

**CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE BILL NO. 2711**

As Agreed to April 2, 2024

**Brief\***

HB 2711 would create the Countries of Concern Divestment Act, which would require state-managed funds' divestment from investments with countries of concern and prohibit investments and deposits with a bank or company domiciled in a country of concern and indemnify state-managed funds with respect to actions taken in compliance with the Act; amend the Kansas Public Employees Retirement System (KPERs or Retirement System) working-after-retirement provisions and increase the lump-sum death benefit for a KPERs retiree; and amend law governing the KPERs Trust Fund and investment standards to increase a statutory limitation ("cap") on alternative investments, from 15.0 percent to 25.0 percent, placed on the KPERs Board of Trustees (KPERs Board).

The provisions of the Countries of Concern Divestment Act would expire on July 1, 2029.

***Technical Changes***

The bill would also make technical updates to remove working-after-retirement exceptions that expired January 1, 2018.

***Countries of Concern Divestment Act (New Sections 1–7)***

The bill would create the Countries of Concern Divestment Act. The Act would require state-managed funds' divestment from investments with countries of concern and prohibit investments and deposits with a bank or company domiciled in a country of concern, and would also indemnify state-managed funds with respect to actions taken in compliance with the Act.

***Designation of Act and Definitions (New Sections 1–2)***

The bill would establish several definitions under the Act, including:

- "Company" would mean any:

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\*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kIRD>

- For-profit corporation, partnership, limited partnership, limited liability partnership, limited liability company, joint venture, trust, association, sole proprietorship, or other organization, including any:
  - Subsidiary of such company, a majority ownership interest of which is held by such company;
  - Parent company that holds a majority ownership of such company; and
  - Other affiliate or business association of such company whose primary purpose is to make a profit; or
- Nonprofit organization;
- “Country of concern” would mean the following:
  - People’s Republic of China, including the Hong Kong special administrative region;
  - Republic of Cuba;
  - Islamic Republic of Iran;
  - Democratic People’s Republic of Korea;
  - Russian Federation; and
  - Bolivarian Republic of Venezuela.

The bill would specify that “country of concern” does not include the Republic of China (Taiwan).

- “Covered transaction” would be defined the same as in 31 C.F.R. § 800.213, as in effect on July 1, 2024 [Note: 31 C.F.R. Part 800 includes regulations pertaining to certain investments in the United States by foreign persons; it was promulgated by the U.S. Department of the Treasury, Office of Investment Security.];
- “Covered transaction” as defined in the federal Code means:
  - A covered control transaction;
  - A covered investment;
  - A change in the rights that a foreign person has with respect to a U.S. business in which the foreign person has an investment, if that change could result in a covered control transaction or a covered investment; or
  - Any other transaction, transfer, agreement, or arrangement, the structure of which is designed or intended to evade or circumvent the application of Section 721 of Title VII of the Defense Production Act of 1950, 50 U.S.C. 4565.

[Note: According to summary information published in the *Federal Register*, the final rule (31 C.F.R. Part 802; 85 FR 3112) established regulations to implement the provisions relating to real estate transactions in Section 721 of the Defense Production Act of 1950, as amended by the Foreign Investment Risk Review Modernization Act (FIRRMA) of 2018. This rule sets forth the scope of, and process and procedures relating to, the national security review by the Committee on Foreign Investment in the United States (CFIUS) of certain transactions involving the purchase or lease by, or concession to, a foreign person of certain real estate in the United States. FIRRMA also broadened authorities of the President and CFIUS to

address national security concerns arising from certain non-controlling investments, including the review of certain transactions.]

- “Covered control transaction” would be defined the same as in 31 C.F.R. § 800.210, as in effect on July 1, 2024.
- “Covered control transaction” as defined in the Code of Federal Regulations means any transaction that is proposed or pending after August 23, 1988, by or with any foreign person that could result in foreign control of any U.S. business, including such a transaction carried out through a joint venture;
- “Domicile” would mean the country where:
  - A company is organized;
  - A company completes a substantial portion of its business; or
  - A majority of a company’s ownership interest is held;
- “Person” would mean an individual;
- “Person owned or controlled by or subject to the jurisdiction or direction of a country of concern” would mean any:
  - Person, wherever located, who is a citizen of a nation-state controlled by a country of concern, unless such person is a lawful permanent resident of the United States; or
  - Corporation, partnership, association, or other organization organized under the laws of a nation-state controlled by a country of concern;
- “State agency” would mean any department, authority, bureau, division, office, or other governmental agency of this state; and
- “State-managed fund” would mean:
  - The Kansas Public Employees Retirement Fund managed by the Board of Trustees of the Kansas Public Employees Retirement System (KPERs) in accordance with provisions governing the management and investment of the fund; and
  - The Pooled Money Investment Portfolio managed by the Pooled Money Investment Board in accordance with Article 42 of Chapter 75 of the *Kansas Statutes Annotated* (addresses state moneys); and
  - Any other fund that is sponsored or managed by a state agency.

*State-managed Fund—Sale, Redemption, Divestment, or Withdrawal of Publicly Traded Securities (New Section 3)*

The bill would require, notwithstanding the provisions of law governing the Kansas Public Employees Retirement Fund and management and investment of this Trust Fund designated to the KPERs Board (KSA 74-4921) or any other statute to the contrary, a state-managed fund to sell, redeem, divest, or withdraw all publicly traded securities of any country of concern or person owned or controlled by or subject to the jurisdiction or direction of a country of concern in accordance with this schedule:

- At least 50 percent of such assets must be removed from the state-managed fund's assets under management not later than July 1, 2025, or one year from the date the definition of "country of concern" is amended to include such country of concern if amended after July 1, 2024, unless the state-managed fund determines that a later date is more prudent based on a good faith exercise of the state-managed fund's fiduciary discretion and subject to the requirements created pursuant to the January 1, 2026, deadline (described below); and
- 100 percent of such assets must be removed from the state-managed fund's assets under management not later than January 1, 2026, or one year from the date the definition section of the Act is amended to include such country of country if amended after July 1, 2024.

**Removal of assets with prohibition; prohibited acquiring of securities and investing or making a deposit in a bank.** If a country of concern takes action to prohibit or restrict the selling, redeeming, divesting, or withdrawing of publicly traded securities of any country of concern or person owned or controlled by or subject to the jurisdiction or direction of a country of concern beyond the scheduled removal dates provided in the bill, the bill would require the state-managed fund to remove 100 percent of those assets from the state-managed fund's assets not later than one year from the date that such action is ended by such country of concern.

The bill would prohibit a state-managed fund from knowingly acquiring securities of any country of concern or person owned or controlled by or subject to the jurisdiction or direction of a country of concern. State-managed funds would also be prohibited from investing or making a deposit in any bank that is domiciled in a country of concern.

#### *State-managed Fund—Divestiture (New Section 4)*

The bill would require, notwithstanding the provisions of law governing KPERS and directing management and investment of this Trust Fund by the KPERS Board or any other statute to the contrary, state-managed funds to divest from any indirect holdings in actively or passively managed investment funds containing publicly traded securities of any country of concern or person owned or controlled by or subject to the jurisdiction of a country of concern. The state-managed fund would be permitted to submit letters to the managers of each investment fund containing publicly traded securities of any country of concern requesting that they remove such publicly traded securities from the fund or create a similar actively or passively managed fund with indirect holding devoid of any such publicly traded securities. If a manager creates a similar fund with substantially the same management fees and same level of investment risk and anticipated return, the bill would authorize the state-managed fund to replace all applicable investments with investments in the similar fund in a time frame consistent with prudent fiduciary standards but not later than the 450th day after the fund is created. If a manager does not create a similar fund, the bill would require the state-managed fund to divest from its indirect holding in actively or passively managed investment funds.

**Exception and prohibition, real estate or private equity investment commitments.** The bill would state that the provisions of this act do not apply to any real estate or private equity investment commitment made by a state-managed fund prior to July 1, 2024, or to a real estate or private equity investment commitment made by a state-managed fund prior to the date either established by the bill or later amended to include a country of concern. The bill would

also prohibit, on and after July 1, 2024, a state-managed fund from making any new real estate or private equity investment commitment in a person owned or controlled by or subject to the jurisdiction of a country of concern.

*Reporting to the Legislature; KPERS Reporting to Joint Committee (New Section 5)*

The bill would require, no later than the first day of the regular session of the Legislature, each state-managed fund to file an annual report with the Legislature. KPERS would also be required to file a report with the Joint Committee on Pensions, Investments and Benefits that:

- Identifies all securities sold, redeemed, divested, or withdrawn in compliance with requirements of the bill;
- Identifies amendments to the definitions section created under this bill to add or remove a country of concern after the later of July 1, 2024, or the last date such information was reported; and
- Summarizes any changes made under provisions pertaining to state-managed fund divestiture from any direct or indirect holdings in actively or passively managed funds containing publicly traded securities of any country of concern (as provided in section 4 provisions regarding divestiture).

*Cause of Action (New Section 6)*

The bill would provide that in a cause of action based on action, inaction, decision, divestment, report, or other determination made or taken in compliance with the Act, without regard to whether the person performed services for compensation, the State shall:

- Indemnify and hold harmless for actual damages, court costs, and attorney fees adjudged against members of a state-managed fund or any other of its officers related to the act or omission on which the damages are based; and
- Defend the state-managed fund and any of its current and former employees.

*Expiration of the Act (New Section 7)*

The provisions of the Act would expire on July 1, 2029.

On or after July 1, 2028, but prior to July 15, 2028, KPERS would be required to notify the Speaker of the House of Representatives, the President of the Senate, and the chairperson of the Joint Committee on Pensions, Investments and Benefits that this act is scheduled to expire on July 1, 2029.

***Working After Retirement; Lump-Sum Death Benefit (Sections 8–9; 11–15)***

The bill would amend the Kansas Public Employees Retirement System working-after-retirement provisions and increase the lump-sum death benefit for a KPERS retiree.

Amendments to working-after-retirement provisions would:

- Add a new category of positions exempt from working-after-retirement employer contributions;
- Increase a retirant threshold amount from \$25,000 to \$40,000 for the specified 30.0 percent employer contribution; and
- Increase the earnings limit from \$25,000 to \$40,000 for retired Kansas Police and Firemen's Retirement System (KP&F) members returning to employment with a previous employer.

The bill would also make a clarifying amendment to law governing Retirement System membership waiting periods for the entities exempted from working-after-retirement rules in the bill.

#### *Exemption from Working-after-retirement Rules; Membership Waiting Period*

The bill would create a new category of positions exempt from working-after-retirement employer contributions by adding licensed nurses and direct support workers at a KPERS-affiliated community developmental disability organization (CDDO) or a community service provider affiliated with a CDDO to the list of exempted positions.

[*Note:* If exempted from the requirements, the participating employer (CDDO) would not have to enroll retirees into KPERS or report compensation to the Retirement System. The participating employer would not make contributions to KPERS. However, retirees would still be required to serve their 60- or 180-day waiting period, as applicable before returning to covered employment, provided there is no prearranged agreement for employment.]

The bill would also make a clarifying amendment to law governing Retirement System membership waiting periods to provide the waiting period applies to the KPERS-affiliated CDDOs or a community service provider affiliated with a CDDO.

#### *Contribution Rates Paid for Covered Positions; Threshold on Retirant Compensation*

Under current law, when a KPERS retirant ("retiree") returns to work for a KPERS-affiliated employer in a covered position, the participating employer is required to pay a 30.0 percent "assessment" on compensation paid to the retiree that exceeds the \$25,000 threshold amount. The bill would increase this threshold from \$25,000 to \$40,000 per calendar year.

[*Note:* Participating employers are required to make contributions to KPERS to help finance the Retirement System. The working-after-retirement law requires employers to pay the statutory contribution rate for the first \$25,000 of the retirant's salary and a 30.0 percent contribution rate ("assessment") on earnings over the \$25,000 threshold.]

### *Earnings Limit—KP&F Members, Returning to Work with Previous Employer*

The bill would increase from \$25,000 to \$40,000 the earnings limit on KP&F members who have retired and return to work for a previous employer.

### *Lump-Sum Death Benefit for KPERS Retirees*

The bill would also increase the lump-sum death benefit for a KPERS retiree from \$4,000 to \$6,000, beginning on July 1, 2024.

### ***KPERS Board of Trustees; Statutory Cap on Alternative Investments (Section 10)***

The bill would amend law governing the Kansas Public Employees Retirement Trust Fund and investment standards to increase a statutory limitation (“cap”) on alternative investments, from 15.0 percent to 25.0 percent, placed on the KPERS Board.

Under current law, enacted in 2012, the investment of alternative assets by the Board is limited to 15.0 percent of the total investment assets of the fund as a percentage of the Retirement System’s total investments. “Alternative investment” is defined in trust fund law to include a broad group of investments that are not one of the traditional asset types of public equities, fixed income, cash, or real estate (e.g., private equity, private credit, hedge funds, infrastructure, and commodities).

### **Conference Committee Action**

The Conference Committee agreed to the Senate amendments to the bill and further agreed to add provisions pertaining to the KPERS Board and alternative investments (SB 23, as passed by the Senate) and countries of concern and divestiture (House Sub. for SB 37, as passed by the House).

The Conference Committee further agreed to amend SB 23 provisions to increase the statutory cap on alternative investments from 20.0 percent to 25.0 percent. The Conference Committee also agreed to exclude House Sub. for SB 37 provisions relating to procurement of goods and services from its report.

### **Background**

This conference committee report contains provisions of HB 2711, SB 23, and House Sub. for SB 37. Background information for each bill follows.

### ***HB 2711 (Working After Retirement)***

HB 2711 was introduced by the House Committee on Financial Institutions and Pensions at the request of Representative Hoye. [Note: The Senate Committee of the Whole inserted provisions pertaining to the KPERS lump-sum death benefit (SB 172, as recommended by the Senate Committee on Ways and Means).]

## *House Committee on Financial Institutions and Pensions*

In the House Committee hearing on February 19, 2024, a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association and a representative of Big Lakes Developmental Center, Inc., provided **proponent** testimony, generally stating HB 2711 would assist agencies and organizations in hiring retired persons into certain positions to help address staff shortages and improve recruitment efforts. The law enforcement organization representative requested consideration of an amendment to a similar limitation in statutes governing KP&F members returning to work after retirement. The Big Lakes representative requested consideration for a working-after-retirement rules exemption that had been discussed in the 2023 Session.

Written-only proponent testimony was submitted by representatives of the Kansas Association of School Boards, Kansas National Education Association (KNEA), and Starkey, Inc. These representatives indicated the increased threshold amount would help employers address staff shortages and recruitment, without the additional cost of the 30.0 percent assessment.

Neutral information provided by a representative of KPERS outlined the working-after-retirement experience in the Retirement System and the working-after-retirement rules (e.g., specified waiting periods, no permitted prearrangements between retirees and employers, and employer contributions). The information highlighted the current employer contribution rates for a retiree returning to work in a KPERS-covered position, which are based on the retiree's salary: employers pay the statutory contribution rate (currently 12.57 percent for the State/School Group) for the first \$25,000 of the retiree's salary and a 30.0 contribution rate on earnings over \$25,000.

The KPERS conferee's testimony also addressed the working-after-retirement experience, noting in the December 31, 2022, KPERS actuarial valuation, there were about 4,500 retirees with reported compensation during the calendar year, with about 1,900 in exempt positions and about 2,600 in covered positions. The conferee also explained actuarial cost implications (further noted in the bill's fiscal note), explaining actuarial cost is based on two factors: the loss of expected employer contributions due to the proposed change (retirant compensation threshold amount increase) and the potential change in the pattern of retirement or hiring behavior by changing the working-after-retirement rules. Based on data for calendar year 2022, employer contributions for working after retirement based on the existing \$25,000 threshold were estimated to be about \$13.1 million. If the compensation limit had been \$50,000 (as in the bill as introduced), total contributions would be reduced by \$2.7 million—about 20 percent lower. This difference would directly reduce the assets (to the Trust Fund) and, therefore, increase the unfunded actuarial liability.

No other testimony was presented.

The House Committee amended the bill to:

- Reduce the retirant threshold amount on a KPERS retiree working after retirement in a covered position with a participating employer to \$40,000 (the amount in the bill, as introduced, increased the threshold from \$25,000 to \$50,000);

- Insert provisions adding an exemption for retirants employed by a CDDO to working-after-retirement rules (this language was also included in HB 2272, as recommended by this House Committee); and
- Insert provisions pertaining to an earnings limitation on retired KP&F members returning to work with a previous employer, in the same amount as specified for other KPERS members by the bill, as amended.

[*Note:* The Conference Committee retained the House Committee amendments.]

*Senate Committee on Financial Institutions and Insurance*

In the Senate Committee hearing on March 13, 2024, Representatives Hoyer and Clifford and representatives of Big Lakes Developmental Center, Inc., and the Kansas Association of Chiefs of Police, the Kansas Peace Officers Association, and the Kansas Sheriffs Association provided **proponent** testimony generally stating support for the various working-after-retirement provisions included in the bill and the contributions retirees make to various state and local KPERS employers, including the impact in addressing staff shortages and recruitment challenges.

Written-only proponent testimony was submitted by representatives of the KNEA and MCDS (Multi Community Diversified Services, McPherson).

Neutral information was provided by a representative of KPERS. The conferee reviewed KPERS working-after-retirement rules including the waiting period, prohibition on prearrangements, and employer contributions when a retiree returns to work in a covered position. Addressing the House Committee amendments, the KPERS conferee indicated the existing rules prohibiting prearrangements to return to work and the waiting period would remain the same (increasing the statutory threshold for the 30 percent employer contribution from \$25,000 to \$40,000). The conferee indicated the increase in the KP&F retiree earnings limit would impact five or fewer KP&F retirees each year. The conferee indicated the exemption for CDDOs would impact 27 to 54 retirees annually.

No other testimony was presented.

The Senate Committee amended the bill to modify the working-after-retirement exemption for CDDOs to also include community service providers affiliated with a CDDO. The amendment also inserted existing law that prescribes KPERS membership waiting periods. Under current law, employees employed in direct support positions of an affiliated employer under KSA 19-4001 and as defined under KSA 39-1803 may become members of the Retirement System following the completion of a two-year training period. The Senate Committee modified references in both the working-after-retirement exemption created by the bill and in the membership waiting period law to provide the exemption and waiting period would apply to either the CDDO or the affiliated provider. [*Note:* The Conference Committee retained the Senate Committee amendments.]

## *Senate Committee of the Whole*

The Senate Committee of the Whole amended the bill to add provisions pertaining to the increase of the KPERS lump-sum death benefit for KPERS retirees (SB 172, as recommended by the Senate Committee on Ways and Means).

### *SB 172 (Lump-Sum Death Benefit)*

In the Senate Committee hearing on February 15, 2023, Senator McGinn testified as a **proponent**, stating the current death benefit amount has remained unchanged for 30 years. Additionally, Senator McGinn indicated the minimum costs for cremations and burials currently average around \$7,000 and \$11,000 respectively.

Representatives from the Kansas Funeral Directors Association (KFDA) and the Kansas National Education Association also provided proponent testimony, generally emphasizing the last increase in death benefits occurred in 1993. Additionally, the KFDA representative indicated the national median cost of an adult funeral with viewing and burial for calendar year 2021 was \$7,848.

Neutral testimony provided by a representative of the Kansas Coalition of Public Retirees noted the rising funeral costs, but requested consideration for a cost-of-living adjustment for current KPERS retirees.

The Executive Director of KPERS provided neutral information, indicating there are approximately 4,000 KPERS retiree deaths each year, and the cost of paying those benefits totals about \$14.0 million per year. Speaking to actuarial costs, the Executive Director explained the bill would increase the KPERS unfunded actuarial liability (UAL), which could be offset by a one-time appropriation or amortized over a 20-year period.

On January 9, 2024, the bill was withdrawn from the Senate Calendar and re-referred to the Senate Committee on Ways and Means. Following discussion on January 30, 2024, the Senate Committee again recommended the bill be passed.

[*Note:* House Sub. for SB 172 would create the Kansas Land and Military Installation Protection Act.]

### ***SB 23 (KPERS Board of Trustees; Alternative Investments)***

The bill was introduced by the Joint Committee on Pensions, Investments and Benefits. A companion bill, HB 2103, has been introduced in the House.

[*Note:* The Joint Committee met in December 2022 and, as one of the topics discussed, reviewed a request from the KPERS Board of Trustees to remove the alternative investments cap, while maintaining other statutory criteria placed on the investment of alternative assets. The Joint Committee recommended the introduction of this legislation. In its November 2023 meeting, the Joint Committee again considered the topic of SB 23 and HB 2103 and recommended passage of legislation addressing the statutory alternative investment cap and that such legislation be amended to make the change in Board authority effective on publication in the *Kansas Register*.]

### *Senate Committee on Financial Institutions and Insurance*

In the Senate Committee hearing on February 1, 2023, the Executive Director and the Chief Investment Officer, KPERS, provided **proponent** testimony on behalf of the Board, stating if KPERS were to reach the 15.0 percent alternative investments cap, new investments in private equity and infrastructure would stop and could not be resumed until exposure fell below the cap. The representatives indicated this restriction would limit KPERS' ability to diversify these investments across economic cycles, increasing risk, and could result in KPERS losing access to top tier investment managers, potentially reducing return.

No other testimony was provided.

### *Senate Committee of the Whole*

The Senate Committee of the Whole amended the bill to increase the cap on alternative investments from 15.0 percent to 20.0 percent and to remove a provision delegating the selection of the overall cap to the Board that was included in the bill, as introduced. The Senate Committee of the Whole amendment also updates statutory references to incorporate 2023 changes to pensions investment law. [Note: The Senate Committee of the Whole adopted two amendments to SB 23; the amendments modify the same section of law; one would maintain the policy of the underlying bill to eliminate the statutory cap and delegate authority to the KPERS Board to establish such limitation. The second amendment restores current law, as updated by changes in 2023, with the 15.0 percent cap and increases this limitation to 20.0 percent.]

[Note: The Conference Committee retained a single section of law and increased the 20.0 percent limitation to 25.0 percent.]

### ***House Sub. for SB 37 (Counties of Concern; Divestment)***

The House Committee on Financial Institutions and Pensions recommended a substitute bill incorporating provisions that would create the Countries of Concern Divestment and Procurement Protection Act (HB 2739). The House Committee removed the contents of SB 37, pertaining to amendments to the Kansas Housing Investor Tax Credit Act and expansion of the transferability of tax credits issued under that act. [Note: The original contents of SB 37, as amended by the Senate Committee on Financial Institutions and Insurance, were included in SB 34, as amended by the House Committee on Financial Institutions and Pensions. The contents of SB 34, as amended by House Committee and modified by the Conference Committee, were enacted in the 2023 Conference Committee Report for SB 17.]

### *HB 2739 (Countries of Concern Divestment and Procurement Protection Act)*

HB 2739 was introduced by the House Committee on Financial Institutions and Pensions at the request of Representative Hoheisel.

On February 14, 2024, the bill was withdrawn from the House Committee on Financial Institutions and Pensions and referred to the House Committee on Appropriations. On February

15, 2024, the bill was then withdrawn from the House Committee on Appropriations and re-referred to the House Committee on Financial Institutions and Pensions.

### *House Committee on Financial Institutions and Pensions*

In the House Committee hearing on March 4, 2024, representatives of American Global Strategies, LLC, and State Armor Action provided **proponent** testimony, generally stating the bill would protect Kansas' and America's security interests by divesting state funds and stopping new procurements by state agencies from countries of concern. The proponents outlined concerns with the countries identified in the bill and the interconnected global economy and threats seen in emerging technologies. Prior to the hearing, Representative Hoheisel commented on the intentions of the bill, indicating the sole policy question is whether it is appropriate to invest the State's financial resources in countries of concern and entities linked to those ruling regimes.

Written-only neutral testimony was submitted by representatives of the American Council of Engineering Companies of Kansas and the Kansas Chamber. Both representatives requested consideration of removal of language pertaining to a "principal place of business" in provisions pertaining to procurement of goods or services.

The Executive Director of KPERS provided **opponent** testimony on behalf of the KPERS Board of Trustees, stating that the Board and its investment members are fiduciaries to its members and all investment decisions are made for the sole purpose of providing promised benefits. The conferee indicated adding statutory restrictions to investments impedes the Board's ability to make investment decisions and manage risk with the sole purpose of funding benefits. The constraints on KPERS investments could also negatively impact the ultimate rate of return. The conferee noted the Board and its managers follow all federal laws regarding international investments and provided information regarding current holdings in countries of concern (only China, including Hong Kong).

The KPERS Board conferee requested consideration of an amendment to replace reference to "companies affiliated with a country of concern" with "a person owned or controlled by, or subject to the jurisdiction or direction of a country of concern."

The House Committee amended the bill to:

- Add definitions for the terms "covered transaction," "covered control transaction," and "foreign principal";
- Provide the sale, redemption, divestiture, or withdrawal requirements placed on state-managed funds (both publicly traded securities and indirect holdings in actively or passively managed fund containing such securities) would be subject to the law governing KPERS and management and investment of this Trust Fund designated to the KPERS Board of Trustees (KSA 74-4921) or any other statute to the contrary;
- Remove reference to the principal place of business in provisions pertaining to an investment or deposit prohibition for state-managed funds;

- Remove reference to companies affiliated with a country of concern in an real estate or private equity investment prohibition provision to instead reference a person owned or controlled by or subject to the jurisdiction of a country of concern;
- Clarify the prohibition on state agencies contracting or agreeing to procure good or services to include final or finished goods or services and reference a foreign principal instead of a company domiciled or with a principal place of business in a country of concern; and
- Allow a state agency to enter into a contract or agreement with foreign principals that meet specified criteria regarding national security concerns or agreements.

[*Note:* The Conference Committee retained two of the three definitions (omitting “foreign principal”), retained provisions pertaining to investments, and removed references to and provisions relating to procurement of goods and services.]

## **Fiscal Information**

Fiscal information for provisions contained in the Conference Committee Report for HB 2711 follow.

### ***HB 2711 (Working After Retirement)***

According to the fiscal note prepared by the Division of the Budget on HB 2711, as introduced, KPERS indicates provisions from enactment of the bill could be implemented within its existing staffing levels and any costs would be negligible. [*Note:* Additional information from this fiscal estimate is noted above in the KPERS neutral testimony.]

KPERS provided additional information following the House Committee action on the bill to address provisions modified by or added to the bill.

- *Increasing the employer contribution rate threshold.* KPERS indicates the bill, as amended, would reduce the employer contribution by approximately \$2.0 million, assuming similar working-after-retirement experience in the future. This amount represents about 0.2 percent of total employer contribution for the State/School Group;
- *Working-after-retirement contribution exemption.* Similar to prior analysis provided on HB 2272, KPERS indicates the estimated number of direct care support positions was one to two positions per facility at the 27 CDDOs. Using the higher end of the estimate, these 54 retirees represent about 1.0 percent of all retirees returning to work and do not represent a large enough group to present a meaningful impact on cost estimates; and
- *Increasing the KP&F retiree earnings limitation.* KP&F retirees remain under a structure that existed prior to 2017, when KPERS working after retirement was changed to include employer contributions but no retiree earnings limit. KP&F employers therefore only report when a KP&F retiree has reached the earnings limitation. In 2023, five KP&F retirees exceeded the limitation during the calendar

year. Increasing this limitation to \$40,000 is not expected to have a meaningful impact on KP&F funding.

**SB 172 (Lump-Sum Death Benefit)**

According to updated fiscal information provided by KPERS, the KPERS actuary indicates SB 172 would increase the total UAL by approximately \$106.1 million, including \$76.6 million for the State/School Group. This actuarial cost could be funded with either a one-time payment for State employers of \$77.5 million or amortized over a 20-year period. If funded with a one-time payment in full, the increase in employer contribution rate would be approximately 0.1 percent depending on the group. If amortized, the employer contribution for the State/School Group would increase by about 0.1 percent, totaling about \$9.66 million in additional contributions for FY 2025.

| <b>SB 172–Estimated Fiscal Effect</b> |                      |                          |                |         |
|---------------------------------------|----------------------|--------------------------|----------------|---------|
| <b>(Dollars in Millions)</b>          |                      |                          |                |         |
| KPERS Group                           | UAL Est.<br>Increase | Additional Contributions |                |         |
|                                       |                      | FY 2024                  |                | FY 2025 |
| State/School                          | \$ 76.60             | \$ 6.76                  | \$ 6.90        |         |
| KP&F–State                            | 0.60                 | 0.05                     | 0.05           |         |
| Judges                                | 0.30                 | 0.03                     | 0.03           |         |
| <i>Subtotal–State</i>                 | <i>\$ 77.50</i>      | <i>\$ 6.84</i>           | <i>\$ 6.98</i> |         |
| Local                                 | \$ 24.90             | \$ 2.24                  | \$ 2.33        |         |
| KP&F–Local                            | 3.70                 | 0.33                     | 0.35           |         |
| <i>Subtotal–Local</i>                 | <i>\$ 28.60</i>      | <i>\$ 2.57</i>           | <i>\$ 2.68</i> |         |
| <b>TOTAL</b>                          | <b>\$ 106.10</b>     | <b>\$ 9.41</b>           | <b>\$ 9.66</b> |         |

The KPERS actuary also notes the UAL increase for local employers is about \$28.6 million.

**SB 23 (KPERS Board of Trustees; Alternative Investments)**

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, KPERS indicates enactment of the bill would have no fiscal effect.

**House Sub. for SB 37 (Counties of Concern; Divestment)**

According to the fiscal note prepared by the Division of the Budget on HB 2739, as introduced, the Pooled Money Investment Board (PMIB) reports that the enactment of the bill would not have a fiscal impact as the PMIB does not have any investments outlined in the bill. The Office of Procurement and Contracts in the Department of Administration indicates that the enactment of the bill would have no fiscal effect.

The State Treasurer reports that any costs associated with the enactment of the bill would be negligible and could be accomplished within the agency’s existing budget resources. The agency assumes the bill would not affect the various consumer investment programs sponsored by the agency, including the Kansas 529 Education Plan and Kansas ABLE Savings Plan.

KPERS reports that the enactment of the bill would require the divestment of holdings in China, including Hong Kong, over a two-year period. As of December 31, 2023, KPERS has approximately \$256.0 million in public market securities in China, which represents less than 1.0 percent of the total KPERS assets. The agency state the provisions of the bill that would permit a two-year period of divestiture would allow the KPERS Board of Trustees to manage any associated divestiture risks; however, there would be trading costs to liquidate these holdings and reinvestment in other public market securities. The agency estimates these trading costs to be approximately \$680,000 over the two-year period of divestiture. KPERS notes that the bill would not be expected to affect the long-term investment return assumptions currently used by the actuary.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2025 Governor's Budget Report*.

Retirement System; KPERS; KPERS Board of Trustees; investment policy; alternative investments; working after retirement; employer contributions; retirant compensation threshold; KP&F earnings limitation; lump-sum death benefit; Countries of Concern Divestment Act; divestment; state agencies and state-managed funds; reporting to Legislature

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