

1 AN ACT relating to Kentucky investments by public pension funds.

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

3 ➔Section 1. KRS 16.642 is amended to read as follows:

4 (1) The board shall be the trustee of the several funds created by KRS 16.505 to 16.652
5 and shall have full power to invest and reinvest such funds, subject to the
6 limitations that no investments shall be made except upon the exercise of bona fide
7 discretion, in securities which, at the time of making the investment, are, by law,
8 permitted for the investment of funds by fiduciaries in this state, except that the
9 board may, at its discretion, purchase common stock in corporations that do not
10 have a record of paying dividends to their stockholders. Subject to such limitations,
11 the board shall have full power to hold, purchase, sell, assign, transfer or dispose of
12 any of the securities or investments in which any of the funds created herein have
13 been invested, as well as of the proceeds of such investments and any moneys
14 belonging to such funds.

15 (2) All securities acquired under authority of KRS 16.505 to 16.652 shall be registered
16 in the name "Kentucky Retirement Systems" or nominee name as provided by KRS
17 286.3-225, and every change in registration, by reason of sale or assignment of such
18 securities shall be accomplished pursuant to written policies adopted by the board.

19 (3) **(a)** The board, in keeping with its responsibility as trustee and wherever feasible,
20 shall give priority to the investment of funds in obligations calculated to
21 improve the industrial development and enhance the economic welfare of the
22 Commonwealth.

23 **(b) 1. The board shall make it a goal of the system to invest at least one and**
24 **one-half percent (1.5%) of system assets in Kentucky private equity**
25 **funds. Any investment decision made by the board to invest in a**
26 **Kentucky private equity fund or funds must be consistent with the**
27 **board's fiduciary responsibilities and duties as trustees.**

- 1 2. For purposes of this paragraph, a "Kentucky private equity fund"
2 means an entity that makes, manages, or sources potential investments
3 in Kentucky businesses and that:
- 4 a. Has as its primary business activity the investment of funds in
5 return for equity in or debt of businesses for the purpose of
6 providing capital for start-up, expansion, product or market
7 development, recapitalization, or similar business purposes;
- 8 b. Holds out the prospects for capital appreciation from such
9 investments; and
- 10 c. Is committed to investing or helps secure investing by others, in
11 an amount at least equal to the total investment made by the
12 system in funds administered by Kentucky Retirement Systems,
13 in businesses with a principal place of business in Kentucky and
14 that hold promise for attracting additional capital from
15 individual or institutional investors nationwide for businesses in
16 Kentucky.
- 17 3. The system shall develop procedures for informing the business
18 community of the potential for Kentucky private equity fund
19 investments by the fund, accepting and evaluating applications for
20 Kentucky private equity fund investments, and working with members
21 of the business community in executing Kentucky private equity fund
22 investments which are consistent with this section and the board's
23 fiduciary responsibilities and duties. The board shall include in the
24 criteria it uses to evaluate Kentucky private equity fund investments
25 the potential for creating new employment opportunities and adding to
26 the total job pool in Kentucky. The board may cooperate with the
27 board of trustees of the Teachers' Retirement System in developing its

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program and procedures.

4. On or before November 15th of each year, the systems shall electronically submit to the Legislative Research Commission a report of Kentucky private equity fund investments by the systems including a summary of the type and amount of Kentucky private equity fund investments and a detailed listing of all Kentucky private equity fund investments by amount and the progress towards the goal to invest one and one-half percent (1.5%) of fund assets in Kentucky private equity fund investments. The report shall also include the number of applications for Kentucky private equity fund investments received, the nature of the investments proposed, the amount requested, the amount invested, and the percentage of applications which resulted in investments.

(4) The investment committee established pursuant to KRS 61.650 shall serve as the investment committee of the funds established by KRS 16.505 to 16.652.

(5) Based upon market value at the time of purchase, the board shall limit the amount of assets managed by any one (1) active or passive investment manager to fifteen percent (15%) of the assets in the pension and insurance funds.

➔Section 2. KRS 61.650 is amended to read as follows:

(1) (a) The board shall be the trustee of the several funds created by KRS 16.510, 61.515, 61.701, and 78.520, notwithstanding the provisions of any other statute to the contrary, and shall have exclusive power to invest and reinvest such funds in accordance with federal law.

(b) 1. The board shall establish an investment committee whose membership shall be composed of the following:

a. The six (6) trustees appointed by the Governor pursuant to KRS 61.645(1)(e)5.; and

- 1 b. Three (3) trustees appointed by the board chair.
- 2 2. The investment committee shall have authority to implement the
- 3 investment policies adopted by the board and act on behalf of the board
- 4 on all investment-related matters and to acquire, sell, safeguard,
- 5 monitor, and manage the assets and securities of the several funds.
- 6 (c) A trustee, officer, employee, or other fiduciary shall discharge duties with
- 7 respect to the retirement system:
- 8 1. Solely in the interest of the members and beneficiaries;
- 9 2. For the exclusive purpose of providing benefits to members and
- 10 beneficiaries and paying reasonable expenses of administering the
- 11 system;
- 12 3. With the care, skill, and caution under the circumstances then prevailing
- 13 that a prudent person acting in a like capacity and familiar with those
- 14 matters would use in the conduct of an activity of like character and
- 15 purpose;
- 16 4. Impartially, taking into account any differing interests of members and
- 17 beneficiaries;
- 18 5. Incurring any costs that are appropriate and reasonable; and
- 19 6. In accordance with a good-faith interpretation of the law governing the
- 20 retirement system.
- 21 (d) In addition to the standards of conduct prescribed by paragraph (c) of this
- 22 subsection:
- 23 1. All internal investment staff and investment consultants shall adhere to
- 24 the Code of Ethics and Standards of Professional Conduct, and all board
- 25 trustees shall adhere to the Code of Conduct for Members of a Pension
- 26 Scheme Governing Body. All codes cited in this subparagraph are
- 27 promulgated by the CFA Institute; and

- 1 2. Investment managers shall comply with all applicable provisions of the
2 federal Investment Advisers Act of 1940, as amended, and the rules and
3 regulations promulgated thereunder, and shall comply with all other
4 applicable federal securities statutes and related rules and regulations
5 that apply to investment managers.
- 6 (2) All securities acquired under authority of KRS 61.510 to 61.705 shall be registered
7 in the name "Kentucky Retirement Systems" or nominee name as provided by KRS
8 286.3-225 and every change in registration, by reason of sale or assignment of such
9 securities, shall be accomplished pursuant to written policies adopted by the board.
- 10 (3) (a) The board, in keeping with its responsibility as trustee and wherever
11 consistent with its fiduciary responsibilities, shall give priority to the
12 investment of funds in obligation calculated to improve the industrial
13 development and enhance the economic welfare of the Commonwealth.
- 14 (b) 1. The board shall make it a goal of the system to invest at least one and
15 one-half percent (1.5%) of system assets in Kentucky private equity
16 funds. Any investment decision made by the board to invest in a
17 Kentucky private equity fund or funds must be consistent with the
18 board's fiduciary responsibilities and duties as trustees.
- 19 2. For purposes of this paragraph, a "Kentucky private equity fund"
20 means an entity that makes, manages, or sources potential investments
21 in Kentucky businesses and that:
- 22 a. Has as its primary business activity the investment of funds in
23 return for equity in or debt of businesses for the purpose of
24 providing capital for start-up, expansion, product or market
25 development, recapitalization, or similar business purposes;
- 26 b. Holds out the prospects for capital appreciation from such
27 investments; and

1 c. Is committed to investing or helps secure investing by others, in
2 an amount at least equal to the total investment made by the
3 system in funds administered by Kentucky Retirement Systems,
4 in businesses with a principal place of business in Kentucky and
5 that hold promise for attracting additional capital from
6 individual or institutional investors nationwide for businesses in
7 Kentucky.

8 3. The system shall develop procedures for informing the business
9 community of the potential for Kentucky private equity fund
10 investments by the fund, accepting and evaluating applications for
11 Kentucky private equity fund investments, and working with members
12 of the business community in executing Kentucky private equity fund
13 investments which are consistent with this section and the board's
14 fiduciary responsibilities and duties. The board shall include in the
15 criteria it uses to evaluate Kentucky private equity fund investments
16 the potential for creating new employment opportunities and adding to
17 the total job pool in Kentucky. The board may cooperate with the
18 board of trustees of the Teachers' Retirement System in developing its
19 program and procedures.

20 4. On or before November 15th of each year, the systems shall
21 electronically submit to the Legislative Research Commission a report
22 of Kentucky private equity fund investments by the systems including a
23 summary of the type and amount of Kentucky private equity fund
24 investments and a detailed listing of all Kentucky private equity fund
25 investments by amount and the progress towards the goal to invest one
26 and one-half percent (1.5%) of fund assets in Kentucky private equity
27 fund investments. The report shall also include the number of

1 *applications for Kentucky private equity fund investments received, the*
2 *nature of the investments proposed, the amount requested, the amount*
3 *invested, and the percentage of applications which resulted in*
4 *investments.*

- 5 (4) The contents of real estate appraisals, engineering or feasibility estimates, and
6 evaluations made by or for the system relative to the acquisition or disposition of
7 property, until such time as all of the property has been acquired or sold, shall be
8 excluded from the application of KRS 61.870 to 61.884 and shall be subject to
9 inspection only upon order of a court of competent jurisdiction.
- 10 (5) Based upon market value at the time of purchase, the board shall limit the amount
11 of assets managed by any one (1) active or passive investment manager to fifteen
12 percent (15%) of the assets in the pension and insurance funds.
- 13 (6) All contracts for the investment or management of assets of the systems shall not be
14 subject to KRS Chapters 45, 45A, 56, and 57. Instead, the board shall conduct the
15 following process to develop and adopt an investment procurement policy with
16 which all prospective contracts for the investment or management of assets of the
17 systems shall comply:
- 18 (a) On or before July 1, 2017, the board shall consult with the secretary of the
19 Finance and Administration Cabinet or his or her designee to develop an
20 investment procurement policy, which shall be written to meet best practices
21 in investment management procurement;
- 22 (b) Thirty (30) days prior to adoption, the board shall tender the preliminary
23 investment procurement policy to the secretary of the Finance and
24 Administration Cabinet or his or her designee for review and comment;
- 25 (c) Upon receipt of comments from the secretary of the Finance and
26 Administration Cabinet or his or her designee, the board shall choose to adopt
27 or not adopt any recommended changes;

- 1 (d) Upon adoption, the board shall tender the final investment procurement policy
2 to the secretary of the Finance and Administration Cabinet or his or her
3 designee;
- 4 (e) No later than thirty (30) days after receipt of the investment procurement
5 policy, the secretary or his or her designee shall certify whether the board's
6 investment procurement policy meets or does not meet best practices for
7 investment management procurement; and
- 8 (f) Any amendments to the investment procurement policy shall adhere to the
9 requirements set forth by paragraphs (b) to (e) of this subsection.

10 ➔Section 3. KRS 78.790 is amended to read as follows:

- 11 (1) The board shall be the trustee of the several funds created by KRS 78.510 to 78.852,
12 and shall have full power to invest and reinvest such funds subject to the limitations
13 that no investments shall be made except upon the exercise of bona fide discretion,
14 in securities which, at the time of making the investment, are, by law, permitted for
15 the investment of funds by fiduciaries in this state except that the board may, at its
16 discretion, purchase common stocks in corporations that do not have a record of
17 paying dividends to their stockholders. Subject to such limitations, the board shall
18 have full power to hold, purchase, sell, assign, transfer or dispose of any of the
19 securities or investments in which any of the funds created herein have been
20 invested, as well as of the proceeds of such investments and any moneys belonging
21 to such funds.
- 22 (2) All securities acquired under the authority of KRS 78.510 to 78.852 shall be
23 registered in the name Kentucky Retirement Systems or nominee name as provided
24 by KRS 286.3-225 and every change in registration, by reason of sale or assignment
25 of such securities, shall be accomplished pursuant to written policies adopted by the
26 board.
- 27 (3) (a) The board, in keeping with its responsibility as the trustee and wherever

1 feasible, shall give priority to the investment of funds in obligations calculated
2 to improve the industrial development and enhance the economic welfare of
3 the Commonwealth.

4 **(b) 1. The board shall make it a goal of the system to invest at least one and**
5 **one-half percent (1.5%) of system assets in Kentucky private equity**
6 **funds. Any investment decision made by the board to invest in a**
7 **Kentucky private equity fund or funds must be consistent with the**
8 **board's fiduciary responsibilities and duties as trustees.**

9 **2. For purposes of this paragraph, a "Kentucky private equity fund"**
10 **means an entity that makes, manages, or sources potential investments**
11 **in Kentucky businesses and that:**

12 **a. Has as its primary business activity the investment of funds in**
13 **return for equity in or debt of businesses for the purpose of**
14 **providing capital for start-up, expansion, product or market**
15 **development, recapitalization, or similar business purposes;**

16 **b. Holds out the prospects for capital appreciation from such**
17 **investments; and**

18 **c. Is committed to investing or helps secure investing by others, in**
19 **an amount at least equal to the total investment made by the**
20 **system in funds administered by Kentucky Retirement Systems,**
21 **in businesses with a principal place of business in Kentucky and**
22 **that hold promise for attracting additional capital from**
23 **individual or institutional investors nationwide for businesses in**
24 **Kentucky.**

25 **3. The system shall develop procedures for informing the business**
26 **community of the potential for Kentucky private equity fund**
27 **investments by the fund, accepting and evaluating applications for**

1 Kentucky private equity fund investments, and working with members
 2 of the business community in executing Kentucky private equity fund
 3 investments which are consistent with this section and the board's
 4 fiduciary responsibilities and duties. The board shall include in the
 5 criteria it uses to evaluate Kentucky private equity fund investments
 6 the potential for creating new employment opportunities and adding to
 7 the total job pool in Kentucky. The board may cooperate with the
 8 board of trustees of the Teachers' Retirement System in developing its
 9 program and procedures.

10 4. On or before November 15th of each year, the systems shall
 11 electronically submit to the Legislative Research Commission a report
 12 of Kentucky private equity fund investments by the systems including a
 13 summary of the type and amount of Kentucky private equity fund
 14 investments and a detailed listing of all Kentucky private equity fund
 15 investments by amount and the progress towards the goal to invest one
 16 and one-half percent (1.5%) of fund assets in Kentucky private equity
 17 fund investments. The report shall also include the number of
 18 applications for Kentucky private equity fund investments received, the
 19 nature of the investments proposed, the amount requested, the amount
 20 invested, and the percentage of applications which resulted in
 21 investments.

22 (4) The investment committee established pursuant to KRS 61.650 shall serve as the
 23 investment committee of the funds established by KRS 78.510 to 78.852.

24 (5) Based upon market value at the time of purchase, the board shall limit the amount
 25 of assets managed by any one (1) active or passive investment manager to fifteen
 26 percent (15%) of the assets in the pension and insurance funds.

27 ➔Section 4. KRS 161.430 is amended to read as follows:

- 1 (1) (a) The board of trustees shall be the trustee of the funds of the retirement system
2 and shall have full power and responsibility for the purchase, sale, exchange,
3 transfer, or other disposition of the investments and moneys of the retirement
4 system. The board shall, by administrative regulation, establish investment
5 policies and procedures to carry out their responsibilities.
- 6 (b) 1. The board shall contract with experienced competent investment
7 managers to invest and manage assets of the system. The board may also
8 employ qualified investment staff to advise it on investment matters and
9 to invest and manage assets of the system not to exceed fifty percent
10 (50%) of the system's assets. The board may contract with one (1) or
11 more general investment consultants, as well as specialized investment
12 consultants, to advise it on investment matters.
- 13 2. All internal investment staff and investment consultants shall adhere to
14 the Code of Ethics and Standards of Professional Conduct, and all board
15 trustees shall adhere to the Code of Conduct for Members of a Pension
16 Scheme Governing Body, promulgated by the CFA Institute. Investment
17 managers shall comply with the federal Investment Advisers Act of
18 1940, as amended, and the rules and regulations promulgated thereunder
19 and shall comply with all other applicable federal securities statutes and
20 related rules and regulations that apply to investment managers.
- 21 3. No investment manager shall manage more than forty percent (40%) of
22 the funds of the retirement system.
- 23 (c) The board may appoint an investment committee to act for the board in all
24 matters of investment, subject to the approval of the board of trustees.
- 25 (d) The board of trustees, in keeping with their responsibilities as trustees and
26 wherever consistent with their fiduciary responsibilities, shall give priority to
27 the investment of funds in obligations calculated to improve the industrial

1 development and enhance the economic welfare of the Commonwealth.

2 (e) 1. The board shall make it a goal of the system to invest at least one and
 3 one-half percent (1.5%) of system assets in Kentucky private equity
 4 funds. Any investment decision made by the board to invest in a
 5 Kentucky private equity fund or funds must be consistent with the
 6 board's fiduciary responsibilities and duties as trustees.

7 2. For purposes of this paragraph, a "Kentucky private equity fund"
 8 means an entity that makes, manages, or sources potential investments
 9 in Kentucky businesses and that:

10 a. Has as its primary business activity the investment of funds in
 11 return for equity in or debt of businesses for the purpose of
 12 providing capital for start-up, expansion, product or market
 13 development, recapitalization, or similar business purposes;

14 b. Holds out the prospects for capital appreciation from such
 15 investments; and

16 c. Is committed to investing or helps secure investing by others, in
 17 an amount at least equal to the total investment made by the
 18 system in funds administered by the Teachers' Retirement
 19 System, in businesses with a principal place of business in
 20 Kentucky and that hold promise for attracting additional capital
 21 from individual or institutional investors nationwide for
 22 businesses in Kentucky.

23 (e) [~~Toward this end,~~]The board shall develop procedures for informing the
 24 business community of the potential for in-state investments, including
 25 Kentucky private equity fund investments, by the retirement fund, accepting
 26 and evaluating applications for the in-state investment of funds, and working
 27 with members of the business community in executing in-state investments

1 which are consistent with this section and the board's fiduciary
 2 responsibilities and duties. The board shall include in the criteria it uses to
 3 evaluate in-state investments ~~the~~^{their} potential for creating new employment
 4 opportunities and adding to the total job pool in Kentucky. The board may
 5 cooperate with the board of trustees of Kentucky Retirement Systems in
 6 developing its program and procedures.

7 (h) On or before November 15th of each year, the systems shall electronically
 8 submit to the Legislative Research Commission a report of in-state
 9 investments, including Kentucky private equity fund investments, by the
 10 system including a summary of the type and amount of in-state investments
 11 a detailed listing of all in-state investments by type and amount, and
 12 ~~the~~^{shall report to the Legislative Research Commission annually on its}
 13 progress in placing in-state investments and towards the goal to invest one
 14 and one-half percent (1.5%) of fund assets in Kentucky private equity fund
 15 investments~~. The first report shall be submitted by October 1, 1991, and~~
 16 ~~subsequent reports shall be submitted by October 1 of each year thereafter~~.
 17 The report shall also include the number of applications for in-state
 18 investment received, including Kentucky private equity fund investments,
 19 the nature of the investments proposed, the amount requested, the amount
 20 invested, and the percentage of applications which resulted in investments.

21 (2) The board members and investment consultants shall discharge their duties with
 22 respect to the assets of the system solely in the interests of the active contributing
 23 members and annuitants and:

24 (a) For the exclusive purpose of providing benefits to members and annuitants
 25 and defraying reasonable expenses of administering the system;

26 (b) With the care, skill, prudence, and diligence under the circumstances then
 27 prevailing that a prudent person acting in a like capacity and familiar with

1 these matters would use in the conduct of an enterprise of a like character and
2 with like aims;

3 (c) By diversifying the investments of the plan so as to minimize the risk of large
4 losses, unless under the circumstances it is clearly prudent not to do so; and

5 (d) In accordance with the laws, administrative regulations, and other instruments
6 governing the system.

7 (3) (a) In choosing and contracting for professional investment management and
8 consulting services, the board shall do so prudently and in the interest of the
9 members and annuitants. Any contract that the board makes with an
10 investment manager shall set forth policies and guidelines of the board with
11 reference to standard rating services and specific criteria for determining the
12 quality of investments. Expenses directly related to investment management
13 and consulting services shall be financed from the guarantee fund in amounts
14 approved by the board.

15 (b) An investment manager or consultant appointed under this section shall
16 acknowledge in writing his fiduciary responsibilities to the fund. To be
17 eligible for appointment, an investment manager, consultant, or an affiliate,
18 shall be:

- 19 1. Registered under the Federal Investment Advisers Act of 1940; or
- 20 2. A bank as defined by that Act; or
- 21 3. An insurance company qualified to perform investment services under
22 the laws of more than one (1) state.

23 (4) No investment or disbursement of funds shall be made unless authorized by the
24 board of trustees, except that the board, in order to ensure timely market
25 transactions, shall establish investment guidelines and may permit its staff and
26 investment managers who are employed or under contract with the board pursuant
27 to this section to execute purchases and sales of investment instruments within

1 those guidelines without prior board approval.

2 (5) In discharging his or her administrative duties under this section, a trustee shall
3 strive to administer the retirement system in an efficient and cost-effective manner
4 for the taxpayers of the Commonwealth of Kentucky.

5 (6) Notwithstanding any other provision of KRS 161.220 to 161.716, no funds of the
6 Teachers' Retirement System, including fees and commissions paid to an
7 investment manager, private fund, or company issuing securities, who manages
8 systems assets, shall be used to pay fees and commissions to placement agents. For
9 purposes of this subsection, "placement agent" means a third-party individual, who
10 is not an employee, or firm, wholly or partially owned by the entity being hired,
11 who solicits investments on behalf of an investment manager, private fund, or
12 company issuing securities.

13 (7) All contracts for the investment or management of assets of the system shall not be
14 subject to KRS Chapters 45, 45A, 56, and 57. Instead, the board shall conduct the
15 following process to develop and adopt an investment procurement policy with
16 which all prospective contracts for the investment or management of assets of the
17 system shall comply:

18 (a) On or before July 1, 2017, the board shall consult with the secretary of the
19 Finance and Administration Cabinet or his or her designee to develop an
20 investment procurement policy, which shall be written to meet best practices
21 in investment management procurement;

22 (b) Thirty (30) days prior to adoption, the board shall tender the preliminary
23 investment procurement policy to the secretary of the Finance and
24 Administration Cabinet or his or her designee for review and comment;

25 (c) Upon receipt of comments from the secretary of the Finance and
26 Administration Cabinet or his or her designee, the board shall choose to adopt
27 or not adopt any recommended changes;

- 1 (d) Upon adoption, the board shall tender the final investment procurement policy
2 to the secretary of the Finance and Administration Cabinet or his or her
3 designee;
- 4 (e) No later than thirty (30) days after receipt of the investment procurement
5 policy, the secretary or his or her designee shall certify whether the board's
6 investment procurement policy meets or does not meet best practices for
7 investment management procurement; and
- 8 (f) Any amendments to the investment procurement policy shall adhere to the
9 requirements set forth by paragraphs (b) to (e) of this subsection.