

21.450 Funding of benefits -- Trustee -- Duties of board members, investment manager or other fiduciary, or proxy advisor -- Accrual of benefits -- Standards of conduct.

- (1) The benefits provided by KRS 21.350 to 21.510 to be paid shall be funded through contract with a reputable life insurance company authorized to do business in this state, or through investment and reinvestment of funds in securities which, at the time of making the investment, are by law permitted for the investment of funds by fiduciaries in this state, or through a combination of such methods. To the extent that funding is provided through insurance contract, no contributions, payments or premiums shall be subject to any tax on insurance premiums or annuity considerations. The investment committee for the judicial retirement fund shall be trustee of any and all funds contributed or appropriated to the retirement system, and shall have sole authority to make insurance contracts or investments.
- (2) (a) For the purposes of this subsection:
 1. "Solely in the interest of the members and beneficiaries" shall be determined using only pecuniary factors and shall not include any purpose to further a nonpecuniary interest;
 2. "Pecuniary factor" means a consideration having a direct and material connection to the financial risk or financial return of an investment;
 3. A "material connection" is established if there is a substantial likelihood that a reasonable investor would consider it important in determining the financial risk or the financial return of an investment;
 4. "Nonpecuniary interest" includes but is not limited to an environmental, social, political, or ideological interest which does not have a direct and material connection to the financial risk or financial return of an investment;
 5. "Investment manager" shall have the same definition attributed to "investment adviser" under the federal Investment Advisers Act of 1940, 15 U.S.C. sec. 80b-2;
 6. "Shareholder-sponsored proposal" means a proposal by a shareholder included in the proxy statement of an issuer of securities pursuant to 17 C.F.R. sec. 240.14a-8;
 7. "Economic analysis" means a written analysis of the economic impact of a shareholder-sponsored proposal, which shall include, at a minimum:
 - a. The subject matter of the shareholder-sponsored proposal;
 - b. Whether the board of directors of the issuer of securities opposes the shareholder-sponsored proposal and the stated reasons for the opposition;
 - c. Whether the shareholder-sponsored proposal is consistent with the investment policy of the retirement system;
 - d. The economic benefits and costs of implementing the shareholder-sponsored proposal, as written, in the long and short term;
 - e. The quantifiable impact of the shareholder-sponsored proposal, as

written, on the investment returns of the funds of the retirement system; and

- f. An explanation of the modeling, procedures, and processes used to complete the economic analysis; and
8.
 - a. "Proxy adviser" means any person who is engaged in the business of providing advice, research, analysis, ratings, or recommendations specifically with respect to proxy voting and who has entered into an agreement or contracted with the board of trustees of the retirement system to receive compensation for those purposes.
 - b. "Proxy adviser" does not include an investment manager as defined in this paragraph.
- (b) The board members, any investment manager or other fiduciary, or proxy adviser shall discharge their duties with respect to the funds of the retirement system solely in the interest of the members and beneficiaries and:
 1. For the exclusive purposes of providing benefits to members and their beneficiaries and defraying reasonable expenses of administering the plan;
 2. With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and
 3. In accordance with the federal, state, and common laws, regulations and other instruments governing the funds and fiduciaries.
- (c) Evidence that a fiduciary has considered or acted on a nonpecuniary interest shall include but is not limited to:
 1. Statements, explanations, reports, or correspondence;
 2. Communications with portfolio companies;
 3. Statements of principles or policies, whether made individually or jointly;
 4. Votes of shares or proxies; or
 5. Coalitions, initiatives, agreements, or commitments to which the fiduciary is a participant, affiliate, or signatory.
- (d) When exercising or recommending a vote on a shareholder-sponsored proposal, a proxy adviser that has entered into an agreement or contracted with the board of trustees of the retirement system acts solely in the interest of the members and beneficiaries under this subsection if:
 1. The proxy adviser's vote or recommendation is consistent with the recommendation of the board of directors of the issuer of the shares, provided:
 - a. The board of directors of the issuer of the shares is composed of a majority of independent directors; and
 - b. The recommendation of the board of directors is not for the

purpose of furthering a nonpecuniary interest; or

2. The proxy adviser's vote or recommendation is inconsistent with the recommendation of the board of directors of the issuer of the shares, provided the proxy adviser conducts and documents an economic analysis demonstrating that the vote or recommendation is solely in the interest of the members and beneficiaries.
- (3) Any accrual of benefits provided under this or any other applicable statute shall be no less than the benefit adjustment provided for in KRS 21.405(4) from the date of the last establishment of that benefit.
- (4) The board shall establish ethics policies and procedures by promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A. The ethics policies shall include but not be limited to annual financial and conflict of interest disclosure requirements which must be completed by all board members and made available to the public upon request.
- (5) In addition to the standards of conduct prescribed by subsection (2) of this section:
 - (a) Investment managers shall comply with all applicable provisions of the Investment Advisers Act of 1940, as amended, and the rules and regulations promulgated thereunder, and shall comply with all other applicable federal securities statutes and related rules and regulations that apply to investment managers; and
 - (b) Proxy advisers and proxy voting services shall comply with all applicable provisions of the Investment Advisers Act of 1940, as amended, and the rules and regulations promulgated thereunder, and shall comply with all other federal statutes and related rules and regulations that apply to proxy advisers and proxy voting services.
- (6) No contract or agreement, whether made in writing or not, shall in any manner waive, restrict, or limit a fiduciary's liability as to any of the duties imposed by this section. Any agreement shall specify that it is made in the Commonwealth of Kentucky and governed by the laws of the Commonwealth of Kentucky.

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History: Amended 2025 Ky. Acts ch. 115, sec. 1, effective June 27, 2025. -- Amended 2023 Ky. Acts ch. 94, sec. 1, effective June 29, 2023. -- Amended 2012 Ky. Acts ch. 75, sec. 5, effective April 11, 2012. -- Amended 2000 Ky. Acts ch. 448, sec. 4, effective July 14, 2000. -- Amended 1984 Ky. Acts ch. 111, sec. 169, effective July 13, 1984. -- Amended 1980 Ky. Acts ch. 246, sec. 9, effective July 15, 1980. -- Amended 1978 Ky. Acts ch. 384, sec. 6, effective June 17, 1978. -- Created 1960 Ky. Acts ch. 84, Art. III, sec. 11.