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Testimony to the House Financial Institutions and Pensions Committee
In Opposition to HB2217
March 13, 2019

Chairman Kelly and Committee members:

We want to be clear that our opposition to this bill is based on our limited understanding of the bill. We have struggled to fully understand all the components of the bill and have sought help form others to attempt to fill the gaps. These struggles started with trying to understand which KPERS plans it even affects. Examining just that question raised flags that would cause any good investigator to be concerned with the full intent behind the bill. For example, in section 1, subsection (b) it gives strong implications that “the provisions of this act shall not apply to. . .” KP&F, Judges, or other KPERS plans referenced by statute sequences. The plain words in that provision would mean no provision of the act would apply to those plans. But then you get to the last seven words of that subsection, “. . .except as specifically provided in this act.” Those words tell us there may be something further in the act that negates what this section wants us to believe. It is like a suspect in a crime telling us, “I don’t recall being there.” Sure enough, further down on the same page we start to see those things come into play. The definition of “covered position” includes all employees eligible for membership in what appears to be any KPERS plan. We read on and find the definition of “defined benefit plan” which includes the same plans as stated in section 1, subsection (b). Already everything supposedly exempted is being included in definitions and our suspicions are now running very high. It is like getting surveillance video and watching the suspect arrive in the place he said he couldn’t recall being at. Then we get to the first statement in section 5 on page 3: “An eligible employee of the defined benefit plan. . .” Here we find the election option applies to all the plans exempted in section 1, subsection (b), because they are included in the definition of “defined benefit plan.” Same thing happens in section 6 on page 3, line 30. Now we see the suspect prowling around attempting to conceal their true intent of being where they couldn’t recall going.

The big question now in our minds is why would you lead the act with a statement those plans are exempt if you add them all back in again? We hear a lot anymore about transparency, and what we see here just does not pass the smell test. With that said, we understand it has put our suspicions at high alert, but we still don’t clearly understand if there is intent to deceive, unintended conflict, or a lack of understanding of the bill on our part. But alert we are, so we now start looking at other provisions to see what kind of trickery may lay between the lines.

It doesn’t take long to find things that could end badly for the employee. We find the start of it in section 4 on page 3, lines 7-9. “The legislature may from time to time prospectively change the statutory provisions governing the plan, and expressly reserves the right to do so.” This clearly places the employees at risk of ending up with a plan with fewer or reduced benefits than presented when they

opted into the plan. So, what might the legislature think they may want to change in the future? Let's see. Could it be the provisions of section 9, subsection (c) found on page 5, lines 14-20, which contains the employer contributions? Might it be the immediate vesting provisions of the member's mandatory contribution account on page 4, lines 36-37? Or the vesting period of the employer contribution account on page 4, lines 40-41? Perhaps the interest from the employer contributions being placed into the general fund or KPERS fund instead of going to the employee. Why would we not think some legislative body in the future might not take those away to save money for the state? After all, the legislature has not shown consistent hesitation to short change the payments to KPERS, a fund they are legally responsible for. Why would they be less hesitant to make a change to take the money out of the pockets of employees, funds they are not responsible for under the provision on page 3, lines 9-10. Also remember, joining the new Thrift Savings Plan is an irrevocable decision by the employee. Even if the legislature changes the plan in a way substantially reducing benefits to the employee, there is no way for the employee to opt back out or to fight the change. And there it is, right on the video, you see the suspect running away from that place they couldn't remember being at and jumping in their car for the getaway.

The courts have held retirement plans are a contract between the employees and the state. There is little doubt in our minds the provision of section 4 is an attempt to avoid any contractual obligations. So we ask you, committee members, if you were building a home, would any of you enter into a contract for the construction with a clause the contractor "may from time to time prospectively change" the terms of the contract? Would you invest in a CD at a bank that "expressly reserves the right" to "prospectively change" the interest rates or any other terms of the investment requirements? Do you think the public employees are knowingly and/or voluntarily going to enter into a plan that can be changed to their detriment at any time? Or will this be like buying a new cell phone and signing the contract the seller just hopes you don't read and you will just trust they really have your best interest included in the terms? How many employees making the decision to opt into this plan will even know those risks exist?

We still have many questions about the plan proposed in this bill. And we are trying to keep an open mind. But we have learned if it walks like a duck and quacks like a duck the probability is high it is a duck. This duck is clearly is not the Aflac duck. It is not here to serve the interests of the public employees of this state.

One of our many questions is what impact would the transition of employees to this new plan have on the defined benefit plans and the unfunded actuarial liability? Will there be enough employees left in the current KPERS systems to continue building our funded ratio? Or is the long-range goal for this plan to be a tool to further destroy the existing plans to justify ending them completely?

KPERS is making great headway to fixing the ills of the UAL. If we stay on course of the current plan, we can see lower employer contribution rates in the relatively near future as the UAL is paid down and the retirement systems become adequately and appropriately funded. Are we trying to fix something that isn't broken? Or are we trying to break something that we have spent a lot of money and energy to repair?

We urge you to not move this bill forward favorably.

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