SUBJECT: Transfers from the Permanent School Fund to the Available School Fund

COMMITTEE: Appropriations — favorable, without amendment

VOTE: 16 ayes — Pitts, Raymond, F. Brown, Cohen, Creighton, Darby, Dukes, Eiland, Giddings, Herrero, Hochberg, Isett, S. King, McClendon, Otto, Zerwas

0 nays

11 absent — Aycock, Button, Chavez, Crownover, Driver, Edwards, Flores, D. Miller, Morrison, Riddle, Villarreal

WITNESSES: None

BACKGROUND: The Permanent School Fund is a trust that holds state land and mineral rights. The returns earned by the Permanent School Fund are constitutionally dedicated to the benefit of Texas public schools and distributed to the Available School Fund. The Available School Fund consists of distributions from the Permanent School Fund and revenue from one-fourth of the motor fuels tax and one-fourth of occupations taxes.

A percentage of the Permanent School Fund value annually is distributed to the Available School Fund at a rate determined by the State Board of Education (SBOE). The distribution in a state fiscal year cannot exceed 6 percent of a certain measure of the fund's average market value.

Art. 7, sec. 5(a)(2) of the Texas Constitution prevents a distribution from the Permanent School Fund when the amount distributed from the fund during the preceding 10 years exceeds the total return on all investment assets for this fund during the same period.

The comptroller transfers one-twelfth of the annual distribution from the Permanent School Fund to the Available School Fund on the first working day of each month of the fiscal year. The Available School Fund distributions are used to fund school instructional programs.

The comptroller's biennial revenue estimate issued in January indicated that the Available School Fund may not receive distributions from the Permanent School Fund in fiscal 2010-11 because the fund has failed to produce adequate investment returns to permit the transfer. As of January 1, 2009, the Permanent School Fund was valued at $15.5 billion, a decrease of more than 40 percent from the fund's $26.6 billion value in October 2007. If these losses are sustained, this drop in the value of the Permanent School Fund will prevent a distribution from the fund.

DIGEST:

HB 4590 would require the comptroller, on the first working day of each month in the fiscal year, to transfer from the Permanent School Fund to the Available School Fund an amount equal to the annual distribution for that fiscal year, minus any amount that already had been transferred that year, divided by the number of months remaining in the fiscal year.

If Art. 7, sec. 5(a)(2) of the Texas Constitution did not permit distribution of Permanent School Funds to the Available School Fund in the full amount authorized for transfer in the first fiscal year of a fiscal biennium, HB 4590 would allow the SBOE to authorize an increase to the transfer amounts for the second year of the biennium in an amount not to exceed the amount authorized but not distributed in the first year of the biennium.

The bill would take effect September 1, 2009.

SUPPORTERS SAY:

HB 4590 would provide more flexibility for the Permanent School Fund to make distributions to the Available School Fund at the maximum amount authorized by the State Board of Education. Creating more ways for the Permanent School Fund to make distributions would be beneficial to school districts and the state budget, because it would increase the likelihood that important instructional materials such as textbooks could be funded by a source other than scarce general revenue funds during difficult economic times.

During fiscal 2008-09, distributions from the Permanent School Fund to the Available School Fund accounted for about $1.4 billion in public education funding. The comptroller's biennial revenue estimate indicated that the Available School Fund would not receive distributions from the Permanent School Fund in fiscal 2010-11 because the fund has failed to produce adequate investment returns to permit the transfer. The provisions of HB 4590, combined with a January 2009 SBOE updated decision on the fiscal 2010 and fiscal 2011 distribution rates, would provide the basis for higher distributions to be made from the Permanent School Fund in fiscal 2011 if fund performance should improve.

In the event that the constitutional restrictions prohibited a Permanent School Fund distribution in certain months of a fiscal year, HB 4590 would allow the monthly distributions to the Available School Fund to be increased in an amount that would pay evenly over the remaining months of the fiscal year the full amount of Permanent School Fund distribution that was authorized for that fiscal year. If the constitutional limitations prevented the full Permanent School Fund distribution from occurring in the first fiscal year of a biennium, HB 4590 would allow the SBOE to authorize an increase to the transfer amounts for the second year of the biennium in an amount not to exceed the amount authorized, but not distributed, in the first year of the biennium.

The Constitution still would prohibit a transfer in the second fiscal year of a biennium that exceeded 6 percent of the fund's average market value. However, if the value of the fund recovers over the course of the next year and allows a distribution to the Available School Fund, HB 4590 would ensure that the public schools received the maximum distribution possible, while still preserving the corpus of the Permanent School Fund.

Distributions from the Permanent School Fund first would be made to the Available School Fund for designated purposes such as instructional materials. Unless directed otherwise in the general appropriations act, if these obligations already had been fulfilled with federal funds, the distributions would flow into the Foundation School Program and would replace general revenue funds that had been appropriated to the program.

OPPONENTS SAY:

No apparent opposition.

NOTES:

The LBB recommendations for the House and Senate budget proposals published in January proposed appropriating funds from the Available School Fund of $267 million to the Foundation School Program, $271 million for the Technology Allotment, and $895 million for instructional materials, contingent on the availability of a distribution from the Permanent School Fund to the Available School Fund.

HB 4586 by Pitts, the supplemental appropriations bill, would appropriate $220 million for the Technology Allotment and $758 million for instructional materials from federal Recovery Act funds for fiscal 2009. HB 4586 passed the House by 143-4 on April 17 and has been referred to the Senate Finance Committee.

The House-passed version of SB 1, the general appropriations bill for fiscal 2010-11, would appropriate from the Available School Fund $267 million to the Foundation School Program and $50 million for the Technology Allotment, contingent on the availability of a distribution from the Permanent School Fund to the Available School Fund. The Senate-passed budget proposal would appropriate from Available School Fund $267 million to the Foundation School Program and $271 million for the Technology Allotment, contingent on the availability of a distribution from the Permanent School Fund to the Available School Fund. The Senate-passed proposal also includes $895 million for instructional materials in the Article 11 "wish list."

Both the House- and Senate-passed budget proposals would set aside in Article 12 $2.0 billion in federal Recovery Act funds, some of which could be used for the Foundation School Program and the Technology Allotment if the Permanent School Fund distributions do not occur.

Under the House-passed budget proposal, if any funds from the Available School Fund were free to pay for the contingent appropriations of $267 million to the Foundation School Program and $50 million to the Technology Allotment, then the federal Recovery Act funds appropriated for these purposes would be distributed to local education agencies based on their share of funding under Title I of the federal Elementary and Secondary School Act.