



GENERAL ASSEMBLY COMMONWEALTH OF KENTUCKY

2023 REGULAR SESSION

HOUSE BILL NO. 236

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The following bill was reported to the Senate from the House and ordered to be printed.

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MICHAEL G. ADAMS
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY [Signature]

1 AN ACT relating to the fiduciary duties owed to the state-administered retirement
2 systems.

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

4 →Section 1. KRS 21.450 is amended to read as follows:

5 (1) The benefits provided by KRS 21.350 to 21.510 to be paid shall be funded through
6 contract with a reputable life insurance company authorized to do business in this
7 state, or through investment and reinvestment of funds in securities which, at the
8 time of making the investment, are by law permitted for the investment of funds by
9 fiduciaries in this state, or through a combination of such methods. To the extent
10 that funding is provided through insurance contract, no contributions, payments or
11 premiums shall be subject to any tax on insurance premiums or annuity
12 considerations. The investment committee for the judicial retirement fund shall be
13 trustee of any and all funds contributed or appropriated to the retirement system,
14 and shall have sole authority to make insurance contracts or investments.

15 (2) (a) For the purposes of this subsection:

16 1. "Solely in the interest of the members and beneficiaries" shall be
17 determined using only pecuniary factors and shall not include any
18 purpose to further a nonpecuniary interest;

19 2. "Pecuniary factor" means a consideration having a direct and
20 material connection to the financial risk or financial return of an
21 investment;

22 3. A "material connection" is established if there is a substantial
23 likelihood that a reasonable investor would consider it important in
24 determining the financial risk or the financial return of an
25 investment;

26 4. "Nonpecuniary interest" includes but is not limited to an
27 environmental, social, political, or ideological interest which does not

1 have a direct and material connection to the financial risk or financial
 2 return of an investment; and

3 5. "Investment manager" shall have the same definition attributed to
 4 "investment adviser" under the federal Investment Advisers Act of
 5 1940, 15 U.S.C. sec. 80b-2.

6 (b) The board members, ~~{or}~~ any investment manager or other fiduciary, or
 7 proxy adviser shall discharge their duties with respect to the funds of the
 8 retirement system solely in the interest of the members and beneficiaries and:

9 1. ~~{a}~~ For the exclusive purposes of providing benefits to members and
 10 their beneficiaries and defraying reasonable expenses of administering
 11 the plan;

12 2. ~~{b}~~ With the care, skill, prudence, and diligence under the
 13 circumstances then prevailing that a prudent person ~~{man}~~ acting in a
 14 like capacity and familiar with such matters would use in the conduct of
 15 an enterprise of a like character and with like aims; and

16 3. ~~{c}~~ In accordance with the federal, state, and common laws,
 17 regulations and other instruments governing the funds and fiduciaries.

18 (c) Evidence that a fiduciary has considered or acted on a nonpecuniary
 19 interest shall include but is not limited to:

20 1. Statements, explanations, reports, or correspondence;

21 2. Communications with portfolio companies;

22 3. Statements of principles or policies, whether made individually or
 23 jointly;

24 4. Votes of shares or proxies; or

25 5. Coalitions, initiatives, agreements, or commitments to which the
 26 fiduciary is a participant, affiliate, or signatory.

27 (3) Any accrual of benefits provided under this or any other applicable statute shall be

1 no less than the benefit adjustment provided for in KRS 21.405(4) from the date of
2 the last establishment of that benefit.

3 (4) The board shall establish ethics policies and procedures by promulgation of
4 administrative regulations in accordance with the provisions of KRS Chapter 13A.
5 The ethics policies shall include but not be limited to annual financial and conflict
6 of interest disclosure requirements which must be completed by all board members
7 and made available to the public upon request.

8 (5) In addition to the standards of conduct prescribed by subsection (2) of this
9 section:

10 (a) Investment managers shall comply with all applicable provisions of the
11 Investment Advisers Act of 1940, as amended, and the rules and regulations
12 promulgated thereunder, and shall comply with all other applicable federal
13 securities statutes and related rules and regulations that apply to investment
14 managers; and

15 (b) Proxy advisers and proxy voting services shall comply with all applicable
16 provisions of the Investment Advisers Act of 1940, as amended, and the
17 rules and regulations promulgated thereunder, and shall comply with all
18 other federal statutes and related rules and regulations that apply to proxy
19 advisers and proxy voting services.

20 (6) No contract or agreement, whether made in writing or not, shall in any manner
21 wave, restrict, or limit a fiduciary's liability as to any of the duties imposed by
22 this section. Any agreement shall specify that it is made in the Commonwealth
23 and governed by the laws of the Commonwealth.

24 → Section 2. KRS 21.540 is amended to read as follows:

25 (1) (a) Except as provided in KRS 21.550, 21.560, and subsections (3) and (7) of this
26 section, the board of trustees of the Judicial Form Retirement System shall be
27 charged with the administration of KRS 6.500 to 6.577 and 21.350 to 21.510.

- 1 (b) The Judicial Form Retirement System shall have all powers necessary to
2 administer KRS 6.500 to 6.577 and 21.350 to 21.510 including the power to
3 promulgate all reasonable administrative regulations, pass upon questions of
4 eligibility and disability, make employments for services, to contract for
5 fiduciary liability insurance, investment counseling, and actuarial, auditing,
6 and other professional services subject to the limitations of KRS Chapters 45,
7 45A, 56, and 57.
- 8 (c) 1. The administrative expenses shall be paid out of an administrative
9 account which shall be funded by transfers of the necessary money, in
10 appropriate ratio, from the funds provided for in KRS 21.550 and
11 21.560.
- 12 2. Authorization for all administrative expenses relating to the operations
13 of the Judicial Form Retirement System shall be contained in the
14 biennial budget unit request, branch budget recommendations, and the
15 financial plan adopted by the General Assembly pursuant to KRS
16 Chapter 48.
- 17 3. The request from the Judicial Form Retirement System shall include any
18 specific administrative expenses requested by the board of trustees that
19 are not otherwise specified by this subsection.
- 20 (2) (a) A qualified domestic relations order issued by a court or administrative
21 agency shall be honored by the Judicial Form Retirement System if the order
22 is in compliance with the requirements established by the retirement system.
- 23 (b) Except in cases involving child support payments, the Judicial Form
24 Retirement System may charge reasonable and necessary fees and expenses to
25 the participant and the alternate payee of a qualified domestic relations order
26 for the administration of the qualified domestic relations order by the
27 retirement system. All fees and expenses shall be established by

1 administrative regulations promulgated by the board of trustees of the
2 retirement system. The qualified domestic relations order shall specify
3 whether the fees and expenses provided by this subsection shall be paid:

- 4 1. Solely by the participant;
- 5 2. Solely by the alternate payee; or
- 6 3. Equally shared by the participant and alternate payee.

7 (c) For purposes of this subsection, a "qualified domestic relations order" shall
8 mean any judgment, decree, or order, including approval of a property
9 settlement agreement, that:

- 10 1. Is issued by a court or administrative agency; and
- 11 2. Relates to the provision of child support, alimony payments, or marital
12 property rights to a spouse, former spouse, child, or other dependent of a
13 member.

14 (3) Notwithstanding any other evidence of legislative intent, it is hereby declared to be
15 the controlling legislative intent that the provisions of KRS 21.345 to 21.580 and
16 6.500 to 6.577 shall conform with federal statutes or regulations and meet the
17 qualification requirements under 26 U.S.C. sec. 401(a), applicable federal
18 regulations, and other published guidance, and the board shall have the authority to
19 promulgate administrative regulations, with retroactive effect if required under
20 federal law, to conform the Legislators' Retirement Plan and the Judicial Retirement
21 Plan with federal statutes and regulations and to meet the qualification requirements
22 under 26 U.S.C. sec. 401(a).

23 (4) In order to improve public transparency regarding the administration of the
24 Legislators' Retirement Plan and the Judicial Retirement Plan, the board of trustees
25 of the Judicial Form Retirement System shall adopt a best-practices model by
26 posting the following information to the system's website~~[Web site]~~ and shall make
27 it available to the public:

- 1 (a) Meeting notices and agendas for all meetings of the board. Notices and
2 agendas shall be posted to the system's website~~[Web site]~~ at least seventy-two
3 (72) hours in advance of the board or committee meetings, except in the case
4 of special or emergency meetings as provided by KRS 61.823;
- 5 (b) A list of the members of the board of trustees and membership on each
6 committee established by the board, including any investment committees;
- 7 (c) A list of system staff and each staff's salary;
- 8 (d) A list of the fund's professional consultants and their respective fees and
9 commissions paid by the system;
- 10 (e) A list of the system's expenditures;
- 11 (f) The annual financial audit of the system, which shall include but not be
12 limited to a statement of plan net assets, a statement of changes in plan net
13 assets, an actuarial value of assets, a schedule of investments, a statement of
14 funded status and funding progress, and other supporting data;
- 15 (g) All external audits;
- 16 (h) The annual actuarial valuation report of pension and retiree health benefits of
17 each retirement plan administered by the system, which shall include a
18 general statistical section and information on contributions, benefit payouts,
19 and retirement plan demographic data;
- 20 (i) All board minutes or other materials that require adoption or ratification by
21 the board of trustees or committees of the board. The items listed in this
22 paragraph shall be posted within seventy-two (72) hours of adoption or
23 ratification by the board or committees;
- 24 (j) All bylaws, policies, or procedures adopted or ratified by the board of trustees
25 or by committees of the board;
- 26 (k) The summary plan description for each plan administered by the system;
- 27 (l) A document or a link to documents containing an unofficial copy of the

1 statutes governing the plans administered by the Judicial Form Retirement
2 System;

3 (m) Investment information, including all investment holdings in aggregate, fees,
4 and commissions for each fund administered by the board, which shall be
5 updated on a quarterly basis for fiscal years beginning on or after July 1,
6 2017. The system shall request from all managers, partnerships, and any other
7 available sources all information regarding fees and commissions and shall,
8 based on the requested information received:

- 9 1. Disclose the dollar value of fees and commissions paid to each
10 individual manager or partnership;
- 11 2. Disclose the dollar value of any profit sharing, carried interest, or any
12 other partnership incentive arrangements, partnership agreements, or
13 any other partnership expenses received by or paid to each manager or
14 partnership; and
- 15 3. As applicable, report each fee or commission by manager or partnership
16 consistent with standards established by the Institutional Limited
17 Partners Association (ILPA).

18 In addition to the requirements of this paragraph, the system shall also
19 disclose the name and address of all individual underlying managers or
20 partners in any fund of funds in which system assets are invested;

21 (n) An update of net investment returns, asset allocations, and the performance of
22 the funds against benchmarks adopted by the board for each fund, for each
23 asset class administered by the board, and for each manager over a historical
24 period. The update shall be posted on a quarterly basis for fiscal years
25 beginning on or after July 1, 2017;

26 (o) All contracts or offering documents for services, goods, or property purchased
27 or utilized by the system. Notwithstanding KRS 61.878, all contracts,

1 including investment contracts, shall be subject to review by the board, the
 2 Auditor of Public Accounts, and the Government Contract Review Committee
 3 established pursuant to KRS 45A.705. If any public record contains material
 4 which is not excepted under KRS 61.878, the system shall separate the
 5 excepted material by removal, segregation, or redaction, and make the
 6 nonexcepted material available for examination; ~~and~~

7 (p) Information regarding the system's financial and actuarial condition that is
 8 easily understood by the members, retired members, and the public; and

9 (q) All proxy vote reports as provided by subsection (9) of this section.

10 Nothing in this subsection shall require or compel the Judicial Form Retirement
 11 System to disclose information specific to the account of an individual member of
 12 the Legislators' Retirement Plan or the Judicial Retirement Plan.

13 (5) No trustee or employee of the board shall:

14 (a) Have any interest, direct or indirect, in the gains or profits of any investment
 15 or transaction made by the board, provided that the provisions of this
 16 paragraph shall not prohibit a member or retiree of one (1) of the retirement
 17 plans administered by the system from serving as a trustee;

18 (b) Directly or indirectly, for himself or herself or as an agent, use the assets of
 19 the system, except to make current and necessary payments authorized by the
 20 board;

21 (c) Become an endorser, surety, or obligor for moneys loaned by or borrowed
 22 from the board;

23 (d) Have a contract or agreement with the retirement system, individually or
 24 through a business owned by the trustee or the employee;

25 (e) Use his or her official position with the retirement system to obtain a financial
 26 gain or benefit or advantage for himself or herself or a family member;

27 (f) Use confidential information acquired during his or her tenure with the

1 systems to further his or her own economic interests or that of another person;

2 or

3 (g) Hold outside employment with, or accept compensation from, any person or
4 business with which he or she has involvement as part of his or her official
5 position with the system. The provisions of this paragraph shall not prohibit:

6 1. A trustee from serving as a judge or member of the General Assembly;

7 or

8 2. A trustee from serving on the board if the compensation is de minimus
9 and incidental to the trustee's outside employment. If the compensation
10 is more than de minimus, the trustee shall disclose the amount of the
11 compensation to the other trustees and recuse himself or herself from
12 any matters involving hiring or retaining a person or a business from
13 whom more than de minimus amounts are received by the trustee. For
14 purposes of this section, "de minimus" means an insignificant amount
15 that does not raise a reasonable question as to the trustee's objectivity.

16 (6) Notwithstanding any other provision of KRS 6.500 to 6.577 and 21.345 to 21.580
17 to the contrary, no funds of the Legislators' Retirement Plan or the Judicial
18 Retirement Plan, including fees and commissions paid to an investment manager,
19 private fund, or company issuing securities, who manages systems assets, shall be
20 used to pay fees and commissions to placement agents. For purposes of this
21 subsection, "placement agent" means a third-party individual, who is not an
22 employee, or firm, wholly or partially owned by the entity being hired, who solicits
23 investments on behalf of an investment manager, private fund, or company issuing
24 securities.

25 (7) All contracts for the investment or management of assets of the system shall not be
26 subject to KRS Chapters 45, 45A, 56, and 57. Instead, the board shall conduct the
27 following process to develop and adopt an investment procurement policy with

1 which all prospective contracts for the investment or management of assets of the
2 system shall comply:

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

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

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

13 (d) Upon adoption, the board shall tender the final investment procurement policy
14 to the secretary of the Finance and Administration Cabinet or his or her
15 designee;

16 (e) No later than thirty (30) days after receipt of the investment procurement
17 policy, the secretary or his or her designee shall certify whether the board's
18 investment procurement policy meets or does not meet best practices for
19 investment management procurement; and

20 (f) Any amendments to the investment procurement policy shall adhere to the
21 requirements set forth by paragraphs (b) to (e) of this subsection.

22 (8) (a) 1. Upon request by any person, the Judicial Form Retirement System shall
23 release the following information from the accounts of any member or
24 retiree of the Legislators' Retirement Plan or the Judicial Retirement
25 Plan, if the member or retiree is a current or former officeholder in the
26 Kentucky General Assembly:

27 a. The first and last name of the member or retiree;

- 1 b. The plan or plans in which the member has an account or from
2 which the retiree is receiving a monthly retirement allowance;
- 3 c. The status of the member or retiree, including but not limited to
4 whether he or she is a contributing to the plans but has not retired,
5 or a retiree drawing a monthly retirement allowance;
- 6 d. If the individual is a retiree, the monthly retirement allowance that
7 he or she was receiving at the end of the most recently completed
8 fiscal year; and
- 9 e. If the individual is a member who has not yet retired, the estimated
10 monthly retirement allowance that he or she is eligible to receive
11 on the first date he or she would be eligible for an unreduced
12 retirement allowance, using his or her service credit, final
13 compensation, and accumulated account balance at the end of the
14 most recently completed fiscal year.
- 15 2. No information shall be disclosed under this paragraph from an account
16 that is paying benefits to a beneficiary due to the death of a member or
17 retiree.

18 (b) The release of information under paragraph (a) of this subsection shall not
19 constitute a violation of the Open Records Act, KRS 61.870 to 61.884.

20 **(9) (a) The board shall adopt:**

- 21 **1. Written proxy voting guidelines which are consistent with the**
22 **fiduciary duties and other requirements of Section 1 of this Act; or**
- 23 **2. The proxy voting guidelines of a sole investment manager under**
24 **contract with the board to act as a fiduciary in compliance with the**
25 **duties and other requirements of Section 1 of this Act.**

26 **(b) The board shall not adopt the recommendations of a proxy adviser or proxy**
27 **voting service and shall not allow such proxy adviser or proxy voting service**

1 to vote on its behalf, unless the proxy adviser or proxy voting service
 2 acknowledges in writing and accepts under contract its duties under Section
 3 1 of this Act and commits to follow the board-adopted proxy voting
 4 guidelines when voting the system's shares in order to comply with the
 5 board's fiduciary duties and other responsibilities under this section and
 6 Section 1 of this Act.

7 (c) All shares held by or on behalf of the system, and which the system is
 8 entitled to vote under state, federal, or common laws, shall be voted
 9 according to the proxy voting guidelines adopted by the board and subject to
 10 the fiduciary duties and other requirements of this section by:

11 1. The board or investment committee of the board who are fiduciaries
 12 having the authority to make investments under Section 1 of this Act;

13 or

14 2. A proxy adviser, proxy voting service, or sole investment manager that
 15 acknowledges in writing and accepts under contract its duties under
 16 Section 1 of this Act and commits to follow the proxy voting guidelines
 17 adopted by the board when voting the system's shares in order to
 18 comply with the board's fiduciary duties and other responsibilities
 19 under this section.

20 (d) All proxy votes shall be reported at least quarterly to the board. For each
 21 vote, the report shall provide:

22 1. The vote caption;

23 2. The date of the vote;

24 3. The company's name;

25 4. The vote cast for the system;

26 5. The recommendation of the company's management; and

27 6. If applicable, the recommendation of the proxy adviser or proxy voting

1 service.

2 ➔Section 3. KRS 61.645 is amended to read as follows:

3 (1) The Kentucky Employees Retirement System and State Police Retirement System
4 shall be administered by the board of trustees of the Kentucky Retirement Systems
5 composed of nine (9) members, who shall be selected as follows:

6 (a) One (1) trustee, who shall be a member or retired from the State Police
7 Retirement System, elected by the members and retired members of the State
8 Police Retirement System;

9 (b) Two (2) trustees, who shall be members or retired from the Kentucky
10 Employees Retirement System, elected by the members and retired members
11 of the Kentucky Employees Retirement System;

12 (c) Six (6) trustees, appointed by the Governor of the Commonwealth, subject to
13 Senate confirmation in accordance with KRS 11.160 for each appointment or
14 reappointment. Of the six (6) trustees appointed by the Governor, three (3)
15 trustees shall have investment experience and three (3) trustees shall have
16 retirement experience;

17 (d) For purposes of paragraph (c) of this subsection, a trustee with "investment
18 experience" means an individual who does not have a conflict of interest, as
19 provided by KRS 61.655, and who has at least ten (10) years of experience in
20 one (1) of the following areas of expertise:

21 1. A portfolio manager acting in a fiduciary capacity;

22 2. A professional securities analyst or investment consultant;

23 3. A current or retired employee or principal of a trust institution,
24 investment or finance organization, or endowment fund acting in an
25 investment-related capacity;

26 4. A chartered financial analyst in good standing as determined by the
27 CFA Institute; or

- 1 5. A university professor, teaching investment-related studies; and
- 2 (e) For purposes of paragraph (c) of this subsection, a trustee with "retirement
- 3 experience" means an individual who does not have a conflict of interest, as
- 4 provided by KRS 61.655, and who has at least ten (10) years of experience in
- 5 one (1) of the following areas of expertise:
- 6 1. Experience in retirement or pension plan management;
- 7 2. A certified public accountant with relevant experience in retirement or
- 8 pension plan accounting;
- 9 3. An actuary with relevant experience in retirement or pension plan
- 10 consulting;
- 11 4. An attorney licensed to practice law in the Commonwealth of Kentucky
- 12 with relevant experience in retirement or pension plans; or
- 13 5. A current or former university professor whose primary area of
- 14 emphasis is economics or finance.
- 15 (2) The board is hereby granted the powers and privileges of a corporation, including
- 16 but not limited to the following powers:
- 17 (a) To sue and be sued in its corporate name;
- 18 (b) To make bylaws not inconsistent with the law;
- 19 (c) To conduct the business and promote the purposes for which it was formed;
- 20 (d) Except as provided in KRS 61.650(6), to contract for investment counseling,
- 21 auditing, medical, and other professional or technical services as required to
- 22 carry out the obligations of the board subject to KRS Chapters 45, 45A, 56,
- 23 and 57. Actuarial consulting services shall be provided by a firm hired by the
- 24 Kentucky Public Pensions Authority;
- 25 (e) To purchase fiduciary liability insurance;
- 26 (f) Except as provided in KRS 61.650(6), to acquire, hold, sell, dispose of,
- 27 pledge, lease, or mortgage, the goods or property necessary to exercise the

1 board's powers and perform the board's duties subject to KRS Chapters 45,
2 45A, and 56; and

3 (g) The board shall reimburse any trustee, officer, or employee for any legal
4 expense resulting from a civil action arising out of the performance of his or
5 her official duties. The hourly rate of reimbursement for any contract for legal
6 services under this paragraph shall not exceed the maximum hourly rate
7 provided in the Legal Services Duties and Maximum Rate Schedule
8 promulgated by the Government Contract Review Committee established
9 pursuant to KRS 45A.705, unless a higher rate is specifically approved by the
10 secretary of the Finance and Administration Cabinet or his or her designee.

11 (3) (a) Notwithstanding the provisions of subsection (1) of this section, each trustee
12 shall serve a term of four (4) years or until his or her successor is duly
13 qualified except as otherwise provided in this section. An elected trustee or a
14 trustee appointed by the Governor under subsection (1)(c) of this section, shall
15 not serve more than three (3) consecutive four (4) year terms. An elected
16 trustee or a trustee appointed by the Governor under subsection (1)(c) of this
17 section, who has served three (3) consecutive terms may be elected or
18 appointed again after an absence of four (4) years from the board.

19 (b) The term limits established by paragraph (a) of this subsection shall apply to
20 trustees serving on or after July 1, 2012, and all terms of office served prior to
21 July 1, 2012, shall be used to determine if the trustee has exceeded the term
22 limits provided by paragraph (a) of this subsection.

23 (4) (a) The trustees selected by the membership of each of the various retirement
24 systems shall be elected by ballot. For each trustee to be elected, the board
25 may nominate, not less than six (6) months before a term of office of a trustee
26 is due to expire, three (3) constitutionally eligible individuals.

27 (b) Individuals may be nominated by the retirement system members which are to

1 elect the trustee by presenting to the executive director, not less than four (4)
2 months before a term of office of a trustee is due to expire, a petition, bearing
3 the name, last four (4) digits of the Social Security number, and signature of
4 no less than one-tenth (1/10) of the number voting in the last election by the
5 retirement system members.

6 (c) Within four (4) months of the nominations made in accordance with
7 paragraphs (a) and (b) of this subsection, the executive director shall cause to
8 be prepared an official ballot. The ballot shall include the name, address, and
9 position title of each individual nominated by the board and by petition.
10 Provisions shall also be made for write-in votes.

11 (d) Except as provided by paragraph (j) of this subsection, the ballots shall be
12 distributed to the eligible voters by mail to their last known residence address
13 on file with the Kentucky Public Pensions Authority. Ballots shall not be
14 distributed by mail to member addresses reported as invalid to the Kentucky
15 Public Pensions Authority.

16 (e) The ballots shall be addressed to the Kentucky Retirement Systems in care of
17 a predetermined box number at a United States Post Office or submitted
18 electronically as provided by paragraph (j) of this subsection. Access to this
19 post office box shall be limited to the board's contracted firm. The individual
20 receiving a plurality of votes shall be declared elected.

21 (f) The eligible voter shall cast his or her ballot by selecting the candidate of his
22 or her choice. He or she shall sign and mail the ballot or submit the electronic
23 ballot at least thirty (30) days prior to the date the term to be filled is due to
24 expire. The latest mailing date, or date of submission in the case of electronic
25 ballots, shall be provided on the ballot.

26 (g) The board's contracted firm shall report in writing the outcome to the chair of
27 the board of trustees. Cost of an election shall be payable from the funds of

1 the system for which the trustee is elected.

2 (h) For purposes of this subsection, an eligible voter shall be a person who was a
3 member of the retirement system on December 31 of the year preceding the
4 election year.

5 (i) Each individual who submits a request to be nominated by the board under
6 paragraph (a) of this subsection and each individual who is nominated by the
7 membership under paragraph (b) of this subsection shall:

- 8 1. Complete an application developed by the retirement systems which
9 shall include but not be limited to a disclosure of any prior felonies and
10 any conflicts of interest that would hinder the individual's ability to
11 serve on the board;
- 12 2. Submit a resume detailing the individual's education and employment
13 history and a cover letter detailing the member's qualifications for
14 serving as trustee to the board; and
- 15 3. Authorize the systems to have a criminal background check performed.
16 The criminal background check shall be performed by the Department
17 of Kentucky State Police.

18 (j) In lieu of the ballots mailed to members and retired members as provided by
19 this subsection, the systems may by promulgation of administrative regulation
20 pursuant to KRS Chapter 13A conduct trustee elections using electronic
21 ballots, except that the systems shall mail a paper ballot upon request of any
22 eligible voter.

23 (5) (a) Any vacancy which may occur in an appointed position during a term of
24 office shall be filled in the same manner which provides for the selection of
25 the particular trustee, and any vacancy which may occur in an elected position
26 during a term of office shall be filled by appointment by a majority vote of the
27 remaining elected trustees with a person selected from the system in which the

1 vacancy occurs; however, any vacancy shall be filled only for the duration of
2 the unexpired term. In the event of a vacancy of an elected trustee during a
3 term of office, Kentucky Retirement Systems shall notify members of the
4 system in which the vacancy occurs of the vacancy and the opportunity to be
5 considered for the vacant position. Any vacancy during a term of office shall
6 be filled within ninety (90) days of the position becoming vacant.

7 (b) Any appointments or reappointments to an appointed position on the board
8 shall be made no later than thirty (30) days prior to an appointed member's
9 term of office ending.

10 (6) (a) Membership on the board of trustees shall not be incompatible with any other
11 office unless a constitutional incompatibility exists. No trustee shall serve in
12 more than one (1) position as trustee on the board; and if a trustee holds more
13 than one (1) position as trustee on the board, he or she shall resign a position.

14 (b) A trustee shall be removed from office upon conviction of a felony or for a
15 finding of a violation of any provision of KRS 11A.020 or 11A.040 by a court
16 of competent jurisdiction.

17 (c) A current or former employee of Kentucky Retirement Systems, County
18 Employees Retirement System, or the Kentucky Public Pensions Authority
19 shall not be eligible to serve as a member of the board.

20 (7) Trustees who do not otherwise receive a salary from the State Treasury shall
21 receive a per diem of eighty dollars (\$80) for each day they are in session or on
22 official duty, and they shall be reimbursed for their actual and necessary expenses
23 in accordance with state administrative regulations and standards.

24 (8) (a) The board shall meet at least once in each quarter of the year and may meet in
25 special session upon the call of the chair or the chief executive officer.

26 (b) The board shall elect a chair and a vice chair. The chair shall not serve more
27 than four (4) consecutive years as chair or vice-chair of the board. The vice-

1 chair shall not serve more than four (4) consecutive years as chair or vice-
2 chair of the board. A trustee who has served four (4) consecutive years as
3 chair or vice-chair of the board may be elected chair or vice-chair of the board
4 after an absence of two (2) years from the positions.

5 (c) A majority of the trustees shall constitute a quorum and all actions taken by
6 the board shall be by affirmative vote of a majority of the trustees present.

7 (9) (a) The board of trustees shall appoint or contract for the services of a chief
8 executive officer and general counsel and fix the compensation and other
9 terms of employment for these positions without limitation of the provisions
10 of KRS Chapters 18A and 45A and KRS 64.640. The chief executive officer
11 shall serve as the legislative and executive adviser to the board. The general
12 counsel shall serve as legal adviser to the board. The chief executive officer
13 and general counsel shall work with the executive director of the Kentucky
14 Public Pensions Authority to carry out the provisions of KRS 16.505 to
15 16.652 and 61.510 to 61.705. The executive director of the Kentucky Public
16 Pensions Authority shall be the chief administrative officer of the board.

17 (b) Prior to April 1, 2021, the board of trustees shall authorize the executive
18 director to appoint the employees deemed necessary to transact the business
19 of the system. Effective April 1, 2021, the responsibility of appointing
20 employees and managing personnel needs shall be transferred to the Kentucky
21 Public Pensions Authority established by KRS 61.505.

22 (c) The board shall require the chief executive officer and may require the general
23 counsel to execute bonds for the faithful performance of his or her duties
24 notwithstanding the limitations of KRS Chapter 62.

25 (d) The board shall have a system of accounting established by the Kentucky
26 Public Pensions Authority.

27 (e) The board shall do all things, take all actions, and promulgate all

1 administrative regulations, not inconsistent with the provisions of KRS 16.505
2 to 16.652 and 61.510 to 61.705, necessary or proper in order to carry out the
3 provisions of KRS 16.505 to 16.652 and 61.510 to 61.705. Notwithstanding
4 any other evidence of legislative intent, it is hereby declared to be the
5 controlling legislative intent that the provisions of KRS 16.505 to 16.652 and
6 61.510 to 61.705 conform with federal statute or regulation and meet the
7 qualification requirements under 26 U.S.C. sec. 401(a), applicable federal
8 regulations, and other published guidance. Provisions of KRS 16.505 to
9 16.652 and 61.510 to 61.705 which conflict with federal statute or regulation
10 or qualification under 26 U.S.C. sec. 401(a), applicable federal regulations,
11 and other published guidance shall not be available. The board shall have the
12 authority to promulgate administrative regulations to conform with federal
13 statute and regulation and to meet the qualification requirements under 26
14 U.S.C. sec. 401(a), including an administrative regulation to comply with 26
15 U.S.C. sec. 401(a)(9).

16 (f) Notwithstanding any other provision of statute to the contrary, including but
17 not limited to any provision of KRS Chapter 12, the Governor shall have no
18 authority to change any provision of KRS 16.505 to 16.652 and 61.510 to
19 61.705 by executive order or action, including but not limited to reorganizing,
20 replacing, amending, or abolishing the membership of the Kentucky
21 Retirement Systems board of trustees.

22 (10) Notwithstanding any statute to the contrary, employees shall not be considered
23 legislative agents under KRS 6.611.

24 (11) The Attorney General, or an assistant designated by him or her, may attend each
25 meeting of the board and may receive the agenda, board minutes, and other
26 information distributed to trustees of the board upon request. The Attorney General
27 may act as legal adviser and attorney for the board, and the board may contract for

1 legal services, notwithstanding the limitations of KRS Chapter 12 or 13B.

2 (12) (a) The Kentucky Public Pensions Authority shall publish an annual financial
3 report showing all receipts, disbursements, assets, and liabilities for the
4 systems. The annual report shall include a copy of an audit conducted in
5 accordance with generally accepted auditing standards. Except as provided by
6 paragraph (b) of this subsection, the board may select the independent
7 certified public accountant hired by the Kentucky Public Pensions Authority
8 or the Auditor of Public Accounts to perform the audit. If the audit is
9 performed by an independent certified public accountant, the Auditor of
10 Public Accounts shall not be required to perform an audit pursuant to KRS
11 43.050(2)(a), but may perform an audit at his or her discretion. All
12 proceedings and records of the board shall be open for inspection by the
13 public. The Kentucky Public Pensions Authority shall make copies of the
14 audit required by this subsection available for examination by any member,
15 retiree, or beneficiary in the offices of the Kentucky Public Pensions
16 Authority and in other places as necessary to make the audit available to all
17 members, retirees, and beneficiaries. A copy of the annual audit shall be sent
18 to the Legislative Research Commission no later than ten (10) days after
19 receipt by the board.

20 (b) At least once every five (5) years, the Auditor of Public Accounts shall
21 perform the audit described by this subsection, and the system shall reimburse
22 the Auditor of Public Accounts for all costs of the audit. The Auditor of
23 Public Accounts shall determine which fiscal year during the five (5) year
24 period the audit prescribed by this paragraph will be completed.

25 (13) All expenses incurred by or on behalf of the system and the board in the
26 administration of the system during a fiscal year shall be paid from the retirement
27 allowance account, including any administrative expenses for the Kentucky Public

1 Pensions Authority that are assigned to the Kentucky Retirement Systems by KRS
2 61.505. The board shall submit any administrative expenses that are specific to the
3 Kentucky Retirement Systems that are not otherwise covered by KRS
4 61.505(11)(a).

5 (14) Any person adversely affected by a decision of the board, except as provided under
6 subsection (16) of this section or KRS 61.665, involving KRS 16.505 to 16.652 and
7 61.510 to 61.705, may appeal the decision of the board to the Franklin Circuit Court
8 within sixty (60) days of the board action.

9 (15) (a) A trustee shall discharge his or her duties as a trustee, including his or her
10 duties as a member of a committee:

- 11 1. In good faith;
- 12 2. On an informed basis; and
- 13 3. In a manner he or she honestly believes to be in the best interest of the
14 Kentucky Retirement Systems.

15 (b) A trustee discharges his or her duties on an informed basis if, when he or she
16 makes an inquiry into the business and affairs of the Kentucky Retirement
17 Systems or into a particular action to be taken or decision to be made, he or
18 she exercises the care an ordinary prudent person in a like position would
19 exercise under similar circumstances.

20 (c) In discharging his or her duties, a trustee may rely on information, opinions,
21 reports, or statements, including financial statements and other financial data,
22 if prepared or presented by:

- 23 1. One (1) or more officers or employees of the Kentucky Retirement
24 Systems whom the trustee honestly believes to be reliable and
25 competent in the matters presented;
- 26 2. Legal counsel, public accountants, actuaries, or other persons as to
27 matters the trustee honestly believes are within the person's professional

- 1 or expert competence; or
- 2 3. A committee of the board of trustees of which he or she is not a member
- 3 if the trustee honestly believes the committee merits confidence.
- 4 (d) A trustee shall not be considered as acting in good faith if he or she has
- 5 knowledge concerning the matter in question that makes reliance otherwise
- 6 permitted by paragraph (c) of this subsection unwarranted.
- 7 (e) Any action taken as a trustee, or any failure to take any action as a trustee,
- 8 shall not be the basis for monetary damages or injunctive relief unless:
- 9 1. The trustee has breached or failed to perform the duties of the trustee's
- 10 office in compliance with this section; and
- 11 2. In the case of an action for monetary damages, the breach or failure to
- 12 perform constitutes willful misconduct or wanton or reckless disregard
- 13 for human rights, safety, or property.
- 14 (f) A person bringing an action for monetary damages under this section shall
- 15 have the burden of proving by clear and convincing evidence the provisions of
- 16 paragraph (e)1. and 2. of this subsection, and the burden of proving that the
- 17 breach or failure to perform was the legal cause of damages suffered by the
- 18 Kentucky Retirement Systems.
- 19 (g) Nothing in this section shall eliminate or limit the liability of any trustee for
- 20 any act or omission occurring prior to July 15, 1988.
- 21 (h) In discharging his or her administrative duties under this section, a trustee
- 22 shall strive to administer the retirement system in an efficient and cost-
- 23 effective manner for the taxpayers of the Commonwealth of Kentucky and
- 24 shall take all actions available under the law to contain costs for the trusts,
- 25 including costs for participating employers, members, and retirees.
- 26 (16) When an order by the system substantially impairs the benefits or rights of a
- 27 member, retired member, or recipient, except action which relates to entitlement to

1 disability benefits, or when an employer disagrees with an order of the system as
 2 provided by KRS 61.598, the affected member, retired member, recipient, or
 3 employer may request a hearing to be held in accordance with KRS Chapter 13B.
 4 The board may establish an appeals committee whose members shall be appointed
 5 by the chair and who shall have authority to act upon the recommendations and
 6 reports of the hearing officer on behalf of the board. The member, retired member,
 7 recipient, or employer aggrieved by a final order of the board following the hearing
 8 may appeal the decision to the Franklin Circuit Court, in accordance with KRS
 9 Chapter 13B. The board may establish a joint administrative appeals committee
 10 with the County Employees Retirement System and may also establish a joint
 11 disability appeals committee with the County Employees Retirement System.

12 (17) The board shall give the Kentucky Education Support Personnel Association
 13 twenty-four (24) hours notice of the board meetings, to the extent possible.

14 (18) The board shall establish a formal trustee education program for all trustees of the
 15 board. The program shall include but not be limited to the following:

16 (a) A required orientation program for all new trustees elected or appointed to the
 17 board. The orientation program shall include training on:

- 18 1. Benefits and benefits administration;
- 19 2. Investment concepts, policies, and current composition and
 20 administration of retirement systems investments;
- 21 3. Laws, bylaws, and administrative regulations pertaining to the
 22 retirement systems and to fiduciaries; and
- 23 4. Actuarial and financial concepts pertaining to the retirement systems.

24 If a trustee fails to complete the orientation program within one (1) year from
 25 the beginning of his or her first term on the board, the retirement systems shall
 26 withhold payment of the per diem and travel expenses due to the board
 27 member under this section and KRS 16.640 until the trustee has completed the

1 orientation program;

2 (b) Annual required training for board members on the administration, benefits,
3 financing, and investing of the retirement systems. If a trustee fails to
4 complete the annual required training during the calendar or fiscal year, the
5 retirement systems shall withhold payment of the per diem and travel
6 expenses due to the board member under this section and KRS 16.640 until
7 the board member has met the annual training requirements; and

8 (c) The retirement systems shall incorporate by reference in an administrative
9 regulation, pursuant to KRS 13A.2251, the trustee education program.

10 (19) In order to improve public transparency regarding the administration of the systems,
11 the board of trustees shall adopt a best practices model by posting the following
12 information to the Kentucky Public Pensions Authority's website~~[Web-site]~~ and
13 shall make available to the public:

14 (a) Meeting notices and agendas for all meetings of the board. Notices and
15 agendas shall be posted to the Kentucky Public Pensions Authority's
16 website~~[Web-site]~~ at least seventy-two (72) hours in advance of the board or
17 committee meetings, except in the case of special or emergency meetings as
18 provided by KRS 61.823;

19 (b) The ~~[Comprehensive-]~~Annual Comprehensive Financial Report with the
20 information as follows:

- 21 1. A general overview and update on the retirement systems by the
22 executive director;
- 23 2. A listing of the board of trustees;
- 24 3. A listing of key staff;
- 25 4. An organizational chart;
- 26 5. Financial information, including a statement of plan net assets, a
27 statement of changes in plan net assets, an actuarial value of assets, a

- 1 schedule of investments, a statement of funded status and funding
2 progress, and other supporting data;
- 3 6. Investment information, including a general overview, a list of the
4 retirement system's professional consultants, a total net of fees return on
5 retirement systems investments over a historical period, an investment
6 summary, contracted investment management expenses, transaction
7 commissions, and a schedule of investments;
- 8 7. The annual actuarial valuation report on the pension benefit and the
9 medical insurance benefit; and
- 10 8. A general statistical section, including information on contributions,
11 benefit payouts, and retirement systems' demographic data;
- 12 (c) All external audits;
- 13 (d) All board minutes or other materials that require adoption or ratification by
14 the board of trustees. The items listed in this paragraph shall be posted within
15 seventy-two (72) hours of adoption or ratification of the board;
- 16 (e) All bylaws, policies, or procedures adopted or ratified by the board of
17 trustees;
- 18 (f) The retirement systems' summary plan description;
- 19 (g) A document containing an unofficial copy of the statutes governing the
20 systems administered by Kentucky Retirement Systems;
- 21 (h) A listing of the members of the board of trustees and membership on each
22 committee established by the board, including any investment committees;
- 23 (i) All investment holdings in aggregate, fees, and commissions for each fund
24 administered by the board, which shall be updated on a quarterly basis for
25 fiscal years beginning on or after July 1, 2017. The systems shall request from
26 all managers, partnerships, and any other available sources all information
27 regarding fees and commissions and shall, based on the requested information

1 received:

- 2 1. Disclose the dollar value of fees and commissions paid to each
3 individual manager or partnership;
- 4 2. Disclose the dollar value of any profit sharing, carried interest, or any
5 other partnership incentive arrangements, partnership agreements, or
6 any other partnership expenses received by or paid to each manager or
7 partnership; and
- 8 3. As applicable, report each fee or commission by manager or partnership
9 consistent with standards established by the Institutional Limited
10 Partners Association (ILPA).

11 In addition to the requirements of this paragraph, the systems shall also
12 disclose the name and address of all individual underlying managers or
13 partners in any fund of funds in which system assets are invested;

14 (j) An update of net of fees investment returns, asset allocations, and the
15 performance of the funds against benchmarks adopted by the board for each
16 fund, for each asset class administered by the board, and for each manager.
17 The update shall be posted on a quarterly basis for fiscal years beginning on
18 or after July 1, 2017;

19 (k) A searchable database of the systems' expenditures and a listing of each
20 individual employed by the systems along with the employee's salary or
21 wages. In lieu of posting the information required by this paragraph to the
22 Kentucky Public Pensions Authority's website~~[Web site]~~, the systems may
23 provide the information through a website~~[Web site]~~ established by the
24 executive branch to inform the public about executive branch agency
25 expenditures and public employee salaries and wages;

26 (l) All contracts or offering documents for services, goods, or property purchased
27 or utilized by the systems;~~{and}~~

1 (m) Information regarding the systems' financial and actuarial condition that is
 2 easily understood by the members, retired members, and the public; and

3 (n) All proxy vote reports as provided by subsection (7) of Section 4 of this Act.

4 (20) Notwithstanding the requirements of subsection (19) of this section, the retirement
 5 systems shall not be required to furnish information that is protected under KRS
 6 61.661, exempt under KRS 61.878, or that, if disclosed, would compromise the
 7 retirement systems' ability to competitively invest in real estate or other asset
 8 classes, except that no provision of this section or KRS 61.878 shall exclude
 9 disclosure and review of all contracts, including investment contracts, by the board,
 10 the Auditor of Public Accounts, and the Government Contract Review Committee
 11 established pursuant to KRS 45A.705 or the disclosure of investment fees and
 12 commissions as provided by this section. If any public record contains material
 13 which is not excepted under this section, the systems shall separate the excepted
 14 material by removal, segregation, or redaction, and make the nonexcepted material
 15 available for examination.

16 (21) Notwithstanding any other provision of KRS 16.505 to 16.652 and 61.510 to 61.705
 17 to the contrary, no funds of the systems administered by Kentucky Retirement
 18 Systems, including fees and commissions paid to an investment manager, private
 19 fund, or company issuing securities, who manages systems assets, shall be used to
 20 pay fees and commissions to placement agents. For purposes of this subsection,
 21 "placement agent" means a third-party individual, who is not an employee, or firm,
 22 wholly or partially owned by the entity being hired, who solicits investments on
 23 behalf of an investment manager, private fund, or company issuing securities.

24 →Section 4. KRS 61.650 is amended to read as follows:

25 (1) (a) The board shall be the trustee of funds created by KRS 16.510, 61.515, and
 26 61.701 pertaining to the accounts for the Kentucky Employees Retirement
 27 System or State Police Retirement System, notwithstanding the provisions of

1 any other statute to the contrary, and shall have exclusive power to invest and
2 reinvest such assets in accordance with federal law.

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

5 a. The three (3) trustees of the Kentucky Retirement Systems board
6 appointed by the Governor pursuant to KRS 61.645 who have
7 investment experience; and

8 b. Additional trustees appointed by the board chair.

9 2. The investment committee shall have authority to implement the
10 investment policies adopted by the board and act on behalf of the board
11 on all investment-related matters and to acquire, sell, safeguard,
12 monitor, and manage the assets and securities of the several funds.

13 (c) 1. For the purposes of this paragraph:

14 a. "Solely in the interest of the members and beneficiaries" shall
15 be determined using only pecuniary factors and shall not include
16 any purpose to further a nonpecuniary interest;

17 b. "Pecuniary factor" means a consideration having a direct and
18 material connection to the financial risk or financial return of
19 an investment;

20 c. A "material connection" is established if there is a substantial
21 likelihood that a reasonable investor would consider it important
22 in determining the financial risk or the financial return of an
23 investment;

24 d. "Nonpecuniary interest" includes but is not limited to an
25 environmental, social, political, or ideological interest which
26 does not have a direct and material connection to the financial
27 risk or financial return of an investment; and

1 *e. "Investment manager" shall have the same definition attributed*
 2 *to "investment adviser" under the federal Investment Advisers*
 3 *Act of 1940, 15 U.S.C. sec. 80b-2.*

4 2. A trustee, officer, employee, employee of the Kentucky Public Pensions
 5 Authority, *investment manager*, or other fiduciary, *or proxy adviser*
 6 shall discharge duties with respect to the retirement system:

7 *a[1].* Solely in the interest of the members and beneficiaries;

8 *b[2].* For the exclusive purpose of providing benefits to members and
 9 beneficiaries and paying reasonable expenses of administering the
 10 system;

11 *c[3].* With the care, skill, and caution under the circumstances then
 12 prevailing that a prudent person acting in a like capacity and
 13 familiar with those matters would use in the conduct of an activity
 14 of like character and purpose;

15 *d[4].* Impartially, taking into account any differing interests of members
 16 and beneficiaries;

17 *e[5].* Incurring any costs that are appropriate and reasonable; and

18 *f[6].* In accordance with a good-faith interpretation of the *federal, state,*
 19 *and common* law governing the ~~retirement~~ system *and*
 20 *fiduciaries.*

21 3. *Evidence that a fiduciary has considered or acted on a nonpecuniary*
 22 *interest shall include but is not limited to:*

23 *a. Statements, explanations, reports, or correspondence;*

24 *b. Communications with portfolio companies;*

25 *c. Statements of principles or policies, whether made individually*
 26 *or jointly;*

27 *d. Votes of shares or proxies; or*

1 *e. Coalitions, initiatives, agreements, or commitments to which the*
 2 *fiduciary is a participant, affiliate, or signatory.*

3 (d) In addition to the standards of conduct prescribed by paragraph (c) of this
 4 subsection:

5 1. All internal investment staff of the Kentucky Public Pensions Authority,
 6 and investment consultants shall adhere to the Code of Ethics and
 7 Standards of Professional Conduct, and all board trustees shall adhere to
 8 the Code of Conduct for Members of a Pension Scheme Governing
 9 Body. All codes cited in this subparagraph are promulgated by the CFA
 10 Institute; ~~and~~

11 2. Investment managers shall comply with all applicable provisions of the
 12 federal Investment Advisers Act of 1940, as amended, and the rules and
 13 regulations promulgated thereunder, and shall comply with all other
 14 applicable federal securities statutes and related rules and regulations
 15 that apply to investment managers; and

16 3. *Proxy advisers and proxy voting services shall comply with all*
 17 *applicable provisions of the Investment Advisers Act of 1940, as*
 18 *amended, and the rules and regulations promulgated thereunder, and*
 19 *shall comply with all other federal statutes and related rules and*
 20 *regulations that apply to proxy advisers and proxy voting services.*

21 (e) *No contract or agreement, whether made in writing or not, shall in any*
 22 *manner waive, restrict, or limit a fiduciary's liability as to any of the duties*
 23 *imposed by this section. Any agreement shall specify that it is made in the*
 24 *Commonwealth and governed by the laws of the Commonwealth.*

25 (2) The board, through adopted written policies, shall maintain ownership and control
 26 over its assets held in its unitized managed custodial account.

27 (3) The board, in keeping with its responsibility as trustee and wherever consistent with

1 its fiduciary responsibilities, shall give priority to the investment of funds in
2 obligation calculated to improve the industrial development and enhance the
3 economic welfare of the Commonwealth.

4 (4) The contents of real estate appraisals, engineering or feasibility estimates, and
5 evaluations made by or for the system relative to the acquisition or disposition of
6 property, until such time as all of the property has been acquired or sold, shall be
7 excluded from the application of KRS 61.870 to 61.884 and shall be subject to
8 inspection only upon order of a court of competent jurisdiction.

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

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

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

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

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

27 (d) Upon adoption, the board shall tender the final investment procurement policy

1 to the secretary of the Finance and Administration Cabinet or his or her
2 designee;

3 (e) No later than thirty (30) days after receipt of the investment procurement
4 policy, the secretary or his or her designee shall certify whether the board's
5 investment procurement policy meets or does not meet best practices for
6 investment management procurement; and

7 (f) Any amendments to the investment procurement policy shall adhere to the
8 requirements set forth by paragraphs (b) to (e) of this subsection.

9 **(7) (a) The board shall adopt written proxy voting guidelines which are consistent**
10 **with the fiduciary duties and other requirements of this section.**

11 **(b) The board shall not adopt the recommendations of a proxy adviser or proxy**
12 **voting service and shall not allow such proxy adviser or proxy voting service**
13 **to vote on behalf of the system, unless the proxy adviser or proxy voting**
14 **service acknowledges in writing and accepts under contract its duties under**
15 **this section and commits to follow the board-adopted proxy voting**
16 **guidelines when voting the system's shares in order to comply with the**
17 **board's fiduciary duties and other responsibilities under this section.**

18 **(c) All shares held by or on behalf of the system, and which the system is**
19 **entitled to vote under state, federal, or common laws, shall be voted**
20 **according to the proxy voting guidelines adopted by the board and subject to**
21 **the fiduciary duties and other requirements of this section by:**

22 **1. The board, the investment committee of the board, or an employee or**
23 **employees of the Authority who are fiduciaries under subsection (1) of**
24 **this section and are appointed or otherwise authorized by the board; or**

25 **2. A proxy adviser or proxy voting service that acknowledges in writing**
26 **and accepts under contract its duties under this section and commits to**
27 **follow the board-adopted proxy voting guidelines when voting the**

1 system's shares in order to comply with the board's fiduciary duties
 2 and other responsibilities under this section.

3 (d) All proxy votes shall be reported at least quarterly to the board. For each
 4 vote, the report shall provide:

5 1. The vote caption;

6 2. The date of the vote;

7 3. The company's name;

8 4. The vote cast for the system;

9 5. The recommendation of the company's management; and

10 6. If applicable, the recommendation of the proxy adviser or proxy voting
 11 service.

12 →Section 5. KRS 78.782 is amended to read as follows:

13 (1) The County Employees Retirement System shall be administered by the board of
 14 trustees composed of nine (9) members, who shall be selected as follows:

15 (a) Three (3) trustees, who shall be members or retired from the County
 16 Employees Retirement System, elected by the members and retired members
 17 of the County Employees Retirement System, of which:

18 1. Two (2) shall have a majority of his or her service credit earned in the
 19 County Employees Retirement System in a nonhazardous position; and

20 2. One (1) shall have a majority of his or her service credit earned in the
 21 County Employees Retirement System in a hazardous position;

22 (b) Six (6) trustees appointed by the Governor, subject to Senate confirmation in
 23 accordance with KRS 11.160 for each appointment or reappointment. Of the
 24 six (6) trustees appointed by the Governor:

25 1. One (1) trustee with retirement experience shall be appointed from a list
 26 of three (3) applicants submitted by the Kentucky League of Cities;

27 2. One (1) trustee with investment experience shall be appointed from a list

- 1 of three (3) applicants submitted by the Kentucky League of Cities;
- 2 3. One (1) trustee with retirement experience shall be appointed from a list
- 3 of three (3) applicants submitted by the Kentucky Association of
- 4 Counties;
- 5 4. One (1) trustee with investment experience shall be appointed from a list
- 6 of three (3) applicants submitted by the Kentucky Association of
- 7 Counties;
- 8 5. One (1) trustee with retirement experience shall be appointed from a list
- 9 of three (3) applicants submitted by the Kentucky School Boards
- 10 Association; and
- 11 6. One (1) trustee with investment experience shall be appointed from a list
- 12 of three (3) applicants submitted by the Kentucky School Boards
- 13 Association.

14 Notwithstanding the provisions of KRS 12.070(3), the Governor shall appoint

15 each individual trustee described by subparagraphs 1. to 6. of this paragraph

16 solely from each corresponding individual list required to be submitted by the

17 Kentucky League of Cities, the Kentucky Association of Counties, or the

18 Kentucky School Boards Association as provided by subparagraphs 1. to 6. of

19 this paragraph, and the Governor shall not be able to reject the list of

20 applicants submitted, request that another list be provided, or use a list

21 different from the one (1) individual list required to be submitted for each

22 specific appointment or reappointment;

23 (c) For purposes of paragraph (b) of this subsection, a trustee with "investment

24 experience" means an individual who does not have a conflict of interest, as

25 provided by KRS 61.655, and who has at least ten (10) years of experience in

26 one (1) of the following areas of expertise:

- 27 1. A portfolio manager acting in a fiduciary capacity;

- 1 2. A professional securities analyst or investment consultant;
- 2 3. A current or retired employee or principal of a trust institution,
- 3 investment or finance organization, or endowment fund acting in an
- 4 investment-related capacity;
- 5 4. A chartered financial analyst in good standing as determined by the
- 6 CFA Institute; or
- 7 5. A university professor, teaching investment-related studies; and

8 (d) For purposes of paragraph (b) of this subsection, a trustee with "retirement
 9 experience" means an individual who does not have a conflict of interest, as
 10 provided by KRS 61.655, and who has at least ten (10) years of experience in
 11 one (1) of the following areas of expertise:

- 12 1. Experience in retirement or pension plan management;
- 13 2. A certified public accountant with relevant experience in retirement or
- 14 pension plan accounting;
- 15 3. An actuary with relevant experience in retirement or pension plan
- 16 consulting;
- 17 4. An attorney licensed to practice law in the Commonwealth of Kentucky
- 18 with relevant experience in retirement or pension plans; or
- 19 5. A current or former university professor whose primary area of
- 20 emphasis is economics or finance.

21 (2) The board is hereby granted the powers and privileges of a corporation, including
 22 but not limited to the following powers:

- 23 (a) To sue and be sued in its corporate name;
- 24 (b) To make bylaws not inconsistent with the law;
- 25 (c) To conduct the business and promote the purposes for which it was formed;
- 26 (d) Except as provided in KRS 78.790(6), to contract for investment counseling,
- 27 auditing, medical, and other professional or technical services as required to

- 1 carry out the obligations of the board subject to the provisions of KRS
2 Chapters 45, 45A, 56, and 57. Actuarial consulting services shall be provided
3 by a firm hired by the Kentucky Public Pensions Authority;
- 4 (e) To purchase fiduciary liability insurance;
- 5 (f) Except as provided in KRS 78.790(6), to acquire, hold, sell, dispose of,
6 pledge, lease, or mortgage, the goods or property necessary to exercise the
7 board's powers and perform the board's duties subject to KRS Chapters 45,
8 45A, and 56; and
- 9 (g) The board shall reimburse any trustee, officer, or employee for any legal
10 expense resulting from a civil action arising out of the performance of his or
11 her official duties. The hourly rate of reimbursement for any contract for legal
12 services under this paragraph shall not exceed the maximum hourly rate
13 provided in the Legal Services Duties and Maximum Rate Schedule
14 promulgated by the Government Contract Review Committee established
15 pursuant to KRS 45A.705, unless a higher rate is specifically approved by the
16 secretary of the Finance and Administration Cabinet or his or her designee.
- 17 (3) Notwithstanding the provisions of subsection (1) of this section, each trustee shall
18 serve a term of four (4) years or until his or her successor is duly qualified except as
19 otherwise provided in this section. An elected or appointed trustee shall not serve
20 more than three (3) consecutive four (4) year terms. An elected or appointed trustee
21 who has served three (3) consecutive terms may be elected or appointed again after
22 an absence of four (4) years from the board.
- 23 (4) (a) The trustees selected by the membership of the system shall be elected by
24 ballot. For each trustee to be elected, the board may nominate, not less than
25 six (6) months before a term of office of a trustee is due to expire, three (3)
26 constitutionally eligible individuals.
- 27 (b) Individuals may be nominated by the system members by presenting to the

1 executive director, not less than four (4) months before a term of office of a
2 trustee is due to expire, a petition, bearing the name, last four (4) digits of the
3 Social Security number, and signature of no less than one-tenth (1/10) of the
4 number voting in the last election by the system members.

5 (c) Within four (4) months of the nominations made in accordance with
6 paragraphs (a) and (b) of this subsection, the executive director shall cause to
7 be prepared an official ballot. The ballot shall carry the name, address, and
8 position title of each individual nominated by the board and by petition.
9 Provision shall also be made for write-in votes.

10 (d) Except as provided by paragraph (j) of this subsection, the ballots shall be
11 distributed to the eligible voters by mail to their last known residence address
12 on file with the Kentucky Public Pensions Authority. Ballots shall not be
13 distributed by mail to member addresses reported as invalid to the Kentucky
14 Public Pensions Authority.

15 (e) The ballots shall be addressed to the County Employees Retirement System in
16 care of a predetermined box number at a United States Post Office or
17 submitted electronically as provided by paragraph (j) of this subsection.
18 Access to this post office box shall be limited to the board's contracted firm.
19 The individual receiving a plurality of votes shall be declared elected.

20 (f) The eligible voter shall cast his or her ballot by selecting the candidate of his
21 or her choice. He or she shall sign and mail the ballot or submit the electronic
22 ballot at least thirty (30) days prior to the date the term to be filled is due to
23 expire. The latest mailing date, or date of submission in the case of electronic
24 ballots, shall be provided on the ballot.

25 (g) The board's contracted firm shall report in writing the outcome to the chair of
26 the board of trustees. Costs of an election shall be payable from the funds of
27 the system.

- 1 (h) For purposes of this subsection, an eligible voter shall be a person who was a
2 member of the system on December 31 of the year preceding the election
3 year.
- 4 (i) Each individual who submits a request to be nominated by the board under
5 paragraph (a) of this subsection and each individual who is nominated by the
6 membership under paragraph (b) of this subsection shall:
- 7 1. Complete an application developed by the system which shall include
8 but not be limited to a disclosure of any prior felonies and any conflicts
9 of interest that would hinder the individual's ability to serve on the
10 board;
 - 11 2. Submit a resume detailing the individual's education and employment
12 history and a cover letter detailing the member's qualifications for
13 serving as trustee to the board; and
 - 14 3. Authorize the system to have a criminal background check performed.
15 The criminal background check shall be performed by the Department
16 of Kentucky State Police.
- 17 (j) In lieu of the ballots mailed to members and retired members as provided by
18 this subsection, the systems may by promulgation of administrative regulation
19 pursuant to KRS Chapter 13A conduct trustee elections using electronic
20 ballots, except that the systems shall mail a paper ballot upon request of any
21 eligible voter.
- 22 (5) (a) Any vacancy which may occur in an appointed position during a term of
23 office shall be filled in the same manner which provides for the selection of
24 the particular trustee, and any vacancy which may occur in an elected position
25 during a term of office shall be filled by appointment by a majority vote of the
26 remaining elected trustees; however, any vacancy shall be filled only for the
27 duration of the unexpired term. In the event of a vacancy of an elected trustee

1 during a term of office, the system shall notify members of the vacancy and
2 the opportunity to be considered for the vacant position. Any vacancy shall be
3 filled within ninety (90) days of the position becoming vacant.

4 (b) Any appointments or reappointments to an appointed position on the board
5 shall be made at least thirty (30) days prior to an appointed member's term of
6 office ending. The Governor's Office shall, with each appointment or
7 reappointment, request lists to be submitted and base selections on those lists
8 solely under the procedures and requirements provided by subsection (1)(b) of
9 this section.

10 (6) (a) Membership on the board of trustees shall not be incompatible with any other
11 office unless a constitutional incompatibility exists. No trustee shall serve in
12 more than one (1) position as trustee on the board and, if a trustee holds more
13 than one (1) position as trustee on the board, he or she shall resign a position.

14 (b) A trustee shall be removed from office upon conviction of a felony or for a
15 finding of a violation of any provision of KRS 11A.020 or 11A.040 by a court
16 of competent jurisdiction.

17 (c) A current or former employee of the County Employees Retirement System,
18 Kentucky Retirement Systems, or the Kentucky Public Pensions Authority
19 shall not be eligible to serve as a member of the board.

20 (7) Trustees who do not otherwise receive a salary from the State Treasury shall
21 receive a per diem of eighty dollars (\$80) for each day they are in session or on
22 official duty, and they shall be reimbursed for their actual and necessary expenses
23 in accordance with state administrative regulations and standards.

24 (8) (a) The board shall meet at least once in each quarter of the year and may meet in
25 special session upon the call of the chair or the chief executive officer.

26 (b) The board shall elect a chair and a vice chair. The chair shall not serve more
27 than four (4) consecutive years as chair or vice chair of the board. The vice

1 chair shall not serve more than four (4) consecutive years as chair or vice
2 chair of the board. A trustee who has served four (4) consecutive years as
3 chair or vice chair of the board may be elected chair or vice chair of the board
4 after an absence of two (2) years from the positions.

5 (c) A majority of the trustees shall constitute a quorum, and all actions taken by
6 the board shall be by affirmative vote of a majority of the trustees present.

7 (9) (a) The board of trustees shall appoint or contract for the services of a chief
8 executive officer and general counsel and fix the compensation and other
9 terms of employment for these positions without limitation of the provisions
10 of KRS Chapters 18A and 45A and KRS 64.640. The chief executive officer
11 shall serve as the legislative and executive adviser to the board. The general
12 counsel shall serve as legal adviser to the board. The chief executive officer
13 and general counsel shall work with the executive director of the Kentucky
14 Public Pensions Authority to carry out the provisions of KRS 78.510 to
15 78.852. The executive director of the Kentucky Public Pensions Authority
16 shall be the chief administrative officer of the board.

17 (b) The board shall require the chief executive officer and may require the general
18 counsel to execute bonds for the faithful performance of his or her duties
19 notwithstanding the limitations of KRS Chapter 62.

20 (c) The board shall have a system of accounting established by the Kentucky
21 Public Pensions Authority.

22 (d) The board shall do all things, take all actions, and promulgate all
23 administrative regulations, not inconsistent with the provisions of KRS 78.510
24 to 78.852, necessary or proper in order to carry out the provisions of KRS
25 78.510 to 78.852. Notwithstanding any other evidence of legislative intent, it
26 is hereby declared to be the controlling legislative intent that the provisions of
27 KRS 78.510 to 78.852 conform with federal statute or regulation and meet the

1 qualification requirements under 26 U.S.C. sec. 401(a), applicable federal
2 regulations, and other published guidance. Provisions of KRS 78.510 to
3 78.852 which conflict with federal statute or regulation or qualification under
4 26 U.S.C. sec. 401(a), applicable federal regulations, and other published
5 guidance shall not be available. The board shall have the authority to
6 promulgate administrative regulations to conform with federal statute and
7 regulation and to meet the qualification requirements under 26 U.S.C. sec.
8 401(a), including an administrative regulation to comply with 26 U.S.C. sec.
9 401(a)(9).

10 (e) Notwithstanding any other provision of statute to the contrary, including but
11 not limited to any provision of KRS Chapter 12, the Governor shall have no
12 authority to change any provision of KRS 78.510 to 78.852 by executive order
13 or action, including but not limited to reorganizing, replacing, amending, or
14 abolishing the membership of the County Employees Retirement System
15 board of trustees.

16 (10) The chief executive officer and general counsel of the board shall serve during its
17 will and pleasure. Notwithstanding any statute to the contrary, the chief executive
18 officer shall not be considered a legislative agent under KRS 6.611.

19 (11) The Attorney General, or an assistant designated by him or her, may attend each
20 meeting of the board and may receive the agenda, board minutes, and other
21 information distributed to trustees of the board upon request. The Attorney General
22 may act as legal adviser and attorney for the board, and the board may contract for
23 legal services, notwithstanding the limitations of KRS Chapter 12 or 13B.

24 (12) (a) The Kentucky Public Pensions Authority shall publish an annual financial
25 report showing all receipts, disbursements, assets, and liabilities for the
26 systems. The annual report shall include a copy of an audit conducted in
27 accordance with generally accepted auditing standards. Except as provided by

1 paragraph (b) of this subsection, the board may select the independent
2 certified public accountant hired by the Kentucky Public Pensions Authority
3 or the Auditor of Public Accounts to perform the audit. If the audit is
4 performed by an independent certified public accountant, the Auditor of
5 Public Accounts shall not be required to perform an audit pursuant to KRS
6 43.050(2)(a), but may perform an audit at his or her discretion. All
7 proceedings and records of the board shall be open for inspection by the
8 public. The Kentucky Public Pensions Authority shall make copies of the
9 audit required by this subsection available for examination by any member,
10 retiree, or beneficiary in the offices of the County Employees Retirement
11 System and in other places as necessary to make the audit available to all
12 members, retirees, and beneficiaries. A copy of the annual audit shall be sent
13 electronically to the Legislative Research Commission no later than ten (10)
14 days after receipt by the board.

15 (b) At least once every five (5) years, the Auditor of Public Accounts shall
16 perform the audit described by this subsection, and the system shall reimburse
17 the Auditor of Public Accounts for all costs of the audit. The Auditor of
18 Public Accounts shall determine which fiscal year during the five (5) year
19 period the audit prescribed by this paragraph will be completed.

20 (13) All expenses incurred by or on behalf of the system and the board in the
21 administration of the system during a fiscal year shall be paid from the retirement
22 allowance account, including any administrative expenses for the Kentucky Public
23 Pensions Authority that are assigned to the County Employees Retirement System
24 by KRS 61.505. The board shall submit any administrative expenses that are
25 specific to the County Employees Retirement System that are not otherwise covered
26 by KRS 61.505(11)(a).

27 (14) Except as provided under subsection (16) of this section or KRS 61.665, any person

1 adversely affected by a decision of the board involving KRS 78.510 to 78.852 may
2 appeal the decision of the board to the Franklin Circuit Court within sixty (60) days
3 of the board action.

4 (15) (a) A trustee shall discharge his or her duties as a trustee, including his or her
5 duties as a member of a committee:

- 6 1. In good faith;
- 7 2. On an informed basis; and
- 8 3. In a manner he or she honestly believes to be in the best interest of the
9 County Employees Retirement System.

10 (b) A trustee discharges his or her duties on an informed basis if, when he or she
11 makes an inquiry into the business and affairs of the system or into a
12 particular action to be taken or decision to be made, he or she exercises the
13 care an ordinary prudent person in a like position would exercise under
14 similar circumstances.

15 (c) In discharging his or her duties, a trustee may rely on information, opinions,
16 reports, or statements, including financial statements and other financial data,
17 if prepared or presented by:

- 18 1. One (1) or more officers or employees of the system or Authority whom
19 the trustee honestly believes to be reliable and competent in the matters
20 presented;
- 21 2. Legal counsel, public accountants, actuaries, or other persons as to
22 matters the trustee honestly believes are within the person's professional
23 or expert competence; or
- 24 3. A committee of the board of trustees of which he or she is not a member
25 if the trustee honestly believes the committee merits confidence.

26 (d) A trustee shall not be considered as acting in good faith if he or she has
27 knowledge concerning the matter in question that makes reliance otherwise

- 1 permitted by paragraph (c) of this subsection unwarranted.
- 2 (e) Any action taken as a trustee, or any failure to take any action as a trustee,
3 shall not be the basis for monetary damages or injunctive relief unless:
- 4 1. The trustee has breached or failed to perform the duties of the trustee's
5 office in compliance with this section; and
- 6 2. In the case of an action for monetary damages, the breach or failure to
7 perform constitutes willful misconduct or wanton or reckless disregard
8 for human rights, safety, or property.
- 9 (f) A person bringing an action for monetary damages under this section shall
10 have the burden of proving by clear and convincing evidence the provisions of
11 paragraph (e)1. and 2. of this subsection, and the burden of proving that the
12 breach or failure to perform was the legal cause of damages suffered by the
13 system.
- 14 (g) In discharging his or her administrative duties under this section, a trustee
15 shall strive to administer the system in an efficient and cost-effective manner
16 for the taxpayers of the Commonwealth of Kentucky and shall take all actions
17 available under the law to contain costs for the trusts, including costs for
18 participating employers, members, and retirees.
- 19 (16) When an order by the system substantially impairs the benefits or rights of a
20 member, retired member, or recipient, except action which relates to entitlement to
21 disability benefits, or when an employer disagrees with an order of the system as
22 provided by KRS 61.598, the affected member, retired member, recipient, or
23 employer may request a hearing to be held in accordance with KRS Chapter 13B.
24 The board may establish an appeals committee whose members shall be appointed
25 by the chair and who shall have authority to act upon the recommendations and
26 reports of the hearing officer on behalf of the board. The member, retired member,
27 recipient, or employer aggrieved by a final order of the board following the hearing

1 may appeal the decision to the Franklin Circuit Court, in accordance with KRS
2 Chapter 13B. The board may establish a joint administrative appeals committee
3 with the Kentucky Retirement Systems and may also establish a joint disability
4 appeals committee with the Kentucky Retirement Systems.

5 (17) The board shall establish a formal trustee education program for all trustees of the
6 board. The program shall include but not be limited to the following:

7 (a) A required orientation program for all new trustees elected or appointed to the
8 board. The orientation program shall include training on:

- 9 1. Benefits and benefits administration;
- 10 2. Investment concepts, policies, and current composition and
11 administration of system investments;
- 12 3. Laws, bylaws, and administrative regulations pertaining to the system
13 and to fiduciaries; and
- 14 4. Actuarial and financial concepts pertaining to the system.

15 If a trustee fails to complete the orientation program within one (1) year from
16 the beginning of his or her first term on the board, the system shall withhold
17 payment of the per diem and travel expenses due to the board member under
18 this section until the trustee has completed the orientation program;

19 (b) Annual required training for board members on the administration, benefits,
20 financing, and investing of the system. If a trustee fails to complete the annual
21 required training during the calendar or fiscal year, the retirement system shall
22 withhold payment of the per diem and travel expenses due to the board
23 member under this section until the board member has met the annual training
24 requirements; and

25 (c) The system shall incorporate by reference in an administrative regulation,
26 pursuant to KRS 13A.2251, the trustee education program.

27 (18) In order to improve public transparency regarding the administration of the system,

1 the board of trustees shall adopt a best practices model by posting the following
2 information to the Kentucky Public Pensions Authority's website~~[Web site]~~ and
3 shall make available to the public:

4 (a) Meeting notices and agendas for all meetings of the board. Notices and
5 agendas shall be posted to the Kentucky Public Pensions Authority's
6 website~~[Web site]~~ at least seventy-two (72) hours in advance of the board or
7 committee meetings, except in the case of special or emergency meetings as
8 provided by KRS 61.823;

9 (b) The ~~{Comprehensive-}~~Annual Comprehensive Financial Report with the
10 information as follows:

- 11 1. A general overview and update on the system by the executive director;
- 12 2. A listing of the board of trustees;
- 13 3. A listing of key staff;
- 14 4. An organizational chart;
- 15 5. Financial information, including a statement of plan net assets, a
16 statement of changes in plan net assets, an actuarial value of assets, a
17 schedule of investments, a statement of funded status and funding
18 progress, and other supporting data;
- 19 6. Investment information, including a general overview, a list of the
20 system's professional consultants, a total net of fees return on system
21 investments over a historical period, an investment summary, contracted
22 investment management expenses, transaction commissions, and a
23 schedule of investments;
- 24 7. The annual actuarial valuation report on the pension benefit and the
25 medical insurance benefit; and
- 26 8. A general statistical section, including information on contributions,
27 benefit payouts, and retirement system demographic data;

- 1 (c) All external audits;
- 2 (d) All board minutes or other materials that require adoption or ratification by
3 the board of trustees. The items listed in this paragraph shall be posted within
4 seventy-two (72) hours of adoption or ratification of the board;
- 5 (e) All bylaws, policies, or procedures adopted or ratified by the board of
6 trustees;
- 7 (f) The system's summary plan description;
- 8 (g) A document containing an unofficial copy of the statutes governing the
9 system;
- 10 (h) A listing of the members of the board of trustees and membership on each
11 committee established by the board, including any investment committees;
- 12 (i) All investment holdings in aggregate, fees, and commissions for each fund
13 administered by the board, which shall be updated on a quarterly basis for
14 fiscal years beginning on or after July 1, 2021. The system shall request from
15 all managers, partnerships, and any other available sources all information
16 regarding fees and commissions and shall, based on the requested information
17 received:
- 18 1. Disclose the dollar value of fees and commissions paid to each
19 individual manager or partnership;
 - 20 2. Disclose the dollar value of any profit sharing, carried interest, or any
21 other partnership incentive arrangements, partnership agreements, or
22 any other partnership expenses received by or paid to each manager or
23 partnership; and
 - 24 3. As applicable, report each fee or commission by manager or partnership
25 consistent with standards established by the Institutional Limited
26 Partners Association (ILPA).

27 In addition to the requirements of this paragraph, the system shall also

- 1 disclose the name and address of all individual underlying managers or
 2 partners in any fund of funds in which system assets are invested;
- 3 (j) An update of net of fees investment returns, asset allocations, and the
 4 performance of the funds against benchmarks adopted by the board for each
 5 fund, for each asset class administered by the board, and for each manager.
 6 The update shall be posted on a quarterly basis for fiscal years beginning on
 7 or after July 1, 2021;
- 8 (k) A searchable database of the system's expenditures and a listing of each
 9 individual employed by the system along with the employee's salary or wages.
 10 In lieu of posting the information required by this paragraph to the Kentucky
 11 Public Pensions Authority's website~~[Web site]~~, the system may provide the
 12 information through a website~~[Web site]~~ established by the executive branch
 13 to inform the public about public employee salaries and wages;
- 14 (l) All contracts or offering documents for services, goods, or property purchased
 15 or utilized by the system for contracts or offering documents entered into on
 16 or after July 1, 2021;~~{and}~~
- 17 (m) Information regarding the system's financial and actuarial condition that is
 18 easily understood by the members, retired members, and the public; and
- 19 (n) All proxy vote reports as provided by subsection (7) of Section 6 of this Act.
- 20 (19) Notwithstanding the requirements of subsection (18) of this section, the system
 21 shall not be required to furnish information that is protected under KRS 61.661,
 22 exempt under KRS 61.878, or that, if disclosed, would compromise the system's
 23 ability to competitively invest in real estate or other asset classes, except that no
 24 provision of this section or KRS 61.878 shall exclude disclosure and review of all
 25 contracts, including investment contracts, by the board, the Auditor of Public
 26 Accounts, and the Government Contract Review Committee established pursuant to
 27 KRS 45A.705 or the disclosure of investment fees and commissions as provided by

1 this section. If any public record contains material which is not excepted under this
 2 section, the system shall separate the excepted material by removal, segregation, or
 3 redaction, and make the nonexcepted material available for examination.

4 (20) Notwithstanding any other provision of KRS 78.510 to 78.852 to the contrary, no
 5 funds of the County Employees Retirement System, including fees and
 6 commissions paid to an investment manager, private fund, or company issuing
 7 securities, who manages systems assets, shall be used to pay fees and commissions
 8 to placement agents. For purposes of this subsection, "placement agent" means a
 9 third-party individual, who is not an employee, or firm, wholly or partially owned
 10 by the entity being hired, who solicits investments on behalf of an investment
 11 manager, private fund, or company issuing securities.

12 → Section 6. KRS 78.790 is amended to read as follows:

13 (1) (a) The board shall be the trustee of funds pertaining to the County Employees
 14 Retirement System created by KRS 78.510 to 78.852, and KRS 61.701, and
 15 shall have full and exclusive power to invest and reinvest such assets in
 16 accordance with federal law.

17 (b) 1. The board shall establish an investment committee that shall include
 18 members of the board with investment experience, elected members, or
 19 other members as determined by the board chair, and may also include
 20 nonvoting members who have investment expertise.

21 2. The investment committee shall have authority to implement the
 22 investment policies adopted by the board and act on behalf of the board
 23 on all investment-related matters.

24 (c) 1. For the purposes of this paragraph:

25 a. "Solely in the interest of the members and beneficiaries" shall
 26 be determined using only pecuniary factors and shall not include
 27 any purpose to further a nonpecuniary interest;

1 b. "Pecuniary factor" means a consideration having a direct and
 2 material connection to the financial risk or financial return of
 3 an investment;

4 c. A "material connection" is established if there is a substantial
 5 likelihood that a reasonable investor would consider it important
 6 in determining the financial risk or the financial return of an
 7 investment;

8 d. "Nonpecuniary interest" includes but is not limited to an
 9 environmental, social, political, or ideological interest which
 10 does not have a direct and material connection to the financial
 11 risk or financial return of an investment; and

12 e. "Investment manager" shall have the same definition attributed
 13 to "investment adviser" under the federal Investment Advisers
 14 Act of 1940, 15 U.S.C. sec. 80b-2.

15 2. A trustee, officer, employee, employee of the Kentucky Public Pensions
 16 Authority, investment manager, or other fiduciary, or proxy adviser
 17 shall discharge duties with respect to the system:

18 a[1]. Solely in the interest of the members and beneficiaries;

19 b[2]. For the exclusive purpose of providing benefits to members and
 20 beneficiaries and paying reasonable expenses of administering the
 21 system;

22 c[3]. With the care, skill, and caution under the circumstances then
 23 prevailing that a prudent person acting in a like capacity and
 24 familiar with those matters would use in the conduct of an activity
 25 of like character and purpose;

26 d[4]. Impartially, taking into account any differing interests of members
 27 and beneficiaries;

- 1 e[5]. Incurring any costs that are appropriate and reasonable; and
 2 f[6]. In accordance with a good-faith interpretation of the federal, state,
 3 and common law governing the system and fiduciaries.

4 3. Evidence that a fiduciary has considered or acted on a nonpecuniary
 5 interest shall include but is not limited to:

6 a. Statements, explanations, reports, or correspondence;

7 b. Communications with portfolio companies;

8 c. Statements of principles or policies, whether made individually
 9 or jointly;

10 d. Votes of shares or proxies; or

11 e. Coalitions, initiatives, agreements, or commitments to which the
 12 fiduciary is a participant, affiliate, or signatory.

13 (d) In addition to the standards of conduct prescribed by paragraph (c) of this
 14 subsection:

15 1. All internal investment staff of the Kentucky Public Pensions Authority,
 16 and investment consultants shall adhere to the Code of Ethics and
 17 Standards of Professional Conduct, and all board trustees shall adhere to
 18 the Code of Conduct for Members of a Pension Scheme Governing
 19 Body. All codes cited in this subparagraph are promulgated by the CFA
 20 Institute; ~~and~~

21 2. Investment managers shall comply with all applicable provisions of the
 22 federal Investment Advisers Act of 1940, as amended, and the rules and
 23 regulations promulgated thereunder, and shall comply with all other
 24 applicable federal securities statutes and related rules and regulations
 25 that apply to investment managers; and

26 3. Proxy advisers and proxy voting services shall comply with all
 27 applicable provisions of the Investment Advisers Act of 1940, as

1 amended, and the rules and regulations promulgated thereunder, and
 2 shall comply with all other federal statutes and related rules and
 3 regulations that apply to proxy advisers and proxy voting services.

4 (e) No contract or agreement, whether made in writing or not, shall in any
 5 manner waive, restrict, or limit a fiduciary's liability as to any of the duties
 6 imposed by this section. Any agreement shall specify that it is made in the
 7 Commonwealth and governed by the laws of the Commonwealth.

8 (2) The board, through adopted written policies, shall maintain ownership and control
 9 over its assets held in its unitized managed custodial account.

10 (3) The board, in keeping with its responsibility as the trustee and wherever feasible,
 11 shall give priority to the investment of funds in obligations calculated to improve
 12 the industrial development and enhance the economic welfare of the
 13 Commonwealth.

14 (4) The contents of real estate appraisals, engineering or feasibility estimates, and
 15 evaluations made by or for the system relative to the acquisition or disposition of
 16 property, until such time as all of the property has been acquired or sold, shall be
 17 excluded from the application of KRS 61.870 to 61.884 and shall be subject to
 18 inspection only upon order of a court of competent jurisdiction.

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

22 (6) All contracts for the investment or management of assets of the system shall not be
 23 subject to KRS Chapters 45, 45A, 56, and 57. Instead, the board shall conduct the
 24 following process to develop and adopt an investment procurement policy with
 25 which all prospective contracts for the investment or management of assets of the
 26 system shall comply:

27 (a) The board shall consult with the secretary of the Finance and Administration

1 Cabinet or his or her designee to develop an investment procurement policy,
2 which shall be written to meet best practices in investment management
3 procurement;

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

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

10 (d) Upon adoption, the board shall tender the final investment procurement policy
11 to the secretary of the Finance and Administration Cabinet or his or her
12 designee;

13 (e) No later than thirty (30) days after receipt of the investment procurement
14 policy, the secretary or his or her designee shall certify whether the board's
15 investment procurement policy meets or does not meet best practices for
16 investment management procurement; and

17 (f) Any amendments to the investment procurement policy shall adhere to the
18 requirements set forth by paragraphs (b) to (e) of this subsection.

19 **(7) (a) The board shall adopt written proxy voting guidelines, which are consistent**
20 **with the fiduciary duties and other requirements of this section.**

21 **(b) The board shall not adopt the recommendations of a proxy adviser or proxy**
22 **voting service and shall not allow such proxy adviser or proxy voting service**
23 **to vote on behalf of the system, unless the proxy adviser or proxy voting**
24 **service acknowledges in writing and accepts under contract its duties under**
25 **this section and commits to follow the board-adopted proxy voting**
26 **guidelines when voting the system's shares in order to comply with the**
27 **board's fiduciary duties and other responsibilities under this section.**

1 (c) All shares held by or on behalf of the system, and which the system is
 2 entitled to vote under state, federal, or common laws, shall be voted
 3 according to the proxy voting guidelines adopted by the board and subject to
 4 the fiduciary duties and other requirements of this section by:

- 5 1. The board, the investment committee of the board, or an employee or
 6 employees of the Authority who are fiduciaries under subsection (1) of
 7 this section and are appointed or otherwise authorized by the board; or
 8 2. A proxy adviser or proxy voting service that acknowledges in writing
 9 and accepts under contract its duties under this section and commits to
 10 follow the board-adopted proxy voting guidelines when voting the
 11 system's shares in order to comply with the board's fiduciary duties
 12 and other responsibilities under this section.

13 (d) All proxy votes shall be reported at least quarterly to the board. For each
 14 vote, the report shall provide:

- 15 1. The vote caption;
 16 2. The date of the vote;
 17 3. The company's name;
 18 4. The vote cast for the system;
 19 5. The recommendation of the company's management; and
 20 6. If applicable, the recommendation of the proxy adviser or proxy voting
 21 service.

22 →Section 7. KRS 161.250 is amended to read as follows:

- 23 (1) (a) The general administration and management of the retirement system, and the
 24 responsibility for its proper operation and for making effective provisions of
 25 KRS 161.155 and 161.220 to 161.714 are vested in a board of trustees to be
 26 known as the "Board of Trustees of the Teachers' Retirement System of the
 27 State of Kentucky."

- 1 (b) The board of trustees shall consist of the following:
- 2 1. The chief state school officer;
- 3 2. The State Treasurer;
- 4 3. Two (2) trustees, appointed by the Governor of the Commonwealth,
- 5 subject to Senate confirmation in accordance with KRS 11.160 for each
- 6 appointment or reappointment. These two (2) trustees shall have
- 7 investment experience. For purposes of this subparagraph, a trustee with
- 8 "investment experience" means an individual who does not have a
- 9 conflict of interest, as provided by KRS 161.460, and who has at least
- 10 ten (10) years of experience in one (1) of the following areas of
- 11 expertise:
- 12 a. A portfolio manager acting in a fiduciary capacity;
- 13 b. A professional securities analyst or investment consultant;
- 14 c. A current or retired employee or principal of a trust institution,
- 15 investment or finance organization, or endowment fund acting in
- 16 an investment-related capacity;
- 17 d. A chartered financial analyst in good standing as determined by
- 18 the CFA Institute; or
- 19 e. A university professor, teaching investment-related studies; and
- 20 4. Seven (7) other trustees elected as provided in KRS 161.260. Four (4) of
- 21 the elective trustees shall be members of the retirement system, to be
- 22 known as teacher trustees, two (2) shall be persons who are not
- 23 members of the teaching profession, to be known as the lay trustees, and
- 24 one (1) shall be an annuitant of the retirement system to be known as the
- 25 retired teacher trustee. One (1) teacher trustee shall be elected annually
- 26 for a four-year term. The retired teacher trustee shall be elected every
- 27 four (4) years. The chief state school officer and the State Treasurer are

- 1 considered ex officio members of the board of trustees and may
2 designate in writing a person to represent them at board meetings.
- 3 (c) 1. Elective trustees shall not serve more than three (3) consecutive four (4)
4 year terms. An elective trustee who has served three (3) consecutive
5 terms may be elected again after an absence of four (4) years from the
6 board of trustees.
- 7 2. The term limits established by subparagraph 1. of this paragraph shall
8 apply to elective trustees serving on or after July 1, 2012, and all terms
9 of office served prior to July 1, 2012, shall be used to determine if the
10 elective trustee has exceeded the term limits provided by subparagraph
11 1. of this paragraph.
- 12 (d) 1. Each appointed trustee shall serve a term of four (4) years. An appointed
13 trustee shall not serve more than three (3) consecutive four (4) year
14 terms. An appointed trustee who has served three (3) consecutive terms
15 may be appointed again after an absence of four (4) years from the
16 board of trustees.
- 17 2. Any vacancy that occurs in an appointed position shall be filled in the
18 same manner that provides for the selection of the trustee; however, any
19 vacancy shall be filled only for the duration of the unexpired term.
- 20 (2) A member, retired member, or designated beneficiary may appeal the retirement
21 system's decisions that materially affect the amount of service retirement allowance,
22 amount of service credit, eligibility for service retirement, or eligibility for
23 survivorship benefits to which that member, retired member, or designated
24 beneficiary claims to be entitled. All appeals must be in writing and filed with the
25 retirement system within thirty (30) days of the claimant's first notice of the
26 retirement system's decision. For purposes of this section, notice shall be complete
27 and effective upon the date of mailing of the retirement system's decision to the

1 claimant at the claimant's last known address. Failure by the claimant to file a
2 written appeal with the retirement system within the thirty (30) day period shall
3 result in the decision of the retirement system becoming permanent with the effect
4 of a final and unappealable order. Appeals may include a request for an
5 administrative hearing which shall be conducted in accordance with the provisions
6 of KRS Chapter 13B. The board of trustees may establish an appeals committee
7 whose members shall be appointed by the chairperson and who shall have the
8 authority to act upon the report and recommendation of the hearing officer by
9 issuing a final order on behalf of the full board of trustees. A member, retired
10 member, or designated beneficiary who has filed a timely, written appeal of a
11 decision of the retirement system may, following the administrative hearing and
12 issuance of the final order by the board of trustees, appeal the final order of the
13 board of trustees to the Franklin Circuit Court in accordance with the provisions of
14 KRS Chapter 13B.

15 (3) The board of trustees shall establish a formal trustee education program for all
16 trustees of the board. The program shall include but not be limited to the following:

17 (a) A required orientation program for all new trustees to the board. The
18 orientation program shall include training on:

- 19 1. Benefits and benefits administration;
- 20 2. Investment concepts, policies, and current composition and
21 administration of retirement system investments;
- 22 3. Laws, bylaws, and administrative regulations pertaining to the
23 retirement system and to fiduciaries; and
- 24 4. Actuarial and financial concepts pertaining to the retirement system.

25 If a trustee fails to complete the orientation program within one (1) year from
26 the beginning of his or her first term on the board, the retirement system shall
27 withhold payment of the per diem and travel expenses due to the board

- 1 member under KRS 161.290 until the trustee has completed the orientation
2 program;
- 3 (b) Annual required training for trustees on the administration, benefits,
4 financing, and investing of the retirement system. If a trustee fails to complete
5 the annual required training during the calendar or fiscal year, the retirement
6 system shall withhold payment of the per diem and travel expenses due to the
7 board member under KRS 161.290 until the board member has met the annual
8 training requirements; and
- 9 (c) The retirement system shall incorporate by reference in an administrative
10 regulation, pursuant to KRS 13A.2251, the trustee education program.
- 11 (4) In order to improve public transparency regarding the administration of the system,
12 the board of trustees shall adopt a best practices model by posting the following
13 information to the retirement system's website~~[Web site]~~ and shall make available
14 to the public:
- 15 (a) Meeting notices and agendas for all meetings of the board. Notices and
16 agendas shall be posted to the retirement system's website~~[Web site]~~ at least
17 seventy-two (72) hours in advance of the board or committee meetings, except
18 in the case of special or emergency meetings as provided by KRS 61.823;
- 19 (b) The ~~{Comprehensive}~~ Annual Comprehensive Financial Report with the
20 information as follows:
- 21 1. A general overview and update on the retirement system by the
22 executive secretary;
 - 23 2. A listing of the board of trustees;
 - 24 3. A listing of key staff;
 - 25 4. An organizational chart;
 - 26 5. Financial information, including a statement of plan net assets, a
27 statement of changes in plan net assets, an actuarial value of assets, a

- 1 schedule of investments, a statement of funded status and funding
2 progress, and other supporting data;
- 3 6. Investment information, including a general overview, a list of the
4 retirement system's professional consultants, a total net return on
5 retirement system investments over a historical period, an investment
6 summary, contracted investment management expenses, transaction
7 commissions, and a schedule of investments;
- 8 7. The annual actuarial valuation report on the pension benefit and the
9 medical insurance benefit; and
- 10 8. A general statistical section, including information on contributions,
11 benefit payouts, and retirement system demographic data;
- 12 (c) All external audits;
- 13 (d) All board minutes or other materials that require adoption or ratification by
14 the board of trustees. The items listed in this paragraph shall be posted within
15 seventy-two (72) hours of adoption or ratification of the board;
- 16 (e) All bylaws, policies, or procedures adopted or ratified by the board of
17 trustees;
- 18 (f) The retirement system's summary plan description;
- 19 (g) The retirement system's law book;
- 20 (h) A listing of the members of the board of trustees and membership on each
21 committee established by the board, including any investment committees;
- 22 (i) All investment holdings in aggregate, fees, and commissions for each fund
23 administered by the board, which shall be updated on a quarterly basis for
24 fiscal years beginning on or after July 1, 2017. The system shall request from
25 all managers, partnerships, and any other available sources all information
26 regarding fees and commissions and shall, based on the requested information
27 received:

- 1 1. Disclose the dollar value of fees or commissions paid to each individual
2 manager or partnership;
- 3 2. Disclose the dollar value of any profit sharing, carried interest, or any
4 other partnership incentive arrangements, partnership agreements, or
5 any other partnership expenses received by or paid to each manager or
6 partnership; and
- 7 3. As applicable, report each fee or commission by manager or partnership
8 consistent with standards established by the Institutional Limited
9 Partners Association (ILPA).

10 In addition to the requirements of this paragraph, the system shall also
11 disclose the name and address of all individual underlying managers or
12 partners in any fund of funds in which system assets are invested;

- 13 (j) An update of net of fees investment returns, asset allocations, and the
14 performance of the funds against benchmarks adopted by the board for each
15 fund, for each asset class administered by the board, and for each manager.
16 The update shall be posted on a quarterly basis for fiscal years beginning on
17 or after July 1, 2017;

- 18 (k) All contracts or offering documents for services, goods, or property purchased
19 or utilized by the system; ~~and~~

- 20 (l) A searchable database of the system's expenditures and a listing of each
21 individual employed by the system along with the employee's salary or wages.
22 In lieu of posting the information required by this paragraph to the system's
23 website~~[Web site]~~, the system may provide the information through a
24 website~~[Web site]~~ established by the executive branch to inform the public
25 about executive branch agency expenditures and public employee salaries and
26 wages; and

- 27 (m) All proxy vote reports as provided by subsection (8) of Section 8 of this Act.

1 (5) Notwithstanding the requirements of subsection (4) of this section, the retirement
2 system shall not be required to furnish information that is protected under KRS
3 161.585, exempt under KRS 61.878, or that, if disclosed, would compromise the
4 retirement system's ability to competitively invest in real estate or other asset
5 classes, except that no provision of this section or KRS 61.878 shall exclude
6 disclosure and review of all contracts, including investment contracts, by the board,
7 the Auditor of Public Accounts, and the Government Contract Review Committee
8 established pursuant to KRS 45A.705 or the disclosure of investment fees and
9 commissions as provided by this section. If any public record contains material
10 which is not excepted under this section, the system shall separate the excepted
11 material by removal, segregation, or redaction, and make the nonexcepted material
12 available for examination.

13 (6) For any benefit improvements the General Assembly has authorized the board of
14 trustees to establish under KRS 161.220 to 161.716 and that require formal
15 adoption by the board, the board shall establish the benefits by promulgation of
16 administrative regulations in accordance with KRS Chapter 13A.

17 →Section 8. KRS 161.430 is amended to read as follows:

18 (1) (a) The board of trustees shall be the trustee of the funds of the retirement system
19 and shall have full power and responsibility for the purchase, sale, exchange,
20 transfer, or other disposition of the investments and moneys of the retirement
21 system. The board shall, by administrative regulation, establish investment
22 policies and procedures to carry out their responsibilities.

23 (b) 1. The board shall contract with experienced competent investment
24 managers to invest and manage assets of the system. The board may also
25 employ qualified investment staff to advise it on investment matters and
26 to invest and manage assets of the system not to exceed fifty percent
27 (50%) of the system's assets. The board may contract with one (1) or

- 1 more general investment consultants, as well as specialized investment
2 consultants, to advise it on investment matters.
- 3 2. All internal investment staff and investment consultants shall adhere to
4 the Code of Ethics and Standards of Professional Conduct, and all board
5 trustees shall adhere to the Code of Conduct for Members of a Pension
6 Scheme Governing Body, promulgated by the CFA Institute. Investment
7 managers shall comply with the federal Investment Advisers Act of
8 1940, as amended, and the rules and regulations promulgated thereunder
9 and shall comply with all other applicable federal securities statutes and
10 related rules and regulations that apply to investment managers.
- 11 3. No investment manager shall manage more than forty percent (40%) of
12 the funds of the retirement system.
- 13 (c) The board may appoint an investment committee to act for the board in all
14 matters of investment, subject to the approval of the board of trustees. The
15 board of trustees, in keeping with their responsibilities as trustees and
16 wherever consistent with their fiduciary responsibilities, shall give priority to
17 the investment of funds in obligations calculated to improve the industrial
18 development and enhance the economic welfare of the Commonwealth.
19 Toward this end, the board shall develop procedures for informing the
20 business community of the potential for in-state investments by the retirement
21 fund, accepting and evaluating applications for the in-state investment of
22 funds, and working with members of the business community in executing in-
23 state investments which are consistent with the board's fiduciary
24 responsibilities. The board shall include in the criteria it uses to evaluate in-
25 state investments their potential for creating new employment opportunities
26 and adding to the total job pool in Kentucky. The board may cooperate with
27 the board of trustees of Kentucky Retirement Systems in developing its

1 program and procedures, and shall report to the Legislative Research
 2 Commission annually on its progress in placing in-state investments. The first
 3 report shall be submitted by October 1, 1991, and subsequent reports shall be
 4 submitted by October 1 of each year thereafter. The report shall include the
 5 number of applications for in-state investment received, the nature of the
 6 investments proposed, the amount requested, the amount invested, and the
 7 percentage of applications which resulted in investments.

8 (2) (a) For the purposes of this subsection:

- 9 1. "Solely in the interest of the members and beneficiaries" shall be
 10 determined using only pecuniary factors and shall not include any
 11 purpose to further a nonpecuniary interest;
- 12 2. "Pecuniary factor" means a consideration having a direct and
 13 material connection to the financial risk or financial return of an
 14 investment;
- 15 3. A "material connection" is established if there is a substantial
 16 likelihood that a reasonable investor would consider it important in
 17 determining the financial risk or the financial return of an
 18 investment;
- 19 4. "Nonpecuniary interest" includes but is not limited to an
 20 environmental, social, political, or ideological interest which does not
 21 have a direct and material connection to the financial risk or financial
 22 return of an investment; and
- 23 5. "Investment manager" and "investment consultant" shall have the
 24 same definition attributed to "investment adviser" under the federal
 25 Investment Advisers Act of 1940, 15 U.S.C. sec. 80b-2.

26 (b) The board members, [and] investment managers, investment consultants, or
 27 other fiduciaries, and proxy advisers shall discharge their duties with respect

1 to the assets of the system solely in the interests of the active contributing
2 members and annuitants and:

3 1.{(a)} For the exclusive purpose of providing benefits to members and
4 annuitants and defraying reasonable expenses of administering the
5 system;

6 2.{(b)} With the care, skill, prudence, and diligence under the
7 circumstances then prevailing that a prudent person acting in a like
8 capacity and familiar with these matters would use in the conduct of an
9 enterprise of a like character and with like aims;

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

13 4.{(d)} In accordance with the federal, state, and common laws,
14 administrative regulations, and other instruments governing the system
15 and fiduciaries.

16 (c) Evidence that a fiduciary has considered or acted on a nonpecuniary
17 interest shall include but is not limited to:

18 1. Statements, explanations, reports, or correspondence;

19 2. Communications with portfolio companies;

20 3. Statements of principles or policies, whether made individually or
21 jointly;

22 4. Votes of shares or proxies; or

23 5. Coalitions, initiatives, agreements, or commitments to which the
24 fiduciary is a participant, affiliate, or signatory.

25 (3) (a) In choosing and contracting for professional investment management and
26 consulting services, the board shall do so prudently and in the interest of the
27 members and annuitants. Any contract that the board makes with an

1 investment manager shall set forth policies and guidelines of the board with
 2 reference to standard rating services and specific criteria for determining the
 3 quality of investments. Expenses directly related to investment management
 4 and consulting services shall be financed from the guarantee fund in amounts
 5 approved by the board.

6 (b) An investment manager or consultant appointed under this section shall
 7 acknowledge in writing his *or her* fiduciary responsibilities to the fund. To be
 8 eligible for appointment, an investment manager, consultant, or an affiliate,
 9 shall be:

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

14 (c) Proxy advisers and proxy voting services shall comply with all applicable
 15 provisions of the Investment Advisers Act of 1940, as amended, and the
 16 rules and regulations promulgated thereunder, and shall comply with all
 17 other federal statutes and related rules and regulations that apply to proxy
 18 advisers and proxy voting services.

19 (d) No contract or agreement, whether made in writing or not, shall in any
 20 manner waive, restrict, or limit a fiduciary's liability as to any of the duties
 21 imposed by this section. Any agreement shall specify that it is made in the
 22 Commonwealth and governed by the laws of the Commonwealth.

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.

10 **(8) (a) The board shall adopt written proxy voting guidelines which are consistent**
11 **with the fiduciary duties and other requirements of this section.**

12 **(b) The board shall not adopt the recommendations of a proxy adviser or proxy**
13 **voting service and shall not allow such proxy adviser or proxy voting service**
14 **to vote on behalf of the system, unless the proxy adviser or proxy voting**
15 **service acknowledges in writing and accepts under contract its duties under**
16 **this section and commits to follow the board-adopted proxy voting**
17 **guidelines when voting the system's shares in order to comply with the**
18 **board's fiduciary duties and other responsibilities under this section.**

19 **(c) All shares held by or on behalf of the system, and which the system is**
20 **entitled to vote under state, federal, or common laws, shall be voted**
21 **according to the proxy voting guidelines adopted by the board and subject to**
22 **the fiduciary duties and other requirements of this section by:**

23 **1. The board, the investment committee of the board, or an employee or**
24 **employees of the system who are fiduciaries under this section and are**
25 **appointed or otherwise authorized by the board; or**

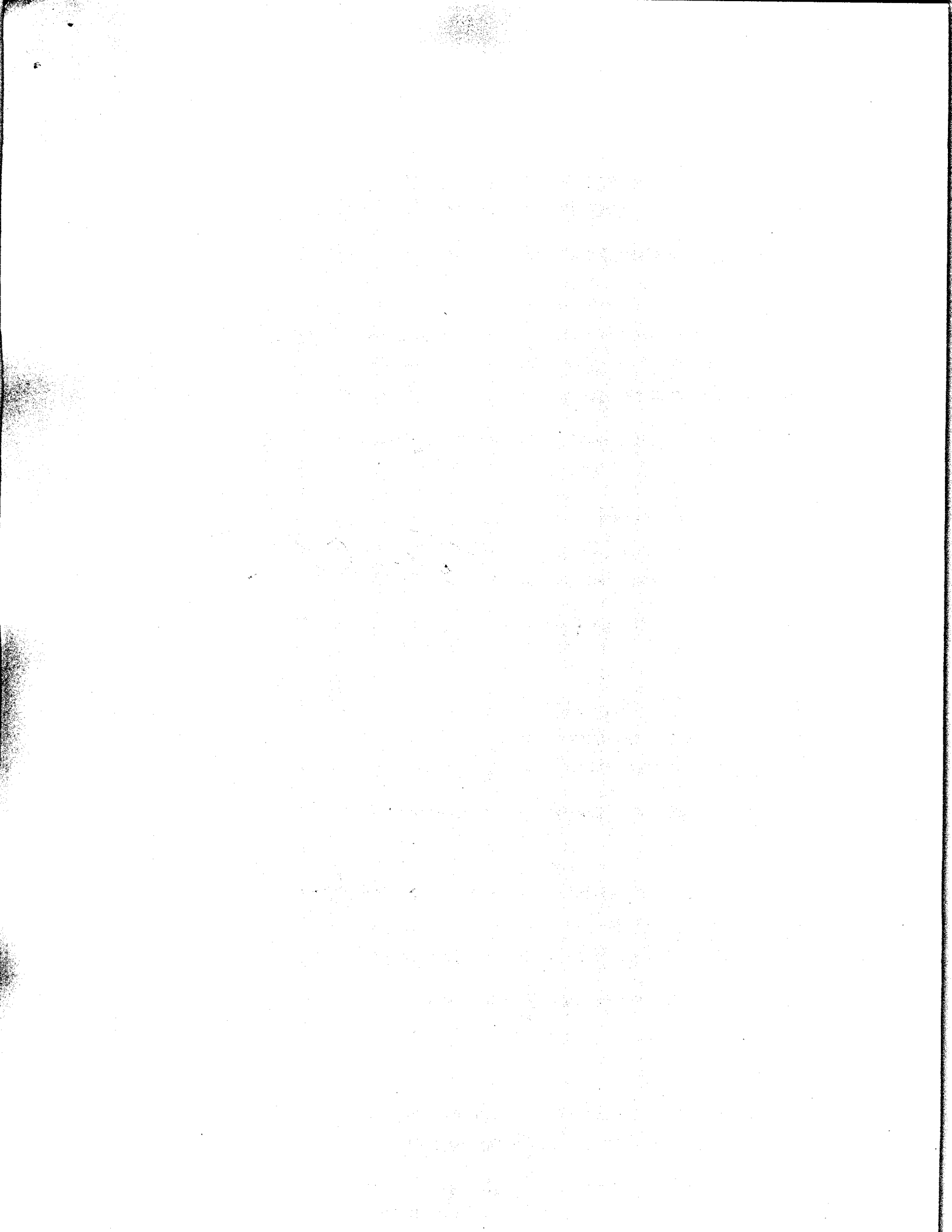
26 **2. A proxy adviser or proxy voting service that acknowledges in writing**
27 **and accepts under contract its duties under this section and commits to**

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follow the board-adopted proxy voting guidelines when voting the system's shares in order to comply with the board's fiduciary duties and other responsibilities under this section.

(d) All proxy votes shall be reported at least quarterly to the board. For each vote, the report shall provide:

1. The vote caption;
2. The date of the vote;
3. The company's name;
4. The vote cast for the system;
5. The recommendation of the company's management; and
6. If applicable, the recommendation of the proxy adviser or proxy voting service.



David W. Olson
Speaker-House of Representatives

Robert Thomas
President of Senate

Attest: W. B. J. J. J.
Chief Clerk of House of Representatives

Approved Andy Beshear
Governor

Date 3/29/2023