

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 58th Legislature (2021)

4 HOUSE BILL 2870

By: Wallace of the House

5 and

6 **Thompson** of the Senate

7
8
9 AS INTRODUCED

10 An Act relating to Commissioners of the Land Office;
11 amending 62 O.S. 2011, Section 34.62, as last amended
12 by Section 28, Chapter 98, O.S.L. 2020 (62 O.S. Supp.
13 2020, Section 34.62), which relates to encumbrance
14 requirements for payments from state funds; allowing
15 the Commissioners of the Land Office to make fee
16 payments to multiple custodial banks and investment
17 consultant from certain proceeds; amending 64 O.S.
18 2011, Section 1013, as last amended by Section 1,
19 Chapter 8, O.S.L. 2020 (64 O.S. Supp. 2020, Section
20 1013), which relates to investment of the permanent
21 school funds; authorizing the Commissioners of the
22 Land Office to select one or more custodial banks;
23 requiring competitive bids from custodial banks every
24 ten year rather than every five years; updating
statutory language; 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. 2011, Section 34.62, as
last amended by Section 28, Chapter 98, O.S.L. 2020 (62 O.S. Supp.
2020, Section 34.62), is amended to read as follows:

1 Section 34.62 Encumbrance requirements for payments from funds
2 of the state shall include the following:

3 1. Whenever agencies of this state enter into contracts for, or
4 on behalf of the state for the purchase of tangible or intangible
5 property, or for services or labor, such agreement shall be
6 evidenced by written contracts or purchase orders, and must be
7 transmitted to the Director of the Office of Management and
8 Enterprise Services within a reasonable time from the date of the
9 awarding of the contract or purchase order, as determined by the
10 Director;

11 2. The Director of the Office of Management and Enterprise
12 Services shall charge such contracts or purchase orders against the
13 proper account as an outstanding order until it is liquidated by
14 payment of a claim, or claims, against the contracts or purchase
15 orders, or by cancellation of the contract or purchase order;

16 3. The Director of the Office of Management and Enterprise
17 Services shall have the power to authorize agencies of the state to
18 make acquisitions without the submission of competitive bids or
19 compliance with the state purchase card program as otherwise
20 required by the Oklahoma Central Purchasing Act, for or on behalf of
21 the state whenever the Director determines that it is in the best
22 interests of the state. The administrative head of any agency shall
23 be personally liable for obligations incurred in excess of the
24 authorization granted by the Director;

1 4. The Director of the Office of Management and Enterprise
2 Services shall never authorize payment of claims for any agency of
3 the state unless they are supported by:

- 4 a. contracts or purchase orders of the Office of
- 5 Management and Enterprise Services,
- 6 b. institutional purchase orders or contracts,
- 7 c. departmental purchase orders or contracts, or
- 8 d. authorizations for purchases granted by the Director
- 9 as provided by paragraph 3 of this section;

10 5. Any invoice or claim dated prior to the date of any of the
11 above-mentioned encumbrance documents shall be rejected by the
12 Office of Management and Enterprise Services;

13 6. Any encumbrance document that is outstanding on the records
14 in the Office of Management and Enterprise Services when its funding
15 source or sources lapse shall be canceled, unless another current
16 funding source is assigned; and

17 7. The Commissioners of the Land Office shall be authorized to
18 make payment of fees to its custodial ~~bank~~ banks, investment
19 consultants and investment managers from the proceeds of total
20 realized investment gains and such payments may be made from a
21 special fund hereby created in the State Treasury for this purpose.
22 Total payments for this purpose in a fiscal year shall not exceed
23 one-half percent (0.5%) of the market value of the funds under the
24 Commissioners' management on June 30 of the previous fiscal year.

1 SECTION 2. AMENDATORY 64 O.S. 2011, Section 1013, as
2 last amended by Section 1, Chapter 8, O.S.L. 2020 (64 O.S. Supp.
3 2020, Section 1013), is amended to read as follows:

4 Section 1013. A. The Commissioners of the Land Office shall be
5 responsible for the investment of the permanent school funds, other
6 educational funds and public building funds solely in the best
7 interests of the current and future beneficiaries. The
8 Commissioners of the Land Office shall make investments:

9 1. For the exclusive purpose of:

10 a. providing maximum benefits to current and future
11 beneficiaries, and

12 b. defraying reasonable expenses of administering the
13 trust funds;

14 2. With the care, skill, prudence and diligence under the
15 circumstances then prevailing that a prudent person acting in a like
16 enterprise of a like character and with like aims would use; and

17 3. By diversifying the investments of the trust funds so as to
18 minimize the risk of large losses.

19 B. The permanent school fund and other educational funds may
20 only be invested in bonds issued in the United States, United States
21 dollar denominated or other investments settled in United States
22 dollars or traded on the United States exchange markets and real
23 property to be owned or acquired by the Commissioners of the Land
24 Office. The Commissioners of the Land Office shall not invest more

1 than sixty percent (60%) of the trust fund investments in equity
2 securities. The Commissioners of the Land Office are further
3 authorized to acquire, purchase, exchange and grant any real
4 property under its jurisdiction as is necessary to carry out the
5 investment in the real property. The Commissioners of the Land
6 Office shall not invest more than five percent (5%) of the total
7 value of the assets of the permanent school funds in connection with
8 investments in real property. In no case shall the Commissioners of
9 the Land Office bid against private-sector bidders above the
10 appraised value of any property to be acquired.

11 C. The Commissioners shall establish an investment committee.
12 The investment committee shall be composed of not more than three
13 members of the Commissioners of the Land Office or their designees.
14 The committee shall make recommendations to the Commissioners of the
15 Land Office on all matters related to the choice of managers of the
16 assets of the funds, on the establishment of investment and fund
17 management guidelines, and in planning future investment policy.
18 The committee shall have no authority to act on behalf of the
19 Commissioners of the Land Office in any circumstances whatsoever.
20 No recommendations of the committee shall have effect as an action
21 of the Commissioners of the Land Office or take effect without the
22 approval of the Commissioners as provided by law. The Commissioners
23 shall promulgate and adopt on an annual basis an investment plan.
24 The investment plan shall state the criteria for selecting

1 investment managers, the allocation of assets among investment
2 managers, and established standards of investment and fund
3 management.

4 D. The Commissioners shall retain qualified investment managers
5 to provide for investment of the fund monies and for the management
6 of investment real property pursuant to the investment plan.
7 Investment managers shall be chosen by a solicitation of proposals
8 on a competitive bid basis pursuant to standards set by the
9 Commissioners. Subject to the investment plan, each investment
10 manager shall have full discretion in the management of the funds or
11 investment real property allocated to ~~said~~ the investment managers.
12 The funds allocated to investment managers shall be actively managed
13 by them, which may include selling investments and realizing losses
14 if the action is considered advantageous to longer term return
15 maximization. Because of the total return objective, no distinction
16 shall be made for management and performance evaluation purposes
17 between realized and unrealized capital gains and losses.

18 E. The Commissioners shall take any measures they deem
19 appropriate to safeguard custody of securities and other assets of
20 the trusts.

21 F. By September 1 of each year, the Commissioners shall develop
22 a written investment plan for the trust funds.

23 G. The Commissioners shall compile a quarterly financial report
24 showing the performance of all the combined funds under their

1 control on a fiscal year basis. The report shall contain a list of
2 all investments made by the Commissioners and a list of any
3 commissions, fees or payments made for services regarding the
4 investments for that reporting period. The report shall be based on
5 market values and shall be compiled pursuant to uniform reporting
6 standards prescribed by the Oklahoma State Pension Commission for
7 all state retirement systems. The report shall be distributed to
8 the Oklahoma State Pension Commission, the Cash Management and
9 Investment Oversight Commission, and the Legislative Service Bureau.

10 H. Before January 1 of each year, the Commissioners shall
11 publish an annual report of all Trust operations, presented in a
12 simple and easily understood manner to the extent possible. The
13 report shall be submitted to the Governor, the Speaker of the House
14 of Representatives, the President Pro Tempore of the Senate, the
15 State Department of Education and each higher education beneficiary.
16 The annual report shall cover the operation of the Trusts during the
17 past fiscal year, including income, disbursements and the financial
18 condition of the Trusts at the end of each fiscal year on a cash
19 basis. The annual report shall also contain a summary of the assets
20 of each trust and current market value as of the report date.

21 I. The Cash Management and Investment Oversight Commission
22 shall review reports prepared by the Commissioners of the Land
23 Office pursuant to this subsection and shall make recommendations
24 regarding the investment strategies and practices, the development

1 of internal auditing procedures and practices and any other matters
2 as determined necessary and applicable.

3 J. The Commissioners of the Land Office shall select one or
4 more custodial ~~bank~~ banks to settle transactions involving the
5 investment of the funds under the control of the Commissioners of
6 the Land Office. The Commissioners of the Land Office shall review
7 the performance of ~~the~~ each custodial bank at least once every year.
8 The Commissioners of the Land Office shall require a written
9 competitive bid every ~~five (5)~~ ten (10) years. The custodial bank
10 shall have a minimum of Five Hundred Million Dollars
11 (\$500,000,000.00) in assets to be eligible for selection. Any out-
12 of-state custodial bank shall have a service agent in the State of
13 Oklahoma so that service of summons or legal notice may be had on
14 the designated agent, and the bank shall submit to the jurisdiction
15 of Oklahoma state courts for resolution of any and all disputes. In
16 order to be eligible for selection, the custodial bank shall allow
17 electronic access to all transaction and portfolio reports
18 maintained by the custodial bank involving the investment of state
19 funds under control of the Commissioners of the Land Office and to
20 the Cash Management and Investment Oversight Commission. The
21 requirement for electronic access shall be incorporated into any
22 contract between the Commissioners of the Land Office and the
23 custodial bank. Neither the Commissioners of the Land Office nor
24 the custodial bank shall permit any of the funds under the control

1 of the Commissioners of the Land Office or any of the documents,
2 instruments, securities or other evidence of a right to be paid
3 money to be located in any place other than within a jurisdiction or
4 territory under the control or regulatory power of the United States
5 government.

6 SECTION 3. This act shall become effective July 1, 2021.

7 SECTION 4. It being immediately necessary for the preservation
8 of the public peace, health or safety, an emergency is hereby
9 declared to exist, by reason whereof this act shall take effect and
10 be in full force from and after its passage and approval.

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12 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
13 02/04/2021 - DO PASS, As Coauthored.
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