

Proposed amendment to HB 2268  
 For Committee on Financial Institutions and  
 Pensions  
 February 15, 2017

Exemption for independent contractors and  
 employees of third-party entities

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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 <sup>1</sup>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 <sup>or a third-</sup>  
 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

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 retirants 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 full-time 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