

21.540 Duties of board of trustees -- Qualified domestic relations orders -- Intent to conform with federal law -- Availability of information on website -- Conflicts of interest -- Prohibition against fees for unregulated placement agents -- Investment procurement policy -- Release of certain information from accounts of current or former legislators -- Proxy voting guidelines.

- (1)
 - (a) Except as provided in KRS 21.550, 21.560, and subsections (3) and (7) of this section, the board of trustees of the Judicial Form Retirement System shall be charged with the administration of KRS 6.500 to 6.577 and 21.350 to 21.510.
 - (b) The Judicial Form Retirement System shall have all powers necessary to administer KRS 6.500 to 6.577 and 21.350 to 21.510 including the power to promulgate all reasonable administrative regulations, pass upon questions of eligibility and disability, make employments for services, to contract for fiduciary liability insurance, investment counseling, and actuarial, auditing, and other professional services subject to the limitations of KRS Chapters 45, 45A, 56, and 57.
 - (c)
 1. The administrative expenses shall be paid out of an administrative account which shall be funded by transfers of the necessary money, in appropriate ratio, from the funds provided for in KRS 21.550 and 21.560.
 2. Authorization for all administrative expenses relating to the operations of the Judicial Form Retirement System shall be contained in the biennial budget unit request, branch budget recommendations, and the financial plan adopted by the General Assembly pursuant to KRS Chapter 48.
 3. The request from the Judicial Form Retirement System shall include any specific administrative expenses requested by the board of trustees that are not otherwise specified by this subsection.
- (2)
 - (a) A qualified domestic relations order issued by a court or administrative agency shall be honored by the Judicial Form Retirement System if the order is in compliance with the requirements established by the retirement system.
 - (b) Except in cases involving child support payments, the Judicial Form Retirement System may charge reasonable and necessary fees and expenses to the participant and the alternate payee of a qualified domestic relations order for the administration of the qualified domestic relations order by the retirement system. All fees and expenses shall be established by administrative regulations promulgated by the board of trustees of the retirement system. The qualified domestic relations order shall specify whether the fees and expenses provided by this subsection shall be paid:
 1. Solely by the participant;
 2. Solely by the alternate payee; or
 3. Equally shared by the participant and alternate payee.
 - (c) For purposes of this subsection, a "qualified domestic relations order" shall mean any judgment, decree, or order, including approval of a property settlement agreement, that:

1. Is issued by a court or administrative agency; and
 2. Relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a member.
- (3) Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that the provisions of KRS 21.345 to 21.580 and 6.500 to 6.577 shall conform with federal statutes or regulations and meet the qualification requirements under 26 U.S.C. sec. 401(a), applicable federal regulations, and other published guidance, and the board shall have the authority to promulgate administrative regulations, with retroactive effect if required under federal law, to conform the Legislators' Retirement Plan and the Judicial Retirement Plan with federal statutes and regulations and to meet the qualification requirements under 26 U.S.C. sec. 401(a).
- (4) In order to improve public transparency regarding the administration of the Legislators' Retirement Plan and the Judicial Retirement Plan, the board of trustees of the Judicial Form Retirement System shall adopt a best-practices model by posting the following information to the system's website and shall make it available to the public:
- (a) Meeting notices and agendas for all meetings of the board. Notices and agendas shall be posted to the system's website at least seventy-two (72) hours in advance of the board or committee meetings, except in the case of special or emergency meetings as provided by KRS 61.823;
 - (b) A list of the members of the board of trustees and membership on each committee established by the board, including any investment committees;
 - (c) A list of system staff and each staff's salary;
 - (d) A list of the fund's professional consultants and their respective fees and commissions paid by the system;
 - (e) A list of the system's expenditures;
 - (f) The annual financial audit of the system, which shall include but not be limited to a statement of plan net assets, a statement of changes in plan net assets, an actuarial value of assets, a schedule of investments, a statement of funded status and funding progress, and other supporting data;
 - (g) All external audits;
 - (h) The annual actuarial valuation report of pension and retiree health benefits of each retirement plan administered by the system, which shall include a general statistical section and information on contributions, benefit payouts, and retirement plan demographic data;
 - (i) All board minutes or other materials that require adoption or ratification by the board of trustees or committees of the board. The items listed in this paragraph shall be posted within seventy-two (72) hours of adoption or ratification by the board or committees;
 - (j) All bylaws, policies, or procedures adopted or ratified by the board of trustees or by committees of the board;

- (k) The summary plan description for each plan administered by the system;
- (l) A document or a link to documents containing an unofficial copy of the statutes governing the plans administered by the Judicial Form Retirement System;
- (m) Investment information, including all investment holdings in aggregate, fees, and commissions for each fund administered by the board, which shall be updated on a quarterly basis for fiscal years beginning on or after July 1, 2017. The system shall request from all managers, partnerships, and any other available sources all information regarding fees and commissions and shall, based on the requested information received:
 - 1. Disclose the dollar value of fees and commissions paid to each individual manager or partnership;
 - 2. Disclose the dollar value of any profit sharing, carried interest, or any other partnership incentive arrangements, partnership agreements, or any other partnership expenses received by or paid to each manager or partnership; and
 - 3. As applicable, report each fee or commission by manager or partnership consistent with standards established by the Institutional Limited Partners Association (ILPA).

In addition to the requirements of this paragraph, the system shall also disclose the name and address of all individual underlying managers or partners in any fund of funds in which system assets are invested;

- (n) An update of net investment returns, asset allocations, and the performance of the funds against benchmarks adopted by the board for each fund, for each asset class administered by the board, and for each manager over a historical period. The update shall be posted on a quarterly basis for fiscal years beginning on or after July 1, 2017;
- (o) All contracts or offering documents for services, goods, or property purchased or utilized by the system. Notwithstanding KRS 61.878, all contracts, including investment contracts, shall be subject to review by the board, the Auditor of Public Accounts, and the Government Contract Review Committee established pursuant to KRS 45A.705. If any public record contains material which is not excepted under KRS 61.878, the system shall separate the excepted material by removal, segregation, or redaction, and make the nonexcepted material available for examination;
- (p) Information regarding the system's financial and actuarial condition that is easily understood by the members, retired members, and the public; and
- (q) All proxy vote reports as provided by subsection (9) of this section.

Nothing in this subsection shall require or compel the Judicial Form Retirement System to disclose information specific to the account of an individual member of the Legislators' Retirement Plan or the Judicial Retirement Plan.

- (5) No trustee or employee of the board shall:
 - (a) Have any interest, direct or indirect, in the gains or profits of any investment or transaction made by the board, provided that the provisions of this

paragraph shall not prohibit a member or retiree of one (1) of the retirement plans administered by the system from serving as a trustee;

- (b) Directly or indirectly, for himself or herself or as an agent, use the assets of the system, except to make current and necessary payments authorized by the board;
 - (c) Become an endorser, surety, or obligor for moneys loaned by or borrowed from the board;
 - (d) Have a contract or agreement with the retirement system, individually or through a business owned by the trustee or the employee;
 - (e) Use his or her official position with the retirement system to obtain a financial gain or benefit or advantage for himself or herself or a family member;
 - (f) Use confidential information acquired during his or her tenure with the systems to further his or her own economic interests or that of another person; or
 - (g) Hold outside employment with, or accept compensation from, any person or business with which he or she has involvement as part of his or her official position with the system. The provisions of this paragraph shall not prohibit:
 - 1. A trustee from serving as a judge or member of the General Assembly; or
 - 2. A trustee from serving on the board if the compensation is de minimus and incidental to the trustee's outside employment. If the compensation is more than de minimus, the trustee shall disclose the amount of the compensation to the other trustees and recuse himself or herself from any matters involving hiring or retaining a person or a business from whom more than de minimus amounts are received by the trustee. For purposes of this section, "de minimus" means an insignificant amount that does not raise a reasonable question as to the trustee's objectivity.
- (6) Notwithstanding any other provision of KRS 6.500 to 6.577 and 21.345 to 21.580 to the contrary, no funds of the Legislators' Retirement Plan or the Judicial Retirement Plan, including fees and commissions paid to an investment manager, private fund, or company issuing securities, who manages systems assets, shall be used to pay fees and commissions to placement agents. For purposes of this subsection, "placement agent" means a third-party individual, who is not an employee, or firm, wholly or partially owned by the entity being hired, who solicits investments on behalf of an investment manager, private fund, or company issuing securities.
- (7) All contracts for the investment or management of assets of the system shall not be subject to KRS Chapters 45, 45A, 56, and 57. Instead, the board shall conduct the following process to develop and adopt an investment procurement policy with which all prospective contracts for the investment or management of assets of the system shall comply:
- (a) On or before July 1, 2017, the board shall consult with the secretary of the Finance and Administration Cabinet or his or her designee to develop an investment procurement policy, which shall be written to meet best practices

- in investment management procurement;
- (b) Thirty (30) days prior to adoption, the board shall tender the preliminary investment procurement policy to the secretary of the Finance and Administration Cabinet or his or her designee for review and comment;
 - (c) Upon receipt of comments from the secretary of the Finance and Administration Cabinet or his or her designee, the board shall choose to adopt or not adopt any recommended changes;
 - (d) Upon adoption, the board shall tender the final investment procurement policy to the secretary of the Finance and Administration Cabinet or his or her designee;
 - (e) No later than thirty (30) days after receipt of the investment procurement policy, the secretary or his or her designee shall certify whether the board's investment procurement policy meets or does not meet best practices for investment management procurement; and
 - (f) Any amendments to the investment procurement policy shall adhere to the requirements set forth by paragraphs (b) to (e) of this subsection.
- (8) (a) 1. Upon request by any person, the Judicial Form Retirement System shall release the following information from the accounts of any member or retiree of the Legislators' Retirement Plan or the Judicial Retirement Plan, if the member or retiree is a current or former officeholder in the Kentucky General Assembly:
- a. The first and last name of the member or retiree;
 - b. The plan or plans in which the member has an account or from which the retiree is receiving a monthly retirement allowance;
 - c. The status of the member or retiree, including but not limited to whether he or she is a contributing to the plans but has not retired, or a retiree drawing a monthly retirement allowance;
 - d. If the individual is a retiree, the monthly retirement allowance that he or she was receiving at the end of the most recently completed fiscal year; and
 - e. If the individual is a member who has not yet retired, the estimated monthly retirement allowance that he or she is eligible to receive on the first date he or she would be eligible for an unreduced retirement allowance, using his or her service credit, final compensation, and accumulated account balance at the end of the most recently completed fiscal year.
2. No information shall be disclosed under this paragraph from an account that is paying benefits to a beneficiary due to the death of a member or retiree.
- (b) The release of information under paragraph (a) of this subsection shall not constitute a violation of the Open Records Act, KRS 61.870 to 61.884.
- (9) (a) The board shall adopt:
- 1. Written proxy voting guidelines which are consistent with the fiduciary

duties and other requirements of KRS 21.450; or

2. The proxy voting guidelines of a sole investment manager under contract with the board to act as a fiduciary in compliance with the duties and other requirements of KRS 21.450.
- (b) The board shall not adopt the recommendations of a proxy adviser or proxy voting service and shall not allow such proxy adviser or proxy voting service to vote on its behalf, unless the proxy adviser or proxy voting service acknowledges in writing and accepts under contract its duties under KRS 21.450 and commits to follow the board-adopted proxy voting guidelines when voting the system's shares in order to comply with the board's fiduciary duties and other responsibilities under this section and KRS 21.450.
- (c) All shares held by or on behalf of the system, and which the system is entitled to vote under state, federal, or common laws, shall be voted according to the proxy voting guidelines adopted by the board and subject to the fiduciary duties and other requirements of this section by:
1. The board or investment committee of the board who are fiduciaries having the authority to make investments under KRS 21.450; or
 2. A proxy adviser, proxy voting service, or sole investment manager that acknowledges in writing and accepts under contract its duties under KRS 21.450 and commits to follow the proxy voting guidelines adopted by the board when voting the system's shares in order to comply with the board's fiduciary duties and other responsibilities under this section.
- (d) All proxy votes shall be reported at least quarterly to the board. For each vote, the report shall provide:
1. The vote caption;
 2. The date of the vote;
 3. The company's name;
 4. The vote cast for the system;
 5. The recommendation of the company's management; and
 6. If applicable, the recommendation of the proxy adviser or proxy voting service.

Effective: June 29, 2023

History: Amended 2023 Ky. Acts ch. 94, sec. 2, effective June 29, 2023. -- Amended 2022 Ky. Acts ch. 55, sec. 2, effective July 14, 2022. -- Amended 2017 Ky. Acts ch. 4, sec. 3, effective January 9, 2017; and ch. 12, sec. 2, effective March 10, 2017. -- Amended 2013 Ky. Acts ch. 43, sec. 1, effective June 25, 2013. -- Amended 2012 Ky. Acts ch. 75, sec. 7, effective April 11, 2012. -- Amended 2010 Ky. Acts ch. 132, sec. 1, effective July 15, 2010; and ch. 148, sec. 4, effective July 15, 2010. -- Amended 1994 Ky. Acts ch. 266, sec. 1, effective July 15, 1994. -- Amended 1990 Ky. Acts ch. 263, sec. 1, effective July 13, 1990. -- Amended 1984 Ky. Acts ch. 111, sec. 30, effective July 13, 1984. -- Created 1980 Ky. Acts ch. 407, sec. 20, effective July 1, 1980.

Legislative Research Commission Note (3/10/2017). 2017 Ky. Acts ch. 12, sec. 12 provides that amendments made to subsections (1) and (6) of this statute in 2017 Ky. Acts ch. 12, sec. 2 governing placement agents and contracts or offerings entered

into by the state-administered retirement systems shall apply to contracts and offerings established or contracts or offerings renewed on or after July 1, 2017.

Legislative Research Commission Note (3/10/2017). 2017 Ky. Acts ch. 12, sec. 13 provided that amendments made to subsections (1) and (7) of this statute in 2017 Ky. Acts ch. 12, sec. 2 governing the application of the Model Procurement Code, KRS Chapter 45A, and related statutes to the state-administered retirement systems, shall apply to contracts and offerings established or contracts or offerings renewed on or after July 1, 2017.

Legislative Research Commission Note (4/11/2012). 2012 Ky. Acts ch. 75, sec. 18, provides that the amendments made to subsection (6) of this statute regarding unregulated placement agents by 2012 Ky. Acts ch. 75, sec. 7, "shall apply to contracts established or contracts renewed on or after July 1, 2012."