

BILL ANALYSIS

Senate Research Center

S.B. 2440
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Education
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

It is imperative that our state update the methods of funding public education to reflect our 21st century policies as well. The Permanent School Fund (PSF) is a lasting legacy of the Texas Legislature. It is time the legislature updated the PSF management structures to model other 21st century investment strategies in our state.

Established in 1894 with a \$2 million investment from the Texas Legislature, the PSF has long been one of the methods Texas uses to pay for public education. The PSF has grown significantly since, from \$30.6 billion in 2013 to over \$44 billion within just five years.

The structure of the PSF is two-fold. The bulk of the PSF's assets are currently managed by the State Board of Education. Meanwhile, the School Land Board manages PSF lands, mineral interest, and lease arrangements.

While PSF distributions have slightly increased over the past 20 years, they have not kept pace with the fund's growth and distribution rates of peer funds.

- Permanent University Fund (PUF) annual distributions have more than doubled from \$400 million to \$887 million, 4.1 percent of its value.
- New Mexico's Land Grant Permanent School Fund distributions have grown 76 percent from \$392 million to \$689 million, or 3.9 percent of its market value.
- PSF annual distributions have grown just 16 percent from \$1.061 billion to \$1.235 billion in constant dollars. The distribution as a percentage of the market value has decreased from 4.2 percent to 2.8 percent.

S.B. 2440 proposes a new management structure for the PSF. Modeled after UTIMCO (The University of Texas Investment Management Company), which manages the Permanent University Fund, the Texas Education Investment Management Organization (TEIMO) will seek to maximize additional education revenues for Texas classrooms without new taxes or fees. TEIMO will create an ongoing, stable source of revenue for school finance and educational reforms through the Bicentennial Education Fund.

Changing the structure of PSF will lead to higher returns on investments and provide more avenues for the legislature to invest more money in public education.

As proposed, S.B. 2440 amends current law relating to the Texas school finance system, including the creation of the bicentennial education fund, the establishment of the Texas Education Investment Management Organization, and the management and investment of the permanent school fund.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the State Board of Education is rescinded in SECTION 7 (Section 43.005, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 31.021(a), Education Code, as amended by Acts 2017, 85th Legislature, Regular Session, Chapter 705 (H.B. 3526), as follows:

(a) Provides that the state technology and instructional fund consists of:

(1) an amount set aside by the Texas Education Investment Management Organization (TEIMO), rather than the State Board of Education (SBOE), from the available school fund, in accordance with Section 43.001(d) (relating to distribution of certain funds to the state instructional materials and technology fund); and

(2) makes no changes to this subdivision.

SECTION 2. Amends Section 31.021(a), Education Code, as amended by Acts 2017, 85th Legislature, Regular Session, Chapter 581 (S.B. 810), to make a conforming change.

SECTION 3. Amends the heading to Section 43.001, Education Code, to read as follows:

Sec. 43.001. COMPOSITION OF PERMANENT SCHOOL FUND, AVAILABLE SCHOOL FUND, AND BICENTENNIAL EDUCATION FUND.

SECTION 4. Amends Section 43.001, Education Code, by adding Subsection (b-1) and amending Subsection (d), as follows:

(b-1) Provides that the bicentennial education fund, which is required to be dedicated to providing funding for merit-based teacher pay and incentivizing academic improvement among historically underperforming student groups, consists of:

(1) the distributions to the fund from the permanent school fund as provided by Section 5(a-2) (relating to composition of the permanent school fund), Article VII, Texas Constitution; and

(2) all other appropriations to the bicentennial education fund made by the legislature for public school purposes.

(d) Requires the organization, rather than the SBOE, each biennium, to allocate a portion, rather than to set aside an amount equal to 50 percent, of the distribution for that biennium from the permanent school fund to the available school fund as provided by Section 5(a), Article VII, Texas Constitution, to be placed, subject to the General Appropriations Act, in the state instructional materials and technology fund established under Section 31.021 (State Technology and Education Materials Fund).

SECTION 5. Amends Chapter 43, Education Code, by adding Section 43.0011, as follows:

Sec. 43.0011. PURPOSE OF PERMANENT SCHOOL FUND. Provides that the purpose of the permanent school fund is to maximize available revenue distributions for the education of students enrolled in the public education system.

SECTION 6. Amends Chapter 43, Education Code, by adding Section 43.0021, as follows:

Sec. 43.0021. TEXAS EDUCATION INVESTMENT MANAGEMENT ORGANIZATION. (a) Provides that the organization is composed of nine members appointed by the governor, five of whom are required to have a substantial background and expertise in investments. Requires the governor to appoint one member of SBOE as one of the members of the organization. Requires the governor to appoint one member of the School Land Board (SLB) as one of the members of the organization.

(b) Requires appointments to the board to be made without regard to race, color, disability, sex, religion, age, or national origin.

(c) Provides that members of the board serve staggered six-year terms, with the terms of as near to one-third of the members as possible expiring on January 31 of each odd-numbered year.

(d) Requires the governor to designate a member of the board as presiding officer to serve in that capacity at the pleasure of the governor.

SECTION 7. Amends Sections 43.003 through 43.0051, Education Code, as follows:

Sec. 43.003. INVESTMENT OF PERMANENT SCHOOL FUND. Makes conforming changes to this section.

Sec. 43.0031. PERMANENT SCHOOL FUND ETHICS POLICY. Makes conforming changes to this section.

Sec. 43.0032. CONFLICTS OF INTEREST. Makes conforming changes to this section.

Sec. 43.0033. REPORTS OF EXPENDITURES. Makes conforming changes and removes an employee of the Texas Education Agency or of a nonprofit corporation created under Section 43.006 (Investment Management) from a report of persons on whose behalf any expenditure of more than \$50 by certain persons providing services to TEIMO is required to be filed with TEIMO.

Sec. 43.0034. FORMS; PUBLIC INFORMATION. Makes conforming changes to this section.

Sec. 43.004. WRITTEN INVESTMENT OBJECTIVES; PERFORMANCE EVALUATION. Makes conforming changes to this section.

Sec. 43.005. EXTERNAL INVESTMENT MANAGERS. Makes conforming changes and deletes existing text relating to SBOE adopting rules related to contracting authority.

Sec. 43.0051. TRANSFERS TO REAL ESTATE SPECIAL FUND ACCOUNT OF THE PERMANENT SCHOOL FUND. Makes conforming changes to this section.

SECTION 8. Amends Sections 43.007 through 43.012, Education Code, to make conforming changes.

SECTION 9. Amends Sections 43.014 and 43.015, Education Code, as follows:

Sec. 43.014. DUTIES OF COMPTROLLER. Makes conforming changes to this section.

Sec. 43.015. DUTIES OF COMPTROLLER. Makes conforming changes to this section.

SECTION 10. Amends Sections 43.017 through 43.019, Education Code, to make conforming changes.

SECTION 11. Amends Section 51.011, Natural Resources Code, by amending Subsection (a) and adding Subsections (a-3) and (a-4), as follows:

(a) Requires any land or mineral or royalty interest that is set apart to the permanent school fund under the constitution and laws of this state together with the mineral estate in riverbeds, channels, and the tidelands, including islands, to be controlled, sold, and leased by SLB and the commissioner of the Texas General Land Office GLO (commissioner; GLO) under the provisions of this chapter (Land, Timber, and Surface Resources) and other applicable law, rather than requiring any land, mineral or royalty interest, real estate investment, or other interest, including revenue received from those sources, that is set apart to the permanent school fund under the constitution and other laws of this state together with the mineral estate in riverbeds, channels, and the tidelands, including islands, to be subject to the sole and exclusive management and

control of SLB and the commissioner under the provisions of this chapter and other applicable law.

(a-3) Requires all revenue received from mineral or royalty interests described by Subsection (a), including bonus payments, surface lease revenues, royalties, and any other type of revenue received from those interests, to be transferred each month to the organization for investment in the permanent school fund.

SECTION 12. Amends Section 32.012, Natural Resources Code, as follows:

Sec. 32.012. MEMBERS OF THE BOARD. (a) Provides that SLB is composed of:

(1) makes no changes to this subdivision;

(2) two citizens, rather than a citizen, of the state appointed by the governor with the advice and consent of the senate; and

(3) two citizens, rather than a citizen, of the state appointed by the Texas attorney general (attorney general) with the advice and consent of the senate.

(a-1) Requires one citizen appointed by the governor and one citizen appointed by the attorney general to be selected from lists of nominees submitted by SBOE. Requires SBOE to submit to the governor or the attorney general, as applicable, a list of six nominees for a vacant position described by this subsection. Authorizes the governor or attorney general, as applicable, to request that SBOE submit a second list of six nominees if the governor or attorney general does not choose to appoint a nominee from the first list.

(b) Makes a conforming change to this subsection.

(c) Makes no changes to this subsection.

SECTION 13. Amends Subchapter B, Chapter 32, Natural Resources Code, by adding Section 32.0161, as follows:

Sec. 32.0161. ANNUAL JOINT MEETING. Requires SLB and the organization to hold an annual joint public meeting to discuss the allocation of the assets of the permanent school fund and the investment of the money in the fund.

SECTION 14. Amends Subchapter B, Chapter 32, Natural Resources Code, by adding Section 32.0191, as follows:

Sec. 32.0191. SEPARATION OF RESPONSIBILITIES. Requires SLB to develop and implement policies that clearly separate the policymaking responsibilities of SLB and the management responsibilities of the commissioner and the staff of GLO.

SECTION 15. Amends Subchapter B, Chapter 32, Natural Resources Code, by adding Section 32.027, as follows:

Sec. 32.027. MEMBER TRAINING. (a) Prohibits a person who is appointed to and qualifies for office as a member of SLB from voting, deliberating, or being counted as a member in attendance at a meeting of SLB until the person completes a training program that complies with this section.

(b) Requires the training program to provide the person with certain operational and procedural information.

(c) Provides that a person appointed to SLB is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in

attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(d) Requires the commissioner to create a training manual that includes the information required by Subsection (b).

(e) Requires the commissioner to distribute a copy of the training manual annually to each appointed member of SLB. Requires each appointed member of SLB, on receipt of the training manual, to sign and submit to the commissioner a statement acknowledging receipt of the training manual.

SECTION 16. Amends Subchapter B, Chapter 32, Natural Resources Code, by adding Section 32.028, as follows:

Sec. 32.028. COMPLAINTS. (a) Requires SLB to maintain a system to promptly and efficiently act on complaints filed with SLB. Requires SLB to maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) Requires SLB to make information available describing its procedures for complaint investigation and resolution.

(c) Requires SLB to periodically notify the complaint parties of the status of the complaint until final disposition.

SECTION 17. Amends Section 51.017, Natural Resources Code, to require the commissioner, on request, to furnish to the organization or the commissioner of education, rather than to SBOE, all available data.

SECTION 18. Amends Section 51.401, Natural Resources Code, by amending Subsection (a) and adding Subsections (c), (d), and (d-1), as follows:

(a) Authorizes SLB to designate money received from the sale of real property of mineral or royalty interests set apart to the permanent school fund under the constitution and laws of this state together with the mineral estate in riverbeds, channels, and the tidelands, including islands, for deposit in the real estate special fund account of the permanent school fund in the State Treasury to be used by SLB to acquire fee or lesser interests in real property, including mineral or royalty interests, for the use and benefit of the permanent school fund, as provided by Section 51.402 (Use of Designated Funds), rather than authorizing SLB to designate funds received from any land, mineral or royalty interest, real estate investment, or other interest, including revenue received from those sources, that is set apart to the permanent school fund under the constitution and laws of this state together with the mineral estate in riverbeds, channels, and the tidelands, including islands, for deposit in the real estate special fund account of the permanent school fund in the State Treasury to be used by SLB as provided by this subchapter (Acquisition of Public School Land).

(c) Requires money received from the sale of real property, including mineral or royalty interests, and designated under this subchapter for the acquisition of real property, including mineral or royalty interests, to be used by SLB not later than one year after the date of the sale from which the money is derived.

(d) Requires any money from a specific sale that remains in the real estate special fund account for longer than one year to be immediately deposited in the State Treasury to the credit of the organization for investment in the permanent school fund.

(d-1) Requires SLB, each quarter, to provide a cashflow report to the organization that specifies the use of all funds designated under Subsection (a) and the amount of time that money from each specific sale has remained in the real estate special fund account.

SECTION 19. Amends Section 51.402, Natural Resources Code, by amending Subsections (b) and (c), as follows:

(b) Requires SLB, before acquiring real property, including mineral or royalty interests, under Subsection (a) (relating to authorizing SLB to use funds for certain purposes), to determine using the prudent investor standard, that the acquisition is in the best interest of the permanent school fund, rather than requiring SLB, before using funds under Subsection (a), to determine the using the prudent investor standard that the use of the funds for the intended purpose is authorized by Subsection (a) and in the best interest of the permanent school fund. Deletes existing text providing that a determination by SLB on the use of funds under this section is conclusive unless the determination was made as a result of fraud or obvious error.

(c) Makes a nonsubstantive change and prohibits the sum of any funds designated under Section 51.401 (Real Estate Special Fund Account) not being used for a purpose listed in Subsection (a) of this section and the market value of the investments in real estate made under this section, notwithstanding Subsection (a) of this section, on January 1 of each even-numbered year, from exceeding an amount that is equal to 15 percent of the sum of:

- (1) the funds held by SLB and SBOE as part of the permanent school fund; and
- (2) the market value of the assets held by SLB and SBOE as part of the permanent school fund, rather than the market value of the permanent school fund on that date.

SECTION 20. Amends Sections 51.4021(a) and (b), Natural Resources Code, as follows:

(a) Requires SLB, in consultation with TEIMO, to appoint investment managers, consultants, or advisors to invest or assist SLB in investing the money designated under Section 51.401, to the extent the investment of the money is authorized under this chapter, by contracting for professional investment management or investment advisory services with one or more organizations that are in the business of managing or advising on the management of real estate investments.

(b) Authorizes money designated under Section 51.401 to only be invested to the extent SLB has the authority under this chapter to make the investment, and prohibits it from being invested in a real estate investment trust, as defined by Section 200.001 (Definition), Business Organizations Code, or otherwise invested in a manner not authorized under this chapter.

SECTION 21. Amends Sections 51.408(a), (b), (d), and (e), Natural Resources Code, as follows:

(a) Requires SLB, in addition to any other requirements provided by law, to adopt and enforce an ethics policy that provides standards of conduct relating to the management and investment of the funds designated for that purpose under Section 51.401. Requires the ethics policy to include provisions that address certain issues as they apply to the management and investment of the funds and to persons responsible for acquiring or managing real property or mineral or royalty interests of the permanent school fund or investing the funds to the extent authorized by this chapter, rather than as they apply to the management and investment of the funds and to persons responsible for managing and investing the funds.

(b) Requires the ethics policy to include provisions applicable to:

- (1)–(3) makes no changes to these subdivisions; and
- (4) any person who provides services to SLB relating to the management of the funds designated under Section 51.401 or the investment of funds to the extent authorized by this chapter, rather than any person who provides services to SLB

relating to the management or investment of the funds designated under Section 51.401.

(d) and (e) Makes conforming changes to these subsections.

SECTION 22. Amends Section 51.409(a), Natural Resources Code, as follows:

(a) Requires a member of SLB, the commissioner, an employee of SLB, or a person who provides services to SLB that relate to the management, rather than management or investment, of the funds designated under Section 51.401 or the investment of those funds to the extent authorized under this chapter who has a business, commercial, or other relationship that could reasonably be expected to diminish the person's independence of judgment in the performance of the person's responsibilities relating to the management of public school lands or investment of the funds to disclose the relationship in writing to SLB.

SECTION 23. Amends Section 51.410, Natural Resources Code, to make conforming changes.

SECTION 24. Amends Section 51.412, Natural Resources Code, as follows:

Sec. 51.412. REPORTS TO LEGISLATURE. Deletes existing Subsection (b) requiring SLB, not later than January 1 of each odd-numbered year, to submit to the legislature a report that assesses the return and economic impact of the investments reported to the legislature before the preceding regular legislative session. Deletes the designation of Subsection (a), deletes existing text of that subsection requiring SLB, not later than September 1 of each even-numbered year, to report certain other information to the legislature, makes nonsubstantive changes, and deletes Subsections (a)(2) and (a)(5) relating to certain required information of that report and renumbers the remaining subsections accordingly. Requires SLB, not later than September 1 of each year, to submit to the legislature a report that includes the following information:

(1) the total amount of money received under this chapter and designated under Section 51.401 for deposit in the real estate special fund account of the permanent school fund that SLB intends to use for a purpose authorized under that section;

(2) the amount of money SLB expects to distribute to the available school fund or SBOE for investment in the permanent school fund under Section 51.413 (Transfers From the Real Estate Special Fund Account to the Available School Fund and the Permanent School Fund);

(3) the distribution by county of real property interests, including mineral or royalty interests, and including the actual or expected revenues from the interests, that were acquired by SLB for the use and benefit of the permanent school fund since the most recently submitted report under this section;

(4) the market value of all investments and assets managed by SLB and the total market value of the permanent school fund; and

(5) any other information SLB considers necessary to include in the report.

(b) Deletes this subsection and existing text requiring SLB, not later than January 1 of each odd numbered year, to submit to the legislature a report that assesses the return and economic impact of the investments reported to the legislature before the preceding regular legislative session. Deletes the designation of Subsection (a), deletes existing text requiring SLB to submit a report with certain information not later than September 1 of each even-numbered year, and makes nonsubstantive changes.

Redesignates existing Subdivision (4) as this subdivision

SECTION 25. Amends Section 51.413(a), Natural Resources Code, as follows:

(a) Authorizes SLB, by a resolution adopted at a regular meeting, to release from the real estate special fund account funds previously designated under Section 51.401 or used under Section 51.402 to acquire real property, including mineral or royalty interests, rather than funds designated under Section 51.401 or managed, used, or encumbered under Section 51.402 or Section 51.4021, to be deposited in the State Treasury to the credit of certain funds.

SECTION 26. Repealer: 43.006 (Investment Management), Education Code.

Repealer: Section 51.011 (a-2) (relating to a requirement that SLB report on the sale of land for less than appraised value or the purchase of land for more than appraised value), Natural Resources Code.

SECTION 27. Requires SBOE and SLB, as soon as practicable after the appointment of members of TEIMO, to provide for the transfer of powers, duties, functions, programs, and activities under this Act. Requires the transfer to be completed by August 1, 2020.

SECTION 28. Requires the governor and the attorney general, not later than September 1, 2020, to appoint members to SLB in accordance with Section 32.012(a-1), Natural Resources Code, as added by this Act.

SECTION 29. Provides that Section 32.027, Natural Resources Code, as added by this Act, applies to a member of SLB appointed before, on, or after the effective date of this Act. Prohibits a member of SLB from voting, deliberating, or being counted as a member in attendance at a meeting of SLB held on or after December 1, 2019, until the member completes the training.

SECTION 30. Provides that this Act takes effect on the date the constitutional amendment proposed by the 86th Legislature, Regular Session, 2019, relating to the creation of the bicentennial education fund, the dedication of funds for teacher pay and historically underperforming student groups, and the transfer of the management and investment of the permanent school fund to an entity designated by the legislature.