

1 STATE OF OKLAHOMA

2 2nd Session of the 56th Legislature (2018)

3 SENATE BILL 1149

By: McCortney and Pugh of the  
Senate

4 and

5 McBride of the House  
6

7  
8 AS INTRODUCED

9 An Act relating to the Tobacco Settlement Endowment  
10 Trust; amending 62 O.S. 2011, Section 50, as amended  
11 by Section 1, Chapter 370, O.S.L. 2012 (62 O.S. Supp.  
12 2017, Section 50), which relates to the Tobacco  
13 Settlement Fund; clarifying language; deleting  
14 certain reference; modify and creating certain  
15 apportionments; amending 62 O.S. 2011, Section 2302,  
16 which relates to the Tobacco Settlement Endowment  
17 Trust Act; modifying certain apportionment;  
18 authorizing certain expenditures; amending 62 O.S.  
19 2011, Section 2303, which relates to the Tobacco  
20 Settlement Endowment Trust Fund principal; modifying  
21 the definition of the trust fund principal to include  
22 trust fund earnings; directing the Legislature to  
23 appropriate certain monies for certain purposes;  
24 directing certain agencies to provide assistance to  
the Legislature; amending 62 O.S. 2011, Section 2309,  
as amended by Section 1, Chapter 98, O.S.L. 2015 (62  
O.S. Supp. 2017, Section 2309), which relates to the  
powers and duties of the Board of Directors of the  
Tobacco Settlement Endowment Trust Fund; authorizing  
expenditure of trust fund principal for certain  
purposes; modifying certain reference; amending 62  
O.S. 2011, Section 2310, as amended by Section 470,  
Chapter 304, O.S.L. 2012 (62 O.S. Supp. 2017, Section  
2310), which relates to budgeting for the Board of  
Directors of the Tobacco Settlement Endowment Trust  
Fund; modifying the contents of the notice to be  
provided by the Board of Investors; requiring certain  
expenses to be paid from the principal of the trust  
fund; modifying source to cash reserves required to

1 be set aside; requiring earnings to be deposited in  
2 the trust fund; directing the Board of Investors to  
3 make certain calculation; providing for codification;  
4 and providing conditional effective date.

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

6 SECTION 1. AMENDATORY 62 O.S. 2011, Section 50, as  
7 amended by Section 1, Chapter 370, O.S.L. 2012 (62 O.S. Supp. 2017,  
8 Section 50), is amended to read as follows:

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

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

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

18 3. That portion of monies apportioned to the Tobacco Settlement  
19 Fund pursuant to the provisions of subsection B of this section; and

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

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

1 B. Monies received each year by the state or any official,  
2 agency or department of the state in settlement of claims by the  
3 state against tobacco manufacturers ~~which is not otherwise~~  
4 ~~apportioned pursuant to the provisions of Section 40 of Article X of~~  
5 ~~the Oklahoma Constitution~~ shall be apportioned as follows:

6 1. ~~Seventy-five percent (75%)~~ Eighteen and seventy-five one  
7 hundredths percent (18.75%) shall be apportioned to the Tobacco  
8 Settlement Fund; ~~and~~

9 2. ~~Twenty-five percent (25%)~~ Two percent (2%) shall be  
10 apportioned to the Attorney General's Evidence Fund; and

11 3. Seventy-nine and twenty-five one hundredths percent (79.25%)  
12 shall be apportioned to the General Revenue Fund and shall be  
13 appropriated by the Legislature as provided for in Section 4 of this  
14 act.

15 SECTION 2. AMENDATORY 62 O.S. 2011, Section 2302, is  
16 amended to read as follows:

17 Section 2302. The purpose of the Tobacco Settlement Endowment  
18 Trust Fund Act is to further implement the provisions of Section 40  
19 of Article X of the Oklahoma Constitution that:

20 1. Created the Tobacco Settlement Endowment Trust Fund, the  
21 Board of Investors of the Tobacco Settlement Endowment Trust Fund,  
22 and the Board of Directors of the Tobacco Settlement Endowment Trust  
23 Fund;

24

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

6        3. Authorizes the Board of Directors of the Tobacco Settlement  
7 Endowment Trust Fund to expend up to five percent (5%) of the trust  
8 fund ~~earnings~~ principal for specific purposes.

9        SECTION 3.        AMENDATORY        62 O.S. 2011, Section 2303, is  
10 amended to read as follows:

11        Section 2303. A. Section 40 of Article X of the Oklahoma  
12 Constitution created a trust fund to be known as the "Tobacco  
13 Settlement Endowment Trust Fund". The trust fund principal shall  
14 consist of the portion of monies which ~~are~~ have been received by the  
15 State of Oklahoma ~~on or after July 1, 2001~~ as of December 31, 2018,  
16 pursuant to any settlement with or judgment against any tobacco  
17 company or companies as provided by subsection B of this section,  
18 the Fifty Million Dollars (\$50,000,000.00) transferred to the  
19 Tobacco Settlement Endowment Trust Fund pursuant to Section 29,  
20 Chapter 8, 1st Extraordinary Session, O.S.L. 2000, the earnings of  
21 the trust fund, and any other monies that may be appropriated or  
22 otherwise directed to the trust fund by the Legislature.

23        B. The trust fund principal shall consist of monies which are  
24 deposited to the trust fund. Notwithstanding any other provisions

1 of law, income and investment return on trust fund principal shall  
2 accrue to the trust fund.

3 SECTION 4. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 2307.1 of Title 62, unless there  
5 is created a duplication in numbering, reads as follows:

6 A. For the fiscal year ending June 30, 2020, and for each  
7 fiscal year thereafter, the Legislature shall appropriate fifty  
8 percent (50%) of monies received by the state or any official,  
9 agency or department of the state in settlement of claims by the  
10 state against tobacco manufacturers that have been apportioned to  
11 the General Revenue Fund to all common school districts of the state  
12 in order to promote the health and quality of life for students in  
13 pre-kindergarten through twelfth grade. Funds shall be appropriated  
14 on the basis of school population. The State Board of Education  
15 shall provide the Legislature with the average daily attendance  
16 (ADA) as defined in Section 10-103.1 of Title 70 of the Oklahoma  
17 Statutes for the preceding school year for each school district in  
18 the state. The funds may be used for purposes of compensating  
19 personnel involved in specialized mental health services, school  
20 nurse programs, special education services including, but not  
21 limited to, speech pathology and audiology, and such other programs  
22 as the Legislature may determine to be consistent with the  
23 provisions of Section 40 of Article X of the Oklahoma Constitution  
24 in order to promote the health and well-being of children attending

1 pre-kindergarten through twelfth grade in the common schools of the  
2 state.

3 B. For the fiscal year ending June 30, 2020, and for each  
4 fiscal year thereafter, the Legislature shall appropriate fifty  
5 percent (50%) of monies received by the state or any official,  
6 agency or department of the state in settlement of claims by the  
7 state against tobacco manufacturers that have been apportioned to  
8 the General Revenue Fund to the Department of Mental Health and  
9 Substance Abuse Services for substance abuse treatment programs  
10 including criminal justice diversion programs.

11 C. The State Department of Education and the Department of  
12 Mental Health and Substance Abuse Services shall provide such  
13 information and assistance as the Legislature may require in order  
14 to implement the provisions of this section.

15 SECTION 5. AMENDATORY 62 O.S. 2011, Section 2309, as  
16 amended by Section 1, Chapter 98, O.S.L. 2015 (62 O.S. Supp. 2017,  
17 Section 2309), is amended to read as follows:

18 Section 2309. A. The Board of Directors of the Tobacco  
19 Settlement Endowment Trust Fund shall be empowered to:

20 1. Appoint an executive director and other staff necessary to  
21 perform the duties of the Board of Directors;

22 2. Make and execute contracts and other instruments necessary  
23 or convenient to the exercise of its powers on such terms and for  
24 such period of time as the Board of Directors shall determine; and

1           3. Promulgate rules in accordance with the Administrative  
2 Procedures Act and not inconsistent with the Tobacco Settlement  
3 Endowment Trust Fund Act to implement its duties and  
4 responsibilities as provided by law.

5           B. Funding for capital expenditures and operating expenses  
6 incurred by the University of Oklahoma Health Sciences Center and  
7 the Oklahoma State University College of Osteopathic Medicine, for  
8 educational programs and residency training to maintain or improve  
9 the health of Oklahomans or to enhance the provision of health care  
10 services to Oklahomans, is hereby deemed to be an allowable purpose  
11 for which ~~earnings from~~ the trust fund principal may be expended  
12 pursuant to the provisions of paragraph 3 of subsection ~~E~~ F of  
13 Section 40 of Article X of the Oklahoma Constitution. Pursuant to  
14 its authority as set forth in subsection ~~G~~ H of Section 40 of  
15 Article X of the Oklahoma Constitution, the Legislature hereby  
16 authorizes the Board to expend ~~earnings from~~ the trust fund  
17 principal for such purposes, in addition to other purposes provided  
18 by law.

19           C. The Board shall develop a multiyear strategy by January 1,  
20 2002, and annually update it in order to guide the Board's funding  
21 for those programs set forth in Section 40 of Article X of the  
22 Oklahoma Constitution. The strategy shall be used to maximize the  
23 outcomes of the grants awarded by the Board of Directors.

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1 D. The Board of Directors shall develop grant programs for  
2 private, nonprofit, and public entities for the purposes set forth  
3 in Section 40 of Article X of the Oklahoma Constitution.

4 1. The selection and awarding of grants, whether in the form of  
5 professional service contracts or any other funding mechanism  
6 developed by the Board of Directors, awarded pursuant to grant  
7 programs developed under this subsection, shall be exempt from the  
8 requirements of The Oklahoma Central Purchasing Act.

9 2. The Board of Directors shall develop competitive processes  
10 for awarding grants under programs developed under this subsection.  
11 Such competitive processes for selection shall not be required for  
12 contracts awarded for program support services, including, but not  
13 limited to, professional service contracts to evaluate, audit or  
14 provide budgeting, accounting, auditing or legal services for  
15 specific programs or program grantees, contractors or participants.

16 3. The Board of Directors may promulgate rules to assist in the  
17 implementation and administration of grant programs developed under  
18 this subsection.

19 4. The terms of any request for proposals, request for  
20 applications, invitation for bid, bid notice, or grant proposal or  
21 any other solicitation issued by the Board of Directors to solicit  
22 or invite applications, proposals, bids or responses to obtain  
23 funding under grant programs developed under this subsection shall  
24 be confidential until the date and time at which the solicitation is



1 to be made equally and uniformly known to all prospective applicants  
2 and the public, at which point all such documents and information  
3 shall be uniformly known to all prospective applicants and the  
4 public, at which point all such documents and information shall be  
5 subject to the Oklahoma Open Records Act and Oklahoma Open Meeting  
6 Act. Any application, proposal, bid, or any other document to  
7 obtain funding responsive to any solicitation of the Board of  
8 Directors under grant programs developed under this subsection shall  
9 be confidential until the date and time of award of the grant or  
10 contract, at which point all such documents and information shall be  
11 subject to the Oklahoma Open Records Act and Oklahoma Open Meeting  
12 Act. Any unsolicited application, proposal, bid, or any other  
13 document to obtain funding shall not be considered to be  
14 confidential and shall be subject to the Oklahoma Open Records Act  
15 and Oklahoma Open Meeting Act at all times.

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

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

22 G. The Board of Directors shall contract periodically for  
23 performance evaluations. Copies of the evaluations shall be filed  
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1 with the Governor, the Speaker of the House of Representatives, and  
2 the President Pro Tempore of the Senate.

3 H. The Board of Directors shall prepare an annual report  
4 detailing the Board of Directors' activities and reporting its  
5 expenditures and the outcomes achieved by the expenditures. A copy  
6 of the report shall be submitted to the Governor, the Speaker of the  
7 House of Representatives, and the President Pro Tempore of the  
8 Senate.

9 I. All records associated with the expenditure of monies  
10 received by the Board of Directors or its grantees pursuant to the  
11 Tobacco Settlement Endowment Trust Fund Act shall be subject to the  
12 Oklahoma Open Records Act.

13 SECTION 6. AMENDATORY 62 O.S. 2011, Section 2310, as  
14 amended by Section 470, Chapter 304, O.S.L. 2012 (62 O.S. Supp.  
15 2017, Section 2310), is amended to read as follows:

16 Section 2310. A. The Board of Directors of the Tobacco  
17 Settlement Endowment Trust Fund shall adopt a budget for each fiscal  
18 year after the Board of Directors has been notified by the Board of  
19 Investors of the amount of earnings to be deposited in the Tobacco  
20 Settlement Endowment Trust Fund and the amount of principal  
21 available for distribution. The budget shall be broken out into an  
22 operating budget and a programs budget. The budget shall be  
23 presented to the Board of Investors of the Tobacco Settlement  
24

1 Endowment Trust Fund and filed with the Office of Management and  
2 Enterprise Services.

3 1. The operating budget shall consist of the administrative  
4 expenses of the Board of Directors and the administrative expenses  
5 of the State Treasurer approved by the Board of Directors of the  
6 Tobacco Settlement Endowment Trust Fund.

7 a. Administrative expenses include the portion of  
8 salaries, travel, and other administrative expenses of  
9 the Board of Investors and Board of Directors of the  
10 Tobacco Settlement Endowment Trust Fund that cannot be  
11 identified with a specific program of the Board of  
12 Directors. Administrative expenses allocable to the  
13 operating budget may also include, but are not limited  
14 to: regular board and committee meetings; staff  
15 meetings; personnel or human resource management;  
16 board legal services; board consultant services;  
17 central purchasing and procurement; board budgeting,  
18 accounting and auditing; and public information  
19 activities.

20 b. Administrative expenses do not include program  
21 expenses as defined below or the professional expenses  
22 paid by the Board of Investors related to the  
23 management of the Trust Fund. The fees paid to  
24 investment managers and the custodian bank must be

1 properly disclosed and approved by the Board of  
2 Investors or authorized staff in the Office of the  
3 State Treasurer, but the fees may be paid from assets  
4 under management.

- 5 c. Administrative expenses of the Board of Directors may  
6 not exceed fifteen percent (15%) of the annual amount  
7 of earnings certified by the Board of Investors.

8 2. The programs budget shall consist of the program expenses of  
9 the Board of Directors.

- 10 a. Program expenses include direct funding awarded to  
11 grantees or contractors under grants programs  
12 developed by the Board. Program expenses allocable to  
13 the programs budget may also include, but are not  
14 limited to, staff time, represented by a proportional  
15 amount of the employee's salary, and board and staff  
16 travel expenses that can be identified to benefit a  
17 specific program of the Board of Directors.

- 18 b. Other expenses allocable to the programs budget may  
19 include, but are not limited to: special board and  
20 committee meetings to conduct an activity identifiable  
21 to a specific program; contracted consultants,  
22 technical or program support personnel assigned  
23 directly to specific programs; professional services  
24 contracts to evaluate, audit or provide budgeting,

1           accounting, auditing or legal services for specific  
2           programs or program grantees, contractors or  
3           participants; and training or informational activities  
4           to inform applicants, contractors, grantees or the  
5           public about a specific program developed by the Board  
6           of Directors.

7           3. The Board shall develop policies and procedures to define,  
8           clarify, and implement the allocation of identified expenses to  
9           either the programs or operating budget.

10          4. All operating expenses and program expenses shall be paid  
11          out against the amount of ~~earnings from~~ principal of the Tobacco  
12          Settlement Endowment Trust Fund.

13          B. The Board of Investors shall ensure that sufficient cash is  
14          transferred at appropriate times to honor these claims, but shall  
15          keep as much as possible of the trust fund invested at all times.  
16          The operating budget of the Board of Directors shall be allotted in  
17          twelve substantially equal amounts throughout the fiscal year.  
18          Amounts to be distributed to carry out the purposes of the Tobacco  
19          Settlement Endowment Trust Fund Act shall be made available as  
20          needed and determined by the Board of Directors of the Tobacco  
21          Settlement Endowment Trust Fund.

22          C. The Board of Directors shall direct the Board of Investors  
23          of the Tobacco Settlement Endowment Trust Fund to set aside  
24          sufficient cash reserves out of ~~earnings from~~ the principal of the

1 Tobacco Settlement Endowment Trust Fund to ensure that the expenses  
2 of the Board of Directors and Board of Investors of the Tobacco  
3 Settlement Endowment Trust Fund and the State Treasurer may be  
4 funded in the event that there is insufficient ~~earnings achieved~~  
5 principal in a future year to cover those expenses. Earnings from a  
6 fiscal year ~~may be carried over or used as reserves for expenditure~~  
7 ~~in future fiscal years~~ shall be deposited in the Tobacco Settlement  
8 Endowment Trust Fund.

9 D. The Board of Investors shall calculate earnings and  
10 principal of the Tobacco Settlement Endowment Trust Fund for the  
11 fiscal year ending June 30, 2003, and future fiscal years pursuant  
12 to this act.

13 SECTION 7. This act shall become effective upon certification  
14 of election returns favoring passage of the Constitutional Amendment  
15 proposed in Senate Joint Resolution No. \_\_\_ of the 2nd Session of the  
16 56th Oklahoma Legislature.

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