

ENROLLED SENATE
BILL NO. 904

By: Haney and Hobson of the
Senate

and

Settle, Begley and Cox of
the House

An Act relating to higher education; amending 70 O.S. 1991, Section 3954, as last amended by Section 21 of Enrolled House Bill No. 2728 of the 2nd Session of the 47th Oklahoma Legislature, which relates to duties of Oklahoma State Regents for Higher Education as trustees of certain funds; making State Regents trustees for Oklahoma GEAR UP Scholarship Trust Fund; amending 70 O.S. 1991, Section 3955, as last amended by Section 43, Chapter 320, O.S.L. 1999 (70 O.S. Supp. 1999, Section 3955), which relates to fiduciary duties and conflict of interest; stating fiduciary duties of Oklahoma State Regents for Higher Education toward certain fund; amending 70 O.S. 1991, Section 4012, which relates to lease of buildings; modifying authorization to lease buildings to certain nonprofit corporations; creating the Oklahoma GEAR UP Scholarship Trust Fund; authorizing use of certain fund; stating composition of principal of certain fund; authorizing income and investment return to accrue to certain fund; authorizing State Regents to adopt certain rules and allocate certain funds; prohibiting allocation of funds for certain expenses; providing for codification; providing for recodification; 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 21 of Enrolled House Bill No. 2728 of the 2nd Session of the 47th Oklahoma Legislature, 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, as trustees of the Oklahoma Higher Learning Access Trust Fund, as trustees of the Oklahoma GEAR UP Scholarship Trust Fund, and as trustees of the Oklahoma Tuition Scholarship 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 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.

C. 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.

D. 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.

E. 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.

F. 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.

G. 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, the Oklahoma Higher Learning Access Trust Fund, the Oklahoma GEAR UP Scholarship Trust Fund, and the Oklahoma Tuition Scholarship 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.

H. 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 Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Director of the Legislative Service Bureau, and the 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, the Oklahoma Higher Learning Access Trust Fund, the Oklahoma GEAR UP Scholarship Trust Fund, and the Oklahoma Tuition Scholarship 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 G 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 overfunded status, contributions and any other information deemed relevant by the State Regents.

SECTION 2. AMENDATORY 70 O.S. 1991, Section 3955, as last amended by Section 43, Chapter 320, O.S.L. 1999 (70 O.S. Supp. 1999, Section 3955), is amended to read as follows:

Section 3955. A. A fiduciary with respect to the Oklahoma State Regents' Endowment Trust Fund, the Oklahoma State Regents' Academic Scholars Trust Fund, the Oklahoma Higher Learning Access

Trust Fund, ~~or~~ the Oklahoma Tuition Scholarship Trust Fund, or the Oklahoma GEAR UP Scholarship Trust Fund, hereafter the "Trust Fund," shall not cause the Trust Fund to engage in a transaction if the fiduciary knows or should know that such transaction constitutes a direct or indirect:

1. Sale or exchange, or leasing of any property from the Trust Fund to a party in interest;
2. Lending of money or other extension of credit from the Trust Fund to a party in interest;
3. Furnishing of goods, services, or facilities from the Trust Fund to a party in interest; or
4. Transfer to, or use by or for the benefit of, a party in interest of any assets of the Trust Fund.

B. A fiduciary with respect to the Trust Fund shall not:

1. Deal with the assets of the Trust Fund in the fiduciary's own interest or for the fiduciary's own account;
2. In the fiduciary's individual or any other capacity act in any transaction involving the Trust Fund on behalf of a party whose interests are adverse to the interests of the Trust Fund; or
3. Receive any consideration for the fiduciary's own personal account from any party dealing with the Trust Fund in connection with a transaction involving the assets of the Trust Fund.

C. A fiduciary with respect to the Trust Fund may:

1. Invest all or part of the assets of the Trust Fund in deposits which bear the highest interest rate available for funds with the necessary degree of availability in a bank or similar financial institution supervised by the United States or a state, if such bank or other institution is a fiduciary of such plan; or
2. Provide any ancillary service by a bank or similar financial institution supervised by the United States or a state, if such bank or other institution is a fiduciary of such plan.

D. A person or a financial institution is a fiduciary with respect to the Trust Fund to the extent that the person or the financial institution:

1. Exercises any discretionary authority or discretionary control respecting management of the Trust Fund or exercises any authority or control respecting management or disposition of the assets of the Trust Fund;
2. Renders investment advice for a fee or other compensation, direct or indirect, with respect to any monies or other property of the Trust Fund, or has any authority or responsibility to do so; or

3. Has any discretionary authority or discretionary responsibility in the administration of the Trust Fund.

SECTION 3. AMENDATORY 70 O.S. 1991, Section 4012, is amended to read as follows:

Section 4012. In any instance in which the board shall consider it preferable to acquire the building or additions to existing buildings or equipment in the manner authorized in this section rather than through the issuance of bonds by the board, it may do so by complying with this section. In each such case the board is authorized to lease to any nonprofit corporation organized for the ~~purpose of constructing the building or additions to existing buildings~~ benefit of the college or university affected, or to a public trust such portion or portions of the campus of the institution as may be necessary as sites therefor. The lease shall contain such provisions with respect to the type, construction and operation of any such building or addition as the board may consider desirable, and the board may enter into agreements as to the use which will be made of any such building, addition or equipment, the operation, maintenance and supervision thereof, the imposition of fees and charges by the board for the use of the building or addition, and the collection and disposition to be made of the proceeds of such fees and charges. The board may agree to make such fees and charges adequate to provide a sum sufficient to pay the cost of the maintenance and operation thereof and the amortization of the cost of the building or any addition to existing buildings or equipment therefor, over a specified period of years, and when such cost shall have been paid any obligations issued by any entity to finance such cost shall have been fully paid as to principal and interest, the lease shall terminate and title to the building or any addition to existing buildings or equipment shall vest in the board. The agreements herein authorized to be entered into by the board may, in the discretion of the board, include a lease of the buildings, additions or equipment and the payment of rentals therefor. The board may furnish without charge, heat, light, water, power and similar facilities for any building erected under the provisions of this section and all buildings and additions to existing buildings so erected and equipment therefor shall be exempt from taxation.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3953.3 of Title 70, unless there is created a duplication in numbering, reads as follows: A. There is hereby created a trust fund to be known as the "Oklahoma GEAR UP Scholarship Trust Fund". The Oklahoma State Regents for Higher Education shall be the trustees of said Trust Fund.

B. The State Regents shall utilize said Trust Fund to fund scholarships in accordance with the federal Gaining Early Awareness and Readiness for Undergraduate Program (GEAR UP) grant.

C. The Trust Fund principal shall consist of monies received from the GEAR UP grant for scholarship purposes, any monies the Legislature appropriates or transfers to the Oklahoma State Regents for Higher Education for the Trust Fund, and any monies or assets

contributed to the Trust Fund from any other source, public or private.

D. Notwithstanding other provisions of law, income and investment return on Trust Fund principal shall accrue to the Trust Fund for use as provided by authorization of the trustees for the purposes provided in subsection B of this section. The State Regents may also utilize the Trust Fund principal for the purpose provided in subsection B of this section. Except as otherwise provided by law, no such income or investment return or principal shall be used for administrative expenses.

E. The State Regents shall adopt rules for accomplishing transfer of funds from the Oklahoma GEAR UP Scholarship Trust Fund to the appropriate institutional Educational and General Operations Revolving Funds, as provided in Section 3901 of Title 70 of the Oklahoma Statutes, to private institutions, and to the appropriate vocational-technical area school district to cover scholarships for eligible students pursuant to the GEAR UP grant. Allocations from the Trust Fund may be made only for the purpose of covering the scholarship costs. No portion of the Trust Fund may be used or allocated for administrative or operating expenses of any higher education or vocational-technical institution.

SECTION 5. RECODIFICATION 70 O.S. 1991, Section 4012, as amended by Section 3 of this act, shall be recodified as Section 4018 of Title 70 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 6. This act shall become effective September 1, 2000.

Passed the Senate the 25th day of May, 2000.

President of the Senate

Passed the House of Representatives the 25th day of May, 2000.

Speaker of the House of
Representatives