

1 AN ACT relating to the fiduciary duties owed to the state-administered retirement
2 systems.

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

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

- 5 (1) (a) The board shall be the trustee of funds created by KRS 16.510, 61.515, and
6 61.701 pertaining to the accounts for the Kentucky Employees Retirement
7 System or State Police Retirement System, notwithstanding the provisions of
8 any other statute to the contrary, and shall have exclusive power to invest and
9 reinvest such assets in accordance with federal law.
- 10 (b) 1. The board shall establish an investment committee whose membership
11 shall be composed of the following:
- 12 a. The three (3) trustees of the Kentucky Retirement Systems board
13 appointed by the Governor pursuant to KRS 61.645 who have
14 investment experience; and
- 15 b. Additional trustees appointed by the board chair.
- 16 2. The investment committee shall have authority to implement the
17 investment policies adopted by the board and act on behalf of the board
18 on all investment-related matters and to acquire, sell, safeguard,
19 monitor, and manage the assets and securities of the several funds.
- 20 (c) 1. For the purposes of this paragraph:
- 21 a. "Solely in the interest of the members and beneficiaries" shall be
22 determined using only pecuniary factors and shall not include any
23 purpose to further a nonpecuniary interest;
- 24 b. "Pecuniary factor" means a consideration having a direct and
25 material connection to the financial risk or financial return of an
26 investment;
- 27 c. A "material connection" is established if there is a substantial

- 1 likelihood that a reasonable investor would consider it important in
2 determining the financial risk or the financial return of an
3 investment;
- 4 d. "Nonpecuniary interest" includes but is not limited to an
5 environmental, social, political, or ideological interest which does
6 not have a direct and material connection to the financial risk or
7 financial return of an investment; and
- 8 e. "Investment manager" shall have the same definition attributed to
9 "investment adviser" under the federal Investment Advisers Act of
10 1940, 15 U.S.C. sec. 80b-2.
- 11 2. A trustee, officer, employee, employee of the Kentucky Public Pensions
12 Authority, investment manager, or other fiduciary, or proxy adviser shall
13 discharge duties with respect to the retirement system:
- 14 a. Solely in the interest of the members and beneficiaries;
- 15 b. For the exclusive purpose of providing benefits to members and
16 beneficiaries and paying reasonable expenses of administering the
17 system;
- 18 c. With the care, skill, and caution under the circumstances then
19 prevailing that a prudent person acting in a like capacity and
20 familiar with those matters would use in the conduct of an activity
21 of like character and purpose;
- 22 d. Impartially, taking into account any differing interests of members
23 and beneficiaries;
- 24 e. Incurring any costs that are appropriate and reasonable; and
- 25 f. In accordance with a good-faith interpretation of the federal, state,
26 and common law governing the system and fiduciaries.
- 27 3. Evidence that a fiduciary has considered or acted on a nonpecuniary

- 1 interest shall include but is not limited to:
- 2 a. Statements, explanations, reports, or correspondence;
 - 3 b. Communications with portfolio companies;
 - 4 c. Statements of principles or policies, whether made individually or
 - 5 jointly;
 - 6 d. Votes of shares or proxies; or
 - 7 e. Coalitions, initiatives, agreements, or commitments to which the
 - 8 fiduciary is a participant, affiliate, or signatory.

9 (d) In addition to the standards of conduct prescribed by paragraph (c) of this
10 subsection:

- 11 1. All internal investment staff of the Kentucky Public Pensions Authority,
12 and investment consultants shall adhere to the Code of Ethics and
13 Standards of Professional Conduct, and all board trustees shall adhere to
14 the Code of Conduct for Members of a Pension Scheme Governing
15 Body. All codes cited in this subparagraph are promulgated by the CFA
16 Institute;
- 17 2. Investment managers shall comply with all applicable provisions of the
18 federal Investment Advisers Act of 1940, as amended, and the rules and
19 regulations promulgated thereunder, and shall comply with all other
20 applicable federal securities statutes and related rules and regulations
21 that apply to investment managers; and
- 22 3. Proxy advisers and proxy voting services shall comply with all
23 applicable provisions of the Investment Advisers Act of 1940, as
24 amended, and the rules and regulations promulgated thereunder, and
25 shall comply with all other federal statutes and related rules and
26 regulations that apply to proxy advisers and proxy voting services.

27 (e) No contract or agreement, whether made in writing or not, shall in any

1 manner waive, restrict, or limit a fiduciary's liability as to any of the duties
2 imposed by this section. Any agreement shall specify that it is made in the
3 Commonwealth of Kentucky and governed by the laws of the Commonwealth
4 of Kentucky.

- 5 (2) The board, through adopted written policies, shall maintain ownership and control
6 over its assets held in its unitized managed custodial account.
- 7 (3) The board, in keeping with its responsibility as trustee and wherever consistent with
8 its fiduciary responsibilities, shall give priority to the investment of funds in
9 obligation calculated to improve the industrial development and enhance the
10 economic welfare of the Commonwealth.
- 11 (4) The contents of real estate appraisals, engineering or feasibility estimates, and
12 evaluations made by or for the system relative to the acquisition or disposition of
13 property, until such time as all of the property has been acquired or sold, shall be
14 excluded from the application of KRS 61.870 to 61.884 and shall be subject to
15 inspection only upon order of a court of competent jurisdiction.
- 16 (5) Based upon market value at the time of purchase, the board shall limit the amount
17 of assets managed by any one (1) active or passive investment manager to fifteen
18 percent (15%) of the assets in the pension and insurance funds.
- 19 (6) All contracts for the investment or management of assets of the systems shall not be
20 subject to KRS Chapters 45, 45A, 56, and 57. Instead, the board shall conduct the
21 following process to develop and adopt an investment procurement policy with
22 which all prospective contracts for the investment or management of assets of the
23 systems shall comply:
- 24 (a) On or before July 1, 2017, the board shall consult with the secretary of the
25 Finance and Administration Cabinet or his or her designee to develop an
26 investment procurement policy, which shall be written to meet best practices
27 in investment management procurement;

- 1 (b) Thirty (30) days prior to adoption, the board shall tender the preliminary
2 investment procurement policy to the secretary of the Finance and
3 Administration Cabinet or his or her designee for review and comment;
- 4 (c) Upon receipt of comments from the secretary of the Finance and
5 Administration Cabinet or his or her designee, the board shall choose to adopt
6 or not adopt any recommended changes;
- 7 (d) Upon adoption, the board shall tender the final investment procurement policy
8 to the secretary of the Finance and Administration Cabinet or his or her
9 designee;
- 10 (e) No later than thirty (30) days after receipt of the investment procurement
11 policy, the secretary or his or her designee shall certify whether the board's
12 investment procurement policy meets or does not meet best practices for
13 investment management procurement; and
- 14 (f) Any amendments to the investment procurement policy shall adhere to the
15 requirements set forth by paragraphs (b) to (e) of this subsection.
- 16 (7) (a) The board shall adopt written proxy voting guidelines which are consistent
17 with the fiduciary duties and other requirements of this section.
- 18 (b) The board shall not adopt the recommendations of a proxy adviser or proxy
19 voting service and shall not allow such proxy adviser or proxy voting service
20 to vote on behalf of the system, unless the proxy adviser or proxy voting
21 service acknowledges in writing and accepts under contract its duties under
22 this section and commits to follow the board-adopted proxy voting guidelines
23 when voting the system's shares in order to comply with the board's fiduciary
24 duties and other responsibilities under this section.
- 25 (c) All shares held by or on behalf of the system, and which the system is entitled
26 to vote under state, federal, or common laws, shall be voted according to the
27 proxy voting guidelines adopted by the board and subject to the fiduciary

- 1 duties and other requirements of this section by:
- 2 1. The board, the investment committee of the board, or an employee or
- 3 employees of the Authority who are fiduciaries under subsection (1) of
- 4 this section and are appointed or otherwise authorized by the board; or
- 5 2. A proxy adviser or proxy voting service that acknowledges in writing
- 6 and accepts under contract its duties under this section and commits to
- 7 follow the board-adopted proxy voting guidelines when voting the
- 8 system's shares in order to comply with the board's fiduciary duties and
- 9 other responsibilities under this section.
- 10 (d) All proxy votes shall be reported at least quarterly to the board. For each vote,
- 11 the report shall provide:
- 12 1. The vote caption;
- 13 2. The date of the vote;
- 14 3. The company's name;
- 15 4. The vote cast for the system;
- 16 5. The recommendation of the company's management; and
- 17 6. If applicable, the recommendation of the proxy adviser or proxy voting
- 18 service.