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Pilot program for judges a retirement bonanza

The General Assembly enacted a pilot program in 2000 to entice judges — after they retire — to work part-time in exchange for higher pension benefits. The program is viewed as one way to reduce a backlog of cases without the expense of creating additional judgeships. The program will sunset in 2009, unless the Legislature extends it or makes it permanent. HB 66 in the current session, as amended, would extend the program to 2015.

The pension benefits are so enriched, 63 percent of the judges in the program (17 of 27) quit their elected posts early to get on board. Because some of the information used in the payout formula is unavailable under Open Records, the exact amounts of their pensions are confidential; and no one outside the retirement system can figure it to the penny.

The Kentucky Gazette has, nonetheless, run a spreadsheet on the payout. The findings are not precise due to the withheld data, but the major elements are included. It unveils such a bonanza, officials who run the retirement fund don't want us to print what we've discovered.

In a letter to the *Gazette*, the executive director of the Kentucky Judicial Form Retirement System wrote, "I am formally asking that you refrain from moving forward with the use of these numbers. I respect the independence of journalists but expect due diligence and fair reporting to result in accurate information."

They contend that no citizen (no one in the media) can figure out how rich the enhanced benefits for Senior Status judges are because the state is not permitted to reveal certain information about retirement accounts. The withheld information includes: (a) the number of earned or bought years outside of judicial service, (b) surviving spouse agreements, and (c) reduced monthly benefits due to penalties for early enrollment.

However, we have enough data (provided by the Administrative Office of the Courts and the retirement fund) to provide a good estimate of what the Senior Status program means financially to a judge. Of those who have taken Senior Status thus far, the average increase in lifetime retirement benefits is \$879,204. For nine of the 27 judges, the increase

exceeded \$1 million. Eleven retired with a 100 percent pension after 20 years on the bench (doing it the regular way would have taken 36 years).

All of that is in exchange for working half-time (120 days a year) for five years.

We were able to identify the difference in benefit payout provided by the Senior Status program — compared to regular retirement — by assuming that a judge retires, then chooses one plan over the other. We plugged in a life expectancy table, U.S. population 2002. A minimum of earned or bought time for a few of the judges was assumed; otherwise, they did not meet the Rule of 75 (the judge's age plus years of service must add up to 75; the only other eligibility requirement is that the judge have a minimum of 10 years of judicial service).

Retirement fund officials justify the higher payout on the notion that a substantial portion of it comes from income earned on investments. From February 1993 to October 2004, the \$250 million Fund had an annualized return on investments of 9.10 percent. Actuarial assumptions project future interest income at 8 percent. Nonetheless, taxpayers support the Fund to the tune of \$1.9 million a year; other income for the Fund comes from member and employer contributions.

Fund officials testified before a legislative committee last month that the cost to the state for operating the Senior Status program will be only \$420,000 a year over the next 30 years. "Characterizations of additional state monies being spent on the program are inaccurate," they warned in the aforementioned letter.

Senior Status judges receive annual benefits that are \$1,069,860 higher, collectively, than they would have been had the same judges retired under the regular plan.

When a retired judge dies, the surviving spouse receives a minimum of 50 percent of the judge's retirement benefits for the remainder of his or her life. For judges in the Senior Status program, monthly spousal benefits are, on average, 70 percent higher than the regular plan — the actual amount depends on

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special agreements that reduce a judge's monthly benefits.

Of the judges in the program, 24 are males, and their average age is 57.8 years. A 58-year-old male has a life expectancy of 21.7 years; a 58-year-old female, on the other hand, has a life expectancy of 24.3 years — a difference of 2.6 years. That comes to about \$1 million additional in spousal benefits, which is not part of the chart below.

The richness of the Senior Status program keys on the percentage factor used in the method for determining benefits: A set percentage is multiplied by years of service, which is then multiplied by the average of a judge's salary during his or her last three years of regular service.

The percentage factor for judges is 2.75 percent. However, under Senior Status, the percentage jumps to 5 percent — an 82 percent increase. The 5 percent applies only to judicial service. After 20 years on the bench, a judge can get a 100 percent pension, and the surviving spouse gets approximately 70 percent higher benefits.

The listing of judicial service years in the chart is conservative. As with an individual's birthday, the next year of service wasn't added until the actual day of the anniversary. Four of the judges are listed as having 19 years of service; we could have rounded those four at 20, but didn't. That would have made the payouts shown below greater.

There is no statutory limit on the number of Senior Status judges. The gatekeeper is the chief justice of the Supreme Court, who has sole approval authority.

HB 66, which also contains language to increase legislators' pay, is pending on the House calendar. This issue could take on special meaning in next year's elections. Of the state's 275 judgeships, all but three will be on the ballot due to a quirk in the 1992 law that made one of every four years in Kentucky election-free. Incumbent judges defeated next year could end up back on the payroll as non-elected judges in the Senior Status program; and the program's 100 percent retirement enticement could encourage a higher than usual number of young attorneys to run for judgeships at all levels — district, circuit, appellate and Supreme Court.

Judges granted senior status since 2000				Monthly Benefits Comparison			Lifetime Benefits Comparison		
Name	Hometown	Age	Years Judge	Standard Pension	Enhanced Pension	Percent Increase	Standard Pension	Enhanced Pension	Difference
Rebecca Overstreet	Lexington	52	22	\$5,937	\$9,386	58	\$2,165,716	\$3,424,012	\$1,258,297
Paul Rosenblum	Prospect	55	19	5,206	9,253	78	1,555,692	2,764,796	1,209,105
Robert B. Overstreet	Versailles	57	20	5,192	9,439	82	1,401,776	2,548,530	1,146,754
Henry F. Weber	Louisville	52	19	5,676	8,974	58	1,927,670	3,047,570	1,119,900
William J. Wehr	Fort Thomas	54	15	5,431	8,864	63	1,681,524	2,744,294	1,062,771
Thomas R. Lewis	Bowling Green	58	19	4,769	8,671	82	1,287,664	2,341,170	1,053,505
Thomas E. McDonald	Prospect	50	20	6,394	9,300	45	2,301,730	3,348,000	1,046,270
Lewis G. Paisley	Lexington	60	21	5,451	9,439	73	1,419,449	2,457,916	1,038,466
Kevin Home	Lexington	57	15	4,209	7,313	74	1,358,691	2,360,636	1,001,946
T. Steven Bland	Cecilia	55	15	5,420	8,588	58	1,619,642	2,566,094	946,452
William T. Cain	Somerset	62	19	4,848	8,814	82	1,128,602	2,051,899	923,297
JoAnn S. Coleman	Bowling Green	51	13	5,664	8,174	44	2,059,272	2,972,066	912,794
John W. Potter	Louisville	61	20	4,203	7,642	82	1,094,543	1,989,977	895,434
Larry D. Raikes	Bardstown	65	20	5,003	9,097	82	1,080,711	1,964,952	884,241
Joseph H. Bamberger	Bronston	62	22	5,613	9,278	65	1,306,803	2,159,918	853,116
Harold Burks	Harrodsburg	60	21	4,287	7,423	73	1,157,434	2,004,210	846,776
Charles Ehlschide	Greenville	62	21	4,678	8,101	73	1,134,004	1,963,682	829,678
Stanley M. Billingsley	Carrollton	61	18	4,010	7,291	82	1,010,499	1,837,332	826,833
D. Jeff Choate	Florence	48	20	6,311	8,500	35	2,332,649	3,141,600	808,951
Mary L. Corey*	Louisville	60	14	3,192	5,629	76	1,030,220	1,817,041	786,821
Carl U. Hurst	Madisonville	61	17	3,787	6,886	82	954,360	1,735,272	780,912
Virginia Whittinghill	Louisville	62	13	3,263	5,742	76	888,850	1,564,121	675,270
John D. Miller	Owensboro	72	20	5,155	9,373	82	816,597	1,484,683	668,086
Edward E. Lanham	Owensboro	62	16	3,220	5,855	82	811,553	1,475,460	663,907
Joseph R. Huddleston	Bowling Green	68	16	4,195	7,627	82	800,330	1,455,232	654,901
Thomas D. Emberton	Edmonton	72	15	4,112	7,476	82	621,743	1,130,371	508,628
James E. Bondurant	Hodgenville	75	14	2,711	4,929	82	409,873	745,265	335,392

* Corey has completed the program.

Four ex-lawmakers, UK basketball star and game announcer on state payroll

The executive branch of state government has 32,849 full-time employees (31,010 merit and 1,839 non-merit), with cumulative salaries of \$1.07 billion. The average salary of a non-merit worker is \$56,624, compared to \$31,010 for merit employees.

Among the non-merits are four former lawmakers — Mark Treesh and Brian Crall of Owensboro, Lindy Casebier of Louisville and Charles Geveden of Wickliffe — who joined the state payroll within the past year. Treesh joined the Finance and Administration Cabinet 11 months ago as commissioner of the Department of Revenue at an annual salary of \$106,044.

Crall resigned his state legislative post last April to become deputy director of Gov. Ernie Fletcher's executive cabinet, also at an annual salary of \$106,044. Casebier came on board the Commerce Cabinet last month at \$103,992.

Geveden, who lost re-election in November to 26-year-old Republican Stephen Rudy, heads up Attorney General Greg Stumbo's special investigations unit at \$75,000 a year.

Other non-merit notables on the state payroll are former UK play-by-play announcer Ralph Hacker and former UK basketball player J.P. Blevins, both of whom actively supported Fletcher's election in 2003.

Hacker is paid \$32 an hour as an "executive assistant" to Gov. Fletcher and keeps an office in state Finance and Administration Cabinet Sec. Robbie Rudolph's suite on the third floor of the Capitol Annex. According to a source in Fletcher's office, Hacker advises the governor on a "wide variety" of personnel and policy issues and works less than 100 hours a month.

The 25-year-old Blevins, who was a freshman member of UK's 1998 NCAA championship team (he played a total of 64 minutes that season), joined the state Commerce Cabinet 11 months ago as a division director for the state parks department at \$66,804 a year.

Governor replaces "principal assistants" with six new job titles

Gov. Ernie Fletcher's office announced last year that he was replacing the Democratic-era job designation of "principal assistant" for non-merit or political appointees with six new classifications — (1) special assistant, (2) policy adviser, (3) executive assistant, (4) executive adviser, (5) administrative coordinator and (6) staff assistant.

At that time, Fletcher adviser Daniel Groves pitched the new titles as an effort to change the negative perception the principal assistant's role had developed toward the end of Gov. Paul Patton's second term, when as many as 175 or so executive branch workers were serving under that title. Groves described them as "jobs without any real accountability or job description," according to an Associated Press article. He said Fletcher wanted to make sure the new titles were reflective of work per-

formed.

Fast-forward to today. An analysis of executive branch employee salaries by the *Kentucky Political Report* shows the Fletcher administration has hired 104 workers under the six new classifications and is paying them collectively \$5,991,187 a year. According to a spokesperson for the state Personnel Cabinet, none of the new classifications have been assigned a formal job description.

Of the 104 substituted titles, there are 29 executive assistants; 27 special assistants; 16 staff assistants; 13 executive advisors; 13 policy advisors; and six administrative coordinators.

Highway contractors, not state truckers' association, want overweight

Legislation approved last week by the House that would extend the current 120,000-pound weight limit for trucks hauling coal to those carrying rock, stone, gravel and sand reportedly was the result of a coordinated effort by road builder Leonard Lawson and other highway contractors.

HB 8, introduced by Rep. Howard Cornett, R-Dry Fork, passed the House on a vote of 55 to 32 and was sent to the Senate Transportation Committee, chaired by Sen. Brett Guthrie, R-Bowling Green. Legislation enacted in 1986 granted the exemption to coal trucks.

According to *Lexington Herald-Leader* reporter John Cheves, a lawsuit in Pike Circuit Court that figures prominently in the debate was initiated by a gravel-trucking firm, D.R.T. Trucking, that hauls for Lawson's road-paving companies. The suit was brought last year after one of the firm's trucks received a state-issued fine for exceeding non-coal weight limits. The company hired attorney Jon Woodall — of Terry McBrayer's law firm in Lexington — to argue that the limit on non-coal haulers is unconstitutional. Woodall said he spoke to Lawson before he filed the suit.

Cornett has said he consulted Lawson late last year before he filed the bill. Behind the scenes in Frankfort, the people pushing Cornett's bill include former Gov. Paul Patton, long-time friend of Lawson and McBrayer, who reportedly called some House members before the vote and told them to support the bill.

The McBrayer law firm's lobbying team is working for passage of HB 8 on behalf of the Kentucky Association of Highway Contractors. Oddly, the Kentucky Motor Transport Association (truckers) is neutral on the bill, as is the Kentucky Coal Association; they aren't sure it's needed, Cheves reported.

Coal pays a fee for overweight permits and the trucks are restricted to designated roads. If HB 8 is enacted as proposed, many bridges in the state would have to be repaired or built to accommodate overweight vehicles, and roads would deteriorate sooner — creating new business for the highway construction industry. Most of the roads in Kentucky are built with asphalt; about 95 percent of the asphalt mix is rock; and highway contractors own about 90 percent of the crushed stone in Kentucky.

Kentucky Notes & Quotes

Kentucky General Assembly ranks third-to-last nationally in female representation

Kentucky ranks among the lowest of the 50 states in the number of women serving as state legislators, according to a story in the January issue of *State Legislatures* magazine. With women comprising only 12.3 percent of the General Assembly, Kentucky ranks 48th in the nation, ahead of only South Carolina and Alabama. The national average is 22.5 percent, with Colorado leading the way at 34 percent. States with the highest percentage are found along the West Coast, in the Southwest and in the Chesapeake Bay area.

Northup on endangered list again — sort of

Third CD Rep. Anne Northup, who received her highest margin of victory in last year's General Election matchup with Jefferson County Circuit Court Clerk Tony Miller, a Democrat, was recently named one of 10 Republican House members most vulnerable ahead of next year's elections by GOP leaders. In defeating Miller by 73,696 votes, Northup surpassed the 60 percent threshold for the first time since her election to Congress in 1996. The latest *Rothenberg Political Report*, a D.C.-based nonpartisan newsletter, said Northup's strong victory over Miller "isn't likely to deter the DCCC from recruiting a strong challenger" against her in 2006, calling it "a district worth watching." Rothenberg lists no other Kentucky U.S. House seat on his radar screen right now.

State Rep. Tim Feeley named circuit judge

Soon there will be two seats in the Kentucky General Assembly up in the air — resulting perhaps in two special elections this spring or summer. In addition to the Stephenson-Woodward election dispute for a Louisville Senate seat, Gov. Ernie Fletcher recently announced the appointment of Republican legislator Tim Feeley of Crestwood to the office of 12th circuit family court judge for Henry, Oldham and Trimble counties. Feeley has served in the House, representing the 59th District, since 1999. He will leave the House at the end of the current session. Feeley will replace former circuit judge Paul Rosenblum, who resigned in December to enter the Senior Status program (see related story, page one). The annual salary for circuit judges is \$117,804. Members of the Supreme Court are paid \$128,172; the Court of Appeals \$122,988; and District judges \$106,440. Annual salary increases for members of the courts are actuarially assumed to be 5.5 percent.

U.S. Capitol mail delivery takes four weeks

Courier-Journal Washington correspondent James Carroll wrote Sunday that the pace of mail delivery to the Capitol Hill offices of members of Congress can take "up to four weeks" as a result of beefed-up screening procedures following the 2001 anthrax scare. Carroll, whose own office is on the Hill, wrote that he occasionally receives mail "a couple of months old" and that members of Congress recently were told that it's best to hand-

deliver important documents. All this means that constituents in Kentucky and elsewhere may get a quicker response by using the phone or e-mail.

Kentucky has new part-time D.C. rep

Kristi Craig, a former legislative aide to 3rd District Congresswoman Anne Northup, was recently hired as the state of Kentucky's representative in Washington. Craig is the first to serve in that capacity under Gov. Ernie Fletcher. According to Fletcher's press office, Craig will be paid \$60,000 a year for the part-time position.

HB 66 would boost legislators' pension benefits by 80 percent, judges' 70 percent

Paducah Sun reporter Bill Bartleman wrote in an article Feb. 28 that HB 66 would increase retirement benefits for legislators by "up to 80 percent." Also, an analysis of the same bill by *The Kentucky Gazette* found that it would increase the retirement benefits for retired judges in the Senior Status program by 70 percent, on average. The bill was introduced by Rep. Adrian Arnold, D-Mt. Sterling, on behalf of Kentucky Supreme Court Chief Justice Joe Lambert, who is chairman of the state board for legislators' and judges' pensions. Earlier this year, Arnold told *Gazette* reporter Joe Anderson it was a "housekeeping" bill. The bill is on the House calendar, but appears dead for the session. The Democratic House caucus discussed the bill behind closed doors last week and could not reach a consensus to move it any farther.

2005 legislative session nears end; House, Senate members wanted 743 new laws

In the 2005 session of the General Assembly — the state's third 30-day session since annual sessions began — lawmakers have introduced 743 bills (225 Senate, 518 House). That's slightly fewer than the short session two years ago, which considered 781 bills (221 Senate, 560 House). But it's well ahead of the first short session in 2001, which took up 579 bills (192 Senate, 387 House). As of Feb. 28, the governor had signed only five bills; but a couple hundred more are in the traditional end-of-session logjam, ready to break loose. Four working days remain in the session, and two of those, March 4 and 7, are devoted solely to conference meetings to iron out differences between House and Senate versions of bills. After March 7, the Legislature will recess, returning March 21-22 for a two-day veto session. The session will adjourn *sine die* March 22.

Birthdays

Wed., March 2, **Sen. Elizabeth Tori**, 69 . . . Sun., March 6, **Sen. Jack Westwood**, 61 . . . Tues., March 10, **Rep. Rick Rand**, 48 . . . Fri., March 11, **Rep. Ronald Crimm**, 70 . . . Sun., March 13, **Rep. Thomas McKee**, 64.