

Substitute for HOUSE BILL No. 2103

By Committee on Financial Institutions and Pensions

1-25

1 AN ACT concerning retirement and pensions; relating to the Kansas public
2 employees retirement system; Kansas public employees retirement
3 fund; investment standards; eliminating the statutory 15% alternative
4 investment percentage limit thereto; requiring the board of trustees to
5 set an alternative investment percentage limit; amending K.S.A. 2023
6 Supp. 74-4921 and repealing the existing section.

7
8 *Be it enacted by the Legislature of the State of Kansas:*

9 Section 1. K.S.A. 2023 Supp. 74-4921 is hereby amended to read as
10 follows: 74-4921. (1) There is hereby created in the state treasury the
11 Kansas public employees retirement fund. All employee and employer
12 contributions shall be deposited in the state treasury to be credited to the
13 Kansas public employees retirement fund. The fund is a trust fund and
14 shall be used solely for the exclusive purpose of providing benefits to
15 members and member beneficiaries and defraying reasonable expenses of
16 administering the fund. Investment income of the fund shall be added or
17 credited to the fund as provided by law. All benefits payable under the
18 system, refund of contributions and overpayments, purchases or
19 investments under the law and expenses in connection with the system
20 unless otherwise provided by law shall be paid from the fund. The director
21 of accounts and reports is authorized to draw warrants on the state
22 treasurer and against such fund upon the filing in the director's office of
23 proper vouchers executed by the chairperson or the executive director of
24 the board. As an alternative, payments from the fund may be made by
25 credits to the accounts of recipients of payments in banks, savings and loan
26 associations and credit unions. A payment shall be so made only upon the
27 written authorization and direction of the recipient of payment and upon
28 receipt of such authorization such payments shall be made in accordance
29 therewith. Orders for payment of such claims may be contained on:

30 (a) A letter, memorandum, telegram, computer printout or similar
31 writing; or

32 (b) any form of communication, other than voice, which is registered
33 upon magnetic tape, disc or any other medium designed to capture and
34 contain in durable form conventional signals used for the electronic
35 communication of messages.

36 (2) The board shall have the responsibility for the management of the

1 fund and shall discharge the board's duties with respect to the fund solely
2 in the interests of the members and beneficiaries of the system for the
3 exclusive purpose of providing benefits to members and such member's
4 beneficiaries and defraying reasonable expenses of administering the fund
5 and shall invest and reinvest moneys in the fund and acquire, retain,
6 manage, including the exercise of any voting rights and disposal of
7 investments of the fund within the limitations and according to the powers,
8 duties and purposes as prescribed by this section.

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

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

27 (5) Notwithstanding subsection (4):

28 (a) Total investments in common stock may be made in the amount of
29 up to 60% of the total book value of the fund;

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

32 (i) The total of the annual net commitment to alternative investments
33 does not exceed 5% of the total market value of investment assets of the
34 fund as measured from the end of the preceding calendar year;

35 (ii) if in addition to the system, there are at least two other qualified
36 institutional buyers, as defined by section (a)(1)(i) of rule 144A, securities
37 act of 1933;

38 (iii) the system's share in any individual alternative investment is
39 limited to an investment representing not more than 20% of any such
40 individual alternative investment;

41 (iv) the system has received a favorable and appropriate
42 recommendation from a qualified, independent expert in investment
43 management or analysis in that particular type of alternative investment;

1 (v) the alternative investment is consistent with the system's
2 investment policies and objectives as provided in subsection (6);

3 (vi) the individual alternative investment does not exceed more than
4 2.5% of the total alternative investments made under this subsection. If the
5 alternative investment is made pursuant to participation by the system in a
6 multi-investor pool, the 2.5% limitation contained in this subsection is
7 applied to the underlying individual assets of such pool and not to
8 investment in the pool itself. The total of such alternative investments
9 made pursuant to participation by the system in any one individual multi-
10 investor pool shall not exceed more than 20% of the total of alternative
11 investments made by the system pursuant to this subsection. Nothing in
12 this subsection requires the board to liquidate or sell the system's holdings
13 in any alternative investments made pursuant to participation by the
14 system in any one individual multi-investor pool held by the system on the
15 effective date of this act, unless such liquidation or sale would be in the
16 best interest of the members and beneficiaries of the system and be
17 prudent under the standards contained in this section. The 20% limitation
18 contained in this subsection shall not have been violated if the total of such
19 investment in any one individual multi-investor pool exceeds 20% of the
20 total alternative investments of the fund as a result of market forces acting
21 to increase the value of such a multi-investor pool relative to the rest of the
22 system's alternative investments; however, the board shall not invest or
23 reinvest any moneys of the fund in any such individual multi-investor pool
24 until the value of such individual multi-investor pool is less than 20% of
25 the total alternative investments of the fund;

26 (vii) the board has received and considered the investment manager's
27 due diligence findings submitted to the board as required by subsection
28 (6);

29 (viii) prior to the time the alternative investment is made, the system
30 has in place procedures and systems to ensure that the investment is
31 properly monitored and investment performance is accurately measured;
32 and

33 (ix) ~~the total~~ *subject to the provisions of subsections (3), (4) and (5),*
34 *the board shall adopt a limitation for the investment of alternative*
35 *investments does not exceed 15% expressed as a percentage of the total*
36 *investment assets of the fund. The 15% Such limitation contained in this*
37 *subsection shall not have been violated if the total of such alternative*
38 *investments exceeds 15% of the total investment assets of the fund the*
39 *percentage adopted by the board, based on the fund total market value, as*
40 *a result of market forces acting to increase the value of such alternative*
41 *investments relative to the rest of the system's investments. However, the*
42 *board shall not invest or reinvest any moneys of the fund in alternative*
43 *investments until the total value of such alternative investments is less than*

1 ~~15% of the total investment assets of the fund based on the market value.~~
2 ~~If the total value of the alternative investments exceeds 15% of the total~~
3 ~~investment assets of the fund, the limitation adopted by the board or the~~
4 ~~board adopts a new limit.~~ The board shall not be required to liquidate or
5 sell the system's holdings in any alternative investment held by the system,
6 unless such liquidation or sale would be in the best interest of the members
7 and beneficiaries of the system and is prudent under the standards
8 contained in this section;

9 (c) for purposes of this section, "alternative investment" includes a
10 broad group of investments that are not one of the traditional asset types of
11 public equities, fixed income, cash or real estate. Alternative investments
12 are generally made through limited partnership or similar structures, are
13 not regularly traded on nationally recognized exchanges and thus are
14 relatively illiquid, and exhibit lower correlations with more liquid asset
15 types such as stocks and bonds. Alternative investments generally include,
16 but are not limited to, private equity, private credit, hedge funds,
17 infrastructure, commodities and other investments that have the
18 characteristics described in this paragraph; and

19 (d) except as otherwise provided, the board may invest or reinvest
20 moneys of the fund in real estate investments if the following conditions
21 are satisfied:

22 (i) The system has received a favorable and appropriate
23 recommendation from a qualified, independent expert in investment
24 management or analysis in that particular type of real estate investment;

25 (ii) the real estate investment is consistent with the system's
26 investment policies and objectives as provided in subsection (6); and

27 (iii) the system has received and considered the investment manager's
28 due diligence findings.

29 (6) (a) Subject to the objective set forth in subsection (3) and the
30 standards set forth in subsections (4) and (5) the board shall formulate
31 policies and objectives for the investment and reinvestment of moneys in
32 the fund and the acquisition, retention, management and disposition of
33 investments of the fund. Such policies and objectives shall include:

34 (i) Specific asset allocation standards and objectives;

35 (ii) establishment of criteria for evaluating the risk versus the
36 potential return on a particular investment;

37 (iii) a requirement that all investment managers submit such
38 manager's due diligence findings on each investment to the board or
39 investment advisory committee for approval or rejection prior to making
40 any alternative investment;

41 (iv) a requirement that all investment managers shall immediately
42 report all instances of default on investments to the board and provide the
43 board with recommendations and options, including, but not limited to,

1 curing the default or withdrawal from the investment; and

2 (v) establishment of criteria that would be used as a guideline for
3 determining when no additional add-on investments or reinvestments
4 would be made and when the investment would be liquidated.

5 (b) The board shall review such policies and objectives, make
6 changes considered necessary or desirable and readopt such policies and
7 objectives on an annual basis.

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

30 (8) (a) In the acquisition or disposition of securities, the board may
31 rely on the written legal opinion of a reputable bond attorney or attorneys,
32 the written opinion of the attorney of the investment counselor or
33 managers, or the written opinion of the attorney general certifying the
34 legality of the securities.

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

38 (9) (a) Except as provided in subsection (7) and this subsection, the
39 custody of money and securities of the fund shall remain in the custody of
40 the state treasurer, except that the board may arrange for the custody of
41 such money and securities as it considers advisable with one or more
42 member banks or trust companies of the federal reserve system or with one
43 or more banks in the state of Kansas, or both, to be held in safekeeping by

1 the banks or trust companies for the collection of the principal and interest
2 or other income or of the proceeds of sale. The services provided by the
3 banks or trust companies shall be paid pursuant to rates fixed by the board
4 subject to provisions of appropriation acts.

5 (b) The state treasurer and the board shall collect the principal and
6 interest or other income of investments or the proceeds of sale of securities
7 in the custody of the state treasurer and pay same when so collected into
8 the fund.

9 (c) The principal and interest or other income or the proceeds of sale
10 of securities as provided in this subsection shall be reported to the state
11 treasurer and the board and credited to the fund.

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

20 (11) The board shall provide for an examination of the investment
21 program annually. The examination shall include an evaluation of current
22 investment policies and practices and of specific investments of the fund in
23 relation to the objective set forth in subsection (3), the standard set forth in
24 subsection (4) and other criteria as may be appropriate, and
25 recommendations relating to the fund investment policies and practices
26 and to specific investments of the fund as are considered necessary or
27 desirable. The board shall include in its annual report to the governor as
28 provided in K.S.A. 74-4907, and amendments thereto, a report or a
29 summary thereof covering the investments of the fund.

30 (12) Any internal assessment or examination of alternative
31 investments of the system performed by any person or entity employed or
32 retained by the board which evaluates or monitors the performance of
33 alternative investments shall be reported to the legislative post auditor so
34 that such report may be reviewed in accordance with the annual financial-
35 compliance audits conducted pursuant to K.S.A. 74-49,136, and
36 amendments thereto.

37 Sec. 2. K.S.A. 2023 Supp. 74-4921 is hereby repealed.

38 Sec. 3. This act shall take effect and be in force from and after its
39 publication in the Kansas register.