

**(Corrected)**  
**As Amended by House Committee**

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*Session of 2012*

**HOUSE BILL No. 2461**

By Joint Committee on Pensions, Investments and Benefits

1-17

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1 AN ACT concerning retirement and benefits, relating to the Kansas public  
2 employees retirement fund; alternative investments; amending K.S.A.  
3 2011 Supp. 74-4921 and repealing the existing section.  
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5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2011 Supp. 74-4921 is hereby amended to read as  
7 follows: 74-4921. (1) There is hereby created in the state treasury the  
8 Kansas public employees retirement fund. All employee and employer  
9 contributions shall be deposited in the state treasury to be credited to the  
10 Kansas public employees retirement fund. The fund is a trust fund and  
11 shall be used solely for the exclusive purpose of providing benefits to  
12 members and member beneficiaries and defraying reasonable expenses of  
13 administering the fund. Investment income of the fund shall be added or  
14 credited to the fund as provided by law. All benefits payable under the  
15 system, refund of contributions and overpayments, purchases or  
16 investments under the law and expenses in connection with the system  
17 unless otherwise provided by law shall be paid from the fund. The director  
18 of accounts and reports is authorized to draw warrants on the state  
19 treasurer and against such fund upon the filing in the director's office of  
20 proper vouchers executed by the chairperson or the executive director of  
21 the board. As an alternative, payments from the fund may be made by  
22 credits to the accounts of recipients of payments in banks, savings and loan  
23 associations and credit unions. A payment shall be so made only upon the  
24 written authorization and direction of the recipient of payment and upon  
25 receipt of such authorization such payments shall be made in accordance  
26 therewith. Orders for payment of such claims may be contained on (a) a  
27 letter, memorandum, telegram, computer printout or similar writing, or (b)  
28 any form of communication, other than voice, which is registered upon  
29 magnetic tape, disc or any other medium designed to capture and contain  
30 in durable form conventional signals used for the electronic  
31 communication of messages.

32 (2) The board shall have the responsibility for the management of the  
33 fund and shall discharge the board's duties with respect to the fund solely  
34 in the interests of the members and beneficiaries of the system for the  
35 exclusive purpose of providing benefits to members and such member's  
36 beneficiaries and defraying reasonable expenses of administering the fund

1 and shall invest and reinvest moneys in the fund and acquire, retain,  
2 manage, including the exercise of any voting rights and disposal of  
3 investments of the fund within the limitations and according to the powers,  
4 duties and purposes as prescribed by this section.

5 (3) Moneys in the fund shall be invested and reinvested to achieve the  
6 investment objective which is preservation of the fund to provide benefits  
7 to members and member beneficiaries, as provided by law and accordingly  
8 providing that the moneys are as productive as possible, subject to the  
9 standards set forth in this act. No moneys in the fund shall be invested or  
10 reinvested if the sole or primary investment objective is for economic  
11 development or social purposes or objectives.

12 (4) In investing and reinvesting moneys in the fund and in acquiring,  
13 retaining, managing and disposing of investments of the fund, the board  
14 shall exercise the judgment, care, skill, prudence and diligence under the  
15 circumstances then prevailing, which persons of prudence, discretion and  
16 intelligence acting in a like capacity and familiar with such matters would  
17 use in the conduct of an enterprise of like character and with like aims by  
18 diversifying the investments of the fund so as to minimize the risk of large  
19 losses, unless under the circumstances it is clearly prudent not to do so,  
20 and not in regard to speculation but in regard to the permanent disposition  
21 of similar funds, considering the probable income as well as the probable  
22 safety of their capital.

23 (5) Notwithstanding subsection (4): (a) Total investments in common  
24 stock may be made in the amount of up to 60% of the total book value of  
25 the fund;

26 (b) the board may invest or reinvest moneys of the fund in alternative  
27 investments if the following conditions are satisfied:

28 (i) The total of the annual *net commitment to alternative investment*  
29 *investments* does not exceed ~~more than 1%~~ 5% of the total market value of  
30 investment assets of the fund as measured from the end of the preceding  
31 calendar year;

32 (ii) if in addition to the system, there are at least two other  
33 ~~sophisticated investors~~ *qualified institutional buyers*, as defined by section  
34 ~~301 of the (a)(1)(i) of rule 144A~~, securities and exchange act of 1933;

35 (iii) the system's share in any individual alternative investment is  
36 limited to an investment representing not more than 20% of any such  
37 individual alternative investment;

38 (iv) the system has received a favorable and appropriate  
39 recommendation from a qualified, independent expert in investment  
40 management or analysis in that particular type of alternative investment;

41 (v) the alternative investment is consistent with the system's  
42 investment policies and objectives as provided in subsection (6);

43 (vi) the individual alternative investment does not exceed more than

1 2.5% of the total alternative investments made under this subsection. If the  
2 alternative investment is made pursuant to participation by the system in a  
3 multi-investor pool, the 2.5% limitation contained in this subsection is  
4 applied to the underlying individual assets of such pool and not to  
5 investment in the pool itself. The total of such alternative investments  
6 made pursuant to participation by the system in any one individual multi-  
7 investor pool shall not exceed more than 20% of the total of alternative  
8 investments made by the system pursuant to this subsection. Nothing in  
9 this subsection requires the board to liquidate or sell the system's holdings  
10 in any alternative investments made pursuant to participation by the  
11 system in any one individual multi-investor pool held by the system on the  
12 effective date of this act, unless such liquidation or sale would be in the  
13 best interest of the members and beneficiaries of the system and be  
14 prudent under the standards contained in this section. The 20% limitation  
15 contained in this subsection shall not have been violated if the total of such  
16 investment in any one individual multi-investor pool exceeds 20% of the  
17 total alternative investments of the fund as a result of market forces acting  
18 to increase the value of such a multi-investor pool relative to the rest of the  
19 system's alternative investments; however, the board shall not invest or  
20 reinvest any moneys of the fund in any such individual multi-investor pool  
21 until the value of such individual multi-investor pool is less than 20% of  
22 the total alternative investments of the fund;

23 (vii) the board has received and considered the investment manager's  
24 due diligence findings submitted to the board as required by subsection (6)  
25 (c); ~~and~~

26 (viii) prior to the time the alternative investment is made, the system  
27 has in place procedures and systems to ensure that the investment is  
28 properly monitored and investment performance is accurately measured-;  
29 ~~and~~

30 **(ix) the total of alternative investments does not exceed 25% of**  
31 **the total investment assets of the fund.**

32 For purposes of this act, "alternative investment" ~~means nontraditional~~  
33 ~~investments outside the established nationally recognized public stock~~  
34 ~~exchanges and government securities market. Alternative investments shall~~  
35 ~~include, but not be limited to, private placements, venture capital,~~  
36 ~~partnerships, limited partnerships and leveraged buyout partnerships; and~~  
37 ~~includes a broad group of investments that are not one of the~~  
38 ~~traditional asset types of public equities, fixed income, cash or real~~  
39 ~~estate. Alternative investments are generally made through limited~~  
40 ~~partnership or similar structures, are not regularly traded on~~  
41 ~~nationally recognized exchanges and thus are relatively illiquid, and~~  
42 ~~exhibit lower correlations with more liquid asset types such as stocks~~  
43 ~~and bonds. Alternative investments generally include, but are not~~

1 **limited to, private equity, private credit, hedge funds, infrastructure,**  
2 **commodities and other investments which have the characteristics**  
3 **described in this paragraph; and**

4 (c) except as otherwise provided, the board may invest or reinvest  
5 moneys of the fund in real estate investments if the following conditions  
6 are satisfied:

7 (i) The system has received a favorable and appropriate  
8 recommendation from a qualified, independent expert in investment  
9 management or analysis in that particular type of real estate investment;

10 (ii) the real estate investment is consistent with the system's  
11 investment policies and objectives as provided in subsection (6); and

12 (iii) the system has received and considered the investment manager's  
13 due diligence findings.

14 (6) Subject to the objective set forth in subsection (3) and the  
15 standards set forth in subsections (4) and (5) the board shall formulate  
16 policies and objectives for the investment and reinvestment of moneys in  
17 the fund and the acquisition, retention, management and disposition of  
18 investments of the fund. Such policies and objectives shall include:

19 (a) Specific asset allocation standards and objectives;

20 (b) establishment of criteria for evaluating the risk versus the  
21 potential return on a particular investment;

22 (c) a requirement that all investment managers submit such manager's  
23 due diligence findings on each investment to the board or investment  
24 advisory committee for approval or rejection prior to making any  
25 alternative investment;

26 (d) a requirement that all investment managers shall immediately  
27 report all instances of default on investments to the board and provide the  
28 board with recommendations and options, including, but not limited to,  
29 curing the default or withdrawal from the investment; and

30 (e) establishment of criteria that would be used as a guideline for  
31 determining when no additional add-on investments or reinvestments  
32 would be made and when the investment would be liquidated.

33 The board shall review such policies and objectives, make changes  
34 considered necessary or desirable and readopt such policies and objectives  
35 on an annual basis.

36 (7) The board may enter into contracts with one or more persons  
37 whom the board determines to be qualified, whereby the persons undertake  
38 to perform the functions specified in subsection (2) to the extent provided  
39 in the contract. Performance of functions under contract so entered into  
40 shall be paid pursuant to rates fixed by the board subject to provisions of  
41 appropriation acts and shall be based on specific contractual fee  
42 arrangements. The system shall not pay or reimburse any expenses of  
43 persons contracted with pursuant to this subsection, except that after

1 approval of the board, the system may pay approved investment related  
2 expenses subject to provisions of appropriation acts. The board shall  
3 require that a person contracted with to obtain commercial insurance  
4 which provides for errors and omissions coverage for such person in an  
5 amount to be specified by the board, provided that such coverage shall be  
6 at least the greater of \$500,000 or 1% of the funds entrusted to such person  
7 up to a maximum of \$10,000,000. The board shall require a person  
8 contracted with to give a fidelity bond in a penal sum as may be fixed by  
9 law or, if not so fixed, as may be fixed by the board, with corporate surety  
10 authorized to do business in this state. Such persons contracted with the  
11 board pursuant to this subsection and any persons contracted with such  
12 persons to perform the functions specified in subsection (2) shall be  
13 deemed to be agents of the board and the system in the performance of  
14 contractual obligations.

15 (8) (a) In the acquisition or disposition of securities, the board may  
16 rely on the written legal opinion of a reputable bond attorney or attorneys,  
17 the written opinion of the attorney of the investment counselor or  
18 managers, or the written opinion of the attorney general certifying the  
19 legality of the securities.

20 (b) The board shall employ or retain qualified investment counsel or  
21 counselors or may negotiate with a trust company to assist and advise in  
22 the judicious investment of funds as herein provided.

23 (9) (a) Except as provided in subsection (7) and this subsection, the  
24 custody of money and securities of the fund shall remain in the custody of  
25 the state treasurer, except that the board may arrange for the custody of  
26 such money and securities as it considers advisable with one or more  
27 member banks or trust companies of the federal reserve system or with one  
28 or more banks in the state of Kansas, or both, to be held in safekeeping by  
29 the banks or trust companies for the collection of the principal and interest  
30 or other income or of the proceeds of sale. The services provided by the  
31 banks or trust companies shall be paid pursuant to rates fixed by the board  
32 subject to provisions of appropriation acts.

33 (b) The state treasurer and the board shall collect the principal and  
34 interest or other income of investments or the proceeds of sale of securities  
35 in the custody of the state treasurer and pay same when so collected into  
36 the fund.

37 (c) The principal and interest or other income or the proceeds of sale  
38 of securities as provided in clause (a) of this subsection (9) shall be  
39 reported to the state treasurer and the board and credited to the fund.

40 (10) The board shall with the advice of the director of accounts and  
41 reports establish the requirements and procedure for reporting any and all  
42 activity relating to investment functions provided for in this act in order to  
43 prepare a record monthly of the investment income and changes made

1 during the preceding month. The record will reflect a detailed summary of  
2 investment, reinvestment, purchase, sale and exchange transactions and  
3 such other information as the board may consider advisable to reflect a  
4 true accounting of the investment activity of the fund.

5 (11) The board shall provide for an examination of the investment  
6 program annually. The examination shall include an evaluation of current  
7 investment policies and practices and of specific investments of the fund in  
8 relation to the objective set forth in subsection (3), the standard set forth in  
9 subsection (4) and other criteria as may be appropriate, and  
10 recommendations relating to the fund investment policies and practices  
11 and to specific investments of the fund as are considered necessary or  
12 desirable. The board shall include in its annual report to the governor as  
13 provided in K.S.A. 74-4907, and amendments thereto, a report or a  
14 summary thereof covering the investments of the fund.

15 (12) (a) An annual financial-compliance audit of the system,  
16 including any performance audit subjects which are directed to be included  
17 in such annual audit by the legislative post audit committee, performance  
18 audits of the system as prescribed under the Kansas governmental  
19 operations law, and such other audits as are directed by the legislative post  
20 audit committee under the Kansas legislative post audit act shall be  
21 conducted. The annual financial-compliance audit shall include, but not be  
22 limited to, a review of alternative investments of the system with any  
23 estimates of permanent impairments to the value of such alternative  
24 investments reported by the system pursuant to K.S.A. 74-4907, and  
25 amendments thereto.

26 (b) In accordance with this subsection (12), the annual financial-  
27 compliance audit may include one or more performance audit subjects as  
28 directed by the legislative post audit committee. In considering  
29 performance audit subjects to be included in any financial-compliance  
30 audit conducted pursuant to this subsection (12), the legislative post audit  
31 committee shall consider recommendations and requests for performance  
32 audits, relating to the system or the management thereof, by the joint  
33 committee on pensions, investments and benefits or by any other  
34 committee or individual member of the legislature. Commencing with the  
35 financial-compliance audit for the fiscal year ending June 30, 1998, the  
36 legislative post audit committee shall specify if one or more performance  
37 audit subjects shall be included in the financial-compliance audit  
38 conducted pursuant to this subsection (12), in addition to such other  
39 subjects as may be directed to be included in the financial-compliance  
40 audit by the legislative post audit committee. Except as otherwise  
41 determined by the legislative post audit committee pursuant to this  
42 subsection (12), commencing with the financial-compliance audit for the  
43 fiscal year ending June 30, 1998, one or more performance audit subjects

1 specified by the legislative post audit committee shall be included at least  
2 once every two fiscal years in a financial-compliance audit conducted  
3 pursuant to this subsection (12). The legislative post audit committee may  
4 direct that one or more performance audit subjects are to be included in a  
5 financial-compliance audit conducted pursuant to this subsection (12) not  
6 more than once during a specific period of three fiscal years, in lieu of  
7 once every two fiscal years.

8 (c) The auditor to conduct the financial-compliance audit required  
9 pursuant to this subsection (12) shall be specified in accordance with  
10 K.S.A. 46-1122, and amendments thereto. If the legislative post audit  
11 committee specifies under such statute that a firm, as defined by K.S.A.  
12 46-1112, and amendments thereto, is to perform all or part of the audit  
13 work of such audit, such firm shall be selected and shall perform such  
14 audit work as provided in K.S.A. 46-1123, and amendments thereto, and  
15 K.S.A. 46-1125 through 46-1127, and amendments thereto. The audits  
16 required pursuant to this subsection (12) shall be conducted in accordance  
17 with generally accepted governmental auditing standards. The financial-  
18 compliance audit required pursuant to this subsection (12) shall be  
19 conducted as soon after the close of the fiscal year as practicable, but shall  
20 be completed no later than six months after the close of the fiscal year. The  
21 post auditor shall annually compute the reasonably anticipated cost of  
22 providing the financial-compliance audit pursuant to this subsection (12),  
23 subject to review and approval by the contract audit committee established  
24 by K.S.A. 46-1120, and amendments thereto. Upon such approval, the  
25 system shall reimburse the division of post audit for the amount approved  
26 by the contract audit committee. The furnishing of the financial-  
27 compliance audit pursuant to this subsection (12) shall be a transaction  
28 between the legislative post auditor and the system and shall be settled in  
29 accordance with the provisions of K.S.A. 75-5516, and amendments  
30 thereto.

31 (d) Any internal assessment or examination of alternative investments  
32 of the system performed by any person or entity employed or retained by  
33 the board which evaluates or monitors the performance of alternative  
34 investments shall be reported to the legislative post auditor so that such  
35 report may be reviewed in accordance with the annual financial-  
36 compliance audits conducted pursuant to this subsection (12).

37 Sec. 2. K.S.A. 2011 Supp. 74-4921 is hereby repealed.

38 Sec. 3. This act shall take effect and be in force from and after its  
39 publication in the statute book.

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