

KANSAS OFFICE *of*  
**REVISOR *of* STATUTES**

LEGISLATURE *of* THE STATE *of* KANSAS  
*Legislative Attorneys transforming ideas into legislation.*

300 SW TENTH AVENUE ■ SUITE 24-E ■ TOPEKA, KS 66612 ■ (785) 296-2321

**MEMORANDUM**

To: House Committee on Financial Institutions and Pensions  
From: Office of Revisor of Statutes  
Date: March 8, 2023  
Subject: HB 2436: Enacting the Kansas public investments and contracts protection act concerning environmental, social and governance (ESG) criteria.

House Bill No. 2436 adds five new sections of law to be known as the Kansas public investments and contracts protection act and amends K.S.A. 74-4921, the statute providing invest standards and objectives concerning the Kansas public employees retirement fund of KPERS.

Section 1 names the act and provides definitions of terms used throughout the act, including a definition of "environmental, social and governance criteria" (ESG).

Section 2 prohibits the state, a state agency, political subdivision or instrumentality thereof, including the pooled money investment board, from giving preferential treatment to or discriminating against a bidder or contractor based on environmental, social and governance criteria. This section also prohibits state and local government from adopting of any procurement regulation or policy based on ESG except as otherwise specifically permitted or required by law.

Section 3 establishes requirements in making and supervising investments of KPERS. The system and any investment manager, proxy advisor or contractor thereof shall discharge its duties solely in the financial interest of the participants and beneficiaries for the exclusive purpose of: (1) Providing financial benefits to participants and their beneficiaries; and (2) defraying reasonable expenses of administering the system.

Section 4 provides that no state agency shall share or publish information, adopt policies, adopt rules and regulations or issue guidelines for purposes of ESG criteria that restrict the ability of any industry to offer products or services. No state agency shall require any person or business to adopt or operate in accordance with ESG criteria.

Section 5 authorizes the attorney general to enforce the act or any contract subject to the act. This section also provides that an investment manager or contractor of KPERS that serves as a fiduciary and violates section 3 shall be obligated to pay damages to the state in an amount equal to three times all moneys paid to the investment manager or contractor for the services of such investment manager or contractor.

Section 6 amends K.S.A. 74-4921, the statute governing investment standards for the KPERS trust fund. The bill strikes language prohibiting moneys in the fund being invested or reinvested if the sole or primary investment objective is for economic development or social purposes and adds language that prohibits moneys from being invested or reinvested if an investment objective is for economic development or social purposes. The bill also amends the statute to eliminate an obsolete reference to a 2016 alternative investment report and makes other technical adjustments.