



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

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Kentucky Legislators  
702 Capitol Ave  
Capitol Annex  
Frankfort KY 40601

Re: Senate Bill 1

Dear Legislators:

Last week, Senate Bill 1 ("SB 1") was filed in the General Assembly. SB 1 seeks to substantially alter and ultimately reduce the retirement benefits for current and future state, city, and county retirees including teachers, police officers, firefighters, and social workers. The Attorney General's Office was not provided any advanced copy of SB 1. This letter is therefore our first opportunity to advise you on the multiple legal violations that we have thus far identified within the bill's 289 pages.

As you know, you – the General Assembly – created an inviolable contract between the Commonwealth and its public employees. You passed this contract into law as KRS 21.480, KRS 61.692, KRS 78.852, and KRS 161.714. Under those laws, you promised Kentucky's public employees that, in exchange for their public service, they would be guaranteed certain retirement benefits. You declared these promises to be inviolable, meaning that you could not later break them.<sup>1</sup>

The Commonwealth's public employees have upheld their end of the contract, working for decades on behalf of our Kentucky families. The General Assembly, on the other hand, will violate the contract if it passes the current version of SB 1 into law, as it would materially reduce, alter, or impair the contract's guaranteed benefits. For teachers, SB 1 unlawfully reduces cost of living adjustments, caps the use of sick time, extends years of service to qualify for some benefits, and forces teachers to contribute significantly more of their salaries to their retirement. For state police officers, state employees, and county employees, the bill unlawfully changes how public employees' retirement is calculated, reduces or caps sick leave benefits, and imposes new deductions on already strapped salaries.

Below, I have provided an initial description of some of the most serious violations:

**1. Kentucky Teachers**

The General Assembly created an inviolable contract with public educators under KRS Chapter 161. The contract protects benefits provided between KRS 161.220 and KRS 161.710. *See* KRS 161.714. SB 1 amends or repeals these very statutes, thereby unlawfully and materially reducing, altering, or impairing pension benefits due to KTRS members. Violations include:

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<sup>1</sup> *Inviolable*, Black's Law Dictionary (10th ed. 2014) *adj.*: Safe from violation; incapable of being violated. *Inviolable*, The American Heritage Dictionary (2d ed. 1985) *adj.*: Secure from violation or profanation.

- **Reduction of Cost of Living Adjustments:** The inviolable contract guarantees teacher retirees a 1.5% annual COLA. *See* KRS 161.620(2). SB 1, Section 73 reduces the annual member COLA from 1.5% to 0.75%. This reduction may reduce retirement benefits by up to \$73,000. As such, it materially impairs the rights and benefits due to retirees, and therefore violates the inviolable contract. *See e.g.*, OAG 17-031.
- **Mandatory Annual Contribution Increases:** Under the inviolable contract, teachers are required to contribute a defined amount of their annual compensation to the retirement system's health fund. *See* KRS 161.540. SB 1, Section 57 mandates that the KTRS governing board increase member contributions by up to one percent (1%) annually under certain conditions. This increase materially impairs the rights guaranteed to KTRS members and therefore violates the inviolable contract.
- **Cap of Sick Time Used to Increase Service Credit:** The inviolable contract does not cap the amount of accrued sick leave that teachers who started before July 1, 2008, may convert to additional service credit for purposes of their retirement. *See* KRS 161.623. SB 1, Section 74 caps the amount of accrued sick leave that members may convert to the amount accrued as of July 31, 2018. This limitation materially alters and impairs the rights and benefits due to employees who started before July 1, 2008, and therefore violates the inviolable contract.
- **Increase of Years of Service Requirement For 3% Benefit Factor:** The KTRS pension plan guarantees a 3% benefit factor for calculating retirees' retirement allowances, if the member has 30 years of service. *See* KRS 161.620. SB 1, Section 73 increases the service years required for this 3% benefit factor, limiting it to employees retiring with thirty (30) years of service, who have at least twenty (20) years of that service as of July 1, 2018. While members without twenty (20) years of service may still receive the 3% benefit factor, they are forced to work thirty-five (35) years and be at least age sixty (60) upon retirement to receive the factor. Because this increase materially alters the contractual service requirements and guaranteed benefits related thereto, it violates the inviolable contract.

## 2. Kentucky Employees

The Kentucky Employees Retirement System ("KERS") pension rights and benefits are located at KRS Chapter 61, with the inviolable contract found in KRS 61.510-61.705. *See* KRS 61.692. SB 1 amends or repeals these very statutes, thereby unlawfully and materially reducing, altering, or impairing pension benefits due to KERS members. Violations include:

- **Excludes Compensatory Time Payments From Creditable Compensation:** The inviolable contract allows lump-sum payments for compensatory time to be included in the creditable compensation of Tier I nonhazardous employees.<sup>2</sup> *See* KRS 61.510. SB 1, Section 14 expressly excludes lump-sum payments from creditable compensation for non-hazardous, Tier I employees, retiring after July 1, 2023. This exclusion materially alters and impairs the ultimate calculation of KERS members' retirement allowances, and therefore violates the inviolable contract.
- **Eliminates Uniform and Equipment Allowances From Creditable Compensation:** Under the inviolable contract, uniform and equipment allowances may be included in KERS members'

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<sup>2</sup> Tier I employees began their employment prior to September 1, 2008. Tier II employees began their employment on or after September 1, 2008 but prior to January 1, 2014.

creditable compensation. *See* KRS 61.510. SB 1, Section 14 expressly excludes such allowances, paid on or after January 1, 2019, from creditable compensation. This exclusion materially alters and impairs the ultimate calculation of KERS members' retirement allowances, and therefore violates the inviolable contract.

- **Caps Service Credit For Accumulated Sick Leave:** Under the inviolable contract, KERS Tier I employees are not limited in the amount of service credit they may receive for their accrued, unused sick leave. *See* KRS 61.546. SB 1, Section 16, caps service credit for sick leave for Tier I members who retire on or after August 1, 2018. Effective August 1, 2018, for any KERS member retiring on or after August 1, 2018, the maximum amount of service credited for sick leave would be set by – and could not exceed – the amount credited for balance on July 31, 2018. Because this cap materially impairs the sick leave conversion rights and benefits guaranteed to members, it violates the inviolable contract.
- **Prohibits Use of Sick Leave For Determination of Retirement Eligibility:** The inviolable contract guarantees KERS Tier I members may use accumulated, unused sick leave to determine retirement eligibility. *See* KRS 61.546. SB 1, Section 16 prohibits KERS Tier I employees from using sick leave service credit for retirement eligibility, if they retire on or after August 1, 2018. Because this prohibition materially impairs the rights and benefits due to members, it violates the inviolable contract.
- **Imposes Deductions from Creditable Compensation for Group Hospital and Medical Insurance:** The inviolable contract does not include deductions in any amount from KERS Tier I members' creditable compensation for hospital and medical insurance. *See* KRS 61.702(2)(b). SB 1, Section 30 requires an employer of a KERS Tier I member employed after July 1, 2003 to deduct up to 3% of the member's creditable compensation for purposes of hospital and medical insurance under the plan. Because this provision alters and impairs the ultimate calculation of KERS members' retirement allowances, it violates the inviolable contract.
- **Alters Final Compensation Calculation:** The inviolable contract requires Tier I hazardous employees' final compensation be calculated using the creditable compensation from the three (3) fiscal years the employee was paid the highest average monthly rate. It requires the highest five (5) years for Tier I nonhazardous employees. *See* KRS 61.510. SB 1, Section 14 requires, after January 1, 2019, that Tier I hazardous employees' final compensation be calculated using the creditable compensation from their highest three (3) *complete* fiscal years, and that the highest five (5) *complete* fiscal years be used to calculate for Tier I nonhazardous employees' final compensation. Because SB 1 alters and impairs the final compensation calculation guaranteed to hazardous and nonhazardous Tier I employees, it violates the inviolable contract.
- **Eliminates Guaranteed Annual Interest For Hybrid Cash Balance Plan Participants:** KERS Tier I and Tier II employees who opted into the current hybrid cash balance plan are guaranteed an annual interest credit of at least 4%. *See* KRS 61.597. SB 1, Section 19 removes this guarantee. Because this change materially impairs the rights of these employees, it violates the inviolable contract.

### 3. Kentucky State Police

The State Police Retirement System ("SPRS") pension rights and benefits are located at KRS Chapter 16, with the inviolable contract found in KRS 16.510-16.645. *See* KRS 16.652. SB 1 amends or

repeals these very statutes, thereby unlawfully and materially reducing, altering, or impairing pension benefits due to SPRS members. Violations include:

- **Caps Service Credit For Accumulated Sick Leave:** The inviolable contract guarantees Tier I employees are not limited in the amount of service credit they may receive for their accrued, unused sick leave. *See* KRS 16.645; KRS 61.546. SB 1, Section 16, caps service credit for sick leave for Tier I members who retire on or after August 1, 2018, requiring that the maximum amount of service credited for sick leave be set by – and could not exceed – the amount credited for balance on July 31, 2018. This cap materially impairs rights and benefits due to members, and therefore violates the inviolable contract.
- **Prohibits Use of Sick Leave For Determination of Retirement Eligibility:** The inviolable contract guarantees SPRS Tier I members may use accumulated, unused sick leave to determine retirement eligibility. *See* KRS 16.645; KRS 61.546. SB 1, Section 16 prohibits SPRS Tier I employees from using sick leave service credit for retirement eligibility, if they retire on or after August 1, 2018. This prohibition materially impairs rights and benefits due to members, and therefore violates the inviolable contract.
- **Imposes Deductions from Creditable Compensation for Group Hospital and Medical Insurance:** The inviolable contract does not include deductions in any amount from SPRS Tier I members' creditable compensation for hospital and medical insurance. *See* KRS 16.645; KRS 61.702(2)(b). SB 1, Section 30 requires an employer of a SPRS Tier I member, employed after July 1, 2003, to deduct up to 3% of the member's creditable compensation for purposes of hospital and medical insurance under the plan. Because this provision alters and impairs the ultimate calculation of SPRS members' retirement allowances, it violates the inviolable contract.

#### 4. County Employees

The County Employees Retirement System ("CERS") pension rights and benefits are located at KRS Chapter 78, with the inviolable contract found in KRS 78.510-78.852. *See* KRS 78.852. SB 1 amends or repeals these very statutes, thereby unlawfully and materially reducing, altering, or impairing pension benefits due to CERS members. Violations include:

- **Excludes Compensatory Time Payments From Creditable Compensation:** The inviolable contract allows lump-sum payments for compensatory time to be included in the creditable compensation of Tier I nonhazardous employees. *See* KRS 78.510. SB 1, Section 15 expressly excludes lump-sum payments from creditable compensation for non-hazardous, Tier I employees, retiring after July 1, 2023. This exclusion materially alters and impairs the ultimate calculation of CERS members' retirement allowances and therefore violates the inviolable contract.
- **Eliminates Uniform and Equipment Allowances From Creditable Compensation: Currently,** uniform and equipment allowances may be included in CERS members' creditable compensation. *See* KRS 78.510. SB 1, Section 15 expressly excludes uniform and equipment allowances, paid on or after January 1, 2019, from creditable compensation. This exclusion materially alters and impairs the ultimate calculation of CERS members' retirement allowances, and therefore violates the inviolable contract.
- **Caps Service Credit For Accumulated Sick Leave:** The inviolable contract guarantees that CERS Tier I employees are not limited to the amount of service credit they may receive for his or

her accrued, unused sick leave. Tier II employees can receive up to twelve (12) months of service credit. *See* KRS 78.616. SB 1, Section 17, caps service credit for sick leave for CERS members who retire on or after August 1, 2018, requiring the maximum amount of service credited for sick leave be set by – and not exceed – the amount credited for balance on July 31, 2018. Because the cap materially impairs the sick leave rights and benefits due to CERS members, it violates the inviolable contract.

- **Prohibits Use of Sick Leave For Determination of Retirement Eligibility:** The inviolable contract guarantees CERS members may use accumulated, unused sick leave to determine retirement eligibility. *See* KRS 78.616. SB 1, Section 17 prohibits CERS employees from using sick leave service credit for retirement eligibility, if they retire on or after August 1, 2018. This prohibition materially impairs rights and benefits guaranteed to CERS members, and therefore violates the inviolable contract.
- **Imposes Deductions from Creditable Compensation for Group Hospital and Medical Insurance:** The inviolable contract does not include deductions, in any amount, from CERS Tier I members' creditable compensation for hospital and medical insurance. *See* KRS 78.545; KRS 61.702(2)(b). SB 1, Section 30 requires an employer of a CERS Tier I member, employed after July 1, 2003, to deduct up to 3% of the member's creditable compensation for purposes of hospital and medical insurance under the plan. As this provision alters and impairs the ultimate calculation of CERS members' retirement allowances, it violates the inviolable contract.
- **Alters Final Compensation Calculation:** The inviolable contract requires CERS Tier I hazardous employees' final compensation to be calculated using the creditable compensation from the three (3) fiscal years the employee was paid the highest average monthly rate. It requires the highest five (5) years for CERS Tier I nonhazardous employees. *See* KRS 78.510. SB 1, Section 15 requires, after January 1, 2019, that CERS Tier I hazardous employees' final compensation be calculated using the creditable compensation from their highest three (3) *complete* fiscal years, and that the highest five (5) *complete* fiscal years be used to calculate CERS Tier I nonhazardous employees' final compensation. Because this provision alters and impairs the ultimate calculation of CERS members' retirement allowances, it violates the inviolable contract.
- **Eliminates Guaranteed Annual Interest For Hybrid Cash Balance Plan Participants:** CERS Tier I and Tier II employees who opted into the current hybrid cash balance plan are guaranteed an annual interest credit of at least 4%. *See* KRS 61.597; *see also*, KRS 78.545. SB 1, Section 19 removes this guarantee. Because this change materially impairs the rights of these employees, it violates the inviolable contract.

Based on the above, if passed into law, SB 1 would unquestionably breach the inviolable contract. Additional violations of the contract likely exist, as this analysis is limited to our initial review of the 289 page bill. However, at this time it is clear that if you pass SB 1 into law, you should expect numerous lawsuits, which the Commonwealth will lose.

Specifically, should you pass SB 1 and thereby break the inviolable contract, a court must determine whether that breach violates the Contracts Clause of the United States Constitution and Section 19 of the Kentucky Constitution. However, the Kentucky Supreme Court has held: “[a]ny reduction or demonstrable threat to those promised benefits might well run afoul of” Kentucky’s Constitution. *Jones v. Bd. of Trustees of Kentucky Ret. Sys.*, 910 S.W.2d 710, 713 (Ky. 1995). It is our conclusion that a court will not uphold any of the violations in SB 1.

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As the chief law officer of the Commonwealth and the people's lawyer, I took an oath to protect the Constitution. You took that same oath. In that light, I urge you to take the necessary and appropriate steps to address these legal concerns and any others that might arise during the legislative process. If another agency is willing to provide its legal analysis, I would be happy to review it and provide additional comments.

I would also strongly suggest that, instead of passing SB 1, you consider legalizing expanded gaming. By doing so, you can create a dedicated revenue stream that will begin to address the unfunded liability, and will do so without raising taxes.

If you would like to discuss the concerns I have raised, please feel free to contact me. I remain committed to working with you to protect Kentucky families and our valued public employees.

Sincerely,

A handwritten signature in cursive script that reads "Andy Beshear". The signature is written in black ink and is positioned above the printed name and title.

Andy Beshear  
Attorney General