

**161.430 Investment of funds -- Standards of conduct -- Investment procurement policy -- Proxy voting guidelines.**

- (1) (a) The board of trustees shall be the trustee of the funds of the retirement system and shall have full power and responsibility for the purchase, sale, exchange, transfer, or other disposition of the investments and moneys of the retirement system. The board shall, by administrative regulation, establish investment policies and procedures to carry out their responsibilities.
- (b)
  1. The board shall contract with experienced competent investment managers to invest and manage assets of the system. The board may also employ qualified investment staff to advise it on investment matters and to invest and manage assets of the system not to exceed fifty percent (50%) of the system's assets. The board may contract with one (1) or more general investment consultants, as well as specialized investment consultants, to advise it on investment matters.
  2. All internal investment staff and investment consultants shall adhere to the Code of Ethics and Standards of Professional Conduct, and all board trustees shall adhere to the Code of Conduct for Members of a Pension Scheme Governing Body, promulgated by the CFA Institute. Investment managers shall comply with the federal 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.
  3. No investment manager shall manage more than forty percent (40%) of the funds of the retirement system.
- (c) The board may appoint an investment committee to act for the board in all matters of investment, subject to the approval of the board of trustees. The board of trustees, in keeping with their responsibilities as trustees and wherever consistent with their fiduciary responsibilities, shall give priority to the investment of funds in obligations calculated to improve the industrial development and enhance the economic welfare of the Commonwealth. Toward this end, the board shall develop procedures for informing the business community of the potential for in-state investments by the retirement fund, accepting and evaluating applications for the in-state investment of funds, and working with members of the business community in executing in-state investments which are consistent with the board's fiduciary responsibilities. The board shall include in the criteria it uses to evaluate in-state investments their potential for creating new employment opportunities and adding to the total job pool in Kentucky. The board may cooperate with the board of trustees of Kentucky Retirement Systems in developing its program and procedures, and shall report to the Legislative Research Commission annually on its progress in placing in-state investments. The first report shall be submitted by October 1, 1991, and subsequent reports shall be submitted by October 1 of each year thereafter. The report shall include the number of applications for in-state investment received, the nature of the investments proposed, the amount requested, the amount invested, and the

percentage of applications which resulted in investments.

(2) (a) For the purposes of this subsection:

1. "Solely in the interest of the members and annuitants" 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" and "investment consultant" 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 or investment consultant as defined in this paragraph.

- (b) The board members, investment managers, investment consultants, or other fiduciaries, and proxy advisers shall discharge their duties with respect to the assets of the system solely in the interests of the active contributing members and annuitants and:
    - 1. For the exclusive purpose of providing benefits to members and annuitants and defraying reasonable expenses of administering the system;
    - 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 these matters would use in the conduct of an enterprise of a like character and with like aims;
    - 3. By diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and
    - 4. In accordance with the federal, state, and common laws, administrative regulations, and other instruments governing the system 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 annuitants 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 annuitants.
- (3) (a) In choosing and contracting for professional investment management and consulting services, the board shall do so prudently and in the interest of the

members and annuitants. Any contract that the board makes with an investment manager shall set forth policies and guidelines of the board with reference to standard rating services and specific criteria for determining the quality of investments. Expenses directly related to investment management and consulting services shall be financed from the guarantee fund in amounts approved by the board.

- (b) An investment manager or consultant appointed under this section shall acknowledge in writing his or her fiduciary responsibilities to the fund. To be eligible for appointment, an investment manager, consultant, or an affiliate, shall be:
  - 1. Registered under the Federal Investment Advisers Act of 1940; or
  - 2. A bank as defined by that Act; or
  - 3. An insurance company qualified to perform investment services under the laws of more than one (1) state.
- (c) 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.
- (d) 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, unless the agreement is in commingled investments or real property outside the Commonwealth, in which case the agreements may be made in or governed by laws outside of the Commonwealth provided that the other requirements of this section are met.
- (4) No investment or disbursement of funds shall be made unless authorized by the board of trustees, except that the board, in order to ensure timely market transactions, shall establish investment guidelines and may permit its staff and investment managers who are employed or under contract with the board pursuant to this section to execute purchases and sales of investment instruments within those guidelines without prior board approval.
- (5) In discharging his or her administrative duties under this section, a trustee shall strive to administer the retirement system in an efficient and cost-effective manner for the taxpayers of the Commonwealth of Kentucky.
- (6) Notwithstanding any other provision of KRS 161.220 to 161.716, no funds of the Teachers' Retirement System, 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) The board shall adopt written proxy voting guidelines which are consistent with the fiduciary duties and other requirements of this section.
- (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 behalf of the system, unless the proxy adviser or proxy voting service acknowledges in writing and accepts under contract its duties under this section 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.
- (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, the investment committee of the board, or an employee or employees of the system who are fiduciaries under this section and are appointed or otherwise authorized by the board; or
  - 2. A proxy adviser or proxy voting service that acknowledges in writing and accepts under contract its duties under this section 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.

- (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 27, 2025

**History:** Amended 2025 Ky. Acts ch. 115, sec. 4, effective June 27, 2025; and ch. 138, sec. 6, effective March 31, 2025. -- Amended 2023 Ky. Acts ch. 94, sec. 8, effective June 29, 2023. -- Amended 2019 Ky. Acts ch. 72, sec. 3, effective March 25, 2019. -- Amended 2017 Ky. Acts ch. 12, sec. 8, effective March 10, 2017. -- Amended 2012 Ky. Acts ch. 75, sec. 13, effective April 11, 2012. -- Amended 2008 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 32, effective June 27, 2008. -- Amended 2004 Ky. Acts ch. 121, sec. 5, effective July 1, 2004. -- Amended 2002 Ky. Acts ch. 275, sec. 9, effective July 1, 2002. -- Amended 1994 Ky. Acts ch. 369, sec. 5, effective July 1, 1994. -- Amended 1992 Ky. Acts ch. 192, sec. 4, effective July 1, 1992. -- Amended 1990 Ky. Acts ch. 442, sec. 18, effective July 1, 1990; and ch. 476, Pt. V, sec. 499, effective July 13, 1990. -- Amended 1988 Ky. Acts ch. 363, sec. 4, effective July 1, 1988. -- Amended 1984 Ky. Acts ch. 253, sec. 7, effective July 1, 1984. -- Amended 1980 Ky. Acts ch. 246, sec. 10, effective July 15, 1980. -- Amended 1978 Ky. Acts ch. 152, sec. 4, effective March 28, 1978. -- Amended 1972 Ky. Acts ch. 82, sec. 8. - - Amended 1968 Ky. Acts ch. 136, sec. 3. -- Amended 1966 Ky. Acts ch. 16, sec. 2. - - Amended 1964 Ky. Acts ch. 43, sec. 5. -- Amended 1962 Ky. Acts ch. 64, sec. 4. -- Amended 1960 Ky. Acts ch. 44, sec. 7. -- Amended 1958 Ky. Acts ch. 8, sec. 2. -- Amended 1954 Ky. Acts ch. 215, sec. 1. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 4506b-21.

**Legislative Research Commission Note (6/27/2025).** This statute was amended by 2025 Ky. Acts chs. 115 and 138, which do not appear to be in conflict and have been codified together.

**Legislative Research Commission Note (3/10/2017).** 2017 Ky. Acts ch. 12, sec. 12 provided that amendments made to subsection (6) in 2017 Ky. Acts ch. 12, sec. 8 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 subsection (7) of this statute in 2017 Ky. Acts ch. 12, sec. 8 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. 13, "shall apply to contracts established or contracts renewed on or after July 1, 2012."