

February 24, 2014

The Honorable Steven Johnson, Chairperson
House Committee on Pensions and Benefits
Statehouse, Room 286-N
Topeka, Kansas 66612

Dear Representative Johnson:

SUBJECT: Fiscal Note for HB 2666 by House Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2666 is respectfully submitted to your committee.

HB 2666 would establish the Kansas Public Employees Pension Forfeiture Act. The Act would prohibit public officials or employees or their beneficiaries from receiving retirement benefits for conviction of or pleading “nolo contendere” to any felony in any court of record. The member would be entitled to a return of only the members contributions paid into the retirement system without interest. Innocent spouses of active members would be entitled to receive 50.0 percent of the refunded contributions. Innocent spouses who are joint annuitants would retain any benefits due.

The appropriate retirement system board may retain a member’s contributions and earned interest to pay any fines imposed on the member or any misappropriated funds. The Kansas Employees Retirement System (KERS) Board of Trustees must not disburse any funds to members who have forfeited their right to benefits until the Attorney General has determined and certified that there has been no loss to the state. If there is a loss to the state, the Board must pay the amount of the loss to the State Treasurer from the member’s contributions and earned interest.

Whenever a member is convicted of or pleads “nolo contendere” to any felony in any court of record, the court must order the defendant to make complete and full restitution to the state for any monetary loss incurred as a result of the crime. All sums credited to the defendant’s account or payable to the defendant, except for an innocent spouse’s 50.0 percent share, must be available to satisfy a restitution order, including all sums credited to a 457 or 403(b) plan. The orders must identify either a specific amount or a specific percentage of the amount to be distributed by the retirement system. The retirement board, administrator of the pension fund, or the employer of the defendant must provide all pension benefits, contributions, or other benefits to satisfy the restitution order. Funds received would be credited to the Crime Victims Compensation Fund.

According to KPERS, HB 2666 would not increase benefits or alter contributions for any of the three pension plans. To the extent that members forfeit otherwise accrued retirement benefits, there would be a small amount of cost savings to the plans. Additionally, there would be a fiscal effect on administrative procedures, which would require added expenditures. But, because the bill would apply to any felony in any jurisdiction, it is not possible to estimate the costs at this time. KPERS notes that there are a number of uncertainties about how the bill would be applied, including the following considerations:

1. KPERS has not yet identified an administratively feasible, cost effective means for KPERS (or other affected retirement plans) to independently and consistently identify members with a felony conviction or plea.
2. There is a significant potential for challenges and legal appeals by affected members, which would likely entail legal expenses for KPERS.
3. Depending on the volume of members with felonies, a mechanism may be needed in the KPERS information technology system to track payables and make the required entries into the general ledger.
4. Additional accounting mechanisms would need to be established. Funds identified as subject to forfeiture may need to be placed in reserve (which could be for extended periods if a conviction is on appeal) and payments may be made to the appropriate court clerk as well as the State Treasurer's office. KPERS would need to track payments, record payment history, and generate a transaction history to record reserve and payment transactions. Depending on the cumulative magnitude of these costs, KPERS may need to seek additional expenditure authority.

Similar issues to the ones indicated above would need to be addressed for the deferred compensation plan. If the third-party administrator of the plan incurs sizeable additional administrative costs from implementing HB 2666, contract fees may need to be re-evaluated. Should those fees be increased, the costs would be passed to the plan participants. Likewise, local governments would need to handle similar issues for their defined benefit or defined contribution plans.

The Office of the Attorney General does not expect that the bill would require additional expenditures. An estimate of the amount of revenue that may be credited to the Crime Victims Compensation Fund is difficult to determine because the number of offenders who might be convicted under the provisions of the bill is unknown.

The Office of Judicial Administration indicates that the bill could increase the complexity of felony proceedings. Whenever a public official or public employee pleads "nolo contendere" to a felony, there would be additional motions and the need to consider additional evidence regarding issues such as the amounts of retirement system benefits to be withheld and whether a beneficiary is an innocent spouse joint annuitant. Additional work would also be created for district court clerks who must serve a copy of a court's order to the retirement system. This

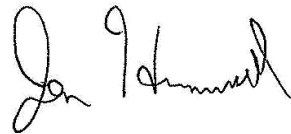
The Honorable Steven Johnson, Chairperson

February 24, 2014

Page 3—HB 2666

would increase the time spent by district and appellate court judicial and non-judicial personnel to process, research, and hear cases. However, it is not possible to predict the number of additional court cases or appeals that would arise or how complex and time-consuming they would be. Therefore, a precise fiscal effect cannot be determined. Any fiscal effect associated with HB 2666 is not reflected in *The FY 2015 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Hummell". The signature is written in a cursive style with a large initial "J" and "H".

Jon Hummell,
Interim Director of the Budget

cc: Faith Loretto, KPERS
Mary Rinehart, Judiciary
Willie Prescott, Attorney General's Office