

HOUSE BILL No. 2501

By Joint Committee on Pensions, Investments and Benefits

1-12

AN ACT concerning retirement and pensions; relating to the Kansas public employees retirement system and systems thereunder; real estate investments; amending K.S.A. 74-4921 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

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

(2) The board shall have the responsibility for the management of the fund and shall discharge the board's duties with respect to the fund solely in the interests of the members and beneficiaries of the system for

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

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

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

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

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

30 (i) The total of such alternative investments does not exceed more
31 than 5% of the total investment assets of the fund. If the total of such
32 alternative investments exceeds more than 5% of the total investment
33 assets of the fund on the effective date of this act, the board shall not
34 invest or reinvest any moneys of the fund in alternative investments until
35 the total of such alternative investments is less the 5% of the total in-
36 vestment assets of the fund subject to the 5% limitation contained in this
37 subsection. Nothing in this subsection requires the board to liquidate or
38 sell the system's holdings in any alternative investment held by the system
39 on the effective date of this act, unless such liquidation or sale would be
40 in the best interest of the members and beneficiaries of the system and
41 be prudent under the standards contained in this section. The 5% limi-
42 tation contained in this section shall not have been violated if the total of
43 such alternative investments exceeds 5% of the total investment assets of

1 the fund as a result of market forces acting to increase the value of such
2 alternative investments relative to the rest of the system's investments;
3 however, the board shall not invest or reinvest any moneys of the fund
4 in alternative investments until the total of such alternative investments
5 is less than 5% of the total investment assets of the fund subject to the
6 5% limitation contained in this subsection;

7 (ii) if in addition to the system, there are at least two other sophisti-
8 cated investors, as defined by section 301 of the securities and exchange
9 act of 1933;

10 (iii) the system's share in any individual alternative investment is lim-
11 ited to an investment representing not more than 20% of any such indi-
12 vidual alternative investment;

13 (iv) the system has received a favorable and appropriate recommen-
14 dation from a qualified, independent expert in investment management
15 or analysis in that particular type of alternative investment;

16 (v) the alternative investment is consistent with the system's invest-
17 ment policies and objectives as provided in subsection (6);

18 (vi) the individual alternative investment does not exceed more than
19 2.5% of the total alternative investments made under this subsection. If
20 the alternative investment is made pursuant to participation by the system
21 in a multi-investor pool, the 2.5% limitation contained in this subsection
22 is applied to the underlying individual assets of such pool and not to
23 investment in the pool itself. The total of such alternative investments
24 made pursuant to participation by the system in any one individual multi-
25 investor pool shall not exceed more than 20% of the total of alternative
26 investments made by the system pursuant to this subsection. Nothing in
27 this subsection requires the board to liquidate or sell the system's holdings
28 in any alternative investments made pursuant to participation by the sys-
29 tem in any one individual multi-investor pool held by the system on the
30 effective date of this act, unless such liquidation or sale would be in the
31 best interest of the members and beneficiaries of the system and be pru-
32 dent under the standards contained in this section. The 20% limitation
33 contained in this subsection shall not have been violated if the total of
34 such investment in any one individual multi-investor pool exceeds 20%
35 of the total alternative investments of the fund as a result of market forces
36 acting to increase the value of such a multi-investor pool relative to the
37 rest of the system's alternative investments; however, the board shall not
38 invest or reinvest any moneys of the fund in any such individual multi-
39 investor pool until the value of such individual multi-investor pool is less
40 than 20% of the total alternative investments of the fund;

41 (vii) the board has received and considered the investment manager's
42 due diligence findings submitted to the board as required by subsection
43 (6)(c); and

1 (viii) prior to the time the alternative investment is made, the system
2 has in place procedures and systems to ensure that the investment is
3 properly monitored and investment performance is accurately measured.

4 For purposes of this act, "alternative investment" means nontraditional
5 investments outside the established nationally recognized public stock
6 exchanges and government securities market. Alternative investments
7 shall include, but not be limited to, private placements, venture capital,
8 partnerships, limited partnerships and leveraged buyout partnerships; and

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

12 (i) The system has received a favorable and appropriate recommen-
13 dation from a qualified, independent expert in investment management
14 or analysis in that particular type of real estate investment;

15 (ii) the real estate investment is consistent with the system's invest-
16 ment policies and objectives as provided in subsection (6); and

17 (iii) the ~~board system~~ has received and considered the investment
18 manager's due diligence findings ~~submitted to the board as required by~~
19 ~~subsection (6)(c).~~

20 (6) Subject to the objective set forth in subsection (3) and the stan-
21 dards set forth in subsections (4) and (5) the board shall formulate policies
22 and objectives for the investment and reinvestment of moneys in the fund
23 and the acquisition, retention, management and disposition of invest-
24 ments of the fund. Such policies and objectives shall include:

25 (a) Specific asset allocation standards and objectives;

26 (b) establishment of criteria for evaluating the risk versus the poten-
27 tial return on a particular investment;

28 (c) a requirement that all investment managers submit such man-
29 ager's due diligence findings on each investment to the board or invest-
30 ment advisory committee for approval or rejection prior to making any
31 alternative investment;

32 (d) a requirement that all investment managers shall immediately re-
33 port all instances of default on investments to the board and provide the
34 board with recommendations and options, including, but not limited to,
35 curing the default or withdrawal from the investment; and

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

39 The board shall review such policies and objectives, make changes con-
40 sidered necessary or desirable and readopt such policies and objectives
41 on an annual basis.

42 (7) The board may enter into contracts with one or more persons
43 whom the board determines to be qualified, whereby the persons under-

1 take to perform the functions specified in subsection (2) to the extent
2 provided in the contract. Performance of functions under contract so
3 entered into shall be paid pursuant to rates fixed by the board subject to
4 provisions of appropriation acts and shall be based on specific contractual
5 fee arrangements. The system shall not pay or reimburse any expenses of
6 persons contracted with pursuant to this subsection, except that after
7 approval of the board, the system may pay approved investment related
8 expenses subject to provisions of appropriation acts. The board shall re-
9 quire that a person contracted with to obtain commercial insurance which
10 provides for errors and omissions coverage for such person in an amount
11 to be specified by the board, provided that such coverage shall be at least
12 the greater of \$500,000 or 1% of the funds entrusted to such person up
13 to a maximum of \$10,000,000. The board shall require a person con-
14 tracted with to give a fidelity bond in a penal sum as may be fixed by law
15 or, if not so fixed, as may be fixed by the board, with corporate surety
16 authorized to do business in this state. Such persons contracted with the
17 board pursuant to this subsection and any persons contracted with such
18 persons to perform the functions specified in subsection (2) shall be
19 deemed to be agents of the board and the system in the performance of
20 contractual obligations.

21 (8) (a) In the acquisition or disposition of securities, the board may
22 rely on the written legal opinion of a reputable bond attorney or attorneys,
23 the written opinion of the attorney of the investment counselor or man-
24 agers, or the written opinion of the attorney general certifying the legality
25 of the securities.

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

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

39 (b) The state treasurer and the board shall collect the principal and
40 interest or other income of investments or the proceeds of sale of secu-
41 rities in the custody of the state treasurer and pay same when so collected
42 into the fund.

43 (c) The principal and interest or other income or the proceeds of sale

1 of securities as provided in clause (a) of this subsection (9) shall be re-
2 ported to the state treasurer and the board and credited to the fund.

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

11 (11) The board shall provide for an examination of the investment
12 program annually. The examination shall include an evaluation of current
13 investment policies and practices and of specific investments of the fund
14 in relation to the objective set forth in subsection (3), the standard set
15 forth in subsection (4) and other criteria as may be appropriate, and rec-
16 ommendations relating to the fund investment policies and practices and
17 to specific investments of the fund as are considered necessary or desir-
18 able. The board shall include in its annual report to the governor as pro-
19 vided in K.S.A. 74-4907, and amendments thereto, a report or a summary
20 thereof covering the investments of the fund.

21 (12) (a) An annual financial-compliance audit of the system, includ-
22 ing any performance audit subjects which are directed to be included in
23 such annual audit by the legislative post audit committee, performance
24 audits of the system as prescribed under the Kansas governmental op-
25 erations law, and such other audits as are directed by the legislative post
26 audit committee under the Kansas legislative post audit act shall be con-
27 ducted. The annual financial-compliance audit shall include, but not be
28 limited to, a review of alternative investments of the system with any
29 estimates of permanent impairments to the value of such alternative in-
30 vestments reported by the system pursuant to K.S.A. 74-4907, and
31 amendments thereto.

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

1 ducted pursuant to this subsection (12), in addition to such other subjects
2 as may be directed to be included in the financial-compliance audit by
3 the legislative post audit committee. Except as otherwise determined by
4 the legislative post audit committee pursuant to this subsection (12), com-
5 mencing with the financial-compliance audit for the fiscal year ending
6 June 30, 1998, one or more performance audit subjects specified by the
7 legislative post audit committee shall be included at least once every two
8 fiscal years in a financial-compliance audit conducted pursuant to this
9 subsection (12). The legislative post audit committee may direct that one
10 or more performance audit subjects are to be included in a financial-
11 compliance audit conducted pursuant to this subsection (12) not more
12 than once during a specific period of three fiscal years, in lieu of once
13 every two fiscal years.

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

37 (d) Any internal assessment or examination of alternative investments
38 of the system performed by any person or entity employed or retained
39 by the board which evaluates or monitors the performance of alternative
40 investments shall be reported to the legislative post auditor so that such
41 report may be reviewed in accordance with the annual financial-compli-
42 ance audits conducted pursuant to this subsection (12).

43 Sec. 2. K.S.A. 74-4921 is hereby repealed.

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