

## HOUSE BILL No. 2468

By Representatives Davis, Brown, Brunk, Dillmore, Goico, Kelley, Kelley, Kinzer, Knox, Lane, Mast, Siegfried, Svaty and Watkins

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10 AN ACT concerning the Kansas public employees retirement system;  
11 relating to investment standards; prohibited investments; divestment,  
12 conditions and procedures.  
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14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. (a) As used in sections 1 and 2, and amendments thereto:

16 (1) "Active business operations" means a company engaged in busi-  
17 ness operations that provide revenue to the government of Sudan or a  
18 company engaged in oil-related activities;

19 (2) "board" means the board of trustees of the Kansas public em-  
20 ployees retirement system;

21 (3) "business operations" means maintaining, selling or leasing equip-  
22 ment, facilities, personnel, or any other apparatus of business or com-  
23 merce in Sudan, including the ownership or possession of real or personal  
24 property located in Sudan;

25 (4) "company" means a sole proprietorship, organization, association,  
26 corporation, partnership, venture or other entity, its subsidiary or affiliate  
27 that exists for profitmaking purposes or to otherwise secure economic  
28 advantage. "Company" also means a company owned or controlled, either  
29 directly or indirectly, by the government of Sudan, that is established or  
30 organized under the laws of or has its principal place of business in the  
31 republic of the Sudan;

32 (5) "complicity" means the taking of actions which have directly sup-  
33 ported or promoted the genocidal campaign in Darfur;

34 (6) "energy or power-related operations" means any business oper-  
35 ation that involves a project commissioned by the national electricity cor-  
36 poration of Sudan or similar Sudanese entity whose purpose is to facilitate  
37 energy or power generation and delivery;

38 (7) "government of Sudan" means the government of Sudan or its  
39 instrumentalities;

40 (8) "invest" or "investment" means the purchase, ownership or con-  
41 trol of stock of a company, association or corporation, the capital stock of  
42 a mutual water company or corporation, bonds issued by the government  
43 or a political subdivision of Sudan, corporate bonds or other debt instru-

- 1 ments issued by a company, or the commitment of funds or other assets  
2 to a company, including a loan or extension of credit to that company;
- 3 (9) “KPEERS fund” means the Kansas public employees retirement  
4 fund created pursuant to the provisions of K.S.A. 74-4921, and amend-  
5 ments thereto;
- 6 (10) “military equipment” means weapons, arms or military defense  
7 supplies;
- 8 (11) “mineral extraction activities” includes, but is not limited to, the  
9 exploring, extracting, processing, transporting or wholesale selling or trad-  
10 ing of elemental minerals or associated metal alloys or oxides or ore;
- 11 (12) “oil-related activities” means, but is not limited to, the export of  
12 oil, extracting or producing oil, exploration for oil, or the construction or  
13 maintenance of a pipeline, refinery, or other oil field infrastructure;
- 14 (13) “research firm” means a reputable, neutral third-party research  
15 firm;
- 16 (14) “substantial action” means a boycott of the government of Su-  
17 dan, curtailing business in Sudan until that time described in subsection  
18 (m), selling company assets, equipment or real and personal property  
19 located in Sudan, or undertaking significant humanitarian efforts in the  
20 eastern, southern, or western regions of Sudan; and
- 21 (15) “Sudan” means the republic of the Sudan, a territory under the  
22 administration or control of the Sudan, including, but not limited to, the  
23 Darfur region, or an individual, company, or public agency located in  
24 Khartoum, northern Sudan, or the Nile River Valley that supports the  
25 republic of the Sudan.
- 26 (b) The board shall not invest KPEERS funds in a company with busi-  
27 ness operations in Sudan that meets all of the following criteria:
- 28 (1) The company is engaged in active business operations in Sudan.  
29 If that company is not engaged in oil-related activities, that company also  
30 lacks significant business operations in the eastern, southern and western  
31 regions of Sudan; and
- 32 (2) either of the following apply:
- 33 (A) The company is engaged in oil-related activities, mineral extrac-  
34 tion activities or energy or power-related operations, or contracts with  
35 another company with business operations in the oil, mineral extraction,  
36 energy and power sectors of Sudan, and the company failed to take sub-  
37 stantial action related to the government of Sudan because of the Darfur  
38 genocide; or
- 39 (B) the company has demonstrated complicity in the Darfur  
40 genocide.
- 41 (c) Notwithstanding subsection (b), the board shall not invest KPEERS  
42 funds in a company that supplies military equipment within the borders  
43 of Sudan. If a company provides equipment within the borders of Sudan

1 that may be readily used for military purposes, including, but not limited  
2 to, radar systems and military-grade transport vehicles, there shall also be  
3 a strong presumption against investing in that company unless that com-  
4 pany implements safeguards to prevent the use of that equipment for  
5 military purposes.

6 (d) (1) The board may contract with a research firm or firms to de-  
7 termine those companies that have business operations in Sudan. Such  
8 research firm or firms may obtain aggregate data on a majority of com-  
9 panies with business operations in Sudan. On or before September 30,  
10 2007, such research firm or firms may report any findings to the board  
11 and may submit further findings to the board if there is a change of  
12 circumstances in Sudan.

13 (2) In addition to the reports described in subsection (d)(1), the board  
14 shall take all of the following actions no later than September 30, 2007:

15 (A) Review publicly available information regarding companies with  
16 business operations in Sudan;

17 (B) contact other institutional investors that invest in companies with  
18 business operations in Sudan; and

19 (C) send written notice to a company with business operations in  
20 Sudan that the company may be subject to this section.

21 (e) (1) The board shall determine, by the next applicable board  
22 meeting and based on the information and reports described in subsec-  
23 tion (d), if a company meets the criteria described in subsection (b) or  
24 (c). If the board plans to invest or has investments in a company that  
25 meets the criteria described in subsection (b) or (c), that planned or ex-  
26 isting investments shall be subject to subsections (g) and (h).

27 (2) Investments of the board in a company that does not meet the  
28 criteria described in subsection (b) or (c) or does not have active business  
29 operations in Sudan are not subject to subsection (h), provided that the  
30 company does not subsequently meet the criteria described in subsection  
31 (b) or (c) or engage in active business operations. The board shall identify  
32 the reasons why that company does not satisfy the criteria described in  
33 subsection (b) or (c) or does not engage in active business operations in  
34 the report to the joint committee on pensions, investments and benefits  
35 described in subsection (i).

36 (f) (1) Notwithstanding subsection (e), if the board's investment in a  
37 company described in subsection (b) or (c) is limited to investment via  
38 an externally and actively managed commingled fund, the board shall  
39 contact that fund manager in writing and request that the fund manager  
40 remove that company from the KPERS fund as described in subsection  
41 (h). If the KPERS fund or account manager creates a fund or account  
42 devoid of companies described in subsection (b) or (c), the transfer of  
43 board investments from the prior fund or account to the fund or account

1 devoid of companies with business operations in Sudan shall be deemed  
2 to satisfy subsection (h).

3 (2) If the board's investment in a company described in subsection  
4 (b) or (c) is limited to an alternative fund or account, the alternative fund  
5 or account manager creates an actively managed commingled fund that  
6 excludes companies described in subsection (b) or (c), and the new fund  
7 or account is deemed to be financially equivalent to the existing fund or  
8 account, the transfer of board investments from the existing fund or ac-  
9 count to the new fund or account shall be deemed to satisfy subsection  
10 (h). If the board determines that the new fund or account is not financially  
11 equivalent to the existing fund, the board shall include the reasons for  
12 that determination in the report described in subsection (i).

13 (3) The board shall make a good faith effort to identify any private  
14 equity investments that involve companies described in subsection (b) or  
15 (c) or are linked to the government of Sudan. If the board determines  
16 that a private equity investment clearly involves a company described in  
17 subsection (b) or (c) or is linked to the government of Sudan, the board  
18 shall consider, at its discretion, if those private equity investments shall  
19 be subject to subsection (h). If the board determines that a private equity  
20 investment clearly involves a company described in subsection (b) or (c)  
21 or is linked to the government of Sudan and the board does not take  
22 action as described in subsection (h), the board shall include the reasons  
23 for its decision in the report described in subsection (i).

24 (g) Except as described in subsection (f) or subsection (e)(2), the  
25 board, in the board's capacity of shareholder or investor, shall notify any  
26 company described in subsection (e)(1) that the company is subject to  
27 subsection (h) and permit that company to respond to the information  
28 and reports described in subsection (d). The board shall request that the  
29 company take substantial action no later than 90 days from the date the  
30 board notified the company under this subsection. If the board deter-  
31 mines that a company has taken substantial action or has made sufficient  
32 progress towards substantial action before the expiration of that 90-day  
33 period, that company shall not be subject to subsection (h). The board  
34 shall, at intervals not to exceed 90 days, continue to monitor and review  
35 the progress of the company until that company has taken substantial  
36 action in Sudan. A company that fails to complete substantial action or  
37 continue to make sufficient progress towards substantial action by the  
38 next time interval shall be subject to subsection (h).

39 (h) If a company described in subsection (e)(1) fails to complete sub-  
40 stantial action by the time described in subsection (g), the board shall  
41 take the following actions:

42 (1) The board shall not make additional or new investments or renew  
43 existing investments in that company.

- 1       (2) The board shall liquidate the investments of the board in that  
2 company no later than 18 months after this subsection applies to that  
3 company. The board shall liquidate those investments in a manner to  
4 address the need for companies to take substantial action in Sudan and  
5 consistent with the board's fiduciary responsibilities as provided in K.S.A.  
6 74-4921, and amendments thereto.
- 7       (i) On or before June 30, 2008, and every year thereafter, the board  
8 shall file a report with the joint committee on pensions, investments and  
9 benefits. The report shall describe the following:
- 10       (1) A list of investments the board has in companies with business  
11 operations in Sudan, including, but not limited to, the issuer, by name,  
12 of the stock, bonds, securities and other evidence of indebtedness;
- 13       (2) a detailed summary of the business operations a company de-  
14 scribed in subsection (i)(1) has in Sudan and whether that company sat-  
15 isfies all of the criteria in subsection (b) or (c);
- 16       (3) whether the board has reduced KPERS fund investments in a  
17 company that satisfies the criteria in subsection (b) or (c);
- 18       (4) if the board has not completely reduced KPERS fund investments  
19 in a company that satisfies the criteria in subsection (b) or (c), when the  
20 board anticipates that the board will reduce all investments in that com-  
21 pany or the reasons why a sale or transfer of investments is inconsistent  
22 with the fiduciary responsibilities of the board as provided in K.S.A. 74-  
23 4921, and amendments thereto;
- 24       (5) any information described in subsection (e); and
- 25       (6) a detailed summary of investments that were transferred to funds  
26 or accounts devoid of companies with business operations in Sudan as  
27 described in subsection (f).
- 28       (j) If the board voluntarily sells or transfers all KPERS fund invest-  
29 ments in a company with business operations in Sudan, this section shall  
30 not apply except that the board shall file a report with the legislature  
31 related to that company as described in subsection (i).
- 32       (k) Nothing in this section shall require the board to take action as  
33 described in this section unless the board determines, in good faith, that  
34 the action described in this section is consistent with the fiduciary re-  
35 sponsibilities of the board as provided in K.S.A. 74-4921, and amend-  
36 ments thereto.
- 37       (l) Subsection (h) shall not apply to any of the following:
- 38       (1) Investments in a company that is primarily engaged in supplying  
39 goods or services intended to relieve human suffering in Sudan;
- 40       (2) investments in a company that promotes health, education, jour-  
41 nalistic or religious activities in or welfare in the western, eastern or south-  
42 ern regions of Sudan; and
- 43       (3) investments in a United States company that is authorized by the

1 federal government to have business operations in Sudan.  
2 (m) This section shall remain in effect only until one of the following  
3 occurs, and as of the date of that action, is repealed:  
4 (1) The government of Sudan halts the genocide in Darfur for 12  
5 months as determined by both the department of state and the congress  
6 of the United States; or  
7 (2) the United States revokes its current sanctions against Sudan.  
8 New Sec. 2. Present, future and former board members jointly and  
9 individually, state officers and employees, research firms described in  
10 subsection (d) of section 1, and amendments thereto, and investment  
11 managers under contract with the Kansas public employees retirement  
12 system shall be indemnified from the state general fund and held harm-  
13 less by the state from all claims, demands, suits, actions, damages, judg-  
14 ments, costs, charges and expenses, including court costs and attorney's  
15 fees, and against all liability, losses and damages of any nature whatsoever  
16 that these present, future or former board members, officers, employees,  
17 research firms or contract investment managers shall or may at any time  
18 sustain by reason of any decision to restrict, reduce or eliminate invest-  
19 ments pursuant to section 1, and amendments thereto.  
20 Sec. 3. This act shall take effect and be in force from and after its  
21 publication in the statute book.