

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

HOUSE BILL 1617

By: Lepak

AS INTRODUCED

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 codification; and providing an effective date.

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".

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

As used in the Oklahoma Public Finance Protection Act:

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

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

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

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

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

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

23 c. has any discretionary authority or discretionary
24 responsibility in the administration of such plan,

1 including making recommendations or voting a plan's
2 shares or proxies;

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

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

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

10 (2) exercising, or declining to exercise, any rights
11 appurtenant to securities, and

12 b. does not include:

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

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

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

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

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

15 A. A fiduciary shall discharge his duties with respect to a
16 plan solely in the pecuniary interest of the participants and
17 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 E. All proxy votes shall be tabulated and reported annually to
14 the respective Board of Trustees. For each vote, the report shall
15 contain a vote caption, the plan's vote, the recommendation of
16 company management, and, if applicable, the proxy advisor's
17 recommendation. These reports shall be posted on a publicly
18 available webpage.

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

22 A. This act may be enforced by the Attorney General.
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1 B. If the Attorney General has reasonable cause to believe that
2 a person has engaged in, is engaging in, or is about to engage in, a
3 violation of this article, he or she may:

4 1. require such person to file on such forms as he or she
5 prescribes a statement or report in writing, under oath, as to all
6 the facts and circumstances concerning the violation, and such other
7 data and information as he or she may deem necessary,

8 2. examine under oath any person in connection with the
9 violation,

10 3. examine any record, book, document, account, or paper as he
11 or she may deem necessary, and

12 4. pursuant to an order of the Supreme Court of Oklahoma,
13 impound any record, book, document, account, paper, or sample or
14 material relating to such practice and retain the same in his or her
15 possession until the completion of all proceedings undertaken under
16 this article or in the courts.

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

20 Should a court of competent jurisdiction hold any provision(s)
21 of this chapter to be invalid, such action will not affect any other
22 provision of this chapter.

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

59-1-5078 CMA 01/17/23

THOMAS E. CUMMINS CONSULTING ACTUARY, INC.

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January 18, 2023

Representative Mark Lepak
Room 543

Re: RBH No. 5078

RBH No. 5078 defines the fiduciary's duties for the retirement systems.

RBH No. 5078 is a nonfiscal bill as defined by OPLAAA.

I am a member of the American Academy of Actuaries and meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion herein.

Thomas E. Cummins

Thomas E. Cummins, MAAA