

HOUSE BILL No. 2383

By Committee on Taxation

2-28

1 AN ACT concerning retirement and pensions; relating to the Kansas public
2 employees retirement system; investment standards; prohibited
3 investments, Iran; divestment therefrom, conditions and procedures;
4 indemnification and hold harmless provisions.
5

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

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

8 (1) "Board" means the board of trustees of the Kansas public
9 employees retirement system;

10 (2) "company" means any sole proprietorship, organization,
11 association, corporation, partnership, joint venture, limited partnership,
12 limited liability partnership, limited liability company, or other entity or
13 business association that exists for the purpose of making profit;

14 (3) "direct holdings" in a company means all securities of that
15 company that are held directly by the KPERS fund or in an account or
16 fund in which the KPERS fund owns all shares or interests;

17 (4) "government of Iran" means the government of Iran, its
18 instrumentalities, and companies owned or controlled by the government
19 of Iran;

20 (5) "inactive business activities" means the mere continued holding or
21 renewal of rights to property previously operated for the purpose of
22 generating revenues but not presently deployed for such purpose;

23 (6) "indirect holdings" in a company means all securities of that
24 company that are held in an account or fund, such as a mutual fund,
25 managed by one or more persons not employed by the KPERS fund, in
26 which the KPERS fund owns shares or interests together with other
27 investors not subject to the provisions of this act;

28 (7) "Iran" means the Islamic Republic of Iran;

29 (8) "KPERS fund" means the Kansas public employees retirement
30 fund created pursuant to the provisions of K.S.A. 74-4921, and
31 amendments thereto;

32 (9) "petroleum resources" means petroleum or natural gas;

33 (10) "scrutinized business activities" means business activities that
34 have resulted in a company becoming a scrutinized company;

35 (11) "scrutinized company" means any company that has, with actual
36 knowledge, on or after August 5, 1996, made an investment of \$20 million

1 or more in Iran's petroleum sector which directly or significantly
2 contributes to the enhancement of Iran's ability to develop the petroleum
3 resources of Iran; and

4 (12) "substantial action specific to Iran" means adopting, publicizing,
5 and implementing a formal plan to cease scrutinized business activities
6 within one year and to refrain from any such new business activities.

7 (b) Within 45 days after the effective date of this act, the board shall
8 make the board's best efforts to identify all scrutinized companies in which
9 the KPERS fund has direct holdings or indirect holdings. Such efforts
10 include: (1) Reviewing and relying, as appropriate in the board's judgment,
11 on publicly available information regarding companies that have invested
12 more than \$20 million in any given year since August 5, 1996, in Iran's
13 petroleum energy sector, including information provided by nonprofit
14 organizations, research firms, international organizations, and government
15 entities; and

16 (2) by the first meeting of the board following the 45-day period
17 described in this subsection, assembling all scrutinized companies that fit
18 criteria specified in subsection (a)(10) into a scrutinized companies with
19 activities in the Iran petroleum energy sector list.

20 The board shall update and make publicly available annually from the
21 effective date of this act the scrutinized companies with activities in the
22 Iran petroleum energy sector list based on evolving information from,
23 among other sources, those listed in this act.

24 (c) The Kansas public employees retirement system shall adhere to
25 the following procedure for assembling companies on the scrutinized
26 companies with activities in the Iran petroleum energy sector list:

27 (1) For each company in which the KPERS fund has direct holdings
28 newly identified under subsection (b), the board shall send a written notice
29 informing the company of its scrutinized company status and that it may
30 become subject to divestment by the board. The notice must inform the
31 company of the opportunity to clarify its Iran-related activities and
32 encourage the company, within 90 days, to cease its scrutinized business
33 activities or convert such activities to inactive business activities in order
34 to avoid qualifying for divestment by the board. Such notice shall be sent
35 no later than 135 days after the effective date of this act. If, within 90 days
36 after the board's first engagement with a company pursuant to this
37 paragraph, the company announces by public disclosure substantial action
38 specific to Iran, the board may maintain its direct holdings, but the
39 company shall remain on the scrutinized companies with activities in the
40 Iran petroleum energy sector list pending completion of its cessation of
41 scrutinized business activities.

42 (2) If, after 90 days following the board's first engagement with a
43 company pursuant to subsection (c)(1), the company has not announced by

1 public disclosure substantial action specific to Iran, or the board
2 determines or becomes aware that the company continues to have
3 scrutinized business activities, the board within 12 months after the
4 expiration of such 90-day period shall sell, redeem, divest or withdraw all
5 publicly traded securities of the company from the KPERS fund's direct
6 holdings.

7 (3) If the board determines or becomes aware that a company that
8 ceased scrutinized business activities following engagement pursuant to
9 subsection (c)(1) has resumed such activities, the board shall send a
10 written notice to the company under subsection (c)(1), and (c)(2) also shall
11 apply. The company also shall be immediately reintroduced onto the
12 scrutinized companies with activities in the Iran petroleum energy sector
13 list.

14 (4) The board shall monitor the scrutinized company that has
15 announced by public disclosure substantial action specific to Iran and, if
16 after one year the board determines or becomes aware that the company
17 has not implemented such plan, within three months after the expiration of
18 such one year period shall sell, redeem, divest or withdraw all publicly
19 traded securities of the company from the KPERS fund's direct holdings,
20 and the company also shall be immediately reintroduced onto the
21 scrutinized companies with activities in the Iran petroleum energy sector
22 list.

23 (5) The board may not acquire securities of companies on the
24 scrutinized companies with activities in the Iran petroleum energy sector
25 list.

26 (6) Notwithstanding the provisions of this act, subsection (c)(2) does
27 not apply to the KPERS fund's indirect holdings. However, the board shall
28 submit letters to the managers of any managed investment funds
29 containing companies on the scrutinized companies with activities in the
30 Iran petroleum energy sector list that such managers consider removing
31 such companies from the fund or create a similar actively managed fund
32 having indirect holdings devoid of such companies. If the manager creates
33 a similar fund devoid of such securities or if such funds are created
34 elsewhere, the board shall determine within six months whether to replace
35 all applicable investments with investments in the similar fund in an
36 expedited timeframe consistent with prudent investing standards. For the
37 purposes of this section, a private equity fund is deemed to be an actively
38 managed investment fund.

39 (d) The board shall file a report with the joint committee on pensions,
40 investments and benefits that includes the scrutinized companies with
41 activities in the Iran petroleum energy sector list within 30 days after the
42 list is created. This report shall be made available to the public. On an
43 annual basis thereafter, the board shall file a report which shall be made

1 available to the joint committee on pensions, investments and benefits and
2 the public which includes:

3 (1) A summary of correspondence with companies engaged by the
4 board under subsection (c)(1);

5 (2) all investments sold, redeemed, divested or withdrawn in
6 compliance with subsection (c)(2);

7 (3) all prohibited investments under subsection (c)(5);

8 (4) any progress made under subsection (c)(6); and

9 (5) a list of all publicly traded securities held directly by this state.

10 (e) This act expires upon the occurrence of any of the following: (1)

11 The congress or president of the United States affirmatively and
12 unambiguously states, by means including, but not limited to, legislation,
13 executive order, or written certification from the president to congress, that
14 the government of Iran has ceased to pursue the capabilities to develop
15 nuclear weapons and support international terrorism;

16 (2) the United States revokes all sanctions imposed against the
17 government of Iran; or

18 (3) the congress or president of the United States affirmatively and
19 unambiguously declares, by means including, but not limited to,
20 legislation, executive order, or written certification from the president to
21 congress, that mandatory divestment of the type provided for in this act
22 interferes with the conduct of United States foreign policy.

23 (f) With respect to actions taken in compliance with this act,
24 including all good faith determinations regarding companies as required by
25 this act, the Kansas public employees retirement system is exempt from
26 any conflicting statutory or common law obligations, including any such
27 obligations with respect to choice of asset managers, investment funds, or
28 investments for the KPERs fund's securities portfolios.

29 (g) If any provision of this act or its application to any person or
30 circumstance is held invalid, the invalidity does not affect other provisions
31 or applications of the act that can be given effect without the invalid
32 provision or application, and to this end, the provisions of this act are
33 severable. The legislature hereby declares that it would have passed this
34 act and each provision of this act, irrespective of the fact that any one or
35 more provisions of this act might be declared invalid, illegal,
36 unenforceable or unconstitutional, including, but not limited to, each of the
37 engagement, divestment and prohibition provisions of this act.

38 Sec. 2. Present, future and former board members jointly and
39 individually, state officers and employees, research firms described in
40 section 1, and amendments thereto, and investment managers under
41 contract with the Kansas public employees retirement system shall be
42 indemnified from the state general fund and held harmless by the state
43 from all claims, demands, suits, actions, damages, judgments, costs,

1 charges and expenses, including court costs and attorney's fees, and
2 against all liability, losses and damages of any nature whatsoever that these
3 present, future or former board members, officers, employees, research
4 firms or contract investment managers shall or may at any time sustain by
5 reason of any decision to restrict, reduce or eliminate investments pursuant
6 to section 1, and amendments thereto.

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