

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

HOUSE BILL NO. 2383

By: Roach

AS INTRODUCED

An Act relating to public finance; amending 62 O.S. 1991, Sections 89.7 and 89.11, which relate to the State Treasurer; prohibiting payment of compensation by State Treasurer to business entities unless certain services performed; requiring certain investment transactions to be conducted by entity with substantial business presence; defining term; requiring State Treasurer to develop system for recording transaction involving state funds; prescribing requirements for record-keeping system; requiring written reports to State Treasurer and State Auditor and Inspector based upon possible violations of certain law; prescribing procedures for reporting; requiring determination by State Auditor and Inspector; requiring assistance by the Attorney General; prohibiting certain actions to be taken against persons filing written reports; providing for penalty based upon filing written reports without factual basis; authorizing disciplinary and other action for filing report under certain circumstances; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 62 O.S. 1991, Section 89.7, is amended to read as follows:

Section 89.7 A. The State Treasurer shall prepare quarterly and annual investment performance reports of the State Treasurer's Office 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 investment performance reports shall be made within thirty (30) calendar days after the end of the respective reporting period. 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. The State Treasurer shall not pay any form of compensation or remuneration, whether monetary or non-monetary, to any person, firm, association, partnership, trust, corporation, limited liability company or any other legal entity for the purpose

of locating, identifying, recommending or otherwise communicating information or advice to the State Treasurer or any employee of the Treasurer concerning the qualifications of a person, firm, association, partnership, trust, corporation, limited liability company or any other legal entity to invest or manage any funds under the control of the Treasurer. Except as may otherwise be specifically provided by law, the State Treasurer may only pay monetary compensation to an entity for the actual services rendered to the State Treasurer for the investment or management of funds under the control of the Treasurer.

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.

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 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 2. 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 electronic investment bidding transactions with outside financial concerns.

B. The State Treasurer shall not contract with any entity for the investment or management of funds under the control of the Treasurer unless the entity has substantial business presence within the State of Oklahoma. For purposes of this subsection, an entity

has substantial business presence within the state if at least three (3) of the following criteria are satisfied:

1. The entity is registered with the Oklahoma Secretary of State to transact business in the State of Oklahoma and has a registered agent for service of process located within the State of Oklahoma;

2. The entity maintains a business office at a physical location within the state which is occupied by at least one (1) natural person for an average period of forty (40) hours per week, exclusive of holidays;

3. The entity owns property within the state with a value based upon acquisition cost of at least Twenty Thousand Dollars (\$20,000.00) as of the date upon which the Treasurer enters into any contract with the entity for the investment or management of funds under the control of the Treasurer;

4. The entity is required to file and does file an Oklahoma income tax return or returns based upon the domicile of the entity or the residence of any natural persons, as applicable;

5. The entity is contractually obligated to occupy real property within the state for a term of at least one (1) year beyond the date as of which the State Treasurer enters into any contract with the entity for the investment or management of funds under the control of the Treasurer.

C. The State Treasurer shall provide for a system which makes an accurate record of every transaction involving the investment of state funds. The system shall include a written record of each such transaction and a record of each such transaction which is stored in electronic or magnetic form. An accurate copy of the electronic or magnetic form of each such record shall be transmitted to the State Auditor and Inspector simultaneously with the creation and storage of each such record by the State Treasurer. The Information Services Division of the Office of State Finance shall provide such

assistance as may be required in order for the Treasurer to develop and implement the system required by this subsection.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 89.12 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. If the State Treasurer or any person employed or compensated by the State Treasurer has a reasonable basis to believe that a transaction involving the investment or management of state funds has been made in violation of any rule, regulation, policy, directive, order, statute or any other provision of law, whether federal or state, such information as may be required to evaluate the potential violation shall be reported in writing to the State Auditor and Inspector and, if reported by a person other than the Treasurer, to the State Treasurer.

B. The State Auditor and Inspector shall evaluate the information presented and make a determination of whether a violation has occurred. The Attorney General shall provide such assistance to the State Auditor and Inspector as may be required for making the determination required herein.

C. No person shall be subject to any form of disciplinary proceeding, suspension, demotion, discharge or other adverse action for making the report required by subsection A of this section.

D. Any person who makes a written report provided for by subsection A of this section with the intent to damage the reputation of any person without any factual basis to believe that a potential violation requiring the report has occurred shall be subject to disciplinary action, including suspension, demotion, discharge or other adverse action.

SECTION 4. This act shall become effective July 1, 1994.

SECTION 5. 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.

44-2-7817

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