

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 1440

By: Nations

COMMITTEE SUBSTITUTE

An Act relating to higher education; amending 62 O.S. 2001, Section 41.29e, which relates to the Oklahoma Scholarship Revolving Fund; changing name of the Fund; requiring Fund to be used for providing certain student aid; amending 70 O.S. 2001, Sections 3954 and 3955, which relate to duty of care for certain trust funds; deleting the Oklahoma Tuition Scholarship Trust Fund; amending 70 O.S. 2001, Section 2403, which relates to the Oklahoma State Regents Academic Scholars Program; deleting certain requirement for approval by the State Regents; modifying condition by which scholarship awards become effective; allowing the State Regents to modify scholarship amount and to establish separate scholarship award levels; repealing 70 O.S. 2001, Sections 2610, 2611, 2612 and 2613, which relate to the Oklahoma Tuition Scholarship Act; repealing 70 O.S. 2001, Section 3953.2, which relates to the Oklahoma Tuition Scholarship Trust Fund; 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. 2001, Section 41.29e, is amended to read as follows:

Section 41.29e A. There is hereby created in the State Treasury a revolving fund for the Oklahoma State Regents for Higher Education to be designated the "Oklahoma ~~Tuition Scholarship~~ Student Aid Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of monies received pursuant to the provisions of subparagraph c of paragraph 2 and subparagraph c of paragraph 3 of Section 1004 of Title 68 of the Oklahoma Statutes and any funds previously deposited in the Oklahoma Tuition Scholarship Fund. All monies accruing to the credit of the

fund are hereby appropriated and may be budgeted and expended by the Oklahoma State Regents for Higher Education as authorized by the Oklahoma Legislature. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

B. Beginning with fiscal year 2003, monies accruing to the credit of the Oklahoma Student Aid Revolving Fund shall be appropriated for and budgeted and expended for providing student aid in the form of state tuition aid grants awarded pursuant to the Higher Education Tuition Aid Act and scholarships awarded pursuant to the Oklahoma State Regents' Academic Scholars Program and the Oklahoma Higher Learning Access Program.

SECTION 2. AMENDATORY 70 O.S. 2001, 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, as trustees of the Oklahoma Higher Learning Access Trust Fund, and 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, and 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~~ four 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, and 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 over-funded status, contributions and any other information deemed relevant by the State Regents.

SECTION 3. AMENDATORY 70 O.S. 2001, 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, ~~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 4. AMENDATORY 70 O.S. 2001, Section 2403, is amended to read as follows:

Section 2403. A. No person shall be eligible to participate in the Oklahoma State Regents' Academic Scholars Program unless the person:

1. Has complied with all of the rules promulgated by the Oklahoma State Regents for Higher Education pursuant to the provisions of the Oklahoma State Regents' Academic Scholars Act, Section 2401 et seq. of this title, for the award, regulation, and administration of scholarships; and

2. Qualifies as one of the following:

a. an Individual Applicant Qualified Student, which shall mean a student who is a resident of the State of Oklahoma whose American College Testing Program score or whose Scholastic Aptitude Test score falls within the 99.5 to 100.0 percentile levels as administered in the State of Oklahoma and whose grade point average and/or class rank is exceptional, as determined by the State Regents,

b. a Presidential Scholar, which shall mean a student selected by the Commission on Presidential Scholars administered by the United States Department of Education,

- c. a National Merit Scholar, which shall mean a student designated as a National Merit Scholar by the National Merit Scholarship Corporation,
- d. a National Merit Finalist, which shall mean a student designated as a National Merit Finalist by the National Merit Scholarship Corporation, or
- e. after October 1, 1999, an Institutional Nominee, which shall mean a student nominated by an institution in The Oklahoma State System of Higher Education:
  - (1) whose American College Testing Program or Scholastic Aptitude Test score falls within the 95.0 to 99.49 percentile levels, or
  - (2) who shows exceptional academic achievement as evidenced by factors, including, but not limited to, grade point average, class rank, national awards, scholastic achievements, honors, and who shows exceptional promise based on documentation that may include, but not be limited to, teacher recommendations, extracurricular activities, and evidence of overcoming economic and social obstacles as determined by the State Regents.The State Regents shall ~~approve each nomination~~ ~~to~~ ensure that standards of high academic ability are documented. Scholarship awards to Institutional Nominees shall become effective when ~~approved~~ appropriate documentation is verified by the State Regents.

B. No person shall be eligible to receive a scholarship pursuant to the provisions of the Oklahoma State Regents' Academic Scholars Program unless the person is enrolled as a full-time student at a public or private accredited institution of higher education in Oklahoma.

C. The Oklahoma State Regents' Academic Scholars Program shall provide a scholarship in an amount ~~equivalent to~~ not to exceed the average costs of all enrollment fees, tuition and other fees, room and board, and all required textbooks or materials for up to five (5) years of undergraduate and/or graduate study at an accredited public or private institution of higher education in Oklahoma as provided in subsection E of this section. The State Regents may establish separate scholarship award levels for each qualifying category.

D. If a person identifies himself or herself as a student with a disability and requests consideration for a scholarship under the Academic Scholars Program by means other than standard testing procedures, the State Regents shall determine what means of assessment are appropriate and upon the basis of said assessment results, determine what level of award, if any, shall be made.

E. 1. If the student is attending an institution of The Oklahoma State System of Higher Education, the total funding for the scholarship provided in this section, exclusive of any internships, shall not exceed the costs for items specified in subsection C of this section at the institution attended as determined annually by the Oklahoma State Regents for Higher Education.

2. If the student is attending a private institution of higher education, the total funding for the scholarship provided in this section, exclusive of any internships, shall not exceed the costs for items specified in subsection C of this section at an institution of The Oklahoma State System of Higher Education of comparable type which has the highest general enrollment fees of its type institution in The Oklahoma State System of Higher Education as determined annually by the Oklahoma State Regents for Higher Education.

SECTION 5. REPEALER 70 O.S. 2001, Sections 2610, 2611, 2612 and 2613, are hereby repealed.

SECTION 6. REPEALER 70 O.S. 2001, Section 3953.2, is hereby repealed.

SECTION 7. This act shall become effective July 1, 2002.

SECTION 8. 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.

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