

ENROLLED HOUSE
BILL NO. 1003

By: Askins and Vaughn of the
House

and

Taylor and Shurden of the
Senate

An Act relating to public finance; enacting the Tobacco Settlement Endowment Trust Fund Act; stating purpose; providing for the Tobacco Settlement Endowment Trust Fund; providing for deposits to the trust fund; providing for the Board of Investors of the Tobacco Settlement Endowment Trust Fund; providing for the meetings and staff support of the Board of Investors; amending Section 2 of Enrolled Senate Bill No. 372 of the 1st Session of the 48th Oklahoma Legislature, which relates to terms of office for members of the Board of Investors of the Tobacco Settlement Endowment Trust Fund and the Board of Directors of the Tobacco Settlement Endowment Trust Fund; clarifying terms of office; specifying duties and procedures concerning the Tobacco Settlement Endowment Trust Fund; specifying duties of the Board of Investors; defining terms; providing for the Board of Directors of the Tobacco Settlement Endowment Trust Fund; providing for reimbursement of expenses, organization, meetings and staff support of the Board of Directors; specifying duties of the Board of Directors; limiting administrative expenses; providing for certain temporary staff support; providing for recodification; providing for noncodification; providing for codification; 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 10 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. Section 40 of Article X of the Oklahoma Constitution 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 29, Chapter 8, 1st Extraordinary Session, O.S.L. 2000, and any other monies that may be appropriated or otherwise directed to the trust fund by the Legislature.

B. 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. AMENDATORY Section 2 of Enrolled Senate Bill No. 372 of the 1st Session of the 48th Oklahoma Legislature, is amended to read as follows:

Section 2. A. Appointments to the Board of Investors of the Tobacco Settlement Endowment Trust Fund shall be ~~made~~ staggered as provided in this section, pursuant to the provisions of Section 40 of Article X of the Oklahoma Constitution. The initial staggered terms of office of persons appointed prior to ~~the effective date of this act~~ April 10, 2001, or persons appointed to fill the remainder of an initial term of office shall be as follows:

1. The term of office of the person appointed by the Speaker of the House of Representatives shall expire June 30, 2001;

2. The term of office of the person appointed by the President Pro Tempore of the Senate shall expire June 30, 2002;

3. The term of office of the person appointed by the Governor shall expire June 30, 2003; and

4. The term of office of the person appointed by the State Auditor and Inspector shall expire June 30, 2004.

Thereafter, persons shall be appointed for terms of four (4) years beginning July 1. Any vacancy shall be filled by the appointing authority for the remainder of the unexpired term.

B. Appointments to the Board of Directors of the Tobacco Settlement Endowment Trust Fund shall be ~~made~~ staggered as provided in this section, pursuant to the provisions of Section 40 of Article X of the Oklahoma Constitution. The initial staggered terms of office of persons appointed prior to ~~the effective date of this act~~ April 10, 2001, or persons appointed to fill the remainder of an initial term of office shall be as follows:

1. The term of office of the person appointed by the Speaker of the House of Representatives shall expire June 30, 2001;

2. The term of office of the person appointed by the President Pro Tempore of the Senate shall expire June 30, 2002;

3. The term of office of the person appointed by the Governor shall expire June 30, 2003;

4. The term of office of the person appointed by the Attorney General shall expire June 30, 2004;

5. The term of office of the person appointed by the State Treasurer shall expire June 30, 2005;

6. The term of office of the person appointed by the State Auditor and Inspector shall expire June 30, 2006; and

7. The term of office of the person appointed by the State Superintendent of Public Instruction shall expire June 30, 2007.

Thereafter, persons shall be appointed for terms of seven (7) years beginning July 1. Any vacancy shall be filled by the appointing authority for the remainder of the unexpired term.

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. Section 40 of Article X of the Oklahoma Constitution created the Board of Investors of the Tobacco Settlement Endowment Trust Fund.

B. 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.

C. The terms of the Board of Investors shall be staggered as provided by subsection A of Section 4 of this act.

D. The Board shall annually elect a chair and any other officers, provided that no member shall be elected chair for more

than two (2) consecutive years. The Board shall meet at least quarterly.

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

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. 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 basis pursuant to standards set by the Board of Investors. The investment managers shall manage those monies of the trust fund allocated to the investment managers in compliance with 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 in accordance with the investment guidelines and other directions of the Board of Investors. 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 may 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. The Board of Investors may also select professional investment consultants, auditors, and actuaries to assist the Board of Investors in carrying out its fiduciary responsibilities. All these professionals shall be selected 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 professional 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, investment consultants, auditors, and actuaries, and a custodian bank shall be exempt from the provisions of the Oklahoma Central Purchasing Act.

F. The Board of Investors shall set aside cash reserves from the earnings of the Tobacco Settlement Endowment Trust Fund if requested by the Board of Directors of the Tobacco Settlement Endowment Trust Fund pursuant to subsection B of Section 10 of this act.

G. The State Treasurer shall provide any necessary staff support to the Board of Investors. The cost of up to two full-time-equivalent employees 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 Directors of the Tobacco Settlement Endowment Trust Fund.

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. On or before September 1 of each year, the Board of Investors of the Tobacco Settlement Endowment Trust Fund shall determine the net appreciation of the trust fund for the previous fiscal year ending June 30. The maximum earnings for each fiscal year shall not exceed the net appreciation. In determining earnings, the Board of Investors shall certify so much of the net appreciation which is prudent under the standard set forth in paragraph C of this section. The earnings so determined and certified by the Board of Investors for each fiscal year shall constitute the earnings of the Tobacco Settlement Endowment Trust Fund for the purposes of Section 40 of Article X of the Oklahoma Constitution.

B. "Net appreciation" consists of the positive difference, if any, between the dollar value of the Tobacco Settlement Endowment Trust Fund and the historic dollar value as of a given date. Both unrealized and realized gains and losses, as well as cash on hand, shall be taken into account in determining the dollar value of the trust fund. "Historic dollar value" means the aggregate fair value in dollars of:

1. The monies transferred to the Tobacco Settlement Endowment Trust Fund pursuant to Section 29, Chapter 8, 1st Extraordinary Session, O.S.L. 2000;

2. Any payments to the trust fund principal pursuant to the tobacco settlement entered into on November 13, 1998, and pursuant to Section 40 of Article X of the Oklahoma Constitution; and

3. Payments from any future settlements or judgments to the trust fund pursuant to Section 40 of Article X of the Oklahoma Constitution; and

4. Other payments or appropriations added or contributed to the trust fund principal by law.

The determination of historic dollar value made in good faith by the Board of Investors shall be conclusive.

C. In the administration of the powers to determine net appreciation and earnings, to make and retain investments, and to delegate investment management of institutional funds, the Board of Investors shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. In so doing, the Board of Investors shall consider:

1. Long- and short-term needs of the trust fund in carrying out its purposes;

2. The present and anticipated financial requirements for programs funded by the Board of Directors of the Tobacco Settlement Endowment Trust Fund;

3. Expected total return on its investments;

4. Price level and inflation trends; and

5. General economic conditions.

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. Section 40 of Article X of the Oklahoma Constitution created the Board of Directors of the Tobacco Settlement Endowment Trust Fund.

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. The terms of the Board of Directors shall be staggered as provided by subsection B of Section 4 of this act.

D. 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.

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

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:

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 guide the Board's funding for those programs set forth in Section 40 of Article X of the Oklahoma Constitution. 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 for private, nonprofit, and public entities for the purposes set forth in Section 40 of Article X of the Oklahoma Constitution.

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 periodically for performance evaluations. Copies of the evaluations 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 Board of Directors' 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 Board of Directors or its grantees pursuant to the Tobacco Settlement Endowment Trust Fund Act shall be subject to the Oklahoma Open Records Act.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2310 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 adopt a budget for each fiscal year after the Board of Directors has been notified by the Board of Investors of the amount of earnings available for distribution. 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 earnings certified by the Board of Investors, provided that the funds spent on administrative expenses shall not exceed Five Hundred Thousand Dollars (\$500,000.00) in any fiscal year. 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.

B. 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.

C. The Board of Directors shall direct the Board of Investors of the Tobacco Settlement Endowment Trust Fund to set aside sufficient cash reserves out of earnings from the Tobacco Settlement Endowment Trust Fund to ensure that the administrative expenses of the Board of Directors and Board of Investors of the Tobacco Settlement Endowment Trust Fund and the State Treasurer may be funded in the event that there is insufficient earnings achieved in a future year to cover those expenses.

SECTION 11. 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 12. RECODIFICATION Section 2 of Enrolled Senate Bill No. 372 of the 1st Session of the 48th Oklahoma Legislature, as amended by Section 4 of this act, shall be recodified as Section 2304 of Title 62 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 13. 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.

Passed the House of Representatives the 18th day of May, 2001.

Presiding Officer of the House of
Representatives

Passed the Senate the 21st day of May, 2001.

Presiding Officer of the Senate