



Testimony of the Kansas Association of Counties to the  
Senate Committee on Federal & State Affairs  
Opponent on SB 395 (Limits on KPERS KP&F) • February 15, 2018

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify against Senate Bill 395, which would place a cap on calculating the final average salary for certain members of KPERS, KP&F, and the Judge's Retirement System. KAC has concerns over the constitutionality of the proposal and—more significant from the county perspective—concerns over how the change will affect recruitment and retention of individuals for high-skill positions. Based on these considerations, we oppose SB 395 and ask this committee to oppose the bill, as well.

One of the challenges in altering state-pensions systems is that the Constitution places limitations on how government can treat its citizens to whom it provides benefits.<sup>1</sup> Article 1 of the U.S. Constitution prevents states from impairing the obligation of contracts.<sup>2</sup> Kansas historically treats its pension system as a contract with the system members.<sup>3</sup> Yet other states view their respective pension systems as a property right that receives protection under the Fifth Amendment.<sup>4</sup> Courts extend more protections to citizens under the Fifth Amendment than the Article 1's Contracts Clause, but both restrictions warrant consideration when Kansas considers changing KPERS. Though SB 395 has limited application on vested KPERS members, KAC's members would rather avoid any changes that risk causing lawsuits.

Beyond the constitutional considerations, our member counties are concerned about the ability to recruit and retain talented and capable individuals. Based on these concerns, KAC opposes the legislation on behalf of its member counties. When it comes to high-salary positions, the disparity between the public sector and private sector can be significant.<sup>5</sup> One example that applies here is

---

<sup>1</sup> Liz Farmer. *How Are Pensions Protected State-by-State?* GOVERNING (Jan. 28, 2014). Available at: [www.governing.com/finance101/gov-pension-protections-state-by-state.html](http://www.governing.com/finance101/gov-pension-protections-state-by-state.html).

<sup>2</sup> U.S. Const. art. I, § 10.

<sup>3</sup> *Denning v. Kansas Public Employees Retirement System*, 285 Kan. 1045, 1050 (2008).

<sup>4</sup> Liz Farmer. *How Are Pensions Protected State-by-State?*

<sup>5</sup> Andrew G. Biggs & Jason Richwine. *Overpaid or Underpaid? A State-by-State Ranking of Public-Employee Compensation*. AMERICAN ENTERPRISE INSTITUTE (April 2014). Available at: [www.aei.org/wp-](http://www.aei.org/wp-)

the legal market. A 2010 analysis by the National Association of Law Placement found that the average public-sector attorney can expect \$50,000 to \$60,000.<sup>6</sup> In comparison, the private-sector averages are between \$90,000 to \$190,000 in law firms for first-year attorneys.<sup>7</sup> A county manager—the public equivalent to a CEO—could similarly find a higher salary by shifting to the private sector. Such attrition harms both the government organizations and the citizenry. By placing a cap on KPERs benefits, the policy change risks making the public sector more unappealing to otherwise capable and interested employees.

Both the constitutional concerns and the concerns over recruitment and retention prompt opposition from our counties. KAC subsequently opposes SB 395, and—in light of these considerations—we ask this committee to vote against the legislation.

Respectfully,



Nathan Eberline  
Kansas Association of Counties

---

[content/uploads/2014/04/-biggs-overpaid-or-underpaid-a-statebystate-ranking-of-public-employee-compensation\\_112536583046.pdf](https://www.nationaljurist.com/content/uploads/2014/04/-biggs-overpaid-or-underpaid-a-statebystate-ranking-of-public-employee-compensation_112536583046.pdf).

<sup>6</sup> *Huge gap remains between public interest and law firm attorney salaries, NALP reports*. THE NATIONAL JURIST (2010). Available at: [www.nationaljurist.com/content/huge-gap-remains-between-public-interest-and-law-firm-attorney-salaries-nalp-reports](http://www.nationaljurist.com/content/huge-gap-remains-between-public-interest-and-law-firm-attorney-salaries-nalp-reports).

<sup>7</sup> *Id.*