

## MEMORANDUM

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TO: Designated Agents

FROM: KPERS Legal and Member Services Staff

DATE: May 31, 2002

RE: **2002 Legislative Summary on Issues Affecting KPERS Members**

- (1) Trustee-to-Trustee Transfers for Service Purchases
- (2) Definition of Final Average Salary (*Which Employees Owe KPERS Contributions on Their Lump Sums at Termination?*)
- (3) Multiple Employers / KPERS Membership
- (4) Board of Regents: Purchase of KPERS Service for BOR Plan Waiting Period, and Accidental Death Benefit Coverage During BOR Plan Waiting Period
- (5) The Partial Lump Sum Option for “Brazelton” KP&F Members
- (6) Death and Disability Contribution Moratorium
- (7) State/School Employer Match for Deferred Savings Authorized (not required; not funded).

Provisions affecting KPERS and KPERS members, contained in Senate Substitute for House Bill 2621, signed by Governor Graves on May 16, 2002, and effective upon publication in the *Kansas Register* (May 23, 2002), are described in this memorandum.

### (1) **Trustee-to-Trustee Transfers**

Effective immediately, a new law allows members who have money in a 457(b) governmental deferred compensation plan in Kansas or a 403(b) tax sheltered annuity to transfer money from those plans to KPERS for a purchase of service credit. Tax-sheltered annuities are available through Kansas colleges and universities (where they are the primary retirement plan for most unclassified employees); also, some unified school districts sponsor a 403(b) plan as a way for school employees to accumulate supplemental retirement savings in a tax-deferred account. For the same reason, the State of Kansas and some local units sponsor a 457(b) deferred compensation plan for their employees.

The federal Economic Growth and Tax Reconciliation Relief Act of 2001 (EGTRRA) provides many tax changes related to pensions, including increased contribution limits and catch-up provisions, a savers' tax credit available to some, and increased portability among plans. The trustee-to-trustee transfer option is currently generating the most interest within the public-

pension community. Now Kansas, as with a number of other states, has changed its public employee retirement plan so members can take advantage of the new opportunity.

Note that even if members transfer money from their employer's 403(b) or 457(b) plan to KPERS, they can continue to participate in those plans. They don't have to close their accounts. The new law offers members a good opportunity to maximize their KPERS benefits while continuing to participate in supplemental taxed-deferred savings plans.

**There are three requirements for a trustee-to-trustee transfer:**

- The **member's transferring plan must allow** in-service trustee-to-trustee transfers. (The State of Kansas Deferred Compensation Plan permits such transfers. Members who participate in other plans should contact their plan administrator to determine if the plan allows in-service trustee to trustee transfers.)
- The **transferred funds must not be more than** the cost to purchase service for which the member is eligible.
- The transferring **457(b) plan must be sponsored by** a governmental employer in Kansas. (This is a recent federal regulation specific to 457(b) plans; there is no similar regulation for 403(b) plans.)

**The steps in the trustee-to-trustee transfer transaction are as follows:**

- Member fills out and sends **to KPERS** a KPERS-67 (*Request to Purchase Service Credit*) and selects a lump sum purchase (the form will be revised soon, to allow the member to designate whether the lump sum purchase will be completed by rollover, trustee transfer, or with post-tax money).
- KPERS sends **to the member** a cost letter and a blank KPERS-67T (*In-service Trustee-to-Trustee Transfer Request for the Purchase of Service*).
- Member then completes **Parts A and B** of the KPERS-67T and sends it **to the plan service provider** for the transferring plan (for example, to ING/Aetna for the state of Kansas deferred compensation plan), being sure to include on the form the total amount to be transferred, not to exceed the amount shown on the cost letter from KPERS.
- Member's transferring plan service provider completes **Part C** of the form and forwards the form **to the plan administrator** at the employer level.
- Employer's plan administrator completes **Part D** (approval of distribution), and returns the 67T **to the plan service provider**.
- Based on the plan administrator's approval, the plan service provider transfers the authorized sum **to KPERS** along with the completed 67T form.
- KPERS then completes the transaction.

The KPERS Infoline and the background information attached to the KPERS-67T are sources of further information on this subject. The KPERS-67T form has been added to the forms online.

## (2) **Definition of Final Average Salary**

New language within the statutory definition of “final average salary” (FAS) has been enacted this session. **The focus will now be on membership date rather than hire date.** The question to be answered by this particular aspect of the FAS definition is, which members receive a final average salary based on the **higher** of (a) the high four-year average including add-ons at termination or (b) the high three-year average without add-ons? And, by extension, which members qualify **only** for (b)? **The practical, every-day impact of this issue for designated agents has been the question, “How do I know whether a member’s termination payments are subject to KPERS contributions or not?”** This is an important issue because members who would not be eligible to have their termination payments counted in FAS at retirement should not have KPERS contributions withheld from those payments, whether they are leaving employment because of retirement or for some other reason.

**Originally, the law setting up two different means of calculating FAS used the member’s hire date** in a KPERS position to make the distinction. Under the original statutory language, those hired into a KPERS-covered position before July 1, 1993 have their FAS based on the higher of (a) or (b) as described above, while those hired on and after July 1, 1993 have their FAS based on (b). **The change to membership date was sought** because many DAs do not know a given employee’s original hire date in a KPERS-covered position. Nor is it an easy procedure for KPERS staff to find it (it is not in the member database). By contrast, it is not difficult to learn their membership date (which is in the database). The amendment enacted this year is aimed at changing the statutory language on which the FAS distinction is based from the hire date to membership date, because KPERS staff can find it if the DA doesn’t know it.

The specific language of the amendment is confusing to read, but the final analysis is this: **DAs should withhold KPERS contributions from the termination lump sums of persons whose membership date is before July 1, 1994, and not withhold KPERS contributions from the termination lump sums of persons whose membership date is July 1, 1994 or later.**

If you have questions or problems concerning an individual situation, KPERS staff will be glad to help you.

## (3) **Multiple Employers / KPERS Membership**

In special situations, not expected to occur frequently, it is now possible for an employee who holds similar positions with more than one KPERS employer, where no single job meets the 1,000-hour requirement, to become a member of KPERS. This would require a certain amount of inter-governmental cooperation, and it isn’t mandatory. The employee and employers have to agree to do this. To illustrate:

- if several counties were to separately employ the same person to perform the same function, as (for example) a county appraiser, and

- none of the individual arrangements is an eligible KPERS position, but
- the jobs involve similar services, and
- taken together, the jobs (each one non-seasonal and non-temporary) require more than 1,000 hours annually, then
- KPERS membership is now available for that employee.

**Note** that this change does not affect school members, who already have an available category of concurrent employment, covering situations where an employee has jobs with more than one employer, each of which would otherwise not be covered. *See K.A.R. 80-2-1.* And this new non-school provision is not exactly the same as the school-employee concurrent-membership status. Specifically, in this provision, the services performed for the separate employers must be “similar or related.”

**Also note** that if a person is already a KPERS member (is employed in a 1,000-hour job), this provision does not authorize adding other jobs and salaries to the person’s KPERS record.

**Further note** that this is meant to aid **local unit employers who wish to cooperate** with each other by sharing the employment of a person who possesses a skill set they need but not on a full-time basis. By this means the cooperating employers may also benefit a person who renders full- or near-fulltime public service, but not all for one employer. Since KPERS participation for the employee isn’t mandatory, the concept of any employer-paid “arrearage” will not apply. If the arrangement is not voluntarily made available by two or more cooperating employers, the employee will have no right at some future date to claim entitlement to past service credit because such an arrangement “could have” existed.

The new statutory language (in italics) reads as follows:

*"[E]mployee" means any appointed or elective officer or employee of a participating employer whose employment is not seasonal or temporary and whose employment requires at least 1,000 hours of work per year, and any such officer or employee who is concurrently employed performing similar or related tasks by two or more participating employers, who each remit employer and employee contributions on behalf of such officer or employee to the system, and whose combined employment is not seasonal or temporary, and whose combined employment requires at least 1,000 hours of work per year.*

In summary, for a non-school employee to qualify for contributions to be reported to KPERS from more than one employer, where each separate job standing alone does not require 1,000 hours, **the following elements must be present:**

- combined permanent, non-seasonal employment totaling 1,000 or more hours,
- similar or related tasks, and
- employers willing to send in a KPERS-1 (enrollment) and remit employer and employee contributions.

(4) **Provisions Affecting Persons with Board of Regents Service.**

- *Purchase of Service Credit for Waiting Period:* Any person with KPERS membership who was previously employed full-time as a Regents unclassified employee is now eligible to purchase KPERS service credit for the waiting period to become a BOR plan member, even if the employee never actually became a BOR plan member. (This is a clarification of a provision enacted last year.)
- *Accidental Death Benefits in Waiting Period:* Unclassified Board of Regents retirement plan employees now have first-day, coverage during their year of waiting, for the service-connected accidental death benefit authorized in the KPERS plan at K.S.A. 74-4916. Accidental death benefits have also been made applicable to certain employees of the School for the Blind who, at the time of consolidation with KPERS, were grandfathered into the BOR plan. No ongoing funding supports the accidental death benefit for these groups; therefore, should an event occur that invokes this benefit, the plan's actuary would recognize the employer cost, which would be added to the employer's rate going forward.

(5) **Calculation of Partial Lump-Sum Option for KP&F Brazelton Group Members**

New provisions clarify that the actuarial calculation of the PLSO benefit for Brazelton group members will assume that the retiring member starts receiving Social Security benefits at either the earliest age at which they are eligible for unreduced Social Security benefits or their actual retirement age, whichever is later. (These members are in the closed group of police and firefighters who participated in the lawsuit by the same name and, consequently, besides having a lower employee contribution rate, also have their retirement benefits offset for any Social Security benefits they receive.)

(6) **Death and Disability Moratorium**

Another six-month moratorium has been enacted concerning employer contributions to the KPERS death and disability program. The specific dates during which such contributions should **not** be remitted are: **July 1 through December 31, 2002**. The contributions begin again effective January 1, 2003. Things to remember:

- Local units will receive (or may have received prior to this memorandum), from KPERS, an individualized rate letter for the period July 1 through December 31, 2002. The letter also contains the rates for Calendar Year 2003.
- State agencies receive their rate notification from the Division of Accounts and Reports.
- The moratorium affects only the 0.6 % employer death and disability contribution.
- Employers with "first-day coverage" please note: first-day coverage relates solely to the basic death and disability benefits. Therefore, during the moratorium, **do not** remit the employer contributions that are allocated to first-day coverage. Your

employees in their year of service will continue to have coverage for these benefits during the moratorium period.

- Employer withholding and remitting of employee contributions for individual Optional Group Life coverage is not affected.

**(7) State/School Employer Match for Deferred Savings Authorized**

Legislation was enacted authorizing (but not requiring) the board of education of any school district or the board of trustees of any community college to contribute to employees' 403(b) tax-sheltered annuity or 457(b) deferred compensation accounts. Legislation was also enacted (subject to appropriations, none provided this year) authorizing the State of Kansas to contribute to state employees' 457(b) deferred compensation accounts.