

BILL ANALYSIS

Senate Research Center
80R15128 EJI/ESH-F

H.B. 3699
By: McCall (Williams)
Finance
5/18/2007
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The legislature has charged the school land board (board) and the commissioner of the general land office (commissioner) with the duty and authority to manage the state-owned lands dedicated to the permanent school fund (PSF) under Sections 4 and 5, Article VII, Texas Constitution. These lands consist of millions of acres, including upland properties, the Gulf Coast beaches and bays, and the "submerged" lands extending 10.3 miles out from the shoreline. The general land office (GLO) and the board can authorize the use of these state lands for a variety of private and commercial purposes, including conservation and ecological projects, public and private piers, docks, channels, and wharves, oil and gas exploration and production, pipeline and roadway rights of way, commercial development, and sustainable energy development.

The 77th, 78th, and 79th Legislatures amended Subchapter I (Acquisition of Public School Land), Chapter 51, Natural Resources Code, to create a special fund account of PSF, consisting primarily of revenues from oil and gas leases on PSF lands. This legislation authorized the board to use these revenues to build a portfolio of commercial real estate investments in order to diversify the holdings of PSF and to create a new source of revenue for public education that, unlike oil and gas revenues, does not deplete over time.

H.B. 3699 allows the board and GLO to operate in the modern real estate market as they build PSF's commercial real estate portfolio. This bill ensures that the board has the authority to make prudent investments in real estate, either directly or through the services of fund advisors, managers, or consultants. The bill makes conforming changes to confirm the board's authority to manage the lands and other interests dedicated to PSF or the special fund account. The bill provides a mechanism for payments from the real estate special fund account to be made by the comptroller of public accounts to the available school fund.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 51.011(a) and (a-1), Natural Resources Code, as follows:

(a) Includes a mineral or royalty interest, real estate investment, or other interest, including revenue received from those sources in addition to any land interest and certain mineral estate (sources of finance), that is set apart to the permanent school fund, as being required to be subject to the sole and exclusive management and control of the school land board (board) and the commissioner of the general land office (commissioner).

(a-1) Authorizes the board to maintain and protect in a certain manner, among other certain actions, mineral and royalty interests, real estate investments, or other interests, including sources of finance. Makes a conforming change.

SECTION 2. Amends the heading to Section 51.401, Natural Resources Code, to read as follows:

Sec. 51.401. REAL ESTATE SPECIAL FUND ACCOUNT.

SECTION 3. Amends Sections 51.401(a) and (b), Natural Resources Code, as follows:

(a) Authorizes the board to designate funds received from sources of finance that is set apart to the permanent school fund (PSF) under the constitution and laws of this state together with the mineral estate in certain areas for deposit in the real estate special fund account (account). Deletes existing text authorizing the board to designate funds from the sale of PSF land under Chapter 51 (Land, Timber, and Surface Resources), and the proceeds of future mineral leases and royalties generated from existing and future leases of fund mineral interests received under Chapters 52 (Oil and Gas) and 53 (Minerals), Natural Resource Code.

(b) Makes conforming changes.

SECTION 4. Amends Subchapter I, Chapter 51, Natural Resources Code, by adding Section 51.4011, as follows:

Sec. 51.4011. DESIGNATION OF BOARD AS MANAGER OF REAL ESTATE SPECIAL FUND ACCOUNT. Requires the board to manage and control the account for purposes of Section 4 (Sale of Lands; Investment of Proceeds), Article VII, Texas Constitution.

SECTION 5. Amends Section 51.402, Natural Resources Code, by amending Subsections (a) and (b) and adding Subsection (b-1), as follows:

(a) Authorizes the board to use the money designated under Section 51.401, Natural Resources Code, for certain purposes, including to acquire, sell, lease, trade, improve, maintain, protect, or use land, mineral or royalty interests, real estate investments, or other interests at prices and under terms the board determines to be in the best interest of PSF.

(b) Requires the board, using the prudent investor standard and before using funds under Subsection (a), to determine that the use of the funds for the intended purpose is authorized by Subsection (a). Provides that a determination by the board on the use of funds under this section is conclusive unless the determination was made due to fraud or obvious error.

(b-1) Authorizes the board to confer with one or more of the board's employees or with a third party regarding an investment or potential acquisition of interest in real estate, to the extent permitted to the board of trustee of the Texas growth fund under Section 551.075 (Conference Relating to Investments and Potential Investments Attended by Board of Trustees of Texas Growth Fund; Closed Meeting), Government Code.

SECTION 6. Amends Section 51.4021, Natural Resources Code, as follows:

Sec. 51.4021. New heading: APPOINTMENT OF REAL ESTATE SPECIAL FUND MANAGERS, INVESTMENT CONSULTANTS, OR ADVISORS. (a) Authorizes the board to appoint investment managers, consultants, or advisors to invest or to assist the board in investing money designated under Section 51.401 by contracting for professional investment management or investment advisory services with one or more organizations that are in the business of manage or advising on the management of real estate investments.

(b) Requires an investment manager, consultant, or advisor to abide by certain policies, requirements, or restrictions to be eligible for appointment under this section. Deletes existing text setting forth certain requirements for a person to be eligible for appointment under this section as an investment manager. Deletes existing text prohibiting the investment of money in the fund in a real estate investment trust.

(c) and (d) Redesignated from existing Subsections (d) and (e). Makes conforming changes.

SECTION 7. Amends Section 51.412(a), Natural Resources Code, to make conforming changes.

SECTION 8. Amends Subchapter I, Chapter 51, Natural Resources Code, by adding Section 51.413, as follows:

Sec. 51.413. TRANSFERS FROM REAL ESTATE SPECIAL FUND ACCOUNT TO AVAILABLE SCHOOL FUND. Requires the comptroller of public accounts (comptroller) to transfer on the first working day of each month an amount equal to one-twelfth of the annual distribution from the account of PSF to the available school fund (ASF) as provided by Section 4, Article VII, Texas Constitution, for the fiscal year.

SECTION 9. Reenacts and amends Section 43.001(b), Education Code, as amended by Chapters 201 and 328, Acts of the 78th Legislature, Regular Session, 2003, as follows:

(b) Provides that ASF consists of, among other things, the distributions to ASF from the investment special fund account of PSF as provided by Section 5(a), Article VII, Texas Constitution and the distributions to the fund from the account of PSF as provided by Section 4(a), Article VII, Texas Constitution.

SECTION 10. Amends the heading to Section 43.002, Education Code, to read as follows:

Sec. 43.002. TRANSFERS FROM INVESTMENT SPECIAL FUND ACCOUNT OF PERMANENT SCHOOL FUND AND GENERAL REVENUE FUND TO AVAILABLE SCHOOL FUND.

SECTION 11. Amends Section 43.002(a), Education Code, to make references to the investment special fund account of PSF, rather than just PSF.

SECTION 12. Amends Sections 43.0031(a), (b), (d), and (e), Education Code, to make conforming changes.

SECTION 13. Amends Section 43.0032(a), Education Code, to make a conforming change.

SECTION 14. Amends Sections 43.0033, 43.004, and 43.005, Education Code, to make conforming changes.

SECTION 15. Amends Sections 43.006(a), (b), and (e), Education Code, to make conforming changes.

SECTION 16. Amends Section 43.007(a), Education Code, to make conforming changes.

SECTION 17. Amends Section 45.052, Education Code, to make a conforming change.

SECTION 18. Amends Sections 45.053(a) and (b), Education Code, to make conforming changes.

SECTION 19. Amends Sections 45.059 and 45.061, Education Code, to make conforming and nonsubstantive changes.

SECTION 20. Amends Section 45.062(a), Education Code, to make conforming and nonsubstantive changes.

SECTION 21. (a) Repealer: Sections 51.401(c) and (d) (regarding required spending of money within the special fund account within two years), Natural Resources Code.

(b) Repealer: Sections 43.003 (Investment of Permanent School Fund), 43.007(b) (requiring the State Board of Education to exercise judgment and care in the making of purchases, sales, exchanges, and reissues, considering the probably income as well as the

probable safety of their capital), and 43.020 (Treatment of Accrued Income), Education Code.

SECTION 22. (a) Effective date, except as provided by Subsection (b) of this section: upon passage or September 1, 2007.

(b) Effective date, Sections 4 and 7 through 20 of this Act: January 1, 2008, contingent upon approval by the voters of the constitutional amendment relating to creation of the real estate and investment special funds accounts within PSF and to allow the returns from PSF real estate portfolio investments to be added to ASF for the support of public schools.