spiking restrictions would not apply for any overtime worked as a result of the local state of emergency, retroactive to May 30, 2020.

Additionally, a new exemption was created which allows the first 100 hours of mandatory overtime in a fiscal years to be exempted from the pension spiking determination. By including the 100-hour exemption, KPPA's independent actuary determined this bill causes no measurable fiscal impact to any of the pension funds maintained by KPPA.

The bill was signed by the Governor on April 8. It has an EMERGENCY clause, so the bill is already in effect.

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5. Enhanced Frequency and Scope of Actuarial Studies

House Bill 76 (sponsored by Rep. Jerry Miller and Rep. C. Ed Massey) enhances the frequency and scope of actuarial studies for the state's pension plans. The bill requires the Legislators Retirement Plan, the Judicial Retirement Plan, KRS, CERS, and the Teachers' Retirement System (TRS) to perform an actuarial investigation of **economic** assumptions (inflation rate, investment return, payroll growth assumptions, etc.) once every two years rather than once every five years. The first actuarial investigation of economic assumptions will occur prior to the 2023 actuarial valuations. A review of **demographic** assumptions (mortality tables, withdrawal rates, retirement rate assumptions, etc.) will continue to be conducted once every five years.

House Bill 76 also requires CERS to provide projections in the annual actuarial valuation related to experience studies, assumption changes, and other changes made by the boards of each system over a 30-year period rather than a 20-year period. Providing the board of trustees with actuarial assumptions on a biennial basis should allow the board to more closely analyze performance and make necessary changes that impact system liabilities and benefits.

Finally, the bill allows those people who were "bound by an educational contract prior to December 31, 2003" to purchase service credit and have that credit apply to their retirement eligibility and benefit determination. Previous legislation passed in the early 2000's placed restrictions on those service purchases effective August 1, 2004. The systems' independent actuary says this will not have a measurable fiscal impact on the systems.

6. Temporary Revision of Retired-Reemployed Law for School Board Employees

Senate Bill 25 (sponsored by Sen. Max Wise) officially ends most of the Executive Orders issued by the Governor during the COVID-19 pandemic, and provides for a temporary revision of retired-reemployed law until June 30, 2022 for classified and certified school board employees who retired before August 1, 2021. For those retirees, the required bona fide separation of service before returning to work is reduced to one (1) month through the end of this fiscal year. The bill contains an Emergency clause, so it is already in effect.

7. Part-time Adjunct Instructors for the Kentucky Fire Commission

Senate Bill 27 (sponsored by Sen. Michael Nemes) allows a part-time adjunct instructor for the Kentucky Fire Commission who has not participated in KERS prior to retirement, but is eligible to retire from the County Employees Retirement System (CERS), to retire and draw benefits without being required to resign from his or her position as part-time adjunct instructor for the Kentucky Fire Commission.

8. State Government Entities to Divest in Financial Companies Engaged in Boycotts of Fossil-Fuel Based Energy Companies

Senate Bill 205 (sponsored by Sen. Robby Mills) requires state governmental entities, including the retirement systems operated by KPPA, to divest from financial companies that engage in boycotts of fossil-fuel based energy companies. The bill also prohibits entering into contracts for goods and services with companies that engage in boycotts of fossil-fuel based energy companies. These provisions would not apply if the state governmental agency determines that the requirements would be inconsistent with its fiduciary responsibility.

9. Increase in Non-Medicare Eligible Retiree Health Subsidy for Career Members of KERS, CERS, and SPRS

Senate Bill 209 (sponsored by Sen. Michael Nemes) increases the non-Medicare eligible retiree health subsidy for career members of KERS, CERS, and SPRS who began participating in the system on or after July 1, 2003, who are eligible for a fixed-dollar retiree health subsidy not tied to the premium.

The increase in the insurance dollar contribution for members hired on or after July 1, 2003 would be equal to:

(1) $5 for every year of hazardous service a member attains over 20 years for Tier 1 members; or
(2) $5 for every year of hazardous service a member attains over 25 years for Tier 2 and Tier 3 members; or
(3) $5 for every year of service a member attains over 27 years for nonhazardous members.

This increase in the insurance dollar contribution, effective January 1, 2023, is only payable for non-Medicare eligible retirees when the member's applicable insurance fund is at least 90% funded.

Additionally, the insurance changes in SB 209 would allow members who are eligible for the insurance dollar contribution to be reimbursed for premiums for health insurance plans other than those administered by KPPA. These reimbursement provisions take effect January 1, 2023.

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10. Increasing pay for State Troopers

House Bill 259 amends KRS 16.052 to increase the base pay for cadet Troopers to $45,000, and increases base pay for Troopers and commercial vehicle enforcement based on years of service and rank. Salary schedules increase beginning July 1, 2022 and then effective July 1, 2023 future increases in pay are based on the Cost of Living Index (CPI).

In addition, the bill converts unused sick leave in excess of 480 hours (i.e. 60 days) to cash balance pay credits at the end of each fiscal year for members earning benefits in the SPRS Tier 3 cash balance plan. Similarly, the proposed legislation will also convert the member's balance of unused sick leave to cash balance pay credits upon termination of employment. There is no change in benefits for members earning Tier 1 and Tier 2 benefits.

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11. Exemptions from House Bill 8 Reporting Requirements for Contracts with "Non-Core Services Independent Contractors"

House Bill 668 (sponsored by Rep. Jim DuPlessis and Rep. James Tipton) exempts contracts for services through a non-core services independent contractor used by a KERS quasi-governmental employer from the reporting requirements established in KRS 61.5991 by House Bill 8 during the 2021 Regular Session.

A "non-core services independent contractor" is defined to mean a company or business that is not owned or controlled by an employer participating in the system, whose business also provides services to the general public or other public agencies not participating in the system, such as facilities services, grounds services, custodial services, bookstore services, dining services, etc.

The bill also requires KERS to provide employers with the member data provided to the actuary and the data the actuary produced as it relates to prorating liabilities to each employer under House Bill 8 passed during the 2021 Regular Session. The bill is retroactive to July 1, 2021 and contains an Emergency clause, so it is already in effect.

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12. New Agency Created: Employees Given Opportunity to Join KERS

House Bill 777 (sponsored by Rep. Ken Fleming, *et al*) creates the Kentucky Board of Emergency Medical Services as an independent agency. The bill provides a 30-day window to allow employees of this Agency who are currently participating in the 403(b) defined contribution plan maintained by the Kentucky Community and Technical College System (KCTCS) to either remain in employment with KCTCS and be assigned to provide services to the Agency, or to elect to be transferred and employed directly by the Agency.

Employees who elect to be transferred and employed directly by the Agency will become KERS members. The Benefit Tier for these employees will be based on the earlier of the date of initial participation in KERS and the 403(b) defined contribution plan maintained by KCTCS. However, there will be no duplication of benefits and the member will not receive additional benefit service credit prior to the transfer date.

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13. State Senate Confirms Gubernatorial Appointments to CERS and KRS Boards

State law requires gubernatorial appointments to the CERS and KRS boards receive Senate approval. On April 14, three Senate Resolutions confirming Governor Andy Beshear's recent appointments to the boards were unanimously adopted by a vote of 36-0:

A. **Senate Resolution 198** (Sponsored by Senator Julie Raque Adams) confirmed the appointment of **Pamela F. Thompson** to the Board of Trustees of the Kentucky Retirement Systems for a term expiring June 17, 2023;
B. **Senate Resolution 242** (Sponsored by Senator Julie Raque Adams) confirmed the appointment of **Martin I. Milkman** to the Board of Trustees of the County Employees Retirement System for a term ending July 1, 2025; and
C. **Senate Resolution 261** (Sponsored by Senator Julie Raque Adams) confirmed the appointment of **E. Lynn Hampton** to the Board of Trustees of the Kentucky Retirement Systems for a term expiring June 17, 2022.

The Resolutions only required Senate confirmation and did not need to be adopted in the House.
Unless the Governor calls a special session later this year, the General Assembly will not convene again until January 3, 2023.

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