Regular Session, 2011

HOUSE BILL NO. 69

BY REPRESENTATIVE LIGI

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

MALPRACTICE/MEDICAL: Provides investment procedures for the Patient's Compensation Fund

AN ACT

To amend and reenact R.S. 40:1299.44(A)(1)(b) and to enact R.S. 40:1299.44(D)(2)(b)(xvi) and 1299.44.1, relative to the Patient's Compensation Fund; to provide for the investment of fund monies by the board; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 40:1299.44(A)(1)(b) is hereby amended and reenacted and R.S. 40:1299.44(D)(2)(b)(xvi) and 1299.44.1 are hereby enacted to read as follows:

§1299.44. Patient's Compensation Fund

A.(1)(a)

* * *

(b) The Patient's Compensation Fund Oversight Board may ~~enter into a cooperative endeavor agreement whereby the state treasurer shall be authorized to~~ invest, in accordance with R.S. 40:1299.44.1, ~~a~~ any portion of the private monies comprising the corpus of the fund, as determined by the board, ~~in the same manner and in accordance with the law governing the investment of funds of the state, or develop and adopt an investment policy which complies with R.S. 49:327(B)(5). Income from investments under the authority of this Subsection shall be credited to the fund~~ which are not required for the payment of one and one half times the current fiscal year of budgeted expenditures. The board may enter into a cooperative

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endeavor agreement whereby the state treasurer may be authorized to invest, in accordance with R.S. 40:1299.44.1, a portion of the private monies comprising the corpus of the fund, as determined by the board.

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D.

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(2)

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(b) In addition to other powers and authority expressly or impliedly conferred on the board by this Part, the board shall have the authority, to the extent not inconsistent with the provisions of this Part, to:

* * *

(xvi) Employ, in the unclassified service, an appropriately qualified chief investment officer and delegate to him a portion of the authority vested in the board related to investments, subject to the superseding authority of the board.

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§1299.44.1. Investment responsibilities

A. The Patient's Compensation Fund shall be maintained for the use, benefit, and protection of medical malpractice claimants and private health care provider members of the fund. The fund shall be maintained on a sound actuarial basis and the investment practices of the board in administering the fund are an integral part.

B. The prudent man rule shall be applied by the board in investing monies of the fund.

C.(1) The prudent man rule shall require each member of the board and the board collectively to act with the care, skill, prudence, and diligence under the circumstances prevailing that a prudent institutional investor 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.

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(2) The prudent man standard requires the exercise of reasonable care, skill, and caution, and is to be applied to investments not in isolation, but in the context of the fund portfolio, and as part of an overall investment strategy, which shall include an asset allocation study and plan for implementation thereof, incorporating risk and return objectives reasonably suitable to the fund. The asset allocation study and implementation plan shall include the examination of market value risk, credit risk, interest rate risk, inflation risk, counterparty risk, and concentration risk. The investment policy of the board shall preserve and enhance principal over the long term and provide adequate liquidity and cash flow for the payment of benefits and expenses of the fund and the board under this Part. The investments shall be diversified to minimize the risk of significant losses unless it is clearly prudent to do otherwise.

D.(1) Notwithstanding the prudent man rule, the board shall not invest more than twenty-five percent of the total portfolio in equities, except as provided in Paragraph (2) of this Subsection.

(2) The board may invest more than twenty-five percent of the total portfolio in equities, so long as not more than thirty-five percent of the total portfolio is invested in equities and at least ten percent of the total equity portfolio is invested in one or more index funds which seek to replicate the performance of the chosen indices.

(3) When contemplating any investment, action, or asset allocation, the following factors shall be considered:

(a) The availability of public pricing to value each investment.

(b) The ability to liquidate each investment at a fair market price within a reasonable time for the size of investment being considered.

(c) The degree of transparency that accompanies each investment.

(d) The risk of fluctuations in currency.

(e) The experience of the professionals who will manage each investment and the financial soundness of the business entity employing the professionals.

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(f) The degree of diversification within each investment and what each may provide relative to the existing investments.

(g) Whatever leverage is involved.

(h) The jurisdiction of the laws that govern each investment.

(i) The net return expected relative to the risk associated with each investment.

E.(1) The board shall electronically submit semiannual reports beginning January 1, 2012, to the House Committee on Civil Law and Procedure and the Senate Committee on Judiciary A. The reports shall be submitted no later than thirty calendar days after January first and July first of each year and shall contain the following:

(a) The investment return net of investment fees and expenses expressed as a percentage return and dollar amount.

(b) The amount of administrative expenses.

(c) The board approved target asset allocation.

(d) The current actual asset allocation of the portfolio.

(2) Investment returns reported in accordance with this Subsection shall be by total fund and particular asset class over the six-month period reported, fiscal year-to-date, one-year, three-year, five-year, and ten-year periods.

F. The board is hereby authorized, in requesting proposals for investment advisory services, to require fees to be quoted as a fixed fee, a fee based on market value of assets, or a performance fee.

G.(1) Investment performance reports shall be in compliance with the current Performance Presentation Standards as amended and published by the Association for Investment Management and Research or any successor entity.

(2) Investment performance composite data submitted in response to a request for proposal or any other solicitation or selection process used by the board for hiring an investment manager or investment advisor shall be in compliance with

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the current Performance Presentation Standards as amended and published by the Association for Investment Management and Research or any successor entity.

(3) The board shall require, at least annually, the investment managers or investment advisors employed or otherwise retained by the board to submit investment performance composite data that is subject to a Level I verification as defined in the Performance Presentation Standards as amended and published by the Association for Investment Management and Research or any successor entity.

H.(1) Consultants and money managers shall provide full disclosure to the board of conflicts of interest. Consultants shall also provide full disclosure of any payments received from money managers, in hard or soft dollars, for any services provided, including but not limited to performance measurement, business consulting, and education.

(2) Each consultant and money manager shall submit a written disclosure report semiannually to the board beginning January 1, 2012. A report shall be submitted regardless of whether the consultant or money manager has any conflict or payment to report. If a reportable agreement is confected during any reporting period, the consultant or money manager shall notify the board of the agreement within seven business days.

I. Any consultant or money manager found to be in violation of Subsection H of this Section shall pay to the board an amount of money equal to the value of the undisclosed revenue or payment and any damages caused by the failure to disclose. Additionally, if the consultant or money manager intentionally failed to disclose as required in Subsection H of this Section, he shall pay to the board an amount equal to three times the value of the revenue or payment he failed to disclose as a penalty and any damages caused by the failure to disclose.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Ligi HB No. 69

Abstract: Provides investment procedures for the Patient's Compensation Fund.

Present law provides that the Patient's Compensation Fund Oversight Board may enter into a cooperative agreement with the state treasurer to invest monies or develop an investment policy and credit any income from those investments to the fund.

Proposed law provides that in addition to a cooperative agreement with the state treasurer, the board may invest monies, in accordance with proposed law, which are not required for the payment of 1-½ times the current fiscal year of budgeted expenditures.

Proposed law makes the prudent man rule applicable in the investing of fund monies which requires the board and each member to act with the same care, skill, prudence, and diligence a prudent institutional investor acting in a like capacity would use. The rule is not applied in isolation, but as an overall investment strategy. Proposed law also requires an asset allocation study and diversification in investments.

Proposed law provides that the board shall not invest more than 25% of the total portfolio in equities unless not more than 35% of the total is invested in equities and at least 10% is invested in one or more index funds.

Proposed law grants the board authority to hire a chief investment officer and delegate certain investment duties to him.

Proposed law requires the board to report semiannually to the House Committee on Civil Law and Procedure and the Senate Committee on Judiciary A. Requires investment performance reports be given to the board at least annually and to be in compliance with the current Performance Presentation Standards as published by the Association for Investment Management and Research.

Proposed law requires consultants and money managers to fully disclose any conflicts of interest to the board and provides penalties for the failure to do so.

(Amends R.S. 40:1299.44(A)(1)(b); Adds R.S. 40:1299.44(D)(2)(b)(xvi) and 1299.44.1)

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