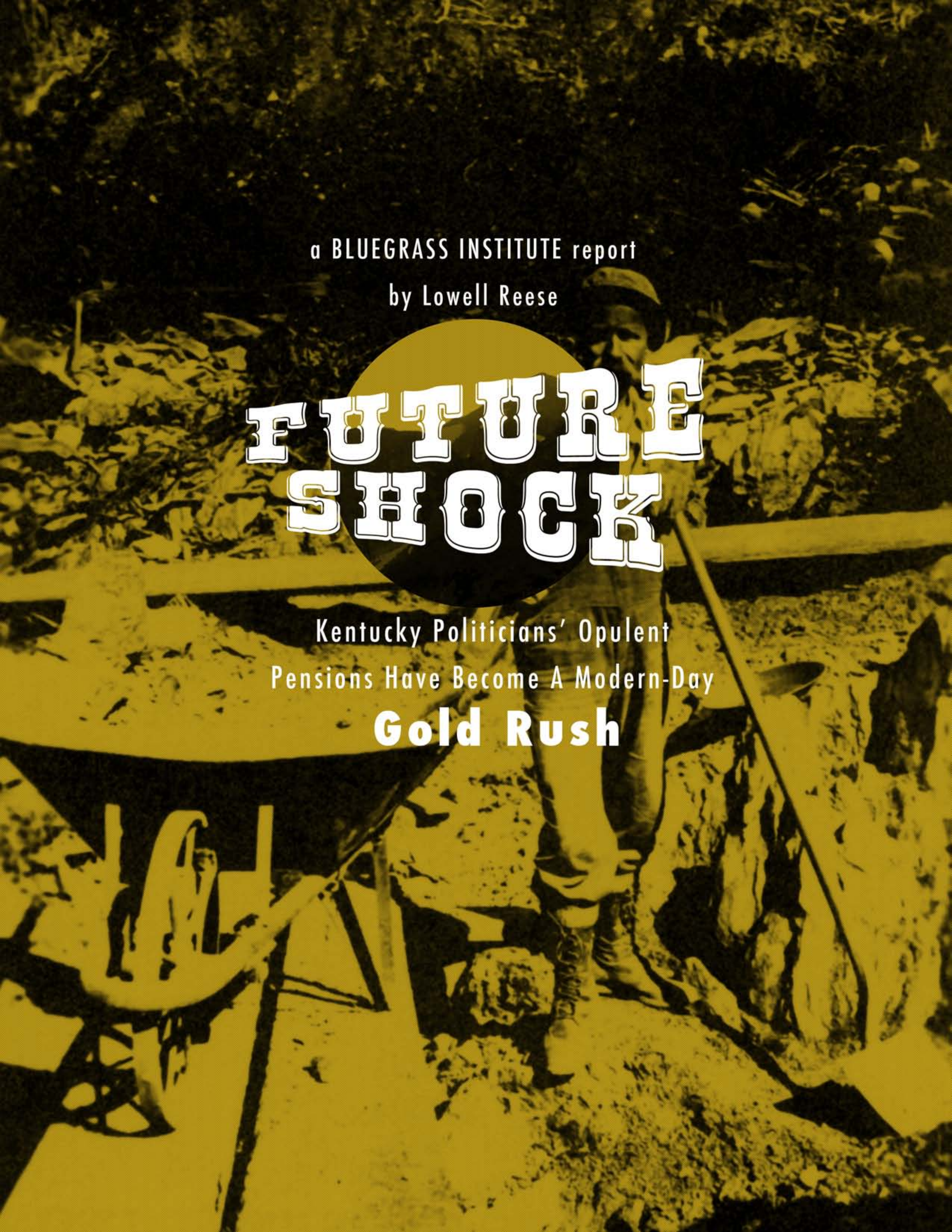

a BLUEGRASS INSTITUTE report

by Lowell Reese

FUTURE SHOCK

Kentucky Politicians' Opulent Pensions Have Become A Modern-Day **Gold Rush**

Future Shock: Kentucky Politicians' Opulent Pensions Have Become A Modern-Day Gold Rush

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The first gold rush in the United States was not — as widely thought — in California in 1849; rather, it was in Georgia in 1828. Gold occurred naturally in a band from Virginia to Alabama, with especially rich veins around the town of Dahlonega in northern Georgia. During the next two decades, thousands of miners began pouring in, joining the Georgia Gold Rush. By the time gold was discovered in a streambed by an employee of Captain John Sutter's sawmill near Sacramento, California, much of the easily retrieved gold in Georgia had been mined.

News of the California find tempted many Georgia miners to move west. To discourage them from leaving the Georgia gold field, a local assayer at the Dahlonega branch mint, addressing a crowd of miners on the courthouse steps, pointed to a nearby hill known as Findley Ridge and pleaded: "Why go to California? In that ridge lies more gold than man ever dreamt of. There's millions in it." Although many of the miners did not follow the admonishment, they took the assayer's remark west. "There's millions in it!" became a famous saying by Mark Twain's literary character Mulberry Sellers and may have inspired another famous quote, "Thar's gold in them thar hills."

"...the main message of this story resides in the subsurface — the attitude of the General Assembly...demonstrated by flat-out greed and disrespect for the public treasury, which now has put the standard of living of all Kentuckians in jeopardy."

Today in Kentucky the lure of gold remains evident not to "forty-niners," but to legislators and public employees. The story you are about to read is, on the surface, about gold-plated pensions, the most outrageous aspect; but the main message of this story resides in the subsurface — the attitude of the General Assembly (and governors who once dominated it), demonstrated by flat-out greed and disrespect for the public treasury, which now has put the standard of living of all Kentuckians in jeopardy. The state is $44.1 billion in debt, of which around $9.6 billion is a result of borrowing and $34.5 billion is the unfunded liabilities of the state's public employee retirement systems.

With exceptions, public employees in Kentucky remain in their positions — not so much for the pay but for the full compensation package, to wit, the pay, fringe benefits and pensions, which is one of the richest in the nation. Why go anyplace else? In Kentucky, *there's gold in them thar pensions*.

While a comprehensive report on the state's pension systems overall will be provided in a separate publication later this year, consider the following, which is primarily about legislators' pensions:

Figuring a lawmaker's pension

Pension payouts from Kentucky's six state-administered retirement systems are distributed according to a three-factor formula: (1) The number of years and months of service, (2) average salary and (3) a percentage figure, which for most legislators — those who came in 1982 and afterward — is 2.75 percent. Simply multiple the three factors: years x salary x percent. For example, a legislator with 20 years of service, a "high-three" of $40,000 and a percentage multiplier of 2.75 percent would draw a pension of $22,000 a year. After 36 years and about four months of legislative service, a legislator with a SCR of 2.75 maxes out, and, therefore, draws 100 percent of the $40,000-a-year salary example in retirement.

The pension is calculated from the date the legislator takes office (January 1, generally) to the ending date of the legislator's service (December 31, generally).

The salary part is referred to as "high three" because it's the average of the highest three years.

It's not limited to the last three years – it's *any* three years during the legislator's service, even after he has reached the 100 percent threshold, "maxed out," quits contributing to the legislators' pension plan and starts a second pension in the state employees' plan.

Thanks to HB 299 enacted in 2005, the "high three" can now include salaries in government positions held before, during or after service in the legislature.

The percentage factor used in figuring the pension allowance is another crucial element. Like one stroke of a canoe paddle can significantly alter its course, the slightest change in the percent can significantly inflate a pension check.

"Like one stroke of a canoe paddle can significantly alter its course, the slightest change in the percent can significantly inflate a pension check."

Judges and legislators who entered service in 1982 or later (the bulk of those now serving) have a service credit rate of 2.75 percent. For state and county employees, there's a sliding scale. For some non-hazardous state employees' hired before Sept. 1, 2008, the rate is around 2 percent; the rate is lower for those employed on or after that date. It's around 2.2 percent for some county employees.

The few current members of the 2012 General Assembly who were serving in 1978 and earlier have the highest SCR of all at 5 percent. Those who came in 1980 and in 1981 have SCRs of 4.15 percent and 3.5 percent, respectively. The rest are at 2.75 percent.

Ag Commissioner James Comer's bonus

Among current policymakers to significantly benefit from HB 299 is Kentucky Commissioner of Agriculture James Comer. Even before winning last year's election Comer, then a representative from Tompkinsville, joined 17 of his fellow Republicans in the House by voting in favor of HB 299, a bill that could double or even triple his legislative pension — if he were to win a statewide office or get appointed to an upper-echelon job in state or local government, or even accept a position with one of several private organizations that have been granted state pension privileges.

On Jan. 1, 2012, the moment Comer raised his hand for the oath of office as the commonwealth's new agriculture commissioner, which pays $113,616 a year, he hit the jackpot as a result of his vote on House Bill 299 in the 2005 legislative session. Suddenly, Comer's pension for having served 11 years in the legislature nearly tripled. Simply upon taking the oath, his annual legislative pension spiked from $13,100 a year to $34,369.

Comer can begin drawing the pension in full when he reaches age 63. Just for winning the election and helping enact what became known as "the greed bill" in 2005, Comer's windfall over a lifetime comes to at least $467,906.

As impressive as it is, Comer's "gold find" is small compared to the pension spikes of some legislators. Bigger yet, in importance, are the generous benefits the politicians have bestowed upon their constituents who work in government.

Comer's legislative pension is determined using the state's three-factor formula: (1) Eleven years of service; (2) a service credit rate of 2.75 percent; and (3) the average of his highest three years of salary as a legislator, which was $43,037 a year.

Comer's windfall involves two pension systems — the legislators' plan he's coming from and the state employees' plan he now has joined. The pension-padding bill contained a reciprocity provision, which means any legislator who was serving in the 2005 session — and all legislators elected afterward — can calculate their legislative pensions based not on their pay as legislators, which are part-time jobs, but on their pay in full-time positions held before or after leaving the legislature as long as those other jobs are with employers participating in one of the six state-administered retirement systems.

Commissioner Comer as a new state employee now begins a second pension in the Kentucky Employees Retirement System (KERS). Over the next four years — or eight if he is re-elected — his salary and compound cost-of-living increases (once he retires), likely will boost his legislative pension gain to a figure much greater than a half-million dollars.

His excessive gain from public service happens to be only the most recent example of how legislators are padding their pensions. As you will read, the pensions of some legislators are super rich — riches they voted for themselves because they could, once Gov. John Y. Brown Jr. allowed them to begin exerting independence from the executive branch in 1980. Before that, previous governors greatly expanded and protected from repeal the pensions of public employees, a practice subsequent governors obviously accepted, and through their own initiatives continued the benefit creep, gradually, often in silent cat-like steps.

"Even government workers in Kentucky do not dispute that they are generously compensated."

Are public employee benefits in Kentucky 'second to none?'

Even government workers in Kentucky do not dispute that they are generously compensated. When former Gov. Paul Patton was trying to unionize state government through an executive order, the president of the Coalition of State Employee Organizations said that his constituency didn't need unions because their compensation — salaries, fringe benefits and pensions — are "the best in the nation, second to none."[1]

Public employee pensions are now badly draining the budgets of city and county governments and dipping into the budget of the commonwealth as never before, pushing up the state's debt level while pulling down its credit rating. Also, the pension funds' future obligations are on the brink of crowding out essential government services, such as public safety and education.

Now a societal issue

Public employee pensions are now a societal issue: the standard of living of all Kentuckians is at stake. The state's public servants and retirees are increasingly concerned about the security of their retirement accounts, and rightfully so. In part because of the monstrous pension debt, state employees received only 1 percent raises each year for fiscal years 2008, 2009 and 2010 and no raises for fiscal years 2011 and 2012. The recently approved FY 2013-14 budget went a step further — no raises for state workers, but also no cost of living adjustments for retirees, except for teachers. Each of the commonwealth's pension systems grants an annual compound COLA to retirees, if the funds are available; that is a prerogative of the General Assembly. The COLA benefit is not under the inviolable contract. Present law calls for a 1.5 percent annual COLA, which shall be suspended or reduced when in the judgment of the General Assembly "the welfare of the Commonwealth so demands."

Pay raises and cost-of-living increases for public servants have become victims of the financial crisis in the retirement systems. Are we seeing the beginning of a trend? Have benefits for public servants in Kentucky reached a point of diminishing return and become the front line of "crowding out,"

[1] The Kentucky Gazette, May 29, 2001

a reality brought on by the financial crisis in their retirement systems?

During a special session in 2008, the legislature agreed to a diversion of millions of additional dollars each year from the General Fund to the Kentucky Retirement System, a step toward reaching an enacted goal of 100 percent of the legislature's actuarial required contributions (ARC) to the state employees' and state police funds during the next six to 12 years. [2]

The recent reductions of benefits for public servants is, without doubt, the first wave of a pension-debt tsunami that could result in the crowding out of essential government services — especially education, the largest expenditure in the budget. This will increase the demand for additional revenue in order to fulfill the contractually guaranteed pensions of state workers and retirees.

History indicates that the politicians can be counted on to first redirect spending and then raise taxes in order to keep themselves and their retirement systems afloat.

State sinking under $43 billion bonds-pension debt

The serious implications of dealing with a pension debt extend far beyond trimming back benefits for public-sector workers and retirees. The pension debt is nearly four times the size of the commonwealth's General Fund budget. It's a debt that must — and will — be paid, because public employee pensions, under the laws of the commonwealth, are inviolable contracts, arguably guaranteed by the U.S. Constitution, in Article I, Section 10, the Commerce Clause.

The pension debt is rising, and is expected to reach $40 billion or more later this year, when a new Governmental Accounting Standards Board (GASB) rule on reporting pension debt goes into effect. The new GASB rule will require public-sector pension systems to disclose financial liabilities under the same terms required in the private sector. As a result, the rule that requires General Motors, for instance, to disclose all of its liabilities to bondholders now will apply to state-administered pensions.

It's generally unknown by the public, but the national credit-rating firms — Standard & Poor's, Moody's and Fitch Ratings — consider the unfunded liability in a state's public employee pension systems part of the state's debt. In fact, these firms determine the state's total debt by combining the pension systems' unfunded liability with the appropriations-supported debt authorized by the legislature. Politicians separate the outstanding appropriation-supported debt (hard debt) and pension indebtedness (soft debt). However, they are not considered separately by rating firms in the financial market that determine the interest rates Kentucky pays on the money it borrows.

"The pension debt is nearly four times the size of the commonwealth's General Fund budget."

In nearly every session of the Kentucky Legislature, there are media stories about lawmakers proposing that the state borrow money to build new schools and roads, and for pork projects in their districts. No law restrains the politicians, but in the past, they have determined that a "General, Agency, and Road Fund-supported debt service of 6 percent of total revenues represents a reasonable debt burden." [3]

According to the Legislative Research Commission, the state's current debt from borrowing is $9.6 billion — an impressive amount, but not so much compared to the retirement systems' debt, which is $33.5 billion. As a percent of our state's personal

[2] The increased ARC payments are scheduled to continue through the year 2024 for KERS non-hazardous, 2018 for KERS hazardous, and 2019 for the state police system.
[3] Legislative Research Commission memorandum "Kentucky's Bonded Indebtedness," by Kristi Culpepper, Aug. 26, 2011

income, this combined debt of $43.1 billion is near the highest — if not the highest — among the 50 states. Just the appropriation-supported debt alone in 2008 was eighth highest, according to Moody's Investor Service. Of course, taxpayers are obligated. There's no forgiveness of the appropriation-supported debt or the debt in the pension systems — both are locked-in contracts with lenders and public employees.

How did it get to this?

Who's responsible for jeopardizing the livelihood of public-sector employees in their golden years, and for placing the economic wellbeing of all Kentuckians at risk? The answer is no mystery; there's no actuarial mumbo-jumbo. Only lawmakers can correct the crisis they alone created by authorizing the state to borrow money, which is done through revenue bonds and approving added retirement benefits to public workers — benefits they have been piling on for more than a half-century.

Examples of this *benefit creep* are documented at the end of this report. Those who read it will see that a great number of the benefits that have been added over the years seem to apply only to a few individuals, in some cases perhaps special legislation to benefit a single person. Sources say that's because beneficiaries dominate the governing boards, who, in turn, tell the governor and legislators, now and then, it's okay to pad the pensions of public employees who are nearing retirement, since it's only a few. But it's the perfect quid pro quo, not unlike how most politicians operate — dish out taxpayers' money in exchange for votes; in this case, public employees vote for members of retirement fund governing boards. However, what's overlooked or ignored is the fact that once a pension benefit gets on the books, like most government programs, it's rarely removed, and, therefore, it doesn't just apply to the initial groups but to all who follow.

While public employees certainly influence lawmakers and form a significant voting bloc — state and local government employees represent around 35 percent of all voters in Kentucky — they don't write the laws for benefits they reap; lawmakers do. [4]

Some folks say the primary reason our public workers' pension systems are underfunded and drowning in debt is because the General Assembly failed during the past decade to fully make its annual actuarial required contribution (ARC) rates to the Kentucky Retirement System (KRS), the umbrella retirement organization for state and local government employees and state police. Others contend the main problem rests with the governing boards, because, in addition to influencing legislators for more benefits on behalf of state employees and retirees, some boards knowingly approve faulty actuarial assumptions that provide the governor and legislators with politically expedient, but deceptive, income and expenditure estimates.

"Still it's benefit creep — the gradual padding of pensions and fringe benefits that only legislators can authorize — that arguably is the primary reason for today's pension crisis in Kentucky."

The legislature's necessary ARC payments and the boards' questionable actuarial assumptions are undeniably major components in the elaborate web of debt that's pulling down the retirement systems and therefore the state. Still it's *benefit creep* — the gradual padding of pensions and fringe benefits that only legislators can authorize — that arguably is the primary reason for today's pension crisis in Kentucky.

[4] There are 463,619 members in Kentucky's six state-administered retirement systems; the members are active, inactive or retired. The number of households is lower, but the extended family could be as much as two-and-a-half times greater. The state has 2,973,225 registered voters, according to the Office of the Secretary of State.

Legislators work part-time. Nonetheless, the richness of their pensions far exceeds those of full-time state and local government employees. The gap is so wide and the greed is so great that legislators have seriously compromised their ability — and their credibility — to make the tough decisions needed to fix the $33.5 billion unfunded liability.

However disturbing the revelation of individual legislators' self-enriched pensions is, the examples in this story are not the only evils. The 2005 bill, which opened the gate to super-rich pensions for legislators, has a serious unintended consequence: it handed the governor a new political tool that he and all future governors can use to sway legislators' votes on important issues confronting the commonwealth — a tool so powerful that Gov. Steve Beshear has used it to get legislators to resign their seats in hopes of changing the political makeup of the entire General Assembly. The carrot is a gubernatorial appointment to a high-paying government job, which, thanks to the 2005 law, a legislator can hold for three years and boost his or her legislative pension by, in some instances, more than $1 million over a lifetime.

"Just for serving that one year in the cabinet, $244,062 was added to Nunn's legislative pension, giving him a total compensation of $369,062."

The Steve Nunn story pension connection

After 16 years in the House of Representatives, former state Rep. Steve Nunn served about one year as deputy secretary of the Cabinet for Health and Family Services—a position that paid him a $125,000 salary — before resigning in March 2009. Just for serving that one year in the cabinet, $244,062 was added to Nunn's legislative pension, giving him a total compensation of $369,062.

That's an estimate, but it's a sound one based on information obtained by Kentucky Roll Call under the state Open Records Act, a Social Security life expectancy table and a number of pension-related variables.

Nunn's normal pension as a part-time legislator would have been $15,902 a year, but the state job as deputy secretary, as brief as it was, almost doubled his legislative pension to $29,187 a year. Plus, it increased his estimated lifetime pension allowance from $300,699 to $551,917 — an increase of $251,218, or 83 percent.

Had Nunn stayed on as deputy secretary for two more years, his annual legislative pension would have more than tripled — to $55,000 a year. Using the deputy secretary pay as his entire "high three," rather than partial, would have bumped up his legislative pension $739,351 during the course of his retirement lifetime. In other words, in addition to his salary as deputy secretary, each of the three years he would have served in that position would have spiked his legislative pension $246,450 a year — a bonus on top of his salary — only because he was a former lawmaker who was serving in the 2005 General Assembly when his colleagues passed the pension-enrichment bill (Nunn voted against the bill). So quitting the cabinet job when he did — serving one year instead of three — cost Nunn nearly a half-million dollars ($488,133) in missed pension benefits.

Legislators may begin drawing their normal pension at age 65 without an early withdrawal penalty, but that gets reduced one year for each five years of service. So in about two years on Nov. 4, 2014, Nunn – at age 62 – can begin drawing his annual pension of $29,187 with compound COLAs beginning a year later.

Nunn was sentenced to life in prison without the opportunity for parole after pleading guilty to murdering Amanda Ross, his ex-fiancé, who was shot in Lexington on Sept. 11, 2009.

In the wake of BOPTROT, a scandal in the early 1990s that sent 10 percent of the members of the Kentucky Legislature to prison, legislators enacted a law in 1993 that prohibits a lawmaker or ex-lawmaker from drawing a legislative pension if he or she is convicted of a felony "related to his duties as a legislator." The wording of the clause means that Nunn — even though he is imprisoned — can draw his legislative pension since the murder was unrelated to his legislative duties.

KRS 6.696, the felony clause, reads, in part, "(1) A legislator or former legislator convicted of a felony relating to his duties as a legislator, in any state or federal court of competent jurisdiction, shall forfeit rights and benefits earned after September 16, 1993, under the state administered retirement plan to which contributions have been made as a result of his service in the General Assembly, except for the return of his accumulated contributions and interest credited on those contributions."

"The governor had visions of dangling sweetened pensions as bait to lure Republicans out of the Senate..."

Legislators hold other government jobs

The number of lawmakers serving in the legislature today who previously held (or now hold) full-time government jobs — and who are potentially eligible to apply their "high-three" earnings in those jobs in calculating their legislative pensions — is about 25 percent. We qualify that observation with a somewhat elusive "potentially," because of the shroud of secrecy blanketing the pension records. That lack of transparency extends to whether a teacher or former teacher serving in the legislature has chosen to remain in the teachers' retirement plan instead of participating in the legislative plan.

In the case of former governor and now-Sen. Julian Carroll, it's not likely that he will base his legislative pension on his salary as governor (1974-79) because he earns more now even as a state senator than the $32,000 annual salary he made as governor.

Besides Carroll, some of the other senators who have held or now hold state or local government jobs include Perry Clark, a University of Louisville employee at $47,788 a year; Carroll Gibson, a retired circuit court clerk; Denise Harper Angel, a retired property valuation administrator (PVA); Vernie McGaha, a retired teacher and principal; John Schickel, a former jailer; Johnnny Ray Turner, a former teacher and basketball coach; and Jack Westwood, a former teacher.

In the House, former or current educators enrolled in the Kentucky Legislators Retirement Plan include Linda Belcher, Kevin Bratcher, Teddy Edmonds, Joni Jenkins, Charles Miller and Jim Glenn; other former or current educators serving in the House have chosen not to participate in the legislators' retirement plan, and that list includes Regina Bunch, John Carney, Hubert Collins, Derrick Graham and Rick Nelson; also, Carl Rollins, an employee of the Kentucky Higher Education Student Loan Corporation, is not in the legislators' retirement plan.

Other members of the House who have held other government jobs include C.B. Embry, a former county judge-executive; Reginald Meeks, a former employee of the University of Louisville; Sal Santoro, a former state trooper; Greg Stumbo, a former state attorney general; and Alecia Webb-Edgington, a retired state police major.

Romance governor for million-dollar pension bonus

More important than who once worked for government is who might. Legislators — especially those with 20 years or more in the General Assembly — are now tempted to keep one eye on taking care of business in the House and Senate while trying to placate the governor in hopes of landing high-paying government jobs primarily to enhance his or her legislative pension.

Former Republican Sen. Charlie Borders was the first legislator to bring the power of legislative pensions to the public's attention. Gov. Steve Beshear lured Borders out of the Senate in 2008 with the carrot of a $117,000-a-year job at the Public Service Commission, which regulates utilities. Borders not only received a huge increase in salary, he also landed an additional $737,516 in future monthly inflated pension checks. The governor then called a special election to fill the vacant Senate seat, and Grayson Rep. Robin Webb won it — a take-away for the Democrats, which achieved a political goal for the governor at taxpayers' expense.

A few months afterward, then-Senate Majority Floor Leader Dan Kelly, Springfield Republican, was given a gubernatorial appointment to a $123,384-a-year job to fill an unexpired term of a circuit judge.

The governor had visions of dangling sweetened pensions as bait to lure Republicans out of the Senate so that Democrats could take over the upper chamber and pass casino gambling at racetracks and control the redistricting process. If the Democrats could take Kelly's seat — and he was a willing participant in providing them that opportunity— it would bring the count in the Senate to 20 R -18 D, one shy of a tie. On a tie vote, Republican David Williams would have remained president, but it would have forced some sharing of power.

Other Republican senators — in addition to Borders and Kelly — were considered likely candidates at the time to take the governor up on his offer of "super-pension" jobs.

But the governor and the Democrats didn't figure on Rep. Jimmy Higdon, R-Lebanon, winning Kelly's seat, which he did easily once the Republican nationalized the race.

Until the reciprocity provision in the legislators' retirement plan is removed, governors (of both parties) always will have legislators (in both parties) sucking up for a high-paying state job. This could manifest in their willingness to sacrifice principles and vote in favor of virtually any bill the governor wants. On close votes, that should be remembered by all Kentuckians concerned about good government.

History of legislators' pension greed

"...in the 1982 session, the lawmakers enriched their pensions even more, creating bonanzas for the bulk of sitting members — which was so extensively reported by the media it is remembered to this day as the 'greed bill'".

The lawmakers created their own pension system in 1980, and modeled it after the judges' pension fund. In creating their system, the lawmakers made it richer than what state and local government employees have, but not quite as rich as the judges' plan that had been in place since 1960. However, at their very next chance, in the 1982 session, the lawmakers enriched their pensions even more, creating bonanzas for the bulk of sitting members — which was so extensively reported by the media it is remembered to this day as the "greed bill."

The next step in greed came in March 2005 when the Senate Republican leadership inserted bold self-enrichment pension language into House Bill 299, an innocuous bill that came over from the Democrat-controlled House. The consequences are the essence of this story.

Four of the five Senate Republican leaders — David Williams, Dan Kelly, Richie Sanders and Dan Seum — voted for the bill on the Senate floor. Sen. Katie Stine, president pro tem, did not vote when the bill came up. Stine was one of six senators who did not cast a vote on the bill, which passed the Senate 30-2 before passing the House 48-36 — all on the same day.

By passing HB 299 with the inserted pension changes, legislators made five major changes to their pensions:

1. They lowered from 30 to 27 the number of years legislators must serve before they can start drawing their pensions prior to age 65 without an early withdrawal penalty.

2. They fixed it so that any member who was not in the legislative retirement plan could join by a certain date and be eligible for the bonanzas to come. Here we once again note the lack of transparency involving the taxpayer-funded pension system as information on how many legislators took advantage of this opportunity for a pension bonanza is not available to the public.

"'Reciprocity' is what allows lawmakers to convert their normal pensions into super-sized pensions."

3. They lowered the salary multiplying factor used in figuring their pensions to their "high three" years of service instead of the previous "high five" years.

4. They eliminated their $27,500 "assumed" salary as a multiplying-factor and replaced it with their real salary so that change No. 5 below would make sense.

5. They bestowed upon themselves a pension privilege called "reciprocity." This policy allows all legislators serving when all the pension-formula changes were made during the 2005 session — as well as legislators elected in future years — to calculate their pensions NOT on their part-time salary as a legislator but on their full-time salary in another state or local government job held either before or after they left the legislature. The only restriction: the pre- or post-legislative job must be covered by one of Kentucky's state-administered pension systems.

"Reciprocity" is what allows lawmakers to convert their normal pensions into super-sized pensions. The option is available to all participants except judges in the state's retirement systems — a practice that some legislators point to in rationalizing it for themselves. There is a big difference, however. The service credit rate (the percentage figure used in calculating pensions) is greater for legislators — in a few instances, much greater — than it is for other government employees, except judges. In 1982, lawmakers lowered their original percentage rate of 3.5 percent[5] to 2.75 percent — and lowered the judges' rate, which was 4.15 percent at the time, to 2.75 percent — to make the legislative and judicial rates equal. But lawmakers are part-time employees while judges work full-time.

Second pension

In 1998, legislators quietly voted to give themselves a second pension in the retirement system for state employees. This second pension in KERS, which begins automatically — with no action even required by the legislator — kicks in when his pension in the Kentucky Legislators' Retirement Plan "maxes out." A legislator "maxes out" when he reaches eligibility to draw 100 percent of his legislative salary upon retiring. Therefore, lawmakers receiving a second pension will, when they retire, draw *more* in taxpayer-funded pension benefits than they did in legislative salaries.

Today, six serving legislators are double dipping with a second pension in KERS — Sens. Walter Blevins and Dan Seum, and Reps. Tom Burch, Danny Ford, Jody Richards, Tom Riner and Greg Stumbo. Former Sen. David Boswell was also a double dipper in KERS, as was former Rep. Harry Moberly, who somehow was able to drop out of KERS so he could enroll in the teachers' retirement system through his employer, Eastern Kentucky University — a move believed to have been done to enhance one or more of his three government pensions: legislative, KERS and university pensions.

[5] Legislators in 1982 who had at least four years of service (those serving since 1978 or earlier) were given the highest SCR of all at 5 percent. Those who came in 1980 were assigned 4.15 percent, and for those who came in 1981 kept the 3.5 percent.

They wrote the law

Former Rep. Harry Moberly

Harry Moberly of Richmond entered the House of Representatives with the Freshman Class of 1980, the year that the legislators' pension system was created. Moberly served there for 30 years. Moberly and members of his class were assigned a service credit rate (SCR) of 4.15 percent. The SCR is one of three factors used to determine an individual's pension allowance. In this case, Moberly's SCR is more than double that of most state employees.

The only legislator still serving who came in with Moberly, and therefore has the same 4.15 percent rate, is Speaker Greg Stumbo. Three current legislators who came to Frankfort prior to 1978 have a service credit rate of 5 percent — Reps. Tom Burch, Jody Richards and Tom Riner[6]; three others have a 3.5 percent rate — Sens. Walter Blevins and Dan Seum, and Rep. Danny Ford. All others have 2.75.

Moberly's employer when he retired from the legislature at the end of 2010 was Eastern Kentucky University, where he was paid $168,686 a year as the vice president of Administrative Affairs. On Dec. 31, 2004, after 25 years of legislative service, he "maxed out" of his legislative pension — meaning at that point he became eligible to draw 100 percent of his legislative salary.

Moberly's "high-three" salary as a legislator the year before he retired was $41,035. However, thanks to reciprocity granted in HB 299 — a bill the Richmond Democrat voted for — his pension will not be determined by what he earned in the legislature. Rather, it will be based on what he earned at the university — an amount four times greater than his legislative pay.

Therefore, Moberly's *legislative* pension is at least $168,686 a year, plus compound COLA increases, for the rest of his life. That's $127,651 per year more than what his legislative pension *would* have been had the 2005 legislation not been enacted. He voted for the bill that gives him an estimated lifetime windfall of at least $2.6 million. With compound COLAs, that can grow to more than $3 million. [7]

Former Sen. Dan Kelly

Dan Kelly accepted an appointment by the governor to become a circuit court judge in the 11th Judicial District, which more than doubled his legislative pension from about $30,000 a year to about $64,000 — a lifetime gain estimated to be at least $645,000. That amount could be even higher if Kelly bought years-of-service credit for his military time. Kelly's legislative pension will be calculated entirely on his salary as a circuit judge after serving at least three years, which will fulfill the "high three" requirement of HB 299.

If Kelly bought military time — which, again, we do not know whether he did because of a lack of transparency in the public pension system — the lifetime gain on his legislative pension as a result of accepting the judgeship would be around $900,000, based on the $124,816-a-year salary of a circuit judge today. Considering salary and cost-of-living increases that will occur after his retirement, it was like the governor offered Kelly $1 million — payable in monthly installments later — to quit the Senate. This amount doesn't even include the salary or second pension he will receive as a judge.

[6] Rep. Tom Riner came in with the Freshman Class of 1982. A provision enacted that year allows spouses who both served in the General Assembly, but not at the same time, to combine their years of service and decide who gets it. Rep. Riner succeeded his wife, Claudia, who also represented District 41, and, therefore, his pension is calculated using her service credit rate (SCR) of 5 percent, instead of his 2.75 percent. Currently, this rule applied only to one other legislator, Rep. Linda Belcher, who succeeded her husband, Larry, who died in an automobile accident.

[7] Former Rep. Harry Moberly's legislative pension is estimated to be at least $168,686 a year. A 1.5 percent cost-of-living increase applied to that amount, beginning the second year of his retirement and then compounded annually over the next 24 years, would give him an extra $585,428 in increments over that time.

Kelly was one of the Republican leaders in the Senate who, as majority floor leader, rushed HB 299 through the process to passage.

Former Rep. J.R. Gray

After winning the November 2007 general election, Gov. Beshear picked then-state Rep. J.R. Gray to head the Labor Cabinet. Gray, a Benton Democrat who came to Frankfort as a lawmaker in 1976, stayed on as cabinet secretary exactly three years at a salary, on average, of roughly $136,500 a year. The high salary is an important part in building Gray's legislative pension, for two reasons: (a) after three years on the job, it became his "high three" salary in the three-factor formula for calculating pensions, and (b) the "high three" salary is multiplied in the formula by the other two factors — the service credit rate (expressed as a percent) and years of service, and Gray has a very high SCR, the highest allowed, 5 percent, which is the rate given to all legislators who came into the General Assembly in 1978 and earlier.

Consequently, the 2005 "legislators' pension enhancement" bill enriched Gray's pension by an estimated $1.2 million. That means his pension, as a legislator, spiked $400,000 a year during each of the three years he was cabinet secretary. The pension gain was just gravy on top of the well-paid salary he received to run the cabinet.

But there's more to Gray's pension bonanza. In 2000, he "maxed out" on his legislative pension, after which he was enrolled automatically in a second pension in the Kentucky Employees' Retirement System where he was an active member when he took the cabinet job. So, on top of his estimated $136,500-a-year pension for serving in the legislature, Gray is drawing in retirement a KERS pension of around $13,062 a year (based on his seven years in the plan as a part-time legislator followed by three years as cabinet secretary after he "maxed out" on his legislative pension).

Gray is enjoying the benefits of his vote for HB 299 in the form of two state pensions totaling approximately $149,000 a year, plus compound COLA increases with both pensions — all of that for being elected to the legislature and parlaying the election successes into a cabinet secretary post.

House Speaker Greg Stumbo

Speaker Greg Stumbo is one of the big winners in the legislative pension game, even though he was not serving in the legislature when HB 299 was enacted in 2005; he was attorney general, a post he held four years. Nonetheless, as a result of the bill, he will receive a pension bonus estimated to be more than $1.24 million, not counting compound COLAs.

The 2005 legislation, you will remember, applies not only to legislators who were serving that year but also to those elected in the future. Within a month after Gov. Beshear took office and Stumbo was out as attorney general, Stumbo met with the governor, after which freshman Prestonsburg Democratic state Rep. Brandon Spencer, who held Stumbo's old District 95 House seat, abruptly resigned. Beshear then called a special election — which Stumbo easily won — to fill Spencer's unexpired term.

Stumbo, now back in the legislature where he had previously served for 12 terms from 1980 to 2003, would benefit from three pension events: (a) returning made him eligible to refigure his legislative pension and base it on his salary as attorney general, which averaged $98,824 a year as his "high three" versus his average legislative salary "high three" of $39,792; (b) he immediately maxed out on his legislative pension at 24 years and two

"Speaker Greg Stumbo is one of the big winners in the legislative pension game... he will receive a pension bonus estimated to be more than $1.24 million."

months, which made him eligible to draw 100 percent of his $98,824 AG salary, and (c) Stumbo's maxing out triggered the 1998 law that automatically enrolled him in the Kentucky Employees' Retirement System to begin a second legislative pension.

His legislative pension would be around $39,792 a year had he not returned to the legislature or reaped the benefits of the reciprocity provision in the 2005 law. Instead, both his tenure as attorney general and his decision to return to the legislature gave him an estimated gain of $63,311 a year for the rest of his life, plus a lifetime of compound COLA increases. It's like running for a seat in the House of Representatives, serving one term and becoming a millionaire.

Stumbo's lifetime windfall is estimated at $1,244,694 (not counting the COLAs) — a nice reward for winning one election (which really wasn't much of an election at all since Stumbo won 80 percent of the vote). In fact, if the Speaker were to get a COLA of 1.5 percent annually for 22 years, he would pick up an additional $379,245 — just another demonstration of how expensive compound COLAs are for Kentucky taxpayers.

His return to the legislature also demonstrates that a break in service has no bearing on service years used to figure pension amounts. In tallying Stumbo's total years of service, his four-year absence from the legislature was a non-factor in calculating his legislative pension.

"Not only did his tenure as lieutenant governor cost taxpayers more in terms of his salary, it also will cost them an additional $232,995 in lifetime pension benefits."

Former Sen. David Boswell

Former Sen. David Boswell entered the legislature as a member of the House in 1978, and therefore had a 5 percent service credit rate. In 1983, after six years in the House, Boswell, an Owensboro Democrat, was elected Commissioner of Agriculture — serving in that capacity during the administration of Gov. Martha Layne Collins.

In 1990, Boswell was elected to the Senate, where he served continuously through 2010 for a total of 26 years in the legislature. Because his service credit rate (SCR) was the highest allowed at 5 percent, he was able to max–out his legislative pension on Dec. 31, 2004, at which time he immediately started a second government pension in the state employees' plan, KERS, thanks to a 1998 law the legislators passed that made the second pension automatic.

Boswell also benefited handsomely from his vote for HB 299. His salary as Ag commissioner (his "high-three" in that job) was $53,757 a year, which spiked his legislative pension an estimated $275,000, because as a result HB 299 his pension for being a part-time legislators is calculated on his Ag commissioner pay rather than his legislative salary, which in 2010, the last year he served, was about $40,000. And thanks to a law enacted in 1998, Boswell has a second pension as a legislator, which began in 2005 in KERS — for legislators who "max out" in the legislators' pension plan.

Former Lt. Gov. Daniel Mongiardo

As a state senator, Hazard Democrat Daniel Mongiardo did not vote yea or nay on HB 299. Nevertheless, when Mongiardo reaches age 64 in 2024 — that's when he can begin drawing his legislative pension without an early withdrawal penalty — he will reap the personal benefits of that legislation.

Instead of receiving an annual pension of $6,429 based on his "high-three" average salary of $33,397 during his seven years in the Kentucky Senate, Mongiardo's pension spikes to $20, 356 based on his "high-three" average salary of $105,744 during his four-year term as lieutenant governor.

Not only did his tenure as lieutenant governor cost taxpayers more in terms of his salary, it also will cost them an additional $232,995 in lifetime pension benefits.

Former Sen. Richie Sanders

Richard "Richie" Sanders, R-Franklin, served 18 years in the legislature — six years in the House and 12 years in the Senate. When Sanders left the legislature at the end of 2008, he was the Senate Majority Caucus chairman. In fact, he was one of four members of the Senate Republican leadership who voted in favor of HB 299 the day it passed the Senate and House, both chambers the same day — the skids were greased.

Sanders walked away from his political career to become executive director of the Scottsdale-Allen County Industrial Authority, a position he has held since at a salary of $79,000 a year. Since his employer, the industrial authority — an arm of the city-county governments — participates in the County Employees' Retirement System (CERS), Sanders will be eligible to calculate his legislative pension on his much-higher salary as economic development director rather than on his legislative pay.

An open records request filed with the Legislative Research Commission shows Sanders' "high three" — the average of his highest three years as a legislator — was $41,363. Since his annual service credit rate is 2.75 percent, his annual pension, which he can start drawing at 62 without an early withdrawal penalty, would be an estimated $20,475 a year.

However, under HB 299, instead of using his salary as a legislator in calculating his pension, Sanders instead can use the salary of the economic development director job to spike his legislative pension to $39,105 a year — an increase of $18,630 annually and a minimum lifetime pick up of $413,593.

With even modest annual salary increases over the next 13 years and compound COLAs, which kick in one year after he retires, Sanders' gain from the 2005 bill could well exceed $1 million.

Former Rep. Frank Rasche

Paducah Democrat Frank Rasche served 15 years in the House before resigning in 2008 to accept an $80,000-a-year position in the Beshear administration in the Education and Workforce Development Cabinet. That state job would have increased Rasche's legislative pension to $33,000 a year from $14, 841 — a gain of $18,159 a year — had he stayed in the state job three years. However, he was let go as part of a cabinet reorganization after only about two years on the job, meaning that Rasche's total lifetime pension gain, which would have been an estimated at $329,949, will be reduced proportionally.

Democratic leaders during the 2010 regular session of the legislature would not allow a bill out of the House Committee on State Government that would have rolled back the portion of HB 299 promising reciprocity claiming "it would be unfair to Frank Rasche," who voted for HB 299 and who quit the legislature to take the state job specifically to boost his legislative pension. It didn't matter that the rollback could have applied to future legislators only.

Former Rep. Jon Draud

Edgewood Republican Jon Draud served nine years in the House before resigning in 2007 to become state education commissioner at $220,000 a year. Draud held that job for only about one year, but that year counts as one of his "high three" in calculating his legislative pension. As a result of serving just a single year as education commissioner, Draud's legislative pension increased from $9,247 annually to $22,876 annually — a gain of $13,629. That's a lifetime gain of at least $172,545.

Had Draud remained as commissioner for three years, he would have received — through his legislative pension — a bonus of $572,270. His annual pension for being a part-time legislator for nine years, during which he voted against HB 299, would have jumped to $45,203.

Former Rep. Don Pasley

Don Pasley, D-Winchester, was first elected to the Kentucky House of Representatives in a special election in 2001 and served continuously before losing a bid for re-election in 2010.

After losing the race, Gov. Beshear appointed Pasley to the Transportation Cabinet as commissioner of the Department of Rural and Municipal Aid at a salary of $99,750 a year. His "high three" as a legislator was $40,235. With a service credit rate of 2.75 percent, his normal legislative pension would have been $9,958 a year.

However, thanks to HB 299 — which he voted for — Pasley in calculating his legislative pension can use his $99,750-a-year cabinet salary, which spikes his pension by an additional $14,788 to $24,688 a year, which all adds up to a lifetime bonus of at least $296,073.

Frankfort culture to double dip

Frankfort is a culture of pensions. It's common to find people drawing two, or even three, government pensions. Legislators have joined the parade. The effect of such developments on the legislative process specifically and on Kentucky politics in general should not be underestimated.

We don't know if the governor is keeping a list. What we do know is, Gov. Beshear has received many requests for state jobs from members of the House and Senate — not jobs for their constituents, but positions for themselves for the pension benefits they offer!

How they voted on bill to spike their own pensions

On March 8, 2005, members of the Kentucky General Assembly voted in the Senate and House on the same day their approval of HB 299, a bill that could greatly enrich their pensions. Gov. Ernie Fletcher allowed the bill to become law without his signature. Below is a roster of the state legislature in 2005 and how each member voted on HB 299.

The names of lawmakers who no longer serve in the General Assembly are in italics.

SENATE

Yea — 30 votes (13 Democrats, 17 Republicans)

(D) Blevins Jr., Walter — West Liberty
(D) Boswell, David E. — Owensboro
(D) Carroll, Julian — Frankfort
(D) Harper Angel, Denise — Louisville
(D) Jones II, Ray S. — Pikeville
(D) Neal, Gerald — Louisville
(D) Palmer II, R.J. — Winchester
(D) Pendleton, Joey — Hopkinsville
(D) Rhoads, Jerry P. — Madisonville
(D) Ridley, Dorsey — Henderson
(D) Shaughnessy, Tim — Louisville
(D) Turner, Johnny Ray — Drift
(D) Worley, Ed — Richmond
(R) Borders, Charlie — Russell
(R) Buford, Tom — Nicholasville
(R) Gibson, Carroll — Leitchfield
(R) Guthrie, Brett — Bowling Green
(R) Harris, Ernie — Crestwood
(R) Kelly, Dan — Springfield
(R) Kerr, Alice Forgy — Lexington
(R) Roeding, Richard "Dick" — Lakeside Park
(R) Sanders Jr., Richard "Richie" — Franklin
(R) Seum, Dan — Louisville
(R) Stivers II, Robert — Manchester
(R) Tapp, Gary L. — Shelbyville

(R) Thayer, Damon — Georgetown
(R) Tori, Elizabeth — Radcliff
(R) Westwood, John D. "Jack" — Crescent Springs
(R) Williams, David L. — Burkesville
(R) Winters, Kenneth "Ken" — Murray

Nay — 2 votes (1 Independent, 1 Republican)

(I) Leeper, Robert "Bob" — I-Paducah
(R) McGaha, Vernie — R-Russell Springs

Did Not Vote — 6 (4 Democrats, 2 Republicans)

(D) Mongiardo, Daniel — Hazard
(D) Scorsone, Ernesto — Lexington
(R) Denton, Julie — Louisville
(R) Jensen, Tom — London
(R) Stine, Katie Kratz — Fort Thomas
(R) Stephenson, Dana Seum — Louisville*
**Barred from voting on Senate bill by court order, pending outcome of residency qualifications to serve.*

REPRESENTATIVES

Yea — 48 votes (30 Democrats, 18 Republicans)

(D) Adkins, Rocky. — Sandy Hook
(D) Arnold, Adrian K. — Mount Sterling
(D) Arnold Jr., John A. — Sturgis
(D) Barrows, Joe — Versailles
(D) Bruce, James E. "Jim" — Hopkinsville
(D) Burch, Thomas "Tom" — Louisville
(D) Butler, Denver — Louisville
(D) Clark, Larry — Louisville
(D) Crenshaw, Jesse — Lexington
(D) Denham, Mitchell "Mike" — Maysville
(D) Edmonds, Ted "Teddy" — Jackson
(D) Gooch Jr., Jim — Providence
(D) Graham, Derrick — Frankfort
(D) Gray, J.R. — Benton
(D) Hall, W. Keith — Phelps
(D) Horlander, Dennis L. — Shively
(D) Jenkins, Joni — Shively
(D) Lindsay, Gross Clay — Henderson
(D) Miller, Charles — Louisville
(D) Moberly Jr., Harry — Richmond
(D) Pasley, Don — Winchester
(D) Rasche, Frank A. — Paducah
(D) Richards, Jody — Bowling Green
(D) Riggs, Steven R. — Louisville
(D) Stacy, John Will — West Liberty
(D) Webb, Robin — Grayson
(D) Westrom, Susan — Lexington
(D) Wilkey, Rob — Franklin
(R) Baugh, Sheldon E. — Russellville
(R) Comer, James R. — Tompkinsville
(R) Cornett, Howard — Whitesburg
(R) Couch, Tim — Hyden
(R) Crimm, Ronald "Ron" — Louisville
(R) DeWeese, Bob M. — Louisville
(R) Feeley, Tom — Crestwood
(R) Ford, Danny R. — Mount Vernon
(R) Harper, Mary C. — Shepherdsville
(R) Kerr, Thomas R. — Taylor Mill
(R) Lynn, Gerald "Gerry" — Brandenburg
(R) Marcotte, Paul H. — Union
(R) Mobley, Russ — Campbellsville
(R) Napier, Lonnie N. — Lancaster
(R) Rader, Marie L. — McKee
(R) Reinhardt, Jon David — Alexandria
(R) Rudy, Steven — Paducah
(R) Siler, Charlie — Williamsburg
(R) Upchurch, Ken — Monticello
(R) Vincent, John — Ashland

Nays — 36 votes (22 Democrats, 14 Republicans)

(D) Adams, Royce W. — Dry Ridge
(D) Ballard, Joseph "Eddie" — Madisonville
(D) Belcher, Carolyn — D-Preston
(D) Carr, James R. — Hopkinsville
(D) Cherry, Michael "Mike" — Princeton
(D) Collins, Hubert "Hubie" — Wittensville
(D) Hoffman, Charles R. "Charlie" — Georgetown
(D) Keene, Dennis — Wilder
(D) Lee, Jimmie — Elizabethtown
(D) McKee, Thomas M. "Tom" — Cynthiana
(D) Meade, Charles E. "Chuck" — McDowell
(D) Nelson, Rick — Middlesboro
(D) Nesler, Fred L. — Mayfield
(D) Owens, Darryl — Louisville
(D) Palumbo, Ruth Ann — Lexington

(D) Pullin, Tanya — South Shore
(D) Rand, Rick — Bedford
(D) Riner Jr., Thomas "Tom" — Louisville
(D) Smith, Ancel — Leburn
(D) Thompson, Tommy — Owensboro
(D) Wayne, Jim — Louisville
(D) Yonts, Brent — Greenville
(R) Bowen, Joe R. — Owensboro
(R) Bratcher, Kevin D. — Louisville
(R) Brinkman, Scott — Louisville
(R) Butler, Dwight D. — Harned
(R) Decesare, Jim — Bowling Green
(R) Dedman, Milward — Harrodsburg
(R) Farmer Jr., William P. "Bill" — Lexington
(R) Henley, Melvin B. — Murray
(R) Higdon, Jimmy — Lebanon
(R) Lee, Stan — Lexington
(R) Nunn, Stephen "Steve" — Glasgow
(R) Shelton, Terry — Magnolia
(R) Stewart III, James "Jim" — Flat Lick
(R) Turner, Thomas J. "Tommy" — Somerset

Did Not Vote — 16 (7 Democrats, 9 Republicans)

(D) Clark, Perry — Louisville
(D) Damron, Robert "Bob" — Nicholasville
(D) Marzian, Mary Lou — Louisville
(D) Meeks, Reginald – Louisville
(D) Simpson, Arnold — Covington
(D) Stein, Kathy W. — Lexington
(D) Weaver, John Michael "Mike" — Elizabethtown
(R) Draud, Jon E. — Edgewood
(R) Embry Jr., C.B. — Morgantown
(R) Fischer, Joseph M. "Joe" — Fort Thomas
(R) Floyd, David W. — Bardstown
(R) Harmon, Mike — Junction City
(R) Hoover, Jeffrey H. "Jeff" — Jamestown
(R) Montell, Brad — Shelbyville
(R) Smith, Brandon — Hazard
(R) Wuchner, Addia — Florence

Thresholds

Kentucky statute designates years-of-service milestones with each bringing additional benefits:

Five years: For each five years of service, a legislator may reduce by one year the drawing of his or her pension before age 65 without an early withdrawal penalty. For example, after 20 years of service, a legislator can retire at age 61.

Fifteen years: After 15 years of service, a legislator may purchase five years of "air" time — credit for work they never did — but can't use it until they reach 20 years of actual service.

Twenty years: After completing 20 years, the retirement plan pays 100 percent of the health care insurance costs for the lawmaker, spouse and dependent children.

Twenty-seven years: After 27 years of service, legislators may start drawing their pensions at any time before age 65 without an early withdrawal penalty.

Thirty-six years: After 36 years and about four months, a legislator with a SCR of 2.75 can retire at 100 percent of his or her "high three" salary. (Those with a 5 percent SCR reach that milestone in 20 years; those with a 4.15 in 24 years and about one month; and those with a 3.5 in 28 years and about seven months. By comparison, a state employee with a 2 percent SCR would have to work

50 years for his or her pension to be 100 percent of salary.

Retirement age

For employees hired before Sept. 1, 2008, there is no age restriction or penalty for early withdrawal of legislative pensions after 27 years of service in any of the state's six government-administered retirement plans.

Post- or pre-legislative job

In the 32-year history of the pension system for legislators, no amendment to increase benefits has been more substantial than the reciprocity provision legislators adopted in 2005. This allowed them to calculate their General Assembly pensions not on what they are paid as a part-time legislator but on salaries they receive in full-time jobs held before, during or after they come to the legislature — a caveat being that the employer in the other job must be a participant in one of Kentucky's six state-administered pension systems.

The math is simple: when an annual salary is more than part-time compensation, the legislator's pension check is larger. The difference is so huge that in some cases, it makes "reciprocity" a mere code word for "plunder." It's legal only because the lawmakers said so. The Kentucky Legislative Ethics Commission agrees because the opportunity to spend their golden years in the land of milk and honey — courtesy of the public treasury — applies equally to everybody in the legislature, the same people who mandate their own ethical behavior.

100 percent health care coverage

Health care cost is a concern for most citizens — but not for citizen-legislators once they reach the threshold of having served 20 years in the General Assembly. Beyond that time and for the rest of their lives, legislators' retirement packages pays 100 percent of the health care insurance premiums for the legislator *and* for his or her spouse and dependent children — except when Medicare starts at age 65 for the legislator. Then, the retirement plan pays only the supplemental insurance premiums.

And legislators are not bare on the front end. The free health care is graduated. After completion of four years in the legislature, the legislators' retirement plan pays 25 percent of his or her health insurance premium; after 10 years, it goes to 50 percent; and then coverage increases in increments of 5 percent each year, reaching 100 percent at the end of 20 years. (A legislator can buy five years of "air" time after serving 15 years, but can't use it until after 20 years of actual service; so "air" time doesn't speed up free health care.)

Only lawmakers and the state police have this 20-year free health care insurance sliding scale. All other public employees have good health insurance coverage as a fringe benefit, but it's not as rich for them as it is for legislators and the state police.

Health care insurance, a major component in each of the retirement systems, is not the emphasis of this report, which, for reasons of space and time, is confined to pensions.

Other pertinent points

1. A legislator cannot be enrolled in two government-administered retirement systems at the same time.

2. A legislator's pension allowance from service in the General Assembly cannot be greater than 100 percent of his "high three" legislative salary. However, there are ways to stretch that limitation. For instance, once a legislator reaches eligibility to draw 100 percent of his legislative pay during retirement — it's called "maxing out" — he immediately stops contributing to the legislators' retirement plan and starts a second government pension in the state employees' retirement plan (KERS). As a result, upon retirement from the General Assembly, the combined pensions are greater than his or her pay as a legislator. Another way to stretch the 100-percent rule is through the reciprocity clause, the opportunity for super-rich pensions, which legislators bestowed upon themselves in 2005, as described throughout this report.

3. A legislator cannot begin drawing his or her pension prior to the age of 65 without an early withdrawal penalty, except it can be drawn anytime

without penalty if the legislator has 27 years of government service. For a retirement beginning at age 65, the early withdrawal penalty is reduced one year for each five years of service.

4. Once a legislator starts drawing a General Assembly pension, he or she is no longer eligible to enrich the pension from employment in another government job.

5. A legislator becomes "vested" (and thereafter can draw pension benefits) after five years of legislative service or eight years of total government service. That is, a legislator with only two years of legislative service — one term in the House of Representatives, for instance — can draw a pension if he or she has at least six years of total government service. However, the pension would be figured only on the two years in the legislature.

6. Legislators who have had a break in service and worked in a government job during the interim and who later are re-elected to the legislature may transfer the years of service in the interim government job to their legislative retirement plan, but they may have to pay a stiff penalty based on an actuarial assessment of the liability of the transfer — the amount it would cost the Kentucky Legislators' Retirement Plan in higher pension payouts to the individual. Ex-legislators cannot transfer years of service unless they get re-elected and enroll as a contributing member of the Kentucky Legislators' Retirement Plan.

Sitting legislators who purchase and/or transfer service credit, pay the entire projected liability (including the state's portion), based on an actuarial assessment; the only exception is for the purchase of active military service credit, in which case the legislator pays only 35 percent of the projected liability. More often than not, a purchase or transfer of service credit is cost prohibitive, under current law.

7. Each of the state's six retirement systems calculates its pension benefits based on the number of years of service in its own system.

8. Only legislators and teachers have a "high three." Judges and all other government non-hazardous employees have a "high five."

"the 131,815 retirees — and the 331,804 active and inactive public employees in line to retire — owe thanks to their representatives and senators, who have been so benevolent over the past five decades in steadily increasing their benefits."

Liability

About 20 percent to 25 percent of the payout for retirement benefits for legislators comes from funds appropriated to the Kentucky Legislators' Retirement Plan by the General Assembly. Legislators elected prior to Sept. 1, 2008, contribute 5 percent of their salaries (6 percent for new legislators after Sept. 1, 2008), which comprises roughly 5 percent to 10 percent of their retirement plan's annual budget. The rest comes from investments. As of June 30, 2011, the KLRP had a $24.5 million unfunded liability, which is relatively low because it is the smallest of the six state-administered retirement systems. There can be no more than 138 activemembers (the total number of legislators serving in the House and Senate) at any given time.

Benefit creep — gradually padding the pensions

It's the lawmakers' sole prerogative to grant benefits — salaries and fringe benefits — to employees and retirees in the state's six state-administered retirement plans.

In other words, the 131,815 retirees — and the 331,804 active and inactive public employees in line to retire — owe thanks to their representatives and senators, who have been so benevolent over the past five decades in steadily increasing their benefits. However, it wasn't the legislators' choice in the early days when governors ruled the legislature with absolute authority. Gov. John Y. Brown Jr. in 1980 was the first governor to allow lawmakers some independence, which developed into the two branches of Kentucky state government becoming equals.

Selected examples of benefit creep through the years are presented below, categorized under the heading of the governor during the year the provision was enacted. These are selected examples only — not a full presentation by a long shot.

As you read through this listing, keep in mind the formula for calculating the pension allowance. A majority of bills to fatten the pensions are aimed at tweaking that formula: *years of service*, *service credit rate* and *final average compensation*.

The employee's contribution rate, for instance, which is 5 percent for most government workers, is not directly related to the size of the pension. The math and the politics are focused like a surgical strike on the three factors in the pension allowance formula for the advantage of some group or other, or, occasionally, for a few individuals or even a single individual. We've counted more than 40 ways that can be done.

Retirement systems established

Kentucky's six state-administered retirement systems — each of which has a pension fund and a medical fund (health care, as a fringe benefit) — were created as follows:

1. **Kentucky Employees Retirement System (KERS)**
Established in 1956. Gov. A.B. "Happy" Chandler
2. **County Employees Retirement System (CERS)**
Established in 1958. Gov. A.B. "Happy" Chandler
3. **State Police Retirement System (SPRS)**
Established in 1958. Gov. A.B. "Happy" Chandler
4. **Kentucky Teachers' Retirement System (KTRS)**
Established in 1938. Gov. A.B. "Happy" Chandler
5. **Kentucky Judicial Retirement System (KJRS)**
Established in 1960. Gov. Bert T. Combs
6. **Kentucky Legislators' Retirement Plan (KLRP)**
Established in 1980. Gov. John Y. Brown Jr.

Add-on benefits are listed by governor

Gov. Simeon S. Willis (1943-1947)

• Teachers are allowed to "buy" up to eight years from teaching in another state.

Gov. Lawrence W. Wetherby (1950-1955)

• The formula for calculating a teacher's pension allowance (the size of the monthly check) is sweetened from 50 percent of the employee's annual salary to an average of the employee's full salary over five consecutive years.

Gov. A.B. "Happy" Chandler (1955-1959)

• Military Affairs employees paid by the federal government, wholly or in part, are allowed to enroll in the state employees' pension system.

Gov. Bert T. Combs (1959-1963)

• State employees are allowed to "buy" years of service from prior government employment.
• The minimum number of years for eligibility for teachers to draw full pension benefits beginning at age 60 is reduced from 20 years to 15 years.

Gov. Edward T. Breathitt (1963-1967)

• Minimum number of years for teachers to be eligible to draw full pension benefits beginning at age 60 is reduced from 15 years to 10 years.
• Health insurance as a fringe benefit for teachers is created, and teachers' contributions are matched by the state.

• How *final average compensation* is figured for state employees is sweetened by allowing them to figure the pension on an average of the employee's five highest annual salary years (high-five), instead of basing it on the employee's averaged salary over 15 years.

• The *benefit factor*, which began at 1.5 percent for state police, is sweetened to 2 percent. (Afterward, through incremental increases over six legislative sessions, the benefit factor for state police is increased to 2.5 percent.)

Gov. Louie B. Nunn (1967-1971)

• The percent of salary that the state police contribute to their pension fund is reduced from 10 percent to 7 percent. Also, the normal retirement age for state police is lowered from age 55 to any age after 30 years of service (later trimmed to 20 years, then upped to 25 for new hires on or after Sept. 1, 2008).

Gov. Wendell H. Ford (1971-1974)

• The *inviolable contract* language is added to the pension benefits of public employees — state and local workers and state police — enrolled in the Kentucky Retirement System. It shields all pension benefits in place on the employee's first day on the job from future repeal or alteration.

• A *confidentiality clause*, which bars the release of information about a retirement account without the individual's authorization, is added.

• Some employees of a labor union (Kentucky Education Association) and other private-sector organizations (Kentucky High School Athletic Association and Kentucky School Boards Association) are allowed to join the state retirement plan for teachers.

• Since being a legislator is a part-time job, and legislators had, therefore, no annual salary upon which to base their pensions, an "assumed" annual salary of $15,000 is created for them (later increased to $18,000 and $27,500 before being eliminated altogether in 2005 in favor of the lawmakers' gross total taxable income as reported annually to the IRS).

Gov. Julian Carroll (1974-1979)

• The *inviolable contract* language is added to the teachers' pension benefits, shielding all retirement benefits in place the first day on the job from future repeal or alteration.

• Health insurance is added as a fringe benefit for the state police.

• The *final average compensation* factor is reduced (enriched) to an average of the employee's five highest years.

• The *benefit factor* is increased (enriched) to 2 percent.

Gov. John Y. Brown Jr. (1979-1983)

• Public employees are allowed to retire before age 55 if they have at least 25 years of service, lowered from 30 years.

• Legislators created their own retirement system — the Kentucky Legislators' Retirement Plan — and made the benefits richer than any other system; their *benefit factor* is based on a sliding scale: 5 percent for members who entered the legislature in 1978 or before; 4.15 percent for members who entered the legislature in 1980; 3.5 percent for members who entered the legislature in 1981; and 2.75 percent for members who entered the legislature after July 1, 1982.

• A medical insurance fund is created to provide legislators — current and retired, and their families — health care insurance as a fringe benefit.

• Spouses who serve in the General Assembly but not at the same time are allowed to combine their services into a single account and decide who gets it. This rule currently applies only to Rep. Tom Riner.

Gov. Martha Layne Collins (1983-1987)

• For hazardous duty jobs in local governments, the years of service required for a normal retirement is reduced from 25 years to 20 years.

• All employees in CERS are allowed to "buy" four years of service credit from their time in the military, lifting a previous restriction.

• For state police, the years of service required for a normal retirement is reduced from 25 years to 20 years for members younger than age 55.
• Employers (the government) can "buy" for retiring employees up to six months of unused sick leave, which the employee can then use to pad his or her pension.
• School board employees are allowed to buy summer months and all employees in CERS are allowed to buy educational and maternity leave time to enhance retirement benefits.

Gov. Wallace Wilkinson (1987-1991)

• Disabilities that last more than 12 months are considered permanent.
• The annual COLA for retirees is increased from 4 percent to 4.5 percent.
• Employees are allowed to buy service credit time in increments of one year.
• Employees who have taken sick leave without pay may buy that time, and get credit for all accumulated sick leave to enhance his or her pension.
• The years of service needed for normal retirement is lowered from 30 years to 27.
• The cap on an annual pension allowance is moved from 75 percent to 100 percent of final average compensation.
• A group health insurance plan is started for judges and their families, free for judges with 20 years of service, 75 percent free for those with 15 to 20 years of service, 50 percent free for those with 10 to 15 years of service, and 25 percent free for those with four to 10 years of service.
• The *benefit factor* for some county employees is increased from 2 percent to 2.2 percent.
• The number of hours needed for participation in the retirement plan by non-certified school employees — teacher aides, cafeteria employees, bus drivers, secretaries and custodial — is reduced to 80 hours per month.
• Judges are allowed to transfer up to 10 years of prior service as a state employee to the judicial retirement system.

Gov. Brereton C. Jones (1991-1995)

• Employees of a credit union, a private-sector entity, are allowed to join the state employees' pension system.
• Hazardous duty employees with five years of service are allowed to buy up to 10 years of service credit time from having worked *in another state* in a hazardous duty position.
• Employees are allowed to buy the time they served as a volunteer in the Kentucky Peace Corps.
• Recipients of a hazardous duty disability pension are authorized to return to work in a non-hazardous position and start a second pension.

Gov. Paul E. Patton (1995-2003)

• The salary factor used in figuring the pension allowance for hazardous duty positions is lowered to a "high three" from a "high five," making the pension richer.
• Employees are allowed to buy five years of "air" time toward years-of-service credit — credit for work they don't do.
• Hazardous duty retirees elected to local government offices may double dip in the CERS pension plan.
• Legislators who max out on their legislative pension, and therefore become eligible to draw 100 percent of their annual salary in retirement, stop contributing to the legislators' pension plan and are automatically enrolled in another pension system — the KERS — to start building a second pension.
• Public workers who are retired and living out-of-state are reimbursed for the difference if their health insurance costs more than in-state.
• A program called "Senior Status Special Judges" is created to allow retired judges to work 600 hours over a period of six years in exchange for gold-plated pension enhancements — in the range of a $1 million — for many who entered it (the program is still active but enrollment ended in 2009.)
• A pension-enrichment window is created to encourage state and local employees in non-

hazardous positions to retire. To accomplish this, the *final average compensation* factor is sweetened — that is, it's lowered to a "high three" from a "high five" from August 2001 to January 2009.

Gov. Ernie Fletcher (2003-2007)

• Legislators and judges with 15 years of service — formerly 20 years — are allowed to buy five years of "air" time. Again, this is credit for work they never did.
• The number of years of service required for legislators to take normal retirement at any age is lowered from 30 years to 27 years.
• The *final average compensation* factor for legislators and judges is sweetened (lowered) from a "high five" to a "high three."
• The legislators' "assumed annual salary" of $27,500 is replaced with taxable legislative income as reported to the IRS on lawmakers' federal W-2 form; this is a higher amount than the assumed figure, which makes the pension larger.
• To enhance their own pensions, legislators added a reciprocity provision, which allows any legislator serving in the 2005 session — and those serving in all future sessions — to calculate their legislative pensions NOT on their pay as a legislator but on their earnings from any full-time job before they arrive in or after they leave the legislature. There are some stipulations on reciprocity: the post- or pre-legislature job must be with an employer participating in one of the six public employee retirement systems run by the state; and the individual's two pensions must commence simultaneously (the same day). Pensions do not occur automatically when an individual retires; he or she must apply for the pension and designate its commencement date. There is no statutory provision for an ex-legislator, who has a second, non-legislative pension, to decline reciprocity; however, a back-door rejection of reciprocity can be made by simply choosing to NOT commence the two pensions on the same day.

Lowell Reese is owner of Kentucky Roll Call, a public affairs publishing company in Frankfort, and a former state Chamber of Commerce executive.

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