

HOUSE BILL No. 2536

By Committee on Appropriations

2-20

AN ACT concerning retirement and benefits; relating to the Kansas public employees retirement system; investment fund; interest earnings; amending K.S.A. 2000 Supp. 74-4921 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2000 Supp. 74-4921 is hereby amended to read as follows: 74-4921. (1) There is hereby created in the state treasury the Kansas public employees retirement fund. All employee and employer contributions shall be deposited in the state treasury to be credited to the Kansas public employees retirement fund. The fund is a trust fund and shall be used solely for the exclusive purpose of providing benefits to members and member beneficiaries and defraying reasonable expenses of administering the fund. Investment income of the fund shall be added or credited to the fund as provided by law. All benefits payable under the system, refund of contributions and overpayments, purchases or investments under the law and expenses in connection with the system unless otherwise provided by law shall be paid from the fund. The director of accounts and reports is authorized to draw warrants on the state treasurer and against such fund upon the filing in the director's office of proper vouchers executed by the chairperson or the executive secretary of the board. As an alternative, payments from the fund may be made by credits to the accounts of recipients of payments in banks, savings and loan associations and credit unions. A payment shall be so made only upon the written authorization and direction of the recipient of payment and upon receipt of such authorization such payments shall be made in accordance therewith. Orders for payment of such claims may be contained on ~~(a)~~ a letter, memorandum, telegram, computer printout or similar writing, or ~~(b)~~ any form of communication, other than voice, which is registered upon magnetic tape, disc or any other medium designed to capture and contain in durable form conventional signals used for the electronic communication of messages. *On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the Kansas public employees retirement fund interest earnings based on: (a) The average daily balance of moneys in the Kansas public employees re-*

1 *tirement fund; and*

2 *(b) the net earnings rate for the pooled money investment portfolio*
3 *for the preceding month.*

4 (2) The board shall have the responsibility for the management of
5 the fund and shall discharge the board's duties with respect to the fund
6 solely in the interests of the members and beneficiaries of the system for
7 the exclusive purpose of providing benefits to members and such mem-
8 ber's beneficiaries and defraying reasonable expenses of administering
9 the fund and shall invest and reinvest moneys in the fund and acquire,
10 retain, manage, including the exercise of any voting rights and disposal of
11 investments of the fund within the limitations and according to the pow-
12 ers, duties and purposes as prescribed by this section.

13 (3) Moneys in the fund shall be invested and reinvested to achieve
14 the investment objective which is preservation of the fund to provide
15 benefits to members and member beneficiaries, as provided by law and
16 accordingly providing that the moneys are as productive as possible, sub-
17 ject to the standards set forth in this act. No moneys in the fund shall be
18 invested or reinvested if the sole or primary investment objective is for
19 economic development or social purposes or objectives.

20 (4) In investing and reinvesting moneys in the fund and in acquiring,
21 retaining, managing and disposing of investments of the fund, the board
22 shall exercise the judgment, care, skill, prudence and diligence under the
23 circumstances then prevailing, which persons of prudence, discretion and
24 intelligence acting in a like capacity and familiar with such matters would
25 use in the conduct of an enterprise of like character and with like aims
26 by diversifying the investments of the fund so as to minimize the risk of
27 large losses, unless under the circumstances it is clearly prudent not to
28 do so, and not in regard to speculation but in regard to the permanent
29 disposition of similar funds, considering the probable income as well as
30 the probable safety of their capital.

31 (5) Notwithstanding subsection (4): (a) Total investments in common
32 stock may be made in the amount of up to 60% of the total book value
33 of the fund;

34 (b) the board may invest or reinvest moneys of the fund in alternative
35 investments if the following conditions are satisfied:

36 (i) The total of such alternative investments does not exceed more
37 than 5% of the total investment assets of the fund. If the total of such
38 alternative investments exceeds more than 5% of the total investment
39 assets of the fund on the effective date of this act, the board shall not
40 invest or reinvest any moneys of the fund in alternative investments until
41 the total of such alternative investments is less the 5% of the total in-
42 vestment assets of the fund subject to the 5% limitation contained in this
43 subsection. Nothing in this subsection requires the board to liquidate or

1 sell the system's holdings in any alternative investment held by the system
2 on the effective date of this act, unless such liquidation or sale would be
3 in the best interest of the members and beneficiaries of the system and
4 be prudent under the standards contained in this section. The 5% limita-
5 tion contained in this section shall not have been violated if the total of
6 such alternative investments exceeds 5% of the total investment assets of
7 the fund as a result of market forces acting to increase the value of such
8 alternative investments relative to the rest of the system's investments;
9 however, the board shall not invest or reinvest any moneys of the fund
10 in alternative investments until the total of such alternative investments
11 is less than 5% of the total investment assets of the fund subject to the
12 5% limitation contained in this subsection;

13 (ii) if in addition to the system, there are at least two other sophisti-
14 cated investors, as defined by section 301 of the securities and exchange
15 act of 1933;

16 (iii) the system's share in any individual alternative investment is lim-
17 ited to an investment representing not more than 20% of any such indi-
18 vidual alternative investment;

19 (iv) the system has received a favorable and appropriate recommen-
20 dation from a qualified, independent expert in investment management
21 or analysis in that particular type of alternative investment;

22 (v) the alternative investment is consistent with the system's invest-
23 ment policies and objectives as provided in subsection (6);

24 (vi) the individual alternative investment does not exceed more than
25 2.5% of the total alternative investments made under this subsection. If
26 the alternative investment is made pursuant to participation by the system
27 in a multi-investor pool, the 2.5% limitation contained in this subsection
28 is applied to the underlying individual assets of such pool and not to
29 investment in the pool itself. The total of such alternative investments
30 made pursuant to participation by the system in any one individual multi-
31 investor pool shall not exceed more than 20% of the total of alternative
32 investments made by the system pursuant to this subsection. Nothing in
33 this subsection requires the board to liquidate or sell the system's holdings
34 in any alternative investments made pursuant to participation by the sys-
35 tem in any one individual multi-investor pool held by the system on the
36 effective date of this act, unless such liquidation or sale would be in the
37 best interest of the members and beneficiaries of the system and be pru-
38 dent under the standards contained in this section. The 20% limitation
39 contained in this subsection shall not have been violated if the total of
40 such investment in any one individual multi-investor pool exceeds 20%
41 of the total alternative investments of the fund as a result of market forces
42 acting to increase the value of such a multi-investor pool relative to the
43 rest of the system's alternative investments; however, the board shall not

1 invest or reinvest any moneys of the fund in any such individual multi-
2 investor pool until the value of such individual multi-investor pool is less
3 than 20% of the total alternative investments of the fund;

4 (vii) the board has received and considered the investment manager's
5 due diligence findings submitted to the board as required by subsection
6 (6)(c); and

7 (viii) prior to the time the alternative investment is made, the system
8 has in place procedures and systems to ensure that the investment is
9 properly monitored and investment performance is accurately measured.

10 For purposes of this act, "alternative investment" means nontraditional
11 investments outside the established nationally recognized public stock
12 exchanges and government securities market. Alternative investments
13 shall include, but not be limited to, private placements, venture capital,
14 partnerships, limited partnerships and leveraged buyout partnerships;

15 (c) except as otherwise provided, the board may invest or reinvest
16 moneys of the fund in real estate investments if the following conditions
17 are satisfied:

18 (i) The system has received a favorable and appropriate recom-
19 mendation from a qualified, independent expert in investment manage-
20 ment or analysis in that particular type of real estate investment;

21 (ii) the real estate investment is consistent with the system's invest-
22 ment policies and objectives as provided in subsection (6); and

23 (iii) the board has received and considered the investment manager's
24 due diligence findings submitted to the board as required by subsection
25 (6)(c); and

26 (d) the board shall not invest or reinvest moneys of the fund in any
27 banking institution, savings and loan association or credit union which
28 positions the system as a shareholder or owner of such banking institution,
29 savings and loan association or credit union.

30 (6) Subject to the objective set forth in subsection (3) and the stan-
31 dards set forth in subsections (4) and (5) the board shall formulate policies
32 and objectives for the investment and reinvestment of moneys in the fund
33 and the acquisition, retention, management and disposition of invest-
34 ments of the fund. Such policies and objectives shall include:

35 (a) Specific asset allocation standards and objectives;

36 (b) establishment of criteria for evaluating the risk versus the poten-
37 tial return on a particular investment;

38 (c) a requirement that all investment managers submit such man-
39 ager's due diligence findings on each investment to the board or invest-
40 ment advisory committee for approval or rejection prior to making any
41 alternative investment;

42 (d) a requirement that all investment managers shall immediately re-
43 port all instances of default on investments to the board and provide the

1 board with recommendations and options, including, but not limited to,
2 curing the default or withdrawal from the investment; and

3 (e) establishment of criteria that would be used as a guideline for
4 determining when no additional add-on investments or reinvestments
5 would be made and when the investment would be liquidated.

6 The board shall review such policies and objectives, make changes con-
7 sidered necessary or desirable and readopt such policies and objectives
8 on an annual basis.

9 (7) The board may enter into contracts with one or more persons
10 whom the board determines to be qualified, whereby the persons under-
11 take to perform the functions specified in subsection (2) to the extent
12 provided in the contract. Performance of functions under contract so
13 entered into shall be paid pursuant to rates fixed by the board subject to
14 provisions of appropriation acts and shall be based on specific contractual
15 fee arrangements. The system shall not pay or reimburse any expenses of
16 persons contracted with pursuant to this subsection, except that after
17 approval of the board, the system may pay approved investment related
18 expenses subject to provisions of appropriation acts. The board shall re-
19 quire that a person contracted with to obtain commercial insurance which
20 provides for errors and omissions coverage for such person in an amount
21 to be specified by the board, provided that such coverage shall be at least
22 the greater of \$500,000 or 1% of the funds entrusted to such person up
23 to a maximum of \$10,000,000. The board shall require a person con-
24 tracted with to give a fidelity bond in a penal sum as may be fixed by law
25 or, if not so fixed, as may be fixed by the board, with corporate surety
26 authorized to do business in this state. Such persons contracted with the
27 board pursuant to this subsection and any persons contracted with such
28 persons to perform the functions specified in subsection (2) shall be
29 deemed to be agents of the board and the system in the performance of
30 contractual obligations.

31 (8) (a) In the acquisition or disposition of securities, the board may
32 rely on the written legal opinion of a reputable bond attorney or attorneys,
33 the written opinion of the attorney of the investment counselor or man-
34 agers, or the written opinion of the attorney general certifying the legality
35 of the securities.

36 (b) The board shall employ or retain qualified investment counsel or
37 counselors or may negotiate with a trust company to assist and advise in
38 the judicious investment of funds as herein provided.

39 (9) (a) Except as provided in subsection (7) and this subsection, the
40 custody of money and securities of the fund shall remain in the custody
41 of the state treasurer, except that the board may arrange for the custody
42 of such money and securities as it considers advisable with one or more
43 member banks or trust companies of the federal reserve system or with

1 one or more banks in the state of Kansas, or both, to be held in safe-
2 keeping by the banks or trust companies for the collection of the principal
3 and interest or other income or of the proceeds of sale. The services
4 provided by the banks or trust companies shall be paid pursuant to rates
5 fixed by the board subject to provisions of appropriation acts.

6 (b) The state treasurer and the board shall collect the principal and
7 interest or other income of investments or the proceeds of sale of secu-
8 rities in the custody of the state treasurer and pay same when so collected
9 into the fund.

10 (c) The principal and interest or other income or the proceeds of sale
11 of securities as provided in clause (a) of this subsection (9) shall be re-
12 ported to the state treasurer and the board and credited to the fund.

13 (10) The board shall with the advice of the director of accounts and
14 reports establish the requirements and procedure for reporting any and
15 all activity relating to investment functions provided for in this act in order
16 to prepare a record monthly of the investment income and changes made
17 during the preceding month. The record will reflect a detailed summary
18 of investment, reinvestment, purchase, sale and exchange transactions
19 and such other information as the board may consider advisable to reflect
20 a true accounting of the investment activity of the fund.

21 (11) The board shall provide for an examination of the investment
22 program annually. The examination shall include an evaluation of current
23 investment policies and practices and of specific investments of the fund
24 in relation to the objective set forth in subsection (3), the standard set
25 forth in subsection (4) and other criteria as may be appropriate, and rec-
26 ommendations relating to the fund investment policies and practices and
27 to specific investments of the fund as are considered necessary or desir-
28 able. The board shall include in its annual report to the governor as pro-
29 vided in K.S.A. 74-4907, and amendments thereto, a report or a summary
30 thereof covering the investments of the fund.

31 (12) (a) An annual financial-compliance audit of the system, includ-
32 ing any performance audit subjects which are directed to be included in
33 such annual audit by the legislative post audit committee, performance
34 audits of the system as prescribed under the Kansas governmental op-
35 erations law, and such other audits as are directed by the legislative post
36 audit committee under the Kansas legislative post audit act shall be con-
37 ducted. The annual financial-compliance audit shall include, but not be
38 limited to, a review of alternative investments of the system with any
39 estimates of permanent impairments to the value of such alternative in-
40 vestments reported by the system pursuant to K.S.A. 74-4907, and
41 amendments thereto.

42 (b) In accordance with this subsection (12), the annual financial-com-
43 pliance audit may include one or more performance audit subjects as

1 directed by the legislative post audit committee. In considering perform-
2 ance audit subjects to be included in any financial-compliance audit con-
3 ducted pursuant to this subsection (12), the legislative post audit com-
4 mittee shall consider recommendations and requests for performance
5 audits, relating to the system or the management thereof, by the joint
6 committee on pensions, investments and benefits or by any other com-
7 mittee or individual member of the legislature. Commencing with the
8 financial-compliance audit for the fiscal year ending June 30, 1998, the
9 legislative post audit committee shall specify if one or more performance
10 audit subjects shall be included in the financial-compliance audit con-
11 ducted pursuant to this subsection (12), in addition to such other subjects
12 as may be directed to be included in the financial-compliance audit by
13 the legislative post audit committee. Except as otherwise determined by
14 the legislative post audit committee pursuant to this subsection (12), com-
15 mencing with the financial-compliance audit for the fiscal year ending
16 June 30, 1998, one or more performance audit subjects specified by the
17 legislative post audit committee shall be included at least once every two
18 fiscal years in a financial-compliance audit conducted pursuant to this
19 subsection (12). The legislative post audit committee may direct that one
20 or more performance audit subjects are to be included in a financial-
21 compliance audit conducted pursuant to this subsection (12) not more
22 than once during a specific period of three fiscal years, in lieu of once
23 every two fiscal years.

24 (c) The auditor to conduct the financial-compliance audit required
25 pursuant to this subsection (12) shall be specified in accordance with
26 K.S.A. 46-1122, and amendments thereto. If the legislative post audit
27 committee specifies under such statute that a firm, as defined by K.S.A.
28 46-1112, and amendments thereto, is to perform all or part of the audit
29 work of such audit, such firm shall be selected and shall perform such
30 audit work as provided in K.S.A. 46-1123, and amendments thereto, and
31 K.S.A. 46-1125 through 46-1127, and amendments thereto. The audits
32 required pursuant to this subsection (12) shall be conducted in accord-
33 ance with generally accepted governmental auditing standards. The fi-
34 nancial-compliance audit required pursuant to this subsection (12) shall
35 be conducted as soon after the close of the fiscal year as practicable, but
36 shall be completed no later than six months after the close of the fiscal
37 year. The post auditor shall annually compute the reasonably anticipated
38 cost of providing the financial-compliance audit pursuant to this subsec-
39 tion (12), subject to review and approval by the contract audit committee
40 established by K.S.A. 46-1120, and amendments thereto. Upon such ap-
41 proval, the system shall reimburse the division of post audit for the
42 amount approved by the contract audit committee. The furnishing of the
43 financial-compliance audit pursuant to this subsection (12) shall be a

1 transaction between the legislative post auditor and the system and shall
2 be settled in accordance with the provisions of K.S.A. 75-5516, and
3 amendments thereto.

4 (d) Any internal assessment or examination of alternative investments
5 of the system performed by any person or entity employed or retained
6 by the board which evaluates or monitors the performance of alternative
7 investments shall be reported to the legislative post auditor so that such
8 report may be reviewed in accordance with the annual financial-compli-
9 ance audits conducted pursuant to this subsection (12).

10 Sec. 2. K.S.A. 2000 Supp. 74-4921 is hereby repealed.

11 Sec. 3. This act shall take effect and be in force from and after its
12 publication in the statute book.

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