

HOUSE BILL No. 2436

By Committee on Appropriations

2-22

Proposed amendment to HB 2436
House Committee on Financial Institutions and Pensions
3/8/2023
Prepared by Office of Revisor of Statutes

1 AN ACT concerning environmental, social and governance criteria
2 involving public contracts and investments; enacting the Kansas public
3 investments and contracts protection act; prohibiting the state or a
4 political subdivision from giving preferential treatment to or
5 discriminating against companies based on environmental, social and
6 governance criteria in procuring or letting contracts; requiring
7 fiduciaries of the Kansas public employees retirement system to act
8 solely in the financial interest of participants and beneficiaries of the
9 system; restricting state agencies from adopting environmental, social
10 and governance criteria or requiring any person or business to operate
11 in accordance with such criteria; providing for enforcement of such act
12 by the attorney general; amending K.S.A. 2022 Supp. 74-4921 and
13 repealing the existing section.
14

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

16 New Section 1. (a) The provisions of sections 1 through 5, and
17 amendments thereto, shall be known and may be cited as the Kansas
18 public investments and contracts protection act.

19 (b) As used in this act:

20 (1) "Act" means the Kansas public investments and contracts
21 protection act.

22 (2) "Board" means the board of trustees of the Kansas public
23 employees retirement system.

24 (3) "Company" means any organization, association, corporation,
25 partnership, joint venture, limited partnership, limited liability partnership,
26 limited liability company or other entity of business association, including
27 a wholly owned subsidiary, majority-owned subsidiary, parent company or
28 affiliate of such entities or business associations that exists for the purpose
29 of making a profit.

30 (4) "Environmental, social and governance criteria" means a
31 preferential treatment or a discrimination evaluation conducted by the
32 state, any agency of the state, any political subdivision of the state, or any
33 instrumentality thereof, that considers whether a company meets or fails to
34 meet one or more of the following criteria:

35 (A) Engaging in the exploration, production, utilization,
36 transportation, sale or manufacturing of:

1 composition, compensation or disclosure criteria that incorporates
2 characteristics protected under state law;

3 (iii) divesting from, limiting investment in or limiting the activities or
4 investments of any company for failing or not committing to meet
5 environmental standards or disclosures;

6 (iv) accessing abortion, sex or gender change or transgender surgery,
7 or

8 (v) divesting from, limiting investment in or limiting the activities or
9 investments of any company that engages in, facilitates or supports the
10 manufacture, import, distribution, marketing, advertising, sale or lawful
11 use of firearms, ammunition or component parts and accessories of
12 firearms or ammunition.

13 (8) "Fossil fuels" means coal, natural gas, petroleum or oil formed by
14 natural processes through decomposition of dead organisms.

15 (9) "Natural resources" means fossil fuels, minerals, metal ores or any
16 other nonrenewable or finite resource that cannot be readily replaced by
17 natural means at the speed at which it is consumed.

18 (10) "System" means the Kansas public employees retirement system.
19 New Sec. 2. (a) The state, any agency of the state, any political
20 subdivision of the state, or any instrumentality thereof, including the
21 pooled money investment board established by K.S.A. 75-4221a, and
22 amendments thereto, when engaged in procuring or letting contracts for
23 any purpose, shall ensure that bidders, offerors, contractors or
24 subcontractors are not given preferential treatment or discriminated against
25 based on an environmental, social and governance criteria.

26 (b) The state, any agency of the state, any political subdivision of the
27 state or any instrumentality thereof, including the pooled money
28 investment board established by K.S.A. 75-4221a, and amendments
29 thereto, shall not adopt any procurement regulation or policy that causes
30 any bidder, offeror, contractor or subcontractor to be given preferential
31 treatment or be subject to discrimination based on an environmental, social
32 and governance criteria, except as otherwise specifically permitted or
33 required by law.

34 New Sec. 3. (a) In making and supervising investments of the system,
35 the system and any investment manager, proxy advisor or contractor
36 thereof shall discharge its duties solely in the financial interest of the
37 participants and beneficiaries for the exclusive purposes of:

38 (1) Providing financial benefits to participants and their beneficiaries;
39 and

40 (2) defraying reasonable expenses of administering the system.

41 (b) An investment manager, proxy advisor or contractor retained by
42 the system shall be subject to the same fiduciary duties as the system's
43 board of trustees.

solely