Pensions and Investments—Countries of Concern Divestment Act; Working After Retirement; Lump-sum Death Benefit; Alternative Investments Cap; HB 2711

HB 2711 creates the Countries of Concern Divestment Act, which will 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; amends the Kansas Public Employees Retirement System (KPERS or Retirement System) working-after-retirement provisions and increases the lump-sum death benefit for a KPERS retiree; and amends 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 will expire on July 1, 2029.

Technical Changes

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

Countries of Concern Divestment Act

The bill creates the Countries of Concern Divestment Act. The Act requires 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 also indemnifies state-managed funds with respect to actions taken in compliance with the Act.

Designation of Act and Definitions

The bill establishes several definitions under the Act, including:

- "Company" to mean any:
  - 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” to 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 specifies that “country of concern” does not include the Republic of China (Taiwan).

- “Covered transaction” will be defined the same as in 31 CFR § 800.213, as in effect on July 1, 2024 [*Note:* 31 CFR 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 USC 4565.

  [*Note:* According to summary information published in the *Federal Register*, the final rule (31 CFR 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" will be defined the same as in 31 CFR § 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" to 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" to mean an individual;

- "Person owned or controlled by or subject to the jurisdiction or direction of a country of concern" to 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" to mean any department, authority, bureau, division, office, or other governmental agency of this state; and

- "State-managed fund" to 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

The bill requires, 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 50.0 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 no later than January 1, 2026, or one year from the date the definition section of the Act is amended to include such country of concern 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 will require the state-managed fund to remove 100 percent of those assets from the state-managed fund's assets no later than one year from the date that such action is ended by such country of concern.

The bill prohibits 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 are also prohibited from investing or making a deposit in any bank that is domiciled in a country of concern.

State-managed Fund—Divestiture

The bill requires, notwithstanding the provisions of law governing KPERS and directing management and investment of the 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 will 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 authorizes 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 no later than the 450th day after the fund is created. If a manager does not create a similar fund, the bill will 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 states 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 will 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

The bill requires, 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 will 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 provisions regarding divestiture).

Cause of Action

The bill provides 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

On or after July 1, 2028, but prior to July 15, 2028, KPERS will 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

The bill amends the KPERS working-after-retirement provisions and increases the lump-sum death benefit for a KPERS retiree.

Amendments to working-after-retirement provisions will:

- 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 also makes 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 creates 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 also makes 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 prior 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 increases 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 increases 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 also increases 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

The bill amends law governing the Trust Fund and investment standards to increase a cap on alternative investments, from 15.0 percent to 25.0 percent, placed on the KPERS Board.

Under 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).