

1 AN ACT relating to state-supported universities and community colleges
2 participating in the Kentucky Employees Retirement System and declaring an emergency.

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

4 ➔Section 1. KRS 61.522 is amended to read as follows:

5 Notwithstanding any other provision of KRS 61.510 to 61.705 or 78.510 to 78.852 to the
6 contrary:

7 (1) For purposes of this section:

8 (a) "Active member" means a member who is participating in the system;

9 (b) "Employer" means the governing body of a department, as defined by KRS
10 61.510, or a county as defined by KRS 78.510;

11 (c) "Employer's effective cessation date" means:

12 1. The last day of the system's plan year in the year in which the employer
13 has elected to cease participation in the system, provided the employer
14 has met the requirements of this section and has given the Kentucky
15 Retirement Systems sufficient notice as provided by administrative
16 regulations promulgated by the systems; or

17 2. For Kentucky Employees Retirement System employers making an
18 election to cease participating under the provisions of subsection (8) of
19 this section, it shall be June 30, 2020; and

20 (d) "Inactive member" means a member who is not participating with the system;

21 (2) Any employer participating in the Kentucky Employees Retirement System or the
22 County Employees Retirement System on July 1, 2015, except as limited by
23 subsection (6) of this section, may:

24 (a) Voluntarily cease participation in its respective retirement system subject to
25 the requirements and restrictions of this section;

26 (b) Be required to involuntarily cease participation in the system under the
27 provisions of this section if the board has determined the employer is no

- 1 longer qualified to participate in a governmental plan or has failed to comply
2 with the provisions of KRS 61.510 to 61.705 or 78.510 to 78.852; or
- 3 (c) If the employer is participating in the Kentucky Employees Retirement
4 System, request an estimate of the cost of voluntarily ceasing participation in
5 the system prior to officially making a request to cease participation. For those
6 Kentucky Employees Retirement System nonhazardous employers who are
7 considering ceasing participating in the system under the provisions of
8 subsection (8) of this section on June 30, 2020, the request for an estimate to
9 voluntarily cease participating must be made prior to December 31, 2019, and
10 the estimate shall be provided to that employer within sixty (60) days of the
11 request, except that no estimate shall be required to be provided prior to
12 January 31, 2020;
- 13 (3) (a) If an employer desires to voluntarily cease participation in the Kentucky
14 Employees Retirement System or the County Employees Retirement System
15 as provided by subsection (2)(a) of this section:
- 16 1. The employer shall adopt a resolution requesting to cease participation
17 in the system and shall submit the resolution to the board for its
18 approval. The board shall not be able to deny a resolution to cease
19 participation in the Kentucky Employees Retirement System for any
20 employer who seeks to voluntarily cease participation in the system as
21 provided by subsection (8) of this section;
 - 22 2. Except as provided by subsection (8)(d) of this section, the cessation of
23 participation in the system shall apply to all employees of the employer;
 - 24 3. The employer shall pay for all administrative costs of an actuarial study
25 to be completed by the Kentucky Retirement Systems' consulting actuary
26 and for any other administrative costs for discontinuing participation in
27 the system as determined by the board and as provided by this section;

- 1 4. The employer shall provide an alternative retirement program for
2 employees who will no longer be covered by the system, which may
3 include a voluntary defined contribution plan but, for Kentucky
4 Employees Retirement System employers with effective cessation dates
5 occurring on or after June 30, 2020, the alternative retirement program
6 shall not include a defined benefit plan which by its nature can have an
7 unfunded liability;
- 8 5. If the alternative retirement program established by the employer meets
9 the qualification requirements under 26 U.S.C. sec. 401(a) or 26 U.S.C.
10 sec. 403(b) and is capable of accepting trustee-to-trustee transfers of
11 both pre-tax and post-tax contributions, employees of the employer
12 ceasing participation may, except for those employees continuing to
13 participate in the system as provided by subsection (8)(d)2. of this
14 section, seek to transfer his or her account balance to the employer's
15 qualified alternate retirement program within sixty (60) days of the
16 employer's effective cessation date. An employee's election to transfer
17 his or her account balance within sixty (60) days of the employer's
18 effective cessation date is an irrevocable waiver of the right to obtain
19 service credits in the system for the time worked for the employer
20 ceasing participation;
- 21 6. The employer shall pay to the system by lump sum or in installments as
22 provided by subsection (8) of this section, if eligible, the full actuarial
23 cost, except as provided by subsection (8)(g)4. of this section, of the
24 benefits accrued by its current and former employees in the system as
25 determined separately for the pension fund and the insurance fund by the
26 actuarial study required by subparagraph 3. of this paragraph. If the
27 employer makes an election for employees to continue to participate in

1 the system as provided by subsection (8)(d)2. of this section, the cost
2 shall also include the present value of future normal costs of those
3 employees who will continue to participate in the system after the
4 employer's effective cessation date. The full actuarial cost shall not
5 include any employee who seeks a transfer of his or her account balance
6 within sixty (60) days of the employer's effective cessation date as
7 provided by subparagraph 5. of this paragraph. The actuarial cost shall
8 be fixed, and the employer shall not be subject to any increases or
9 subsequent adjustments, once the lump sum is paid or the installment
10 payments have commenced; and

11 7. Kentucky Employees Retirement System employers ceasing
12 participating under the provisions of subsection (8) of this section who
13 elect to pay their actuarial costs by a lump sum shall make the full lump-
14 sum payment by June 30, 2021, and shall pay interest on the principal
15 amount beginning on July 1, 2020, equal to a rate of five and one-quarter
16 percent (5.25%) per annum for pension costs and at a rate of six and
17 one-quarter percent (6.25%) per annum for retiree health costs until the
18 lump-sum payment is made. If the ceasing employer fails to make the
19 full lump-sum payment by June 30, 2021, the ceasing employer shall
20 make installments as provided by subsection (8)(g) of this section, and
21 the ceasing employer shall have the costs recalculated based upon
22 making installment payments as provided by this section and shall be
23 required to make up any missed installment payments as determined by
24 the system.

25 (b) If the board determines an employer must involuntarily cease participation in
26 the system as provided by subsection (2)(b) of this section:

27 1. The cessation of participation in the system shall apply to all employees

1 of the employer;

2 2. The employer shall pay for all administrative costs of an actuarial study
3 to be completed by the Kentucky Retirement Systems' consulting actuary
4 and for any other administrative costs for discontinuing participation in
5 the system as determined by the board and as provided by this section;
6 and

7 3. The employer shall pay by lump sum to the system the full actuarial cost
8 of the benefits accrued by its current and former employees in the
9 system as determined separately for the pension fund and the insurance
10 fund by the actuarial study required by subparagraph 2. of this
11 paragraph. The actuarial cost shall be fixed, and the employer shall not
12 be subject to any increases or subsequent adjustments, once the lump
13 sum is paid.

14 A Kentucky Employees Retirement System employer who ceases participation
15 in the systems under this paragraph shall not establish or contribute to on
16 behalf of its employees a defined benefit plan which by its nature can have an
17 unfunded liability;

18 (4) Any employee hired on or after the employer's effective cessation date by an
19 employer who has ceased participation in the system as provided by this section
20 shall not, regardless of his or her membership date in the systems administered by
21 Kentucky Retirement Systems, be eligible to participate in the Kentucky Employees
22 Retirement System or the County Employees Retirement System through the
23 employer that ceased participation for the duration of his or her employment with
24 that employer;

25 (5) If an employer has ceased participation in the system as provided by this section:

26 (a) The rights of recipients and the vested rights of inactive members accrued as
27 of the employer's effective cessation date shall not be impaired or reduced in

1 any manner as a result of the employer ceasing participation in the system; and
2 (b) Except as provided by subsection (8)(d)2. of this section, employees of the
3 employer ceasing participation shall accrue benefits through the employer's
4 effective cessation date but shall not accrue any additional benefits in the
5 Kentucky Employees Retirement System or the County Employees Retirement
6 System, including earning years of service credit through the ceased employer,
7 after the employer's effective cessation date for as long as they remain
8 employed by the employer. The day after the employer's effective cessation
9 date, each employee described by this paragraph, except as provided by
10 subsection (8)(d)2. of this section, shall be considered an inactive member
11 with respect to his or her employment with the employer that ceased
12 participation and, subject to the provisions and limitations of KRS 61.510 to
13 61.705 and 78.510 to 78.852, shall:

- 14 1. Retain his or her accounts with the Kentucky Employees Retirement
15 System or the County Employees Retirement System and have those
16 accounts credited with interest in accordance with KRS 61.510 to
17 61.705 and 78.510 to 78.852;
- 18 2. Retain his or her vested rights in accordance with paragraph (a) of this
19 subsection; and
- 20 3. Be eligible to take a refund of his or her accumulated account balance in
21 accordance with KRS 61.625 or any other available distribution if
22 eligible;

23 (6) (a) Kentucky Employees Retirement System employers who are county attorney
24 offices, Commonwealth's attorney offices, local and district health
25 departments governed by KRS Chapter 212, master commissioners, executive
26 branch agencies whose employees are subject to KRS 18A.005 to 18A.200,
27 state-administered retirement systems, state-supported universities and

1 community colleges, property valuation administration offices, or employers
2 in the legislative or judicial branch of Kentucky state government, shall not be
3 eligible to voluntarily discontinue participation in the Kentucky Employees
4 Retirement System, except that:

- 5 1. Any employer who is a nonstock nonprofit corporation organized under
6 KRS Chapter 273 may voluntarily cease participation; and
- 7 2. Local and district health departments governed by KRS Chapter 212,
8 state-supported universities and community colleges, and the Kentucky
9 Higher Education Student Loan Corporation may voluntarily cease
10 participation in the Kentucky Employees Retirement System solely
11 under the provisions and requirements of subsection (8) of this section.

12 (b) Only the employers in the County Employees Retirement System who are a
13 nonstock nonprofit corporation organized under KRS Chapter 273 may
14 voluntarily cease participation in the County Employees Retirement System;

15 (7) For purposes of this section, the full actuarial cost shall be determined by the
16 Kentucky Retirement Systems' consulting actuary separately for the pension fund
17 and the insurance fund using the assumptions and methodology established by the
18 system specifically for determining the full actuarial cost of ceasing participation as
19 of the employer's effective cessation date. For purposes of determining the full
20 actuarial cost, the assumed rate of return used to calculate the cost shall be the lesser
21 of the assumed rate of return utilized in the system's most recent actuarial valuation
22 or the yield on a thirty (30) year United States treasury bond as of the employer's
23 effective cessation date, but shall in no case be lower than:

24 (a) Except as provided by paragraphs (b) to ~~(f)(e)~~ of this subsection, the
25 assumed rate of return utilized in the system's most recent actuarial valuation
26 minus three and one-half percent (3.5%);

27 (b) Four and one-half percent (4.5%) for those Kentucky Employees Retirement

1 System employers who voluntarily cease participation under the provisions of
2 subsection (8) of this section who pay the costs of ceasing participation by
3 lump-sum payment by June 30, 2021, and who do not make an election for
4 their employees to continue to participate in the system after the employer's
5 effective cessation date as provided by subsection (8)(d)3. of this section;

6 (c) **Except as provided by paragraph (f) of this subsection,** three and one-half
7 percent (3.5%) for those Kentucky Employees Retirement System employers
8 who voluntarily cease participation under the provisions of subsection (8) of
9 this section who pay the costs of ceasing participation by lump-sum payment
10 by June 30, 2021, and who do make an election for employees to continue to
11 participate in the system after the employer's effective cessation date as
12 provided by subsection (8)(d)2. of this section;

13 (d) Three and one-half percent (3.5%) for those Kentucky Employees Retirement
14 System employers who voluntarily cease participation under the provisions of
15 subsection (8) of this section who pay the costs of ceasing participation by
16 installment payments and who do not make an election for employees to
17 continue to participate in the system after the employer's effective cessation
18 date as provided by subsection (8)(d)3. of this section;~~or~~

19 (e) **Except as provided by paragraph (f) of this subsection,** three percent (3%)
20 for those Kentucky Employees Retirement System employers who voluntarily
21 cease participation under the provisions of subsection (8) of this section who
22 pay the costs of ceasing participation by installment payments and who do
23 make an election for employees to continue to participate in the system after
24 the employer's effective cessation date as provided by subsection (8)(d)2. of
25 this section; **or**

26 **(f) 1. For the actuarial cost of nonhazardous employees hired prior to a**
27 **state-supported university's or community college's effective cessation**

1 date, who began participating in the systems administered by the
2 Kentucky Retirement Systems on or after September 1, 2008, but prior
3 to January 1, 2014, who are participating in the Kentucky Employees
4 Retirement System through a state-supported university or community
5 college as the employer:

6 a. Four and one-half percent (4.5%) for those Kentucky Employees
7 Retirement System university and college employers who
8 voluntarily cease participation under the provisions of
9 subsection (8) of this section who pay the costs of ceasing
10 participation by lump-sum payment by June 30, 2021, and who
11 make an election that the employees described by this
12 subparagraph will not continue to participate in the system after
13 the university or college employer's effective cessation date as
14 provided by subsection (8)(d)1.b. of this section; or

15 b. Three and one-half percent (3.5%) for those Kentucky
16 Employees Retirement System university and college employers
17 who voluntarily cease participation under the provisions of
18 subsection (8) of this section who pay the costs of ceasing
19 participation by installment payments and who make an election
20 that the employees described by this subparagraph will not
21 continue to participate in the system after the university or
22 college employer's effective cessation date as provided by
23 subsection (8)(d)1.b. and 3. of this section.

24 2. For the actuarial cost of nonhazardous employees hired prior to a
25 state-supported university's or community college's effective cessation
26 date, who began participating in the systems administered by the
27 Kentucky Retirement Systems prior to September 1, 2008, who are

participating in the Kentucky Employees Retirement System through a state-supported university or community college:

a. Three and one-half percent (3.5%) for those Kentucky Employees Retirement System university and college employers who pay the costs of ceasing participation by lump-sum payment and who make an election for the employees described by this subparagraph to continue to participate in the system after the university or college employer's effective cessation date as provided by subsection (8)(d)2. of this section; or

b. Three percent (3.0%) for those Kentucky Employees Retirement System university and college employers who pay the costs of ceasing participation by installment payments and who make an election for the employees described by this subparagraph to continue to participate in the system after the university or college employer's effective cessation date as provided by subsection (8)(d)2. of this section;

(8) Notwithstanding the provisions of this section, any Kentucky Employees Retirement System employer who is eligible to voluntarily cease participating as provided by subsection (6) of this section may, on or after April 1, 2020, but prior to May 1, 2020, elect to voluntarily cease participating in the systems for its nonhazardous employees by submitting a resolution in accordance with subsection (3)(a)1. of this section. If an employer makes an election to voluntarily cease participation by submitting a resolution as provided by this subsection:

(a) The board shall accept any election to cease participation on or before June 30, 2020, and the employer's effective cessation date shall be June 30, 2020. Prior to May 1, 2020, an employer may rescind a previously submitted election to cease participation;

1 (b) Nonhazardous employees hired on or after the employer's effective cessation
2 date by an employer who has ceased participation in the system as provided by
3 this section shall not, regardless of his or her membership date in the systems
4 administered by Kentucky Retirement Systems, be eligible to participate in the
5 Kentucky Employees Retirement System through the employer that ceased
6 participation for the duration of his or her employment with that ceasing
7 employer;

8 (c) Nonhazardous employees hired prior to the employer's effective cessation
9 date, who began participating in the systems administered by Kentucky
10 Retirement Systems on or after January 1, 2014, and who are participating in
11 the hybrid cash balance plan as provided by KRS 61.597, shall continue to
12 contribute and earn service credit in the systems through the employer's
13 effective cessation date. After the employer's effective cessation date, the
14 employee shall participate in the alternative retirement plan established by the
15 employer as provided by subsection (3)(a)4. of this section. A nonhazardous
16 employee covered by this paragraph who elects to transfer his or her account
17 balance within sixty (60) days of the employer's effective cessation date as
18 provided by subsection (3)(a)5. of this section, shall, notwithstanding KRS
19 61.597, receive a transfer of the employee's accumulated account balance,
20 including the entire accumulated employer credit, regardless of the employee's
21 years of service credit;

22 (d) 1. The employer shall, in the resolution submitted in accordance with
23 subsection (3)(a)1. of this section, make an election as to whether or not
24 nonhazardous employees hired prior to the employer's effective
25 cessation date, who began participating in the systems administered by
26 Kentucky Retirement Systems prior to January 1, 2014, who are
27 participating in the systems administered by Kentucky Retirement

1 Systems through the employer, will continue to participate in the system
2 after the employer's effective cessation date. A state-supported
3 university or community college employer may elect that:

4 a. Nonhazardous employees hired prior to the university or college
5 employer's effective cessation date, who began participating in
6 the systems administered by the Kentucky Retirement Systems
7 prior to September 1, 2008, who are participating in the systems
8 administered by the Kentucky Retirement Systems through the
9 university or college employer, will continue to participate in the
10 system after the university or college employer's effective
11 cessation date; and

12 b. Nonhazardous employees hired prior to the university or college
13 employer's effective cessation date, who began participating in
14 the systems administered by the Kentucky Retirement Systems on
15 or after September 1, 2008, but prior to January 1, 2014, who are
16 participating in the systems administered by the Kentucky
17 Retirement Systems through the university or college employer,
18 will not continue to participate in the system after the university
19 or college employer's effective cessation date.

20 2. If the employer makes an election for the employees described by
21 this paragraph to continue participating in the system after the
22 employer's effective cessation date, these employees will continue to
23 contribute and earn service credit in the systems for as long as they
24 remain employed by the employer in a regular full-time position that is
25 eligible to participate in the systems, except in the event the employer
26 fails to make installment payments as provided by KRS 61.675(4). Any
27 costs for the present value of future normal costs of the employees

1 covered by this subparagraph who will contribute and earn service in the
2 system after the employer's effective cessation date shall be included in
3 the cost calculation established by subsection (7) of this section.

4 3. If the employer does not make an election for the employees described
5 by this paragraph to continue participating in the system after the
6 employer's effective cessation date, **or makes an election under**
7 **subparagraph 1.b. of this paragraph,** these employees shall continue to
8 contribute and earn service credit in the systems through the employer's
9 effective cessation date. After the employer's effective cessation date,
10 these employees shall participate in the alternative retirement plan
11 established by the employer as provided by subsection (3)(a)4. of this
12 section;

13 (e) The cost of ceasing participating to an individual employer shall be equal to
14 the cost determined under subsection (7) of this section and shall include the
15 costs of those employees who continue to participate in the system as
16 provided by paragraph (d)2. of this subsection;

17 (f) The employer may pay the full actuarial cost of ceasing participation by lump-
18 sum payment or in installments as provided by paragraph (g) of this
19 subsection;

20 (g) If the employer elects to pay the costs in installment payments, the cost of
21 ceasing participation as provided by this subsection shall be financed by the
22 systems using the following method:

23 1. Annual payments occurring on or after July 1, 2020, shall be a set dollar
24 value and shall be paid in monthly installments. In fiscal year 2020-
25 2021, the set dollar value shall be equal to the higher of the actual
26 contributions paid by the employer in fiscal year 2019-2020 or the
27 annualized average of the creditable compensation reported to the

1 systems by the ceasing employer over the last sixty (60) months
2 occurring prior to July 1, 2019, for which contributions were paid by the
3 ceasing employer, and multiplied by an employer rate of forty-nine and
4 forty-seven one-hundredths percent (49.47%). Annual payments, for
5 fiscal years occurring on or after July 1, 2021, which shall be paid
6 monthly, shall be increased by one and one-half percent (1.5%) annually
7 and shall be paid until the cost as provided by subsection (7) of this
8 section and as adjusted annually by subparagraphs 2. and 3. of this
9 paragraph are paid in full or until an employer as described by
10 subparagraph 4. of this paragraph has paid for thirty (30) years from the
11 effective cessation date;

12 2. Interest shall be assigned to the principal amount annually beginning on
13 July 1, 2020, and for each July 1 thereafter, that is equal to a rate of five
14 and one-quarter percent (5.25%) per annum for pension costs and at a
15 rate of six and one-quarter percent (6.25%) per annum for retiree health
16 costs;

17 3. If an employer is not projected by the systems to pay off the full
18 actuarial costs to cease participation with interest as provided by
19 subparagraph 2. of this paragraph at the conclusion of the thirty (30) year
20 installment period from the employer's effective cessation date, and the
21 employer makes an election for employees to continue to participate in
22 the system after the employer's effective cessation date as provided by
23 paragraph (d)2. of this subsection, then the systems shall adjust the base
24 value for the first annual payments occurring on or after July 1, 2020, in
25 order to keep the maximum period of installments to thirty (30) years;
26 and

27 4. If an employer is not projected by the systems to pay off the full

1 actuarial costs to cease participation with interest as provided by
2 subparagraph 2. of this paragraph at the conclusion of the thirty (30) year
3 installment period from the employer's effective cessation date, and the
4 employer does not make an election for any employees to continue to
5 participate in the system after the employer's effective cessation date as
6 provided by paragraph (d)3. of this subsection, the employer shall pay
7 the amount determined by subparagraph 1. of this paragraph for thirty
8 (30) years from the effective cessation date and no additional costs shall
9 be billed to a ceasing employer after the conclusion of the thirty (30)
10 year period nor shall the employer be subject to adjustments under
11 subparagraph 3. of this paragraph. The system may request in future
12 biennial executive branch budgets the additional funding needed on an
13 annual basis to fully pay off the installments at the conclusion of the
14 thirty (30) year period for the employers described by this paragraph,
15 and it is the intent of the General Assembly to pay the additional funding
16 needed by appropriation in the biennial executive branch budget.

17 An employer ceasing participation who is making installment payments as
18 provided by this paragraph may at any time pay off a portion of the remaining
19 balance or the entire remaining balance and shall not be charged any interest
20 for periods beyond the pay-off date for the balance that is paid off;

- 21 (h) Kentucky Employees Retirement System employers eligible to cease
22 participation under the provisions of this subsection who do not make an
23 election to cease participation in the system prior to May 1, 2020, shall be
24 required to pay the full actuarially determined contributions established by
25 KRS 61.565 and 61.702 for fiscal years occurring on or after July 1, 2020; and
26 (i) Kentucky Employees Retirement System employers who elect to cease
27 participation in the system as provided by this subsection who are currently

- 1 receiving a distribution of general fund appropriations in the biennial
2 executive branch budget under the provisions of 2018 Ky. Acts ch. 169, Part I,
3 G., 4., (5), 2018 Ky. Acts ch. 169, Part I, G., 5., (2), or 2018 Ky. Acts ch. 169,
4 Part I, G., 9., (2) to help pay employer contributions to the system shall
5 continue to receive the same level of distribution of general fund
6 appropriations to help pay the costs of ceasing participation until such time
7 that the employer's full actuarial costs of ceasing participation are paid off;
- 8 (9) The Kentucky Retirement Systems shall promulgate administrative regulations
9 pursuant to KRS Chapter 13A to administer this section;
- 10 (10) (a) Any employer who voluntarily ceases participation, or who is required to
11 involuntarily cease participation as provided in this section, shall hold the
12 Commonwealth and the Kentucky Retirement Systems, including board
13 members and employees of the Kentucky Retirement Systems, harmless from
14 damages, attorney's fees and costs from legal claims for any cause of action
15 brought by any member or retired member of the departing employer related
16 to the employer's cessation of participation as set forth in this section.
- 17 (b) Any employer who is voluntarily ceasing participation under the provisions of
18 subsection (8) of this section shall be required to pledge any security in any
19 relevant real estate, chattel paper, deposit accounts, documents, goods covered
20 by documents, instruments, investment property, letters of credit rights, and
21 money to the costs of ceasing participation until all costs of ceasing
22 participation are paid in full; and
- 23 (11) Notwithstanding any other provision of statute to the contrary, the provisions of
24 KRS 61.510 to 61.705 and 78.510 to 78.852, and the administrative regulations
25 promulgated thereunder, shall prevail regarding any question of participation in the
26 systems of any employer or any employee of an employer who ceases participation
27 in the Kentucky Employees Retirement System.

1 ➡Section 2. Whereas ensuring the financial health of state-supported universities
2 and community colleges providing essential services to the Commonwealth of Kentucky
3 is imperative, an emergency is declared to exist, and this Act takes effect upon its passage
4 and approval by the Governor or upon its otherwise becoming a law.