

MEMORANDUM

To: Senate Ways and Means Committee

From: Alan D. Conroy, Executive Director

Date: March 13, 2018

Subject: Substitute HB 2331; Enacting the Representative Jim Morrison Cybersecurity Act and establishing the Kansas Information Technology Enterprise

KPERS supports efforts of the State to improve the overall cybersecurity of the State network. Due to the unique fiduciary obligations of the KPERS Board of Trustees, cybersecurity is already a high priority for the Board. Legislative Post Audit has recognized KPERS' efforts in cybersecurity, identifying KPERS as exemplary among state agencies.

Substitute HB 2331 would provide for the creation of the Kansas Information Security Office (KISO), which would centralize cybersecurity for all executive branch agencies, and the Kansas Information Technology Enterprise (KITE) and would consolidate information technology administration among executive branch agencies.

Due to the unique character and fiduciary obligations of KPERS, including KPERS as part of centralized cybersecurity or information technology functions, raises several potential legal concerns. In light of these concerns, the House Committee of the Whole amended Substitute HB 2331 to exempt KPERS from the new KISO and KITE requirements. KPERS requests that the Senate maintain the current exemption. KPERS would join other exempted Executive Branch agencies – elected officials and Regents institutions.

As a Trust Fund, KPERS has three primary IRS compliance concerns (as raised by our national tax counsel firm) with inclusion in HB 2331.

1. Diversion of KPERS' assets, such as physical servers or personnel, which may constitute a "prohibited transaction" under IRS code.
2. The potential for a prohibited transaction if fees are not commercially reasonable or subsidize costs of other state entities.
3. Penalties for administrative errors that could arise from having information technology requirements handled by another agency.

There may be concerns with KPERS being exempted from the provisions of the Substitute HB 2331, but staying within the executive branch information technology system (KANWIN). KPERS has reviewed the options available and believes that it would be feasible for KPERS to move outside of KANWIN if that would be helpful. Thank you for your consideration.

