

As Amended by Senate Committee
{As Amended by House Committee of the Whole}
(Corrected)
As Amended by House Committee

Session of 2012

HOUSE BILL No. 2461

By Joint Committee on Pensions, Investments and Benefits

1-17

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.
4

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

1 in the interests of the members and beneficiaries of the system for the
2 exclusive purpose of providing benefits to members and such member's
3 beneficiaries and defraying reasonable expenses of administering the fund
4 and shall invest and reinvest moneys in the fund and acquire, retain,
5 manage, including the exercise of any voting rights and disposal of
6 investments of the fund within the limitations and according to the powers,
7 duties and purposes as prescribed by this section.

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

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

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

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

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

35 (ii) if in addition to the system, there are at least two other
36 ~~sophisticated investors~~ *qualified institutional buyers*, as defined by section
37 ~~301 of the (a)(1)(i) of rule 144A, securities and exchange act of 1933;~~

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

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

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

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

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

29 (viii) prior to the time the alternative investment is made, the system
30 has in place procedures and systems to ensure that the investment is
31 properly monitored and investment performance is accurately measured;
32 **and**

33 **(ix) the total of alternative investments does not exceed 25%—**
34 **{15%} of the total investment assets of the fund. *The 15% limitation***
35 ***contained in this subsection shall not have been violated if the total of***
36 ***such alternative investments exceeds 15% of the total investment assets***
37 ***of the fund, based on the fund total market value, as a result of market***
38 ***forces acting to increase the value of such alternative investments***
39 ***relative to the rest of the system's investments. However, the board shall***
40 ***not invest or reinvest any moneys of the fund in alternative investments***
41 ***until the total value of such alternative investments is less than 15% of***
42 ***the total investment assets of the fund based on the market value. If the***
43 ***total value of the alternative investments exceeds 15% of the total***

1 *investment assets of the fund, the board shall not be required to*
2 *liquidate or sell the system's holdings in any alternative investment held*
3 *by the system, unless such liquidation or sale would be in the best*
4 *interest of the members and beneficiaries of the system and is prudent*
5 *under the standards contained in this section.*

6 For purposes of this act, "alternative investment" ~~means nontraditional~~
7 ~~investments outside the established nationally recognized public stock~~
8 ~~exchanges and government securities market. Alternative investments shall~~
9 ~~include, but not be limited to, private placements, venture capital,~~
10 ~~partnerships, limited partnerships and leveraged buyout partnerships; and~~
11 **includes a broad group of investments that are not one of the**
12 **traditional asset types of public equities, fixed income, cash or real**
13 **estate. Alternative investments are generally made through limited**
14 **partnership or similar structures, are not regularly traded on**
15 **nationally recognized exchanges and thus are relatively illiquid, and**
16 **exhibit lower correlations with more liquid asset types such as stocks**
17 **and bonds. Alternative investments generally include, but are not**
18 **limited to, private equity, private credit, hedge funds, infrastructure,**
19 **commodities and other investments which have the characteristics**
20 **described in this paragraph; and**

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

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

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

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

31 (6) Subject to the objective set forth in subsection (3) and the
32 standards set forth in subsections (4) and (5) the board shall formulate
33 policies and objectives for the investment and reinvestment of moneys in
34 the fund and the acquisition, retention, management and disposition of
35 investments of the fund. Such policies and objectives shall include:

36 (a) Specific asset allocation standards and objectives;

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

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

43 (d) a requirement that all investment managers shall immediately

1 report all instances of default on investments to the board and provide the
2 board with recommendations and options, including, but not limited to,
3 curing the default or withdrawal from the investment; and

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

7 The board shall review such policies and objectives, make changes
8 considered necessary or desirable and readopt such policies and objectives
9 on an annual basis.

10 (7) The board may enter into contracts with one or more persons
11 whom the board determines to be qualified, whereby the persons undertake
12 to perform the functions specified in subsection (2) to the extent provided
13 in the contract. Performance of functions under contract so entered into
14 shall be paid pursuant to rates fixed by the board subject to provisions of
15 appropriation acts and shall be based on specific contractual fee
16 arrangements. The system shall not pay or reimburse any expenses of
17 persons contracted with pursuant to this subsection, except that after
18 approval of the board, the system may pay approved investment related
19 expenses subject to provisions of appropriation acts. The board shall
20 require that a person contracted with to obtain commercial insurance
21 which provides for errors and omissions coverage for such person in an
22 amount to be specified by the board, provided that such coverage shall be
23 at least the greater of \$500,000 or 1% of the funds entrusted to such person
24 up to a maximum of \$10,000,000. The board shall require a person
25 contracted with to give a fidelity bond in a penal sum as may be fixed by
26 law or, if not so fixed, as may be fixed by the board, with corporate surety
27 authorized to do business in this state. Such persons contracted with the
28 board pursuant to this subsection and any persons contracted with such
29 persons to perform the functions specified in subsection (2) shall be
30 deemed to be agents of the board and the system in the performance of
31 contractual obligations.

32 (8) (a) In the acquisition or disposition of securities, the board may
33 rely on the written legal opinion of a reputable bond attorney or attorneys,
34 the written opinion of the attorney of the investment counselor or
35 managers, or the written opinion of the attorney general certifying the
36 legality of the securities.

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

40 (9) (a) Except as provided in subsection (7) and this subsection, the
41 custody of money and securities of the fund shall remain in the custody of
42 the state treasurer, except that the board may arrange for the custody of
43 such money and securities as it considers advisable with one or more

1 member banks or trust companies of the federal reserve system or with one
2 or more banks in the state of Kansas, or both, to be held in safekeeping by
3 the banks or trust companies for the collection of the principal and interest
4 or other income or of the proceeds of sale. The services provided by the
5 banks or trust companies shall be paid pursuant to rates fixed by the board
6 subject to provisions of appropriation acts.

7 (b) The state treasurer and the board shall collect the principal and
8 interest or other income of investments or the proceeds of sale of securities
9 in the custody of the state treasurer and pay same when so collected into
10 the fund.

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

14 (10) The board shall with the advice of the director of accounts and
15 reports establish the requirements and procedure for reporting any and all
16 activity relating to investment functions provided for in this act in order to
17 prepare a record monthly of the investment income and changes made
18 during the preceding month. The record will reflect a detailed summary of
19 investment, reinvestment, purchase, sale and exchange transactions and
20 such other information as the board may consider advisable to reflect a
21 true accounting of the investment activity of the fund.

22 (11) The board shall provide for an examination of the investment
23 program annually. The examination shall include an evaluation of current
24 investment policies and practices and of specific investments of the fund in
25 relation to the objective set forth in subsection (3), the standard set forth in
26 subsection (4) and other criteria as may be appropriate, and
27 recommendations relating to the fund investment policies and practices
28 and to specific investments of the fund as are considered necessary or
29 desirable. The board shall include in its annual report to the governor as
30 provided in K.S.A. 74-4907, and amendments thereto, a report or a
31 summary thereof covering the investments of the fund.

32 (12) (a) An annual financial-compliance audit of the system,
33 including any performance audit subjects which are directed to be included
34 in such annual audit by the legislative post audit committee, performance
35 audits of the system as prescribed under the Kansas governmental
36 operations law, and such other audits as are directed by the legislative post
37 audit committee under the Kansas legislative post audit act shall be
38 conducted. The annual financial-compliance audit shall include, but not be
39 limited to, a review of alternative investments of the system with any
40 estimates of permanent impairments to the value of such alternative
41 investments reported by the system pursuant to K.S.A. 74-4907, and
42 amendments thereto.

43 (b) In accordance with this subsection (12), the annual financial-

1 compliance audit may include one or more performance audit subjects as
2 directed by the legislative post audit committee. In considering
3 performance audit subjects to be included in any financial-compliance
4 audit conducted pursuant to this subsection (12), the legislative post audit
5 committee shall consider recommendations and requests for performance
6 audits, relating to the system or the management thereof, by the joint
7 committee on pensions, investments and benefits or by any other
8 committee or individual member of the legislature. Commencing with the
9 financial-compliance audit for the fiscal year ending June 30, 1998, the
10 legislative post audit committee shall specify if one or more performance
11 audit subjects shall be included in the financial-compliance audit
12 conducted pursuant to this subsection (12), in addition to such other
13 subjects as may be directed to be included in the financial-compliance
14 audit by the legislative post audit committee. Except as otherwise
15 determined by the legislative post audit committee pursuant to this
16 subsection (12), commencing with the financial-compliance audit for the
17 fiscal year ending June 30, 1998, one or more performance audit subjects
18 specified by the legislative post audit committee shall be included at least
19 once every two fiscal years in a financial-compliance audit conducted
20 pursuant to this subsection (12). The legislative post audit committee may
21 direct that one or more performance audit subjects are to be included in a
22 financial-compliance audit conducted pursuant to this subsection (12) not
23 more than once during a specific period of three fiscal years, in lieu of
24 once every two fiscal years.

25 (c) The auditor to conduct the financial-compliance audit required
26 pursuant to this subsection (12) shall be specified in accordance with
27 K.S.A. 46-1122, and amendments thereto. If the legislative post audit
28 committee specifies under such statute that a firm, as defined by K.S.A.
29 46-1112, and amendments thereto, is to perform all or part of the audit
30 work of such audit, such firm shall be selected and shall perform such
31 audit work as provided in K.S.A. 46-1123, and amendments thereto, and
32 K.S.A. 46-1125 through 46-1127, and amendments thereto. The audits
33 required pursuant to this subsection (12) shall be conducted in accordance
34 with generally accepted governmental auditing standards. The financial-
35 compliance audit required pursuant to this subsection (12) shall be
36 conducted as soon after the close of the fiscal year as practicable, but shall
37 be completed no later than six months after the close of the fiscal year. The
38 post auditor shall annually compute the reasonably anticipated cost of
39 providing the financial-compliance audit pursuant to this subsection (12),
40 subject to review and approval by the contract audit committee established
41 by K.S.A. 46-1120, and amendments thereto. Upon such approval, the
42 system shall reimburse the division of post audit for the amount approved
43 by the contract audit committee. The furnishing of the financial-

1 compliance audit pursuant to this subsection (12) shall be a transaction
2 between the legislative post auditor and the system and shall be settled in
3 accordance with the provisions of K.S.A. 75-5516, and amendments
4 thereto.

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

11 **{(e) The board shall prepare and submit an alternative**
12 **investment report to the joint committee on pensions, investments and**
13 **benefits prior to January 1, 2016. Such report shall include a review of**
14 **alternative investments of the system with an emphasis on the effects**
15 **of changes in law pursuant to this act and includes specific investment**
16 **cost and market value information of each individual alternative**
17 **investment.}**

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

19 Sec. 3. This act shall take effect and be in force from and after its
20 publication in the statute book.
21