

1 AN ACT relating to retirement benefits for legislators.

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

3 ➔SECTION 1. A NEW SECTION OF KRS 6.500 to 6.577 IS CREATED TO
4 READ AS FOLLOWS:

5 *Notwithstanding any other provision of KRS 6.500 to 6.577, 21.345 to 21.580, and*
6 *61.510 to 61.705 to the contrary:*

7 *(1) Any member who began contributing to the Legislators' Retirement Plan prior to*
8 *January 1, 2014, may, in lieu of the benefits he or she is currently eligible to*
9 *receive from the Legislators' Retirement Plan, elect to receive the benefits and*
10 *rights provided to members who began participating in the Kentucky Employees*
11 *Retirement System on or after January 1, 2014, including participating in the*
12 *hybrid cash balance plan created pursuant to Section 6 of this Act;*

13 *(2) For each member who makes an election provided by this section:*

14 *(a) Any service credit the member has accrued prior to January 1, 2014, shall*
15 *be considered as service credit earned on or after January 1, 2014, for*
16 *purposes of determining benefits under Section 6 of this Act;*

17 *(b) On the member's effective election date, the value of the member's*
18 *accumulated account balance as defined by KRS 21.345(6)(b) shall be*
19 *deposited into the member's hybrid cash balance account as provided by*
20 *Section 6 of this Act and considered part of the member's accumulated*
21 *account balance;*

22 *(c) On the member's effective election date, an employer pay credit as provided*
23 *by Section 6 of this Act shall be added to the member's accumulated*
24 *account balance for each month the member contributed to the Legislators'*
25 *Retirement Plan prior to his or her effective election date; and*

26 *(d) Interest credits as provided by Section 6 of this Act shall only be applied for*
27 *periods occurring on or after the member's effective election date;*

1 (3) Before accepting an election provided by this section, the boards of the Judicial
2 Form Retirement System and Kentucky Retirement Systems shall provide the
3 member with information detailing the potential results of the member's election;

4 (4) An election made pursuant to this section shall be irrevocable; and

5 (5) (a) A member of the Legislators' Retirement Plan shall not be eligible to make
6 an election prescribed by this section until the Judicial Form Retirement
7 System receives a favorable private letter ruling from the Internal Revenue
8 Service regarding this section.

9 (b) If the Internal Revenue Service denies the request for a private letter ruling
10 as provided by paragraph (a) of this subsection, this section shall be void.

11 (c) The Judicial Form Retirement System and the Kentucky Retirement
12 Systems may promulgate administrative regulations under KRS Chapter
13 13A in order to carry out this section.

14 ➔SECTION 2. A NEW SECTION OF KRS 6.500 to 6.577 IS CREATED TO
15 READ AS FOLLOWS:

16 Notwithstanding any other provision of KRS 6.500 to 6.577, 21.345 to 21.580, and
17 61.510 to 61.705 to the contrary:

18 (1) Any retired member who began contributing to the Legislators' Retirement Plan
19 prior to January 1, 2014, may, in lieu of the benefits he or she is currently
20 receiving from the Legislators' Retirement Plan, elect to receive the benefits and
21 rights provided to members who began participating in the Kentucky Employees
22 Retirement System on or after January 1, 2014, including participating in the
23 hybrid cash balance plan created pursuant to Section 6 of this Act;

24 (2) For each member who makes an election provided by this section:

25 (a) On the member's effective election date, the member shall forfeit all
26 monthly retirement benefits computed by the Judicial Form Retirement
27 System pursuant to KRS 6.520 and 21.400 and based on the member's

1 actual participation date and, in lieu thereof, have his or her benefits
 2 recomputed by the Kentucky Retirement Systems pursuant to Section 6 of
 3 this Act;

4 **(b) Any service credit the member accrued prior to his or her retirement date**
 5 **shall be considered as service credit earned on or after January 1, 2014, for**
 6 **purposes of determining benefits under Section 6 of this Act; and**

7 **(c) On the member's effective election date, a lump-sum payment of the**
 8 **actuarial value of the member's remaining benefits as determined by the**
 9 **Judicial Form Retirement System shall be transferred to the Kentucky**
 10 **Retirement Systems to be deposited into the member's hybrid cash balance**
 11 **account as provided by Section 6 of this Act and considered part of the**
 12 **member's recalculated accumulated account balance;**

13 **(3) Before accepting an election provided by this section, the boards of the Judicial**
 14 **Form Retirement System and Kentucky Retirement Systems shall provide the**
 15 **member with information detailing the potential results of the member's election;**

16 **(4) An election made pursuant to this section shall be irrevocable; and**

17 **(5) (a) A member of the Legislators' Retirement Plan shall not be eligible to make**
 18 **an election prescribed by this section until the Judicial Form Retirement**
 19 **System receives a favorable private letter ruling from the Internal Revenue**
 20 **Service regarding this section.**

21 **(b) If the Internal Revenue Service denies the request for a private letter ruling**
 22 **as provided by paragraph (a) of this subsection, this section shall be void.**

23 **(c) The Judicial Form Retirement System and the Kentucky Retirement**
 24 **Systems may promulgate administrative regulations under KRS Chapter**
 25 **13A in order to carry out this section.**

26 ➔ Section 3. KRS 6.505 is amended to read as follows:

27 (1) (a) **Except as provided by Sections 1 and 2 of this Act,** each legislator in office

1 on July 1, 1980, may within thirty (30) days after that date, and any legislator
2 thereafter taking office may within thirty (30) days after the date thereof, elect
3 to make monthly contributions to the Legislators' Retirement Plan, in an
4 amount equal to five percent (5%) of his monthly creditable compensation, as
5 defined in KRS 61.510(13). The election shall be effective to establish
6 membership in the plan as of July 1, 1980, or as of the date from which the
7 thirty (30) day period is measured, as the case may be. Provided, however, that
8 any legislator who was in office on July 1, 1980, and who is in office at the
9 time he makes the election may, after the expiration of the thirty (30) day
10 period and until May 1, 1982, make the election, in which event he shall pay
11 to the Legislators' Retirement Plan, for the months between July 1, 1980, and
12 the date of his election such sum as, when added to any member's contribution
13 by him that is transferred from another retirement system under KRS 6.535,
14 will equal the member's contribution required by this section. If the member
15 makes his election after February 1, 1981, he shall in addition pay to the plan
16 interest on the foregoing sum, at six percent (6%) per annum, calculated as if
17 the sum consisted of equal monthly payments, one (1) of which was due at the
18 end of each month between July 1, 1980, and the date the election was made.
19 The election shall be addressed to and filed with the secretary of the Finance
20 and Administration Cabinet and shall constitute an authorization to the
21 secretary to thereafter cause to be deducted from the member's monthly
22 creditable compensation an amount equal to five percent (5%) thereof, as a
23 voluntarily elected contribution by the member towards the funding of the
24 Legislators' Retirement Plan.

- 25 (b) 1. For a member who begins participating in the Legislators' Retirement
26 Plan prior to January 1, 2014, the election shall operate to create an
27 inviolable contract between such member and the Commonwealth,

1 guaranteeing to and vesting in the member the rights and benefits
2 provided for under KRS 6.515 to 6.530.

3 2. a. For members who begin participating in the Legislators'
4 Retirement Plan on or after January 1, 2014, the General Assembly
5 reserves the right to amend, suspend, or reduce the benefits and
6 rights provided under KRS 6.500 to 6.577 if, in its judgment, the
7 welfare of the Commonwealth so demands, except that the amount
8 of benefits the member has accrued at the time of amendment,
9 suspension, or reduction shall not be affected.

10 b. For purposes of this subparagraph, the amount of benefits the
11 member has accrued at the time of amendment, suspension, or
12 reduction shall be limited to the accumulated account balance the
13 member has accrued at the time of amendment, suspension, or
14 reduction.

15 c. The provisions of this subsection shall not be construed to limit the
16 General Assembly's authority to change any other benefit or right
17 specified by KRS 6.500 to 6.577, for members who begin
18 participating in the Legislators' Retirement Plan on or after January
19 1, 2014, except the benefits specified by subparagraph 2.b. of this
20 paragraph.

21 3. The provisions of this paragraph shall not be construed to limit the
22 General Assembly's authority to amend, reduce, or suspend the benefits
23 and rights of members of the Legislators' Retirement Plan as provided by
24 KRS 6.500 to 6.577 that the General Assembly had the authority to
25 amend, reduce, or suspend, prior to July 1, 2013.

26 (c) *Except as provided by Sections 1 and 2 of this Act,* an election once made
27 under this section either to participate or not to participate in the Legislators'

1 Retirement Plan, shall be considered to apply to all future service as a
2 legislator, whether in the same or a different office as a legislator, and whether
3 or not it is in successive terms.

4 (d) Notwithstanding the provisions of this subsection:

5 1. A legislator who becomes a member of the Legislators' Retirement Plan
6 on or after September 1, 2008, but prior to January 1, 2014, shall make
7 monthly contributions to the Legislators' Retirement Plan in an amount
8 equal to six percent (6%) of his monthly creditable compensation, as
9 defined in KRS 61.510(13).

10 2. A legislator who becomes a member of the Legislators' Retirement Plan
11 on or after January 1, 2014, shall make monthly contributions to the
12 Legislators' Retirement Plan in an amount equal to six percent (6%) of
13 his or her monthly creditable compensation, as defined in KRS
14 61.510(13), of which:

15 a. Five percent (5%) of his or her monthly creditable compensation,
16 as defined in KRS 61.510(13), shall be used to provide funding for
17 benefits provided under KRS 21.402; and

18 b. One percent (1%) of his or her monthly creditable compensation,
19 as defined in KRS 61.510(13), shall be used exclusively to help
20 fund retiree health benefits as provided by KRS 6.577 and shall not
21 be refunded to the member if the member withdraws his or her
22 accumulated account balance as provided by KRS 21.460. The
23 amounts deducted under this subdivision shall be credited to an
24 account established pursuant to 26 U.S.C. sec. 401(h), within the
25 fund established by KRS 6.530.

26 (2) A legislator entitled to elect membership in the retirement system who failed to
27 elect membership within thirty (30) days after taking office may elect membership

1 not later than August 31, 2005. An election, upon being made pursuant to this
2 section, shall operate to create an inviolable contract between the member entitled
3 to elect membership under this subsection and the Commonwealth, guaranteeing to
4 and vesting in the member the rights and benefits provided for under the terms and
5 conditions of KRS 6.500 to 6.577.

6 (3) When any legislator makes a delayed election of membership in the Legislators'
7 Retirement Plan under subsection (2) of this section, his active membership in the
8 Kentucky Employees Retirement System shall terminate, as of the date his
9 membership in the Legislators' Retirement Plan becomes effective, and any credit in
10 the Kentucky Employees Retirement System, earned for service as a legislator,
11 which he then has or which he subsequently regains while being an active member
12 of the Legislators' Retirement Plan, shall be transferred to and counted as service
13 credit in the Legislators' Retirement Plan, and shall no longer constitute credit in the
14 Kentucky Employees Retirement System, except for the purpose of validating any
15 other credit in that system if the member pays the difference, if any, between the
16 amount transferred from the Kentucky Employees Retirement System and the
17 actuarial value of the transferred service. However, any credit he then has in the
18 Kentucky Employees Retirement System, earned for service in any capacity other
19 than a legislator, shall not be affected. No person may attain credit in more than one
20 (1) of the retirement plans or systems mentioned in this section for the same period
21 of service. When credit is transferred from the Kentucky Employees Retirement
22 System to the Legislators' Retirement Plan, the Kentucky Employees Retirement
23 System shall transfer to the Legislators' Retirement Fund an amount equal to the
24 employee's and employer's contributions attributable to that credit, together with
25 interest on the contributions from the date made to the date of transfer at the
26 actuarially assumed interest rate of the Kentucky Employees Retirement System in
27 effect at the time the contributions were made, compounded annually at that same

1 interest rate.

2 (4) The state shall, solely for the purpose of compliance with Section 414(h) of the
3 United States Internal Revenue Code, pick up the employee contributions required
4 by this section for all compensation earned after August 1, 1982, and the
5 contributions so picked up shall be treated as employer contributions in determining
6 tax treatment under the United States Internal Revenue Code and KRS 141.010(10).
7 The picked-up employee contribution shall satisfy all obligations to the retirement
8 system satisfied prior to August 1, 1982, by the employee contribution, and the
9 picked-up employee contribution shall be in lieu of an employee contribution. The
10 state shall pay these picked-up employee contributions from the same source of
11 funds which is used to pay earnings to the employee. The employee shall have no
12 option to receive the contributed amounts directly instead of having them paid by
13 the employer to the system. Employee contributions picked up after August 1, 1982,
14 shall be treated for all purposes of KRS 6.500 to 6.535 in the same manner and to
15 the same extent as employee contributions made prior to August 1, 1982.

16 (5) Except as provided by Sections 1 and 2 of this Act, when any legislator elects
17 membership in the Legislators' Retirement Plan in accordance with this section, his
18 active membership in the Kentucky Employees Retirement System, State Police
19 Retirement System, County Employees Retirement System, or Teachers' Retirement
20 System shall terminate, as of the date his membership in the Legislators' Retirement
21 Plan becomes effective, and any credit in such other system or systems, earned for
22 service as a legislator, which he then has or which he subsequently regains while
23 being an active member of the Legislators' Retirement Plan, shall be transferred to
24 and counted as service credit in the Legislators' Retirement Plan, and shall no longer
25 constitute credit in such other retirement system except for the purpose of validating
26 any other credit in that system. However, any credit he then has in such other
27 retirement system, earned for service in any capacity other than a legislator, shall

1 not be affected. No person may attain credit in more than one (1) of the retirement
2 plans or systems mentioned in this section, for the same period of service.

3 (6) A member of the Legislators' Retirement Plan who would be entitled, under KRS
4 61.552, to repurchase credit in the Kentucky Employees Retirement System, for
5 previous service as a legislator, which credit had been lost by refund of
6 contributions, may pay the amount required by KRS 61.552 directly to the
7 Legislators' Retirement Plan and thereby obtain credit in that plan for such service,
8 rather than making payment to the Kentucky Employees Retirement System for
9 credit which would be transferred to the Legislators' Retirement Plan. In such event,
10 the Kentucky Employees Retirement System shall transfer to the Legislators'
11 Retirement Plan an amount equal to the employer's contributions that originally
12 were made to the Kentucky Employees Retirement System for the regained service
13 credit, with interest as provided in KRS 6.535. Six (6) months' current service shall
14 be required in the Legislators' Retirement Plan in order for the repurchased credit to
15 remain in force, the same as provided in KRS 61.552. Service purchased under this
16 subsection on or after January 1, 2014, shall not be used to determine the member's
17 participation date in the Legislators' Retirement Plan.

18 **(7) Effective August 1, 2018, the Legislators' Retirement Plan, as provided by KRS**
19 **6.500 to 6.577, shall be closed to new members. A legislator who has not**
20 **contributed to the Legislators' Retirement Plan prior to August 1, 2018, shall not**
21 **be eligible to participate in the Legislators' Retirement Plan for his or her service**
22 **as a member of the General Assembly.**

23 **(8) Effective August 1, 2018, any member who began participating in or would be**
24 **eligible to participate in the Legislators' Retirement Plan on or after January 1,**
25 **2014, including participating in the hybrid cash balance plan created pursuant to**
26 **Section 5 of this Act, shall:**

27 **(a) For a member who begins participating after August 1, 2018, be enrolled in**

1 the Kentucky Employees Retirement System under Section 6 of this Act,
 2 including participating in the hybrid cash balance plan;

3 (b) For a member who began participating on or after January 1, 2014, but
 4 prior to August 1, 2018, have the value of the member's accumulated
 5 account balance as defined by KRS 21.345(6)(b) transferred to the Kentucky
 6 Employees Retirement System and deposited into the member's hybrid cash
 7 balance account as provided by Section 6 of this Act and considered part of
 8 the member's accumulated account balance under KRS 61.510(41)(b); and

9 (c) For purposes of calculating retiree health benefits and contributions, retain
 10 the earlier date of initial participation in a state-administered retirement
 11 system, including the Legislators' Retirement Plan, the Judicial Retirement
 12 Plan, the Kentucky Retirement Systems, and the Kentucky Teachers'
 13 Retirement System.

14 Nothing in this subsection shall be construed to provide additional service credit
 15 for the member prior to the transfer date other than what has been credited to the
 16 appropriate retirement system.

17 ➔Section 4. KRS 21.374 is amended to read as follows:

18 Notwithstanding KRS ~~[6.500 to 6.577 and]~~21.345 to 21.580:

19 (1) Subject to the provisions of this section, any member who began participating in
 20 ~~[the Legislators' Retirement Plan or]~~the Judicial Retirement Plan prior to January 1,
 21 2014, may in lieu of the benefits he or she is currently eligible to receive under the
 22 plan~~[plans]~~, elect to receive the benefits and rights provided to members who began
 23 participating in ~~[the Legislators' Retirement Plan or]~~the Judicial Retirement Plan on
 24 or after January 1, 2014, including participating in the hybrid cash balance plan
 25 created pursuant to KRS 21.402;

26 (2) The election provided by this section shall be made in writing and on a form
 27 prescribed by the Judicial Form Retirement System board;

- 1 (3) For each member who makes an election provided by this section:
- 2 (a) Any service credit the member has accrued prior to January 1, 2014, shall be
- 3 considered as service credit earned on or after January 1, 2014, for purposes of
- 4 determining benefits under KRS~~[6.500 to 6.577 and]~~ 21.345 to 21.580;
- 5 (b) On the member's effective election date, the value of the member's
- 6 accumulated contributions, less any interest, shall be deposited into the
- 7 member's hybrid cash balance account as provided by KRS 21.402 and
- 8 considered part of the member's accumulated account balance;
- 9 (c) On the member's effective election date, an employer pay credit as provided
- 10 by KRS 21.402 shall be added to the member's accumulated account balance
- 11 for each month the member contributed to ~~[the Legislators' Retirement Plan or~~
- 12 ~~]the Judicial Retirement Plan~~ prior to his or her effective election date; and
- 13 (d) Interest credits as provided by KRS 21.402 shall only be applied for periods
- 14 occurring on or after the member's effective election date;
- 15 (4) Before accepting an election provided by this section, the Judicial Form Retirement
- 16 System board shall provide the member with information detailing the potential
- 17 results of the member's election;
- 18 (5) An election made pursuant to this section shall be irrevocable; and
- 19 (6) (a) A member of ~~[the Legislators' Retirement Plan or]~~the Judicial Retirement
- 20 Plan shall not be eligible to make an election prescribed by this section until
- 21 the Judicial Form Retirement System receives a favorable private letter ruling
- 22 from the Internal Revenue Service regarding this section.
- 23 (b) If the Internal Revenue Service denies the request for a private letter ruling as
- 24 provided by paragraph (a) of this subsection, this section shall be void.
- 25 (c) The Judicial Form Retirement System may promulgate administrative
- 26 regulations under KRS Chapter 13A in order to carry out this section.
- 27 ➔Section 5. KRS 21.402 is amended to read as follows:

- 1 (1) A member of ~~the Legislators' Retirement Plan or~~ the Judicial Retirement Plan,
2 whose participation in ~~the Legislators' Retirement Plan or~~ the Judicial Retirement
3 Plan begins on or after January 1, 2014, or a member making an election pursuant to
4 KRS 21.374, shall receive the retirement benefits provided by this section in lieu of
5 the retirement benefits provided under KRS ~~6.520 and~~ 21.400. The retirement
6 benefit provided by this section shall be known as the hybrid cash balance plan and
7 shall operate as another benefit tier within ~~the Legislators' Retirement Plan and~~ the
8 Judicial Retirement Plan.
- 9 (2) The hybrid cash balance plan shall provide a retirement benefit based upon the
10 member's accumulated account balance, which shall include:
- 11 (a) Contributions made by the member as provided by KRS ~~6.500 to 6.577 and~~
12 21.345 to 21.580, except for employee contributions prescribed by KRS
13 ~~6.505(1)(d)2.b. and~~ 21.360(1)(a)3.b.;
- 14 (b) An employer pay credit of four percent (4%) of the creditable compensation
15 earned by the employee for each month the employee is contributing to the
16 hybrid cash balance plan provided by this section; and
- 17 (c) Interest credits added annually to the member's accumulated account balance
18 as provided by this section.
- 19 (3) (a) Member contributions and employer pay credits as provided by subsection
20 (2)(a) and (b) of this section shall be credited to the member's account
21 monthly as contributions are reported and posted to the plan.
- 22 (b) Interest credits, as provided by subsection (2)(c) of this section, shall be
23 credited to the member's account annually on June 30 of each fiscal year, as
24 determined by subsection (4) of this section.
- 25 (4) (a) On June 30 of each fiscal year, the plan shall determine if the member
26 contributed to the hybrid cash balance plan during the fiscal year.
- 27 (b) If the member contributed to the hybrid cash balance plan during the fiscal

- 1 year, the interest credit added to the member's account for that fiscal year shall
2 be determined by multiplying the member's accumulated account balance on
3 June 30 of the preceding fiscal year by a percentage increase equal to:
- 4 1. Four percent (4%); plus
 - 5 2. Seventy-five percent (75%) of the plan's geometric average net
6 investment return in excess of a four percent (4%) rate of return.
- 7 (c) If the member did not contribute to the hybrid cash balance plan during the
8 fiscal year, the interest credit added to the member's account for that fiscal
9 year shall be determined by multiplying the member's accumulated account
10 balance on June 30 of the preceding fiscal year by four percent (4%).
- 11 (d) For purposes of this subsection, "plan's geometric average net investment
12 return":
- 13 1. Means the annual average geometric investment return, net of
14 administrative and investment fees and expenses, over the last five (5)
15 fiscal years as of the date the interest is credited to the member's
16 account; and
 - 17 2. Shall be expressed as a percentage and based upon the plan in which the
18 member has an account.
- 19 (5) (a) Upon termination of employment, a member who has less than five (5) years
20 of service credited under ~~the Legislators' Retirement Plan or~~ the Judicial
21 Retirement Plan, who elects to take a refund of his or her accumulated account
22 balance as provided by KRS 21.460, shall forfeit the accumulated employer
23 credit, and shall only receive a refund of his or her accumulated contributions.
- 24 (b) Upon termination of employment, a member who has five (5) or more years of
25 service credited under ~~the Legislators' Retirement Plan or~~ the Judicial
26 Retirement Plan, who elects to take a refund of his or her accumulated account
27 balance as provided by KRS 21.460, shall receive a full refund of his or her

1 accumulated account balance.

2 (6) A member participating in the hybrid cash balance plan provided by this section
3 may retire:

4 (a) Upon reaching normal retirement age, provided he or she has earned five (5)
5 or more years of service credited under~~[the Legislators' Retirement Plan or]~~
6 the Judicial Retirement Plan, or another state-administered retirement system;
7 or

8 (b) If the member is at least age fifty-seven (57) and has an age and years of
9 service total of at least eighty-seven (87) years. The years of service used to
10 determine eligibility for retirement under this paragraph shall only include
11 years of service credited under~~[the Legislators' Retirement Plan or]~~ the
12 Judicial Retirement Plan, or another state-administered retirement system.

13 (7) A member eligible to retire under subsection (6) of this section may elect to:

14 (a) Receive a monthly retirement allowance payable for life by having his or her
15 accumulated account balance annuitized by the retirement plan in accordance
16 with the actuarial assumptions and actuarial methods adopted by the board
17 and in effect on the member's retirement date;

18 (b) Receive the actuarial equivalent of his or her retirement allowance calculated
19 under paragraph (a) of this subsection payable under one (1) of the options set
20 forth in KRS 21.420(8)(b); or

21 (c) Take a refund of his or her accumulated account balance as provided by KRS
22 21.460.

23 (8) The board of the Judicial Form Retirement System shall establish individual
24 members' accounts for each member participating in the hybrid cash balance plan as
25 provided by this section. The Judicial Form Retirement System may promulgate
26 administrative regulations in accordance with KRS Chapter 13A to administer the
27 provisions of this section.

1 (9) The provisions of this section shall not apply to members who began participating
2 in ~~the Legislators' Retirement Plan or~~ the Judicial Retirement Plan prior to January
3 1, 2014, except for those members making an election pursuant to KRS 21.374.

4 ➔Section 6. KRS 61.597 is amended to read as follows:

5 (1) A member of the Kentucky Employees Retirement System or County Employees
6 Retirement System who is not participating in a hazardous duty position as provided
7 by KRS 61.592, whose participation in the systems begins on or after January 1,
8 2014, or a member making an election pursuant to KRS 61.5955, **Section 1 or 2 of**
9 **this Act, or transferring from the Legislators' Retirement Plan pursuant to**
10 **Section 3 of this Act,** shall receive the retirement benefits provided by this section
11 in lieu of the retirement benefits provided under KRS **6.520, 21.400, 21.402** 61.559,
12 and 61.595. The retirement benefit provided by this section shall be known as the
13 hybrid cash balance plan and shall operate as another benefit tier within the
14 Kentucky Employees Retirement System and the County Employees Retirement
15 System.

16 (2) The hybrid cash balance plan shall provide a retirement benefit based upon the
17 member's accumulated account balance, which shall include:

18 (a) Contributions made by the member as provided by KRS **6.500 to 6.577,**
19 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852, except for
20 employee contributions prescribed by KRS **6.505(1)(d)2.b. or** 61.702(2)(b);

21 (b) An employer pay credit of four percent (4%) of the creditable compensation
22 earned by the employee for each month the employee is contributing to the
23 hybrid cash balance plan provided by this section; and

24 (c) Interest credits added annually to the member's accumulated account balance
25 as provided by this section.

26 (3) (a) Member contributions and employer pay credits as provided by subsection
27 (2)(a) and (b) of this section shall be credited to the member's account

1 monthly as contributions are reported and posted to the system in accordance
2 with KRS 61.675 and 78.625.

3 (b) Interest credits, as provided by subsection (2)(c) of this section, shall be
4 credited to the member's account annually on June 30 of each fiscal year, as
5 determined by subsection (4) of this section.

6 (4) (a) On June 30 of each fiscal year, the system shall determine if the member
7 contributed to the hybrid cash balance plan during the fiscal year.

8 (b) If the member contributed to the hybrid cash balance plan during the fiscal
9 year, the interest credit added to the member's account for that fiscal year shall
10 be determined by multiplying the member's accumulated account balance on
11 June 30 of the preceding fiscal year by a percentage increase equal to:

- 12 1. Four percent (4%); plus
- 13 2. Seventy-five percent (75%) of the system's geometric average net
14 investment return in excess of a four percent (4%) rate of return.

15 (c) If the member did not contribute to the hybrid cash balance plan during the
16 fiscal year, the interest credit added to the member's account for that fiscal
17 year shall be determined by multiplying the member's accumulated account
18 balance on June 30 of the preceding fiscal year by four percent (4%).

19 (d) For purposes of this subsection, "system's geometric average net investment
20 return":

- 21 1. Means the annual average geometric investment return, net of
22 administrative and investment fees and expenses, over the last five (5)
23 fiscal years as of the date the interest is credited to the member's
24 account; and
- 25 2. Shall be expressed as a percentage and based upon the system in which
26 the member has an account.

27 (e) No employer pay credits or interest credits shall be provided to a member who

1 has taken a refund of contributions as provided by KRS 61.625 or who has
2 retired and annuitized his or her accumulated account balance as prescribed by
3 this section.

4 (5) (a) Upon termination of employment, a member who has less than five (5) years
5 of service credited under KRS 16.543(1), 61.543(1), and 78.615(1), who
6 elects to take a refund of his or her accumulated account balance as provided
7 by KRS 61.625, shall forfeit the accumulated employer credit, and shall only
8 receive a refund of his or her accumulated contributions.

9 (b) Upon termination of employment, a member who has five (5) or more years of
10 service credited under KRS 16.543(1), 61.543(1), and 78.615(1), who elects to
11 take a refund of his or her accumulated account balance as provided by KRS
12 61.625, shall receive a full refund of his or her accumulated account balance.

13 (6) A member participating in the hybrid cash balance plan provided by this section
14 may retire:

15 (a) At his or her normal retirement date, provided he or she has earned five (5) or
16 more years of service credited under KRS 16.543(1), 61.543(1), 78.615(1), or
17 another state-administered retirement system; or

18 (b) If the member is at least age fifty-seven (57) and has an age and years of
19 service total of at least eighty-seven (87) years. The years of service used to
20 determine eligibility for retirement under this paragraph shall only include
21 years of service credited under KRS 16.543(1), 61.543(1), 78.615(1), or
22 another state-administered retirement system.

23 (7) A member eligible to retire under subsection (6) of this section may elect to:

24 (a) Receive a monthly retirement allowance payable for life by having his or her
25 accumulated account balance annuitized by the retirement systems in
26 accordance with the actuarial assumptions and actuarial methods adopted by
27 the board and in effect on the member's retirement date;

- 1 (b) Receive the actuarial equivalent of his or her retirement allowance calculated
 2 under paragraph (a) of this subsection payable under one (1) of the options set
 3 forth in KRS 61.635, except for the option provided by KRS 61.635(11); or
 4 (c) Take a refund of his or her account balance as provided by KRS 61.625.
- 5 (8) The provisions of this section shall not apply to members who began participating
 6 in the Kentucky Employees Retirement System, ~~or~~ the County Employees
 7 Retirement System, or the Legislators' Retirement Plan prior to January 1, 2014,
 8 except for those members making an election pursuant to KRS Section 1 or 2 of
 9 this Act or 61.5955.

10 ➔Section 7. KRS 141.010 is amended to read as follows:

11 As used in this chapter, unless the context requires otherwise:

- 12 (1) "Commissioner" means the commissioner of the Department of Revenue;
- 13 (2) "Department" means the Department of Revenue;
- 14 (3) "Internal Revenue Code" means the Internal Revenue Code in effect on December
 15 31, 2015, exclusive of any amendments made subsequent to that date, other than
 16 amendments that extend provisions in effect on December 31, 2015, that would
 17 otherwise terminate, and as modified by KRS 141.0101;
- 18 (4) "Dependent" means those persons defined as dependents in the Internal Revenue
 19 Code;
- 20 (5) "Fiduciary" means "fiduciary" as defined in Section 7701(a)(6) of the Internal
 21 Revenue Code;
- 22 (6) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal
 23 Revenue Code;
- 24 (7) "Individual" means a natural person;
- 25 (8) "Modified gross income" means the greater of:
- 26 (a) Adjusted gross income as defined in Section 62 of the Internal Revenue Code
 27 of 1986, including any subsequent amendments in effect on December 31 of

1 the taxable year, and adjusted as follows:

2 1. Include interest income derived from obligations of sister states and
3 political subdivisions thereof; and

4 2. Include lump-sum pension distributions taxed under the special
5 transition rules of Pub. L. No. 104-188, sec. 1401(c)(2); or

6 (b) Adjusted gross income as defined in subsection (10) of this section and
7 adjusted to include lump-sum pension distributions taxed under the special
8 transition rules of Pub. L. No. 104-188, sec. 1401(c)(2);

9 (9) "Gross income," in the case of taxpayers other than corporations, means "gross
10 income" as defined in Section 61 of the Internal Revenue Code;

11 (10) "Adjusted gross income," in the case of taxpayers other than corporations, means
12 gross income as defined in subsection (9) of this section minus the deductions
13 allowed individuals by Section 62 of the Internal Revenue Code and as modified by
14 KRS 141.0101 and adjusted as follows, except that deductions shall be limited to
15 amounts allocable to income subject to taxation under the provisions of this chapter,
16 and except that nothing in this chapter shall be construed to permit the same item to
17 be deducted more than once:

18 (a) Exclude income that is exempt from state taxation by the Kentucky
19 Constitution and the Constitution and statutory laws of the United States and
20 Kentucky;

21 (b) Exclude income from supplemental annuities provided by the Railroad
22 Retirement Act of 1937 as amended and which are subject to federal income
23 tax by Public Law 89-699;

24 (c) Include interest income derived from obligations of sister states and political
25 subdivisions thereof;

26 (d) Exclude employee pension contributions picked up as provided for in KRS
27 6.505, 16.545, 21.360, 61.523, 61.560, 65.155, 67A.320, 67A.510, 78.610,

- 1 and 161.540 upon a ruling by the Internal Revenue Service or the federal
2 courts that these contributions shall not be included as gross income until such
3 time as the contributions are distributed or made available to the employee;
- 4 (e) Exclude Social Security and railroad retirement benefits subject to federal
5 income tax;
- 6 (f) Include, for taxable years ending before January 1, 1991, all overpayments of
7 federal income tax refunded or credited for taxable years;
- 8 (g) Deduct, for taxable years ending before January 1, 1991, federal income tax
9 paid for taxable years ending before January 1, 1990;
- 10 (h) Exclude any money received because of a settlement or judgment in a lawsuit
11 brought against a manufacturer or distributor of "Agent Orange" for damages
12 resulting from exposure to Agent Orange by a member or veteran of the
13 Armed Forces of the United States or any dependent of such person who
14 served in Vietnam;
- 15 (i) 1. ~~For taxable years ending prior to December 31, 2005, exclude the~~
16 ~~applicable amount of total distributions from pension plans, annuity~~
17 ~~contracts, profit-sharing plans, retirement plans, or employee savings~~
18 ~~plans. The "applicable amount" shall be:~~
- 19 a. ~~Twenty five percent (25%), but not more than six thousand two hundred~~
20 ~~fifty dollars (\$6,250), for taxable years beginning after December 31,~~
21 ~~1994, and before January 1, 1996;~~
- 22 b. ~~Fifty percent (50%), but not more than twelve thousand five hundred~~
23 ~~dollars (\$12,500), for taxable years beginning after December 31, 1995,~~
24 ~~and before January 1, 1997;~~
- 25 c. ~~Seventy five percent (75%), but not more than eighteen thousand seven~~
26 ~~hundred fifty dollars (\$18,750), for taxable years beginning after~~
27 ~~December 31, 1996, and before January 1, 1998; and~~

1 d. ~~One hundred percent (100%), but not more than thirty five thousand~~
2 ~~dollars (\$35,000), for taxable years beginning after December 31, 1997.~~

3 ~~2.~~ For taxable years beginning after December 31, 2005, exclude up to
4 forty-one thousand one hundred ten dollars (\$41,110) of total
5 distributions from pension plans, annuity contracts, profit-sharing plans,
6 retirement plans, or employee savings plans.

7 ~~2.~~^[3.] **Notwithstanding subparagraph 1. of this paragraph, for taxable years**
8 **beginning after December 31, 2018, any member of the Legislators'**
9 **Retirement Plan who began participating in the plan before January**
10 **1, 2014, and did not make an election pursuant to Section 1 or 2 of**
11 **this Act, shall not include within the calculation of the exclusion**
12 **provided in subparagraph 1. of this paragraph any distribution from**
13 **the Legislators' Retirement Plan.**

14 **3.** As used in this paragraph:

15 a. "Distributions" includes but is not limited to any lump-sum
16 distribution from pension or profit-sharing plans qualifying for the
17 income tax averaging provisions of Section 402 of the Internal
18 Revenue Code; any distribution from an individual retirement
19 account as defined in Section 408 of the Internal Revenue Code;
20 and any disability pension distribution;

21 b. "Annuity contract" has the same meaning as set forth in Section
22 1035 of the Internal Revenue Code; and

23 c. "Pension plans, profit-sharing plans, retirement plans, or employee
24 savings plans" means any trust or other entity created or organized
25 under a written retirement plan and forming part of a stock bonus,
26 pension, or profit-sharing plan of a public or private employer for
27 the exclusive benefit of employees or their beneficiaries and

- 1 includes plans qualified or unqualified under Section 401 of the
2 Internal Revenue Code and individual retirement accounts as
3 defined in Section 408 of the Internal Revenue Code;
- 4 (j) 1. a. Exclude the portion of the distributive share of a shareholder's net
5 income from an S corporation subject to the franchise tax imposed
6 under KRS 136.505 or the capital stock tax imposed under KRS
7 136.300; and
- 8 b. Exclude the portion of the distributive share of a shareholder's net
9 income from an S corporation related to a qualified subchapter S
10 subsidiary subject to the franchise tax imposed under KRS
11 136.505 or the capital stock tax imposed under KRS 136.300.
- 12 2. The shareholder's basis of stock held in a S corporation where the S
13 corporation or its qualified subchapter S subsidiary is subject to the
14 franchise tax imposed under KRS 136.505 or the capital stock tax
15 imposed under KRS 136.300 shall be the same as the basis for federal
16 income tax purposes;
- 17 (k) Exclude, to the extent not already excluded from gross income, any amounts
18 paid for health insurance, or the value of any voucher or similar instrument
19 used to provide health insurance, which constitutes medical care coverage for
20 the taxpayer, the taxpayer's spouse, and dependents, or for any person
21 authorized to be provided excludable coverage by the taxpayer pursuant to the
22 federal Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-
23 148, or the Health Care and Education Reconciliation Act of 2010 Pub. L. No.
24 111-152, during the taxable year. Any amounts paid by the taxpayer for health
25 insurance that are excluded pursuant to this paragraph shall not be allowed as
26 a deduction in computing the taxpayer's net income under subsection (11) of
27 this section;

- 1 (l) Exclude income received for services performed as a precinct worker for
2 election training or for working at election booths in state, county, and local
3 primary, regular, or special elections;
- 4 (m) Exclude any amount paid during the taxable year for insurance for long-term
5 care as defined in KRS 304.14-600;
- 6 (n) Exclude any capital gains income attributable to property taken by eminent
7 domain;
- 8 (o) Exclude any amount received by a producer of tobacco or a tobacco quota
9 owner from the multistate settlement with the tobacco industry, known as the
10 Master Settlement Agreement, signed on November 22, 1998;
- 11 (p) Exclude any amount received from the secondary settlement fund, referred to
12 as "Phase II," established by tobacco companies to compensate tobacco
13 farmers and quota owners for anticipated financial losses caused by the
14 national tobacco settlement;
- 15 (q) Exclude any amount received from funds of the Commodity Credit
16 Corporation for the Tobacco Loss Assistance Program as a result of a
17 reduction in the quantity of tobacco quota allotted;
- 18 (r) Exclude any amount received as a result of a tobacco quota buydown program
19 that all quota owners and growers are eligible to participate in;
- 20 (s) Exclude state Phase II payments received by a producer of tobacco or a
21 tobacco quota owner;
- 22 (t) Exclude all income from all sources for active duty and reserve members and
23 officers of the Armed Forces of the United States or National Guard who are
24 killed in the line of duty, for the year during which the death occurred and the
25 year prior to the year during which the death occurred. For the purposes of this
26 paragraph, "all income from all sources" shall include all federal and state
27 death benefits payable to the estate or any beneficiaries; and

- 1 (u) For taxable years beginning on or after January 1, 2010, exclude all military
2 pay received by active duty members of the Armed Forces of the United
3 States, members of reserve components of the Armed Forces of the United
4 States, and members of the National Guard, including compensation for state
5 active duty as described in KRS 38.205;
- 6 (11) "Net income," in the case of taxpayers other than corporations, means adjusted
7 gross income as defined in subsection (10) of this section, minus:
- 8 (a) The deduction allowed by KRS 141.0202;
- 9 (b) Any amount paid for vouchers or similar instruments that provide health
10 insurance coverage to employees or their families;
- 11 (c) For taxable years beginning on or after January 1, 2010, the amount of
12 domestic production activities deduction calculated at six percent (6%) as
13 allowed in Section 199(a)(2) of the Internal Revenue Code for taxable years
14 beginning before 2010; and
- 15 (d) 1. All the deductions allowed individuals by Chapter 1 of the Internal
16 Revenue Code as modified by KRS 141.0101 except:
- 17 a. Any deduction allowed by the Internal Revenue Code for state or
18 foreign taxes measured by gross or net income, including state and
19 local general sales taxes allowed in lieu of state and local income
20 taxes under the provisions of Section 164(b)(5) of the Internal
21 Revenue Code;
- 22 b. Any deduction allowed by the Internal Revenue Code for amounts
23 allowable under KRS 140.090(1)(h) in calculating the value of the
24 distributive shares of the estate of a decedent, unless there is filed
25 with the income return a statement that such deduction has not
26 been claimed under KRS 140.090(1)(h);
- 27 c. The deduction for personal exemptions allowed under Section 151

- 1 of the Internal Revenue Code and any other deductions in lieu
2 thereof;
- 3 d. For taxable years beginning on or after January 1, 2010, the
4 domestic production activities deduction allowed under Section
5 199 of the Internal Revenue Code;
- 6 e. Any deduction for amounts paid to any club, organization, or
7 establishment which has been determined by the courts or an
8 agency established by the General Assembly and charged with
9 enforcing the civil rights laws of the Commonwealth, not to afford
10 full and equal membership and full and equal enjoyment of its
11 goods, services, facilities, privileges, advantages, or
12 accommodations to any person because of race, color, religion,
13 national origin, or sex, except nothing shall be construed to deny a
14 deduction for amounts paid to any religious or denominational
15 club, group, or establishment or any organization operated solely
16 for charitable or educational purposes which restricts membership
17 to persons of the same religion or denomination in order to
18 promote the religious principles for which it is established and
19 maintained;
- 20 f. Any deduction directly or indirectly allocable to income which is
21 either exempt from taxation or otherwise not taxed under this
22 chapter;
- 23 g. The itemized deduction limitation established in 26 U.S.C. sec. 68
24 shall be determined using the applicable amount from 26 U.S.C.
25 sec. 68 as it existed on December 31, 2006; and
- 26 h. A taxpayer may elect to claim the standard deduction allowed by
27 KRS 141.081 instead of itemized deductions allowed pursuant to

- 1 26 U.S.C. sec. 63 and as modified by this section; and
- 2 2. Nothing in this chapter shall be construed to permit the same item to be
- 3 deducted more than once;
- 4 (12) "Gross income," in the case of corporations, means "gross income" as defined in
- 5 Section 61 of the Internal Revenue Code and as modified by KRS 141.0101 and
- 6 adjusted as follows:
- 7 (a) Exclude income that is exempt from state taxation by the Kentucky
- 8 Constitution and the Constitution and statutory laws of the United States;
- 9 (b) Exclude all dividend income received after December 31, 1969;
- 10 (c) Include interest income derived from obligations of sister states and political
- 11 subdivisions thereof;
- 12 (d) Exclude fifty percent (50%) of gross income derived from any disposal of coal
- 13 covered by Section 631(c) of the Internal Revenue Code if the corporation
- 14 does not claim any deduction for percentage depletion, or for expenditures
- 15 attributable to the making and administering of the contract under which such
- 16 disposition occurs or to the preservation of the economic interests retained
- 17 under such contract;
- 18 (e) Include in the gross income of lessors income tax payments made by lessees
- 19 to lessors, under the provisions of Section 110 of the Internal Revenue Code,
- 20 and exclude such payments from the gross income of lessees;
- 21 (f) Include the amount calculated under KRS 141.205;
- 22 (g) Ignore the provisions of Section 281 of the Internal Revenue Code in
- 23 computing gross income;
- 24 (h) Exclude income from "safe harbor leases" (Section 168(f)(8) of the Internal
- 25 Revenue Code);
- 26 (i) Exclude any amount received by a producer of tobacco or a tobacco quota
- 27 owner from the multistate settlement with the tobacco industry, known as the

- 1 Master Settlement Agreement, signed on November 22, 1998;
- 2 (j) Exclude any amount received from the secondary settlement fund, referred to
3 as "Phase II," established by tobacco companies to compensate tobacco
4 farmers and quota owners for anticipated financial losses caused by the
5 national tobacco settlement;
- 6 (k) Exclude any amount received from funds of the Commodity Credit
7 Corporation for the Tobacco Loss Assistance Program as a result of a
8 reduction in the quantity of tobacco quota allotted;
- 9 (l) Exclude any amount received as a result of a tobacco quota buydown program
10 that all quota owners and growers are eligible to participate in;
- 11 (m) For taxable years beginning after December 31, 2004, and before January 1,
12 2007, exclude the distributive share income or loss received from a
13 corporation defined in subsection (24)(b) of this section whose income has
14 been subject to the tax imposed by KRS 141.040. The exclusion provided in
15 this paragraph shall also apply to a taxable year that begins prior to January 1,
16 2005, if the tax imposed by KRS 141.040 is paid on the distributive share
17 income by a corporation defined in subparagraphs 2. to 8. of subsection
18 (24)(b) of this section with a return filed for a period of less than twelve (12)
19 months that begins on or after January 1, 2005, and ends on or before
20 December 31, 2005. This paragraph shall not be used to delay payment of the
21 tax imposed by KRS 141.040; and
- 22 (n) Exclude state Phase II payments received by a producer of tobacco or a
23 tobacco quota owner;
- 24 (13) "Net income," in the case of corporations, means "gross income" as defined in
25 subsection (12) of this section minus:
- 26 (a) The deduction allowed by KRS 141.0202;
- 27 (b) Any amount paid for vouchers or similar instruments that provide health

1 insurance coverage to employees or their families;

2 (c) For taxable years beginning on or after January 1, 2010, the amount of
3 domestic production activities deduction calculated at six percent (6%) as
4 allowed in Section 199(a)(2) of the Internal Revenue Code for taxable years
5 beginning before 2010; and

6 (d) All the deductions from gross income allowed corporations by Chapter 1 of
7 the Internal Revenue Code and as modified by KRS 141.0101, except:

- 8 1. Any deduction for a state tax which is computed, in whole or in part, by
9 reference to gross or net income and which is paid or accrued to any
10 state of the United States, the District of Columbia, the Commonwealth
11 of Puerto Rico, any territory or possession of the United States, or to any
12 foreign country or political subdivision thereof;
- 13 2. The deductions contained in Sections 243, 244, 245, and 247 of the
14 Internal Revenue Code;
- 15 3. The provisions of Section 281 of the Internal Revenue Code shall be
16 ignored in computing net income;
- 17 4. Any deduction directly or indirectly allocable to income which is either
18 exempt from taxation or otherwise not taxed under the provisions of this
19 chapter, and nothing in this chapter shall be construed to permit the
20 same item to be deducted more than once;
- 21 5. Exclude expenses related to "safe harbor leases" (Section 168(f)(8) of
22 the Internal Revenue Code);
- 23 6. Any deduction for amounts paid to any club, organization, or
24 establishment which has been determined by the courts or an agency
25 established by the General Assembly and charged with enforcing the
26 civil rights laws of the Commonwealth, not to afford full and equal
27 membership and full and equal enjoyment of its goods, services,

1 facilities, privileges, advantages, or accommodations to any person
2 because of race, color, religion, national origin, or sex, except nothing
3 shall be construed to deny a deduction for amounts paid to any religious
4 or denominational club, group, or establishment or any organization
5 operated solely for charitable or educational purposes which restricts
6 membership to persons of the same religion or denomination in order to
7 promote the religious principles for which it is established and
8 maintained;

- 9 7. Any deduction prohibited by KRS 141.205;
- 10 8. Any dividends-paid deduction of any captive real estate investment trust;
- 11 and
- 12 9. For taxable years beginning on or after January 1, 2010, the domestic
13 production activities deduction allowed under Section 199 of the
14 Internal Revenue Code;

15 (14) (a) "Taxable net income," in the case of corporations that are taxable in this state,
16 means "net income" as defined in subsection (13) of this section;

17 (b) "Taxable net income," in the case of corporations that are taxable in this state
18 and taxable in another state, means "net income" as defined in subsection (13)
19 of this section and as allocated and apportioned under KRS 141.120. A
20 corporation is taxable in another state if, in any state other than Kentucky, the
21 corporation is required to file a return for or pay a net income tax, franchise
22 tax measured by net income, franchise tax for the privilege of doing business,
23 or corporate stock tax;

24 (c) "Taxable net income," in the case of homeowners' associations as defined in
25 Section 528(c) of the Internal Revenue Code, means "taxable income" as
26 defined in Section 528(d) of the Internal Revenue Code. Notwithstanding the
27 provisions of subsection (3) of this section, the Internal Revenue Code

1 sections referred to in this paragraph shall be those code sections in effect for
2 the applicable tax year; and

3 (d) "Taxable net income," in the case of a corporation that meets the requirements
4 established under Section 856 of the Internal Revenue Code to be a real estate
5 investment trust, means "real estate investment trust taxable income" as
6 defined in Section 857(b)(2) of the Internal Revenue Code, except that a
7 captive real estate investment trust shall not be allowed any deduction for
8 dividends paid;

9 (15) "Person" means "person" as defined in Section 7701(a)(1) of the Internal Revenue
10 Code;

11 (16) "Taxable year" means the calendar year or fiscal year ending during such calendar
12 year, upon the basis of which net income is computed, and in the case of a return
13 made for a fractional part of a year under the provisions of this chapter or under
14 regulations prescribed by the commissioner, "taxable year" means the period for
15 which the return is made;

16 (17) "Resident" means an individual domiciled within this state or an individual who is
17 not domiciled in this state, but maintains a place of abode in this state and spends in
18 the aggregate more than one hundred eighty-three (183) days of the taxable year in
19 this state;

20 (18) "Nonresident" means any individual not a resident of this state;

21 (19) "Employer" means "employer" as defined in Section 3401(d) of the Internal
22 Revenue Code;

23 (20) "Employee" means "employee" as defined in Section 3401(c) of the Internal
24 Revenue Code;

25 (21) "Number of withholding exemptions claimed" means the number of withholding
26 exemptions claimed in a withholding exemption certificate in effect under KRS
27 141.325, except that if no such certificate is in effect, the number of withholding

- 1 exemptions claimed shall be considered to be zero;
- 2 (22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue
3 Code and includes other income subject to withholding as provided in Section
4 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;
- 5 (23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the
6 Internal Revenue Code;
- 7 (24) (a) For taxable years beginning before January 1, 2005, and after December 31,
8 2006, "corporation" means "corporation" as defined in Section 7701(a)(3) of
9 the Internal Revenue Code; and
- 10 (b) For taxable years beginning after December 31, 2004, and before January 1,
11 2007, "corporations" means:
- 12 1. "Corporations" as defined in Section 7701(a)(3) of the Internal Revenue
13 Code;
 - 14 2. S corporations as defined in Section 1361(a) of the Internal Revenue
15 Code;
 - 16 3. A foreign limited liability company as defined in KRS 275.015;
 - 17 4. A limited liability company as defined in KRS 275.015;
 - 18 5. A professional limited liability company as defined in KRS 275.015;
 - 19 6. A foreign limited partnership as defined in KRS 362.2-102(9);
 - 20 7. A limited partnership as defined in KRS 362.2-102(14);
 - 21 8. A limited liability partnership as defined in KRS 362.155(7) or in 362.1-
22 101(7) or (8);
 - 23 9. A real estate investment trust as defined in Section 856 of the Internal
24 Revenue Code;
 - 25 10. A regulated investment company as defined in Section 851 of the
26 Internal Revenue Code;
 - 27 11. A real estate mortgage investment conduit as defined in Section 860D of

- 1 the Internal Revenue Code;
- 2 12. A financial asset securitization investment trust as defined in Section
- 3 860L of the Internal Revenue Code; and
- 4 13. Other similar entities created with limited liability for their partners,
- 5 members, or shareholders.

6 For purposes of this paragraph, "corporation" shall not include any publicly

7 traded partnership as defined by Section 7704(b) of the Internal Revenue Code

8 that is treated as a partnership for federal tax purposes under Section 7704(c)

9 of the Internal Revenue Code or its publicly traded partnership affiliates. As

10 used in this paragraph, "publicly traded partnership affiliates" shall include

11 any limited liability company or limited partnership for which at least eighty

12 percent (80%) of the limited liability company member interests or limited

13 partner interests are owned directly or indirectly by the publicly traded

14 partnership;

15 (25) "Doing business in this state" includes but is not limited to:

- 16 (a) Being organized under the laws of this state;
- 17 (b) Having a commercial domicile in this state;
- 18 (c) Owning or leasing property in this state;
- 19 (d) Having one (1) or more individuals performing services in this state;
- 20 (e) Maintaining an interest in a pass-through entity doing business in this state;
- 21 (f) Deriving income from or attributable to sources within this state, including
- 22 deriving income directly or indirectly from a trust doing business in this state,
- 23 or deriving income directly or indirectly from a single-member limited
- 24 liability company that is doing business in this state and is disregarded as an
- 25 entity separate from its single member for federal income tax purposes; or
- 26 (g) Directing activities at Kentucky customers for the purpose of selling them
- 27 goods or services.

1 Nothing in this subsection shall be interpreted in a manner that goes beyond the
2 limitations imposed and protections provided by the United States Constitution or
3 Pub. L. No. 86-272;

4 (26) "Pass-through entity" means any partnership, S corporation, limited liability
5 company, limited liability partnership, limited partnership, or similar entity
6 recognized by the laws of this state that is not taxed for federal purposes at the
7 entity level, but instead passes to each partner, member, shareholder, or owner their
8 proportionate share of income, deductions, gains, losses, credits, and any other
9 similar attributes;

10 (27) "S corporation" means "S corporation" as defined in Section 1361(a) of the Internal
11 Revenue Code;

12 (28) "Limited liability pass-through entity" means any pass-through entity that affords
13 any of its partners, members, shareholders, or owners, through function of the laws
14 of this state or laws recognized by this state, protection from general liability for
15 actions of the entity; and

16 (29) "Captive real estate investment trust" means a real estate investment trust as defined
17 in Section 856 of the Internal Revenue Code that meets the following requirements:

18 (a) 1. The shares or other ownership interests of the real estate investment trust
19 are not regularly traded on an established securities market; or

20 2. The real estate investment trust does not have enough shareholders or
21 owners to be required to register with the Securities and Exchange
22 Commission; and

23 (b) 1. The maximum amount of stock or other ownership interest that is owned
24 or constructively owned by a corporation equals or exceeds:

25 a. Twenty-five percent (25%), if the corporation does not occupy
26 property owned, constructively owned, or controlled by the real
27 estate investment trust; or

1 b. Ten percent (10%), if the corporation occupies property owned,
2 constructively owned, or controlled by the real estate investment
3 trust.

4 The total ownership interest of a corporation shall be determined by
5 aggregating all interests owned or constructively owned by a
6 corporation;

7 2. For the purposes of this paragraph:

8 a. "Corporation" means a corporation taxable under KRS 141.040,
9 and includes an affiliated group as defined in KRS 141.200, that is
10 required to file a consolidated return pursuant to the provisions of
11 KRS 141.200; and

12 b. "Owned or constructively owned" means owning shares or having
13 an ownership interest in the real estate investment trust, or owning
14 an interest in an entity that owns shares or has an ownership
15 interest in the real estate investment trust. Constructive ownership
16 shall be determined by looking across multiple layers of a
17 multilayer pass-through structure; and

18 (c) The real estate investment trust is not owned by another real estate investment
19 trust.

20 ➔Section 8. KRS 141.020 is amended to read as follows:

21 (1) An annual tax shall be paid for each taxable year by every resident individual of this
22 state upon his entire net income as defined in this chapter. The tax shall be
23 determined by applying the rates in subsection (2) of this section to net income and
24 subtracting allowable tax credits provided in subsection (3) of this section.

25 (2) (a) For taxable years beginning before January 1, 2005, the tax shall be
26 determined by applying the following rates to net income:

27 1. Two percent (2%) of the amount of net income up to three thousand

- 1 dollars (\$3,000);
- 2 2. Three percent (3%) of the amount of net income over three thousand
- 3 dollars (\$3,000) and up to four thousand dollars (\$4,000);
- 4 3. Four percent (4%) of the amount of net income over four thousand
- 5 dollars (\$4,000) and up to five thousand dollars (\$5,000);
- 6 4. Five percent (5%) of the amount of net income over five thousand
- 7 dollars (\$5,000) and up to eight thousand dollars (\$8,000); and
- 8 5. Six percent (6%) of the amount of net income over eight thousand
- 9 dollars (\$8,000).

10 (b) For taxable years beginning after December 31, 2004, the tax shall be

11 determined by applying the following rates to net income:

- 12 1. Two percent (2%) of the amount of net income up to three thousand
- 13 dollars (\$3,000);
- 14 2. Three percent (3%) of the amount of net income over three thousand
- 15 dollars (\$3,000) and up to four thousand dollars (\$4,000);
- 16 3. Four percent (4%) of the amount of net income over four thousand
- 17 dollars (\$4,000) and up to five thousand dollars (\$5,000);
- 18 4. Five percent (5%) of the amount of net income over five thousand
- 19 dollars (\$5,000) and up to eight thousand dollars (\$8,000);
- 20 5. Five and eight-tenths percent (5.8%) of the amount of net income over
- 21 eight thousand dollars (\$8,000) and up to seventy-five thousand dollars
- 22 (\$75,000); and
- 23 6. Six percent (6%) of the amount of net income over seventy-five
- 24 thousand dollars (\$75,000).

25 (3) (a) For taxable years beginning before January 1, 2014, the following tax credits,

26 when applicable, shall be deducted from the result obtained under subsection

27 (2) of this section to arrive at the annual tax:

- 1 1. Twenty dollars (\$20) for an unmarried individual;
- 2 2. Twenty dollars (\$20) for a married individual filing a separate return and
- 3 an additional twenty dollars (\$20) for the spouse of taxpayer if a separate
- 4 return is made by the taxpayer and if the spouse, for the calendar year in
- 5 which the taxable year of the taxpayer begins, had no Kentucky gross
- 6 income and is not the dependent of another taxpayer; or forty dollars
- 7 (\$40) for married persons filing a joint return, provided neither spouse is
- 8 the dependent of another taxpayer. The determination of marital status
- 9 for the purpose of this section shall be made in the manner prescribed in
- 10 Section 153 of the Internal Revenue Code;
- 11 3. Twenty dollars (\$20) credit for each dependent. No credit shall be
- 12 allowed for any dependent who has made a joint return with his spouse;
- 13 4. An additional forty dollars (\$40) credit if the taxpayer has attained the
- 14 age of sixty-five (65) before the close of the taxable year;
- 15 5. An additional forty dollars (\$40) credit for taxpayer's spouse if a
- 16 separate return is made by the taxpayer and if the taxpayer's spouse has
- 17 attained the age of sixty-five (65) before the close of the taxable year,
- 18 and, for the calendar year in which the taxable year of the taxpayer
- 19 begins, has no Kentucky gross income and is not the dependent of
- 20 another taxpayer;
- 21 6. An additional forty dollars (\$40) credit if the taxpayer is blind at the
- 22 close of the taxable year;
- 23 7. An additional forty dollars (\$40) credit for taxpayer's spouse if a
- 24 separate return is made by the taxpayer and if the taxpayer's spouse is
- 25 blind, and, for the calendar year in which the taxable year of the taxpayer
- 26 begins, has no Kentucky gross income and is not the dependent of
- 27 another taxpayer;

- 1 8. In the case of nonresidents, the tax credits allowable under this
2 subsection shall be the portion of the credits that are represented by the
3 ratio of the taxpayer's Kentucky adjusted gross income as determined by
4 KRS 141.010(10), without the adjustments contained in (f) and (g) of
5 that subsection, to the taxpayer's adjusted gross income as defined in
6 Section 62 of the Internal Revenue Code. However, in the case of a
7 married nonresident taxpayer with income from Kentucky sources,
8 whose spouse has no income from Kentucky sources, the taxpayer shall
9 determine allowable tax credit(s) by either:
- 10 a. The method contained above applied to the taxpayer's tax credit(s),
11 excluding credits for a spouse and dependents; or
- 12 b. Prorating the taxpayer's tax credit(s) plus the tax credits for the
13 taxpayer's spouse and dependents by the ratio of the taxpayer's
14 Kentucky adjusted gross income as determined by KRS
15 141.010(10), without the adjustments contained in (f) and (g) of
16 that subsection, to the total joint federal adjusted gross income of
17 the taxpayer and the taxpayer's spouse;
- 18 9. In the case of an individual who becomes a resident of Kentucky during
19 the taxable year, the tax credits allowable under this subsection shall be
20 the portion of the credits represented by the ratio of the taxpayer's
21 Kentucky adjusted gross income as determined by subsection (10) of
22 KRS 141.010, without the adjustments contained in paragraphs (f) and
23 (g) of that subsection, to the taxpayer's adjusted gross income as defined
24 in Section 62 of the Internal Revenue Code;
- 25 10. In the case of a fiduciary, other than an estate, the allowable tax credit
26 shall be two dollars (\$2);
- 27 11. In the case of an estate, the allowable tax credit shall be twenty dollars

1 (\$20); and

2 12. An additional twenty dollars (\$20) credit shall be allowed if the taxpayer
3 is a member of the Kentucky National Guard at the close of the taxable
4 year.

5 (b) 1. For taxable years beginning on or after January 1, 2014, the following
6 tax credits, when applicable, shall be deducted from the result obtained
7 under subsection (2) of this section to arrive at the annual tax:

8 a. Ten dollars (\$10) for an unmarried individual;

9 b. Ten dollars (\$10) for a married individual filing a separate return
10 and an additional ten dollars (\$10) for the spouse of taxpayer if a
11 separate return is made by the taxpayer and if the spouse, for the
12 calendar year in which the taxable year of the taxpayer begins, had
13 no Kentucky gross income and is not the dependent of another
14 taxpayer; or twenty dollars (\$20) for married persons filing a joint
15 return, provided neither spouse is the dependent of another
16 taxpayer. The determination of marital status for the purpose of
17 this section shall be made in the manner prescribed in Section 153
18 of the Internal Revenue Code;

19 c. Ten dollars (\$10) credit for each dependent. No credit shall be
20 allowed for any dependent who has made a joint return with his
21 spouse;

22 d. An additional forty dollars (\$40) credit if the taxpayer has attained
23 the age of sixty-five (65) before the close of the taxable year;

24 e. An additional forty dollars (\$40) credit for taxpayer's spouse if a
25 separate return is made by the taxpayer and if the taxpayer's spouse
26 has attained the age of sixty-five (65) before the close of the
27 taxable year, and, for the calendar year in which the taxable year of

- 1 the taxpayer begins, has no Kentucky gross income and is not the
2 dependent of another taxpayer;
- 3 f. An additional forty dollars (\$40) credit if the taxpayer is blind at
4 the close of the taxable year;
- 5 g. An additional forty dollars (\$40) credit for taxpayer's spouse if a
6 separate return is made by the taxpayer and if the taxpayer's spouse
7 is blind, and, for the calendar year in which the taxable year of the
8 taxpayer begins, has no Kentucky gross income and is not the
9 dependent of another taxpayer;
- 10 h. In the case of a fiduciary, other than an estate, the allowable tax
11 credit shall be two dollars (\$2);
- 12 i. In the case of an estate, the allowable tax credit shall be ten dollars
13 (\$10); and
- 14 j. An additional twenty dollars (\$20) credit shall be allowed if the
15 taxpayer is a member of the Kentucky National Guard at the close
16 of the taxable year.
- 17 2. In the case of nonresidents, the tax credits allowable under this
18 subsection shall be the portion of the credits that are represented by the
19 ratio of the taxpayer's Kentucky adjusted gross income as determined by
20 KRS 141.010(10), without the adjustments contained in paragraphs (f)
21 and (g) of that subsection, to the taxpayer's adjusted gross income as
22 defined in Section 62 of the Internal Revenue Code. However, in the
23 case of a married nonresident taxpayer with income from Kentucky
24 sources, whose spouse has no income from Kentucky sources, the
25 taxpayer shall determine allowable tax credit(s) by either:
- 26 a. The method contained above applied to the taxpayer's tax credit(s),
27 excluding credits for a spouse and dependents; or

- 1 b. Prorating the taxpayer's tax credit(s) plus the tax credits for the
2 taxpayer's spouse and dependents by the ratio of the taxpayer's
3 Kentucky adjusted gross income as determined by KRS
4 141.010(10), without the adjustments contained in paragraphs (f)
5 and (g) of that subsection, to the total joint federal adjusted gross
6 income of the taxpayer and the taxpayer's spouse.
- 7 3. In the case of an individual who becomes a resident of Kentucky during
8 the taxable year, the tax credits allowable under this subsection shall be
9 the portion of the credits represented by the ratio of the taxpayer's
10 Kentucky adjusted gross income as determined by KRS 141.010(10),
11 without the adjustments contained in paragraphs (f) and (g) of that
12 subsection, to the taxpayer's adjusted gross income as defined in Section
13 62 of the Internal Revenue Code.
- 14 (4) An annual tax shall be paid for each taxable year as specified in this section upon
15 the entire net income except as herein provided, from all tangible property located
16 in this state, from all intangible property that has acquired a business situs in this
17 state, and from business, trade, profession, occupation, or other activities carried on
18 in this state, by natural persons not residents of this state. A nonresident individual
19 shall be taxable only upon the amount of income received by the individual from
20 labor performed, business done, or from other activities in this state, from tangible
21 property located in this state, and from intangible property which has acquired a
22 business situs in this state; provided, however, that the situs of intangible personal
23 property shall be at the residence of the real or beneficial owner and not at the
24 residence of a trustee having custody or possession thereof. The remainder of the
25 income received by such nonresident shall be deemed nontaxable by this state.
- 26 (5) Subject to the provisions of KRS 141.081, any individual may elect to pay the
27 annual tax imposed by KRS 141.023 in lieu of the tax levied under this section.

1 (6) An individual who becomes a resident of Kentucky during the taxable year is
2 subject to taxation as prescribed in subsection (4) of this section prior to
3 establishing residence and as prescribed in subsection (1) of this section following
4 the establishment of residence.

5 (7) An individual who becomes a nonresident of Kentucky during the taxable year is
6 subject to taxation, as prescribed in subsection (1) of this section, during that
7 portion of the taxable year that the individual is a resident and, as prescribed in
8 subsection (4) of this section, during that portion of the taxable year when the
9 individual is a nonresident.

10 **(8) (a) For taxable years beginning on or after January 1, 2019, a member of the**
11 **Legislators' Retirement Plan who began participating in the plan before**
12 **January 1, 2014, and did not make an election pursuant to Section 1 or 2 of**
13 **this Act, shall be subject to a surtax in addition to the tax imposed by**
14 **subsection (1) of this section.**

15 **(b) The individual shall:**

- 16 **1. Determine the surtax by applying a rate of seventy-five percent (75%)**
17 **to all distributions during the taxable year from the Legislators'**
18 **Retirement Plan that exceed eighty thousand dollars (\$80,000); and**
19 **2. Pay the surtax at the same time and in the same manner as provided**
20 **for the payment of the tax imposed by subsection (1) of this section.**