

STATE OF KANSAS

SENATE CHAMBER

MR. PRESIDENT:

I move to amend **Senate Substitute for Substitute for HB 2333**, on page 1, by striking all in lines 14 through 35;

By striking all on pages 2 through 8;

On page 9, by striking all in lines 1 through 32 and inserting the following:

"New Section 1. (a) The provisions of sections 1 through 18, and amendments thereto, shall be known and may be cited as the Kansas public employees retirement system act of 2014.

(b) This act applies to any individual who is:

(1) First hired on and after January 1, 2014, by a participating employer and who would otherwise qualify for membership in the Kansas public employees retirement system, K.S.A. 74-4901 *et seq.*, and amendments thereto; and

(2) any individual:

(A) Who was a member of the Kansas public employees retirement system prior to January 1, 2014, but was not an active or inactive member of the Kansas public employees retirement system on January 1, 2014;

(B) who is hired on or after January 1, 2014, by a participating employer; and

(C) who would otherwise qualify for membership in the Kansas public employees retirement system, K.S.A. 74-4901 *et seq.*, and amendments thereto.

(c) This act does not apply to members of the Kansas police and firemen's retirement system, K.S.A. 74-4951 *et seq.*, and amendments thereto, and the retirement system for judges, K.S.A. 20-2601 *et seq.*, and amendments thereto.

(d) A system member may not simultaneously be a member of the pre-2014 plan and the plan established pursuant to this act. A period of service may not be credited in more than one retirement plan within the system.

(e) The board of trustees of the Kansas public employees retirement system shall administer the provisions of this act in the same manner as the board administers the provisions of K.S.A. 74-4901 *et seq.*, and amendments thereto, except as specifically provided in this act.

(f) Unless specifically provided in this act, the provisions of K.S.A. 74-4901 *et seq.*, and amendments thereto, shall be applicable to this act. In an event that a conflict exists between the provisions of this act and the provisions of K.S.A. 74-4901 *et seq.*, and amendments thereto, the provisions of this act shall control, and to that end, no legal or contractual rights shall inure to the benefit of members or participating employers under this act with regard to the provisions of K.S.A. 74-4901 *et seq.*, and amendments thereto, when the provisions of this act control.

(g) Each participating employer as provided in this act and each employee as defined by this act shall be subject to the provisions of this act as specified in this act and subject to the provisions of K.S.A. 74-4901 *et seq.*, and amendments thereto, as appropriate as to terms, conditions and requirements not specifically covered in this act. The provisions of this act shall not apply to members of the Kansas public employees retirement system as provided in K.S.A. 74-4901 *et seq.*, and 74-49,201 *et seq.*, and amendments thereto, employed by a participating employer prior to January 1, 2014, unless otherwise provided in this act.

(h) The provisions of this act shall be part of and supplemental to the provisions of K.S.A. 74-4901 *et seq.*, and amendments thereto, subject to the limitations contained in this act.

New Sec. 2. (a) Terms that are used in this act have the meanings set forth for them in K.S.A. 74-4902, and amendments thereto, unless otherwise provided or the context otherwise requires.

(b) As used in this act, unless otherwise provided or the context otherwise requires:

- (1) "Act" means the Kansas public employees retirement system act of 2014, section 1 *et seq.*, and amendments thereto;
- (2) "active member" means a member who is actively employed by a participating employer;
- (3) "403(b) plan" means a retirement plan offered to qualifying public school employees, community college employees and other eligible employees as allowed under section 403(b) of the internal revenue code. The 403(b) plan shall be comprised of tax deferred annuities described in section 403(b) of the internal revenue code, including custodial accounts described in section 403(b)(7) of the internal revenue code;
- (4) "employee directed account" means the account established for a member under section 3, and amendments thereto;
- (5) "employer annuity account" means the account established for a member under section 3, and amendments thereto;
- (6) "member" means an individual who is required by section 1, and amendments thereto, to be a member of the plan. The term also includes any survivor or beneficiary of such member;
- (7) "normal retirement age" means the attainment of age 65, except that for security officers, normal retirement age means the attainment of age 55;
- (8) "plan" means the plan established within the Kansas public employees retirement system by section 3, and amendments thereto;
- (9) "pre-2014 plan" means the plan established pursuant to K.S.A. 74-4901 *et seq.*, and amendments thereto, and K.S.A. 74-49,201 *et seq.*, and amendments thereto; and
- (10) "system" means the Kansas public employees retirement system.

New Sec. 3. (a) The board shall establish within the Kansas public employees retirement system a plan in accordance with the provisions of this act. In addition to other options provided under such plan, for qualifying public school employees, community college employees and other eligible

employees, the plan shall include all plan options as allowed under section 403(b) of the internal revenue code. For all other employees, the plan must be established as part of the pension plan pursuant to K.S.A. 74-4920, and amendments thereto, for the exclusive benefit of members and their beneficiaries, and as a qualified governmental plan pursuant to sections 401(a), 414(d), and 414(k) of the federal internal revenue code and its implementing regulations. The plan is established in addition to any retirement, pension, deferred compensation or other benefit plan currently administered by the state or a political subdivision thereof. Assets of the plan must be held in the trust for the Kansas public employees retirement system, other than those assets held in the 403(b) plan which may be held in annuities or custodial accounts as provided by section 403(b) of the federal internal revenue code and implementing regulations.

(b) (1) For members who are qualifying public school employees, community college employees and other eligible employees, the board shall establish separate accounts for employee contributions of each member. These separate accounts shall be administered as a defined contribution plan as provided by section 403(b) of the federal internal revenue code and implementing regulations.

(2) For all other members, the board shall establish separate accounts for the mandatory contributions of each member. These separate accounts shall be administered in the nature of a defined contribution plan as provided by section 414(k) of the federal internal revenue code and implementing regulations.

(3) Accounts described in both subsection (b)(1) and (b)(2) shall be referred to as the employee directed accounts.

(c) The board shall establish for each member an employer annuity account, which shall be credited with employer credits as provided pursuant to section 10, and amendments thereto, and interest credits on those employer contribution credits as determined by the board under section 11, and amendments thereto. The employer annuity account shall be used to determine a lump-sum distribution

or an annuity for the member upon retirement as provided in section 13, and amendments thereto.

New Sec. 4. (a) The board has the powers and shall perform the duties regarding the plan as provided in K.S.A. 74-4909, and amendments thereto, as applicable. The board may exercise the powers and shall perform the duties provided in this act.

(b) The board may contract for any aspect of plan administration, subject to subsection (c), and must use a competitive proposal process when contracting for consulting, educational, investment, recordkeeping or other administrative services for the plan.

(c) The board shall administer the plan through a third party administrator/recordkeeper selected by the board based on a competitive proposal process established by such specifications and considerations as are deemed appropriate by the board. The administrator/recordkeeper shall be independent of any of the retirement plan providers or investment providers selected by the board or by any participating employer.

New Sec. 5. (a) For participants in the 403(b) plan, up to the amount allowed by the internal revenue code, each participating employer shall make a mandatory contribution of 6% of an eligible employee's compensation to the 403(b) plan for participants in such plan. Eligible employees for the 403(b) plan may contribute an additional, discretionary contribution through payroll deductions on a pre-tax or after-tax basis. The 403(b) plan shall comply with all applicable provisions of the internal revenue code.

(b) For all other members, up to the amount allowed by the internal revenue code, each active member shall make a mandatory contribution of 6% of the member's compensation to the member's employee directed account in the 401(a) plan. These contributions shall be picked up by the employer via a salary reduction as provided in section 414(h)(2) of the federal internal revenue code. An employer may not pick up these contributions without a corresponding salary reduction as provided in section 414(h)(2) of the federal internal revenue code. A member under this subsection may not make

voluntary contributions to the plan. The 401(a) plan shall comply with all applicable provision of the internal revenue code.

(c) A member's employee directed account includes the member's mandatory contributions under this section, and the gains and losses on those contributions. The member's employee directed account is vested from the date the employee becomes a member of the plan.

New Sec. 6. (a) A wide range of investment alternatives shall be established for the employee directed accounts. For all employees, there also shall be offered an investment alternative that is similar to the investment portfolio of the Kansas public employees retirement system.

(b) Each eligible employee in the 403(b) plan shall select one or more investment options for the contributions made on such employee's behalf and may transfer such employee's directed account plan balance among those investments, as allowed under the internal revenue code and the rules, regulations and policies established by the board, from among the section 403(b) annuities and section 403(b)(7) custodial accounts made available under the 403(b) plan:

(1) By the board. The board shall make available section 403(b) options from no less than three annuity or investment providers, reviewed and selected by the board based on a competitive proposal process established by such specifications and considerations as are deemed appropriate by the board; and

(2) by the employee's employer. In addition to the options made available by the board, each participating employer shall use all reasonable efforts to make available to its eligible employees section 403(b) options from no less than three annuity or investment providers, reviewed and selected by the employer based on a competitive proposal process established by such specifications and considerations as are deemed appropriate by the employer. The board shall establish procedures for incorporating these options into the operation and administration of the 403(b) plan. All materials relating to the 403(b) plan that are provided by the board to participating employers or eligible

employees, or by a participating employer to its eligible employees, including, but not limited to, summaries of the 403(b) plan and plan marketing materials, shall not favor specific annuity or investment providers or products.

(c) The section 403(b) options selected by the board shall:

(1) Encompass a broad range of investment alternatives, including one or more alternatives that provide asset management, one or more alternatives that provide asset protection, and one or more alternatives that provide income guarantees;

(2) include a low fee or self-service alternative; and

(3) include an independent local financial advisor alternative; and provide eligible employees with a reasonable opportunity to materially affect the potential return on such employee's retirement investment, to choose among diversified investments that in the aggregate minimize the risk of the employee's overall retirement investment, and to achieve a retirement investment portfolio with the varying risk and return characteristics in the aggregate that are normally appropriate for plan participants.

(d) The board shall from time to time review the suitability and management of investment alternatives under the employee directed accounts, including those 403(b) options chosen by the board and may change the alternatives to be offered. The board shall notify affected members of potential changes before any changes become effective, except if the board determines there is a compelling need to change an alternative immediately.

(e) The default option for any member or beneficiary who does not have an effective investment direction shall be the fund that is similar to the investment portfolio of KPERS.

(f) Assets within each employee directed account must be invested as directed by the member within the investment alternatives established by the board, unless the board determines there is a compelling need to remove assets from an investment alternative. In such a case, the asset will be

moved to the default alternative until the member elects another investment alternative.

New Sec. 7. (a) With respect to the employee directed accounts, the board may:

(1) Assess fees on member employee directed accounts to pay the reasonable administrative costs of the accounts, which fees may be reasonable or asset-based fees, or both, as determined by the board;

(2) negotiate with a vendor or vendors for vendor reimbursement of board administrative expenses for the accounts;

(3) assess fees on employers to pay reasonable administrative costs of the accounts; and

(4) assess specific fees on an individual member employee directed account to pay specific expenses attributable to that member.

(b) All fees assessed must be fully disclosed to members and treated as public information.

(c) Costs for the board to secure investment advice, recordkeeping, contract oversight, educational materials for members, performance evaluations and other appropriate information and services are included as part of the administrative expenses of the plan.

New Sec. 8. The board shall establish a rollover account for each member and shall accept the rollover of contributions and the income on those contributions from another eligible retirement plan to the member's rollover account only to the extent allowed under applicable federal law. The board shall establish policies with respect to the rollover accounts as to investments, distributions and other administrative matters.

New Sec. 9. (a) An employer credit shall be made to the member's employer annuity account at the end of each calendar quarter according to the following schedule:

(1) One percent of compensation for each member who has up to one year of service;

(2) one and one-half percent of compensation for each member who has one but less than two years of service;

(3) two percent of compensation for each member who has two but less than three years of service;

(4) two and one-half percent of compensation for each member who has three but less than four years of service;

(5) three percent of compensation for each member who has four but less than five years of service;

(6) three and one-half percent of compensation for each member who has five but less than six years of service;

(7) four percent of compensation for each member who has six but less than seven years of service;

(8) four and one-half percent of compensation for each member who has seven but less than eight years of service; and

(9) five percent of compensation for each member who has eight or more years of service.

(b) An active member's employer shall contribute a percentage of compensation, determined by the board, which must be allocated to the death and long-term disability plan under K.S.A. 74-4927, and amendments thereto.

(c) Any credited service accrued by a member under the provisions of the pre-2014 plan shall be credited for the purpose of computing such member's years of service under this section.

New Sec. 10. (a) A member's employer annuity account is the sum of all employer credits to the account plus the interest credits on the account, which shall be determined at the end of each year. The interest credits shall be determined under section 11, and amendments thereto.

(b) If the member's employer annuity account is not vested upon the member's termination of plan membership, as provided in section 13, and amendments thereto, the employer credits and interest credits are forfeited as provided in section 13, and amendments thereto. If the member's employer

annuity account is vested upon the member's termination of plan membership, as provided in section 13, and amendments thereto, but the member dies prior to attaining normal retirement age without a spouse eligible for the employer annuity account under section 13, and amendments thereto, the employer credits and interest credits are forfeited. Forfeitures may not be used to increase a member's account, but instead will be used to pay administrative expenses of the accounts or to reduce employer contributions.

New Sec. 11. At the end of each calendar year, the board shall credit each employer annuity account with a zero percent interest credit. At the end of each calendar year, the board shall also credit each employer annuity account with a supplemental interest credit rate, which will equal the net investment return on the KPERS portfolio, which may be negative or positive, in that particular calendar year. If the member retires in the middle of a calendar year, the board shall credit that member's employer annuity account with a supplemental interest credit rate that equals the net investment return on the KPERS portfolio, which may be negative or positive, for that portion of that calendar year. For the purposes of determining the member's annuity benefit amount pursuant to section 13, and amendments thereto, a member's employer annuity account shall not be less than the total amount of employer credits to the account.

New Sec. 12. (a) Any time after termination of service or death, a member or the member's beneficiary may file a written application with the board and take a distribution of the member's employee directed account from the plan through any combination of the following payout options, each of which is subject to the applicable provisions of the federal internal revenue code and the applicable regulations of the internal revenue service:

- (1) A direct rollover to an eligible retirement plan;
- (2) a lump-sum distribution; or
- (3) an optional form of periodic distribution offered by the board by official action.

(b) The board by official action may specify minimum account balances for purposes of allowing benefit payment options and rollovers in accordance with federal law.

New Sec. 13. (a) A member is vested, but subject to forfeiture, in the member's employer annuity account upon completion of five years of service. A member's benefit is nonforfeitable upon the attainment of normal retirement age and the completion of at least five years of service, whichever is later.

(b) Except as provided in subsection (d), a member who has a nonforfeitable interest in the member's employer annuity account, at any time after termination from service and the attainment of normal retirement age, shall receive an annuity that may be provided by employer credits and income credits in the employer annuity account, using factors established by the board by official action as of the member's annuity start date, and based on the pension benefits guaranty corporation distress termination interest rates. The normal form of benefit shall be a single life annuity with five-year certain. The member may elect any joint and survivor option described in K.S.A. 74-4918, and amendments thereto.

(c) Except as provided in subsection (d), in the case of an active or inactive member:

(1) Who is vested in the member's employer annuity account;

(2) who has 10 or more years of service at death; and

(3) who dies before attaining normal retirement age, with their spouse at time of death designated as their sole primary beneficiary, the member's surviving spouse on and after the date the member would have attained normal retirement age had the member not died, shall receive an annuity that may be provided by employer credits and income credits in the employer annuity account, using factors established by the board by official action as of the beneficiary's annuity start date and taking into consideration the pension benefit guaranty corporation distress termination interest rates. The normal form of benefit shall be a single life annuity with five-year certain. The beneficiary may elect

any joint and survivor option as described in K.S.A. 74-4918, and amendments thereto.

(d) If a member's vested employer annuity account is less than \$1,000 upon separation from service, the account balance shall be mandatorily distributed to the member in accordance with section 401(a)(31)(B) of the federal internal revenue code. If the member does not elect to have such distribution paid directly to an eligible retirement plan specified by the participant in a direct rollover or to receive the distribution directly, then the board will pay the distribution to the member directly.

New Sec. 14. A member's beneficiary must be determined as provided in the pre-2014 plan regulations. Upon filing a written application with the board after the death of a member, the member's beneficiary is entitled to the member's employee directed account.

New Sec. 15. (a) Members of the retirement system under the Kansas public employees retirement system act of 2014 shall be covered in the death and disability plan in accordance with K.S.A. 74-4927, and amendments thereto, but subject to the provisions of this section.

(b) (1) In the event that a member becomes eligible for and begins receiving a long-term disability benefit under the plan, such member shall be given participating service credit for the entire period of such disability. Such member's employer annuity account shall be credited with the amount of credits and interest prescribed in this act for the entire period of such disability.

(2) The salary upon which credits to such member's employer annuity account are based shall be the employee's salary at the time of disability, which shall be adjusted once each year on January 1, but only after five years of disability, by the lesser of: (A) The percentage increase in the consumer price index for all urban consumers as published by the bureau of labor statistics of the United States department of labor measured in the prior November, minus 1%; or

(B) 4% per annum.

(3) All credits to the employer annuity account shall cease upon the earliest of: (A) Death; (B) attainment of normal retirement age; or (C) the date the member is no longer entitled to receive

disability benefits pursuant to law.

New Sec. 16. The provisions of K.S.A. 74-49,122, 74-49,123 and 74-49,124, and amendments thereto, apply to this act, except the definitions of "actuarial equivalent" and "actuarial computation" are not applicable to this act.

New Sec. 17. On and after January 1, 2014, any benefit earned or accrued by a member of the legislature under the provisions of this act shall be calculated based only upon all compensation received: (a) As *per diem* compensation for service during a regular or special session of the legislature pursuant to subsection (a) of K.S.A. 46-137a, and amendments thereto; (b) as per diem compensation for attendance at in-state or out-of-state meetings pursuant to K.S.A. 75-3212, 75-3215 or 75-3223, and amendments thereto, in the amount prescribed under subsection (a) of K.S.A. 46-137a, and amendments thereto; (c) as additional compensation for legislative officers as provided in K.S.A. 46-137b, and amendments thereto; and (d) as any other additional compensation provided by law, excluding any allowances or reimbursements for any expenses incurred.

New Sec. 18. The provisions of sections 1 through 18, and amendments thereto, shall be effective on and after January 1, 2014."

Senator _____