

161.430 Investment of funds -- Investment procurement policy.

- (1) The board of trustees shall be the trustee of the funds of the retirement system and shall have full power and responsibility for the purchase, sale, exchange, transfer, or other disposition of the investments and moneys of the retirement system. The board shall, by administrative regulation, establish investment policies and procedures to carry out their responsibilities. The board shall employ experienced competent investment counselors to advise it on all matters pertaining to investment, except the board may employ qualified investment personnel to advise it on investment matters not to exceed fifty percent (50%) of the book value of the system's assets. All individuals associated with the investment and management of retirement system assets, whether contracted investment advisors, board members, or staff employees, shall adhere to the Code of Ethics and Standards of Professional Conduct, the Asset Manager Code of Professional Conduct if the individual is managing retirement system assets, and the Code of Conduct for Members of a Pension Scheme Governing Body if the individual is a board member, promulgated by the CFA Institute. Effective July 1, 1991, no investment counselor shall manage more than forty percent (40%) of the funds of the retirement system. The board may appoint an investment committee consisting of the executive secretary and two (2) trustees to act for the board in all matters of investment, subject to the approval of the board of trustees. The board of trustees, in keeping with their responsibilities as trustees and wherever consistent with their fiduciary responsibilities, shall give priority to the investment of funds in obligations calculated to improve the industrial development and enhance the economic welfare of the Commonwealth. Toward this end, the board shall develop procedures for informing the business community of the potential for in-state investments by the retirement fund, accepting and evaluating applications for the in-state investment of funds, and working with members of the business community in executing in-state investments which are consistent with the board's fiduciary responsibilities. The board shall include in the criteria it uses to evaluate in-state investments their potential for creating new employment opportunities and adding to the total job pool in Kentucky. The board may cooperate with the board of trustees of Kentucky Retirement Systems in developing its program and procedures, and shall report to the Legislative Research Commission annually on its progress in placing in-state investments. The first report shall be submitted by October 1, 1991, and subsequent reports shall be submitted by October 1 of each year thereafter. The report shall include the number of applications for in-state investment received, the nature of the investments proposed, the amount requested, the amount invested, and the percentage of applications which resulted in investments.
- (2) The board members and investment counselor shall discharge their duties with respect to the assets of the system solely in the interests of the active contributing members and annuitants and:
 - (a) For the exclusive purpose of providing benefits to members and annuitants and defraying reasonable expenses of administering the system;

- (b) With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims;
 - (c) By diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and
 - (d) In accordance with the laws, administrative regulations, and other instruments governing the system.
- (3) (a) In choosing and contracting for professional investment management services the board must do so prudently and in the interest of the members and annuitants. Any contract that the board makes with an investment counselor shall set forth policies and guidelines of the board with reference to standard rating services and specific criteria for determining the quality of investments. Expenses directly related to investment management services shall be financed from the guarantee fund in amounts approved by the board.
- (b) An investment counselor appointed under this section shall acknowledge in writing his fiduciary responsibilities to the fund. To be eligible for appointment, an investment counselor must be:
- 1. Registered under the Federal Investment Advisors Act of 1940; or
 - 2. A bank as defined by that Act; or
 - 3. An insurance company qualified to perform investment services under the laws of more than one (1) state.
- (4) No investment or disbursement of funds shall be made unless authorized by the board of trustees, except that the board, in order to ensure timely market transactions, shall establish investment guidelines, by administrative regulation, and may permit its staff and investment counselors employed pursuant to this section to execute purchases and sales of investment instruments within those guidelines without prior board approval.
- (5) In discharging his or her administrative duties under this section, a trustee shall strive to administer the retirement system in an efficient and cost-effective manner for the taxpayers of the Commonwealth of Kentucky.
- (6) Notwithstanding any other provision of KRS 161.220 to 161.716, no funds of the Kentucky Teachers' Retirement System, including fees and commissions paid to an investment manager, private fund, or company issuing securities, who manages systems assets, shall be used to pay fees and commissions to placement agents. For purposes of this subsection, "placement agent" means a third-party individual, who is not an employee, or firm, wholly or partially owned by the entity being hired, who solicits investments on behalf of an investment manager, private fund, or company issuing securities.
- (7) All contracts for the investment or management of assets of the system shall not be subject to KRS Chapters 45, 45A, 56, and 57. Instead, the board shall conduct the following process to develop and adopt an investment procurement policy with which all prospective contracts for the investment or management of assets of the system shall comply:

- (a) On or before July 1, 2017, the board shall consult with the secretary of the Finance and Administration Cabinet or his or her designee to develop an investment procurement policy, which shall be written to meet best practices in investment management procurement;
- (b) Thirty (30) days prior to adoption, the board shall tender the preliminary investment procurement policy to the secretary of the Finance and Administration Cabinet or his or her designee for review and comment;
- (c) Upon receipt of comments from the secretary of the Finance and Administration Cabinet or his or her designee, the board shall choose to adopt or not adopt any recommended changes;
- (d) Upon adoption, the board shall tender the final investment procurement policy to the secretary of the Finance and Administration Cabinet or his or her designee;
- (e) No later than thirty (30) days after receipt of the investment procurement policy, the secretary or his or her designee shall certify whether the board's investment procurement policy meets or does not meet best practices for investment management procurement; and
- (f) Any amendments to the investment procurement policy shall adhere to the requirements set forth by paragraphs (b) to (e) of this subsection.

Effective: March 10, 2017

History: Amended 2017 Ky. Acts ch. 12, sec. 8, effective March 10, 2017. -- Amended 2012 Ky. Acts ch. 75, sec. 13, effective April 11, 2012. -- Amended 2008 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 32, effective June 27, 2008. -- Amended 2004 Ky. Acts ch. 121, sec. 5, effective July 1, 2004. -- Amended 2002 Ky. Acts ch. 275, sec. 9, effective July 1, 2002. -- Amended 1994 Ky. Acts ch. 369, sec. 5, effective July 1, 1994. -- Amended 1992 Ky. Acts ch. 192, sec. 4, effective July 1, 1992. -- Amended 1990 Ky. Acts ch. 442, sec. 18, effective July 1, 1990; and ch. 476, Pt. V, sec. 499, effective July 13, 1990. -- Amended 1988 Ky. Acts ch. 363, sec. 4, effective July 1, 1988. -- Amended 1984 Ky. Acts ch. 253, sec. 7, effective July 1, 1984. -- Amended 1980 Ky. Acts ch. 246, sec. 10, effective July 15, 1980. -- Amended 1978 Ky. Acts ch. 152, sec. 4, effective March 28, 1978. -- Amended 1972 Ky. Acts ch. 82, sec. 8. -- Amended 1968 Ky. Acts ch. 136, sec. 3. -- Amended 1966 Ky. Acts ch. 16, sec. 2. -- Amended 1964 Ky. Acts ch. 43, sec. 5. -- Amended 1962 Ky. Acts ch. 64, sec. 4. -- Amended 1960 Ky. Acts ch. 44, sec. 7. -- Amended 1958 Ky. Acts ch. 8, sec. 2. -- Amended 1954 Ky. Acts ch. 215, sec. 1. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 4506b-21.

Legislative Research Commission Note (3/10/2017). 2017 Ky. Acts ch. 12, sec. 12 provided that amendments made to subsection (6) in 2017 Ky. Acts ch. 12, sec. 8 governing placement agents and contracts or offerings entered into by the state-administered retirement systems shall apply to contracts and offerings established or contracts or offerings renewed on or after July 1, 2017.

Legislative Research Commission Note (3/10/2017). 2017 Ky. Acts ch. 12, sec. 13 provided that amendments made to subsection (7) of this statute in 2017 Ky. Acts ch. 12, sec. 8 governing the application of the Model Procurement Code, KRS Chapter 45A, and related statutes to the state-administered retirement systems, shall apply to contracts and offerings established or contracts or offerings renewed on or after July 1, 2017.

Legislative Research Commission Note (4/11/2012). 2012 Ky. Acts ch. 75, sec. 18, provides that the amendments made to subsection (6) of this statute regarding unregulated placement agents by 2012 Ky. Acts ch. 75, sec. 13, "shall apply to contracts established or contracts renewed on or after July 1, 2012."

