

1 AN ACT relating to pension spiking and declaring an emergency.

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 *(1) For purposes of this section, "bona fide promotion or career advancement"*
6 *means a professional advancement in substantially the same line of work held by*
7 *the member in the four (4) years immediately prior to the final three (3) annual*
8 *years preceding retirement or a change in employment position based on the*
9 *training, skills, education, or expertise of the member that imposes a significant*
10 *change in job duties and responsibilities to clearly justify the increased*
11 *compensation to the member.*

12 *(2) (a) For members retiring on or after January 1, 2018, the plan shall, for each*
13 *of the retiring member's last three (3) annual years of service in the General*
14 *Assembly, identify any annual year in which the creditable compensation*
15 *increased at a rate of ten percent (10%) or more annually over the*
16 *immediately preceding annual year's creditable compensation.*

17 *(b) Except as limited or excluded by subsections (3) and (4) of this section, any*
18 *amount of increase in creditable compensation for an annual year*
19 *identified under paragraph (a) of this subsection that exceeds ten percent*
20 *(10%) more than the member's creditable compensation from the*
21 *immediately preceding annual year shall not be included in the creditable*
22 *compensation used to calculate the member's monthly pension benefits. If*
23 *the creditable compensation for a specific annual year identified under*
24 *paragraph (a) of this subsection as exceeding the ten percent (10%)*
25 *increase limitation is not used to calculate the retiring member's monthly*
26 *pension benefits, then no reduction in creditable compensation shall occur*
27 *for that annual year.*

1 (c) If the creditable compensation of the retiring member is reduced as
2 provided by paragraph (b) of this subsection, the retirement system shall,
3 notwithstanding KRS 21.460, refund the member contributions attributable
4 to the reduction in creditable compensation.

5 (3) In order to ensure the prospective application of the limitations on increases in
6 creditable compensation contained in subsection (2) of this section, only the
7 creditable compensation earned by the retiring member on or after July 1, 2017,
8 shall be subject to reduction under the provisions of subsection (2) of this section.
9 Creditable compensation earned by the retiring member prior to July 1, 2017,
10 shall not be subject to reduction under the provisions of subsection (2) of this
11 section.

12 (4) The provisions of subsections (2) and (3) of this section shall not apply to
13 increases that are the direct result of a bona fide promotion or career
14 advancement.

15 (5) The Judicial Form Retirement System board of trustees shall determine whether
16 increases in creditable compensation during the last three (3) annual years of
17 employment prior to retirement constitute a bona fide promotion or career
18 advancement and may promulgate administrative regulations in accordance with
19 KRS Chapter 13A to administer this section.

20 (6) The provisions of this section shall not apply to employees participating in the
21 hybrid cash balance plan as provided by KRS 21.402.

22 ➔SECTION 2. A NEW SECTION OF KRS 21.345 TO 21.580 IS CREATED TO
23 READ AS FOLLOWS:

24 (1) For purposes of this section, "bona fide promotion or career advancement"
25 means a professional advancement in substantially the same line of work held by
26 the member in the four (4) years immediately prior to the final sixty (60) months
27 preceding retirement or a change in employment position based on the training,

1 skills, education, or expertise of the member that imposes a significant change in
2 job duties and responsibilities to clearly justify the increased compensation to the
3 member, including any circumstance when a member is elected or appointed to
4 another court within the Court of Justice.

5 (2) For purposes of this section, the term "year" has the same meaning as provided
6 by KRS 21.345(3).

7 (3) (a) For members retiring on or after January 1, 2018, the plan shall identify
8 any consecutive twelve (12) month period utilized in determining the
9 member's final compensation in which the member's compensation
10 increased at a rate of ten percent (10%) or more over the member's
11 compensation in the immediately preceding twelve (12) month period.

12 (b) Except as limited or excluded by subsections (4) and (5) of this section, any
13 amount of increase in compensation for a twelve (12) month period
14 identified under paragraph (a) of this subsection that exceeds ten percent
15 (10%) more than the member's compensation from the immediately
16 preceding twelve (12) month period shall not be used in the calculation of
17 the member's final compensation for the purposes of determining the
18 member's monthly pension benefit under KRS 21.400.

19 (c) If the member's final compensation is reduced for the purposes of
20 determining the member's pension benefit under KRS 21.400 as provided by
21 paragraph (b) of this subsection, the retirement system shall,
22 notwithstanding KRS 21.460, refund the member contributions attributable
23 to the reduction in compensation.

24 (4) In order to ensure the prospective application of the potential reduction in
25 pension benefits as provided in subsection (3) of this section, only the
26 compensation earned by the retiring member on or after July 1, 2017, shall be
27 subject to reduction under the provisions of subsection (3) of this section.

1 Compensation earned by the retiring member prior to July 1, 2017, shall not be
 2 subject to reduction under the provisions of subsection (3) of this section.

3 (5) The provisions of subsections (3) and (4) of this section shall not apply to
 4 increases that are the direct result of a bona fide promotion or career
 5 advancement.

6 (6) The Judicial Form Retirement System board of trustees shall determine whether
 7 increases in compensation during the last five (5) years of employment prior to
 8 retirement constitute a bona fide promotion or career advancement and may
 9 promulgate administrative regulations in accordance with KRS Chapter 13A to
 10 administer this section.

11 (7) The provisions of this section shall not apply to employees participating in the
 12 hybrid cash balance plan as provided by KRS 21.402.

13 ➔Section 3. KRS 61.598 is amended to read as follows:

14 (1) For purposes of this section, "bona fide promotion or career advancement":

15 (a) Means a professional advancement in substantially the same line of work held
 16 by the employee in the four (4) years immediately prior to the final five (5)
 17 fiscal years preceding retirement or a change in employment position based on
 18 the training, skills, education, or expertise of the employee that imposes a
 19 significant change in job duties and responsibilities to clearly justify the
 20 increased compensation to the member; and

21 (b) Does not include any circumstance where an elected official participating in
 22 the Kentucky Employees Retirement System or the County Employees
 23 Retirement System takes a position of employment with a different employer
 24 participating in any of the state-administered retirement systems.

25 (2) (a) For employees retiring from the Kentucky Employees Retirement System,
 26 the County Employees Retirement System, or the State Police Retirement
 27 System on or after January 1, 2018, the systems shall, for each of the

1 retiring employee's last five (5) fiscal years of employment, identify any
2 fiscal year in which the creditable compensation increased at a rate of ten
3 percent (10%) or more annually over the immediately preceding fiscal
4 year's creditable compensation. The employee's creditable compensation in
5 the fiscal year immediately prior to the employee's last five (5) fiscal years
6 of employment shall be utilized to compare the initial fiscal year in the five
7 (5) fiscal year period.

8 (b) Except as limited or excluded by subsections (3) and (4) of this section, any
9 amount of increase in creditable compensation for a fiscal year identified
10 under paragraph (a) of this subsection that exceeds ten percent (10%) more
11 than the employee's creditable compensation from the immediately
12 preceding fiscal year shall not be included in the creditable compensation
13 used to calculate the retiring employee's monthly retirement allowance. If
14 the creditable compensation for a specific fiscal year identified under
15 paragraph (a) of this subsection as exceeding the ten percent (10%)
16 increase limitation is not used to calculate the retiring employee's monthly
17 retirement allowance, then no reduction in creditable compensation shall
18 occur for that fiscal year.

19 (c) If the creditable compensation of the retiring employee is reduced as
20 provided by paragraph (b) of this subsection, the retirement systems:

- 21 1. Shall refund the employee contributions and interest attributable to
22 the reduction in creditable compensation; and
- 23 2. Shall not refund the employer contributions paid but shall utilize
24 those funds to pay down the unfunded liability of the pension fund in
25 which the retiring employee participated.

26 (3) In order to ensure the prospective application of the limitations on increases in
27 creditable compensation contained in subsection (2) of this section, only the

1 creditable compensation earned by the retiring employee on or after July 1, 2017,
2 shall be subject to reduction under subsection (2) of this section. Creditable
3 compensation earned by the retiring employee prior to July 1, 2017, shall not be
4 subject to reduction under subsection (2) of this section.

5 (4) Subsection (2) of this section shall not apply to:

6 (a) The fiscal year containing the employee's effective retirement date if the
7 employee earned less than twelve (12) months of service credit during the
8 fiscal year;

9 (b) A bona fide promotion or career advancement as defined by subsection (1)
10 of this section;

11 (c) A lump-sum payment for compensatory time paid to an employee upon
12 termination of employment;

13 (d) A lump-sum payment made pursuant to an alternate sick leave program
14 under KRS 78.616(5) that is paid to an employee upon termination of
15 employment;

16 (e) Increases in creditable compensation in a fiscal year over the immediately
17 preceding fiscal year, where in the immediately preceding fiscal year the
18 employer reported the employee as being on leave without pay for any
19 reason, including but not limited to any period of time where the employee
20 received workers' compensation benefit payments that were not reported to
21 the plan as creditable compensation;

22 (f) Increases in creditable compensation directly attributable to an employee's
23 receipt of compensation for overtime hours worked while serving as a
24 participating employee under any state or federal grant, grant pass-through,
25 or similar program that requires overtime as a condition or necessity of the
26 employer's receipt of the grant; and

27 (g) Increases in creditable compensation directly attributable to an employee's

1 *receipt of compensation for overtime performed during a state of emergency*
 2 *declared by the President of the United States or the Governor of the*
 3 *Commonwealth of Kentucky.*

4 (5) (a) For employees retiring on or after January 1, 2014, *but prior to July 1, 2017,*
 5 the last participating employer shall be required to pay for any additional
 6 actuarial costs resulting from annual increases in an employee's creditable
 7 compensation greater than ten percent (10%) over the employee's last five (5)
 8 fiscal years of employment that are not the direct result of a bona fide
 9 promotion or career advancement. The cost shall be determined by the
 10 retirement systems ~~and the system may promulgate administrative regulations~~
 11 ~~in accordance with KRS Chapter 13A to administer this section.~~

12 *(b) Lump-sum payments for compensatory time paid to an employee upon*
 13 *termination of employment shall be exempt from this subsection.*

14 *(c) Kentucky Retirement Systems shall answer inquiries from participating*
 15 *employers regarding this subsection. Upon request of the employer prior to*
 16 *the employee's change of position or hiring, the systems shall make a*
 17 *determination that is binding to the systems as to whether or not a change*
 18 *of position or hiring constitutes a bona fide promotion or career*
 19 *advancement.*

20 *(d) For any additional actuarial costs charged to the employer under this*
 21 *subsection, the systems shall allow the employer to pay the costs without*
 22 *interest over a period of one (1) year from the date of receipt of the*
 23 *employer's final invoice.*

24 (6) [(3) — (a)] The Kentucky Retirement Systems shall determine whether increases in
 25 creditable compensation during the last five (5) fiscal years of employment
 26 prior to retirement constitute a bona fide promotion or career advancement
 27 *and may promulgate administrative regulations in accordance with KRS*

1 *Chapter 13A to administer this section. All state-administered retirement*
2 *systems shall cooperate to implement this section.*

3 ~~(7) [(b) Lump sum payments for compensatory time paid to an employee upon~~
4 ~~termination of employment shall be exempt from the provisions of this section.~~

5 ~~(4) Kentucky Retirement Systems shall be required to answer inquiries from~~
6 ~~participating employers regarding this section. Upon request of the employer prior~~
7 ~~to the employee's change of position or hiring, the systems shall make a~~
8 ~~determination that is binding to the systems as to whether or not a change of~~
9 ~~position or hiring constitutes a bona fide promotion or career advancement.~~

10 ~~(5)]Any employer who disagrees with a determination made by the system in~~
11 ~~accordance with this section *regarding whether an increase in compensation*~~
12 ~~*constitutes a bona fide promotion or career advancement for purposes of*~~
13 ~~*subsection (5) of this section* may request a hearing and appeal the decision in~~
14 ~~accordance with KRS 61.645(16). [The systems shall not charge interest, or~~
15 ~~consider the costs due under this section as delinquent contributions, during the~~
16 ~~pendency of the hearing process and appeal.~~

17 ~~(6) For any additional actuarial costs charged to the employer under this section, the~~
18 ~~systems shall allow the employer to pay the costs over a period, not to exceed one~~
19 ~~(1) year, without interest.]~~

20 ~~(8) *For the fiscal year beginning July 1, 2017, and subsequent years, the Kentucky*~~
21 ~~*Retirement Systems shall provide a means for employers to separately report the*~~
22 ~~*specific exceptions provided in subsection (4) of this section within the reporting*~~
23 ~~*system utilized by the employers for making employer reports under Section 5 of*~~
24 ~~*this Act and KRS 61.675 and 78.545. The Kentucky Retirement Systems shall*~~
25 ~~*continually provide communication, instructions, training, and educational*~~
26 ~~*opportunities for employers regarding how to appropriately report exemptions*~~
27 ~~*established by subsection (4) of this section.*~~

1 **(9) This section shall not apply to employees participating in the hybrid cash balance**
2 **plan as provided by KRS 16.583 and 61.597.**

3 ➔Section 4. KRS 16.645 is amended to read as follows:

4 The following subjects shall be administered in the same manner subject to the same
5 limitations and requirements as provided for the Kentucky Employees Retirement System
6 as follows:

- 7 (1) Cessation of membership, as provided for by KRS 61.535;
- 8 (2) Medical examiners and hearing procedures, as provided for by KRS 61.665;
- 9 (3) Actuarial bases, as provided for by KRS 61.670;
- 10 (4) Duties of the employer, as provided for by KRS 61.675;
- 11 (5) Exemption of benefits of the system for taxation and qualified domestic relations
12 orders, as provided for by KRS 61.690;
- 13 (6) Retirement allowance increase, as provided for by KRS 61.691;
- 14 (7) Calculation of retirement allowance, as provided for by KRS 61.599;
- 15 (8) Beneficiaries to be designated by member, change, rights, as provided for by KRS
16 61.542;
- 17 (9) Year of service credit, as provided for by KRS 61.545;
- 18 (10) Refund of contributions, death after retirement, as provided by KRS 61.630;
- 19 (11) Custodian of fund, payments made, when, as provided for by KRS 61.660;
- 20 (12) Credit for service prior to membership date, as provided for by KRS 61.526;
- 21 (13) Member's account, confidential, as provided for by KRS 61.661;
- 22 (14) Cessation of membership, loss of benefits, as provided for by KRS 61.550;
- 23 (15) Correction of errors in records, as provided for by KRS 61.685;
- 24 (16) Maximum disability benefit, as provided for by KRS 61.607;
- 25 (17) Retirement application procedure, effective retirement date, as provided for by KRS
26 61.590;
- 27 (18) Employer contributions, as provided for by KRS 61.565;

- 1 (19) Reinstatement of lost service credit, purchase of service credit, interest paid, and
2 delayed contribution and installment payments, as provided for by KRS 61.552;
- 3 (20) Reciprocal arrangement between systems, as provided by KRS 61.680;
- 4 (21) Refund of contributions, conditions, as provided by KRS 61.625;
- 5 (22) Hospital and medical insurance plan, as provided by KRS 61.702;
- 6 (23) Death benefit, as provided by KRS 61.705;
- 7 (24) Disability retirement allowance, reduction, and discontinuance, as provided by KRS
8 61.615;
- 9 (25) Service credit, Armed Forces, as provided by KRS 61.555;
- 10 (26) Reinstated employee, contributions on creditable compensation, as provided for by
11 KRS 61.569;
- 12 (27) Statement to be made under oath, good faith reliance, as provided for in KRS
13 61.699;
- 14 (28) Retirement of persons in hazardous positions, as provided for by KRS 61.592;
- 15 (29) Direct deposit of recipient's retirement allowance as provided in KRS 61.623;
- 16 (30) Purchase of service credit effective July 1, 2001, as provided in KRS 61.5525;
- 17 (31) Payment of small amounts upon death of member, retiree, or recipient without
18 formal administration of the estate as provided in KRS 61.703;
- 19 (32) Suspension of retirement payments on reemployment, reinstatement, recomputation
20 of allowance, waiver of provisions in certain instances, reemployment in a different
21 position, as provided for by KRS 61.637;
- 22 (33) Medical examination and financial review after disability retirement, staff review,
23 as provided in KRS 61.610; and
- 24 (34) Employer payment of increases in creditable compensation **and adjustments to**
25 **creditable compensation** during the last five (5) years of employment as provided
26 by KRS 61.598.
- 27 ➔Section 5. KRS 78.545 is amended to read as follows:

- 1 The following matters shall be administered in the same manner subject to the same
2 limitations and requirements as provided for the Kentucky Employees Retirement System
3 as follows:
- 4 (1) Cessation of membership, conditions, as provided for by KRS 61.535;
 - 5 (2) Statement of member and employer, as provided for by KRS 61.540;
 - 6 (3) Beneficiary to be designated by member, change, rights, as provided for by KRS
7 61.542;
 - 8 (4) Service credit determination, as provided for by KRS 61.545;
 - 9 (5) Cessation of membership, loss of benefits, as provided for by KRS 61.550;
 - 10 (6) Service credit, Armed Forces, as provided for by KRS 61.555;
 - 11 (7) Normal and early retirement eligibility requirements, as provided for by KRS
12 61.559;
 - 13 (8) Retirement allowance increases as provided for by KRS 61.691;
 - 14 (9) Retirement application procedure, effective retirement date, as provided for by KRS
15 61.590;
 - 16 (10) Disability retirement, conditions, as provided for by KRS 61.600;
 - 17 (11) Disability retirement, allowance, as provided for by KRS 61.605;
 - 18 (12) Medical examination after disability retirement, as provided for by KRS 61.610;
 - 19 (13) Disability retirement allowance, reduction, as provided for by KRS 61.615;
 - 20 (14) Determination of retirement allowance, as provided for by KRS 61.595;
 - 21 (15) Refund of contributions, conditions, as provided for by KRS 61.625;
 - 22 (16) Refund of contributions, death after retirement, as provided for by KRS 61.630;
 - 23 (17) Optional retirement plans, as provided for by KRS 61.635;
 - 24 (18) Suspension of retirement payments on reemployment, reinstatement, as provided for
25 by KRS 61.637;
 - 26 (19) Death before retirement, beneficiary's options, as provided for by KRS 61.640;
 - 27 (20) Board of trustees, conflict of interest, as provided for by KRS 61.655;

- 1 (21) Custodian of funds, payments made, when, as provided for by KRS 61.660;
- 2 (22) Medical examiners and hearing procedures, as provided for by KRS 61.665;
- 3 (23) Actuarial bases, as provided for by KRS 61.670;
- 4 (24) Employer's administrative duties, as provided for by KRS 61.675;
- 5 (25) Correction of errors in records, as provided for by KRS 61.685;
- 6 (26) Exemptions of retirement allowances, and qualified domestic relations orders, as
7 provided for by KRS 61.690;
- 8 (27) Credit for service prior to membership date, as provided for by KRS 61.526;
- 9 (28) Creditable compensation of fee officers, as provided for by KRS 61.541;
- 10 (29) Members' account, confidential, as provided for by KRS 61.661;
- 11 (30) Retirement plan for employees determined to be in a hazardous position, as
12 provided for by KRS 61.592;
- 13 (31) Maximum disability benefit, as provided for by KRS 61.607;
- 14 (32) Consent of employees to deductions and reciprocal arrangement between systems,
15 as provided for by KRS 61.680;
- 16 (33) Employer contributions, as provided for by KRS 61.565;
- 17 (34) Recontribution and delayed contribution payments, purchase of service credit,
18 interest, and installment payments, as provided for by KRS 61.552;
- 19 (35) Hospital and medical insurance plan, as provided by KRS 61.702;
- 20 (36) Death benefit, as provided by KRS 61.705;
- 21 (37) Reinstated employee, contributions on creditable compensation, as provided for by
22 KRS 61.569;
- 23 (38) Statement to be made under oath, good faith reliance, as provided for in KRS
24 61.699;
- 25 (39) Disability procedure for members in hazardous positions as provided for in KRS
26 16.582;
- 27 (40) Direct deposit of recipient's retirement allowance as provided for in KRS 61.623;

- 1 (41) Death or disability from a duty-related injury as provided in KRS 61.621;
- 2 (42) Purchase of service credit effective July 1, 2001, as provided in KRS 61.5525;
- 3 (43) Payment of small accounts upon death of member, retiree, or recipient without
- 4 formal administration of the estate as provided in KRS 61.703;
- 5 (44) Hybrid cash balance plan provided to new members as provided by KRS 61.597;
- 6 (45) Employer payment of increases in creditable compensation **and adjustments to**
- 7 **creditable compensation** during the last five (5) years of employment as provided
- 8 by KRS 61.598;
- 9 (46) Calculation of retirement allowance, as provided by KRS 61.599; and
- 10 (47) Voluntary and involuntary cessation of participation by a participating agency as
- 11 provided by KRS 61.522.
- 12 ➔Section 6. Whereas employers are facing various legal and financial issues
- 13 regarding pension-spiking charges, an emergency is declared to exist, and this Act takes
- 14 effect upon its passage and approval by the Governor or upon its otherwise becoming
- 15 law.