



GENERAL ASSEMBLY COMMONWEALTH OF KENTUCKY

2010 REGULAR SESSION

HOUSE BILL NO. 164

WEDNESDAY, FEBRUARY 24, 2010

The following bill was reported to the Senate from the House and ordered to be printed.

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TREY GRAYSON
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Allen

AN ACT relating to the transfer of faculty and staff providing educational services to Department of Corrections' inmates and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

1 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 196 IS CREATED TO
2 READ AS FOLLOWS:

3 *(1) Effective July 1, 2010, faculty and staff of the Kentucky Community and*
4 *Technical College System who:*

5 *(a) Are engaged in providing educational services and support to inmates at*
6 *institutions; and*

7 *(b) Exercise the option in subsection (4) of this section;*

8 *shall be transferred to the Department of Corrections along with the funding*
9 *associated with those employees. The Personnel Cabinet shall assist the*
10 *department in implementing the transfer of employees according to this section.*

11 *(2) Employees transferred pursuant to subsection (1) of this section shall retain:*

12 *(a) Their salaries and leave time balances accumulated as of the transfer date;*

13 *(b) For purposes of determining leave time accumulation, the date of initial*
14 *employment with a state agency or a postsecondary educational institution,*
15 *whichever is earlier; and*

16 *(c) For purposes of calculating retirement and retiree health benefits and*
17 *contributions, the earlier of the date of initial participation in:*

18 *1. A state-administered retirement system if the employee has*
19 *participated or is participating in the Kentucky Employees Retirement*
20 *System or the Kentucky Teachers' Retirement System; or*

21 *2. A defined contribution plan that meets requirements of 26 U.S.C. sec.*
22 *403(b), for employees of the Kentucky Community and Technical*
23 *College System.*

24 *Nothing in this paragraph shall be construed to provide additional service credit*

1 for the employee prior to the transfer date other than what has been credited to
2 the appropriate retirement system.

3 (3) Employees exercising their option under subsection (4) of this section may elect
4 to be covered under KRS Chapter 18A and receive:

5 (a) All rights and benefits provided to other employees in the department; and

6 (b) Their choice of retirement benefits under:

7 1. The Kentucky Teachers' Retirement System; or

8 2. Hazardous duty retirement benefits under the Kentucky Employees
9 Retirement System with hazardous duty contributions and coverage
10 beginning July 1, 2010. The hazardous duty retirement benefits shall
11 be calculated in accordance with KRS 61.510 to 61.705.

12 (4) Employees of the Kentucky Community and Technical College System engaged
13 in providing educational services and support to inmates at institutions shall
14 choose whether to remain in their present employment and be assigned to the
15 department to continue providing these services, or become an employee of the
16 department under the terms of this section. Employees shall make their choice on
17 or before June 15, 2010, and shall have access to counseling prior to June 15,
18 2010, by representatives of the department, the Kentucky Community and
19 Technical College System, applicable retirement systems, and the Personnel
20 Cabinet concerning the effect that choosing employment with the department
21 would have on the employee. If an employee does not make a choice on or before
22 June 15, 2010, that employee shall be deemed to have chosen to exercise the
23 option to become an employee of the department with retirement benefits
24 described in subsection (3)(b)2. of this section.

25 (5) Effective July 1, 2010, all instructional supplies, equipment, funds, and records
26 of the Kentucky Community and Technical College System associated with the
27 provision of educational services and support to inmates at institutions shall be

1 **transferred to the department along with all financial and management oversight**
2 **responsibility and liability for these programs.**

3 ➔Section 2. KRS 61.510 is amended to read as follows:

4 As used in KRS 61.510 to 61.705, unless the context otherwise requires:

5 (1) "System" means the Kentucky Employees Retirement System created by KRS
6 61.510 to 61.705;

7 (2) "Board" means the board of trustees of the system as provided in KRS 61.645;

8 (3) "Department" means any state department or board or agency participating in the
9 system in accordance with appropriate executive order, as provided in KRS 61.520.

10 For purposes of KRS 61.510 to 61.705, the members, officers, and employees of the
11 General Assembly and any other body, entity, or instrumentality designated by
12 executive order by the Governor, shall be deemed to be a department,
13 notwithstanding whether said body, entity, or instrumentality is an integral part of
14 state government;

15 (4) "Examiner" means the medical examiners as provided in KRS 61.665;

16 (5) "Employee" means the members, officers, and employees of the General Assembly
17 and every regular full-time, appointed or elective officer or employee of a
18 participating department, including the Department of Military Affairs. The term
19 does not include persons engaged as independent contractors, seasonal, emergency,
20 temporary, interim, and part-time workers. In case of any doubt, the board shall
21 determine if a person is an employee within the meaning of KRS 61.510 to 61.705;

22 (6) "Employer" means a department or any authority of a department having the power
23 to appoint or select an employee in the department, including the Senate and the
24 House of Representatives, or any other entity, the employees of which are eligible
25 for membership in the system pursuant to KRS 61.525;

26 (7) "State" means the Commonwealth of Kentucky;

27 (8) "Member" means any employee who is included in the membership of the system or

- 1 any former employee whose membership has not been terminated under KRS
2 61.535;
- 3 (9) "Service" means the total of current service and prior service as defined in this
4 section;
- 5 (10) "Current service" means the number of years and months of employment as an
6 employee, on and after July 1, 1956, except that for members, officers, and
7 employees of the General Assembly this date shall be January 1, 1960, for which
8 creditable compensation is paid and employee contributions deducted, except as
9 otherwise provided, and each member, officer, and employee of the General
10 Assembly shall be credited with a month of current service for each month he
11 serves in the position;
- 12 (11) "Prior service" means the number of years and completed months, expressed as a
13 fraction of a year, of employment as an employee, prior to July 1, 1956, for which
14 creditable compensation was paid; except that for members, officers, and employees
15 of the General Assembly, this date shall be January 1, 1960. An employee shall be
16 credited with one (1) month of prior service only in those months he received
17 compensation for at least one hundred (100) hours of work; provided, however, that
18 each member, officer, and employee of the General Assembly shall be credited with
19 a month of prior service for each month he served in the position prior to January 1,
20 1960. Twelve (12) months of current service in the system are required to validate
21 prior service;
- 22 (12) "Accumulated contributions" at any time means the sum of all amounts deducted
23 from the compensation of a member and credited to his individual account in the
24 members' contribution account, including employee contributions picked up after
25 August 1, 1982, pursuant to KRS 61.560(4), together with interest credited on such
26 amounts and any other amounts the member shall have contributed thereto,
27 including interest credited thereon. For members who begin participating on or after

1 September 1, 2008, "accumulated contributions" shall not include employee
2 contributions that are deposited into accounts established pursuant to 26 U.S.C. sec.
3 401(h) within the funds established in KRS 16.510, 61.515, and 78.520, as
4 prescribed by KRS 61.702(2)(b);

- 5 (13) "Creditable compensation" means all salary, wages, tips to the extent the tips are
6 reported for income tax purposes, and fees, including payments for compensatory
7 time, paid to the employee as a result of services performed for the employer or for
8 time during which the member is on paid leave, which are includable on the
9 member's federal form W-2 wage and tax statement under the heading "wages, tips,
10 other compensation," including employee contributions picked up after August 1,
11 1982, pursuant to KRS 61.560(4). For members of the General Assembly, it shall
12 mean all amounts which are includable on the member's federal form W-2 wage and
13 tax statement under the heading "wages, tips, other compensation," including
14 employee contributions picked up after August 1, 1982, pursuant to KRS 6.505(4)
15 or 61.560(4). A lump-sum bonus, severance pay, or employer-provided payment for
16 purchase of service credit shall be included as creditable compensation but shall be
17 averaged over the employee's total service with the system in which it is recorded if
18 it is equal to or greater than one thousand dollars (\$1,000). In cases where
19 compensation includes maintenance and other perquisites, the board shall fix the
20 value of that part of the compensation not paid in money. Living allowances,
21 expense reimbursements, lump-sum payments for accrued vacation leave, and other
22 items determined by the board shall be excluded. Creditable compensation shall
23 also include amounts which are not includable in the member's gross income by
24 virtue of the member having taken a voluntary salary reduction provided for under
25 applicable provisions of the Internal Revenue Code. Creditable compensation shall
26 also include elective amounts for qualified transportation fringes paid or made
27 available on or after January 1, 2001, for calendar years on or after January 1, 2001,

1 that are not includable in the gross income of the employee by reason of 26 U.S.C.
2 sec. 132(f)(4). For employees who begin participating on or after September 1,
3 2008, creditable compensation shall not include payments for compensatory time;

4 (14) "Final compensation" of a member means:

5 (a) For a member who begins participating before September 1, 2008, who is not
6 employed in a hazardous position, as provided in KRS 61.592, the creditable
7 compensation of the member during the five (5) fiscal years he was paid at the
8 highest average monthly rate divided by the number of months of service
9 credit during that five (5) year period multiplied by twelve (12). The five (5)
10 years may be fractional and need not be consecutive. If the number of months
11 of service credit during the five (5) year period is less than forty-eight (48),
12 one (1) or more additional fiscal years shall be used;

13 (b) For a member who is not employed in a hazardous position, as provided in
14 KRS 61.592, whose effective retirement date is between August 1, 2001, and
15 January 1, 2009, and whose total service credit is at least twenty-seven (27)
16 years and whose age and years of service total at least seventy-five (75), final
17 compensation means the creditable compensation of the member during the
18 three (3) fiscal years the member was paid at the highest average monthly rate
19 divided by the number of months of service credit during that three (3) years
20 period multiplied by twelve (12). The three (3) years may be fractional and
21 need not be consecutive. If the number of months of service credit during the
22 three (3) year period is less than twenty-four (24), one (1) or more additional
23 fiscal years shall be used. Notwithstanding the provision of KRS 61.565, the
24 funding for this paragraph shall be provided from existing funds of the
25 retirement allowance;

26 (c) For a member who begins participating before September 1, 2008, who is
27 employed in a hazardous position, as provided in KRS 61.592, the creditable

1 compensation of the member during the three (3) fiscal years he was paid at
2 the highest average monthly rate divided by the number of months of service
3 credit during that three (3) year period multiplied by twelve (12). The three (3)
4 years may be fractional and need not be consecutive. If the number of months
5 of service credit during the three (3) year period is less than twenty-four (24),
6 one (1) or more additional fiscal years shall be used;

7 (d) For a member who begins participating on or after September 1, 2008, who is
8 not employed in a hazardous position, as provided in KRS 61.592, the
9 creditable compensation of the member during the five (5) complete fiscal
10 years immediately preceding retirement divided by five (5). Each fiscal year
11 used to determine final compensation must contain twelve (12) months of
12 service credit; or

13 (e) For a member who begins participating on or after September 1, 2008, who is
14 employed in a hazardous position, as provided in KRS 61.592, the creditable
15 compensation of the member during the three (3) complete fiscal years he was
16 paid at the highest average monthly rate divided by three (3). Each fiscal year
17 used to determine final compensation must contain twelve (12) months of
18 service credit;

19 (15) "Final rate of pay" means the actual rate upon which earnings of an employee were
20 calculated during the twelve (12) month period immediately preceding the
21 member's effective retirement date, including employee contributions picked up
22 after August 1, 1982, pursuant to KRS 61.560(4). The rate shall be certified to the
23 system by the employer and the following equivalents shall be used to convert the
24 rate to an annual rate: two thousand eighty (2,080) hours for eight (8) hour
25 workdays, nineteen hundred fifty (1,950) hours for seven and one-half (7-1/2) hour
26 workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months,
27 one (1) year;

- 1 (16) "Retirement allowance" means the retirement payments to which a member is
2 entitled;
- 3 (17) "Actuarial equivalent" means a benefit of equal value when computed upon the
4 basis of the actuarial tables that are adopted by the board. In cases of disability
5 retirement, the options authorized by KRS 61.635 shall be computed by adding ten
6 (10) years to the age of the member, unless the member has chosen the Social
7 Security adjustment option as provided for in KRS 61.635(8), in which case the
8 member's actual age shall be used. No disability retirement option shall be less than
9 the same option computed under early retirement;
- 10 (18) "Normal retirement date" means the sixty-fifth birthday of a member, unless
11 otherwise provided in KRS 61.510 to 61.705;
- 12 (19) "Fiscal year" of the system means the twelve (12) months from July 1 through the
13 following June 30, which shall also be the plan year. The "fiscal year" shall be the
14 limitation year used to determine contribution and benefit limits as established by
15 26 U.S.C. sec. 415;
- 16 (20) "Officers and employees of the General Assembly" means the occupants of those
17 positions enumerated in KRS 6.150. The term shall also apply to assistants who
18 were employed by the General Assembly for at least one (1) regular legislative
19 session prior to July 13, 2004, who elect to participate in the retirement system, and
20 who serve for at least six (6) regular legislative sessions. Assistants hired after July
21 13, 2004, shall be designated as interim employees;
- 22 (21) "Regular full-time positions," as used in subsection (5) of this section, shall mean
23 all positions that average one hundred (100) or more hours per month determined by
24 using the number of months actually worked within a calendar or fiscal year,
25 including all positions except:
- 26 (a) Seasonal positions, which although temporary in duration, are positions which
27 coincide in duration with a particular season or seasons of the year and which

- 1 may recur regularly from year to year, the period of time shall not exceed nine
2 (9) months;
- 3 (b) Emergency positions which are positions which do not exceed thirty (30)
4 working days and are nonrenewable;
- 5 (c) Temporary positions which are positions of employment with a participating
6 department for a period of time not to exceed nine (9) months;
- 7 (d) Part-time positions which are positions which may be permanent in duration,
8 but which require less than a calendar or fiscal year average of one hundred
9 (100) hours of work per month, determined by using the number of months
10 actually worked within a calendar or fiscal year, in the performance of duty,
11 and
- 12 (e) Interim positions which are positions established for a one-time or recurring
13 need not to exceed nine (9) months;
- 14 (22) "Delayed contribution payment" means an amount paid by an employee for
15 purchase of current service. The amount shall be determined using the same formula
16 in KRS 61.5525, and the payment shall not be picked up by the employer. A
17 delayed contribution payment shall be deposited to the member's contribution
18 account and considered as accumulated contributions of the individual member. In
19 determining payments under this subsection, the formula found in this subsection
20 shall prevail over the one found in KRS 212.434;
- 21 (23) "Parted employer" means a department, portion of a department, board, or agency,
22 such as Outwood Hospital and School, which previously participated in the system,
23 but due to lease or other contractual arrangement is now operated by a publicly held
24 corporation or other similar organization, and therefore is no longer participating in
25 the system;
- 26 (24) "Retired member" means any former member receiving a retirement allowance or
27 any former member who has filed the necessary documents for retirement benefits

- 1 and is no longer contributing to the retirement system;
- 2 (25) "Current rate of pay" means the member's actual hourly, daily, weekly, biweekly,
3 monthly, or yearly rate of pay converted to an annual rate as defined in final rate of
4 pay. The rate shall be certified by the employer;
- 5 (26) "Beneficiary" means the person or persons or estate or trust or trustee designated by
6 the member in accordance with KRS 61.542 or 61.705 to receive any available
7 benefits in the event of the member's death. As used in KRS 61.702, "beneficiary"
8 does not mean an estate, trust, or trustee;
- 9 (27) "Recipient" means the retired member or the person or persons designated as
10 beneficiary by the member and drawing a retirement allowance as a result of the
11 member's death or a dependent child drawing a retirement allowance. An alternate
12 payee of a qualified domestic relations order shall be considered a recipient only for
13 purposes of KRS 61.691;
- 14 (28) "Level-percentage-of-payroll amortization method" means a method of determining
15 the annual amortization payment on the unfunded actuarial accrued liability as
16 expressed as a percentage of payroll over a set period of years. Under this method,
17 the percentage of payroll shall be projected to remain constant for all years
18 remaining in the set period and the unfunded actuarially accrued liability shall be
19 projected to be fully amortized at the conclusion of the set period;
- 20 (29) "Increment" means twelve (12) months of service credit which are purchased. The
21 twelve (12) months need not be consecutive. The final increment may be less than
22 twelve (12) months;
- 23 (30) "Person" means a natural person;
- 24 (31) "Retirement office" means the Kentucky Retirement Systems office building in
25 Frankfort;
- 26 (32) "Last day of paid employment" means the last date employer and employee
27 contributions are required to be reported in accordance with KRS 16.543, 61.543, or

1 78.615 to the retirement office in order for the employee to receive current service
 2 credit for the month. Last day of paid employment does not mean a date the
 3 employee receives payment for accrued leave, whether by lump sum or otherwise, if
 4 that date occurs twenty-four (24) or more months after previous contributions;

5 (33) "Objective medical evidence" means reports of examinations or treatments; medical
 6 signs which are anatomical, physiological, or psychological abnormalities that can
 7 be observed; psychiatric signs which are medically demonstrable phenomena
 8 indicating specific abnormalities of behavior, affect, thought, memory, orientation,
 9 or contact with reality; or laboratory findings which are anatomical, physiological,
 10 or psychological phenomena that can be shown by medically acceptable laboratory
 11 diagnostic techniques, including but not limited to chemical tests,
 12 electrocardiograms, electroencephalograms, X-rays, and psychological tests;

13 (34) "Participating" means an employee is currently earning service credit in the system
 14 as provided in KRS 61.543;

15 (35) "Month" means a calendar month; and

16 (36) "Membership date" means:

17 (a) The date upon which the member began participating in the system as
 18 provided in KRS 61.543; or

19 (b) For a member electing to participate in the system pursuant to subsection
 20 (4) of Section 1 of this Act who has not previously participated in the system
 21 or the Kentucky Teachers' Retirement System, the date the member began
 22 participating in a defined contribution plan that meets the requirements of
 23 26 U.S.C. sec. 403(b).

24 ➔ Section 3. KRS 61.592 is amended to read as follows:

25 (1) (a) "Hazardous position" for employees participating in the Kentucky Employees
 26 Retirement System, and for employees who begin participating in the County
 27 Employees Retirement System before September 1, 2008, means:

1 1. Any position whose principal duties involve active law enforcement,
 2 including the positions of probation and parole officer and
 3 Commonwealth detective, active fire suppression or prevention, or other
 4 positions, including, but not limited to, pilots of the Transportation
 5 Cabinet and paramedics and emergency medical technicians, with duties
 6 that require frequent exposure to a high degree of danger or peril and
 7 also require a high degree of physical conditioning; ~~and~~

8 2. Positions in the Department of Corrections in state correctional
 9 institutions and the Kentucky Correctional Psychiatric Center with
 10 duties that regularly and routinely require face-to-face contact with
 11 inmates; and

12 **3. Positions of employees who elect coverage under subsection (3)(b)2. of**
 13 **Section 1 of this Act and who continue to provide educational services**
 14 **and support to inmates as a Department of Corrections employee.**

15 (b) "Hazardous position" for employees who begin participating in the County
 16 Employees Retirement System on or after September 1, 2008, means police
 17 officers and firefighters as defined in KRS 61.315(1), paramedics, correctional
 18 officers with duties that routinely and regularly require face-to-face contact
 19 with inmates, and emergency medical technicians if:

- 20 1. The employee's duties require frequent exposure to a high degree of
 21 danger or peril and a high degree of physical conditioning; and
- 22 2. The employee's duties are not primarily clerical or administrative.

23 (c) The effective date of participation under hazardous duty coverage for
 24 positions in the Office of Alcoholic Beverage Control shall be April 1, 1998.
 25 The employer and employee contributions shall be paid by the employer and
 26 forwarded to the retirement system for the period not previously reported.

27 (2) (a) Each employer may request of the board hazardous duty coverage for

1 those positions as defined in subsection (1) of this section. Upon request, each
2 employer shall certify to the system, in the manner prescribed by the board,
3 the names of all employees working in a hazardous position as defined in
4 subsection (1) of this section for which coverage is requested. The
5 certification of the employer shall bear the approval of the agent or agency
6 responsible for the budget of the department or county indicating that the
7 required employer contributions have been provided for in the budget of the
8 employing department or county. The system shall determine whether the
9 employees whose names have been certified by the employer are working in
10 positions meeting the definition of a hazardous position as provided by
11 subsection (1) of this section. *This process shall not be required for*
12 *employees who elect coverage under subsection (3)(b)2. of Section 1 of this*
13 *Act.*

- 14 (b) Each employer desiring to provide hazardous duty coverage to employees who
15 begin participating in the County Employees Retirement System on or after
16 September 1, 2008, may request that the board approve hazardous duty
17 coverage for those positions that meet the criteria set forth in subsection (1)(b)
18 of this section. Each employer shall certify to the system, in the manner
19 prescribed by the board, the names of all employees working in a hazardous
20 position as defined in subsection (1)(b) of this section for which coverage is
21 requested and a job description for each position or employee. The
22 certification of the employer shall bear the approval of the agent or agency
23 responsible for the budget of the department or county indicating that the
24 required employer contributions have been provided for in the budget of the
25 employing department or county. Each employer shall also certify, under
26 penalty of perjury in accordance with KRS Chapter 523, that each employee's
27 actual job duties are accurately reflected in the job description provided to the

1 system. The system shall determine whether the employees whose names have
2 been certified by the employer are working in positions meeting the definition
3 of a hazardous position as defined in subsection (1)(b) of this section. The
4 board shall have the authority to remove any employee from hazardous duty
5 coverage if the board determines the employee is not working in a hazardous
6 duty position or if the employee is classified in a hazardous duty position but
7 has individual job duties that do not meet the definition of a hazardous duty
8 position or are not accurately reflected in the job descriptions filed by the
9 employer with the system.

10 (3) (a) **An employee who elects coverage under subsection (3)(b)2. of Section 1 of**
11 **this Act, and** an employee participating in the Kentucky Employees
12 Retirement System who is determined by the system to be working in a
13 hazardous position in accordance with subsection (2) of this section, shall
14 contribute, for each pay period for which he receives compensation, eight
15 percent (8%) of his creditable compensation. An employee participating in the
16 County Employees Retirement System who is determined by the system to be
17 working in a hazardous duty position in accordance with subsection (2) of this
18 section shall contribute, for each pay period for which he receives
19 compensation, eight percent (8%) of his creditable compensation.

20 (b) Each employer shall pay employer contributions based on the creditable
21 compensation of the employees determined by the system to be working in a
22 hazardous position at the employer contribution rate as determined by the
23 board. The rate shall be determined by actuarial methods consistent with the
24 provisions of KRS 61.565.

25 (c) If the employer participated in the system prior to electing hazardous duty
26 coverage, the employer may pay to the system the cost of converting the
27 nonhazardous service to hazardous service from the date of participation to

1 the date the payment is made, or the employer may establish a payment
2 schedule for payment of the cost of the hazardous service above that which
3 would be funded within the existing employer contribution rate. The employer
4 may extend the payment schedule to a maximum of thirty (30) years.
5 Payments made by the employer under this subsection shall be deposited to
6 the retirement allowance account of the proper retirement system and these
7 funds shall not be considered accumulated contributions of the individual
8 members. If the employer elects not to make the additional payment, the
9 employee may make the lump-sum payment in his own behalf or may pay by
10 increments. Payments made by the employee under this subsection shall not
11 be picked up, as described in KRS 61.560(4), by the employer. If neither the
12 employer nor employee makes the payment, the service prior to hazardous
13 coverage shall remain nonhazardous.

14 (4) The normal retirement age, retirement allowance, other benefits, eligibility
15 requirements, rights, and responsibilities of a member in a hazardous position, as
16 prescribed by subsections (1), (2), and (3) of this section, and the responsibilities,
17 rights, and requirements of his employer shall be as prescribed for a member and
18 employer participating in the State Police Retirement System as provided for by
19 KRS 16.505 to 16.652.

20 (5) Any person employed in a hazardous position after July 1, 1972, shall be required to
21 undergo a thorough medical examination by a licensed physician, and a copy of the
22 medical report of the physician shall be retained on file by the employee's
23 department or county and made available to the system upon request.

24 (6) If doubt exists regarding the benefits payable to a hazardous position employee
25 under this section, the board shall determine the benefits payable under KRS 61.510
26 to 61.705, or 78.510 to 78.852, or 16.505 to 16.652.

27 ➔Section 4. KRS 161.220 is amended to read as follows:

1 As used in KRS 161.220 to 161.716 and 161.990:

- 2 (1) "Retirement system" means the arrangement provided for in KRS 161.220 to
3 161.716 and 161.990 for payment of allowances to members;
- 4 (2) "Retirement allowance" means the amount annually payable during the course of his
5 natural life to a member who has been retired by reason of service;
- 6 (3) "Disability allowance" means the amount annually payable to a member retired by
7 reason of disability;
- 8 (4) "Member" means the commissioner of education, deputy commissioners, associate
9 commissioners, and all division directors in the State Department of Education,
10 **employees participating in the system pursuant to subsection (3)(b) 1. of Section 1**
11 **of this Act**, and any full-time teacher or professional occupying a position requiring
12 certification or graduation from a four (4) year college or university, as a condition
13 of employment, and who is employed by public boards, institutions, or agencies as
14 follows:
- 15 (a) Local boards of education;
- 16 (b) Eastern Kentucky University, Kentucky State University, Morehead State
17 University, Murray State University, Western Kentucky University, and any
18 community colleges established under the control of these universities;
- 19 (c) State-operated secondary area vocational education or area technology centers,
20 Kentucky School for the Blind, and Kentucky School for the Deaf;
- 21 (d) The Education Professional Standards Board, other public education agencies
22 as created by the General Assembly, and those members of the administrative
23 staff of the Teachers' Retirement System of the State of Kentucky whom the
24 board of trustees may designate by administrative regulation;
- 25 (e) Regional cooperative organizations formed by local boards of education or
26 other public educational institutions listed in this subsection, for the purpose
27 of providing educational services to the participating organizations;

- 1 (f) All full-time members of the staffs of the Kentucky Association of School
2 Administrators, Kentucky Education Association, Kentucky Vocational
3 Association, Kentucky High School Athletic Association, Kentucky Academic
4 Association, and the Kentucky School Boards Association who were members
5 of the Kentucky Teachers' Retirement System or were qualified for a position
6 covered by the system at the time of employment by the association in the
7 event that the board of directors of the respective association petitions to be
8 included. The board of trustees of the Kentucky Teachers' Retirement System
9 may designate by resolution whether part-time employees of the petitioning
10 association are to be included. The state shall make no contributions on
11 account of these employees, either full-time or part-time. The association shall
12 make the employer's contributions, including any contribution that is specified
13 under KRS 161.550. The provisions of this paragraph shall be applicable to
14 persons in the employ of the associations on or subsequent to July 1, 1972;
- 15 (g) Employees of the Council on Postsecondary Education who were employees
16 of the Department for Adult Education and Literacy and who were members
17 of the Kentucky Teachers' Retirement System at the time the department was
18 transferred to the council pursuant to Executive Order 2003-600;
- 19 (h) The Office of Career and Technical Education, except that the executive
20 director shall not be a member;
- 21 (i) The Office of Vocational Rehabilitation;
- 22 (j) The Kentucky Educational Collaborative for State Agency Children;
- 23 (k) The Governor's Scholars Program;
- 24 (l) Any person who is retired for service from the retirement system and is
25 reemployed by an employer identified in this subsection in a position that the
26 board of trustees deems to be a member;
- 27 (m) Employees of the former Cabinet for Workforce Development who are

1 transferred to the Kentucky Community and Technical College System and
2 who occupy positions covered by the Kentucky Teachers' Retirement System
3 shall remain in the Teachers' Retirement System. New employees occupying
4 these positions, as well as newly created positions qualifying for Teachers'
5 Retirement System coverage that would have previously been included in the
6 former Cabinet for Workforce Development, shall be members of the
7 Teachers' Retirement System;

8 (n) Effective January 1, 1998, employees of state community colleges who are
9 transferred to the Kentucky Community and Technical College System shall
10 continue to participate in federal old age, survivors, disability, and hospital
11 insurance, and a retirement plan other than the Kentucky Teachers' Retirement
12 System offered by Kentucky Community and Technical College System. New
13 employees occupying positions in the Kentucky Community and Technical
14 College System as referenced in KRS 164.5807(5) that would not have
15 previously been included in the former Cabinet for Workforce Development,
16 shall participate in federal old age, survivors, disability, and hospital insurance
17 and have a choice at the time of employment of participating in a retirement
18 plan provided by the Kentucky Community and Technical College System,
19 including participation in the Kentucky Teachers' Retirement System, on the
20 same basis as faculty of the state universities as provided in KRS 161.540 and
21 161.620;

22 (o) Employees of the Office of General Counsel, the Office of Budget and
23 Administrative Services, and the Office of Quality and Human Resources
24 within the Office of the Secretary of the former Cabinet for Workforce
25 Development and the commissioners of the former Department for Adult
26 Education and Literacy and the former Department for Technical Education
27 who were contributing to the Kentucky Teachers' Retirement System as of

1 July 15, 2000; and

2 (p) Employees of the Kentucky Department of Education only who are graduates
3 of a four (4) year college or university, notwithstanding a substitution clause
4 within a job classification, and who are serving in a professional position as
5 defined by the department.

6 (5) "Present teacher" means any teacher who was a teacher on or before July 1, 1940,
7 and became a member of the retirement system created by 1938 (1st Extra. Sess.)
8 Ky. Acts ch. 1, on the date of the inauguration of the system or within one (1) year
9 after that date, and any teacher who was a member of a local teacher retirement
10 system in the public elementary or secondary schools of the state on or before July
11 1, 1940, and continued to be a member of the system until he, with the membership
12 of the local retirement system, became a member of the state Teachers' Retirement
13 System or who becomes a member under the provisions of KRS 161.470(4);

14 (6) "New teacher" means any member not a present teacher;

15 (7) "Prior service" means the number of years during which the member was a teacher
16 in Kentucky prior to July 1, 1941, except that not more than thirty (30) years' prior
17 service shall be allowed or credited to any teacher;

18 (8) "Subsequent service" means the number of years during which the teacher is a
19 member of the Teachers' Retirement System after July 1, 1941;

20 (9) "Final average salary" means the average of the five (5) highest annual salaries
21 which the member has received for service in a covered position and on which the
22 member has made contributions, or on which the public board, institution, or
23 agency has picked-up member contributions pursuant to KRS 161.540(2), or the
24 average of the five (5) years of highest salaries as defined in KRS 61.680(2)(a),
25 which shall include picked-up member contributions. Additionally, the board of
26 trustees may approve a final average salary based upon the average of the three (3)
27 highest salaries for members who are at least fifty-five (55) years of age and have a

1 minimum of twenty-seven (27) years of Kentucky service credit. However, if any of
2 the five (5) or three (3) highest annual salaries used to calculate the final average
3 salary was paid within the three (3) years immediately prior to the date of the
4 member's retirement, the amount of salary to be included for each of those three (3)
5 years for the purpose of calculating the final average salary shall be limited to the
6 lesser of:

7 (a) The member's actual salary; or

8 (b) The member's annual salary that was used for retirement purposes during each
9 of the prior three (3) years, plus a percentage increase equal to the percentage
10 increase received by all other members employed by the public board,
11 institution, or agency, or for members of school districts, the highest
12 percentage increase received by members on any one (1) rank and step of the
13 salary schedule of the school district. The increase shall be computed on the
14 salary that was used for retirement purposes.

15 This limitation shall not apply if the member receives an increase in salary in a
16 percentage exceeding that received by the other members, and this increase was
17 accompanied by a corresponding change in position or in length of employment.

18 This limitation shall also not apply to the payment to a member for accrued annual
19 leave if the individual becomes a member before July 1, 2008, or accrued sick leave
20 which is authorized by statute and which shall be included as part of a retiring
21 member's annual compensation for the member's last year of active service;

22 (10) "Annual compensation" means the total salary received by a member as
23 compensation for all services performed in employment covered by the retirement
24 system during a fiscal year. Annual compensation shall not include payment for any
25 benefit or salary adjustments made by the public board, institution, or agency to the
26 member or on behalf of the member which is not available as a benefit or salary
27 adjustment to other members employed by that public board, institution, or agency.

1 Annual compensation shall not include the salary supplement received by a member
2 under KRS 157.197(2)(c), 158.6455, or 158.782 on or after July 1, 1996. Under no
3 circumstances shall annual compensation include compensation that is earned by a
4 member while on assignment to an organization or agency that is not a public board,
5 institution, or agency listed in subsection (4) of this section. In the event that federal
6 law requires that a member continue membership in the retirement system even
7 though the member is on assignment to an organization or agency that is not a
8 public board, institution, or agency listed in subsection (4) of this section, the
9 member's annual compensation for retirement purposes shall be deemed to be the
10 annual compensation, as limited by subsection (9) of this section, last earned by the
11 member while still employed solely by and providing services directly to a public
12 board, institution, or agency listed in subsection (4) of this section. The board of
13 trustees shall determine if any benefit or salary adjustment qualifies as annual
14 compensation. For an individual who becomes a member on or after July 1, 2008,
15 annual compensation shall not include lump-sum payments upon termination of
16 employment for accumulated annual or compensatory leave;

17 (11) "Age of member" means the age attained on the first day of the month immediately
18 following the birthdate of the member. This definition is limited to retirement
19 eligibility and does not apply to tenure of members;

20 (12) "Employ," and derivatives thereof, means relationships under which an individual
21 provides services to an employer as an employee, as an independent contractor, as
22 an employee of a third party, or under any other arrangement as long as the services
23 provided to the employer are provided in a position that would otherwise be covered
24 by the Kentucky Teachers' Retirement System and as long as the services are being
25 provided to a public board, institution, or agency listed in subsection (4) of this
26 section;

27 (13) "Regular interest" means interest at three percent (3%) per annum, except for an

- 1 individual who becomes a member on or after July 1, 2008, "regular interest" means
2 interest at two and one-half percent (2.5%) per annum for purposes of crediting
3 interest to the teacher savings account or any other contributions made by the
4 employee that are refundable to the employee upon termination of employment;
- 5 (14) "Accumulated contributions" means the contributions of a member to the teachers'
6 savings fund, including picked-up member contributions as described in KRS
7 161.540(2), plus accrued regular interest;
- 8 (15) "Annuitant" means a person who receives a retirement allowance or a disability
9 allowance;
- 10 (16) "Local retirement system" means any teacher retirement or annuity system created
11 in any public school district in Kentucky in accordance with the laws of Kentucky;
- 12 (17) "Fiscal year" means the twelve (12) month period from July 1 to June 30. The
13 retirement plan year is concurrent with this fiscal year. A contract for a member
14 employed by a local board of education may not exceed two hundred sixty-one
15 (261) days in the fiscal year;
- 16 (18) "Public schools" means the schools and other institutions mentioned in subsection
17 (4) of this section;
- 18 (19) "Dependent" as used in KRS 161.520 and 161.525 means a person who was
19 receiving, at the time of death of the member, at least one-half (1/2) of the support
20 from the member for maintenance, including board, lodging, medical care, and
21 related costs;
- 22 (20) "Active contributing member" means a member currently making contributions to
23 the Teachers' Retirement System, who made contributions in the next preceding
24 fiscal year, for whom picked-up member contributions are currently being made, or
25 for whom these contributions were made in the next preceding fiscal year;
- 26 (21) "Full-time" means employment in a position that requires services on a continuing
27 basis equal to at least seven-tenths (7/10) of normal full-time service on a fiscal year

1 basis;

2 (22) "Full actuarial cost," when used to determine the payment that a member must pay
 3 for service credit means the actuarial value of all costs associated with the
 4 enhancement of a member's benefits or eligibility for benefit enhancements,
 5 including health insurance supplement payments made by the retirement system.
 6 The actuary for the retirement system shall determine the full actuarial value costs
 7 and actuarial cost factor tables as provided in KRS 161.400; and

8 (23) "Last annual compensation" means the annual compensation, as defined by
 9 subsection (10) of this section and as limited by subsection (9) of this section,
 10 earned by the member during the most recent period of contributing service, either
 11 consecutive or nonconsecutive, that is sufficient to provide the member with one (1)
 12 full year of service credit in the Kentucky Teachers' Retirement System, and which
 13 compensation is used in calculating the member's initial retirement allowance,
 14 excluding bonuses, retirement incentives, payments for accumulated sick, annual,
 15 personal and compensatory leave, and any other lump-sum payment. For an
 16 individual who becomes a member on or after July 1, 2008, payments for annual or
 17 compensatory leave shall not be included in determining the member's last annual
 18 compensation.

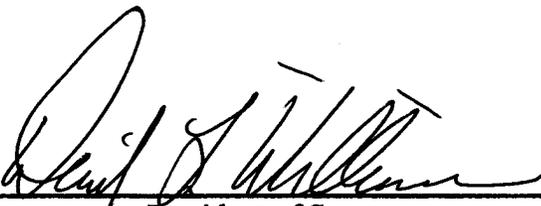
19 ➔Section 5. For employees electing to be covered under KRS Chapter 18A
 20 pursuant to subsection (3)(b)2. of Section 1 of this Act, hazardous duty contributions,
 21 coverage, and benefits shall begin July 1, 2010. Hazardous duty coverage shall continue
 22 while the employee is employed with the Department of Corrections in a position
 23 providing educational service and support to inmates.

24 ➔Section 6: Whereas the transfer of employees under Section 1 of this Act takes
 25 effect on July 1, 2010, and whereas effected employees must make their choice of
 26 benefits as of June 15, 2010, after being counseled by the Department of Corrections, the
 27 Kentucky Community and Technical College System, and the Personnel Cabinet, an

- 1 emergency is declared to exist, and this Act takes effect upon its passage and approval by
- 2 the Governor or upon its otherwise becoming law.



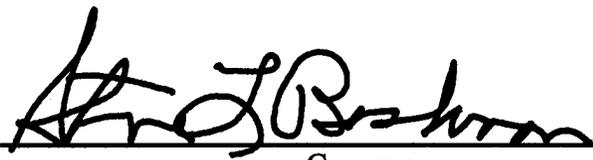
Speaker-House of Representatives



President of Senate

Attest: 

Chief Clerk of House of Representatives

Approved 

Governor

Date 