

1 or pursuant to K.S.A. 46-137b, and amendments thereto. Notwithstanding
 2 any provision of law to the contrary, when a member of the legislature is
 3 paid an amount of compensation of \$20,000 or more in any one calendar
 4 year, the member may continue to receive any amount provided in K.S.A.
 5 46-137a(b) and (d), and amendments thereto, and still be entitled to
 6 receive such member's retirement benefit. Commencing July 1, 2005, the
 7 provisions of this subsection shall not apply to retirants who either retired
 8 under the provisions of subsection (1), or, if they retired under the
 9 provisions of subsection (4), were retired more than 30 days prior to the
 10 effective date of this act and are licensed professional nurses or licensed
 11 practical nurses employed by the state of Kansas in an institution as
 12 defined in K.S.A. 76-12a01(b) or K.S.A. 38-2302~~(f)~~(k), and amendments
 13 thereto, the Kansas soldiers' home or the Kansas veterans' home. Nothing
 14 in this subsection shall be construed to create any right, or to authorize the
 15 creation of any right, which is not subject to amendment or nullification by
 16 act of the legislature. The participating employer of such retirant shall pay
 17 to the system the actuarially determined employer contribution based on
 18 the retirant's compensation during any such period of employment.

19 (6) For purposes of this section, any employee of a local
 20 governmental unit which has its own pension plan who becomes an
 21 employee of a participating employer as a result of a merger or
 22 consolidation of services provided by local governmental units, which
 23 occurred on January 1, 1994, may count service with such local
 24 governmental unit in determining whether such employee has met the
 25 years of credited service requirements contained in this section.

26 (7) (a) Except as provided in ^{subsection (7)(e) and} K.S.A. 74-4937(3), (4); or (5), and
 27 amendments thereto, and the provisions of this subsection, commencing
 28 July 1, 2016, and ending July 1, ~~2020~~ 2021, any retirant who is employed
 29 or appointed in or to any position by a participating employer ^{or an independent contractor} for a third-
 30 party entity who contracts services with a participating employer to fill a
 31 position, without any prearranged agreement with such participating
 32 employer and not prior to 60 days after such retirant's retirement date, shall
 33 not receive any retirement benefit for any month in any calendar year in
 34 which the retirant receives compensation in an amount equal to \$25,000 or
 35 more, pursuant to this subsection. The provisions of this subsection shall
 36 apply to members of the legislature.

37 (b) The provisions of this subsection shall not apply, except as
 38 specifically provided in this subsection, to retirants ~~that~~ who are:

39 (i) Licensed professional nurses or licensed practical nurses
 40 employed by the state of Kansas in an institution as defined in K.S.A. 76-
 41 12a01(b) or 38-2302~~(f)~~(k), and amendments thereto, the Kansas soldiers'
 42 home or the Kansas veterans' home. The participating employer of such
 43 retirant shall pay to the system the actuarially determined employer

Proposed amendment to HB 2268
 For Committee on Financial Institutions and
 Pensions
 February 13, 2017
 Exemption for independent contractors and
 employees of third-party entities
 Prepared by David Wiese
 Office of Revisor of Statutes

subsection (7)(e) and

or an independent contractor

1 contribution based on the retirant's compensation and the statutorily
2 prescribed employee contribution during any such period of employment;

3 (ii) employed by a school district in a position as provided in K.S.A.
4 74-4937(3), (4) or (5), and amendments thereto. Any retirant employed by
5 a school district in a position under K.S.A. 74-4937(3), (4) or (5), and
6 amendments thereto, shall be subject to the provisions of subsection (7)(h)
7 which relate to a limitation on the total term of employment with any
8 participating employer in which a retirant may receive such retirant's full
9 retirement benefit;

10 (iii) certified law enforcement officers employed by the law
11 enforcement training center. Such law enforcement officers shall receive
12 their benefits notwithstanding this subsection. The law enforcement
13 training center shall pay to the system the ~~actuarial~~ *actuarially* determined
14 employer contribution and the statutorily prescribed employee contribution
15 based on the retirant's compensation during any such period of
16 employment;

17 (iv) members of the Kansas police and firemen's retirement system
18 pursuant to K.S.A. 74-4951 et seq., and amendments thereto, or members
19 of the retirement system for judges pursuant to K.S.A. 20-2601 et seq., and
20 amendments thereto;

21 (v) employed as substitute teachers or officers, employees or
22 appointees of the legislature;

23 (vi) a poll worker hired to work an election day for a county election
24 officer responsible for conducting all official elections held in the county;
25 and

26 (vii) employed by, or have accepted employment from, a participating
27 employer prior to May 1, 2015. Any break in continuous employment by a
28 retirant or move to a different position by a retirant during the effective
29 period of this subsection shall be deemed new employment and shall
30 subject the retirant to the provisions of this subsection.

31 (c) The participating employer shall enroll all retirants and report to
32 the system when compensation is paid to a retirant as provided in this
33 subsection. Such report shall contain a certification by the appointing
34 authority of the participating employer that any hired retirant has not been
35 employed by the participating employer within 60 days of such retirant's
36 retirement and that there was no prearranged agreement for employment
37 between the participating employer and the hired retirant. Upon request of
38 the executive director of the system, the participating employer shall
39 provide such information as may be needed by the executive director to
40 carry out the provisions of this subsection. Any participating employer
41 who hires a retirant covered by this subsection shall pay to the system the
42 statutorily prescribed employer contribution rate for such retirant, without
43 regard to whether the retirant is receiving benefits. No retirant shall

1 receive credit for service while employed under the provisions of this
2 subsection.

3 (d) A participating employer may employ a retirant without regard to
4 the compensation limitation in this subsection for a period of one calendar
5 year or one school year, as the case may be, if the following requirements
6 are met:

7 (i) The employer certifies to the board that the position being filled
8 has been vacated due to an unexpected emergency or the employer has
9 been unsuccessful in filling the position;

10 (ii) the employer pays to the system a 30% employer contribution
11 based on the retirant's compensation during any such period of
12 employment. On or before July 1, 2019, and at least every three years
13 thereafter, the board, in consultation with the system's consulting actuary,
14 shall evaluate the plan's experience with employment of such retirants and
15 the corresponding employer contribution rate to assess whether the
16 employer contribution rate can be expected to fund adverse experience or
17 higher liabilities accruing under the system in connection with
18 employment of such retirants, to the extent that such liability can be
19 ascertained or estimated. Based on this evaluation of the plan's experience,
20 the board may certify to the division of the budget, in the case of the state,
21 and to the agent for each other participating employer, a new rate if needed
22 to more fully fund such adverse experience or additional liabilities, but
23 such rate shall not be less than 30%; and

24 (iii) the employer maintains documentation of its efforts to fill the
25 position with a non-retirant and provides such documentation to the joint
26 committee on pensions, investments and benefits upon request of the
27 committee.

28 ~~{e}~~ An employer may submit a written assurance protocol to the
29 system to extend the exception provided for in subsection (7)(d) by one-
30 year increments for a total extension not to exceed three years. A written
31 assurance protocol shall be submitted to the system for each one-year
32 increment extension. If a school district submits a written assurance
33 protocol, such written assurance protocol shall be signed by the
34 superintendent and the board president of such school district. If a
35 municipality, as defined in K.S.A. 75-1117, and amendments thereto, other
36 than a school district, submits a written assurance protocol, such written
37 assurance protocol shall be signed by the governing body or such
38 governing body's designee for such municipality. Such written assurance
39 protocol shall state that the position was advertised on multiple platforms
40 for a minimum of 30 calendar days and that at least one of the following
41 conditions occurred:

42 (i) No applications were submitted for the position;
43 (ii) if applications were submitted, none of the applicants met the

(e) Retirants who are independent contractors or employees of third-party entities who contract with a participating employer shall not be subject to the compensation limitation in this subsection or the requirements of subsection (7)(c) regarding enrollment and employer contributions, so long as all of the following apply:
(i) The contractual relationship was not created to allow the retirant to continue employment with the participating employer after retirement in a position similar to the one such retirant held prior to retirement;
(ii) the activities performed by the independent contractor or third-party entity are not normally performed by employees of that participating employer; and
(iii) the retirant meets the classification of independent contractor as provided in K.S.A. 2016 Supp. 44-768, and amendments thereto, or activities performed by the third-party entity that employs the retirant are performed on a limited-term basis and the third-party entity is not a participating employer in the system.

redesignate paragraphs accordingly