

1 STATE OF OKLAHOMA

2 1st Session of the 47th Legislature (1999)

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 SENATE BILL NO. 37

6 By: Herbert and Maddox of the
7 Senate

8 and

9 Glover, Mitchell and Rice
10 of the House

11 COMMITTEE SUBSTITUTE

12 An Act relating to public lands; amending 64 O.S.
13 1991, Section 51, as last amended by Section 3,
14 Chapter 212, O.S.L. 1995 (64 O.S. Supp. 1998, Section
15 51), which relates to investment of school funds;
16 deleting restrictions on investment of certain funds;
17 deleting requirement for certain Attorney General
18 opinion; deleting obsolete language; deleting
19 restrictions on types of investments; deleting
20 investment limitations; providing certain
21 restrictions on investment policy; providing certain
22 limitation on investments; providing for an increase
23 in investment limitation; amending 64 O.S. 1991,
24 Section 82, which relates to lands acquired by
25 deficiency judgment; modifying requirement for
26 retention of certain mineral interests; requiring the
27 Commissioners of the Land Office to retain certain
28 minerals under certain school lands; requiring the
29 Commissioners to retain certain minerals under school
30 land that is sold; requiring the Commissioners to
31 retain certain minerals under land not in their
32 control; requiring prior approval from the
Legislature to sell mineral interests; amending 64
O.S. 1991, Section 96, which relates to lands sold on
certain contracts; modifying requirement for
retention of certain mineral interests; 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 64 O.S. 1991, Section 51, as last
amended by Section 3, Chapter 212, O.S.L. 1995 (64 O.S. Supp. 1998,
Section 51), is amended to read as follows:

Section 51. A. 1. The permanent school funds and other
educational funds may be invested in first mortgages upon good and

1 improved farm lands within the state (and in no case shall more than
2 fifty percent (50%) of the reasonable value of the lands, without
3 improvements, be loaned upon any tract).

4 ~~2. Said funds may also be invested in Oklahoma state bonds,~~
5 ~~county bonds of the counties of this state, United States bonds, and~~
6 ~~bonds issued pursuant to the Oklahoma Student Loan Act.~~

7 ~~3. The said funds may also be invested in deposits in trust~~
8 ~~companies or financial institutions situated in Oklahoma to the~~
9 ~~extent such deposits are insured by the Federal Deposit Insurance~~
10 ~~Corporation (FDIC), Federal Savings and Loan Insurance Corporation~~
11 ~~(FSLIC), or the National Credit Union Administration (NCUA).~~

12 ~~4. Provided, that sufficient~~ 2. Sufficient monies shall be
13 kept on hand at all times by the Commissioners of the Land Office to
14 close all approved applications for first mortgage loans, as may be
15 approved from time to time by the Commissioners of the Land Office;
16 ~~provided, further, that no bond investment shall be made until the~~
17 ~~Attorney General of the State of Oklahoma gives his opinion in~~
18 ~~writing that such proposed investment is within the legal authority~~
19 ~~of the Commissioners of the Land Office, and that such bonds as the~~
20 ~~Commission may propose to purchase are valid. The passage by the~~
21 ~~people of House Joint Resolution No. 1028 of the 2nd Session of the~~
22 ~~44th Oklahoma Legislature, a constitutional amendment implementing~~
23 ~~subsection B of this section, shall not invalidate this section.~~

24 ~~B. 1. This subsection shall become effective upon passage by~~
25 ~~the people of House Joint Resolution No. 1028 of the 2nd Session of~~
26 ~~the 44th Oklahoma Legislature, a constitutional amendment~~
27 ~~implementing the provisions of this subsection.~~

28 ~~2.~~ The Commissioners of the Land Office shall be responsible
29 for the investment of the permanent school funds, other educational
30 funds and public building funds solely in the best interests of the
31 beneficiaries. The Commissioners of the Land Office shall make such
32 investments:

1 a. for the exclusive purpose of:

2 (1) providing maximum benefits to current and future
3 beneficiaries, and

4 (2) defraying reasonable expenses of administering
5 the trust funds,

6 b. with the care, skill, prudence and diligence under the
7 circumstances then prevailing that a prudent person
8 acting in a like enterprise of a like character and
9 with like aims would use, and

10 c. by diversifying the investments of the trust funds so
11 as to minimize the risk of large losses.

12 ~~3. No investment of the permanent common school and other~~
13 ~~educational funds shall be made in indebtedness or currency of any~~
14 ~~foreign country or in securities issued by any corporation which is~~
15 ~~domiciled outside of the United States of America. The permanent~~
16 ~~common school funds, other educational funds and public building~~
17 ~~funds may be invested in securities including but not limited to~~
18 ~~stocks and other equities issued by corporations domiciled in the~~
19 ~~United States which have investment grade ratings as determined by~~
20 ~~at least one of the major rating agencies. The Commissioners of the~~
21 ~~Land Office shall not invest more than forty percent (40%) of the~~
22 ~~permanent common school fund, other educational funds and public~~
23 ~~building funds in such securities.~~

24 4. 2. The permanent school fund and other educational funds may
25 only be invested in bonds issued in the United States and United
26 States dollar denominated or other investments settled in United
27 States dollars or traded on the United States exchange markets. The
28 Commissioners of the Land Office shall not invest more than forty-
29 five percent (45%) of the permanent common school fund, other
30 educational funds and public building funds in equity securities.
31 The forty-five percent (45%) limitation shall be increased by five
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1 percent (5%) over a period of three (3) years, until it reaches
2 fifty percent (50%).

3 3. The Commissioners shall establish an investment committee.
4 The investment committee shall be composed of not more than three
5 (3) members of the Commissioners of the Land Office or their
6 designee. The committee shall make recommendations to the
7 Commissioners of the Land Office on all matters related to the
8 choice of managers of the assets of the funds, on the establishment
9 of investment and fund management guidelines, and in planning future
10 investment policy. The committee shall have no authority to act on
11 behalf of the Commissioners of the Land Office in any circumstances
12 whatsoever. No recommendations of the committee shall have effect
13 as an action of the Commissioners of the Land Office ~~nor~~ or take
14 effect without the approval of the Commissioners as provided by law.
15 The Commissioners shall promulgate and adopt on an annual basis an
16 investment plan. The investment plan shall state the criteria for
17 selecting investment managers, the allocation of assets among
18 investment managers, and established standards of investment and
19 fund management.

20 ~~5.~~ 4. The Commissioners shall retain qualified investment
21 managers to provide for investment of the fund monies pursuant to
22 the investment plan. Investment managers shall be chosen by a
23 solicitation of proposals on a competitive bid basis pursuant to
24 standards set by the Commissioners. Subject to the investment plan,
25 each investment manager shall have full discretion in the management
26 of the funds allocated to said investment managers. The funds
27 allocated to investment managers shall be actively managed by them,
28 which may include selling investments and realizing losses if such
29 action is considered advantageous to longer term return
30 maximization. Because of the total return objective, no distinction
31 shall be made for management and performance evaluation purposes
32 between realized and unrealized capital gains and losses.

1 ~~6.~~ 5. The Commissioners shall take such measures as they deem
2 appropriate to safeguard custody of securities and other assets of
3 the Trusts.

4 ~~7.~~ 6. By ~~October 1, 1995,~~ and August 1 of each year thereafter,
5 the Commissioners shall develop a written investment plan for the
6 trust funds.

7 ~~8.~~ 7. The Commissioners shall compile a quarterly financial
8 report showing the performance of all the combined funds under their
9 control on a fiscal year basis. The report shall contain a list of
10 all investments made by the Commissioners and a list of any
11 commissions, fees or payments made for services regarding such
12 investments for that reporting period. The report shall be based on
13 market values and shall be compiled pursuant to uniform reporting
14 standards prescribed by the Oklahoma State Pension Commission for
15 all state retirement systems. The report shall be distributed to
16 the Oklahoma State Pension Commission, the Cash Management and
17 Investment Oversight Commission, and the Legislative Service Bureau.

18 ~~9.~~ 8. Before October 1 of each year, the Commissioners shall
19 publish an annual report of all Trust operations, presented in a
20 simple and easily understood manner to the extent possible. The
21 report shall be submitted to the Governor, the Speaker of the House
22 of Representatives, the President Pro Tempore of the Senate, the
23 State Department of Education and each higher education beneficiary.
24 The annual report shall cover the operation of the Trusts during the
25 past fiscal year, including income, disbursements and the financial
26 condition of the Trusts at the end of each fiscal year on a cash
27 basis. The annual report shall also contain a summary of each
28 Trust's assets and current market value as of the report date.

29 ~~10.~~ 9. The Cash Management and Investment Oversight Commission
30 shall review reports prepared by the Commissioners of the Land
31 Office pursuant to this subsection and shall make such
32 recommendations regarding the investment strategies and practices,

1 the development of internal auditing procedures and practices and
2 such other matters as determined necessary and applicable.

3 ~~11.~~ 10. The Commissioners of the Land Office shall select one
4 custodial bank to settle transactions involving the investment of
5 the funds under the control of the Commissioners of the Land Office.
6 The Commissioners of the Land Office shall review the performance of
7 the custodial bank at least once every year. The Commissioners of
8 the Land Office shall require a written competitive bid every three
9 (3) years. The custodial bank shall have a minimum of Five Hundred
10 Million Dollars (\$500,000,000.00) in assets to be eligible for
11 selection. Any out-of-state custodial bank shall have a service
12 agent in the State of Oklahoma so that service of summons or legal
13 notice may be had on such designated agent as is now or may
14 hereafter be provided by law. In order to be eligible for
15 selection, the custodial bank shall allow electronic access to all
16 transaction and portfolio reports maintained by the custodial bank
17 involving the investment of state funds under control of the
18 Commissioners of the Land Office and to the Cash Management and
19 Investment Oversight Commission. The requirement for electronic
20 access shall be incorporated into any contract between the
21 Commissioners of the Land Office and the custodial bank. Neither
22 the Commissioners of the Land Office nor the custodial bank shall
23 permit any of the funds under the control of the Commissioners of
24 the Land Office or any of the documents, instruments, securities or
25 other evidence of a right to be paid money to be located in any
26 place other than within a jurisdiction or territory under the
27 control or regulatory power of the United States government.

28 SECTION 2. AMENDATORY 64 O.S. 1991, Section 82, is
29 amended to read as follows:

30 Section 82. All lands acquired by foreclosure of mortgages or
31 the acceptance of deeds and all lands heretofore sold under a
32 certificate of purchase contract where said certificate of purchase

1 has been canceled, and all deficiency judgments owned by the
2 Commissioners of the Land Office, shall be disposed of in the
3 following manner.

4 (a) Upon resolution adopted by the Commissioners of the Land
5 Office, any or all lands acquired by foreclosure of mortgage or the
6 acceptance of deeds or lands heretofore sold under certificate of
7 purchase contract, where said certificate of purchase has been
8 canceled, or all land acquired by original grant, except original
9 grant land which can be used for grazing purposes only, may be sold
10 by the Commissioners of the Land Office for cash or on sales
11 contracts to be denominated, "Certificates of Purchase", providing
12 for an initial payment of not less than ten percent (10%) of the
13 total purchase price, at the discretion of the Commissioners, the
14 balance to be paid in not more than forty equal annual payments with
15 deferred payments drawing interest at the rate of three percent (3%)
16 per annum. Notice of the sale of such lands as may be offered for
17 sale shall be published in five consecutive issues in at least one
18 weekly newspaper of general circulation in the county in which such
19 tract or tracts of land are situated. Such notice shall give a
20 brief description of the lands and improvements located thereon and
21 the appraised value of both such lands and improvements, the time,
22 place and terms of sale. Said lands shall be sold to the highest
23 responsible bidder at public auction. No tract shall be sold for
24 less than ninety percent (90%) of the appraised value thereof, and
25 the same shall be appraised prior to sale by three duly authorized
26 appraisers of the Commissioners of the Land Office. In all cases
27 the Commissioners of the Land Office shall have the right to reject
28 any and all bids. Said Commissioners are hereby authorized to pay
29 for the cost of conducting said sales from the proceeds thereof.

30 (b) The state shall have first lien upon all lands sold,
31 together with all improvements and appurtenances thereunto
32 belonging, until all payments, being both principal and interest,

1 are made thereon; and upon such payments being made, the
2 Commissioners of the Land Office shall in forms of law, execute to
3 each purchaser, as in this article provided, a patent in fee simple;
4 provided, that a certificate of purchase reciting the conditions of
5 such purchase shall be issued to every purchaser under this article
6 immediately upon execution of the contract of purchase, and such
7 certificate of purchase shall be entitled to record, as evidence of
8 the same, under the provisions of the law of conveyance. Provided,
9 that it shall be the duty of the tax assessor of each county wherein
10 said lands are situated to place on the tax rolls all lands held
11 under said certificate of purchase; said taxes to be paid by the
12 purchaser named in said certificate of purchase or the assignee of
13 said purchaser.

14 (c) The Commissioners of the Land Office are hereby authorized
15 to subdivide any tract or tracts of land, or to combine any tracts
16 of land, subject to sale under the provisions of this act, when in
17 their discretion it is deemed that such subdivision or combination
18 would induce more purchasers for such sales.

19 (d) The Commissioners of the Land Office shall reserve and
20 retain forever the title to ~~not less than forty percent (40%)~~ of all
21 the oil, gas and other mineral rights in and under all lands to be
22 sold; provided further, that the Commissioners of the Land Office
23 are empowered to join in the execution of any oil, gas or mineral
24 lease on school lands, which have been sold and in which they have
25 retained mineral interest, at their own discretion and without the
26 necessity of advertising as required on state-owned lands. Such
27 reservation is to be set out and included in all certificates of
28 purchase and patents issued to cover lands hereafter sold by the
29 Commissioners of the Land Office. Provided, that the provisions of
30 this section shall not apply to any state-owned lands which the
31 Commissioners of the Land Office may, by resolution duly adopted,
32 find to be suitably situated for townsite developmental purposes.

1 Any such land may be by the Commissioners of the Land Office,
2 platted and sold in separate town lots or in entire tracts at the
3 discretion of the Commissioners, without reservation as to the
4 mineral rights, and patent conveying the full fee simple title may
5 be given the purchaser upon full payment of the purchase price.
6 Provided that the provisions hereof, with reference to the
7 reservation and retention of all or part of the oil, gas and mineral
8 rights in and under state lands, shall not apply to any state-owned
9 lands which may be sold by the Commissioners of the Land Office, at
10 any voluntary sale, to any public or municipal corporation, board,
11 commission, department, agency or instrumentality for the
12 construction, development and operation of any hydroelectric power,
13 flood control, reclamation or irrigation project; for any needful
14 public buildings, or for any other public use or purpose. Provided
15 however, that in the case of any lands being sold without the
16 reservation of any mineral rights thereto, such sale shall be held
17 only upon resolution adopted by a unanimous vote of the Commission,
18 following thirty (30) days' notice in writing to the Governor of the
19 State of Oklahoma, of the meeting of said Commission at which such
20 resolution is to be considered, and any such conveyance shall be
21 made only with the written consent of the Governor endorsed thereon.

22 (e) When the lands, mortgaged to the state as security for a
23 loan, have been acquired through foreclosure proceedings, or by
24 deeds thereto accepted by the Commissioners of the Land Office and
25 sold, the amount for which same is sold shall be applied as follows:
26 Any payment received at the time of the sale and all unpaid balance
27 shall, when and as collected, be apportioned as follows: 1st, the
28 entire balance of the principal of the loan shall be transferred
29 into the fund from which the loan is made; 2nd, interest; 3rd, cost;
30 4th, fees earned, and the remainder, if any, shall be paid into and
31 become a part of the fund from which the loan was made.

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1 (f) Diligent effort shall be made by the Commissioners of the
2 Land Office to collect all deficiency judgments now held by the
3 state or which may hereafter be rendered in favor of the state, and
4 immediately after the passage and approval of this act, and after
5 procuring any deficiency judgment, they shall cause execution to be
6 issued thereon and placed in the hands of the sheriff of the proper
7 county for service. In addition to the return of such execution now
8 required by law, the sheriff shall mail to the Commissioners of the
9 Land Office a duplicate of his return of such execution.

10 (g) From any monies collected upon a deficiency judgment there
11 shall be paid: 1st, any balance of the principal, included therein;
12 2nd, interest; 3rd, costs; 4th, fees earned, and the remainder, if
13 any, shall be paid into and become a part of the fund from which the
14 loan was made.

15 (h) Upon the death of any judgment debtor, if his estate be
16 administered, the Commissioners shall cause proper claim to be made
17 in the probate court for the amount due the state upon the
18 deficiency judgment against said debtor and any sum collected shall
19 be applied as provided for collections hereinabove. Should all the
20 judgment debtors in any deficiency judgment die without estate, the
21 deficiency judgment shall be charged off and no longer carried as an
22 asset in the department. Such death shall be noted upon the record
23 of judgments in the office and the transaction closed. The same
24 procedure shall be followed in cases where administrations are had
25 and judgment cannot be collected from the estate.

26 (i) When executions are returned, "no property found", or the
27 property of the defendant is exhausted and the balance of the
28 judgment unsatisfied, the judgment may, at the discretion of the
29 Commissioners of the Land Office, be advertised in the county
30 wherein such judgment was obtained, and sold at public outcry to the
31 highest and best bidder for cash. In case of a sale of any such
32 judgment, the Commissioners of the Land Office shall cause notice of

1 such sale, such notice to contain the pertinent facts, to be
2 published in three consecutive issues of a newspaper of general
3 circulation in the county wherein such judgment was obtained, and
4 will be sold, such sale to be held at a specified hour at the front
5 door of the court house in such county. At any such judgment sale,
6 the Commissioners of the Land Office shall reserve the right to
7 reject any and all bids. Any judgment that may be sold hereunder
8 shall be assigned to the purchaser, without recourse, by the
9 Commissioners of the Land Office, and any deficiency existing
10 thereon shall be charged off and no longer carried as an asset of
11 the Department.

12 (j) Rules and regulations governing the sale of any lands to be
13 sold under the terms and provisions of this act, not inconsistent
14 herewith, may be made by the Commissioners of the Land Office.

15 SECTION 3. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 92b of Title 64, unless there is
17 created a duplication in numbering, reads as follows:

18 The Commissioners of the Land Office shall reserve and retain
19 one hundred percent (100%) of all oil, gas and other minerals under
20 any school lands designated as grazing lands pursuant to Section 99
21 of Title 64 of the Oklahoma Statutes, economic development parks
22 pursuant to Section 13 of Title 64 of the Oklahoma Statutes, lands
23 acquired by deficiency judgements pursuant to Section 82 of Title 64
24 of the Oklahoma Statutes, lands sold on sales contract denominated
25 as Certificate of Purchase pursuant to Section 96 of Title 64 of the
26 Oklahoma Statutes, or any other designated tracts of land under the
27 jurisdiction or authority of the Commissioners of the Land Office.
28 Except for school land sold for homesites, the Commissioners of the
29 Land Office shall reserve and retain one hundred percent (100%) of
30 all oil, gas and other minerals under any designated tract of school
31 land that is sold for any purpose. The Commissioners of the Land
32 Office shall reserve and retain one hundred percent (100%) of all

1 oil, gas and other mineral interest under the jurisdiction or
2 authority of the Commissioners that is located beneath surface
3 acreages not under the jurisdiction or authority of the
4 Commissioners. The Commissioners of the Land Office shall not sell
5 any oil, gas or other mineral interest under the authority or
6 jurisdiction of the Commissioners without prior approval of the
7 Oklahoma Legislature.

8 SECTION 4. AMENDATORY 64 O.S. 1991, Section 96, is
9 amended to read as follows:

10 Section 96. Such land shall be sold by the Commissioners of the
11 Land Office on sales contract, to be denominated Certificate of
12 Purchase, providing for initial payment of at least ten percent
13 (10%) of the total purchase price, or in a greater sum as may be
14 fixed by the Commissioners under the provisions of Section 1 hereof,
15 the balance to be paid over a period of twenty-five (25) years on
16 the amortized plan, with interest at the rate of three percent (3%)
17 per annum, and which provides for the payment of twenty-five equal
18 annual principal and interest installments so as to liquidate such
19 sales contract in full at maturity. Provided, however, that
20 veterans who have been honorably discharged from the Armed Forces of
21 the United States shall be permitted to purchase such land upon a
22 basis of an initial payment of five percent (5%) of the total
23 purchase price, the balance to be paid as above provided.

24 (a) All certificates of purchase issued under this act shall
25 include an agreement by the purchaser that he will follow such
26 suggestions for better agricultural production and soil conservation
27 as may be made by the Soil Conservation Division of the
28 Commissioners of the Land Office. All lands sold upon certificate
29 of purchase under the provisions of this act shall be subject to
30 taxation, and it shall be the duty of the county assessor of each
31 county wherein said lands are situated to place all lands so sold
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1 upon the tax rolls, such taxes to be paid by the holder of the
2 certificate of purchase.

3 (b) No certificate of purchase issued under the provisions of
4 this act shall be transferred or assigned for a period of five (5)
5 years after the date of the issuance thereof without the written
6 consent of the Commissioners of the Land Office, except any transfer
7 or assignment that might be caused by inheritance or caused by
8 devise under will or by the laws of descent and distribution. After
9 such five-year period, no transfer or assignment of any certificate
10 of purchase shall be valid until the Commissioners of the Land
11 Office approve the same.

12 (c) Upon the full payment of the purchase price of any tract of
13 land sold under the provisions of this act, the Commissioners of the
14 Land Office shall immediately execute and deliver to the purchaser
15 thereof a patent thereto in fee simple; provided, however, the
16 Commissioners of the Land Office shall, in all cases, reserve and
17 retain forever title to ~~fifty percent (50%)~~ of all the oil, gas and
18 other mineral rights in and under all lands so sold.

19 SECTION 2. This act shall become effective July 1, 1999.

20 SECTION 3. It being immediately necessary for the preservation
21 of the public peace, health and safety, an emergency is hereby
22 declared to exist, by reason whereof this act shall take effect and
23 be in full force from and after its passage and approval.

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