

CORRECTIONS IMPACT STATEMENT

SESSION: 19RS BILL # HB 230 Introduced . BR # 1076 DOC ID #: BR107600.100- 1076- 1961v

BILL SPONSOR(S): Rep. J. Graviss AMENDMENT SPONSOR(S): . .

SUBJECT: Kentucky Retirement Systems Board of Trustees

SUMMARY OF LEGISLATION: Amend KRS 61.645 to require the Kentucky Retirement Systems (KRS) to follow the state Model Procurement Code when contracting for investment management services; provide that, in addition to removal upon a conviction of a felony or violation of the Executive Branch Ethics Code, a KRS board member shall also be removed for a violation of fiduciary duties or conflict of interest; provide that a KRS board member shall not be considered as acting in good faith if he or she fails to disclose a conflict of interest; grant the Attorney General concurrent jurisdiction to investigate and prosecute violations of the ethical and fiduciary duties of trustees and investment managers for the Kentucky Retirement Systems; specify investment fee and commission reporting to include underlying fund of funds fees; require investment managers failing to disclose investment holdings, fees, and commissions to forfeit any fees or commission paid by KRS; subject investment contracts made by the Kentucky Retirement System to full public disclosure; amend KRS 61.650 to require investment managers to formally adopt the CFA Institute's codes of conduct; require that failure to adhere to the CFA Institute's codes of conduct shall result in the forfeiture of any fees or commissions paid by the Kentucky Retirement Systems; make conforming amendments; amend KRS 61.655 to repeal, reenact, and amend conflict-of-interest provisions to prohibit a trustee and employees of the Kentucky Retirement Systems from having a contractual agreement with or interest in any entities providing services to the systems and from receiving, directly or indirectly, any interest, fees, or profit from entities that provide services to the Kentucky Retirement Systems; require trustees and employees of the Kentucky Retirement Systems to file annual conflict-of-interest statements with the Kentucky Retirement Systems beginning on August 1, 2019; amend KRS 61.990 to provide that a knowing violation of the ethical and fiduciary duties of trustees and investment managers for the Kentucky Retirement Systems is a Class D felony.

This bill amendment committee substitute is expected to:

Have the following Corrections impact Have no Corrections impact

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| <input checked="" type="checkbox"/> Creates new crime(s) | <input type="checkbox"/> Repeals existing crime(s) |
| <input type="checkbox"/> Increases penalty for existing crime(s) | <input type="checkbox"/> Decreases penalty for existing crime(s) |
| <input type="checkbox"/> Increases incarceration | <input type="checkbox"/> Decreases incarceration |
| <input type="checkbox"/> Reduces inmate/offender services | <input type="checkbox"/> Increases inmate/offender services |
| <input type="checkbox"/> Increases staff time or positions | <input type="checkbox"/> Reduces staff time or positions |
| <input type="checkbox"/> Changes elements of offense for existing crime(s) | |
| <input type="checkbox"/> Otherwise impacts incarceration (Explain) . | |

STATE IMPACT: Class A, B & C felonies are based on an average daily prison rate of \$71.10. Most Class D felons are housed in one of 76 full service jails for up to 5 years. DOC's cost to incarcerate a felony inmate in a jail is \$32.78 per day (includes jail per diem, medical & central office costs), not including substance abuse treatment. Projections are based on the daily rate x 365 x number of years.

Projected Impact: NONE MINIMAL to MODERATE (< \$1 million) SIGNIFICANT (> \$1 million)

Section 1 (KRS 61.645) revisions under Subsection 2 of this legislation include civil litigation coverage for trustees, officers, or employees when duties are performed in good faith and in compliance with this legislation. An exception under KRS 61.650(6) is removed, requiring compliance with the state procurement regulations.

Subsection 6 provides for removal of a trustee from office for violations of conflict of interest, ethical conduct, or fiduciary duties.

Subsection 11 requires, if requested, the Attorney General receive information about board meetings. The Attorney General is authorized to investigate and prosecute violations of conflict of interest, ethical conduct violations, or violation of fiduciary duties.

Subsection 15 clarifies that trustees would not be considered as acting in good faith if he or she has a conflict of interest which is not disclosed in writing to the Kentucky Retirement System.

Subsection 19 requires investment holdings, fees, and commissions to be disclosed by each manager. Disclosures shall include profit sharing, carried interest, or other incentive agreement. Failure to disclose shall result in forfeiture of fees and commissions paid by Kentucky Retirement Systems. Failure to comply may result in court action.

Subsection 20 removes the disclosure exception for disclosures which could compromise competitive investment in real estate and other assets. Added wording requires full disclosure under open records of investment fees and commissions.

Section 2 (KRS 61.650) requires contractors to adhere to the CFA Institute codes of ethical conduct. Violation results in forfeiture of fees and commissions paid by Kentucky Retirement Systems. Wording is deleted related to investment procurement policy.

Section 3 (KRS 61.655) is amended to prohibit trustees and employees from having a contractual relationship or any interest in entities that provide services to the Kentucky Retirement Systems.

Subsection 1 prohibits directly or indirectly receiving interest, fees, or profit from entities that provide services to Kentucky Retirement Systems, except as a trustee or employee is a member or beneficiary of the Kentucky Retirement System.

Subsection 4 requires trustees to file an annual public disclosure of financial holdings.

Section 4 (KRS 61.990) establishes a Class D felony for the knowing violation of a conflict of interest under KRS 61.645(15), ethical conduct violation under KRS 61.650, or violation of fiduciary duties under KRS 61.655.

Offenders subject to this offense would serve their sentence in a county jail facility at a cost to the state of \$31.34 per day to the local jail.

Department of Corrections records reflect zero (0) offenders incarcerated or under supervision for violations of KRS 61.510-61.705. AOC records for FY2018 indicate zero (0) convictions under KRS 61.510-61.705, the statutes for the Kentucky Employees Retirement System.

Overall, the number of convictions generated under this legislation is not expected to be significant.

A Class D Felony sentence is 1 to 5 years.	10 Class D Felons cost KY \$119,649 to \$598,244
1 Class D Felon costs KY \$11,965 to \$59,824	100 Class D Felons cost KY \$1.2M to \$6M

LOCAL IMPACT: Local governments are responsible for the cost of incarcerating individuals charged with Class A or B misdemeanors and felony defendants until disposition of the case. While the expense varies by jail, this estimated impact will be based on \$31.34 per day, which equals the per diem and medical that DOC pays jails to house felony offenders.

Projected Impact: NONE MINIMAL to MODERATE (< \$1 million) SIGNIFICANT (> \$1 million)

As a Class D offender, offenders subject to this offense would serve their sentence in a county jail facility. This provides additional revenue for jails. However, in times of current overcrowding any additional incarceration has an impact on the occupancy of jail beds.

Due to the expected limited number of convictions for offenses established in this legislation, the impact to incarceration at the local level would be minimal to non-existent.

The following offices contributed to this Corrections Impact Statement:

Dept. of Corrections Dept. of Kentucky State Police Administrative Office of the Courts Parole Board Other

NOTE: Consideration should be given to the cumulative impact of all bills that increase the felon population or that impose new obligations on state or local governments. The Department of Corrections and local jails continue to operate over capacity. Without steps to reduce the population, any legislation that increases population or lengthens the term of incarceration will have a significant impact on correctional operations.

APPROVED BY: *Bandy W. P.* **2/7/2019**
Deputy Commissioner, Kentucky Department of Corrections Date