

1-1 By: McCall (Senate Sponsor - Staples) H.B. No. 2217
1-2 (In the Senate - Received from the House April 22, 2005;
1-3 April 25, 2005, read first time and referred to Committee on
1-4 Finance; May 23, 2005, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 12, Nays 0;
1-6 May 23, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2217 By: Zaffirini

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the management of public school land and the permanent
1-11 school fund.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 51.001(11), Natural Resources Code, is
1-14 amended to read as follows:

1-15 (11) "Market value" has the meaning assigned by
1-16 Section 1.04, Tax Code [means the value of real property determined
1-17 by an appraisal performed by an appraiser].

1-18 SECTION 2. The heading to Subchapter B, Chapter 51, Natural
1-19 Resources Code, is amended to read as follows:

1-20 SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE
1-21 TO THE MANAGEMENT ~~[SALE AND LEASE]~~
1-22 OF PUBLIC SCHOOL AND ASYLUM LAND

1-23 SECTION 3. The heading to Section 51.011, Natural Resources
1-24 Code, is amended to read as follows:

1-25 Sec. 51.011. MANAGEMENT ~~[SALE AND LEASE]~~ OF PUBLIC SCHOOL
1-26 LAND.

1-27 SECTION 4. Section 51.011, Natural Resources Code, is
1-28 amended by amending Subsection (a) and adding Subsections (a-1) and
1-29 (a-2) to read as follows:

1-30 (a) Any land that is set apart to the permanent school fund
1-31 under the constitution and laws of this state together with the
1-32 mineral estate in riverbeds, channels, and the tidelands, including
1-33 islands, shall be subject to the sole and exclusive management and
1-34 control of [controlled, sold, and leased by] the school land board
1-35 and the commissioner under the provisions of this chapter and other
1-36 applicable law.

1-37 (a-1) The board may acquire, sell, lease, trade, improve, or
1-38 otherwise manage, control, or use land that is set apart to the
1-39 permanent school fund in any manner, at such prices, and under such
1-40 terms and conditions as the board finds to be in the best interest
1-41 of the fund.

1-42 (a-2) Not later than October 15 of each year, the board
1-43 shall report to the Legislative Budget Board the sale of any land
1-44 that is set apart to the permanent school fund for less than
1-45 appraised value or the purchase of any land that is set apart to the
1-46 permanent school fund for more than appraised value during the
1-47 preceding state fiscal year.

1-48 SECTION 5. Section 51.051, Natural Resources Code, is
1-49 amended to read as follows:

1-50 Sec. 51.051. SALE OF LAND. All ~~[Subject to the provisions~~
1-51 ~~of Section 32.109 of this code, all]~~ sales of land described in
1-52 Section 51.011 ~~[of this code]~~ shall be made by or under the
1-53 direction of the school land board ~~[to the applicant who submits the~~
1-54 ~~highest bid for the land at a price that is not less than the price~~
1-55 ~~set by the board for purchase of the land].~~

1-56 SECTION 6. Section 51.052, Natural Resources Code, is
1-57 amended by amending Subsections (d), (e), and (i) and adding
1-58 Subsection (l) to read as follows:

1-59 (d) Before the land under this chapter is sold, the
1-60 appraiser must appraise the land at its market value and file a copy
1-61 of the appraisal with the commissioner. ~~[No land covered by this~~
1-62 ~~chapter may be sold for less than the market value that appears in~~
1-63 ~~the appraisal made under this subsection.]~~

2-1 (e) The owner of land that surrounds land in a tract shall
2-2 have a preference right to purchase the tract before the land is
2-3 made available for sale to any other person, provided the person
2-4 having the preference right pays not less than the market value for
2-5 the land as determined by the board and the board finds use of the
2-6 preference to be in the best interest of the state. The board shall
2-7 adopt rules to implement this preference right.

2-8 (i) If no bid meeting minimum requirements is received for a
2-9 tract of land offered at a sealed bid sale under Subchapter D of
2-10 Chapter 32 [~~of this code~~], or if the transaction involves
2-11 commercial real estate and the board determines that it is in the
2-12 best interest of the permanent school fund, the asset management
2-13 division of the land office may solicit proposals or negotiate a
2-14 sale, exchange, or lease of the land to any person. The asset
2-15 management division may [also] contract for the services of a real
2-16 estate broker or of a private brokerage or real estate firm to
2-17 assist in a [the real estate] transaction under this subsection.
2-18 [~~The sale price may not be less than the market value.~~] The board
2-19 must approve any negotiated sale, exchange, or lease of any land
2-20 under this section.

2-21 (1) If the board leases land under this subchapter and the
2-22 lease includes the right to produce groundwater from the land, the
2-23 lessee shall comply with the statutory provisions governing and the
2-24 rules adopted by the groundwater conservation district, if any, in
2-25 which the land is located, including the statutory provisions and
2-26 rules governing the production and use of groundwater and the
2-27 transfer of groundwater out of the district.

2-28 SECTION 7. Sections 51.401(a) and (c), Natural Resources
2-29 Code, are amended to read as follows:

2-30 (a) The board may designate funds received from the sale of
2-31 permanent school fund land under this chapter and the proceeds of
2-32 future mineral leases and royalties generated from existing and
2-33 future [~~active~~] leases of permanent school fund mineral interests
2-34 received under Chapters 52 and 53 [~~of this code~~] for deposit in a
2-35 special fund account of the permanent school fund in the State
2-36 Treasury to be used by the board [~~to acquire fee or lesser interests~~
2-37 ~~in real property, including mineral and royalty interests, for the~~
2-38 ~~use and benefit of the permanent school fund,~~] as provided by
2-39 [~~Section 51.402 of~~] this subchapter.

2-40 (c) Money received from the sale of a particular piece of
2-41 land [~~and designated for the acquisition of interests in real~~
2-42 ~~property~~] under this subchapter must be used by the board as
2-43 provided by this subchapter not later than two years after the date
2-44 of the sale of land from which the money is derived. Money received
2-45 from the lease of minerals and royalties derived from [active]
2-46 leases and designated for use by the board as provided by [the
2-47 acquisition of interests in real property under] this subchapter
2-48 must be used by the board not later than two years after the date the
2-49 money is deposited in the special fund account.

2-50 SECTION 8. Section 51.402, Natural Resources Code, is
2-51 amended to read as follows:

2-52 Sec. 51.402. USE OF DESIGNATED FUNDS [~~ACQUISITION OF~~
2-53 ~~INTEREST IN REAL PROPERTY~~]. (a) The board may use the money
2-54 designated under Section 51.401 [~~of this subchapter to acquire real~~
2-55 ~~property and to pay the expenses of acquisitions and sales~~] for any
2-56 of the following purposes:

2-57 (1) to add to a tract of public school land to form a
2-58 tract of sufficient size to be manageable;

2-59 (2) to add contiguous land to public school land;

2-60 (3) to acquire, as public school land, interests in
2-61 real property for [of unique] biological, commercial, geological,
2-62 cultural, or recreational purposes [value]; [or]

2-63 (4) to acquire mineral and royalty interests for the
2-64 use and benefit of the permanent school fund;

2-65 (5) to protect, maintain, or enhance the value of
2-66 public school land;

2-67 (6) to acquire interests in real estate; or

2-68 (7) to pay reasonable fees for professional services
2-69 related to a permanent school fund investment.

3-1 (b) Before using funds [~~acquiring real property~~] under
3-2 Subsection (a) [~~of this section~~], the board must determine, using
3-3 the prudent investor standard, that the use of the funds for the
3-4 intended purpose [~~acquisition~~] is in the best interest of the
3-5 permanent school fund.

3-6 SECTION 9. Subchapter I, Chapter 51, Natural Resources
3-7 Code, is amended by adding Sections 51.4021 and 51.408-51.412 to
3-8 read as follows:

3-9 Sec. 51.4021. APPOINTMENT OF SPECIAL FUND MANAGERS. (a)
3-10 The board may appoint investment managers to invest the money
3-11 designated under Section 51.401 by contracting for professional
3-12 investment management services with one or more organizations that
3-13 are in the business of managing real estate investments.

3-14 (b) To be eligible for appointment under this section, an
3-15 investment manager must be:

3-16 (1) registered under the Investment Advisers Act of
3-17 1940 (15 U.S.C. Section 80b-1 et seq.);

3-18 (2) a bank as defined by that Act; or

3-19 (3) an insurance company qualified to perform real
3-20 estate investment services under the laws of more than one state.

3-21 (c) In a contract under this section, the board shall
3-22 specify any policies, requirements, or restrictions, including
3-23 ethical standards and disclosure policies and criteria for
3-24 determining the quality of investments and for the use of standard
3-25 rating services, that the board adopts for real estate investments
3-26 of the permanent school fund. Money designated under Section
3-27 51.401 may not be invested in a real estate investment trust, as
3-28 defined by Section 200.001, Business Organizations Code.

3-29 (d) Compensation paid to an investment manager by the board
3-30 must be consistent with the compensation standards of the
3-31 investment industry and compensation paid by similarly situated
3-32 institutional investors.

3-33 (e) Chapter 2263, Government Code, applies to investment
3-34 managers appointed under this section. The board by rule shall
3-35 adopt standards of conduct for investment managers appointed under
3-36 this section as required by Section 2263.004, Government Code, and
3-37 shall implement the disclosure requirements of Section 2263.005 of
3-38 that code.

3-39 Sec. 51.408. ETHICS POLICY AND TRAINING. (a) In addition
3-40 to any other requirements provided by law, the board shall adopt and
3-41 enforce an ethics policy that provides standards of conduct
3-42 relating to the management and investment of the funds designated
3-43 under Section 51.401. The ethics policy must include provisions
3-44 that address the following issues as they apply to the management
3-45 and investment of the funds and to persons responsible for managing
3-46 and investing the funds:

3-47 (1) general ethical standards;

3-48 (2) conflicts of interest;

3-49 (3) prohibited transactions and interests;

3-50 (4) the acceptance of gifts and entertainment;

3-51 (5) compliance with applicable professional
3-52 standards;

3-53 (6) ethics training; and

3-54 (7) compliance with and enforcement of the ethics
3-55 policy.

3-56 (b) The ethics policy must include provisions applicable
3-57 to:

3-58 (1) members of the board;

3-59 (2) the commissioner;

3-60 (3) employees of the board; and

3-61 (4) any person who provides services to the board
3-62 relating to the management or investment of the funds designated
3-63 under Section 51.401.

3-64 (c) Not later than the 45th day before the date on which the
3-65 board intends to adopt a proposed ethics policy or an amendment to
3-66 or revision of an adopted ethics policy, the board shall submit a
3-67 copy of the proposed policy, amendment, or revision to the Texas
3-68 Ethics Commission and the state auditor for review and comments.
3-69 The board shall consider any comments from the commission or state

4-1 auditor before adopting the proposed policy.

4-2 (d) The provisions of the ethics policy that apply to a
 4-3 person who provides services to the board relating to the
 4-4 management or investment of the funds designated under Section
 4-5 51.401 must be based on the Code of Ethics and the Standards of
 4-6 Professional Conduct prescribed by the Association for Investment
 4-7 Management and Research or other ethics standards adopted by
 4-8 another appropriate professionally recognized entity.

4-9 (e) The board shall ensure that applicable provisions of the
 4-10 ethics policy are included in any contract under which a person
 4-11 provides services to the board relating to the management and
 4-12 investment of the funds designated under Section 51.401.

4-13 Sec. 51.409. DISCLOSURE OF CONFLICTS OF INTEREST AND
 4-14 FINANCES. (a) A member of the board, the commissioner, an employee
 4-15 of the board, or a person who provides services to the board that
 4-16 relate to the management or investment of the funds designated
 4-17 under Section 51.401 who has a business, commercial, or other
 4-18 relationship that could reasonably be expected to diminish the
 4-19 person's independence of judgment in the performance of the
 4-20 person's responsibilities relating to the management or investment
 4-21 of the funds shall disclose the relationship in writing to the
 4-22 board.

4-23 (b) The board or the board's designee shall, in the ethics
 4-24 policy adopted under Section 51.408, define the kinds of
 4-25 relationships that may create a possible conflict of interest.

4-26 (c) A person who is required to file a disclosure statement
 4-27 under Subsection (a) shall refrain from giving advice or making
 4-28 decisions about matters affected by the conflict of interest unless
 4-29 the board, after consultation with the general counsel of the
 4-30 board, expressly waives this prohibition. The board shall maintain
 4-31 a written record of each waiver and the reasons for it. The board
 4-32 may delegate the authority to waive prohibitions under this
 4-33 subsection to one or more designated employees of the land office on
 4-34 a vote of a majority of the members of the board at an open meeting
 4-35 called and held in compliance with Chapter 551, Government Code.
 4-36 The board shall have any order delegating authority to waive
 4-37 prohibitions under this section entered into the minutes of the
 4-38 meeting. The board may adopt criteria for designated employees to
 4-39 use to determine the kinds of relationships that do not constitute a
 4-40 material conflict of interest for purposes of this subsection.

4-41 (d) Each employee of the board who exercises significant
 4-42 decision-making or fiduciary authority, as determined by the board,
 4-43 shall file financial disclosure statements with a person designated
 4-44 by the board. The content of a financial disclosure statement must
 4-45 comply substantially with the requirements of Subchapter B, Chapter
 4-46 572, Government Code. A statement must be filed not later than the
 4-47 30th day after the date a person is employed in a significant
 4-48 decision-making or fiduciary position and annually after
 4-49 employment not later than April 30. The filing deadline may be
 4-50 postponed by the board for not more than 60 days on written request
 4-51 or for an additional period for good cause, as determined by the
 4-52 chairman of the board. The board shall maintain a financial
 4-53 disclosure statement for at least five years after the date of its
 4-54 filing.

4-55 Sec. 51.410. REPORTS OF EXPENDITURES. A consultant,
 4-56 advisor, broker, or other person providing services to the board
 4-57 relating to the management and investment of the funds designated
 4-58 under Section 51.401 shall file with the board regularly, as
 4-59 determined by the board, a report that describes in detail any
 4-60 expenditure of more than \$50 made by the person on behalf of:

- 4-61 (1) a member of the board;
- 4-62 (2) the commissioner; or
- 4-63 (3) an employee of the board.

4-64 Sec. 51.411. FORMS; PUBLIC INFORMATION. (a) The board
 4-65 shall prescribe forms for:

- 4-66 (1) statements of possible conflicts of interest and
 4-67 waivers of possible conflicts of interest under Section 51.409; and
- 4-68 (2) reports of expenditures under Section 51.410.

4-69 (b) A statement, waiver, or report described by Subsection

5-1 (a) is public information.
5-2 (c) The board shall designate an employee of the board to
5-3 act as custodian of statements, waivers, and reports described by
5-4 Subsection (a) for purposes of public disclosure.
5-5 Sec. 51.412. REPORTS TO LEGISLATURE. (a) Not later than
5-6 September 1 of each even-numbered year, the board shall submit to
5-7 the legislature a report that, specifically and in detail, assesses
5-8 the direct and indirect economic impact, as anticipated by the
5-9 board, of the investment of funds designated under Section 51.401
5-10 for deposit in the special fund account of the permanent school
5-11 fund. The board may not disclose information under this section
5-12 that is confidential under applicable state or federal law. The
5-13 report must include the following information:
5-14 (1) the total amount of money designated by Section
5-15 51.401 for deposit in the special fund account of the permanent
5-16 school fund that the board intends to invest;
5-17 (2) the rate of return the board expects to attain on
5-18 the investment;
5-19 (3) the amount of money the board expects to
5-20 distribute to the permanent school fund after making the
5-21 investments;
5-22 (4) the distribution of the board's investments by
5-23 county;
5-24 (5) the effect of the board's investments on the level
5-25 of employment, personal income, and capital investment in the
5-26 state; and
5-27 (6) any other information the board considers
5-28 necessary to include in the report.
5-29 (b) Not later than January 1 of each odd-numbered year, the
5-30 board shall submit to the legislature a report that assesses the
5-31 return and economic impact of the investments reported to the
5-32 legislature before the preceding regular legislative session.
5-33 SECTION 10. Sections 32.254 and 51.403, Natural Resources
5-34 Code, are repealed.
5-35 SECTION 11. This Act takes effect immediately if it
5-36 receives a vote of two-thirds of all the members elected to each
5-37 house, as provided by Section 39, Article III, Texas Constitution.
5-38 If this Act does not receive the vote necessary for immediate
5-39 effect, this Act takes effect September 1, 2005.

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