

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997  
4

As Engrossed: H3/21/97 S3/26/97 S3/28/97

## A Bill

HOUSE BILL 1684

5 By: Representatives Jones, Dawson and Young  
6 By: Senator Hopkins  
7  
8

### For An Act To Be Entitled

9  
10 "AN ACT TO AMEND SUBCHAPTER 4 OF TITLE 24, CHAPTER 3, OF  
11 THE ARKANSAS CODE OF 1987, ANNOTATED, TO REVISE AND UPDATE  
12 THE INVESTMENT POLICIES AND RULES, INCLUDING THE PRUDENT  
13 INVESTOR RULE, FOR THE VARIOUS STATE-SUPPORTED RETIREMENT  
14 SYSTEMS; AND FOR OTHER PURPOSES."

### Subtitle

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16  
17 "TO REVISE AND UPDATE THE INVESTMENT  
18 POLICIES AND RULES FOR THE VARIOUS  
19 STATE-SUPPORTED RETIREMENT SYSTEMS."  
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
22

23 SECTION 1. Arkansas Code § 24-3-401 is amended to read as follows:

24 "24-3-401. Investment authority and limitations generally.

25 All investments of named plans covered by this chapter shall be in  
26 strict compliance with the provisions of this subchapter. The term trust as  
27 used in this subchapter refers to the following Arkansas retirement systems:  
28 the State Police Retirement System, the Arkansas Public Employees Retirement  
29 System, the Arkansas Teacher Retirement System, *the* the Arkansas State Highway  
30 Employees Retirement System, and the Arkansas Judicial Retirement System.  
31 The term trustees as used in this subchapter refers to boards of trustees of  
32 the above referenced systems."  
33

34 SECTION 2. Arkansas Code § 24-3-402 is amended to read as follows:

35 "24-3-402. Investment authority and limitations - Permissible  
36 investments.

1 (a) The Boards of Trustees of the State Police Retirement System, the  
2 Arkansas Public Employees' Retirement System, the Arkansas Teacher Retirement  
3 System, the Arkansas State Highway Employees' Retirement System, and the  
4 Arkansas Judicial Retirement System shall have full power to invest and  
5 reinvest the moneys of the respective systems and to hold, purchase, sell,  
6 assign, transfer, or dispose of any of the investments so made as well as the  
7 proceeds of the investments and moneys.

8 (b) However, the investments and reinvestments shall only be made in  
9 accordance with the prudent investor rule set forth in ~~§ 24-3-411~~ this  
10 subchapter."

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12 SECTION 3. Arkansas Code § 24-3-414 is amended to read as follows:

13 "24-3-414. Investment authority and limitations - Arkansas-related  
14 investments.

15 (a) In acquiring, investing, reinvesting, exchanging, retaining,  
16 selling, and managing funds held by each of the ~~Arkansas public employee~~  
17 ~~retirement systems trusts~~, fiduciaries administering the systems shall manage  
18 the funds so as to favorably impact the economic condition of and maximize  
19 capital investment in the State of Arkansas when appropriate investment  
20 alternatives are available.

21 (b) It is the intention of the General Assembly that, as assets become  
22 available for investment, the systems shall seek to invest not less than five  
23 percent (5%) nor more than ten percent (10%) of their portfolio in  
24 Arkansas-related investments.

25 (c) In calculating the percentage of Arkansas-related investments, the  
26 systems shall not include Federal National Mortgage Association investments  
27 nor Government National Mortgage Association investments.

28 (d) Nothing in this section shall in any way limit or impair the  
29 responsibility of a fiduciary to invest in accordance with the prudent  
30 investor rule set forth in ~~§ 24-3-411~~ 24-3-417."

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32 SECTION 4. Subchapter 4 of Title 24, Chapter 3, of the Arkansas Code of  
33 1987, Annotated, is amended to add the following new §§ 24-3-417 through 24-3-  
34 426 to read as follows:

35 "24-3-417. Prudent investor rule.

36 (a) Except as otherwise provided in subsection (b), trustees who invest

1 and manage trust assets owe a duty to the beneficiaries of the trust to comply  
2 with the prudent investor rule set forth in this subchapter.

3 (b) The prudent investor rule, a default rule, may be expanded,  
4 restricted, eliminated, or otherwise altered by the provisions of a trust.  
5 Trustees are not liable to a beneficiary to the extent that the trustees acted  
6 in reasonable reliance on the provisions of the trust.

7

8 24-3-418. Standard of care - portfolio strategy - risk and return  
9 objectives.

10 (a) Trustees shall invest and manage trust assets as a prudent investor  
11 would, by considering the purposes, terms, distribution requirements, and  
12 other circumstances of the trust. In satisfying this standard, the trustees  
13 shall exercise reasonable care, skill and caution.

14 (b) The trustees investment and management decisions respecting  
15 individual assets must be evaluated not in isolation but in the context of the  
16 trust portfolio as a whole and as a part of an overall investment strategy  
17 having risk and return objectives reasonably suited to the trust.

18 (c) Among circumstances that trustees shall consider in investing and  
19 managing trust assets are such of the following as are relevant to the trust  
20 or its beneficiaries:

21 (1) general economic conditions;

22 (2) the possible effect of inflation or deflation;

23 (3) the expected tax consequences of investment decisions or  
24 strategies;

25 (4) the role that each investment or course of action plays  
26 within the overall trust portfolio, which may include financial assets,  
27 interests in closely held enterprises, tangible and intangible personal  
28 property, and real property;

29 (5) the expected total return from income and the appreciation of  
30 capital;

31 (6) other resources of the beneficiaries;

32 (7) needs for liquidity, regularity of income, and preservation  
33 or appreciation of capital; and

34 (8) an assets special relationship or special value, if any, to  
35 the purposes of the trust or to one or more of the beneficiaries.

36 (d) Trustees shall make a reasonable effort to verify facts relevant to

1 the investment and management of trust assets.

2 (e) Trustees may invest in any kind of property or type of investment  
3 consistent with the standards of this subchapter.

4 (f) Trustees who have special skills or expertise, or are named  
5 trustees in reliance upon the trustees representation that the trustees have  
6 special skills or expertise, have a duty to use those special skills or  
7 expertise.

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9 24-3-419. Diversification.

10 Trustees shall diversify the investments of the trust unless the  
11 trustees reasonably determine that, because of special circumstances, the  
12 purposes of the trust are better served without diversifying.

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14 24-3-420. Duties at inception of trusteeship.

15 Within a reasonable time after accepting a trusteeship or receiving  
16 trust assets, trustees shall review the trust assets and make and implement  
17 decisions concerning the retention and disposition of assets, in order to  
18 bring the trust portfolio into compliance with the purposes, terms,  
19 distributions requirements, and other circumstances of the trust, and with the  
20 requirements of this subchapter.

21 Trustees shall develop an investment policy. This policy shall be a  
22 written statement of goals for the fund and rules to be followed to achieve  
23 those goals. Trustees shall measure performance of the fund and shall measure  
24 each managers performance against benchmarks jointly agreed upon by the  
25 trustees and managers.

26  
27 24-3-421. Loyalty.

28 Trustees shall invest and manage the trust assets solely in the interest  
29 of the beneficiaries.

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31 24-3-422. Impartiality.

32 If a trust has two (2) or more beneficiaries, the trustees shall act  
33 impartially in investing and managing the trust assets, taking into account  
34 any differing interests of the beneficiaries.

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36 24-3-423. Investment costs - Limitations on investment authority.

1       (a) In investing and managing trust assets, trustees may only incur  
2 costs that are appropriate and reasonable in relation to the assets, the  
3 purposes of the trust, and the skills of the trustee.

4       (b) Trustees may delegate investment functions to an agent that a  
5 prudent trustee of comparable skills could properly delegate as provided in  
6 24-3-425.

7       (c) Provided, however, the purchase or sale of investments or trust  
8 assets by the trustee on its own behalf and in its own name shall be executed  
9 on a competitive award basis on which at least three (3) offerings or bids  
10 have been secured. The trustee shall record and keep on file all competitive  
11 offerings and bids.

12

13       24-3-424. Reviewing compliance.

14       Compliance with the prudent investor rule is determined in light of the  
15 facts and circumstances existing at the time of the trustees decisions or  
16 actions and are not by hindsight.

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18       24-3-425. Delegation of investment and management functions.

19       (a) Trustees may delegate investment and management functions that a  
20 prudent trustee of comparable skills could properly delegate under the  
21 circumstances. The trustees shall exercise reasonable care, skill, and  
22 caution in:

23               (1) selecting an agent;

24               (2) establishing the scope and terms of the delegation,  
25 consistent with the purposes and terms of the trust; and

26               (3) periodically reviewing the agents actions in order to  
27 monitor the agents performance and compliance with the terms of the  
28 delegation.

29       (b) In performing a delegated function, an agent owes a duty to the  
30 trust to exercise reasonable care to comply with the terms of the delegation.

31       (c) Trustees who complied with the requirements of subsection (a) are  
32 not liable to the beneficiaries or to the trust for the decisions or actions  
33 of the agent to whom the function was delegated.

34       (d) By accepting the delegation of a trust function from the trustees  
35 of a trust that is subject to the law of this state, an agent submits to the  
36 jurisdiction of the courts of this state.

1        (e) Single agent or exclusive agency delegations by the trustees shall  
 2 be discouraged. Trustees shall delegate investment and management functions  
 3 to a single agent or an exclusive agency arrangement only after the trustee  
 4 has determined the exclusive agency arrangement is in the best interest of the  
 5 trust, has exercised extraordinary care and caution in selecting the exclusive  
 6 agent, and has arranged to periodically review in detail the agents actions  
 7 to monitor their performance and compliance with the terms of the delegation.

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9        24-3-426. Language invoking standard of subchapter.

10        The following terms or comparable language in the provisions of a trust,  
 11 unless otherwise limited or modified, authorize any investment or strategy  
 12 permitted under this subchapter: "investments permissible by law for  
 13 investment of trust funds," "legal investments," "authorized investments,"  
 14 "using the judgment and care under the circumstances then prevailing that  
 15 persons of prudence, discretion, and intelligence exercise in the management  
 16 of their own affairs, not in regard to speculation but in regard to the  
 17 permanent disposition of their funds, considering the probable income as well  
 18 as the probable safety of their capital," "prudent man rule," "prudent trustee  
 19 rule," "prudent person rule," and "prudent investor rule."

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21        SECTION 5. All provisions of this act of general and permanent nature  
 22 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
 23 Revision Commission shall incorporate the same in the Code.

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25        SECTION 6. If any provisions of this act or the application thereof to  
 26 any person or circumstance is held invalid, the invalidity shall not affect  
 27 other provisions or applications of the act which can be given effect without  
 28 the invalid provisions or application, and to this end the provisions of this  
 29 act are declared to be severable.

30

31        SECTION 7. (a) Arkansas Code § 24-3-403 is repealed.

32 ~~—— 24-3-403. Investment authority and limitations - Required~~  
 33 ~~recommendation.~~

34 ~~—— No system shall make any investments in securities, pooled funds,~~  
 35 ~~private placements, or other investment vehicles without an affirmative~~  
 36 ~~recommendation of an investment management or advisory firm with proven~~

1 ~~expertise in the designated investment category.~~

2 (b) Arkansas Code § 24-3-407 is repealed.

3 ~~24-3-407. Investment authority and limitations - Competitive awards.~~

4 ~~(a) The purchase or sale of investments shall be executed on a~~  
5 ~~competitive award basis on which at least three (3) offerings or bids have~~  
6 ~~been secured.~~

7 ~~(b) A "pass" or a declination to bid by a potential bidder shall be~~  
8 ~~considered to be an offering or a bid under this section.~~

9 ~~(c) The retirement system shall record and keep on file all competitive~~  
10 ~~offerings and bids.~~

11 (c) Arkansas Code § 24-3-410 is repealed.

12 ~~24-3-410. Investment authority and limitations - Investment counsel.~~

13 ~~(a)(1) The boards of trustees of the Arkansas Public Employees'~~  
14 ~~Retirement System, Arkansas Teacher Retirement System, Arkansas Highway~~  
15 ~~Employees' Retirement System, and the State Police Retirement System may~~  
16 ~~employ professional investment counsel in either an advisory capacity only or~~  
17 ~~as a money manager with authority to execute transactions.~~

18 ~~(2) If the board of a system chooses the latter method of asset~~  
19 ~~management, the funds of the system shall be invested and reinvested in~~  
20 ~~accordance with the following procedure:~~

21 ~~(A) From time to time the board shall formulate the policy~~  
22 ~~to be followed in future investment activity. Investment policy shall be~~  
23 ~~reviewed and changed or reaffirmed at least once annually;~~

24 ~~(B) The investment counsel shall have full power to hold,~~  
25 ~~purchase, sell, assign, transfer, or dispose of any of the moneys or~~  
26 ~~investments of the system pursuant to the provisions of this subchapter and in~~  
27 ~~accordance with the current investment policy filed with the board;~~

28 ~~(C) The moneys of the system allocated to the investment~~  
29 ~~managers shall be actively managed by the investment managers, which may~~  
30 ~~include selling investments and realizing losses if such action is considered~~  
31 ~~advantageous to longer-term return maximization;~~

32 ~~(D) Each system shall manage those moneys not specifically~~  
33 ~~allocated to the investment managers;~~

34 ~~(E) At least semiannually the investment counsel shall file~~  
35 ~~with the board a written report setting forth, for the period since its last~~  
36 ~~report, all investments purchased and sold, all receipts and disbursements,~~

1 ~~and any other transactions concerning system moneys;~~

2 ~~\_\_\_\_\_ (F) At each regular meeting the board shall examine each~~  
3 ~~written report received from the investment advisor since the last regular~~  
4 ~~meeting; and~~

5 ~~\_\_\_\_\_ (G) Anything in this section to the contrary~~  
6 ~~notwithstanding, from time to time the board may direct a specific investment~~  
7 ~~activity and shall be fully responsible for any such direction.~~

8 ~~\_\_\_\_\_ (b)(1) Any investment counsel that is retained shall be under contract~~  
9 ~~awarded on a competitive basis.~~

10 ~~\_\_\_\_\_ (2) Any time a change is made in investment counsel, a new~~  
11 ~~contract on a competitive basis shall be awarded. However, it is not the~~  
12 ~~intention of this section to provide that an investment counsel contract be~~  
13 ~~awarded solely on the basis of the low bid.~~

14 ~~\_\_\_\_\_ (3) All investment counsel contracts shall be subject to~~  
15 ~~cancellation by the board of trustees with thirty (30) days' notice.~~

16 (d) Arkansas Code § 24-3-411 is repealed.

17 ~~\_\_\_\_\_ 24-3-411. Investment authority and limitations - Prudent investor rule.~~

18 ~~\_\_\_\_\_ (a) The prudent investor rule, as interpreted and defined by the~~  
19 ~~federal Employee Retirement Income Security Act of 1974, and regulations~~  
20 ~~promulgated pursuant thereto, shall be applied by each party serving in a~~  
21 ~~fiduciary capacity for the respective retirement systems.~~

22 ~~\_\_\_\_\_ (b) The prudent investor rule means that, in making investments, the~~  
23 ~~fiduciaries shall exercise the judgment and care, under the circumstances then~~  
24 ~~prevailing, which an institutional investor of ordinary prudence, discretion,~~  
25 ~~and intelligence exercises in the management of large investments entrusted to~~  
26 ~~it, not in regard to speculation but in regard to the permanent disposition of~~  
27 ~~funds, considering probable safety of capital as well as probable income.~~

28 (e) Arkansas Code § 24-3-412 is repealed.

29 ~~\_\_\_\_\_ 24-3-412. Investment authority and limitations - Loan of securities.~~

30 ~~\_\_\_\_\_ (a) In order to increase investment income with minimal risk, the~~  
31 ~~boards of trustees of the respective retirement systems may loan bonds,~~  
32 ~~stocks, or other securities, but only if, at the time the loan is executed, at~~  
33 ~~least one hundred percent (100%) of the full market value of the security~~  
34 ~~loaned shall be collateralized by cash or securities guaranteed by the United~~  
35 ~~States Government or an agency thereof.~~

36 ~~\_\_\_\_\_ (b) At all times during the term of each loan, the collateral shall be~~

1 ~~equal to not less than ninety-five percent (95%) of the full market value~~  
2 ~~calculated on the total value of all securities on loan.~~

3 (f) Arkansas Code § 24-3-413 is repealed.

4 ~~24-3-413. Investment authority and limitations - Covered call options.~~

5 ~~(a) Covered call options may be written or sold against common stock or~~  
6 ~~fixed income securities held in the portfolio.~~

7 ~~(b) Options shall not be purchased, except to close out an existing~~  
8 ~~option that was previously written or sold.~~

9 ~~(c) The sale or purchase of covered call options, stock, or fixed~~  
10 ~~income securities that requires transfer of ownership as a result of an option~~  
11 ~~being exercised shall not be subject to § 24-3-407.~~

12 ~~(d) Investment counsel may assist in the execution of covered call~~  
13 ~~option transactions.~~

14 (g) All laws and parts of laws in conflict with this act are hereby  
15 repealed.

16 /s/Rep. Jones et al

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