

**95.290 Pension system for police and fire divisions -- Governing bodies -- Repeal of ordinances establishing pension fund -- Liquidation and distribution of residual assets -- Report -- Distribution of funds -- Administration expenses -- Equal protection for beneficiaries -- Participation by policemen and firefighters in County Employees Retirement System -- Contributions. (Effective April 1, 2021)**

- (1) The city legislative body in cities of the first class may enact ordinances providing for a system of pensions for retired and disabled members of the police and fire divisions of the department of public safety and their dependents, may appropriate funds for the purpose of paying such pensions, may allot and pay to the policemen's pension fund or the firefighters' pension fund or either or both of them, all fines and forfeitures imposed upon members of the respective divisions, and may provide for, assess, and collect contributions from the members for the benefit of the fund.
- (2)
  - (a) There shall be a governing body of the policemen's pension fund, and a governing body of the firefighters' pension fund. The governing bodies of the respective funds shall hold title to all assets in their respective funds, and shall have exclusive authority relating to investment of the assets of the funds, including contracting with investment advisors or managers to perform investment services as deemed necessary and prudent by the board. A majority of the governing body of each fund shall be composed of persons receiving pension benefits from the respective pension systems, and no more than one (1) member of the city legislative body may be a member of the governing body of either the policemen's or the firefighters' pension fund, except if there are fewer than six (6) active and retired members of the policemen's or the firefighters' pension fund, the governing body of the pension fund shall be composed of the mayor, city treasurer or chief financial officer, and two (2) employees appointed by the mayor from the city's respective police department or fire department. To be effective, an action of the governing body of a fund shall require only a simple majority of the votes cast at a properly convened meeting of the governing body where a quorum is present, with a quorum being a majority of the members of a governing body.
  - (b) If there are fewer than twelve (12) active and retired members or beneficiaries of the policemen's or the firefighters' pension fund, the governing body of the fund may elect to offer to individuals entitled to benefits from the fund a one (1) time irrevocable option to convert monthly pension benefits from the fund to monthly annuity benefits from an insurance company for the same amount. An insurance company accepting a benefit transfer shall honor any features and options available under the existing plan. If the governing body of the fund elects to offer the option to convert monthly pension benefits to monthly annuity benefits, it shall provide to individuals entitled to benefits from the fund sufficiently complete and appropriate disclosures to assist in making an informed decision.
  - (c) If all liabilities to all individuals entitled to benefits from the policemen's pension fund or firefighters' pension fund have been satisfied, the ordinances

establishing the fund may be repealed by the majority vote of the duly elected members of the entire legislative body. If repealed, the governing body of the policemen's or firefighters' pension fund shall, within sixty (60) days of repeal, proceed with the liquidation of any residual assets of the fund. All residual assets liquidated pursuant to this paragraph shall be distributed by the governing body to the city's general fund provided the return of assets complies with federal and state law governing the distribution of assets. Within thirty (30) days following the distribution of residual assets, the governing body of the fund shall as its last act file a complete report with the legislative body of the city, for retention by the city clerk the same as for other city records, of the actions taken to dissolve the fund and liquidate residual assets of the fund.

- (3) Any policemen's pension fund or any firefighters' pension fund established under the provisions of this section shall be held or distributed for, and only for, any of the following purposes of the respective fund as applicable:
- (a) Paying pensions, and any bonus payments under applicable ordinances;
  - (b) Making payments to the city for transfer to the County Employees Retirement System for alternate participation pursuant to KRS 78.530(3)(a) and 78.531(2) or for the distribution of residual assets in the event the fund is dissolved pursuant to subsection (2)(c) of this section;
  - (c) Making payments to the city for transfer to an insurance company for conversion of monthly pension benefits to monthly annuity benefits as provided in subsection (2)(b) of this section;
  - (d) Transferring pension assets through investment contract or other financial instrument for the purpose of amortizing unfunded service liabilities; and
  - (e) Payment from the city to the County Employees Retirement System for future pension contributions required pursuant to KRS 61.702 and 78.635.

Pursuant to the terms of this section, if policemen of the city of the first class elect entry into the County Employees Retirement System and thereby create excess funds over those required to provide for the purposes set forth in paragraphs (a), (b), (c), (d), and (e) of this subsection, these excess funds shall be distributed to the city for use by the city for any other purpose it may elect, including but not limited to the establishment of a reserve for payment under paragraph (e) of this subsection. The governing board of the fund may annually expend for the necessary expenses connected with the fund, including but not limited to expenses for medical, actuarial, accounting, and legal services, the amount such governing board deems proper.

- (f) Payment from the city to the County Employees Retirement System for future pension contributions required pursuant to KRS 61.702 and 78.635. Pursuant to the terms of this section, if firefighters of the city of the first class elect entry into the County Employees Retirement System and thereby create excess funds over those required to provide for the purposes set forth in paragraphs (a), (b), (c), (d), and (e) of this subsection, these excess funds shall be distributed according to the terms of an agreement negotiated between the city

and the union organization representing the firefighters. The city may use its share of the distributed excess funds for any purpose it may elect, including but not limited to the establishment of a reserve for payment under paragraph (f) of this subsection.

- (4) (a) The governing body of each pension fund shall ensure that all of the assets in the fund are distributed for the purposes in subsection (3) of this section, and only for these purposes. If in any calendar year the assets in either fund exceed those needed for the actuarial liability for payment of pension benefits and any anticipated liabilities under subsection (3)(b) and (d) of this section, the legislative body of the city establishing the pension system shall ensure by pension bonus ordinance that a portion of these excess funds be distributed in an equitable manner to all eligible pension recipients. Nothing in this subsection shall be construed to require any change to be made to any pension ordinance as it exists on July 15, 1998.
- (b) The governing board of either fund may annually expend for the necessary expenses connected with the fund, including but not limited to expenses for medical, actuarial, accounting, and legal or other professional services, the amount such governing board deems proper.
- (5) Any ordinance establishing a pension fund under this section shall make equitable provision for the rights of persons having an interest in assets transferred to the fund from any fund heretofore established by statute.
- (6) To assure equal protection for the beneficiaries of either fund, any action taken by the city executive or legislative body in cities of the first class that affects a policemen's pension fund or a firefighters' pension fund established under this section shall, to the maximum extent permitted by law, treat each fund in a uniform manner and shall not cause any change to be made to the structure or operation of either fund, whether through legislation, litigation, compromise, settlement, or otherwise, unless any proposed change is offered to the other fund before it takes effect. Nothing in this subsection shall be construed to require any change to be made to any pension ordinance as it exists on July 15, 1998.
- (7) The legislative body in a city of the first class shall issue the appropriate order, pursuant to KRS 78.530(1), directing participation for policemen in the County Employees Retirement System. All new employees who would have been granted membership in the local policemen's pension system shall be members of the County Employees Retirement System. All active members of the local policemen's pension system at the time of transition to the County Employees Retirement System may choose membership in the County Employees Retirement System or may retain membership in the local system. The city shall elect the alternate participation plan, pursuant to KRS 78.530(3), for policemen who transfer to the County Employees Retirement System. Notwithstanding the provisions of KRS 78.530(3)(b), the city may, at its option, extend the payment period for the cost of alternate participation to a maximum of twenty (20) years with the interest at the rate actuarially assumed by the board. The city shall have the right to use assets in the local pension fund, other than assets necessary to pay benefits to the remaining

active members of the local policemen's pension system and to retirees and their survivors as determined by actuarial valuation, to assist in the payment of the annual installment cost of alternate participation. All policemen who become members of the County Employees Retirement System pursuant to this section shall be granted hazardous duty coverage, and the city may, at its option, purchase accumulated sick leave for each policeman upon retirement pursuant to KRS 78.616.

- (8) The legislative body in a city of the first class may issue the appropriate order, pursuant to KRS 78.530(1), directing participation for firefighters in the County Employees Retirement System. In the event that the legislative body in a city of the first class issues such an order, then all new employees who would have been granted membership in the local firefighters' pension system shall be members of the County Employees Retirement System. All active members of the local firefighters' pension system at the time of transition to the County Employees Retirement System may choose membership in the County Employees Retirement System or may retain membership in the local system. The city shall elect the alternate participation plan, pursuant to KRS 78.530(3), for firefighters who transfer to the County Employees Retirement System. Notwithstanding the provisions of KRS 78.530(3)(b), the city may, at its option, extend the payment period for the cost of alternate participation to a maximum of twenty (20) years with the interest at the rate actuarially assumed by the board. The city shall have the right to use assets in the local firefighters' pension fund, other than assets necessary to pay benefits to the remaining active members of the local firefighters' pension system and to retirees and their survivors as determined by actuarial valuation, to assist in the payment of the annual installment cost of alternate participation. After certification by the County Employees Retirement System of eligibility for hazardous duty coverage, each firefighter who becomes a member of the County Employees Retirement System pursuant to this section shall be granted hazardous duty coverage.
- (9) Notwithstanding the provisions of KRS 61.702 and 78.635, which relate to the contributions required of participating employers, any city of the first class participating in the County Employees Retirement System hazardous duty pension plan which has in effect a collective bargaining agreement with a group of employees who participate in said plan, shall have the right to enter into agreement with its employees or with their respective collective bargaining representatives. This agreement may include but is not limited to specifications of what portion of the required employer contribution shall be borne by the participating employer and what portion shall be borne by the participating employee. This provision in no way modifies the employer's obligation to remit the contributions required by the County Employees Retirement System pursuant to KRS 61.702 and 78.635, whether such contributions are borne by the city or by its participating employees.
- (10) With regard to the employer participation or employer contributions pursuant to KRS 61.702 and 78.635 as it relates to future pension contribution requirements or as it relates to payback period or interest charge for service liability cost under alternate participation, if any statute or any resolution of the appropriate state board of trustees having authority over employer participation or employer contribution

grants any terms or conditions to any city of the home rule class, or to any county, or to any urban-county government, which are more favorable in terms of participation than terms or conditions granted to any city of the first class, then said provisions for employer participation or contribution shall be available to the city of the first class, at its option and effective upon adoption by the city of the first class and notification to the County Employees Retirement System.

**Effective:** April 1, 2021

**History:** Amended 2020 Ky. Acts ch. 79, sec. 42, effective April 1, 2021; and ch. 121, sec. 3, effective July 15, 2020. -- Amended 2016 Ky. Acts ch. 31, sec. 8, effective July 15, 2016. -- Amended 2014 Ky. Acts ch. 92, sec. 107, effective January 1, 2015. -- Amended 1998 Ky. Acts ch. 235, sec. 1, effective July 15, 1998; Amended 1988 Ky. Acts ch. 390, sec. 1, effective July 1, 1988. -- Amended 1986 Ky. Acts ch. 323, sec. 1, effective April 4, 1986. -- Amended 1980 Ky. Acts ch. 387, sec. 1, effective July 15, 1980. -- Amended 1978 Ky. Acts ch. 164, sec. 19, effective June 17, 1978. -- Amended 1966 Ky. Acts ch. 255, sec. 101. -- Amended 1954 Ky. Acts ch. 164, sec. 3. -- Amended 1952 Ky. Acts ch. 56, sec. 17. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 2872b-1.

**Legislative Research Commission Note** (4/1/2021). This statute was amended by 2020 Ky. Acts chs. 79 and 121, which do not appear to be in conflict and have been codified together.