

1 **SENATE FLOOR VERSION**

2 April 8, 2024

3 ENGROSSED HOUSE  
4 BILL NO. 1617

By: Lepak, O'Donnell, McDugle,  
and Echols of the House

5 and

6 Jett and Rader of the  
7 Senate

8  
9 An Act relating to public finance; enacting the  
10 Oklahoma Public Finance Protection Act; defining  
11 terms; providing fiduciary's standard of care;  
12 prohibiting consideration of non-pecuniary factors;  
13 providing who has authority to vote on certain  
14 shares; providing for delegation of authority;  
15 providing that proxy votes be reported annually;  
16 authorizing Attorney General to enforce act and  
17 examine certain persons and records; providing  
18 immunity for the State of Oklahoma and certain  
19 individuals; providing for indemnification; providing  
20 for severability; providing for codification;  
21 providing an effective date; and declaring an  
22 emergency.

23 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

24 SECTION 1. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 9101 of Title 62, unless there  
is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Public  
Finance Protection Act".

1 SECTION 2. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 9102 of Title 62, unless there  
3 is created a duplication in numbering, reads as follows:

4 As used in the Oklahoma Public Finance Protection Act:

5 1. "Fiduciary" means a person who, with respect to a pension  
6 benefit plan:

7 a. exercises any discretionary authority or discretionary  
8 control respecting management of such plan or  
9 exercises any authority or control respecting  
10 management or disposition of its assets,

11 b. renders investment advice for a fee or other  
12 compensation, direct or indirect, with respect to any  
13 monies or other property of such plan, or has any  
14 authority or responsibility to do so, or

15 c. has any discretionary authority or discretionary  
16 responsibility in the administration of such plan,  
17 including making recommendations or voting a plan's  
18 shares or proxies;

19 2. "Material", when used to qualify a risk or return:

20 a. means a risk or return regarding which there is a  
21 substantial likelihood that a reasonable investor  
22 would attach importance when:

23

24

1 (1) evaluating the potential financial return and  
2 financial risks of an existing or prospective  
3 investment, or

4 (2) exercising, or declining to exercise, any rights  
5 appurtenant to securities, and

6 b. does not include:

7 (1) furthering non-pecuniary, environmental, social,  
8 political, ideological, or other goals or  
9 objectives, or

10 (2) any portion of a risk or return that primarily  
11 relates to events that are not investment-  
12 specific in nature;

13 3. "Non-pecuniary" includes any action taken or factor  
14 considered by a fiduciary with any purpose to further environmental,  
15 social, political, ideological, or other goals or objectives. A  
16 fiduciary purpose with respect to plan assets, including any right  
17 appurtenant to plan assets, may be reasonably determined by  
18 evidence, including, but not limited to, a fiduciary's statements or  
19 commitments that include or would include plan assets and indicate  
20 its purpose in selecting investments, engaging with portfolio  
21 companies, or voting shares or proxies, including such statements or  
22 commitments made by a fiduciary pursuant to its participation in, or  
23 status as a signatory to, any coalition, initiative, or organization

24

1 that has a purpose of using investment activity to further non-  
2 pecuniary goals;

3 4. "Pecuniary factor" means a factor that has a material effect  
4 on the financial risk or financial return of an investment based on  
5 appropriate investment horizons consistent with the plan's  
6 investment objectives and the funding policy. The term excludes  
7 non-pecuniary factors; and

8 5. "Pension benefit plan" or "plan" shall mean any plan, fund,  
9 or program which was heretofore or is hereafter established,  
10 maintained, or offered by the State of Oklahoma or any subdivision,  
11 county, municipality, agency, or instrumentality thereof, or any  
12 school, college, university, administration, authority, or other  
13 enterprise operated by the State of Oklahoma, to the extent that by  
14 its terms or as a result of surrounding circumstances:

- 15 a. provides retirement income or other retirement  
16 benefits to employees or former employees, or  
17 b. results in a deferral of income by such employees for  
18 a period extending to the termination of covered  
19 employment or beyond, and  
20 c. the term does not include a defined contribution plan  
21 under the Retirement Freedom Act, established pursuant  
22 to Section 935.1 et seq. of Title 74 of the Oklahoma  
23 Statutes, except that investment options selected as  
24 default investment options for participating employees

1           shall be selected in adherence to the requirements of  
2           this act.

3           SECTION 3.       NEW LAW       A new section of law to be codified  
4 in the Oklahoma Statutes as Section 9103 of Title 62, unless there  
5 is created a duplication in numbering, reads as follows:

6           A fiduciary shall discharge his duties with respect to a plan  
7 solely in the pecuniary interest of the participants and  
8 beneficiaries:

9           1. For the exclusive purpose of providing pecuniary benefits to  
10 participants and their beneficiaries and defraying reasonable  
11 expenses of administering the plan;

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

16          3. By diversifying the investments of the plan so as to  
17 minimize the risk of large losses, unless under the circumstances it  
18 is clearly prudent not to do so; and

19          4. In accordance with the documents and instruments governing  
20 the plan and insofar as such documents and instruments are  
21 consistent with the fiduciary responsibilities provided by law,  
22 including the provisions of this act.

1           SECTION 4.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 9104 of Title 62, unless there  
3 is created a duplication in numbering, reads as follows:

4           A fiduciary's evaluation of an investment, or evaluation or  
5 exercise of any right appurtenant to an investment, must take into  
6 account only pecuniary factors. Plan fiduciaries are not permitted  
7 to promote non-pecuniary benefits or any other non-pecuniary goals.  
8 Environmental, social, ideological, corporate governance, or other  
9 goals, objectives, or similarly oriented considerations are  
10 pecuniary factors only if they present economic risks or  
11 opportunities that qualified investment professionals would treat as  
12 material economic considerations under generally accepted investment  
13 theories. The weight given to those factors should solely reflect a  
14 prudent assessment of their impact on risk and return.

15           SECTION 5.           NEW LAW           A new section of law to be codified  
16 in the Oklahoma Statutes as Section 9105 of Title 62, unless there  
17 is created a duplication in numbering, reads as follows:

18           A. All proxies held by or on behalf of a pension benefit plan  
19 or the beneficiaries thereof shall be voted solely in the pecuniary  
20 interest of plan participants. Voting to further non-pecuniary,  
21 environmental, social, political, ideological or other benefits or  
22 goals is prohibited.

23           B. Unless no economically practicable alternative is available,  
24 a fiduciary may not adopt a practice of following the

1 recommendations of a proxy advisory firm or other service provider  
2 unless such firm or service provider has a practice of, and in  
3 writing commits to, following proxy voting guidelines that are  
4 consistent with the plan's fiduciary obligation to act based only on  
5 pecuniary factors.

6 C. Unless no economically practicable alternative is available,  
7 plan assets shall not be entrusted to a fiduciary unless that  
8 fiduciary has a practice of, and in writing commits to, following  
9 guidelines, when using plan assets to engage with portfolio  
10 companies and vote shares or proxies that match the plan's  
11 obligation to act based only on pecuniary factors.

12 D. With respect to the pension benefit plans, all such proxy  
13 voting authority shall reside with the respective Board of Trustees,  
14 except that the Board of Trustees may delegate such authority to a  
15 person who has a practice of, and in writing commits to, following  
16 guidelines that match the plan's obligation to act based only on  
17 pecuniary factors.

18 E. All proxy votes shall be tabulated and reported annually to  
19 the respective Board of Trustees. For each vote, the report shall  
20 contain a vote caption, the plan's vote, the recommendation of  
21 company management, and, if applicable, the proxy advisor's  
22 recommendation. These reports shall be posted on a publicly  
23 available webpage.

24

1 SECTION 6. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 9106 of Title 62, unless there  
3 is created a duplication in numbering, reads as follows:

4 A. This act may be enforced by the Attorney General.

5 B. If the Attorney General has reasonable cause to believe that  
6 a person has engaged in, is engaging in, or is about to engage in a  
7 violation of this act, he or she may:

8 1. Require such person to file on such forms as he or she  
9 prescribes a statement or report in writing, under oath, as to all  
10 the facts and circumstances concerning the violation, and such other  
11 data and information as he or she may deem necessary;

12 2. Examine under oath any person in connection with the  
13 violation;

14 3. Examine any record, book, document, or paper as he or she  
15 may deem necessary; and

16 4. Pursuant to an order of the Supreme Court of Oklahoma,  
17 impound any record, book, document, paper, or sample or material  
18 relating to such practice and retain the same in his or her  
19 possession until the completion of all proceedings undertaken under  
20 this act or in the courts.

21 SECTION 7. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section 9107 of Title 62, unless there  
23 is created a duplication in numbering, reads as follows:

24



1       A. The State of Oklahoma, pension benefit plans as defined in  
2 this act, as well as officers, board members, and employees of the  
3 state or the pension benefit plans are immune from civil liability  
4 for any act or omission related to any provision under this act.

5       B. In addition to the immunity provided under subsection A of  
6 this section, officers, board members, and employees of the state or  
7 the pension benefit plans are entitled to indemnification from the  
8 pension benefit plan for all losses, costs and expenses, including  
9 reasonable attorney fees, associated with defending against any  
10 claim or suit related to any provision of this act.

11       SECTION 8.       NEW LAW       A new section of law to be codified  
12 in the Oklahoma Statutes as Section 9108 of Title 62, unless there  
13 is created a duplication in numbering, reads as follows:

14       Should a court of competent jurisdiction hold any provision(s)  
15 of this chapter to be invalid, such action will not affect any other  
16 provision of this act.

17       SECTION 9. This act shall become effective July 1, 2024.

18       SECTION 10. It being immediately necessary for the preservation  
19 of the public peace, health or safety, an emergency is hereby  
20 declared to exist, by reason whereof this act shall take effect and  
21 be in full force from and after its passage and approval.

22 COMMITTEE REPORT BY: COMMITTEE ON FINANCE  
23 April 8, 2024 - DO PASS  
24