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MEMORANDUM

To: Chairperson Thompson
Members of the Senate Committee on Federal and State Affairs

From: The Office of Revisor of Statutes

Date: March 7, 2023

Subject: SB 291 – Kansas Protection of Pensions and Businesses Against Ideological Interference Act.

Senate Bill No. 291 (SB 291) would create the Kansas Public Investments and Contracts Protection Act (Act). The Act would generally prohibit the use of environmental, social, and governance criteria (ESG criteria) by the State and its political subdivisions for purposes of contracting and investing. Section 1 of the bill defines ESG criteria as any criterion that gives preferential treatment or discriminates against a person because such person lawfully engages in one of the following:

- Exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy without a pledge to meet certain environmental standards.
- Exploration, production, utilization, transportation, sale, or manufacturing of nuclear energy without a pledge to meet certain environmental standards.
- Exploration, production, utilization, transportation, sale or manufacturing of agriculture, timber, mining, or any other natural resource.
- Emission of greenhouse gases or failure to disclose or offset such emissions.
- Facilitation or support of the manufacture, import, distribution, marketing, advertising, sale, and use of firearms and firearm accessories and ammunition.
- Governance by a board of directors or officers that is not subject to any diversity criteria.
- Does not facilitate or assist employees in obtaining abortions, assisted suicide, or gender reassignment services.

- Facilitate, contract with, support, represent, or advocate for any company that engages in any of the above.

Section 2 generally prohibits the State and its political subdivisions, including the pooled money investment board, from using ESG criteria to give preferential treatment to a person or company when considering bids, offers, and contracts for goods and services. Section 4 also prohibits state agencies from adopting policies, procedures, rules, regulations, or guidelines that would require any person or business to operate in accordance with ESG criteria.

Section 3 generally requires that the Kansas Public Employees Retirement System (KPERS) and any investment manager, proxy advisor, or contractor of KPERS execute their obligations as a fiduciary of the participants and beneficiaries of KPERS solely in the financial interests of such participants and beneficiaries. This includes considering only financial factors, meaning to have a material effect on the financial risk or return of an investment, executing their fiduciary duties. KPERS is also generally prohibited from doing the following, unless there is no economically practicable alternative available:

- Granting proxy voting authority to a person who is not a part of KPERS.
- Selecting a proxy advisor without giving preference to a proxy advisor service that commits in writing to voting shares in a strictly fiduciary manner.
- Entrusting KPERS assets to a fiduciary that does not commit in writing to act solely upon financial factors.
- Following recommendations of a proxy advisor service or other service provider that has not committed in writing to act solely upon financial factors.

Section 3 also requires KPERS to record and annually report all proxy votes to the Board of Trustees and to the Legislative Coordinating Council. The reports are to be published to the KPERS website.

Section 5 requires registered investment advisers to advise clients prior to investment of any proposed investment and at least annually that ESG investing may limit the client's return on investment compared to investments that do not use ESG criteria. The Kansas Legislative Research Department is required to publish and maintain an ESG disclosure webpage with information on ESG investing.

Section 6 grants the Attorney General authority to prosecute violations of SB 291. Any KPERS investment manager or contractor found to have violated Section 3 may be liable for three times the moneys paid to such manager or contractor by the State.

Section 7 amends K.S.A. 74-4921 so that moneys held in the KPERS fund cannot be invested or reinvested if any investment objective is for economic development, or social purposes or objectives.

If enacted, SB 291 would become effective on July 1, 2023.