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REVISED

The Honorable Mike Thompson, Chairperson
Senate Committee on Federal and State Affairs
300 SW 10th Avenue, Room 144-S
Topeka, Kansas 66612

Dear Senator Thompson:

SUBJECT: Revised Fiscal Note for SB 291 by Senate Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following revised fiscal note concerning SB 291 is respectfully submitted to your committee.

SB 291 would enact the Kansas Public Investments and Contracts Protection Act. Any state agency, political subdivision, or instrumentality of the state could not adopt any procurement regulation or policy, or when engaging in a procurement, that would have a bidder or subcontractor be given preferential treatment or subject to discrimination based on any environmental, social and governance (ESG) criteria, except as otherwise provided by law.

In addition, when making and supervising investments, KPERS (including any investment manager, proxy advisory, or contractor) must perform duties solely in the financial interest of the KPERS beneficiaries that provide financial benefits to beneficiaries and defray reasonable expenses of administration. The bill would prohibit any KPERS funds invested or reinvested if any investment objective is for economic development or social purposes. Current law provides that no funds can be invested if the sole or primary investment objective is for economic development or social purposes.

No state agency could share or publish information, adopt policies, rules or regulations, or issue guidelines for ESG criteria that would restrict the ability of any industry to offer products or services.

All registered investment advisors would be required to disclose to each new client prior to the investment of any funds a notice that would declare ESG investing may limit returns on investments that do not use ESG criteria. The Kansas Legislative Research Department would be required to develop and maintain an ESG disclosure website page that would contain information on ESG investing. Any information on the website page would be approved by the Legislative Coordinating Council.

The bill would allow the Attorney General to enforce any infractions of any provision of the bill. In addition to any other legal remedies, an investment manager or contractor of KPERS that serves as a fiduciary and violates provisions of the bill would be obligated to pay damages to the state in an amount of three times all funds paid to the investment manager or contractor.

The enactment of SB 291 would require additional oversight of investment managers and additional reporting requirements. The agency would need to hire an additional 1.00 FTE Investment Officer for these additional duties at a cost of $165,000 in FY 2024 (including fringe benefits) from the KPERS Fund. In addition, the agency reports that KPERS utilizes more than 99,000 proxy votes each year. To manage these votes, the agency would need to utilize a proxy voting vendor, at an estimated annual cost of approximately $750,000 from the KPERS Fund. Both the cost of the additional FTE position and the contract for the proxy voting vendor would be ongoing annual costs.

KPERS reports that the bill could have an actuarial cost to the retirement system from how the divestment requirements would affect the KPERS assets and future expected investment returns. The agency indicates that the KPERS investment portfolio would have to be restructured because the current investment managers would be disqualified as fiduciaries and replaced by alternative investment managers that would meet the bill’s requirements. The initial divestment in private markets is estimated to cost KPERS approximately $1.14 billion from early divestment and could lower the system’s funded ratio by 4.0 percent.

In addition, a theoretical restructured investment portfolio of 60.0 percent equities and 40.0 percent bonds would lower expected investment returns by 0.85 percent. This lowered investment return would increase the liabilities of the system, which would increase the unfunded actuarial liability and require increased employer contribution rates. The KPERS actuary estimates for the State/School Group, lowering the expected return by 0.85 percent would increase the unfunded actuarial liability by $2.4 billion and reduce the funded ratio by 6.5 percent. With this scenario, the actuarial required employer contribution rate would increase in FY 2025 from 12.42 percent to 17.61 percent, or 5.19 percentage points. This increase would trigger the statutory cap on annual employer contributions and would limit the increase to 1.2 percentage points, or approximately $62.0 million for the State/School Group.

The cumulative theoretical actuarial effect on KPERS would be a decrease of approximately 10.0 percent to the system’s funded ratio, which would be approximately the same as in the system’s 2013 actuarial valuation. However, the actual long-term cost to KPERS would depend on the extent of the required divestment and restructuring of the investment portfolio. With a reduction in expected returns of 0.85 percent, the KPERS general investment consultant projects that the investment portfolio returns would reduce by $3.6 billion over the next ten years when compared to the current investment portfolio.

The Department of Administration, Office of Procurement and Contracts indicates that the enactment of the bill would have no fiscal effect. The Legislative Coordinating Council indicates that the enactment of the bill would have a negligible fiscal effect. The Kansas Legislative Research Department, the Pooled Money Investment Board, the Office of the Attorney General, the League of Kansas Municipalities, and the Kansas Association of Counties report that the bill would have no fiscal effect. When the original fiscal note was issued the Division of the Budget had not received responses from the Office of the Attorney General or the League of Kansas Municipalities. Any fiscal effect associated with SB 291 is not reflected in *The FY 2024 Governor's Budget Report*.

Sincerely,

Adam Proffitt
Director of the Budget

cc: Jarod Waltner, KPERS
Wendi Stark, League of Kansas Municipalities
Jay Hall, Kansas Association of Counties
Tamara Emery, Department of Administration
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Scott Miller, Pooled Money Investment Board