

**SENATE BILL No. 237**

By Committee on Federal and State Affairs

3-14

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1 AN ACT concerning the Kansas public employee retirement system;  
2 dealing with military service; amending K.S.A. 2012 Supp. 74-4902  
3 and repealing the existing section.  
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5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2012 Supp. 74-4902 is hereby amended to read as  
7 follows: 74-4902. As used in articles 49 and 49a of chapter 74, and  
8 amendments thereto, unless otherwise provided or the context otherwise  
9 requires:

10 (1) "Accumulated contributions" means the sum of all contributions  
11 by a member to the system which are credited to the member's account,  
12 with interest allowed thereon;

13 (2) "acts" means the provisions of articles 49 and 49a of the Kansas  
14 Statutes Annotated, and amendments thereto;

15 (3) "actuarial equivalent" means an annuity or benefit of equal value  
16 to the accumulated contributions, annuity or benefit, when computed upon  
17 the basis of the actuarial tables in use by the system. Whenever the amount  
18 of any benefit is to be determined on the basis of actuarial assumptions,  
19 the assumptions shall be specified in a way that precludes employer  
20 discretion;

21 (4) "actuarial tables" means the actuarial tables approved and in use  
22 by the board at any given time;

23 (5) "actuary" means the actuary or firm of actuaries employed or  
24 retained by the board at any given time;

25 (6) "agent" means the individual designated by each participating  
26 employer through whom system transactions and communication are  
27 directed;

28 (7) "beneficiary" means, subject to the provisions of K.S.A. 74-4927,  
29 and amendments thereto, any natural person or persons, estate or trust, or  
30 any combination thereof, named by a member to receive any benefits as  
31 provided for by this act. Designations of beneficiaries by a member who is  
32 a member of more than one retirement system made on or after July 1,  
33 1987, shall be the basis of any benefits payable under all systems unless  
34 otherwise provided by law. Except as otherwise provided by subsection  
35 (33) of this section, if there is no named beneficiary living at *the* time of  
36 *the* member's death, any benefits provided for by this act shall be paid to:

1 (A) The member's surviving spouse; (B) the member's dependent child or  
2 children; (C) the member's dependent parent or parents; (D) the member's  
3 nondependent child or children; (E) the member's nondependent parent or  
4 parents; (F) the estate of the deceased member; in the order of preference  
5 as specified in this subsection;

6 (8) "board of trustees," "board" or "trustees" means the managing  
7 body of the system which is known as the Kansas public employees  
8 retirement system board of trustees;

9 (9) "compensation" means, except as otherwise provided, all salary,  
10 wages and other remuneration payable to a member for personal services  
11 performed for a participating employer, including maintenance or any  
12 allowance in lieu thereof provided a member as part of compensation, but  
13 not including reimbursement for travel or moving expenses or on and after  
14 July 1, 1994, payment pursuant to an early retirement incentive program  
15 made prior to the retirement of the member. Beginning with the employer's  
16 fiscal year which begins in calendar year 1991 or for employers other than  
17 the state of Kansas, beginning with the fiscal year which begins in  
18 calendar year 1992, when the compensation of a member who remains in  
19 substantially the same position during any two consecutive years of  
20 participating service used in calculating final average salary is increased  
21 by an amount which exceeds 15%, then the amount of such increase which  
22 exceeds 15% shall not be included in compensation, except that: (A) Any  
23 amount of compensation for accumulated sick leave or vacation or annual  
24 leave paid to the member; (B) any increase in compensation for any  
25 member due to a reclassification or reallocation of such member's position  
26 or a reassignment of such member's job classification to a higher range or  
27 level; and (C) any increase in compensation as provided in any contract  
28 entered into prior to January 1, 1991, and still in force on the effective date  
29 of this act, pursuant to an early retirement incentive program as provided  
30 in K.S.A. 72-5395 et seq., and amendments thereto, shall be included in  
31 the amount of compensation of such member used in determining such  
32 member's final average salary and shall not be subject to the 15%  
33 limitation provided in this subsection. Any contributions by such member  
34 on the amount of such increase which exceeds 15% which is not included  
35 in compensation shall be returned to the member. Unless otherwise  
36 provided by law, beginning with the employer's fiscal year coinciding with  
37 or following July 1, 1985, compensation shall include any amounts for tax  
38 sheltered annuities or deferred compensation plans. Beginning with the  
39 employer's fiscal year which begins in calendar year 1991, compensation  
40 shall include amounts under sections 403b, 457 and 125 of the federal  
41 internal revenue code of 1986 and, as the board deems appropriate, any  
42 other section of the federal internal revenue code of 1986 which defers or  
43 excludes amounts from inclusion in income. For purposes of applying

1 limits under the federal internal revenue code "compensation" shall have  
2 the meaning as provided in K.S.A. 74-49,123, and amendments thereto.  
3 For purposes of this subsection and application to the provisions of  
4 subsection (4) of K.S.A. 74-4927, and amendments thereto,  
5 "compensation" shall not include any payments made by the state board of  
6 regents pursuant to the provisions of subsection (5) of K.S.A. 74-4927a,  
7 and amendments thereto, to a member of the faculty or other person  
8 defined in subsection (1)(a) of K.S.A. 74-4925, and amendments thereto;

9 (10) "credited service" means the sum of participating service and  
10 prior service and in no event shall credited service include any service  
11 which is credited under another retirement plan authorized under any law  
12 of this state;

13 (11) "dependent" means a parent or child of a member who is  
14 dependent upon the member for at least  $\frac{1}{2}$  of such parent or child's  
15 support;

16 (12) "effective date" means the date upon which the system becomes  
17 effective by operation of law;

18 (13) "eligible employer" means the state of Kansas, and any county,  
19 city, township, special district or any instrumentality of any one or several  
20 of the aforementioned or any noncommercial public television or radio  
21 station located in this state which receives state funds allocated by the  
22 Kansas public broadcasting commission whose employees are covered by  
23 social security. If a class or several classes of employees of any above  
24 defined employer are not covered by social security, such employer shall  
25 be deemed an eligible employer only with respect to such class or those  
26 classes of employees who are covered by social security;

27 (14) "employee" means any appointed or elective officer or employee  
28 of a participating employer whose employment is not seasonal or  
29 temporary and whose employment requires at least 1,000 hours of work  
30 per year, and any such officer or employee who is concurrently employed  
31 performing similar or related tasks by two or more participating  
32 employers, who each remit employer and employee contributions on  
33 behalf of such officer or employee to the system, and whose combined  
34 employment is not seasonal or temporary, and whose combined  
35 employment requires at least 1,000 hours of work per year, but not  
36 including: (A) Any employee who is a contributing member of the United  
37 States civil service retirement system; (B) any employee who is a  
38 contributing member of the federal employees retirement system; (C) any  
39 employee who is a leased employee as provided in section 414 of the  
40 federal internal revenue code of a participating employer; and (D) any  
41 employee or class of employees specifically exempted by law. After June  
42 30, 1975, no person who is otherwise eligible for membership in the  
43 Kansas public employees retirement system shall be barred from such

1 membership by reason of coverage by, eligibility for or future eligibility  
2 for a retirement annuity under the provisions of K.S.A. 74-4925, and  
3 amendments thereto, except that no person shall receive service credit  
4 under the Kansas public employees retirement system for any period of  
5 service for which benefits accrue or are granted under a retirement annuity  
6 plan under the provisions of K.S.A. 74-4925, and amendments thereto.  
7 After June 30, 1982, no person who is otherwise eligible for membership  
8 in the Kansas public employees retirement system shall be barred from  
9 such membership by reason of coverage by, eligibility for or future  
10 eligibility for any benefit under another retirement plan authorized under  
11 any law of this state, except that no such person shall receive service credit  
12 under the Kansas public employees retirement system for any period of  
13 service for which any benefit accrues or is granted under any such  
14 retirement plan. Employee shall include persons who are in training at or  
15 employed by, or both, a sheltered workshop for the blind operated by the  
16 secretary of social and rehabilitation services. The entry date for such  
17 persons shall be the beginning of the first pay period of the fiscal year  
18 commencing in calendar year 1986. Such persons shall be granted prior  
19 service credit in accordance with K.S.A. 74-4913, and amendments  
20 thereto. However, such persons classified as home industry employees  
21 shall not be covered by the retirement system. Employees shall include  
22 any member of a board of county commissioners of any county and any  
23 council member or commissioner of a city whose compensation is equal to  
24 or exceeds \$5,000 per year;

25 (15) "entry date" means the date as of which an eligible employer  
26 joins the system. The first entry date pursuant to this act is January 1,  
27 1962;

28 (16) "executive director" means the managing officer of the system  
29 employed by the board under this act;

30 (17) "final average salary" means in the case of a member who retires  
31 prior to January 1, 1977, and in the case of a member who retires after  
32 January 1, 1977, and who has less than five years of participating service  
33 after January 1, 1967, the average highest annual compensation paid to  
34 such member for any five years of the last 10 years of participating service  
35 immediately preceding retirement or termination of employment, or in the  
36 case of a member who retires on or after January 1, 1977, and who has five  
37 or more years of participating service after January 1, 1967, the average  
38 highest annual compensation paid to such member on or after January 1,  
39 1967, for any five years of participating service preceding retirement or  
40 termination of employment, or, in any case, if participating service is less  
41 than five years, then the average annual compensation paid to the member  
42 during the full period of participating service, or, in any case, if the  
43 member has less than one calendar year of participating service such

1 member's final average salary shall be computed by multiplying such  
2 member's highest monthly salary received in that year by 12; in the case of  
3 a member who became a member under subsection (3) of K.S.A. 74-4925,  
4 and amendments thereto, or who became a member with a participating  
5 employer as defined in subsection (3) of K.S.A. 74-4931, and amendments  
6 thereto, and who elects to have compensation paid in other than 12 equal  
7 installments, such compensation shall be annualized as if the member had  
8 elected to receive 12 equal installments for any such periods preceding  
9 retirement; in the case of a member who retires after July 1, 1987, the  
10 average highest annual compensation paid to such member for any four  
11 years of participating service preceding retirement or termination of  
12 employment; in the case of a member who retires on or after July 1, 1993,  
13 whose date of membership in the system is prior to July 1, 1993, and any  
14 member who is in such member's membership waiting period on July 1,  
15 1993, and whose date of membership in the system is on or after July 1,  
16 1993, the average highest annual compensation, as defined in subsection  
17 (9), paid to such member for any four years of participating service  
18 preceding retirement or termination of employment or the average highest  
19 annual salary, as defined in subsection (34), paid to such member for any  
20 three years of participating service preceding retirement or termination of  
21 employment, whichever is greater; and in the case of a member who retires  
22 on or after July 1, 1993, and whose date of membership in the system is on  
23 or after July 1, 1993, the average highest annual salary, as defined in  
24 subsection (34), paid to such member for any three years of participating  
25 service preceding retirement or termination of employment. Final average  
26 salary shall not include any purchase of participating service credit by a  
27 member as provided in subsection (2) of K.S.A. 74-4919h, and  
28 amendments thereto, which is completed within five years of retirement.  
29 For any application to purchase or repurchase service credit for a certain  
30 period of service as provided by law received by the system after May 17,  
31 1994, for any member who will have contributions deducted from such  
32 member's compensation at a percentage rate equal to two or three times the  
33 employee's rate of contribution or will begin paying to the system a lump-  
34 sum amount for such member's purchase or repurchase and such  
35 deductions or lump-sum payment commences after the commencement of  
36 the first payroll period in the third quarter, "final average salary" shall not  
37 include any amount of compensation or salary which is based on such  
38 member's purchase or repurchase. Any application to purchase or  
39 repurchase multiple periods of service shall be treated as multiple  
40 applications. For purposes of this subsection, the date that such member is  
41 first hired as an employee for members who are employees of employers  
42 that elected to participate in the system on or after January 1, 1994, shall  
43 be the date that such employee's employer elected to participate in the

1 system. In the case of any former member who was eligible for assistance  
2 pursuant to K.S.A. 74-4925, and amendments thereto, prior to July 1,  
3 1998, for the purpose of calculating final average salary of such member,  
4 such member's final average salary shall be based on such member's salary  
5 while a member of the system or while eligible for assistance pursuant to  
6 K.S.A. 74-4925, and amendments thereto, whichever is greater;

7 (18) "fiscal year" means, for the Kansas public employees retirement  
8 system, the period commencing July 1 of any year and ending June 30 of  
9 the next;

10 (19) "Kansas public employees retirement fund" means the fund  
11 created by this act for payment of expenses and benefits under the system  
12 and referred to as the fund;

13 (20) "leave of absence" means a period of absence from employment  
14 without pay, authorized and approved by the employer, and which after the  
15 effective date does not exceed one year;

16 (21) "member" means an eligible employee who is in the system and  
17 is making the required employee contributions; any former employee who  
18 has made the required contributions to the system and has not received a  
19 refund if such member is within five years of termination of employment  
20 with a participating employer; or any former employee who has made the  
21 required contributions to the system, has not yet received a refund and has  
22 been granted a vested benefit;

23 (22) "military service" means service in the uniformed forces of the  
24 United States, for which retirement benefit credit must be given under the  
25 provisions of USERRA or service in the armed forces of the United States  
26 or in the commissioned corps of the United States public health service,  
27 which service is immediately preceded by a period of employment as an  
28 employee or by the entering into of an employment contract with a  
29 participating employer and is followed by return to employment as an  
30 employee with the same or another participating employer within ~~12~~ 24  
31 months immediately following discharge from such military service,  
32 except that if the board determines that such return within ~~12~~ 24 months  
33 was made impossible by reason of a service-connected disability, the  
34 period within which the employee must return to employment with a  
35 participating employer shall be extended not more than ~~two~~ three years  
36 from the date of discharge or separation from military service;

37 (23) "normal retirement date" means the date on or after which a  
38 member may retire with full retirement benefits pursuant to K.S.A. 74-  
39 4914, and amendments thereto;

40 (24) "participating employer" means an eligible employer who has  
41 agreed to make contributions to the system on behalf of its employees;

42 (25) "participating service" means the period of employment after the  
43 entry date for which credit is granted a member;

1 (26) "prior service" means the period of employment of a member  
2 prior to the entry date for which credit is granted a member under this act;

3 (27) "prior service annual salary" means the highest annual salary, not  
4 including any amounts received as payment for overtime or as  
5 reimbursement for travel or moving expense, received for personal  
6 services by the member from the current employer in any one of the three  
7 calendar years immediately preceding January 1, 1962, or the entry date of  
8 the employer, whichever is later, except that if a member entered the  
9 employment of the state during the calendar year 1961, the prior service  
10 annual salary shall be computed by multiplying such member's highest  
11 monthly salary received in that year by 12;

12 (28) "retirant" means a member who has retired under this system;

13 (29) "retirement benefit" means a monthly income or the actuarial  
14 equivalent thereof paid in such manner as specified by the member  
15 pursuant to this act or as otherwise allowed to be paid at the discretion of  
16 the board, with benefits accruing from the first day of the month  
17 coinciding with or following retirement and ending on the last day of the  
18 month in which death occurs. Upon proper identification a surviving  
19 spouse may negotiate the warrant issued in the name of the retirant. If  
20 there is no surviving spouse, the last warrant shall be payable to the  
21 designated beneficiary;

22 (30) "retirement system" or "system" means the Kansas public  
23 employees retirement system as established by this act and as it may be  
24 amended;

25 (31) "social security" means the old age, survivors and disability  
26 insurance section of the federal social security act;

27 (32) "trust" means an express trust, created by a trust instrument,  
28 including a will, designated by a member to receive payment of the  
29 insured death benefit under K.S.A. 74-4927, and amendments thereto, and  
30 payment of the member's accumulated contributions under subsection (1)  
31 of K.S.A. 74-4916, and amendments thereto. A designation of a trust shall  
32 be filed with the board. If no will is admitted to probate within six months  
33 after the death of the member or no trustee qualifies within such six  
34 months or if the designated trust fails, for any reason whatsoever, the  
35 insured death benefit under K.S.A. 74-4927, and amendments thereto, and  
36 the member's accumulated contributions under subsection (1) of K.S.A.  
37 74-4916, and amendments thereto, shall be paid in accordance with the  
38 provisions of subsection (7) of this section as in other cases where there is  
39 no named beneficiary living at the time of the member's death and any  
40 payments so made shall be a full discharge and release to the system from  
41 any further claims;

42 (33) "salary" means all salary and wages payable to a member for  
43 personal services performed for a participating employer, including

1 maintenance or any allowance in lieu thereof provided a member as part of  
2 salary. Salary shall not include reimbursement for travel or moving  
3 expenses, payment for accumulated sick leave or vacation or annual leave,  
4 severance pay or any other payments to the member determined by the  
5 board to not be payments for personal services performed for a  
6 participating employer constituting salary or on and after July 1, 1994,  
7 payment pursuant to an early retirement incentive program made prior to  
8 the retirement of the member. When the salary of a member who remains  
9 in substantially the same position during any two consecutive years of  
10 participating service used in calculating final average salary is increased  
11 by an amount which exceeds 15%, then the amount of such increase which  
12 exceeds 15% shall not be included in salary. Any contributions by such  
13 member on the amount of such increase which exceeds 15% which is not  
14 included in compensation shall be returned to the member. Unless  
15 otherwise provided by law, salary shall include any amounts for tax  
16 sheltered annuities or deferred compensation plans. Salary shall include  
17 amounts under sections 403b, 457 and 125 of the federal internal revenue  
18 code of 1986 and, as the board deems appropriate, any other section of the  
19 federal internal revenue code of 1986 which defers or excludes amounts  
20 from inclusion in income. For purposes of applying limits under the  
21 federal internal revenue code "salary" shall have the meaning as provided  
22 in K.S.A. 74-49,123, and amendments thereto. In any case, if participating  
23 service is less than three years, then the average annual salary paid to the  
24 member during the full period of participating service, or, in any case, if  
25 the member has less than one calendar year of participating service such  
26 member's final average salary shall be computed by multiplying such  
27 member's highest monthly salary received in that year by 12;

28 (34) "federal internal revenue code" means the federal internal  
29 revenue code of 1954 or 1986, as in effect on July 1, 2008, and as  
30 applicable to a governmental plan; and

31 (35) "USERRA" means the federal uniformed services employment  
32 and reemployment rights act of 1994 as in effect on July 1, 2008.

33 Sec. 2. K.S.A. 2012 Supp. 74-4902 is hereby repealed.

34 Sec. 3. This act shall take effect and be in force from and after its  
35 publication in the statute book.