

HOUSE BILL No. 2497

By Committee on Commerce and Labor

2-9

9 AN ACT concerning the Kansas public employees retirement system;
10 relating to investment standards; prohibited investments; divestment,
11 conditions and procedures.

12

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

14 Section 1. (a) As used in sections 1 and 2, and amendments thereto:

15 (1) “Board” means the board of trustees of the Kansas public em-
16 ployees retirement system;

17 (2) “business operations” means maintaining, selling or leasing equip-
18 ment, facilities, personnel, or any other apparatus of business or com-
19 merce in Iran, including the ownership or possession of real or personal
20 property located in Iran;

21 (3) “company” means a sole proprietorship, organization, association,
22 corporation, partnership, venture or other entity, its subsidiary or affiliate
23 that exists for profitmaking purposes or to otherwise secure economic
24 advantage. “Company” also means a company owned or controlled, either
25 directly or indirectly, by the government of Iran, that is established or
26 organized under the laws of or has its principal place of business in the
27 republic of the Iran;

28 (4) “government of Iran” means the government of Iran or its
29 instrumentalities;

30 (5) “invest” or “investment” means the purchase, ownership or con-
31 trol of stock of a company, association or corporation, the capital stock of
32 a mutual water company or corporation, bonds issued by the government
33 or a political subdivision of Iran, corporate bonds or other debt instru-
34 ments issued by a company, or the commitment of funds or other assets
35 to a company, including a loan or extension of credit to that company;

36 (6) “KPERS fund” means the Kansas public employees retirement
37 fund created pursuant to the provisions of K.S.A. 74-4921, and amend-
38 ments thereto;

39 (7) “research firm” means a reputable, neutral third-party research
40 firm;

41 (8) “substantial action” means a boycott of the government of Iran,
42 curtailing business in Iran until that time described in subsection (m),
43 selling company assets, equipment or real and personal property located

1 in Iran, or undertaking significant humanitarian efforts in Iran; and
2 (9) “Iran” means the Islamic republic of the Iran, a territory under
3 the administration or control of Iran or an individual, company, or public
4 agency that supports the Islamic republic of Iran.
5 (b) The board shall not invest KPERS funds in a company with busi-
6 ness operations in Iran.
7 (c) (1) The board may contract with a research firm or firms to de-
8 termine those companies that have business operations in Iran. Such re-
9 search firm or firms may obtain aggregate data on a majority of companies
10 with business operations in Iran. On or before September 30, 2007, such
11 research firm or firms may report any findings to the board and may
12 submit further findings to the board if there is a change of circumstances
13 in Iran.
14 (2) In addition to the reports described in subsection (c)(1), the board
15 shall take all of the following actions no later than September 30, 2007:
16 (A) Review publicly available information regarding companies with
17 business operations in Iran;
18 (B) contact other institutional investors that invest in companies with
19 business operations in Iran; and
20 (C) send written notice to a company with business operations in Iran
21 that the company may be subject to this section.
22 (d) (1) The board shall determine, by the next applicable board
23 meeting and based on the information and reports described in subsec-
24 tion (c), if a company meets the requirement described in subsection (b).
25 If the board plans to invest or has investments in a company that meets
26 the requirement described in subsection (b), that planned or existing
27 investment shall be subject to subsections (f) and (g).
28 (2) Investments of the board in a company that does not meet the
29 requirement described in subsection (b) are not subject to subsection (g),
30 provided that the company does not subsequently meet the requirement
31 described in subsection (b). The board shall identify the reasons why that
32 company does not satisfy the requirement described in subsection (b) in
33 the report to the joint committee on pensions, investments and benefits
34 described in subsection (h).
35 (e) (1) Notwithstanding subsection (d), if the board’s investment in
36 a company described in subsection (b) is limited to investment via an
37 externally and actively managed commingled fund, the board shall contact
38 that fund manager in writing and request that the fund manager remove
39 that company from the KPERS fund as described in subsection (g). If
40 the KPERS fund or account manager creates a fund or account devoid
41 of companies described in subsection (b), the transfer of board invest-
42 ments from the prior fund or account to the fund or account devoid of
43 companies with business operations in Iran shall be deemed to satisfy

1 subsection (g).

2 (2) If the board's investment in a company described in subsection
3 (b) is limited to an alternative fund or account, the alternative fund or
4 account manager creates an actively managed commingled fund that ex-
5 cludes companies described in subsection (b), and the new fund or ac-
6 count is deemed to be financially equivalent to the existing fund or ac-
7 count, the transfer of board investments from the existing fund or account
8 to the new fund or account shall be deemed to satisfy subsection (g). If
9 the board determines that the new fund or account is not financially
10 equivalent to the existing fund, the board shall include the reasons for
11 that determination in the report described in subsection (h).

12 (3) The board shall make a good faith effort to identify any private
13 equity investments that involve companies described in subsection (b) or
14 are linked to the government of Iran. If the board determines that a
15 private equity investment clearly involves a company described in sub-
16 section (b) or is linked to the government of Iran, the board shall consider,
17 at its discretion, if those private equity investments shall be subject to
18 subsection (g). If the board determines that a private equity investment
19 clearly involves a company described in subsection (b) or is linked to the
20 government of Iran and the board does not take action as described in
21 subsection (g), the board shall include the reasons for its decision in the
22 report described in subsection (h).

23 (f) Except as described in subsection (e) or subsection (d)(2), the
24 board, in the board's capacity of shareholder or investor, shall notify any
25 company described in subsection (d)(1) that the company is subject to
26 subsection (g) and permit that company to respond to the information
27 and reports described in subsection (c). The board shall request that the
28 company take substantial action no later than 90 days from the date the
29 board notified the company under this subsection. If the board deter-
30 mines that a company has taken substantial action or has made sufficient
31 progress towards substantial action before the expiration of that 90-day
32 period, that company shall not be subject to subsection (g). The board
33 shall, at intervals not to exceed 90 days, continue to monitor and review
34 the progress of the company until that company has taken substantial
35 action in Iran. A company that fails to complete substantial action or
36 continue to make sufficient progress towards substantial action by the
37 next time interval shall be subject to subsection (g).

38 (g) If a company described in subsection (d)(1) fails to complete sub-
39 stantial action by the time described in subsection (f), the board shall take
40 the following actions:

41 (1) The board shall not make additional or new investments or renew
42 existing investments in that company.

43 (2) The board shall liquidate the investments of the board in that

- 1 company no later than 18 months after this subsection applies to that
2 company. The board shall liquidate those investments in a manner to
3 address the need for companies to take substantial action in Iran and
4 consistent with the board's fiduciary responsibilities as provided in K.S.A.
5 74-4921, and amendments thereto.
- 6 (h) On or before June 30, 2008, and every year thereafter, the board
7 shall file a report with the joint committee on pensions, investments and
8 benefits. The report shall describe the following:
- 9 (1) A list of investments the board has in companies with business
10 operations in Iran, including, but not limited to, the issuer, by name, of
11 the stock, bonds, securities and other evidence of indebtedness;
- 12 (2) a detailed summary of the business operations a company de-
13 scribed in subsection (h)(1) has in Iran and whether that company satisfies
14 subsection (b);
- 15 (3) whether the board has reduced KPERS fund investments in a
16 company that satisfies subsection (b);
- 17 (4) if the board has not completely reduced KPERS fund investments
18 in a company that satisfies subsection (b), when the board anticipates that
19 the board will reduce all investments in that company or the reasons why
20 a sale or transfer of investments is inconsistent with the fiduciary respon-
21 sibilities of the board as provided in K.S.A. 74-4921, and amendments
22 thereto;
- 23 (5) any information described in subsection (d); and
- 24 (6) a detailed summary of investments that were transferred to funds
25 or accounts devoid of companies with business operations in Iran as de-
26 scribed in subsection (e).
- 27 (i) If the board voluntarily sells or transfers all KPERS fund invest-
28 ments in a company with business operations in Iran, this section shall
29 not apply except that the board shall file a report with the legislature
30 related to that company as described in subsection (h).
- 31 (j) Nothing in this section shall require the board to take action as
32 described in this section unless the board determines, in good faith, that
33 the action described in this section is consistent with the fiduciary re-
34 sponsibilities of the board as provided in K.S.A. 74-4921, and amend-
35 ments thereto.
- 36 (k) Subsection (g) shall not apply to any of the following:
- 37 (1) Investments in a company that is primarily engaged in supplying
38 goods or services intended to relieve human suffering in Iran;
- 39 (2) investments in a company that promotes health, education, jour-
40 nalist or religious activities in or welfare in Iran; and
- 41 (3) investments in a United States company that is authorized by the
42 federal government to have business operations in Iran.
- 43 (l) This section shall remain in effect only until the United States

1 revokes its current sanctions against Iran and, as of the date of that action,
2 is repealed.

3 Sec. 2. Present, future and former board members jointly and indi-
4 vidually, state officers and employees, research firms described in sub-
5 section (c) of section 1, and amendments thereto, and investment man-
6 agers under contract with the Kansas public employees retirement system
7 shall be indemnified from the state general fund and held harmless by
8 the state from all claims, demands, suits, actions, damages, judgments,
9 costs, charges and expenses, including court costs and attorney's fees, and
10 against all liability, losses and damages of any nature whatsoever that these
11 present, future or former board members, officers, employees, research
12 firms or contract investment managers shall or may at any time sustain
13 by reason of any decision to restrict, reduce or eliminate investments
14 pursuant to section 1, and amendments thereto.

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