

COMMITTEE AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB1617 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Mark Lepak _____

Reading Clerk

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

PROPOSED COMMITTEE
SUBSTITUTE
FOR
HOUSE BILL NO. 1617

By: Lepak

PROPOSED COMMITTEE SUBSTITUTE

An Act relating to public finance; enacting the Oklahoma Public Finance Protection Act; defining terms; providing fiduciary's standard of care; prohibiting consideration of non-pecuniary factors; providing who has authority to vote on certain shares; providing for delegation of authority; providing that proxy votes be reported annually; authorizing Attorney General to enforce act and examine certain persons and records; providing for private right of action; providing immunity for the State of Oklahoma and certain individuals; providing for codification; providing an effective date; and declaring an emergency.

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

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

- 12 a. provides retirement income or other retirement
13 benefits to employees or former employees,
- 14 b. results in a deferral of income by such employees for
15 period extending to the termination of covered
16 employment or beyond, and
- 17 c. the term does not include a defined contribution plan
18 under the Retirement Freedom Act, established pursuant
19 to Section 935.2 of Title 74 of the Oklahoma Statutes,
20 except that investment options selected as default
21 investment options for participating employees shall
22 be selected in adherence to the requirements of this
23 act;
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1 2. "Fiduciary" means a person who, with respect to a pension
2 benefit plan:

- 3 a. exercises any discretionary authority or discretionary
4 control respecting management of such plan or
5 exercises any authority or control respecting
6 management or disposition of its assets,
7 b. renders investment advice for a fee or other
8 compensation, direct or indirect, with respect to any
9 moneys or other property of such plan, or has any
10 authority or responsibility to do so, or
11 c. has any discretionary authority or discretionary
12 responsibility in the administration of such plan,
13 including making recommendations or voting a plan's
14 shares or proxies;

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

- 16 a. means a risk or return regarding which there is a
17 substantial likelihood that a reasonable investor
18 would attach importance when:
19 (1) evaluating the potential financial return and
20 financial risks of an existing or prospective
21 investment, or
22 (2) exercising, or declining to exercise, any rights
23 appurtenant to securities, and
24 b. does not include:

1 (1) furthering non-pecuniary, environmental, social,
2 political, ideological, or other goals or
3 objectives, or

4 (2) any portion of a risk or return that primarily
5 relates to events that are not investment-
6 specific in nature;

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

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

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

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

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

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

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

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

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

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

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

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

20 B. All shares of securities held directly or indirectly by or
21 on behalf of a pension benefit plan or the beneficiaries thereof
22 shall be voted consistent with the recommendations, if any, of the
23 majority of the board of directors, where such board is composed of
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1 a majority of independent directors of the company subject to the
2 proposal, unless:

3 1. The pension benefit plan or any institution managing funds
4 on behalf of a pension benefit plan prepares an economic analysis on
5 the impact of the resolution subject to a shareholder vote; and

6 2. Such economic analysis shows voting against the
7 recommendations of the board of directors would be in the best
8 economic interest of plan participants.

9 C. Subsection B of this section does not apply for purposes of
10 votes on company-sponsored proposals, including resolutions related
11 to the election of directors or the ratification of an independent
12 auditor.

13 D. 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 plan's fiduciary obligation to act based only on
19 pecuniary factors. With respect to shareholder-sponsored proposals
20 for which a proxy advisory firm recommends a vote that is not
21 aligned with the recommendation of the company's board of directors,
22 where such board is composed of a majority of independent directors,
23 a fiduciary shall not follow such recommendation unless the proxy
24 advisory firm conducts and publishes an economic analysis that

1 demonstrates the vote recommendation is in the best economic
2 interest of plan participants.

3 E. Unless no economically practicable alternative is available,
4 plan assets shall not be entrusted to a fiduciary, unless that
5 fiduciary has a practice of, and in writing commits to, following
6 guidelines, when using plan assets to engage with portfolio
7 companies and vote shares or proxies, that match the plan's
8 obligation to act based only on pecuniary factors. A fiduciary
9 shall vote shares consistent with the requirements provided in
10 subsection B of this section.

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

17 G. All proxy votes shall be tabulated and reported annually to
18 the respective Board of Trustees. For each vote, the report shall
19 contain a vote caption, the plan's vote, the recommendation of the
20 company's board of directors, the economic analysis conducted with
21 respect to any shareholder proposal where the plan voted contrary to
22 the recommendation of the company's board where such board is
23 composed of a majority of independent directors, and, if applicable,
24 the proxy advisor's recommendation. The reports required by this

1 section shall be certified by the institution's chief financial
2 officer. These reports shall be posted on a publicly available
3 webpage.

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

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

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

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

15 2. Examine under oath any person in connection with the
16 violation;

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

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

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

4 Plan participants or a person acting on behalf of plan
5 participants may bring an action, on an expedited basis, in a court
6 in this state against a person that does not comply with the
7 requirements or disclosures provided in Sections 4 or 5 of this act
8 for injunctive relief and recovery of reasonable attorney fees.

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

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

16 B. In addition to the immunity provided under subsection A,
17 officers, board members, and employees of the state or the pension
18 benefit plans are entitled to indemnification from the pension
19 benefit plan for all losses, costs and expenses, including
20 reasonable attorney fees, associated with defending against any
21 claim or suit related to any provision of this act.

22 SECTION 9. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 9109 of Title 62, unless there
24 is created a duplication in numbering, reads as follows:

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

4 SECTION 10. This act shall become effective July 1, 2024.

5 SECTION 11. It being immediately necessary for the preservation
6 of the public peace, health or safety, an emergency is hereby
7 declared to exist, by reason whereof this act shall take effect and
8 be in full force from and after its passage and approval.

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