

HOUSE BILL No. 2725

By Committee on Appropriations

3-9

1 AN ACT concerning retirement and pensions; relating to the Kansas public
2 employees retirement system; limits on calculation of members'
3 benefits, accumulated leave and amounts taxable under 409A and
4 457(f) plans; limiting accumulation of vacation leave for certain
5 employees; amending K.S.A. 75-5517 and K.S.A. 2015 Supp. 74-4902
6 and repealing the existing sections.
7

8 *Be it enacted by the Legislature of the State of Kansas:*

9 New Section 1. (a) Except as otherwise provided by subsection (c),
10 no member employed by any participating employer as defined in K.S.A.
11 74-4902 and 74-4931, and amendments thereto, shall:

12 (1) Accumulate vacation leave in excess of 240 hours. Any member
13 with more than 240 hours of accumulated vacation leave as of July 1,
14 2016, shall be able to use such accumulated vacation leave in excess of
15 240 hours as of July 1, 2016, as a portion of compensation as defined in
16 K.S.A. 74-4902, and amendments thereto, upon such employee's
17 retirement; and

18 (2) use sick leave accumulated after July 1, 2016, for proportionate
19 pay out in accordance with the applicable statute, rules and regulations or
20 policies, as a portion of compensation as defined in K.S.A. 74-4902, and
21 amendments thereto, upon such member's retirement. Any member may
22 accumulate sick leave in excess of the amount accumulated as of July 1,
23 2016, but such additional amount of sick leave shall not be included in the
24 calculation of such member's compensation for retirement.

25 (b) Each participating employer shall report to the system the amount
26 of vacation leave and sick leave each member has accumulated and the
27 member's rate of compensation, as of July 1, 2016. Upon request of the
28 executive director, any state agency or participating employer shall
29 provide such additional information as may be needed by the executive
30 director to carry out the provisions of this section.

31 (c) The provisions of this section shall not apply to the Kansas police
32 and firemen's retirement system, K.S.A. 74-4951 et seq., and amendments
33 thereto.

34 Sec. 2. K.S.A. 2015 Supp. 74-4902 is hereby amended to read as
35 follows: 74-4902. As used in articles 49 and 49a of chapter 74 of the
36 Kansas Statutes Annotated, and amendments thereto, unless otherwise

1 provided or the context otherwise requires:

2 (1) "Accumulated contributions" means the sum of all contributions
3 by a member to the system which are credited to the member's account,
4 with interest allowed thereon;

5 (2) "acts" means the provisions of articles 49 and 49a of the Kansas
6 Statutes Annotated, and amendments thereto;

7 (3) "actuarial equivalent" means an annuity or benefit of equal value
8 to the accumulated contributions, annuity or benefit, when computed upon
9 the basis of the actuarial tables in use by the system. Whenever the amount
10 of any benefit is to be determined on the basis of actuarial assumptions,
11 the assumptions shall be specified in a way that precludes employer
12 discretion;

13 (4) "actuarial tables" means the actuarial tables approved and in use
14 by the board at any given time;

15 (5) "actuary" means the actuary or firm of actuaries employed or
16 retained by the board at any given time;

17 (6) "agent" means the individual designated by each participating
18 employer through whom system transactions and communication are
19 directed;

20 (7) "beneficiary" means, subject to the provisions of K.S.A. 74-4927,
21 and amendments thereto, any natural person or persons, estate or trust, or
22 any combination thereof, named by a member to receive any benefits as
23 provided for by this act. Designations of beneficiaries by a member who is
24 a member of more than one retirement system made on or after July 1,
25 1987, shall be the basis of any benefits payable under all systems unless
26 otherwise provided by law. Except as otherwise provided by subsection
27 (33) of this section, if there is no named beneficiary living at the time of
28 the member's death, any benefits provided for by this act shall be paid to:
29 (A) The member's surviving spouse; (B) the member's dependent child or
30 children; (C) the member's dependent parent or parents; (D) the member's
31 nondependent child or children; (E) the member's nondependent parent or
32 parents; *or* (F) the estate of the deceased member; in the order of
33 preference as specified in this subsection;

34 (8) "board of trustees," "board" or "trustees" means the managing
35 body of the system which is known as the Kansas public employees
36 retirement system board of trustees;

37 (9) "compensation" means, except as otherwise provided, all salary,
38 wages and other remuneration payable to a member for personal services
39 performed for a participating employer, including maintenance or any
40 allowance in lieu thereof provided a member as part of compensation, but
41 not including reimbursement for travel or moving expenses or on and after
42 July 1, 1994, payment pursuant to an early retirement incentive program
43 made prior to the retirement of the member. Beginning with the employer's

1 fiscal year which begins in calendar year 1991 or for employers other than
2 the state of Kansas, beginning with the fiscal year which begins in
3 calendar year 1992, when the compensation of a member who remains in
4 substantially the same position during any two consecutive years of
5 participating service used in calculating final average salary is increased
6 by an amount which exceeds 15%, then the amount of such increase which
7 exceeds 15% shall not be included in compensation, except that: (A) Any
8 amount of compensation for accumulated sick leave or vacation or annual
9 leave paid to the member; (B) any increase in compensation for any
10 member due to a reclassification or reallocation of such member's position
11 or a reassignment of such member's job classification to a higher range or
12 level; and (C) any increase in compensation as provided in any contract
13 entered into prior to January 1, 1991, and still in force on the effective date
14 of this act, pursuant to an early retirement incentive program as provided
15 in K.S.A. 72-5395 et seq., and amendments thereto, shall be included in
16 the amount of compensation of such member used in determining such
17 member's final average salary and shall not be subject to the 15%
18 limitation provided in this subsection. Any contributions by such member
19 on the amount of such increase which exceeds 15% which is not included
20 in compensation shall be returned to the member. Unless otherwise
21 provided by law, beginning with the employer's fiscal year coinciding with
22 or following July 1, 1985, compensation shall include any amounts for tax
23 sheltered annuities or deferred compensation plans. Beginning with the
24 employer's fiscal year which begins in calendar year 1991, compensation
25 shall include amounts under sections 403b, 457(b) and 125 of the federal
26 internal revenue code of 1986 and, as the board deems appropriate, any
27 other section of the federal internal revenue code of 1986 which defers or
28 excludes amounts from inclusion in income. *Beginning July 1, 2016,*
29 *"compensation" shall not include amounts taxable under sections 409A or*
30 *457(f) of the federal internal revenue code.* For purposes of applying limits
31 under the federal internal revenue code "compensation" shall have the
32 meaning as provided in K.S.A. 74-49,123, and amendments thereto. For
33 purposes of this subsection and application to the provisions of ~~subsection~~
34 ~~(4)~~ of K.S.A. 74-4927(4), and amendments thereto, "compensation" shall
35 not include any payments made by the state board of regents pursuant to
36 the provisions of ~~subsection (5)~~ of K.S.A. 74-4927a(5), and amendments
37 thereto, to a member of the faculty or other person defined in ~~subsection~~
38 ~~(1)(a)~~ of K.S.A. 74-4925(1)(a), and amendments thereto;

39 *No employee shall increase the amount of compensation during the*
40 *four-year period immediately prior to the retirement of such employee by*
41 *adding any portion of compensation that was earned by such employee but*
42 *not paid to such employee during the period of employment prior to the*
43 *four years before the retirement. For purposes of this subsection and*

1 *application to the provisions of subsection (17), "compensation" shall*
2 *include any payment for accumulated sick leave, vacation or annual leave*
3 *paid to the member at the salary pay rates of such member as of July 1,*
4 *2016. The provisions of this paragraph shall not apply to members of the*
5 *Kansas police and firemen's retirement system;*

6 (10) "credited service" means the sum of participating service and
7 prior service and in no event shall credited service include any service
8 which is credited under another retirement plan authorized under any law
9 of this state;

10 (11) "dependent" means a parent or child of a member who is
11 dependent upon the member for at least $\frac{1}{2}$ of such parent or child's
12 support;

13 (12) "effective date" means the date upon which the system becomes
14 effective by operation of law;

15 (13) "eligible employer" means the state of Kansas, and any county,
16 city, township, special district or any instrumentality of any one or several
17 of the aforementioned or any noncommercial public television or radio
18 station located in this state which receives state funds allocated by the
19 Kansas public broadcasting commission whose employees are covered by
20 social security. If a class or several classes of employees of any above
21 defined employer are not covered by social security, such employer shall
22 be deemed an eligible employer only with respect to such class or those
23 classes of employees who are covered by social security;

24 (14) "employee" means any appointed or elective officer or employee
25 of a participating employer whose employment is not seasonal or
26 temporary and whose employment requires at least 1,000 hours of work
27 per year, and any such officer or employee who is concurrently employed
28 performing similar or related tasks by two or more participating
29 employers, who each remit employer and employee contributions on
30 behalf of such officer or employee to the system, and whose combined
31 employment is not seasonal or temporary, and whose combined
32 employment requires at least 1,000 hours of work per year, but not
33 including: (A) Any employee who is a contributing member of the United
34 States civil service retirement system; (B) any employee who is a
35 contributing member of the federal employees retirement system; (C) any
36 employee who is a leased employee as provided in section 414 of the
37 federal internal revenue code of a participating employer; and (D) any
38 employee or class of employees specifically exempted by law. After June
39 30, 1975, no person who is otherwise eligible for membership in the
40 Kansas public employees retirement system shall be barred from such
41 membership by reason of coverage by, eligibility for or future eligibility
42 for a retirement annuity under the provisions of K.S.A. 74-4925, and
43 amendments thereto, except that no person shall receive service credit

1 under the Kansas public employees retirement system for any period of
2 service for which benefits accrue or are granted under a retirement annuity
3 plan under the provisions of K.S.A. 74-4925, and amendments thereto.
4 After June 30, 1982, no person who is otherwise eligible for membership
5 in the Kansas public employees retirement system shall be barred from
6 such membership by reason of coverage by, eligibility for or future
7 eligibility for any benefit under another retirement plan authorized under
8 any law of this state, except that no such person shall receive service credit
9 under the Kansas public employees retirement system for any period of
10 service for which any benefit accrues or is granted under any such
11 retirement plan. Employee shall include persons who are in training at or
12 employed by, or both, a sheltered workshop for the blind operated by the
13 secretary for children and families. The entry date for such persons shall
14 be the beginning of the first pay period of the fiscal year commencing in
15 calendar year 1986. Such persons shall be granted prior service credit in
16 accordance with K.S.A. 74-4913, and amendments thereto. However, such
17 persons classified as home industry employees shall not be covered by the
18 retirement system. Employees shall include any member of a board of
19 county commissioners of any county and any council member or
20 commissioner of a city whose compensation is equal to or exceeds \$5,000
21 per year;

22 (15) "entry date" means the date as of which an eligible employer
23 joins the system. The first entry date pursuant to this act is January 1,
24 1962;

25 (16) "executive director" means the managing officer of the system
26 employed by the board under this act;

27 (17) "final average salary" means in the case of a member who retires
28 prior to January 1, 1977, and in the case of a member who retires after
29 January 1, 1977, and who has less than five years of participating service
30 after January 1, 1967, the average highest annual compensation paid to
31 such member for any five years of the last 10 years of participating service
32 immediately preceding retirement or termination of employment, or in the
33 case of a member who retires on or after January 1, 1977, and who has five
34 or more years of participating service after January 1, 1967, the average
35 highest annual compensation paid to such member on or after January 1,
36 1967, for any five years of participating service preceding retirement or
37 termination of employment, or, in any case, if participating service is less
38 than five years, then the average annual compensation paid to the member
39 during the full period of participating service, or, in any case, if the
40 member has less than one calendar year of participating service such
41 member's final average salary shall be computed by multiplying such
42 member's highest monthly salary received in that year by 12; in the case of
43 a member who became a member under ~~subsection (3) of~~ K.S.A. 74-

1 4925(3), and amendments thereto, or who became a member with a
2 participating employer as defined in ~~subsection (3)~~ of K.S.A. 74-4931(3),
3 and amendments thereto, and who elects to have compensation paid in
4 other than 12 equal installments, such compensation shall be annualized as
5 if the member had elected to receive 12 equal installments for any such
6 periods preceding retirement; in the case of a member who retires after
7 July 1, 1987, the average highest annual compensation paid to such
8 member for any four years of participating service preceding retirement or
9 termination of employment; in the case of a member who retires on or
10 after July 1, 1993, whose date of membership in the system is prior to July
11 1, 1993, and any member who is in such member's membership waiting
12 period on July 1, 1993, and whose date of membership in the system is on
13 or after July 1, 1993, the average highest annual compensation, as defined
14 in subsection (9), paid to such member for any four years of participating
15 service preceding retirement or termination of employment or the average
16 highest annual salary, as defined in ~~subsection (34)~~ (33), paid to such
17 member for any three years of participating service preceding retirement
18 or termination of employment, whichever is greater; and in the case of a
19 member who retires on or after July 1, 1993, and whose date of
20 membership in the system is on or after July 1, 1993, the average highest
21 annual salary, as defined in ~~subsection (34)~~ (33), paid to such member for
22 any three years of participating service preceding retirement or termination
23 of employment. Final average salary shall not include any purchase of
24 participating service credit by a member as provided in ~~subsection (2)~~ of
25 K.S.A. 74-4919h(2), and amendments thereto, which is completed within
26 five years of retirement. For any application to purchase or repurchase
27 service credit for a certain period of service as provided by law received
28 by the system after May 17, 1994, for any member who will have
29 contributions deducted from such member's compensation at a percentage
30 rate equal to two or three times the employee's rate of contribution or will
31 begin paying to the system a lump-sum amount for such member's
32 purchase or repurchase and such deductions or lump-sum payment
33 commences after the commencement of the first payroll period in the third
34 quarter, "final average salary" shall not include any amount of
35 compensation or salary which is based on such member's purchase or
36 repurchase. Any application to purchase or repurchase multiple periods of
37 service shall be treated as multiple applications. For purposes of this
38 subsection, the date that such member is first hired as an employee for
39 members who are employees of employers that elected to participate in the
40 system on or after January 1, 1994, shall be the date that such employee's
41 employer elected to participate in the system. In the case of any former
42 member who was eligible for assistance pursuant to K.S.A. 74-4925, and
43 amendments thereto, prior to July 1, 1998, for the purpose of calculating

1 final average salary of such member, such member's final average salary
2 shall be based on such member's salary while a member of the system or
3 while eligible for assistance pursuant to K.S.A. 74-4925, and amendments
4 thereto, whichever is greater;

5 (18) "fiscal year" means, for the Kansas public employees retirement
6 system, the period commencing July 1 of any year and ending June 30 of
7 the next;

8 (19) "Kansas public employees retirement fund" means the fund
9 created by this act for payment of expenses and benefits under the system
10 and referred to as the fund;

11 (20) "leave of absence" means a period of absence from employment
12 without pay, authorized and approved by the employer, and which after the
13 effective date does not exceed one year;

14 (21) "member" means an eligible employee who is in the system and
15 is making the required employee contributions; any former employee who
16 has made the required contributions to the system and has not received a
17 refund if such member is within five years of termination of employment
18 with a participating employer; or any former employee who has made the
19 required contributions to the system, has not yet received a refund and has
20 been granted a vested benefit;

21 (22) "military service" means service in the uniformed forces of the
22 United States, for which retirement benefit credit must be given under the
23 provisions of USERRA or service in the armed forces of the United States
24 or in the commissioned corps of the United States public health service,
25 which service is immediately preceded by a period of employment as an
26 employee or by entering into an employment contract with a participating
27 employer and is followed by return to employment as an employee with
28 the same or another participating employer within 12 months immediately
29 following discharge from such military service, except that if the board
30 determines that such return within 12 months was made impossible by
31 reason of a service-connected disability, the period within which the
32 employee must return to employment with a participating employer shall
33 be extended not more than two years from the date of discharge or
34 separation from military service;

35 (23) "normal retirement date" means the date on or after which a
36 member may retire with full retirement benefits pursuant to K.S.A. 74-
37 4914, and amendments thereto;

38 (24) "participating employer" means an eligible employer who has
39 agreed to make contributions to the system on behalf of its employees;

40 (25) "participating service" means the period of employment after the
41 entry date for which credit is granted a member;

42 (26) "prior service" means the period of employment of a member
43 prior to the entry date for which credit is granted a member under this act;

1 (27) "prior service annual salary" means the highest annual salary, not
2 including any amounts received as payment for overtime or as
3 reimbursement for travel or moving expense, received for personal
4 services by the member from the current employer in any one of the three
5 calendar years immediately preceding January 1, 1962, or the entry date of
6 the employer, whichever is later, except that if a member entered the
7 employment of the state during the calendar year 1961, the prior service
8 annual salary shall be computed by multiplying such member's highest
9 monthly salary received in that year by 12;

10 (28) "retirant" means a member who has retired under this system;

11 (29) "retirement benefit" means a monthly income or the actuarial
12 equivalent thereof paid in such manner as specified by the member
13 pursuant to this act or as otherwise allowed to be paid at the discretion of
14 the board, with benefits accruing from the first day of the month
15 coinciding with or following retirement and ending on the last day of the
16 month in which death occurs. Upon proper identification a surviving
17 spouse may negotiate the warrant issued in the name of the retirant. If
18 there is no surviving spouse, the last warrant shall be payable to the
19 designated beneficiary;

20 (30) "retirement system" or "system" means the Kansas public
21 employees retirement system as established by this act and as it may be
22 amended;

23 (31) "social security" means the old age, survivors and disability
24 insurance section of the federal social security act;

25 (32) "trust" means an express trust, created by a trust instrument,
26 including a will, designated by a member to receive payment of the
27 insured death benefit under K.S.A. 74-4927, and amendments thereto, and
28 payment of the member's accumulated contributions under ~~subsection (1)~~
29 ~~of K.S.A. 74-4916(1)~~, and amendments thereto. A designation of a trust
30 shall be filed with the board. If no will is admitted to probate within six
31 months after the death of the member or no trustee qualifies within such
32 six months or if the designated trust fails, for any reason whatsoever, the
33 insured death benefit under K.S.A. 74-4927, and amendments thereto, and
34 the member's accumulated contributions under ~~subsection (1)~~ of K.S.A.
35 74-4916(1), and amendments thereto, shall be paid in accordance with the
36 provisions of subsection (7) ~~of this section~~ as in other cases where there is
37 no named beneficiary living at the time of the member's death and any
38 payments so made shall be a full discharge and release to the system from
39 any further claims;

40 (33) "salary" means all salary and wages payable to a member for
41 personal services performed for a participating employer, including
42 maintenance or any allowance in lieu thereof provided a member as part of
43 salary. Salary shall not include reimbursement for travel or moving

1 expenses, payment for accumulated sick leave or vacation or annual leave,
2 severance pay or any other payments to the member determined by the
3 board to not be payments for personal services performed for a
4 participating employer constituting salary or on and after July 1, 1994,
5 payment pursuant to an early retirement incentive program made prior to
6 the retirement of the member. When the salary of a member who remains
7 in substantially the same position during any two consecutive years of
8 participating service used in calculating final average salary is increased
9 by an amount which exceeds 15%, then the amount of such increase which
10 exceeds 15% shall not be included in salary. Any contributions by such
11 member on the amount of such increase which exceeds 15% which is not
12 included in compensation shall be returned to the member. Unless
13 otherwise provided by law, salary shall include any amounts for tax
14 sheltered annuities or deferred compensation plans. Salary shall include
15 amounts under sections 403b, 457(b) and 125 of the federal internal
16 revenue code of 1986 and, as the board deems appropriate, any other
17 section of the federal internal revenue code of 1986 which defers or
18 excludes amounts from inclusion in income. *Beginning July 1, 2016,*
19 *"salary" shall not include amounts taxable under sections 409A or 457(f)*
20 *of the federal internal revenue code.* For purposes of applying limits under
21 the federal internal revenue code "salary" shall have the meaning as
22 provided in K.S.A. 74-49,123, and amendments thereto. In any case, if
23 participating service is less than three years, then the average annual salary
24 paid to the member during the full period of participating service, or, in
25 any case, if the member has less than one calendar year of participating
26 service such member's final average salary shall be computed by
27 multiplying such member's highest monthly salary received in that year by
28 12;

29 (34) "federal internal revenue code" means the federal internal
30 revenue code of 1954 or 1986, as in effect on July 1, 2008, and as
31 applicable to a governmental plan; and

32 (35) "USERRA" means the federal uniformed services employment
33 and reemployment rights act of 1994 as in effect on July 1, 2008.

34 Sec. 3. K.S.A. 75-5517 is hereby amended to read as follows: 75-
35 5517. (a) Each person retiring from the classified or unclassified service of
36 the state of Kansas who has accumulated ~~one hundred (100)~~ 100 days or
37 more of sick leave *as of July 1, 2016*, shall receive at the time of
38 retirement, compensation for their accumulated sick leave as follows:

39 (1) Compensation for not more than ~~thirty (30)~~ 30 days, if such
40 person has completed eight or more years of such service and has
41 accumulated at least ~~one hundred (100)~~ 100 but less than ~~one hundred~~
42 ~~twenty-five (125)~~ 125 days of sick leave;

43 (2) compensation for not more than ~~forty-five (45)~~ 45 days, if such

1 person has completed ~~fifteen (15)~~ 15 or more years of such service and has
2 accumulated at least ~~one hundred twenty-five (125)~~ 125 but less than ~~one~~
3 ~~hundred fifty (150)~~ 150 days of sick leave; and

4 (3) compensation for not more than ~~sixty (60)~~ 60 days, if such person
5 has completed ~~twenty-five (25)~~ 25 or more years of such service and has
6 accumulated ~~one hundred fifty (150)~~ 150 days of sick leave or more.

7 (b) Retirement employee contributions shall be deducted from all
8 compensation for accumulated sick leave paid to each person who retires
9 and benefit calculations for such person shall include all such
10 compensation *as defined in K.S.A. 74-4902, and amendments thereto,*
11 *upon such person's retirement in accordance with the provisions of section*
12 *1, and amendments thereto.*

13 Sec. 4. K.S.A. 75-5517 and K.S.A. 2015 Supp. 74-4902 are hereby
14 repealed.

15 Sec. 5. This act shall take effect and be in force from and after its
16 publication in the statute book.