

## **BILL ANALYSIS**

C.S.H.B. 3699  
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Land & Resource Management  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The Texas Legislature has charged the School Land Board (SLB) and the Commissioner of the Texas General Land Office (GLO) with the duty and authority to manage the state-owned lands dedicated to the Permanent School Fund (PSF) under Article VII, Sections 4 and 5, 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 GLO and the SLB 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 77<sup>th</sup>, 78<sup>th</sup> and 79<sup>th</sup> Legislatures amended Subchapter I of Chapter 51 of the Natural Resources Code to create a special fund account of the PSF, consisting primarily of revenues from oil and gas leases on PSF lands. This legislation authorized the SLB to use these revenues to build a portfolio of commercial real estate investments in order to diversify the holdings of the PSF and to create a new source of revenue for public education that, unlike oil and gas revenues, does not deplete over time.

The purpose of C.S.H.B. 3699 is to provide amendments necessary to allow the SLB and GLO to operate in the modern real estate market as they build the PSF's commercial real estate portfolio. Specifically, this bill makes changes to ensure that the SLB 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 SLB's authority to manage the lands and other interests dedicated to the PSF and/or the special fund account. Finally, the bill provides a mechanism for payments from the real estate special fund account to be made by the comptroller to the available school fund.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a State office, department, agency, or institution.

### **ANALYSIS**

This bill amends Sections 51.011(a) and 51.011(a-1) of the Natural Resources Code to provide that any land, mineral or royalty interest, real estate investment, or other interest, including revenue received from those sources, that is set apart to the PSF, shall be subject to the sole and exclusive management and control of the SLB and the GLO Commissioner under the provisions of this chapter and other applicable law.

This bill re-names the special fund account the "real estate special fund account" in the heading to Section 51.401, Natural Resources Code.

This bill, through amendments to Section 51.401(a) and (b) of the Natural Resources Code, allows the 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 PSF 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 PSF. This bill also renames the special fund account the "real estate special fund account" in Section 51.401(b) and specifies that interest received on the account shall be deposited in the State Treasury to the credit of the real estate special fund account of the PSF.

This bill designates the SLB to manage and control the real estate special fund account for the purposes of Section 4, Article VII, Texas Constitution.

This bill clarifies the list of potential uses for real estate special fund account monies by adding a new subsection. Proposed subsection 51.402(a)(8) authorizes the SLB to use real estate special fund account monies to acquire, sell, lease, trade, improve, maintain, protect, or use land, mineral or royalty interests, or real estate investments for the benefit of the PSF. This bill further provides in Section 51.402(b) that a determination of the SLB regarding use of the real estate special fund account is conclusive absent fraud or obvious error. In addition, this bill adds subsection 51.402(b-1), which allows the SLB to consult with employees or third parties regarding investments and potential investments in the same manner as the board of trustees of the Texas growth fund are authorized to have such consultations by Section 551.075 of the Government Code.

This bill amends the heading and the text of Section 51.4021 of the Natural Resources Code to allow the SLB to appoint and contract for consultants and advisors in addition to investment managers, in order to invest or assist the SLB in investing money designated under Section 51.401. This bill applies the same policies, requirements, restrictions, ethical standards and rules to investment consultants and advisors as currently apply to investment managers. This bill also eliminates certain federal registration requirements for managers, consultants and advisors.

This bill makes conforming changes, renaming the special fund account the real estate special fund account in Section 51.412(a) of the Natural Resources Code.

This bill adds Section 51.413 to the Natural Resources Code requiring that the comptroller transfer from the real estate special fund account of the PSF to the available school fund an amount equal to one-twelfth of the annual distribution from the real estate special fund account of the PSF to the available school fund, on the first working day of each month in a state fiscal year, as provided by Section 4, Article VII, Texas Constitution.

This bill makes conforming changes to the Education Code in accordance with proposed revisions to Article VII, Section 5, Texas Constitution. Specifically, this bill renames the portion of the PSF managed by the State Board of Education the "investment special fund account of the permanent school fund"

This bill repeals Sections 51.401(c) and (d) of the Natural Resources Code and repeals Sections 43.003, 43.007(b) and 43.020 of the Education Code.

This bill provides for an effective date that is specifically discussed in the EFFECTIVE DATE section of this bill analysis.

### **EFFECTIVE DATE**

SECTIONS 1, 2, 3, 5, 6 and 21 of this bill take effect immediately if approved by a vote of two-thirds of the members of each house or on September 1, 2007 if the bill does not receive the vote necessary for immediate effect. SECTIONS 4 and 7 through 20 take effect January 1, 2008, but only if the proposed constitutional amendment is approved by the voters.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The Committee Substitute is intended to serve as the companion to a joint resolution proposing to create real estate and investment special fund accounts within the PSF, to authorize the Commissioner of the GLO or another statutorily designated entity to manage real estate portfolio investments for the PSF, to allow the returns from PSF real estate portfolio investments to be added to the ASF for the support of public schools and to allow for fund transfers between the real estate and investment special fund accounts of the PSF.

The Committee Substitute makes no changes to the Original SECTIONS 1 through 4.

The Original consolidated and clarified the list of potential uses for real estate special fund account monies by deleting subsections (1) through (6) of Section 51.402(a), Natural Resources

Code, and adding new two new subsections. The Committee Substitute restores the existing subsections 51.402(a)(1) – (6), thus retaining all existing SLB authority for use of real estate special fund account monies. The language of subsection 51.402(a)(1) from the Original is moved to subsection 51.402(a)(8) in the Committee Substitute. The proposed Subsection 51.402(a)(3) from the Original is deleted from the Committee Substitute.

Both the Original and the Committee Substitute contain amendments to Section 51.402(b) providing that a determination of the SLB regarding use of the real estate special fund account is conclusive absent fraud or obvious error. In addition, the Original and the Committee Substitute add subsection 51.402(b-1), which allows the SLB to consult with employees or third parties regarding investments and potential investments in the same manner as the board of trustees of the Texas growth fund are authorized to have such consultations by Section 551.075 of the Government Code. Finally, SECTION 5 of the Committee Substitute deletes subsection 51.402(d), which was proposed by the Original.

Both the Original and the Committee Substitute amend the heading and the text of Section 51.4021 of the Natural Resources Code to allow the SLB to appoint and contract for consultants and advisors in addition to investment managers, in order to invest or assist the SLB in investing money designated under Section 51.401. The Original and the Committee Substitute apply the same policies, requirements, restrictions, ethical standards and rules to investment consultants and advisors as currently apply to investment managers. Both versions of the bill also eliminate certain federal registration requirements for managers, consultants and advisors. The Committee Substitute restores existing statutory language in Section 51.4021 prohibiting investment of special fund account monies in certain real estate investment trusts.

The Committee Substitute makes no changes to SECTIONS 7 and 8 of the Original.

The Committee Substitute adds SECTIONS 9 through 20, which make conforming changes to the Education Code in accordance with proposed revisions to Section 5, Article VII, Texas Constitution. Specifically, this bill renames the portion of the PSF managed by the State Board of Education the “investment special fund account of the permanent school fund.”

The Committee Substitute repeals Sections 51.401(c) and (d) of the Natural Resources Code and repeals Sections 43.003, 43.007(b) and 43.020 of the Education Code. The Original only repealed Sections 51.401(c) and (d) of the Natural Resources Code.

The Original had an immediate effective date if it received the necessary vote or an effective date of September 1, 2007 if it did not receive the necessary vote for immediate effect. According to the substitute, Sections 1, 2, 3, 5, 6 and 21 of the bill take effect immediately if approved by a vote of two-thirds of the members of each house or on September 1, 2007 if the bill does not receive the vote necessary for immediate effect. Sections 4 and 7 through 20 take effect January 1, 2008, but only if the proposed constitutional amendment is approved by the voters.