

By: McCall

H.B. No. 3699

A BILL TO BE ENTITLED

AN ACT

relating to the management of public school land and the investment of the permanent school fund.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 51.011(a) and (a-1), Natural Resources Code, are amended to read as follows:

(a) 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, shall be subject to the sole and exclusive management and control of the school land board and the commissioner under the provisions of this chapter and other applicable law.

(a-1) The board may acquire, sell, lease, trade, improve, maintain, protect, or otherwise manage, control, or use land, mineral and royalty interests, real estate investments, or other interests, including revenue received from those sources, that are ~~is~~ set apart to the permanent school fund in any manner, at such prices, and under such terms and conditions as the board finds to be in the best interest of the fund.

SECTION 2. The heading to Section 51.401, Natural Resources Code, is amended to read as follows:

Sec. 51.401. REAL ESTATE SPECIAL FUND ACCOUNT.

1 SECTION 3. Sections 51.401(a) and (b), Natural Resources
2 Code, are amended to read as follows:

3 (a) The board may designate funds received from any land,
4 mineral or royalty interest, real estate investment, or other
5 interest, including revenue received from those sources, that is
6 set apart to the permanent school fund under the constitution and
7 laws of this state together with the mineral estate in riverbeds,
8 channels, and the tidelands, including islands, [~~the sale of~~
9 ~~permanent school fund land under this chapter and the proceeds of~~
10 ~~future mineral leases and royalties generated from existing and~~
11 ~~future leases of permanent school fund mineral interests received~~
12 ~~under Chapters 52 and 53]~~ for deposit in the real estate [a] special
13 fund account of the permanent school fund in the State Treasury to
14 be used by the board as provided by this subchapter.

15 (b) The real estate special fund account must be an
16 interest-bearing account, and the interest received on the account
17 shall be deposited in the State Treasury to the credit of the real
18 estate special fund account of the permanent school fund.

19 SECTION 4. Subchapter I, Chapter 51, Natural Resources
20 Code, is amended by adding Section 51.4011 to read as follows:

21 Sec. 51.4011. DESIGNATION OF BOARD AS MANAGER OF REAL
22 ESTATE SPECIAL FUND ACCOUNT. The board shall manage and control the
23 real estate special fund account for purposes of Section 4, Article
24 VII, Texas Constitution.

25 SECTION 5. Section 51.402, Natural Resources Code, is
26 amended by amending Subsections (a) and (b) and adding Subsections
27 (b-1) and (d) to read as follows:

1 (a) The board may use the money designated under Section
2 51.401 for any of the following purposes:

3 (1) to acquire, sell, lease, trade, improve, maintain,
4 protect, or use land, mineral or royalty interests, or real estate
5 investments at prices and under terms the board determines to be in
6 the best interest of the permanent school fund [~~to add to a tract of~~
7 ~~public school land to form a tract of sufficient size to be~~
8 ~~manageable~~];

9 (2) [~~to add contiguous land to public school land;~~

10 [~~(3) to acquire, as public school land, interests in~~
11 ~~real property for biological, commercial, geological, cultural, or~~
12 ~~recreational purposes;~~

13 [~~(4) to acquire mineral and royalty interests for the~~
14 ~~use and benefit of the permanent school fund;~~

15 [~~(5) to protect, maintain, or enhance the value of~~
16 ~~public school land;~~

17 [~~(6) to acquire interests in real estate; or~~

18 [~~(7)] to pay reasonable fees for professional services~~

19 related to a permanent school fund investment; or

20 (3) to accomplish any other purpose allowed under the
21 constitution and laws of this state regarding permanent school fund
22 real estate or interests in real estate.

23 (b) Before using funds under Subsection (a), the board must
24 determine, using the prudent investor standard, that the use of the
25 funds for the intended purpose is authorized by Subsection (a) and
26 in the best interest of the permanent school fund. A determination
27 by the board on the use of funds under this section is conclusive

1 unless the determination was made as a result of fraud or obvious
2 error.

3 (b-1) The board may confer with one or more employees of the
4 board or with a third party regarding an investment or potential
5 investment in real estate, including the acquisition or potential
6 acquisition of interests in real estate, to the extent permitted to
7 the board of trustees of the Texas growth fund under Section
8 551.075, Government Code.

9 (d) Notwithstanding Subsection (a), money designated under
10 Section 51.401 may not be invested in a real estate investment
11 trust, as defined by Section 200.001, Business Organizations Code,
12 the interest of which is:

- 13 (1) listed on a national securities exchange;
14 (2) listed on the NASDAQ Stock Market; or
15 (3) publicly traded on a foreign securities exchange
16 or listed on a foreign market system.

17 SECTION 6. Section 51.4021, Natural Resources Code, is
18 amended to read as follows:

19 Sec. 51.4021. APPOINTMENT OF REAL ESTATE SPECIAL FUND
20 MANAGERS, INVESTMENT CONSULTANTS, OR ADVISORS. (a) The board may
21 appoint investment managers, consultants, or advisors to invest or
22 assist the board in investing the money designated under Section
23 51.401 by contracting for professional investment management or
24 investment advisory services with one or more organizations that
25 are in the business of managing or advising on the management of
26 real estate investments.

27 (b) To be eligible for appointment under this section, an

1 investment manager, consultant, or advisor shall agree to abide by
2 the ~~[must be:~~

3 ~~[(1) registered under the Investment Advisers Act of~~
4 ~~1940 (15 U.S.C. Section 80b-1 et seq.);~~

5 ~~[(2) a bank as defined by that Act; or~~

6 ~~[(3) an insurance company qualified to perform real~~
7 ~~estate investment services under the laws of more than one state.~~

8 ~~[(c) In a contract under this section, the board shall~~
9 ~~specify any] policies, requirements, or restrictions, including~~
10 ethical standards and disclosure policies and criteria for
11 determining the quality of investments and for the use of standard
12 rating services, that the board adopts for real estate investments
13 of the permanent school fund. ~~[Money designated under Section~~
14 ~~51.401 may not be invested in a real estate investment trust, as~~
15 ~~defined by Section 200.001, Business Organizations Code.]~~

16 (c) ~~[(d)]~~ Compensation paid to an investment manager,
17 consultant, or advisor by the board must be consistent with the
18 compensation standards of the investment industry and compensation
19 paid by similarly situated institutional investors.

20 (d) ~~[(e)]~~ Chapter 2263, Government Code, applies to
21 investment managers, consultants, or advisors appointed under this
22 section. The board by rule shall adopt standards of conduct for
23 investment managers, consultants, or advisors appointed under this
24 section as required by Section 2263.004, Government Code, and shall
25 implement the disclosure requirements of Section 2263.005 of that
26 code.

27 SECTION 7. Section 51.412(a), Natural Resources Code, is

1 amended to read as follows:

2 (a) Not later than September 1 of each even-numbered year,
3 the board shall submit to the legislature a report that,
4 specifically and in detail, assesses the direct and indirect
5 economic impact, as anticipated by the board, of the investment of
6 funds designated under Section 51.401 for deposit in the real
7 estate special fund account of the permanent school fund. The board
8 may not disclose information under this section that is
9 confidential under applicable state or federal law. The report
10 must include the following information:

11 (1) the total amount of money designated by Section
12 51.401 for deposit in the real estate special fund account of the
13 permanent school fund that the board intends to invest;

14 (2) the rate of return the board expects to attain on
15 the investment;

16 (3) the amount of money the board expects to
17 distribute to the permanent school fund after making the
18 investments;

19 (4) the distribution of the board's investments by
20 county;

21 (5) the effect of the board's investments on the level
22 of employment, personal income, and capital investment in the
23 state; and

24 (6) any other information the board considers
25 necessary to include in the report.

26 SECTION 8. Subchapter I, Chapter 51, Natural Resources
27 Code, is amended by adding Section 51.413 to read as follows:

1 Sec. 51.413. TRANSFERS FROM REAL ESTATE SPECIAL FUND
2 ACCOUNT TO AVAILABLE SCHOOL FUND. On the first working day of each
3 month in a state fiscal year, the comptroller shall transfer from
4 the real estate special fund account of the permanent school fund to
5 the available school fund an amount equal to one-twelfth of the
6 annual distribution from the real estate special fund account of
7 the permanent school fund to the available school fund as provided
8 by Section 4, Article VII, Texas Constitution, for the fiscal year.

9 SECTION 9. Sections 51.401(c) and (d), Natural Resources
10 Code, are repealed.

11 SECTION 10. This Act takes effect immediately if this Act
12 receives a vote of two-thirds of all the members elected to each
13 house, as provided by Section 39, Article III, Texas Constitution.
14 If this Act does not receive the vote necessary for immediate
15 effect, this Act takes effect September 1, 2007.