

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

2ND CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

HOUSE BILL NO. 2656

By: Hamilton (James),
Steidley, Roach, Johnson
(Rob), Kirby, Satterfield
and Davis of the House

and

Rozell of the Senate

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to public finance; amending 62 O.S. 1991, Sections 71.1, 89.2, as amended by Section 2 of Enrolled House Bill No. 2042 of the 2nd Session of the 44th Oklahoma Legislature, 89.7 and 89.11, which relate to the Office of State Treasurer and duties related thereto; amending 74 O.S. 1991, Section 150.5, which relates to the Oklahoma State Bureau of Investigation; modifying membership of Cash Management and Investment Oversight Commission; prohibiting certain member from performing certain duties; creating Executive Review Committee; providing for membership; requiring election of chairperson and prescribing term of office; prescribing duties of Executive Review Committee; modifying authorized meeting frequency for Cash Management and Investment Oversight Commission; providing for administrative support; requiring certain standardized reports to be prescribed by Cash Management and Investment Oversight Commission; requiring reports by State Treasurer; requiring certain communication to the State Treasurer; requiring certain written reports; requiring filing of reports; requiring criminal background investigations; requiring Oklahoma State Bureau of Investigation to report results of investigation; requiring appointment of investment officer; stating duties of investment officer; prohibiting certain duties and responsibilities; requiring selection of custodial bank; prescribing procedures for selection of custodial bank; requiring service agent; prescribing conditions for eligibility of custodial bank; requiring certain access to reports; prohibiting location of funds or certain items in certain places; requiring reports by State Treasurer; providing penalties for certain misconduct; requiring certain records and audit procedures with respect to investment transactions; prescribing procedures with respect to changes to or destruction of records; providing exception to requirement; authorizing inspection of records by certain persons; prescribing criminal penalties; providing for termination of employment; requiring State Treasurer to conduct certain investigation; requiring disclosure of investigative results by Oklahoma State Bureau of Investigation; and declaring an emergency.

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

SECTION 1. AMENDATORY 62 O.S. 1991, Section 71.1, is amended to read as follows:

Section 71.1 A. There is hereby created the Cash Management and Investment Oversight Commission. The Commission shall consist of ~~five (5)~~ six (6) members as follows:

1. The Director of State Finance, or designee;
2. The Bank Commissioner, or designee;
3. The Administrator of the Oklahoma Department of Securities, or designee;

4. One citizen member appointed by the Speaker of the House of Representatives who shall have a demonstrated expertise in public or private investment finance and who shall serve at the Speaker's pleasure;

~~4.~~ 5. One citizen member appointed by the President Pro Tempore of the State Senate who shall be a certified public accountant or public accountant with a demonstrated expertise in public or private auditing procedures and who shall serve at the President Pro Tempore's pleasure; and

~~5.~~ 6. One citizen member appointed by the State Treasurer who shall have a demonstrated expertise in public or private investment funds management and who shall serve at the State Treasurer's pleasure. The citizen member appointed by the State Treasurer shall be an ex officio and nonvoting member. Said citizen member shall not serve as chairperson of the Commission.

B. The appointed members shall have no direct or indirect business relationship with the State Treasurer or the State Treasurer's Office.

C. The initial meeting shall be called by the Governor before September 1, 1991. The Commission shall elect from its membership, other than the citizen member appointed by the State Treasurer, a chairperson and vice-chairperson. Such officers shall serve one-year terms and may be reelected. There shall be an Executive Review Committee of the Cash Management and Investment Oversight Commission consisting of the Director of

State Finance, the Bank Commissioner and the Administrator of the Oklahoma Department of Securities or their respective designees. The Director of the Office of State Finance shall call a meeting to organize the Executive Review Committee. The Executive Review Committee shall elect from its membership a chairperson who shall serve for a period of one (1) year and who may be reelected. The Executive Review Committee shall meet at least once each month and at such other times as it deems necessary for the performance of its duties.

D. The Commission shall hold regular meetings at least ~~one~~ once each quarter, ~~the~~ and at such other times as it deems necessary for the performance of its duties. The date, time and place ~~to~~ of the meetings shall be set by the Commission. The Legislative Service Bureau shall provide the administrative support required by the Commission. The Commission shall be staffed by the Legislative Service Bureau who shall prepare all materials and information needed by the Commission to perform its duties and responsibilities. Meetings of the Commission and of the Executive Review Committee of the Commission shall be subject to the Open Meeting Act, and ~~its~~ their records shall be public records pursuant to the Open Records Act.

E. The Commission in conjunction with the State Auditor and Inspector shall develop a standardized and uniform reporting system which the State Treasurer shall use to make the reports required by Sections 89.7 and 89.10 of this title. The Commission shall prescribe such forms in order to obtain an objective and accurate analysis of the investment of state funds by the State Treasurer and to obtain an accurate analysis of investment performance according to an objective standard established by the Commission, no later than October 1, 1994. The Commission shall not be subject to the provisions of the Administrative Procedures Act for purposes of developing the reporting system required by this subsection. The Commission shall develop the reporting system and notify the State Treasurer of the reporting format requirements not later than October 1, 1994. The State Treasurer shall begin making reports on the forms so developed not later

than December 31, 1994. The Commission shall review the reports prepared by the State Treasurer pursuant to ~~Section~~ Sections 89.7 ~~of this title~~ and ~~Section 7~~ 89.10 of this ~~act~~ title. The Commission shall review with the State Treasurer investment strategies and practices and the development of internal auditing procedures and practices. The Commission shall review the reports submitted by the State Treasurer and shall identify any event, transaction or trend which the Commission determines to represent a violation or potential violation of law or public policy regarding the investment of state funds. The Commission shall specifically identify its concerns or objections and shall communicate such concerns or objections in writing to the State Treasurer.

F. The Commission staff shall submit a written report to each member of the Commission for each month of the calendar year which specifically identifies entities with whom or with which the State Treasurer has transacted business related to investment of any state funds during the applicable reporting period. Any person or entity to whom or to which any form of compensation has been or will be paid for services rendered to the State Treasurer's Office related to the investment of state funds shall be identified in the report. The report shall also be submitted to the Director of the Office of State Finance, the State Auditor and Inspector, the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Governor.

~~F.~~ G. Members of the Commission shall serve without compensation, except for travel, pursuant to the State Travel Reimbursement Act, to be paid by the appointing authority.

~~G.~~ H. The Commission may make written recommendations for changes in legislation to the Legislature or in the policies or procedures and practices of the State Treasurer to the State Treasurer.

I. The Commission shall determine by October 1, 1994, the positions, including but not limited to the investment officer, in the State Treasurer's Office which shall require criminal background investigations by the Oklahoma State Bureau of

Investigation. The Bureau shall advise the State Treasurer and the Cash Management and Investment Oversight Commission in writing of the results of the investigation.

SECTION 2. AMENDATORY 62 O.S. 1991, Section 89.2, as amended by Section 2 of Enrolled House Bill No. 2042 of the 2nd Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 89.2 A. The State Treasurer is directed to invest the maximum amount of funds under his control consistent with good business practices; provided that the Treasurer shall keep eighty percent (80%) or more of the money under his control invested during each fiscal year based on the average daily balances during said fiscal year. Except as otherwise provided for by law, such investments shall earn not less than the rate for comparable maturities on United States Treasury obligations. Except as otherwise provided for by law, the State Treasurer may purchase and invest only in:

1. Obligations of the United States Government, its agencies and instrumentalities;

2. Collateralized or insured certificates of deposit and other evidences of deposit at banks, savings banks, savings and loan associations and credit unions located in this state;

3. Negotiable certificates of deposit issued by a nationally or state-chartered bank, a savings bank, a savings and loan association or a state-licensed branch of a foreign bank.

Purchases of negotiable certificates of deposit shall not exceed ten percent (10%) of the cash available for investment which may be invested pursuant to this section. Not more than one-half (1/2) of the ten percent (10%) limit shall be invested in any one financial institution specified in this paragraph;

4. Prime banker's acceptances which are eligible for purchase by the Federal Reserve System and which do not exceed two hundred seventy (270) days' maturity. Purchases of prime banker's acceptances shall not exceed ten percent (10%) of the cash available for investment which may be invested pursuant to this section. Not more than three-fourths (3/4) of the ten percent

(10%) limit shall be invested in any one commercial bank pursuant to this paragraph;

5. Prime commercial paper which shall not have a maturity that exceeds one hundred eighty (180) days nor represent more than ten percent (10%) of the outstanding paper of an issuing corporation. Purchases of prime commercial paper shall not exceed seven and one-half percent (7 1/2%) of the cash available for investment which may be invested pursuant to this section;

6. Investment grade obligations of state and local governments. Purchases of investment grade obligations of state and local governments shall not exceed ten percent (10%) of the cash available for investment which may be invested pursuant to this section; and

7. Repurchase agreements provided that such agreements are included within the written investment policy required by subsection E D of this section that have underlying collateral consisting of those items and those restrictions specified in paragraphs 1 through 6 of this subsection.

B. Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.

C. The State Treasurer shall appoint an investment officer who shall perform duties related to the investment of state funds in the Office of the State Treasurer. The investment officer shall not perform duties unrelated to the investment of state funds. The investment officer shall not perform or supervise any accounting functions, data processing functions or duties related to the documentation or settlement of investment transactions.

D. Investments of public funds by the State Treasurer shall be made in accordance with written policies developed by the State Treasurer. The written investment policies shall address:

1. liquidityti
2. diversificationti

3. safety of principal~~r~~i;
4. yield~~r~~i;
5. maturity and quality~~r~~i; and
6. capability of investment management~~r~~i, ~~with~~.

The State Treasurer shall place primary emphasis on safety and liquidity in the investment of public funds. To the extent practicable taking into account the need to use sound investment judgment, the written investment policies shall include provision for utilization of a system of competitive bidding in the investment of state funds. Such system shall be designed to maximize yield within each class of investment instrument, consistent with the safety of the funds invested.

E. The State Treasurer shall select one custodial bank to settle transactions involving the investment of state funds under the control of the State Treasurer. The State Treasurer shall review the performance of the custodial bank at least once every year. The State Treasurer shall require a written competitive bid every three (3) years. The custodial bank shall have a minimum of Five Hundred Million Dollars (\$500,000,000.00) in assets to be eligible for selection. Any out-of-state custodial bank shall have a service agent in the State of Oklahoma so that service of summons or legal notice may be had on such designated agent as is now or may hereafter be provided by law. In order to be eligible for selection, the custodial bank shall allow electronic access to all transaction and portfolio reports maintained by the custodial bank involving the investment of state funds under control of the State Treasurer. Such access shall be given to both the State Treasurer and to the Cash Management and Investment Oversight Commission. The requirement for electronic access shall be incorporated into any contract between the State Treasurer and the custodial bank. Neither the State Treasurer nor the custodial bank shall permit any of the funds under the control of the State Treasurer or any of the documents, instruments, securities or other evidence of a right to be paid money to be located in any place other than within a jurisdiction or territory under the control or regulatory power of the United States Government.

F. The investment policy shall specify the general philosophy, policies and procedures to be followed in the investment of state monies by the State Treasurer. The investment policy shall include, but not be limited to, the following:

1. Policy objectives;
2. Performance measure objectives;
3. Authority for investment program;
4. Possible use of an investment advisory committee;
5. Reporting and documentation of investments;
6. Authorized investment instruments;
7. Diversification of investment risk;
8. Maturity limitations;
9. Selections of financial institutions;
10. Interest controls;
11. Safekeeping of investments;
12. Investment ethics; and
13. Formal adoption of policy.

~~D.~~ G. The State Treasurer shall provide weekly reports of all investments made by the State Treasurer for that week to the Executive Review Committee of the Cash Management and Investment Oversight Commission, and list any commissions, fees or payments made for services regarding such investments. The reports required by this subsection shall be delivered to the Committee within three (3) business days of the end of the applicable week, and the Committee shall communicate any facts or information they deem appropriate to the Cash Management and Investment Oversight Commission and shall also prepare all reports necessary for the quarterly meeting of the Commission.

H. Not later than September 1, 1987, and July 1 of each year thereafter, the State Treasurer shall forward a copy of the written investment policy to the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Attorney General, the Bank Commissioner, and the Director of State Finance. In addition, the State Treasurer shall maintain one copy of the investment policy in the office of the State Treasurer for public inspection during regular business hours.

Copies of any modifications to the investment policy shall be forwarded to the Governor, Speaker of the House of Representatives, President Pro Tempore of the Senate, and each member of the Cash Management and Investment Oversight Commission.

SECTION 3. AMENDATORY 62 O.S. 1991, Section 89.7, is amended to read as follows:

Section 89.7 A. The State Treasurer shall prepare ~~quarterly~~ monthly and annual investment performance reports of the State Treasurer's Office in the form and manner required by the Cash Management and Investment Oversight Commission after consultation with the State Treasurer which summarize recent market conditions, economic developments and anticipated investment conditions and the investment plan performance, including portfolio diversification and rates of return measured against the investment plan of the State Treasury. The annual investment performance ~~reports~~ report shall be submitted to the Commission and shall be made within thirty (30) calendar days after the end of the ~~respective reporting period~~ fiscal year. The monthly investment performance reports shall be submitted to the Executive Review Committee and shall be made within fifteen (15) days after the end of the applicable month. The investment performance reports shall specify the investment strategies employed in the most recent reporting period and describe the investment portfolio of the state in terms of:

1. Securities;
2. Maturities;
3. Fund type;
4. Financial institutions from which securities were purchased, including the amounts and the city and state of location;
5. Investment return compared to budgetary expectations;
6. Average yield; and
7. Average life of the portfolio.

The investment performance reports shall also indicate any areas of concern which the State Treasurer has concerning the basic

investment strategies being employed. The investment performance reports shall contain:

- a. combined and individual rates of return and a list of all losses by category of investment, over periods of time;
- b. the rate of return on deposits and all fees and expenses charged as to all depository financial institutions of the State Treasury and a specific review of the adequacy of the collateralization;
- c. any other information that the State Treasurer may include; and
- d.—such other information that the Cash Management and Investment Oversight Commission created by Section ~~2~~ 71.1 of this ~~act~~ title may request and that the State Treasurer agrees to include in the investment performance reports.

B. To the extent that the State Treasurer should have reason to know, the State Treasurer shall also include in the investment performance reports a listing of all payments, fees, commissions, or other compensation received by any person, including but not limited to individuals, financial institutions, or investment companies or corporations, which have an investment agreement, contract, or other arrangement with the State Treasurer, or who receive any compensation as a result of a transaction involving the investment of state monies or funds or the purchase, sale, or trade of securities or bonds involving the Office of the State Treasurer. Said listings shall also include the social security or federal identification number of any person, including but not limited to individuals, financial institutions, or investment companies or corporations, receiving payments, fees, commissions, or other compensation.

C. The annual investment performance report shall be written in simple and easily understood language containing:

- a. an analysis of the written investment plans developed by the Treasurer as required by law;

- b. a quantitative analysis of the performance of all depository financial institutions approved by the State Treasurer, with regard to monies deposited;
- c. the result of the analyses prepared pursuant to subparagraphs a and b of this paragraph compared with similar data for other states;
- d. recommendations on administrative and legislative changes which are necessary to improve the performance of the State Treasury in accordance with current standards for large public fund portfolio management; and
- e. a listing by object code of the expenses of the State Treasury as audited by the independent auditor provided by Section 7 89.10 of this ~~act~~ title.

D. The State Treasurer shall distribute the investment performance reports to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the State Auditor and Inspector, the Attorney General, and members of the Cash Management and Investment Oversight Commission. Upon request, the State Treasurer shall make the annual investment performance report available to the members of the Legislature and the general public. The annual investment performance report shall also include an investment plan for the ensuing fiscal year.

E. The State Treasurer shall require all employees in the State Treasury to sign an anti-collusion affidavit. Execution of a false affidavit shall make such employees subject to disciplinary action, including but not limited to termination, criminal prosecution or both.

F. The State Treasurer shall require an anti-collusion affidavit from brokers or other persons offering investment services to the State Treasury. The State Treasurer shall be prohibited from employing or doing business with any brokers or persons offering investment services to the State Treasury who have not executed such an affidavit.

G. The Cash Management and Investment Oversight Commission shall certify that the State Treasurer has delivered to the

Commission the ~~quarterly~~ monthly and annual investment performance reports required by Section 89.7 of this title and the annual financial report required by this section. If the Commission determines that these reports have not been delivered by the State Treasurer as required by law, the Commission shall notify in writing the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Attorney General, and the State Auditor and Inspector.

SECTION 4. AMENDATORY 62 O.S. 1991, Section 89.11, is amended to read as follows:

Section 89.11 A. The State Treasurer shall develop and implement a system of procedures to record and audit all transactions, including electronic investment bidding transactions with outside financial concerns. Said system of procedures shall be promulgated pursuant to the Administrative Procedures Act and must be approved by the Cash Management and Investment Oversight Commission not later than October 1, 1994.

B. The Executive Review Committee must approve any proposed destruction or changes of any transaction records, including electronic investment bidding transactions. Any approved destructions or changes of such transactions shall be detailed in writing by the Executive Review Committee. The provisions of this subsection shall not apply to corrections of scrivener error in transaction records; however, for purposes of this section, "scrivener error" shall not be defined to include any deliberate change in a transaction record made:

1. For the purpose of causing a record to reflect a transaction having occurred which did not in fact occur;

2. For the purpose of causing a record to reflect that a transaction did not occur when in fact it did occur; or

3. Resulting in inaccuracy in a record which is material to determining whether an act or omission occurred if such act or omission constitutes a violation of any law, rule or requirement.

C. The State Auditor and Inspector, the Attorney General and other authorized law enforcement officers are authorized to

inspect any transaction records or documents, including electronic investment bidding transactions created pursuant to this section.

D. The willful interference with the inspections authorized by subsection C of this section or the deliberate falsification or destruction of transaction records, other than as permitted by subsection B of this section, by the State Treasurer, any employee of the State Treasurer, or any other person or firm shall, upon conviction, be a felony and shall be punishable by imprisonment in the State Penitentiary for a term not to exceed three (3) years, by a fine of Ten Thousand Dollars (\$10,000.00) or by both such imprisonment and fine and shall also constitute grounds for termination of such employee. A violation of the requirements of subsection C of this section, shall be grounds for disciplinary action, including termination from employment.

SECTION 5. AMENDATORY 74 O.S. 1991, Section 150.5, is amended to read as follows:

Section 150.5 A. Oklahoma State Bureau of Investigation investigations not covered under Section 150.2 of this title shall be initiated at the request of the following persons:

1. The Governor;
 2. The Attorney General;
 3. The Council on Judicial Complaints upon a vote by a majority of said Council; or
 4. The chairman of any Legislative Investigating Committee which has been granted subpoena powers by resolution, upon authorization by a vote of the majority of said Committee.
- Such requests for investigations shall be submitted in writing and shall contain specific allegations of wrongdoing under the laws of the State of Oklahoma.

B. The Governor may initiate special background investigations with the written consent of the person who is the subject of the investigation.

C. The chairman of any Senate committee which is fulfilling the statutory responsibility for approving nominations made by the Governor may, upon a vote by a majority of the committee and with the written consent of the person who is to be the subject of the

investigation, initiate a special background investigation of any nominee for the Oklahoma Horse Racing Commission as established by Provision No. 1, State Question No. 553, Initiative Petition No. 315 (3A O.S. Supp. 1982, Section 201). The Bureau shall submit a report to the committee within thirty (30) days of the receipt of the request. Any consideration by the committee of a report from the Bureau shall be for the exclusive use of the committee and shall be considered only in executive session.

D. All records relating to any investigation being conducted by the Bureau shall be confidential and shall not be open to the public or to the Commission except as provided in Section 150.4 of this title; provided, however, officers and agents of the Bureau may disclose, at the discretion of the Director, such investigative information to officers and agents of federal, state, county, or municipal law enforcement agencies and to district attorneys, in the furtherance of criminal investigations within their respective jurisdictions. Any unauthorized disclosure of any information contained in the confidential files of the Bureau shall be a misdemeanor. The person or entity authorized to initiate investigations in this section shall receive a report of the results of the requested investigation. The person or entity requesting the investigation may give that information only to the appropriate prosecutorial officer or agency having statutory authority in the matter if that action appears proper from the information contained in the report, and shall not reveal or give such information to any other person or agency. Violation hereof shall be deemed willful neglect of duty and shall be grounds for removal from office.

E. The State Treasurer must initiate a complete background investigation of the positions with the written consent of the persons who are the subject of the investigation pursuant to subsection I of Section 71.1 of Title 62 of the Oklahoma Statutes. The Bureau shall advise the State Treasurer and the Cash Management and Investment Oversight Commission in writing of the results of the investigation.

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

44-2-L9803 MAH