

CHAPTER 72

(HB 489)

AN ACT relating to the fiduciary and ethical duties of the boards of trustees for the Kentucky Retirement Systems and the Teachers' Retirement System, and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 61.650 is amended to read as follows:

- (1) (a) The board shall be the trustee of the several funds created by KRS 16.510, 61.515, 61.701, and 78.520, notwithstanding the provisions of any other statute to the contrary, and shall have exclusive power to invest and reinvest such funds in accordance with federal law.
- (b) 1. The board shall establish an investment committee whose membership shall be composed of the following:
 - a. The six (6) trustees appointed by the Governor pursuant to KRS 61.645(1)(e)5.; and
 - b. Three (3) trustees appointed by the board chair.
2. The investment committee shall have authority to implement the investment policies adopted by the board and act on behalf of the board on all investment-related matters and to acquire, sell, safeguard, monitor, and manage the assets and securities of the several funds.
- (c) A trustee, officer, employee, or other fiduciary shall discharge duties with respect to the retirement system:
 1. Solely in the interest of the members and beneficiaries;
 2. For the exclusive purpose of providing benefits to members and beneficiaries and paying reasonable expenses of administering the system;
 3. With the care, skill, and caution under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an activity of like character and purpose;
 4. Impartially, taking into account any differing interests of members and beneficiaries;
 5. Incurring any costs that are appropriate and reasonable; and
 6. In accordance with a good-faith interpretation of the law governing the retirement system.
- (d) In addition to the standards of conduct prescribed by paragraph (c) of this subsection~~[-]~~:
 1. All *internal investment staff and investment consultants*~~[individuals associated with the investment and management of retirement system assets, whether contracted investment advisors, board members, or staff employees,]~~ shall adhere to the Code of Ethics and Standards of Professional Conduct, **and all board trustees shall adhere to**~~the Asset Manager Code of Professional Conduct if the individual is managing retirement system assets, and]~~ the Code of Conduct for Members of a Pension Scheme Governing Body~~[if the individual is a board member]~~. All codes cited in this **subparagraph**~~[paragraph]~~ are promulgated by the CFA Institute; **and**~~[-]~~
 2. ***Investment managers shall comply with all applicable provisions of 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.***
- (2) All securities acquired under authority of KRS 61.510 to 61.705 shall be registered in the name "Kentucky Retirement Systems" or nominee name as provided by KRS 286.3-225 and every change in registration, by reason of sale or assignment of such securities, shall be accomplished pursuant to written policies adopted by the board.

- (3) The board, in keeping with its responsibility as trustee and wherever consistent with its fiduciary responsibilities, shall give priority to the investment of funds in obligation calculated to improve the industrial development and enhance the economic welfare of the Commonwealth.
- (4) The contents of real estate appraisals, engineering or feasibility estimates, and evaluations made by or for the system relative to the acquisition or disposition of property, until such time as all of the property has been acquired or sold, shall be excluded from the application of KRS 61.870 to 61.884 and shall be subject to inspection only upon order of a court of competent jurisdiction.
- (5) Based upon market value at the time of purchase, the board shall limit the amount of assets managed by any one (1) active or passive investment manager to fifteen percent (15%) of the assets in the pension and insurance funds.
- (6) All contracts for the investment or management of assets of the systems 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 systems 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.

➔Section 2. KRS 61.655 is repealed, reenacted, and amended to read as follows:

- (1) No trustee or employee of the Kentucky Retirement Systems board shall:
 - (a) Have any interest, direct or indirect, in the gains or profits of any investment or any other legal, business, or financial transaction made by the board, save insofar as any such trustee or employee may be a member, employee, or beneficiary of the retirement system;
 - (b) Directly or indirectly, for himself or as an agent, use the assets of the retirement system, except to make current and necessary payments authorized by the board;
 - (c) Become an *endorser*~~[indorser]~~ or surety or in any manner an 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 retirement system 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 retirement system. The provisions of this subsection shall not prohibit a trustee from serving as an employee of an agency participating in one (1) of the systems administered by Kentucky Retirement Systems.

- (2) No trustee or employee of the board of trustees, who has served as a trustee or employee of the board on or after July 1, 2017, shall have any interest, direct or indirect, in the gains or profits of any investment or any other legal, business, or financial transaction made by the board of trustees for a period of five (5) years following termination of his or her position, except that any such trustee or employee may be a member, employee, or beneficiary of the systems administered by Kentucky Retirement Systems.
- (3) (a) No person who is serving as a member of the General Assembly or is a public servant as defined by KRS 11A.010(9) shall have any interest, direct or indirect, in the gains or profits of any investment or any other legal, business, or financial transaction made by the board of trustees, except that any such ~~member~~~~trustee~~ or public servant may be a member, employee, or beneficiary of the systems administered by Kentucky Retirement Systems.
- (b) No person who was serving as a member of the General Assembly on or after July 1, 2017, or was serving as a public servant as defined by KRS 11A.010(9) on or after July 1, 2017, shall have any interest, direct or indirect, in the gains or profits of any investment or any other legal, business, or financial transaction made by the board of trustees for a period of five (5) years following termination of his or her position, except that any such member or public servant may be a member, employee, or beneficiary of the systems administered by Kentucky Retirement Systems.

➔Section 3. KRS 161.430 is amended to read as follows:

- (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~~~~employ~~ experienced competent investment ~~managers~~~~counselors~~ to ***invest and manage assets of the system.***~~advise it on all matters pertaining to investment, except~~ The board may ***also*** employ qualified investment ~~staff~~~~personnel~~ to advise it on investment matters ***and to invest and manage assets of the system*** not to exceed fifty percent (50%) ~~of the book value~~ 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~~~~individuals associated with the investment and management of retirement system assets, whether contracted investment advisors, board members, or staff employees,~~ shall adhere to the Code of Ethics and Standards of Professional Conduct, ***and all board trustees shall adhere to***~~the Asset Manager Code of Professional Conduct if the individual is managing retirement system assets, and~~ the Code of Conduct for Members of a Pension Scheme Governing Body ~~if the individual is a board member~~, 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. ~~Effective July 1, 1991,~~ No investment ~~manager~~~~counselor~~ shall manage more than forty percent (40%) of the funds of the retirement system.
- (c) The board may appoint an investment committee ~~consisting of the executive secretary and two (2) trustees~~ 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) The board members and investment **consultants**~~counselor~~ shall discharge their duties with respect to the assets of the system solely in the interests of the active contributing members and annuitants and:
- (a) For the exclusive purpose of providing benefits to members and annuitants and defraying reasonable expenses of administering the system;
 - (b) 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;
 - (c) 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
 - (d) In accordance with the laws, administrative regulations, and other instruments governing the system.
- (3) (a) In choosing and contracting for professional investment management **and consulting** services, the board ~~shall~~~~must~~ do so prudently and in the interest of the members and annuitants. Any contract that the board makes with an investment **manager**~~counselor~~ 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**~~counselor~~ appointed under this section shall acknowledge in writing his fiduciary responsibilities to the fund. To be eligible for appointment, an investment **manager, consultant, or an affiliate, shall**~~counselor must~~ be:
1. Registered under the Federal Investment **Advisers**~~Advisors~~ 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.
- (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~~, by administrative regulation,~~ and may permit its staff and investment **managers who are**~~counselors~~ 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 ~~Kentucky~~ 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.

➔Section 4. KRS 161.460 is repealed, reenacted, and amended to read as follows:

- (1) No trustee or employee of the board of trustees shall:
 - (a) Have any interest, direct or indirect, in the gain or profits of any investment or any other legal, business, or financial transaction made by the board, except that any such trustee or employee may be a member, employee, or beneficiary of the plans administered by the board or authority;
 - (b) Directly or indirectly for himself or as an agent for another, use any of the assets of the retirement system in any manner except to make current and necessary payments authorized by the board;
 - (c) Become an endorser, surety, or obligor for moneys loaned to 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 retirement system 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 retirement system. The provisions of this subsection shall not prohibit a trustee from serving as an employee of an agency participating in the Kentucky Teachers' Retirement System.
- (2) No trustee or employee of the board of trustees, who has served as a trustee or employee of the board on or after July 1, 2017, shall have any interest, direct or indirect, in the gains or profits of any investment or any other legal, business, or financial transaction made by the board of trustees for a period of five (5) years following termination of his or her position, except that any such trustee or employee may be a member, employee, or beneficiary of the Teachers' Retirement System.
- (3)
 - (a) No person who is serving as a member of the General Assembly or is a public servant as defined by KRS 11A.010(9) shall have any interest, direct or indirect, in the gains or profits of any investment or any other legal, business, or financial transaction made by the board of trustees, except that any such ~~member~~~~trustee~~ or public servant may be a member, employee, or beneficiary of the Teachers' Retirement System.
 - (b) No person who was serving as a member of the General Assembly on or after July 1, 2017, or was serving as a public servant as defined by KRS 11A.010(9) on or after July 1, 2017, shall have any interest, direct or indirect, in the gains or profits of any investment or any other legal, business, or financial transaction made by the board of trustees for a period of five (5) years following termination of his or her position, except that any such member or public servant may be a member, employee, or beneficiary of the Teachers' Retirement System.

➔Section 5. Whereas the ability of the state-administered retirement systems to invest the funds of each respective system on behalf of its members is one of its most important fiduciary obligations, an emergency is declared to exist, and this Act takes effect upon its passage and approval of the Governor or upon its otherwise becoming law.

Signed by Governor March 25, 2019.

