

SHORT TITLE: Schools; trustee duty of care; clarifying statutory outline; effective date.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 757

By: Williams

AS INTRODUCED

An Act relating to schools; amending 70 O.S. 1991, Section 3954, as last amended by Section 1, Chapter 391, O.S.L. 1992 (70 O.S. Supp. 1996, Section 3954), which relates to trustee duty of care; clarifying statutory outline; and providing an effective date.

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

SECTION 1. AMENDATORY 70 O.S. 1991, Section 3954, as last amended by Section 1, Chapter 391, O.S.L. 1992 (70 O.S. Supp. 1996, Section 3954), is amended to read as follows:

Section 3954. A. The Oklahoma State Regents for Higher Education shall discharge their duties as trustees of the Oklahoma State Regents' Endowment Trust Fund, as trustees of the Oklahoma State Regents' Academic Scholars Trust Fund, and as trustees of the Oklahoma Higher Learning Access Trust Fund, hereafter "Trust Funds":

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

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

3. In accordance with the laws, documents and instruments governing the Trust Funds.

B. The monies of the Trust Funds shall be invested only in assets eligible for the investment of funds of legal reserve life insurance companies in this state as provided for in Sections 1602 through 1611, 1613 through 1620, and 1622 through 1624 of Title 36 of the Oklahoma Statutes. The term "admitted assets" shall mean the amount of the monies of the Trust Funds, and the provisions relating to limitation of investments as a percentage of surplus and loans to policyholders shall be inapplicable with respect to investment of the monies of the Trust Funds. The monies of the Trust Funds may be invested in certificates of indebtedness or such other enforceable evidences of obligation as may be utilized in rights-of-way acquisitions by the Oklahoma Department of Transportation. The monies of the Trust Funds may also be invested in bonds secured by first mortgages, pass-through securities, and insured participation certificates representing interests in first mortgages or insured mortgage pass-through certificates on one- to four-family residences located within this state.

C. The State Regents may procure insurance indemnifying the members of the State Regents from personal loss or accountability from liability resulting from a member's action or inaction as a trustee.

D. The State Regents may establish an investment committee for any of the Trust Funds or any combination of such Trust Funds. Such investment committee shall be composed of members of the State Regents appointed by the chairman of the State Regents. The committee shall make recommendations to the entire membership of the State Regents on all matters related to the choice of custodians and managers of the assets of the Trust Funds, on the establishment of investment and fund management guidelines, and in planning future investment policy. The committee shall have no authority to act on behalf of the State Regents in any circumstances whatsoever. No recommendation of the committee shall have effect as an action of

the State Regents nor take effect without the approval of the State Regents.

E. The State Regents may retain qualified investment managers to provide for the investment of the monies of the Trust Funds and may pay the fees for the services of such investment managers from the investment proceeds attributable to each of the Trust Funds. The investment managers shall be chosen by a solicitation of proposals on a competitive bid basis pursuant to standards set by the State Regents. Subject to the overall investment guidelines set by the State Regents, the investment managers shall have full discretion in the management of those monies of the Trust Funds allocated to the investment managers. The State Regents shall manage those monies not specifically allocated to the investment managers. The monies of the Trust Funds allocated to the investment managers shall be actively managed by the investment managers, which may include selling investments and realizing losses if such action is considered advantageous to longer term return maximization. Because of the total return objective, no distinction shall be made for management and performance evaluation purposes between realized and unrealized capital gains and losses.

F. Funds and revenues for investment by the investment managers or the State Regents shall be placed with a custodian selected by the State Regents. Payment of the fees for the custodians' services may be paid from the applicable Trust Fund. The custodian shall be a bank or trust company offering pension fund master trustee and master custodial services. The custodian shall be chosen by a solicitation of proposals on a competitive bid basis pursuant to standards set by the State Regents. In compliance with the investment policy guidelines of the State Regents, the custodian bank or trust company shall be contractually responsible for ensuring that all monies of the Trust Funds are invested in income-producing investment vehicles at all times. If a custodian bank or

trust company has not received direction from the investment managers of the Trust Funds as to the investment of the monies of the Trust Funds in specific investment vehicles, the custodian bank or trust company shall be contractually responsible to the State Regents for investing the monies in appropriately collateralized short-term interest-bearing investment vehicles.

G. By November 1, 1989, and prior to August 1 of each year thereafter, the State Regents shall develop written investment plans for the Trust Funds.

H. The State Regents shall compile quarterly financial reports of all the funds and accounts of the Oklahoma State Regents' Endowment Trust Fund, the Oklahoma State Regents' Academic Scholars Trust Fund, and the Oklahoma Higher Learning Access Trust Fund on a fiscal year basis. The reports shall include several relevant measures of investment value, including acquisition cost and current fair market value with appropriate summaries of total holdings and returns. The reports shall contain combined and individual rates of returns of the investment managers by category of investment, over periods of time. The reports shall be distributed to the Director of the Legislative Service Bureau and the Chairman of the Joint Committee on Fiscal Operations.

I. After July 1 and before October 1 of each year, the State Regents shall publish three annual reports presented in simple and easily understood language. The reports shall be submitted to the:

1. Governor, ~~the~~;
2. Speaker of the House of Representatives, ~~the~~;
3. President Pro Tempore of the Senate, ~~the~~;
4. Director of the Legislative Service Bureau, ~~i~~ and ~~the~~
5. Chairman of the Joint Committee on Fiscal Operations.

The annual reports shall cover the operation of the Oklahoma State Regents' Endowment Trust Fund, the Oklahoma State Regents' Academic Scholars Trust Fund, and the Oklahoma Higher Learning

Access Trust Fund during the past fiscal year, including income, disbursements, and the financial condition of the Trust Funds at the end of the fiscal year. The annual reports shall also contain the information issued in the quarterly reports required pursuant to subsection H of this section as well as a summary of the results of the most recent actuarial valuation to include total assets, total liabilities, unfunded liability or over-funded status, contributions and any other information deemed relevant by the State Regents.

SECTION 2. This act shall become effective November 1, 1997.

46-1-0507

PHB