

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 59th Legislature (2023)

4 HOUSE BILL 2777

By: McCall, **Lepak**, and **Boles**

7 AS INTRODUCED

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

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

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

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

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

1 As used in the Oklahoma Public Finance Protection Act:

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

9 a. provides retirement income or other retirement  
10 benefits to employees or former employees, or

11 b. results in a deferral of income by such employees for  
12 a period extending to the termination of covered  
13 employment or beyond;

14 2. "Fiduciary" means a person who, with respect to a pension  
15 benefit plan:

16 a. exercises any discretionary authority or discretionary  
17 control respecting management of such plan or  
18 exercises any authority or control respecting  
19 management or disposition of its assets,

20 b. renders investment advice for a fee or other  
21 compensation, direct or indirect, with respect to any  
22 monies or other property of such plan, or has any  
23 authority or responsibility to do so, or  
24

1           c. has any discretionary authority or discretionary  
2           responsibility in the administration of such plan,  
3           including making recommendations or voting a plan's  
4           shares or proxies;

5       3. "Material" when used to qualify a risk or return:

6           a. means a risk or return regarding which there is a  
7           substantial likelihood that a reasonable investor  
8           would attach importance when:

9               (1) evaluating the potential financial return and  
10              financial risks of an existing or prospective  
11              investment, or

12              (2) exercising, or declining to exercise, any rights  
13              appurtenant to securities, and

14           b. does not include:

15              (1) furthering non-pecuniary, environmental, social,  
16              political, ideological, or other goals or  
17              objectives, or

18              (2) any portion of a risk or return that primarily  
19              relates to events that involve a high degree of  
20              uncertainty regarding what may or may not occur  
21              in the distant future and are systemic, general,  
22              or not investment-specific in nature;

23       4. "Pecuniary factor" means a factor that has a material effect  
24       on the financial risk or financial return of an investment based on

1 appropriate investment horizons consistent with the plan's  
2 investment objectives and the funding policy. The term excludes  
3 non-pecuniary factors; and

4 5. "Non-pecuniary" includes any action taken or factor  
5 considered by a fiduciary with any purpose to further environmental,  
6 social, or political goals. A fiduciary purpose may be reasonably  
7 determined by evidence, including, but not limited to, a fiduciary's  
8 statements indicating its purpose in selecting investments, engaging  
9 with portfolio companies, or voting shares or proxies, or any such  
10 statements by any coalition, initiative, or organization that the  
11 fiduciary has joined, participated in, or become a signatory to, in  
12 its capacity as a fiduciary.

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

16 A fiduciary shall discharge duties with respect to a plan solely  
17 in the pecuniary interest of the participants and beneficiaries:

18 1. For the exclusive purpose of providing pecuniary benefits to  
19 participants and their beneficiaries and defraying reasonable  
20 expenses of administering the plan;

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

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

4       4. In accordance with the documents and instruments governing  
5 the plan insofar as such documents and instruments are consistent  
6 with the provisions of this act.

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

10       A fiduciary's evaluation of an investment, or evaluation or  
11 exercise of any right appurtenant to an investment, must take into  
12 account only pecuniary factors. Plan fiduciaries are not permitted  
13 to promote non-pecuniary benefits or any other non-pecuniary goals.  
14 Environmental, social, corporate governance, or other similarly  
15 oriented considerations are pecuniary factors only if they present  
16 economic risks or opportunities that qualified investment  
17 professionals would treat as material economic considerations under  
18 generally accepted investment theories. The weight given to those  
19 factors should solely reflect a prudent assessment of their impact  
20 on risk and return. Fiduciaries considering environmental, social,  
21 corporate governance, or other similarly oriented factors as  
22 pecuniary factors are also required to examine the level of  
23 diversification, degree of liquidity, and the potential risk-return  
24 in comparison with other available alternative investments that

1 would play a similar role in their plans' portfolios. Any pecuniary  
2 consideration of environmental, social, or governance factors must  
3 necessarily include evaluating whether greater returns can be  
4 achieved through investments that rank poorly on such factors.

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

8 A. All shares held directly or indirectly by or on behalf of a  
9 pension benefit plan or the beneficiaries thereof shall be voted  
10 solely in the pecuniary interest of plan participants. Voting to  
11 further non-pecuniary, environmental, social, political, ideological  
12 or other benefits or goals is prohibited.

13 B. Unless no economically practicable alternative is available,  
14 a fiduciary may not adopt a practice of following the  
15 recommendations of a proxy advisory firm or other service provider  
16 unless such firm or service provider has a practice of, and in  
17 writing commits to, following proxy voting guidelines that are  
18 consistent with the fiduciary's obligation to act based only on  
19 pecuniary factors.

20 C. Unless no economically practicable alternative is available,  
21 plan assets shall not be entrusted to a fiduciary, unless that  
22 fiduciary has a practice of, and in writing commits to, following  
23 guidelines, when engaging with portfolio companies and voting shares  
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1 or proxies, that match the plan's obligation to act based only on  
2 pecuniary factors.

3 D. Authority to vote such shares should be in the hands of a  
4 state official politically accountable to the people of the State of  
5 Oklahoma. As such, all current proxy voting authority with respect  
6 to any and all shares held directly or indirectly by or on behalf of  
7 a pension benefit plan or the plan participants is hereby revoked.  
8 With respect to the pension benefit plans, all such voting authority  
9 shall reside with the respective Board of Trustees, except that the  
10 Board of Trustees may delegate such authority to a person who has a  
11 practice of, and in writing commits to, following guidelines that  
12 match the plan's obligation to act based only on pecuniary factors.  
13 With respect to all statewide or local governing authority, all such  
14 voting authority shall reside with the respective governing officer,  
15 except that the governing officer may delegate such authority to a  
16 person who has a practice of, and in writing commits to, following  
17 guidelines that match the governing officer's obligation to act  
18 based only on pecuniary factors.

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

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 article, 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, account, or paper as he  
15 or she may deem necessary; and

16           4. Pursuant to an order of the Supreme Court of Oklahoma,  
17 impound any record, book, document, account, paper, or sample or  
18 material 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:

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1       Should a court of competent jurisdiction hold any provision of  
2 this act to be invalid, such action will not affect any other  
3 provision of this act.

4       SECTION 8. This act shall become effective November 1, 2023.

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6 COMMITTEE REPORT BY: COMMITTEE ON RULES, dated 02/28/2023 - DO PASS,  
7 As Coauthored.  
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