

REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

The Committee on **Federal and State Affairs** recommends **SB 291** be amended on page 1, in line 20, by striking "5" and inserting "7";

On page 2, in line 25, after "fiduciary" by inserting ", specifically on assets managed on behalf of the system"; in line 43, after "requires" by inserting ", specifically on assets managed on behalf of the system";

On page 4, in line 13, after "factors" by inserting ", in which case the system may grant proxy voting authority to such person"; in line 19, after "system" by inserting ", in which case the system may engage a proxy voting advisor"; in line 26, after "system" by inserting ", in which case the system may entrust engagement and share voting to a fiduciary"; in line 32, after "factors" by inserting ", in which case the investment manager or contractor may follow the recommendations of a proxy or other service advisor"; in line 34, by striking "legislative coordinating council" and inserting "joint committee on pensions, investments and benefits"; following line 38, by inserting:

"(j) Subsections (e) through (i) shall apply only to assets managed on behalf of the system and shall not apply to alternative or real estate investments as defined in K.S.A. 74-4921(5), and amendments thereto.";

On page 5, in line 7, after "thereto," by inserting "prior to investing any moneys owned by a client,"; also in line 7, by striking all after "shall"; by striking all in lines 8 through 26; in line 27, by striking all before the period and inserting "obtain written consent from such client stating that the client is fully aware of and consents to the investment of moneys owned by the client or

through any mutual fund, actively or passively managed equity fund, company or financial institution that is using environmental, social and governance criteria. Such written consent need only be obtained a single time from the client. Such written consent shall consist of the following disclosure:

"The institution managing this fund is using environmental, social and governance (ESG) criteria. If such ESG criteria is used in managing your fund, these ESG criteria may impact the fund's returns compared to the fund's historical performance or the performance of funds that do not use ESG criteria. You may have the option to choose a similar fund that does not use ESG criteria. By signing below, you consent to have your investment managed by this institution even if the institution uses ESG criteria that may impact your returns compared to historical performance or other funds."

(b) Conduct prohibited by this section shall be considered an act, practice or course of business that operates or would operate as a fraud or deceit in accordance with K.S.A. 17-12a502, and amendments thereto.

(c) Nothing in this section shall be construed to establish any requirements for registration, capital, custody, margin, financial responsibility, making and keeping of records, bonding or financial or operational reporting for a registered investment adviser that differ from the requirements established under federal law to the extent that such requirements are applicable to the registered investment adviser. The requirements of this section shall not apply to annuities managed by an insurance company.

(d) The provisions of this section, or any contract or practice subject to this section, may be enforced by the attorney general. The attorney general may investigate possible violations of this section in accordance with the provisions of K.S.A. 50-631, and amendments thereto";

Also on page 5, following line 43, by inserting:

"New Sec. 7. In a cause of action based on an action, inaction, decision, divestment, investment, report or other determination made or taken in compliance with this 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, and defend the system and any of its current and former employees, members of the board or any other officers of the system related to the act or omission on which the damages are based.";

And by renumbering sections accordingly;

On page 1, in the title, in line 12, by striking all after "to"; by striking lines 13 and 14; in line 15, by striking all before the semicolon and inserting "obtain written consent from clients prior to investing client moneys in investments using environmental, social and governance criteria"; in line 16, after the semicolon by inserting "indemnifying the Kansas public employees retirement system with respect to actions taken in compliance with such act;"; and the bill be passed as amended.

_____Chairperson