

*{As Amended by Senate Committee of the Whole}*

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*As Further Amended by Senate Committee*

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*As Amended by Senate Committee*

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Session of 2023

## SENATE BILL No. 291

By Committee on Federal and State Affairs

3-6

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; ~~directing registered investment~~  
12 ~~advisers to provide certain environmental, social and governance~~  
13 ~~criteria notice to clients; requiring the legislative research department to~~  
14 ~~develop and maintain an environmental, social and governance~~  
15 ~~disclosure webpage~~ **obtain written consent from clients prior to**  
16 **investing client moneys in investments using environmental, social**  
17 **and governance criteria; {directing the board of trustees of the**  
18 **Kansas public employees retirement system to divest from**  
19 **investments with foreign adversaries; }**providing for enforcement of  
20 such act by the attorney general; **indemnifying the Kansas public**  
21 **employees retirement system with respect to actions taken in**  
22 **compliance with such act;** amending K.S.A. 2022 Supp. 74-4921 and  
23 repealing the existing section.

24

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

26 New Section 1. (a) The provisions of sections 1 through ~~5-7-6~~ {9}, and  
27 amendments thereto, shall be known and may be cited as the Kansas  
28 public investments and contracts protection act.

29 (b) As used in this act:

30 (1) "Act" means the Kansas public investments and contracts  
31 protection act.

32 (2) "Board" means the board of trustees of the Kansas public

1 employees retirement system.

2 (3) "Company" means any organization, association, corporation,  
3 partnership, joint venture, limited partnership, limited liability partnership,  
4 limited liability company or other entity of business association, including  
5 a wholly owned subsidiary, majority-owned subsidiary, parent company or  
6 affiliate of such entities or business associations that exists for the purpose  
7 of making a profit. "Company" does not mean a sole proprietorship.

8 (4) ***{ "Entity" means a partnership, association, trust, joint venture,***  
9 ***corporation, group, subgroup or other non-United States governmental***  
10 ***organization.***

11 (5)  ***}***"Environmental, social and governance criteria" means any  
12 criterion that gives preferential treatment or discriminates based on  
13 whether a company meets or fails to meet one or more of the following  
14 criteria:

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

- 17 (i) Fossil fuel-based energy;  
18 (ii) nuclear energy; or  
19 (iii) any other natural resource;

20 (B) engaging in the production of agriculture;

21 (C) engaging in the production of lumber;

22 (D) engaging in mining;

23 (E) emitting greenhouse gases or not disclosing or offsetting such  
24 greenhouse gas emissions;

25 (F) engaging in the manufacturing, distribution or sale of firearms,  
26 firearms accessories, ammunition or ammunition components;

27 (G) having a governing corporate board or other officers whose race,  
28 ethnicity, sex or sexual orientation meets or does not meet any criteria;

29 (H) facilitating or assisting or not facilitating or assisting employees  
30 in obtaining abortions or gender reassignment services; and

31 (I) doing business with any company described by subparagraphs (A)  
32 through (H).

33 ~~(5)~~**{(6)}** "Fiduciary" means any person acting on behalf of the board  
34 or system as an investment manager, proxy advisor or contractor, including  
35 the system's board of trustees.

36 ~~(6)~~**{(7)}** "Fiduciary commitment" means any evidence of a fiduciary's  
37 purpose in managing assets as a fiduciary, including, but not limited to,  
38 any of the following in a fiduciary's capacity as a fiduciary, ***specifically on***  
39 ***assets managed on behalf of the system:***

40 (A) Advertisements, statements, explanations, reports,  
41 communications with portfolio companies, statements of principles or  
42 commitments; or

43 (B) participation in, affiliation with or status as a signatory to any

1 coalition, initiative, joint statement of principles or agreement.

2 ~~(7)~~**(8)** (A) "Financial" means having been prudently determined by  
3 a fiduciary to have a material effect on the financial risk or the financial  
4 return of an investment.

5 (B) "Financial" does not include any action taken or factor considered  
6 by a fiduciary with any purpose whatsoever to further social, political or  
7 ideological interests.

8 (C) A fiduciary may reasonably be determined to have taken an  
9 action or considered a factor with a purpose to further social, political or  
10 ideological interests based upon evidence indicating such a purpose,  
11 including, but not limited to, any fiduciary commitment to further, through  
12 portfolio company engagement, board or shareholder votes or otherwise as  
13 a fiduciary, any of the following beyond what controlling federal or state  
14 law requires, ***specifically on assets managed on behalf of the system:***

15 (i) Eliminating, reducing, offsetting or disclosing greenhouse gas  
16 emissions;

17 (ii) instituting or assessing corporate board, employment,  
18 composition, compensation or disclosure criteria that incorporates  
19 characteristics protected under state law;

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

23 (iv) accessing abortion, sex or gender change or transgender surgery;  
24 or

25 (v) divesting from, limiting investment in or limiting the activities or  
26 investments of any company that engages in, facilitates or supports the  
27 manufacture, import, distribution, marketing, advertising, sale or lawful  
28 use of firearms, ammunition or component parts and accessories of  
29 firearms or ammunition.

30 ***{(9) (A) "Foreign adversary" means any government or***  
31 ***nongovernment person determined to be a foreign adversary pursuant to***  
32 ***15 C.F.R. § 7.4, as in effect on July 1, 2023, except as otherwise provided***  
33 ***by paragraph (2).***

34 ***(B) Upon any occasion when 15 C.F.R. § 7.4 is amended after July***  
35 ***1, 2023, the attorney general may, in the attorney general's sole***  
36 ***discretion, adopt rules and regulations to add or remove a government***  
37 ***or nongovernment person from the definition of "foreign adversary" but***  
38 ***only after giving due consideration to the risks to state and national***  
39 ***security and the economic costs and benefits of such action.***

40 ~~(8)~~**(10)** "Fossil fuels" means coal, natural gas, petroleum or oil  
41 formed by natural processes through decomposition of dead organisms.

42 ~~(9)~~**(11)** "Natural resources" means fossil fuels, minerals, metal ores  
43 or any other nonrenewable or finite resource that cannot be readily

1 replaced by natural means at the speed at which it is consumed.

2 ~~{(12)}~~ ***"Person" means an individual or entity.***

3 ***(13) "Person owned by, controlled by or subject to the jurisdiction***  
4 ***or direction of a foreign adversary" means:***

5 ***(A) Any person, wherever located, who acts as an agent,***  
6 ***representative or employee, or any person who acts in any other capacity***  
7 ***at the order, request or under the direction or control, of a foreign***  
8 ***adversary or of a person whose activities are directly or indirectly***  
9 ***supervised, directed, controlled, financed or subsidized in whole or in***  
10 ***majority part by a foreign adversary;***

11 ***(B) any person, wherever located, who is a citizen or resident of a***  
12 ***nation-state controlled by a foreign adversary, unless such person is a***  
13 ***dual citizen of the United States and a foreign adversary;***

14 ***(C) any corporation, partnership, association or other organization***  
15 ***organized under the laws of a nation-state controlled by a foreign***  
16 ***adversary; or***

17 ***(D) any corporation, partnership, association or other organization,***  
18 ***wherever organized or doing business, that is owned or controlled by a***  
19 ***foreign adversary.}***

20 ~~{(10)}~~~~{(14)}~~ ***"System" means the Kansas public employees retirement***  
21 ***system. "System" does not include participant-directed individual***  
22 ***account plans.***

23 New Sec. 2. (a) The state, any agency of the state, any political  
24 subdivision of the state, or any instrumentality thereof, including the  
25 pooled money investment board established by K.S.A. 75-4221a, and  
26 amendments thereto, when engaged in procuring or letting contracts for  
27 any purpose, shall ensure that bidders, offerors, contractors or  
28 subcontractors are not given preferential treatment or discriminated against  
29 based on any environmental, social and governance criteria.

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

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

42 (1) Providing financial benefits to participants and their beneficiaries;  
43 and

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

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

5 (c) A fiduciary shall consider only financial factors when discharging  
6 such fiduciary's duties with respect to the system.

7 (d) All shares held directly or indirectly by or on behalf of the system  
8 or the participants and their beneficiaries shall be voted solely in the  
9 financial interest of system participants and their beneficiaries.

10 (e) Unless no economically practicable alternative is available, the  
11 system shall not grant proxy voting authority to any person who is not a  
12 part of the system, unless such person has a practice of, and in writing  
13 commits to, following guidelines that match the system's obligation to act  
14 solely upon financial factors, ***in which case the system may grant proxy***  
15 ***voting authority to such person.***

16 (f) Unless no economically practicable alternative is available, in the  
17 selection of any proxy advisor, the system shall give preference to a proxy  
18 advisor service that commits in writing to engage in voting shares and  
19 making recommendations in a strictly fiduciary manner, and without  
20 consideration of policy objectives that are not the express policy objectives  
21 of the system, ***in which case the system may engage a proxy voting***  
22 ***advisor.***

23 (g) Unless no economically practicable alternative is available,  
24 system assets shall not be entrusted to a fiduciary, unless such fiduciary  
25 has a practice of, and in writing commits to, following guidelines, when  
26 engaging with portfolio companies and voting shares or proxies, that  
27 follow the system's obligation to act solely upon financial factors and not  
28 upon policy considerations that are not the express policy objectives of the  
29 system, ***in which case the system may entrust engagement and share***  
30 ***voting to a fiduciary.***

31 (h) Unless no economically practicable alternative is available, an  
32 investment manager or contractor shall not, in providing service for the  
33 system, follow the recommendations of a proxy advisor or other service  
34 provider, unless such advisor or service provider has a practice of, and in  
35 writing commits to, following proxy voting guidelines that follow the  
36 system's obligation to act solely upon financial factors, ***in which case the***  
37 ***investment manager or contractor may follow the recommendations of a***  
38 ***proxy or other service advisor.***

39 (i) All proxy votes shall be tabulated and reported annually to the  
40 system's board of trustees and to the ~~legislative coordinating council~~ ***joint***  
41 ***committee on pensions, investments and benefits.*** For each vote, the  
42 report shall contain a vote caption, the system's vote, the recommendation  
43 of company management and, if applicable, the proxy advisor's

1 recommendation. Such reports shall be posted on the system's website for  
2 review by the public.

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

6 *{New Sec. 4. (a) The board shall sell, redeem, divest or withdraw all*  
7 *publicly traded securities of any foreign adversary or person owned by,*  
8 *controlled by or subject to the jurisdiction or direction of a foreign*  
9 *adversary in accordance with the following schedule:*

10 *(1) At least 50% of those assets shall be removed from the system's*  
11 *assets under management not later than one year after the effective date*  
12 *of this act or one year from the date 15 C.F.R. § 7.4 is amended to*  
13 *include such foreign adversary if amended after July 1, 2023, unless the*  
14 *board determines that a later date is more prudent, based on a good faith*  
15 *exercise of the board's fiduciary discretion and subject to paragraph (2);*  
16 *and*

17 *(2) 100% of such assets shall be removed from the system's assets*  
18 *under management not later than 18 months after the effective date of*  
19 *this act or one year from the date 15 C.F.R. § 7.4 is amended to include*  
20 *such foreign adversary if amended after July 1, 2023.*

21 *(b) The system may not acquire securities of any foreign adversary*  
22 *or person owned by, controlled by or subject to the jurisdiction or*  
23 *direction of a foreign adversary.*

24 *New Sec. 5. The board shall divest from any indirect holdings in*  
25 *actively or passively managed investment funds or private equity funds*  
26 *containing publicly traded securities of any foreign adversary or person*  
27 *owned by, controlled by or subject to the jurisdiction or direction of a*  
28 *foreign adversary. The board shall submit letters to the managers of*  
29 *each investment fund containing publicly traded securities of any*  
30 *foreign adversary or person owned by, controlled by or subject to the*  
31 *jurisdiction or direction of a foreign adversary requesting that they*  
32 *remove such publicly traded securities from the fund or create a similar*  
33 *actively or passively managed fund with indirect holdings devoid of such*  
34 *publicly traded securities. If a manager creates a similar fund with*  
35 *substantially the same management fees and substantially the same level*  
36 *of investment risk and anticipated return, the board may replace all*  
37 *applicable investments with investments in the similar fund in a time*  
38 *frame consistent with prudent fiduciary standards but not later than the*  
39 *450<sup>th</sup> day after the date the fund is created. If a manager does not create*  
40 *such similar fund, the board shall divest from such indirect holdings in*  
41 *actively or passively managed investment funds or private equity funds.*

42 *New Sec. 6. Not later than the first day of the regular session of the*  
43 *legislature, each year, the board shall file a report with the treasurer, the*

1 *president of the senate, the speaker of the house of representatives and*  
2 *the attorney general that:*

3 *(a) Identifies all securities sold, redeemed, divested or withdrawn in*  
4 *compliance with section 4(a), and amendments thereto;*

5 *(b) identifies all prohibited investments under section 4(b), and*  
6 *amendments thereto; and*

7 *(c) summarizes any changes made under section 5, and*  
8 *amendments thereto.}*

9 New Sec. 4. {7.} (a) As used in this section, "state agency" means an  
10 office, board, commission, department, council, bureau, governmental  
11 entity or other agency of state government having authority to adopt or  
12 enforce rules and regulations.

13 (b) No state agency shall share or publish information, adopt policies,  
14 adopt rules and regulations or issue guidelines for purposes of  
15 environmental, social and governance criteria that restrict the ability of any  
16 industry to offer products or services. No state agency shall require any  
17 person or business to adopt or operate in accordance with environmental,  
18 social and governance criteria.

19 New Sec. 5. —(a) A registered investment adviser, as defined in K.S.A.  
20 17-12a102, and amendments thereto, ***prior to investing any moneys***  
21 ***owned by a client***, shall disclose to each new client prior to the investment  
22 of any moneys owned by the client, and at least annually to each existing  
23 client, the following notice, in writing:

24 "NOTICE: Environmental, social and governance (ESG) investing may  
25 limit your return on investment compared to investments that do not use  
26 such criteria. You should ask your investment adviser for more specific  
27 information on whether there are investment alternatives available with  
28 entities that do not use such ESG criteria and that instead rely on ordinary  
29 business considerations in making investment decisions. The Kansas  
30 legislative research department, with content as approved by the legislative  
31 coordinating council, maintains a website link, at  
32 [www.kslegresearch.org/esgdisclosure](http://www.kslegresearch.org/esgdisclosure) that contains information about  
33 environmental, social and governance investing and how the utilization of  
34 ESG standards, including preferential or discriminatory considerations  
35 other than financial risk or financial return, may affect the return on your  
36 investments."

37 (b) The legislative research department shall develop and maintain an  
38 environmental, social and governance disclosure webpage on the  
39 legislative research department's website that contains information about  
40 environmental, social and governance investing. Such information shall be  
41 approved by the legislative coordinating council ***obtain written consent***  
42 ***from such client stating that the client is fully aware of and consents to***  
43 ***the investment of moneys owned by the client or through any mutual***

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

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

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

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

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

30 ~~New Sec. 6-5: {8.}~~ (a) This act or any contract subject to this act may  
31 be enforced by the attorney general.

32 (b) If the attorney general has reasonable cause to believe that a  
33 person has engaged in, is engaging in or is about to engage in a violation  
34 of this act, the attorney general may require:

35 (1) Such person to file on such forms as the attorney general may  
36 prescribe a statement or report in writing, under oath, as to all the facts and  
37 circumstances concerning the violation; and

38 (2) the filing of such other data and information as the attorney  
39 general may deem necessary.

40 (c) In addition to any other remedies available at law or equity, an  
41 investment manager or contractor of the system that serves as a fiduciary  
42 and violates the provisions of section 3, and amendments thereto, shall be  
43 obligated to pay damages to the state in an amount equal to three times all



1 moneys paid to the investment manager or contractor by the system for the  
2 services of such investment manager or contractor.

3 ***New Sec.—7—6. {9.} In a cause of action based on an action,***  
4 ***inaction, decision, divestment, investment, report or other determination***  
5 ***made or taken in compliance with this act, without regard to whether the***  
6 ***person performed services for compensation, the state shall indemnify***  
7 ***and hold harmless for actual damages, court costs and attorney fees***  
8 ***adjudged against, and defend the system and any of its current and***  
9 ***former employees, members of the board or any other officers of the***  
10 ***system related to the act or omission on which the damages are based.***

11 **Sec.—7—8. 7. {10.}** K.S.A. 2022 Supp. 74-4921 is hereby amended to  
12 read as follows: 74-4921. (1) There is hereby created in the state treasury  
13 the Kansas public employees retirement fund. All employee and employer  
14 contributions shall be deposited in the state treasury to be credited to the  
15 Kansas public employees retirement fund. The fund is a trust fund and  
16 shall be used solely for the exclusive purpose of providing benefits to  
17 members and member beneficiaries and defraying reasonable expenses of  
18 administering the fund. Investment income of the fund shall be added or  
19 credited to the fund as provided by law. All benefits payable under the  
20 system, refund of contributions and overpayments, purchases or  
21 investments under the law and expenses in connection with the system  
22 unless otherwise provided by law shall be paid from the fund. The director  
23 of accounts and reports is authorized to draw warrants on the state  
24 treasurer and against such fund upon the filing in the director's office of  
25 proper vouchers executed by the chairperson or the executive director of  
26 the board. As an alternative, payments from the fund may be made by  
27 credits to the accounts of recipients of payments in banks, savings and loan  
28 associations and credit unions. A payment shall be so made only upon the  
29 written authorization and direction of the recipient of payment and upon  
30 receipt of such authorization such payments shall be made in accordance  
31 therewith. Orders for payment of such claims may be contained on:

32 (a) A letter, memorandum, telegram, computer printout or similar  
33 writing; or

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

38 (2) The board shall have the responsibility for the management of the  
39 fund and shall discharge the board's duties with respect to the fund solely  
40 in the interests of the members and beneficiaries of the system for the  
41 exclusive purpose of providing benefits to members and such member's  
42 beneficiaries and defraying reasonable expenses of administering the fund  
43 and shall invest and reinvest moneys in the fund and acquire, retain,

1 manage, including the exercise of any voting rights and disposal of  
2 investments of the fund within the limitations and according to the powers,  
3 duties and purposes as prescribed by this section.

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

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

22 (5) Notwithstanding subsection (4):

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

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

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

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

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

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

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

41 (vi) the individual alternative investment does not exceed more than  
42 2.5% of the total alternative investments made under this subsection. If the  
43 alternative investment is made pursuant to participation by the system in a

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

21 (vii) the board has received and considered the investment manager's  
22 due diligence findings submitted to the board as required by subsection~~(6)~~  
23 ~~(e)~~ (6);

24 (viii) prior to the time the alternative investment is made, the system  
25 has in place procedures and systems to ensure that the investment is  
26 properly monitored and investment performance is accurately measured;  
27 and

28 (ix) the total of alternative investments does not exceed 15% of the  
29 total investment assets of the fund. The 15% limitation contained in this  
30 subsection shall not have been violated if the total of such alternative  
31 investments exceeds 15% of the total investment assets of the fund, based  
32 on the fund total market value, as a result of market forces acting to  
33 increase the value of such alternative investments relative to the rest of the  
34 system's investments. However, the board shall not invest or reinvest any  
35 moneys of the fund in alternative investments until the total value of such  
36 alternative investments is less than 15% of the total investment assets of  
37 the fund based on the market value. If the total value of the alternative  
38 investments exceeds 15% of the total investment assets of the fund, the  
39 board shall not be required to liquidate or sell the system's holdings in any  
40 alternative investment held by the system, unless such liquidation or sale  
41 would be in the best interest of the members and beneficiaries of the  
42 system and is prudent under the standards contained in this section-;

43 (c) for purposes of this ~~act~~ *section*, "alternative investment" includes

1 a broad group of investments that are not one of the traditional asset types  
2 of public equities, fixed income, cash or real estate. Alternative  
3 investments are generally made through limited partnership or similar  
4 structures, are not regularly traded on nationally recognized exchanges and  
5 thus are relatively illiquid, and exhibit lower correlations with more liquid  
6 asset types such as stocks and bonds. Alternative investments generally  
7 include, but are not limited to, private equity, private credit, hedge funds,  
8 infrastructure, commodities and other investments—~~which~~ *that* have the  
9 characteristics described in this paragraph; and

10 ~~(e)~~(d) except as otherwise provided, the board may invest or reinvest  
11 moneys of the fund in real estate investments if the following conditions  
12 are satisfied:

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

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

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

20 (6) (a) Subject to the objective set forth in subsection (3) and the  
21 standards set forth in subsections (4) and (5) the board shall formulate  
22 policies and objectives for the investment and reinvestment of moneys in  
23 the fund and the acquisition, retention, management and disposition of  
24 investments of the fund. Such policies and objectives shall include:

25 ~~(a)~~(i) Specific asset allocation standards and objectives;

26 ~~(b)~~(ii) establishment of criteria for evaluating the risk versus the  
27 potential return on a particular investment;

28 ~~(c)~~(iii) a requirement that all investment managers submit such  
29 manager's due diligence findings on each investment to the board or  
30 investment advisory committee for approval or rejection prior to making  
31 any alternative investment;

32 ~~(d)~~(iv) a requirement that all investment managers shall immediately  
33 report all instances of default on investments to the board and provide the  
34 board with recommendations and options, including, but not limited to,  
35 curing the default or withdrawal from the investment; and

36 ~~(e)~~(v) establishment of criteria that would be used as a guideline for  
37 determining when no additional add-on investments or reinvestments  
38 would be made and when the investment would be liquidated.

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

42 (7) The board may enter into contracts with one or more persons  
43 whom the board determines to be qualified, whereby the persons undertake

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

21 (8) (a) In the acquisition or disposition of securities, the board may  
22 rely on the written legal opinion of a reputable bond attorney or attorneys,  
23 the written opinion of the attorney of the investment counselor or  
24 managers, or the written opinion of the attorney general certifying the  
25 legality of the securities.

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

29 (9) (a) Except as provided in subsection (7) and this subsection, the  
30 custody of money and securities of the fund shall remain in the custody of  
31 the state treasurer, except that the board may arrange for the custody of  
32 such money and securities as it considers advisable with one or more  
33 member banks or trust companies of the federal reserve system or with one  
34 or more banks in the state of Kansas, or both, to be held in safekeeping by  
35 the banks or trust companies for the collection of the principal and interest  
36 or other income or of the proceeds of sale. The services provided by the  
37 banks or trust companies shall be paid pursuant to rates fixed by the board  
38 subject to provisions of appropriation acts.

39 (b) The state treasurer and the board shall collect the principal and  
40 interest or other income of investments or the proceeds of sale of securities  
41 in the custody of the state treasurer and pay same when so collected into  
42 the fund.

43 (c) The principal and interest or other income or the proceeds of sale

1 of securities as provided in ~~clause (a) of this subsection (9)~~ shall be  
2 reported to the state treasurer and the board and credited to the fund.

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

11 (11) The board shall provide for an examination of the investment  
12 program annually. The examination shall include an evaluation of current  
13 investment policies and practices and of specific investments of the fund in  
14 relation to the objective set forth in subsection (3), the standard set forth in  
15 subsection (4) and other criteria as may be appropriate, and  
16 recommendations relating to the fund investment policies and practices  
17 and to specific investments of the fund as are considered necessary or  
18 desirable. The board shall include in its annual report to the governor as  
19 provided in K.S.A. 74-4907, and amendments thereto, a report or a  
20 summary thereof covering the investments of the fund.

21 (12)~~(a)~~ Any internal assessment or examination of alternative  
22 investments of the system performed by any person or entity employed or  
23 retained by the board which evaluates or monitors the performance of  
24 alternative investments shall be reported to the legislative post auditor so  
25 that such report may be reviewed in accordance with the annual financial-  
26 compliance audits conducted pursuant to K.S.A. 74-49,136, and  
27 amendments thereto.

28 ~~(b) The board shall prepare and submit an alternative investment~~  
29 ~~report to the joint committee on pensions, investments and benefits prior to~~  
30 ~~January 1, 2016. Such report shall include a review of alternative~~  
31 ~~investments of the system with an emphasis on the effects of changes in~~  
32 ~~law pursuant to this act and includes specific investment cost and market~~  
33 ~~value information of each individual alternative investment.~~

34 ~~Sec. 8-9-8. {11.}~~ K.S.A. 2022 Supp. 74-4921 is hereby repealed.

35 ~~Sec. 9-10-9. {12.}~~ This act shall take effect and be in force from and  
36 after its publication in the statute book.