

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1003

By: Askins

COMMITTEE SUBSTITUTE

An Act relating to public finance; enacting the Tobacco Settlement Endowment Trust Fund Act; providing short title; stating purpose; creating the Tobacco Settlement Endowment Trust Fund; providing for deposits to the Trust Fund; creating the Board of Investors of the Tobacco Settlement Endowment Trust Fund; providing for the membership, duties and staff support of the Board of Investors; creating the Board of Directors of the Tobacco Settlement Endowment Trust Fund; providing for the membership, duties and staff support for the Board of Directors; amending Section 2, Chapter 47, O.S.L. 2000, as amended by Section 24, Chapter 8, 1st Extraordinary Session, O.S.L. 2000 (62 O.S. Supp. 2000, Section 50), which relates to the Tobacco Settlement Fund; clarifying procedures for deposits to and expenditures from the fund; providing for codification; providing for noncodification; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2301 of Title 62, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 9 of this act shall be known and may be cited as the "Tobacco Settlement Endowment Trust Fund Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2302 of Title 62, unless there is created a duplication in numbering, reads as follows:

The purpose of the Tobacco Settlement Endowment Trust Fund Act is to further implement the provisions of Section 40 of Article X of the Oklahoma Constitution that:

1. Created the Tobacco Settlement Endowment Trust Fund, the Board of Investors of the Tobacco Settlement Endowment Trust Fund,

and the Board of Directors of the Tobacco Settlement Endowment Trust Fund;

2. Directs the apportionment of revenues from settlements with or judgments against tobacco companies between the Tobacco Settlement Endowment Trust Fund and a special fund established for the purpose of receiving tobacco settlement payments not deposited to the trust fund; and

3. Authorizes the Board of Directors of the Tobacco Settlement Endowment Trust Fund to expend trust fund earnings for specific purposes.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2303 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created a trust fund to be known as the "Tobacco Settlement Endowment Trust Fund". The trust fund principal shall consist of the portion of monies which are received by the State of Oklahoma on or after July 1, 2001, pursuant to any settlement with or judgment against any tobacco company or companies as provided by subsection B of this section, the Fifty Million Dollars (\$50,000,000.00) transferred to the Tobacco Settlement Endowment Trust Fund pursuant to Section 25 of Senate Bill No. 3 of the 1st Extraordinary Session of the 47th Oklahoma Legislature, and any other monies that may be appropriated or otherwise directed to the trust fund by the Legislature.

B. 1. Deposits into the trust fund from monies which are received by the State of Oklahoma pursuant to any settlement with or judgment against any tobacco company or companies shall be based on the following schedule:

<u>Fiscal Year</u>	<u>Minimum Percentage of Payments</u>
Ending June 30, 2002	50%
Ending June 30, 2003	55%

Ending June 30, 2004	60%
Ending June 30, 2005	65%
Ending June 30, 2006	70%
Ending June 30, 2007	75%

2. Deposits into the trust fund in subsequent fiscal years shall never be less than seventy-five percent (75%) of the payments.

C. The trust fund principal shall consist of monies which are deposited to the trust fund. Notwithstanding any other provisions of law, income and investment return on trust fund principal shall accrue to the trust fund.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2304 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the Board of Investors of the Tobacco Settlement Endowment Trust Fund.

B. The Board of Investors shall consist of five (5) members as follows:

1. The State Treasurer who shall be the chair;
2. An appointee of the Governor;
3. An appointee of the Speaker of the House of Representatives;
4. An appointee of the President Pro Tempore of the Senate; and
5. An appointee of the State Auditor and Inspector.

C. The members of the Board of Investors shall receive no salary for serving on the Board. All members shall receive necessary travel expenses for the performance of their duties in accordance with the provisions of the State Travel Reimbursement Act.

D. The members of the Board of Investors shall have demonstrated expertise in public or private investment funds management.

E. Initial appointees to the Board of Investors shall serve staggered terms as follows:

1. The term of the initial appointee of the Speaker of the Oklahoma House of Representatives shall terminate June 30, 2001;

2. The term of the initial appointee of the President Pro Tempore of the Senate shall terminate June 30, 2002;

3. The term of the initial appointee of the Governor shall terminate June 30, 2003; and

4. The term of the initial appointee of the State Auditor and Inspector shall terminate June 30, 2004.

Thereafter, all appointees shall serve four-year terms of office expiring June 30 of the applicable year. Vacancies shall be filled for the unexpired term.

F. No more than two appointees shall be appointed from any single congressional district.

G. The Board shall annually elect any other officers.

H. Staffing for the Board of Investors shall be provided by the Office of the State Treasurer.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2305 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. The Board of Investors of the Tobacco Settlement Endowment Trust Fund shall discharge their duties as trustees of the Tobacco Settlement Endowment Trust Fund:

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 in the trust fund 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 fund.

B. The Board of Investors shall retain qualified investment managers to provide for the investment of the monies of the trust fund. The investment managers shall be chosen by a solicitation of proposals on a competitive bid basis pursuant to standards set by the Board of Investors. The investment managers shall have full discretion in the management of those monies of the trust fund allocated to the investment managers, subject to the overall investment guidelines set by the Board of Investors. The monies of the trust fund allocated to the investment managers shall be managed by the investment managers. The investment managers may sell investments and realize 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. The Board of Investors shall have the State Treasurer manage those monies not specifically allocated to the investment managers.

C. The trust fund may be invested in the manner in which a prudent person would invest it and consistent with the manner that state retirement funds are invested.

D. The Board of Investors shall select a custodial bank to settle transactions involving the investment of funds in the trust fund and to hold custody of the securities in the trust fund portfolio. 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 basis pursuant to standards set by the Board of Investors.

E. The Board of Investors shall choose the custodians and managers of the assets of the trust fund, shall establish investment and fund management guidelines, and shall adopt an investment policy. The selection of investment managers and a custodian bank

shall be exempt from the provisions of the Oklahoma Central Purchasing Act.

F. The State Treasurer shall provide any necessary staff support to the Board of Investors. The cost of up to two full-time-equivalent employee for the Office of the State Treasurer may be considered as an administrative expense of the trust fund. However, the amount provided to the State Treasurer for this purpose shall be determined by the Board of Investors.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2306 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. On or before February 1 of each calendar year, the Board of Investors of the Tobacco Settlement Endowment Trust Fund shall determine the annual net earnings of the trust fund for the previous twelve-month period ending December 31 of the previous calendar year, which shall include all additions to the trust fund, except any payments to the trust fund pursuant to the tobacco settlement entered into on November 13, 1998, by the State of Oklahoma and leading United States tobacco product manufacturers; all future settlement or judgment payments received pursuant to the Tobacco Settlement Act of 1999; all earnings including, but not limited to, interest, dividends, and capital gains from investment of the trust fund which shall be credited to the corpus of the trust fund; and any other monies which may be added thereto by law. A maximum of ninety-five percent (95%) of the annual net income, less the amount of reasonable expenses for administration of the trust fund from that year, shall be transferred to the Board of Directors pursuant to Section 9 of this act.

B. No part of the Tobacco Settlement Endowment Trust Fund shall ever be diverted except as provided by Section 40 of Article X of the Oklahoma Constitution and this act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2307 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the Board of Directors of the Tobacco Settlement Endowment Trust Fund. The Board of Directors shall consist of seven (7) members, one appointed by each of the following appointing authorities:

1. The Governor;
2. The President Pro Tempore of the Senate;
3. The Speaker of the House of Representatives;
4. The Attorney General;
5. The State Treasurer;
6. The State Auditor and Inspector; and
7. The State Superintendent of Public Instruction.

B. The members of the Board of Directors shall receive no salary for serving on the Board. All members shall receive necessary travel expenses for the performance of their official duties in accordance with the provisions of the State Travel Reimbursement Act.

C. Members shall have demonstrated expertise in public or private health care or programs related to or for the benefit of children or senior adults.

D. Initial appointees to the Board of Directors shall serve staggered terms as follows:

1. The term of the initial appointee of the Speaker of the House of Representatives shall terminate June 30, 2001;
2. The term of the initial appointee of the President Pro Tempore of the Senate shall terminate June 30, 2002;
3. The term of the initial appointee of the Governor shall terminate June 30, 2003;
4. The term of the initial appointee of the Attorney General shall terminate June 30, 2004;

5. The term of the initial appointee of the State Treasurer shall terminate June 30, 2005;

6. The term of the initial appointee of the State Auditor and Inspector shall terminate June 30, 2006; and

7. The term of the initial appointee of the State Superintendent of Public Instruction shall terminate June 30, 2007. Thereafter, all appointees shall serve seven-year terms of office expiring June 30 of the applicable year. Vacancies shall be filled for the unexpired term.

E. At least one appointee shall be appointed from each congressional district, and not more than two appointees shall be appointed from any single congressional district. Not more than four appointees shall be members of the same political party. An appointee shall have been a member of the political party to which the appointee belongs for at least one (1) year prior to the date of appointment.

F. The Board of Directors shall annually elect a chair and any other officers, provided that no member shall be elected chair for more than two (2) consecutive years.

G. The initial meeting of the Board of Directors shall be called by the Attorney General and the State Treasurer.

H. The Board of Directors shall meet at least one time each quarter.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2308 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. The Board of Directors of the Tobacco Settlement Endowment Trust Fund shall be empowered to appoint an executive director and other staff necessary to perform the duties of the Board of Directors.

B. The Board shall develop a multiyear strategy by January 1, 2002, and annually update it in order to identify critical needs in

the health and well-being of the people of Oklahoma. The strategy shall be used to maximize the outcomes of the grants awarded by the Board of Directors.

C. The Board of Directors shall develop grant programs in private, nonprofit, and public entities for the following purposes:

1. Clinical and basic research and treatment efforts in Oklahoma for the purpose of enhancing efforts to prevent and combat cancer and other tobacco-related diseases;

2. Cost-effective tobacco prevention and cessation programs;

3. Programs other than those specified in paragraph 1 of this subsection designed to maintain or improve the health of Oklahomans or to enhance the provision of health care services to Oklahomans, with particular emphasis on such programs for children;

4. Programs and services for the benefit of the children of Oklahoma, with particular emphasis on common and higher education, before- and after-school and preschool programs, substance abuse prevention and treatment programs and other programs and services designed to improve the health and quality of life of children;

5. Programs designed to enhance the health and well-being of senior adults; and

6. Authorized administrative expenses of the Office of the State Treasurer and the Board of Directors.

D. The Board of Directors shall encourage grantees to match grant monies awarded with monetary commitments and in-kind matches.

E. The Board of Directors shall be required to develop a performance evaluation component for the Board of Directors' activities and those of its grantees so that the performance of grantees can be measured by their attainment of outcomes.

F. The Board of Directors shall contract annually for a performance evaluation for the foundation and its grantees. Copies of the performance evaluation shall be filed with the Governor, the

Speaker of the House of Representatives, and the President Pro Tempore of the Senate.

G. The Board of Directors shall prepare an annual report detailing the nonprofit foundation's activities and reporting its expenditures and the outcomes achieved by the expenditures. A copy of the report shall be submitted to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate.

H. All records associated with the expenditure of monies received by the foundation or its grantees pursuant to this act shall be subject to the Oklahoma Open Records Act.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2309 of Title 62, unless there is created a duplication in numbering, reads as follows:

The Board of Directors of the Tobacco Settlement Endowment Trust Fund shall adopt a budget for each fiscal year after it has been notified of the amount of distribution from the Board of Investors. The budget shall be broken out into an operating budget and a grants and contracts budget. The budget shall be presented to the Board of Investors of the Tobacco Settlement Endowment Trust Fund and filed with the Office of State Finance. The operating budget of the Board of Directors may not exceed fifteen percent (15%) of the amount of distribution certified by the Board of Investors. This budget shall include the administrative expenses of the State Treasurer approved by the Board of Directors of the Tobacco Settlement Endowment Trust Fund. Claims paid out of this budgeted amount shall be paid against the amount of distribution to be made from the Tobacco Settlement Endowment Trust Fund. The Board of Investors shall ensure that sufficient cash is transferred at appropriate times to honor these claims, but shall keep as much as possible of the trust fund invested at all times. The operating budget of the Board of Directors shall be allotted in twelve substantially equal amounts

throughout the fiscal year. Amounts to be distributed to carry out the purposes of the Tobacco Settlement Endowment Trust Fund Act shall be made available as needed and determined by the Board of Directors of the Tobacco Settlement Endowment Trust Fund.

SECTION 10. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

The Office of State Finance shall provide staff support and pay necessary travel costs for the Board of Directors of the Tobacco Settlement Endowment Trust Fund until the Board has its own staff and budget.

SECTION 11. AMENDATORY Section 2, Chapter 47, O.S.L. 2000, as amended by Section 24, Chapter 8, 1st Extraordinary Session, O.S.L. 2000 (62 O.S. Supp. 2000, Section 50), is amended to read as follows:

Section 50. There is hereby created in the State Treasury a revolving fund to be known and designated as the Tobacco Settlement Fund, into which fund shall be deposited:

1. All monies received by the state or any official, agency or department of the state in settlement of claims by the state against tobacco manufacturers during the month of April 2000;

2. All monies received by the state or any official, agency or department of the state in settlement of claims by the state against tobacco manufacturers during fiscal year 2001;

3. Except as provided in Section 19 of Title 74 of the Oklahoma Statutes, that portion of monies received by the state or any official, agency or department of the state in settlement of claims by the state against tobacco manufacturers which is not otherwise apportioned ~~in~~ pursuant to the provisions of Section 40 of Article X of the Oklahoma Constitution during fiscal year 2002 and subsequent fiscal years; and

4. Such other monies as may be appropriated or otherwise directed thereto by law.

The Tobacco Settlement Fund shall be a continuing fund, not subject to fiscal year limitations. No monies shall be paid out of such fund except pursuant to ~~authorization~~ appropriation by the Legislature.

SECTION 12. 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.

48-1-6246 GH 6/12/15