

78.790 Board trustee of funds -- Investment committee -- Standards of conduct -- Unitized managed custodial account -- Cap on amount of assets managed by any one investment manager -- Investment procurement policy -- Proxy voting guidelines.

- (1) (a) The board shall be the trustee of funds pertaining to the County Employees Retirement System created by KRS 78.510 to 78.852, and KRS 61.701, and shall have full and exclusive power to invest and reinvest such assets in accordance with federal law.
- (b)
 1. The board shall establish an investment committee that shall include members of the board with investment experience, elected members, or other members as determined by the board chair, and may also include nonvoting members who have investment expertise.
 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.
- (c)
 1. For the purposes of this paragraph:
 - a. "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;
 - b. "Pecuniary factor" means a consideration having a direct and material connection to the financial risk or financial return of an investment;
 - c. 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;
 - d. "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;
 - e. "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;
 - f. "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;
 - g. "Economic analysis" means a written analysis of the economic impact of a shareholder-sponsored proposal, which shall include, at a minimum:
 - i. The subject matter of the shareholder-sponsored proposal;
 - ii. Whether the board of directors of the issuer of securities opposes the shareholder-sponsored proposal and the stated reasons for the opposition;

- iii. Whether the shareholder-sponsored proposal is consistent with the investment policy of the retirement system;
 - iv. The economic benefits and costs of implementing the shareholder-sponsored proposal, as written, in the long and short term;
 - v. The quantifiable impact of the shareholder-sponsored proposal, as written, on the investment returns of the funds of the retirement system; and
 - vi. An explanation of the modeling, procedures, and processes used to complete the economic analysis; and
- h.
 - i. "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.
 - ii. "Proxy adviser" does not include an investment manager as defined in this subparagraph.
2. A trustee, officer, employee, employee of the Kentucky Public Pensions Authority, investment manager, or other fiduciary, or proxy adviser shall discharge duties with respect to the system:
- a. Solely in the interest of the members and beneficiaries;
 - b. For the exclusive purpose of providing benefits to members and beneficiaries and paying reasonable expenses of administering the system;
 - c. 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;
 - d. Impartially, taking into account any differing interests of members and beneficiaries;
 - e. Incurring any costs that are appropriate and reasonable; and
 - f. In accordance with a good-faith interpretation of the federal, state, and common law governing the system and fiduciaries.
3. Evidence that a fiduciary has considered or acted on a nonpecuniary interest shall include but is not limited to:
- a. Statements, explanations, reports, or correspondence;
 - b. Communications with portfolio companies;
 - c. Statements of principles or policies, whether made individually or jointly;
 - d. Votes of shares or proxies; or
 - e. Coalitions, initiatives, agreements, or commitments to which the fiduciary is a participant, affiliate, or signatory.

4. 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:
 - a. The proxy adviser's vote or recommendation is consistent with the recommendation of the board of directors of the issuer of the shares, provided:
 - i. The board of directors of the issuer of the shares is composed of a majority of independent directors; and
 - ii. The recommendation of the board of directors is not for the purpose of furthering a nonpecuniary interest; or
 - b. 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.
- (d) In addition to the standards of conduct prescribed by paragraph (c) of this subsection:
 1. All internal investment staff of the Kentucky Public Pensions Authority, 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. All codes cited in this subparagraph are promulgated by the CFA Institute;
 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; and
 3. 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.
- (e) 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 and governed by the laws of the Commonwealth.
- (2) The board, through adopted written policies, shall maintain ownership and control over its assets held in its unitized managed custodial account.
- (3) The board, in keeping with its responsibility as the trustee and wherever feasible, shall give priority to the investment of funds in obligations 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 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) 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.
- (7)
 - (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 Authority who are fiduciaries under subsection (1) of 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. 3, effective June 27, 2025. -- Amended 2023 Ky. Acts ch. 94, sec. 6, effective June 29, 2023. -- Amended 2021 Ky. Acts ch. 102, sec. 30, effective April 1, 2021. -- Amended 2020 Ky. Acts ch. 79, sec. 5, effective April 1, 2021. -- Amended 2010 Ky. Acts ch. 127, sec. 4, effective July 15, 2010; and ch. 173, sec. 10, effective July 15, 2010. -- Amended 2004 Ky. Acts ch. 36, sec. 35, effective July 13, 2004. -- Amended 2003 Ky. Acts ch. 169, sec. 14, effective March 31, 2003. -- Amended 1988 Ky. Acts ch. 349, sec. 40, effective July 15, 1988. -- Amended 1976 Ky. Acts ch. 321, sec. 40. -- Amended 1974 Ky. Acts ch. 128, sec. 35, effective March 26, 1974. -- Amended 1972 Ky. Acts ch. 116, sec. 72. - - Amended 1966 Ky. Acts ch. 34, sec. 13. -- Amended 1960 Ky. Acts ch. 165, Pt. III, sec. 3. -- Created 1958 Ky. Acts ch. 167, sec. 29.

Legislative Research Commission Note (7/12/2006). 2006 Ky. Acts ch. 247 instructs the Reviser of Statutes to adjust KRS references throughout the statutes to conform with the 2006 renumbering of the Financial Services Code, KRS Chapter 286. Such an adjustment has been made in this statute.