

SENATE AMENDMENTS

2nd Printing

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 Subsection
27 (b-1) 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 add to a tract of public school land to form a
4 tract of sufficient size to be manageable;

5 (2) to add contiguous land to public school land;

6 (3) to acquire, as public school land, interests in
7 real property for biological, commercial, geological, cultural, or
8 recreational purposes;

9 (4) to acquire mineral and royalty interests for the
10 use and benefit of the permanent school fund;

11 (5) to protect, maintain, or enhance the value of
12 public school land;

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

14 (7) to pay reasonable fees for professional services
15 related to a permanent school fund investment; or

16 (8) to acquire, sell, lease, trade, improve, maintain,
17 protect, or use land, mineral or royalty interests, real estate
18 investments, or other interests at prices and under terms the board
19 determines to be in the best interest of the permanent school fund.

20 (b) Before using funds under Subsection (a), the board must
21 determine, using the prudent investor standard, that the use of the
22 funds for the intended purpose is authorized by Subsection (a) and
23 in the best interest of the permanent school fund. A determination
24 by the board on the use of funds under this section is conclusive
25 unless the determination was made as a result of fraud or obvious
26 error.

27 (b-1) The board may confer with one or more employees of the

1 board or with a third party regarding an investment or potential
2 investment in real estate, including the acquisition or potential
3 acquisition of interests in real estate, to the extent permitted to
4 the board of trustees of the Texas growth fund under Section
5 551.075, Government Code.

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

8 Sec. 51.4021. APPOINTMENT OF REAL ESTATE SPECIAL FUND
9 MANAGERS, INVESTMENT CONSULTANTS, OR ADVISORS. (a) The board may
10 appoint investment managers, consultants, or advisors to invest or
11 assist the board in investing the money designated under Section
12 51.401 by contracting for professional investment management or
13 investment advisory services with one or more organizations that
14 are in the business of managing or advising on the management of
15 real estate investments.

16 (b) To be eligible for appointment under this section, an
17 investment manager, consultant, or advisor shall agree to abide by
18 the ~~the [must be:~~

19 ~~[(1) registered under the Investment Advisers Act of~~
20 ~~1940 (15 U.S.C. Section 80b-1 et seq.);~~

21 ~~[(2) a bank as defined by that Act, or~~

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

24 ~~[(c) In a contract under this section, the board shall~~
25 ~~specify any] policies, requirements, or restrictions, including~~
26 ethical standards and disclosure policies and criteria for
27 determining the quality of investments and for the use of standard

1 rating services, that the board adopts for real estate investments
2 of the permanent school fund. Money designated under Section 51.401
3 may not be invested in a real estate investment trust, as defined by
4 Section 200.001, Business Organizations Code.

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

9 (d) [~~e~~] Chapter 2263, Government Code, applies to
10 investment managers, consultants, or advisors appointed under this
11 section. The board by rule shall adopt standards of conduct for
12 investment managers, consultants, or advisors appointed under this
13 section as required by Section 2263.004, Government Code, and shall
14 implement the disclosure requirements of Section 2263.005 of that
15 code.

16 SECTION 7. Section 51.412(a), Natural Resources Code, is
17 amended to read as follows:

18 (a) Not later than September 1 of each even-numbered year,
19 the board shall submit to the legislature a report that,
20 specifically and in detail, assesses the direct and indirect
21 economic impact, as anticipated by the board, of the investment of
22 funds designated under Section 51.401 for deposit in the real
23 estate special fund account of the permanent school fund. The board
24 may not disclose information under this section that is
25 confidential under applicable state or federal law. The report
26 must include the following information:

27 (1) the total amount of money designated by Section

1 51.401 for deposit in the real estate special fund account of the
2 permanent school fund that the board intends to invest;

3 (2) the rate of return the board expects to attain on
4 the investment;

5 (3) the amount of money the board expects to
6 distribute to the available school fund or the investment special
7 fund account of the permanent school fund after making the
8 investments;

9 (4) the distribution of the board's investments by
10 county;

11 (5) the effect of the board's investments on the level
12 of employment, personal income, and capital investment in the
13 state; and

14 (6) any other information the board considers
15 necessary to include in the report.

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

18 Sec. 51.413. TRANSFERS FROM REAL ESTATE SPECIAL FUND
19 ACCOUNT TO AVAILABLE SCHOOL FUND. On the first working day of each
20 month in a state fiscal year, the comptroller shall transfer from
21 the real estate special fund account of the permanent school fund to
22 the available school fund an amount equal to one-twelfth of the
23 annual distribution from the real estate special fund account of
24 the permanent school fund to the available school fund as provided
25 by Section 4, Article VII, Texas Constitution, for the fiscal year.

26 SECTION 9. Section 43.001(b), Education Code, as amended by
27 Chapters 201 and 328, Acts of the 78th Legislature, Regular

1 Session, 2003, is reenacted and amended to read as follows:

2 (b) The available school fund, which shall be apportioned
3 annually to each county according to its scholastic population,
4 consists of:

5 (1) the distributions to the fund from the investment
6 special fund account of the permanent school fund as provided by
7 Section 5(a), Article VII, Texas Constitution;

8 (2) the distributions to the fund from the real estate
9 special fund account of the permanent school fund as provided by
10 Section 4(a), Article VII, Texas Constitution;

11 (3) one-fourth of all revenue derived from all state
12 occupation taxes, exclusive of delinquencies and cost of
13 collection;

14 (4) [~~3~~] one-fourth of revenue derived from state
15 gasoline and special fuels excise taxes as provided by law; and

16 (5) [~~4~~] all other appropriations to the available
17 school fund made by the legislature for public school purposes.

18 SECTION 10. The heading to Section 43.002, Education Code,
19 is amended to read as follows:

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

23 SECTION 11. Section 43.002(a), Education Code, is amended
24 to read as follows:

25 (a) On the first working day of each month in a state fiscal
26 year, the comptroller shall transfer from the investment special
27 fund account of the permanent school fund to the available school

1 fund an amount equal to one-twelfth of the annual distribution from
2 the investment special fund account of the permanent school fund to
3 the available school fund as provided by Section 5(a), Article VII,
4 Texas Constitution, for the fiscal year.

5 SECTION 12. Sections 43.0031(a), (b), (d), and (e),
6 Education Code, are amended to read as follows:

7 (a) In addition to any other requirements provided by law,
8 the State Board of Education shall adopt and enforce an ethics
9 policy that provides standards of conduct relating to the
10 management and investment of the investment special fund account of
11 the permanent school fund. The ethics policy must include
12 provisions that address the following issues as they apply to the
13 management and investment of the investment special fund account of
14 the permanent school fund and to persons responsible for managing
15 and investing the special fund account:

- 16 (1) general ethical standards;
17 (2) conflicts of interest;
18 (3) prohibited transactions and interests;
19 (4) the acceptance of gifts and entertainment;
20 (5) compliance with applicable professional
21 standards;
22 (6) ethics training; and
23 (7) compliance with and enforcement of the ethics
24 policy.

25 (b) The ethics policy must include provisions applicable
26 to:

- 27 (1) members of the State Board of Education;

1 (2) the commissioner;

2 (3) employees of the agency; and

3 (4) any person who provides services to the board
4 relating to the management or investment of the investment special
5 fund account of the permanent school fund.

6 (d) The provisions of the ethics policy that apply to a
7 person who provides services to the board relating to the
8 management or investment of the investment special fund account of
9 the permanent school fund must be based on the Code of Ethics and
10 the Standards of Professional Conduct prescribed by the Association
11 for Investment Management and Research or other ethics standards
12 adopted by another appropriate professionally recognized entity.

13 (e) The board shall ensure that applicable provisions of the
14 ethics policy are included in any contract under which a person
15 provides services to the board relating to the management and
16 investment of the investment special fund account of the permanent
17 school fund.

18 SECTION 13. Section 43.0032(a), Education Code, is amended
19 to read as follows:

20 (a) A member of the State Board of Education, the
21 commissioner, an employee of the agency, or a person who provides
22 services to the board that relate to the management or investment of
23 the investment special fund account of the permanent school fund
24 who has a business, commercial, or other relationship that could
25 reasonably be expected to diminish the person's independence of
26 judgment in the performance of the person's responsibilities
27 relating to the management or investment of the fund shall disclose

1 the relationship in writing to the board.

2 SECTION 14. Sections 43.0033, 43.004, and 43.005, Education
3 Code, are amended to read as follows:

4 Sec. 43.0033. REPORTS OF EXPENDITURES. A consultant,
5 advisor, broker, or other person providing services to the State
6 Board of Education relating to the management and investment of the
7 investment special fund account of the permanent school fund shall
8 file with the board regularly, as determined by the board, a report
9 that describes in detail any expenditure of more than \$50 made by
10 the person on behalf of:

- 11 (1) a member of the board;
12 (2) the commissioner; or
13 (3) an employee of the agency or of a nonprofit
14 corporation created under Section 43.006.

15 Sec. 43.004. WRITTEN INVESTMENT OBJECTIVES; PERFORMANCE
16 EVALUATION. (a) The State Board of Education shall develop written
17 investment objectives concerning the investment of the investment
18 special fund account of the permanent school fund. The objectives
19 may address desired rates of return, risks involved, investment
20 time frames, and any other relevant considerations.

21 (b) The board shall employ a well-recognized performance
22 measurement service to evaluate and analyze the investment results
23 of the investment special fund account of the permanent school
24 fund. The service shall compare investment results with the
25 written investment objectives developed by the board, and shall
26 also compare the investment of the investment special fund account
27 of the permanent school fund with the investment of other public and

1 private funds.

2 Sec. 43.005. EXTERNAL INVESTMENT MANAGERS. (a) The State
3 Board of Education may contract with private professional
4 investment managers to assist the board in making investments of
5 the investment special fund account of the permanent school fund. A
6 contract under this subsection must be approved by the board or
7 otherwise entered into in accordance with board rules relating to
8 contracting authority.

9 (b) The State Board of Education by rule may delegate a
10 power or duty relating to the investment of the investment special
11 fund account of the permanent school fund to a committee, officer,
12 employee, or other agent of the board.

13 SECTION 15. Sections 43.006(a), (b), and (e), Education
14 Code, are amended to read as follows:

15 (a) The State Board of Education may delegate investment
16 authority and contract for the investment of the investment special
17 fund account of the permanent school fund to the same extent as the
18 governing board of an institution of higher education with respect
19 to an institutional fund under Chapter 163, Property Code.

20 (b) The board may enter into a contract with a nonprofit
21 corporation for the corporation to invest funds under the control
22 and management of the board, including the investment special fund
23 account of the permanent school fund, as designated by the board.
24 The corporation may not engage in any business other than investing
25 funds designated by the board under the contract.

26 (e) If an investment contract entered into under Subsection
27 (b) includes the investment special fund account of the permanent

1 school fund within the scope of funds under the control and
2 management of the State Board of Education to be invested by the
3 corporation, the board shall provide for an annual financial audit
4 of the investment special fund account of the permanent school
5 fund. Subject to the legislative audit committee's approval of
6 including the audit in the audit plan under Section 321.013(c),
7 Government Code, the audit shall be performed by the state auditor.

8 SECTION 16. Section 43.007(a), Education Code, is amended
9 to read as follows:

10 (a) The State Board of Education may authorize the purchase
11 ~~[of all of the types]~~ of securities for the investment special fund
12 account of ~~[in which it is authorized by law to invest]~~ the
13 permanent school fund in either registered or negotiable form. The
14 board may authorize the reissue of those securities held at any time
15 for the investment special fund account of the permanent school
16 fund in either registered or negotiable form. The State Board of
17 Education may authorize the sale of any of the securities held for
18 the investment special fund account of the permanent school fund
19 and reinvest the proceeds of sale for the fund and may authorize the
20 exchange of any of the securities held for the investment special
21 fund account of the permanent school fund.

22 SECTION 17. Section 45.052, Education Code, is amended to
23 read as follows:

24 Sec. 45.052. GUARANTEE. On approval by the commissioner,
25 bonds issued under Subchapter A, including refunding bonds, are
26 guaranteed by the investment special fund account ~~[corpus and~~
27 ~~income]~~ of the permanent school fund.

1 SECTION 18. Sections 45.053(a) and (b), Education Code, are
2 amended to read as follows:

3 (a) The commissioner may not approve bonds for guarantee if
4 the approval would result in the total amount of outstanding
5 guaranteed bonds exceeding an amount equal to 2-1/2 times the cost
6 value or market value, whichever is less, of the investment special
7 fund account of the permanent school fund, as estimated by the board
8 and certified by the state auditor.

9 (b) Each year, the state auditor shall analyze the status of
10 guaranteed bonds as compared to the cost value and market value of
11 the investment special fund account of the permanent school fund.
12 Based on that analysis, the state auditor shall certify whether the
13 amount of bonds guaranteed is within the limit prescribed by this
14 section.

15 SECTION 19. Sections 45.059 and 45.061, Education Code, are
16 amended to read as follows:

17 Sec. 45.059. PAYMENT FROM PERMANENT SCHOOL FUND. (a)
18 Immediately following receipt of notice under Section 45.058, the
19 commissioner shall instruct the comptroller to transfer from the
20 appropriate account in the investment special fund account of the
21 permanent school fund to the school district's paying agent the
22 amount necessary to pay the maturing or matured principal or
23 interest.

24 (b) Immediately following receipt of the funds for payment
25 of the principal or interest, the paying agent shall pay the amount
26 due and forward the canceled bond or coupon to the comptroller. The
27 comptroller shall hold the canceled bond or coupon on behalf of the

1 investment special fund account of the permanent school fund.

2 (c) Following full reimbursement to the investment special
3 fund account of the permanent school fund with interest, the
4 comptroller shall further cancel the bond or coupon and forward it
5 to the school district for which payment was made.

6 Sec. 45.061. REIMBURSEMENT OF PERMANENT SCHOOL FUND. (a)
7 If the commissioner orders payment from the permanent school fund
8 on behalf of a school district, the commissioner shall direct the
9 comptroller to withhold the amount paid, plus interest, from the
10 first state money payable to the [~~school~~] district. The amount
11 withheld shall be deposited to the credit of the investment special
12 fund account of the permanent school fund.

13 (b) In accordance with the rules of the board, the
14 commissioner may authorize reimbursement to the investment special
15 fund account of the permanent school fund with interest in a manner
16 other than that provided by this section.

17 SECTION 20. Section 45.062(a), Education Code, is amended
18 to read as follows:

19 (a) If two or more payments from the investment special fund
20 account of the permanent school fund are made on the guaranteed
21 bonds of a school district and the commissioner determines that the
22 [~~school~~] district is acting in bad faith under the guarantee, the
23 commissioner may request the attorney general to institute
24 appropriate legal action to compel the [~~school~~] district and its
25 officers, agents, and employees to comply with the duties required
26 of them by law in regard to the bonds.

27 SECTION 21. (a) Sections 51.401(c) and (d), Natural

1 Resources Code, are repealed.

2 (b) The following sections of the Education Code are
3 repealed:

4 (1) Section 43.003;

5 (2) Section 43.007(b); and

6 (3) Section 43.020.

7 SECTION 22. (a) Except as provided by Subsection (b) of this
8 section, this Act takes effect immediately if this Act receives a
9 vote of two-thirds of all the members elected to each house, as
10 provided by Section 39, Article III, Texas Constitution. If this
11 Act does not receive the vote necessary for immediate effect, this
12 Act takes effect September 1, 2007, except as provided by
13 Subsection (b) of this section.

14 (b) Sections 4 and 7 through 20 of this Act take effect
15 January 1, 2008, but only if the constitutional amendment to create
16 real estate and investment special fund accounts within the
17 permanent school fund and to allow the returns from permanent
18 school fund real estate portfolio investments to be added to the
19 available school fund for the support of public schools is approved
20 by the voters. If the proposed constitutional amendment is not
21 approved by the voters, Sections 4 and 7 through 20 of this Act have
22 no effect.

ADOPTED

MAY 23 2007

Leta Dew
Secretary of the Senate

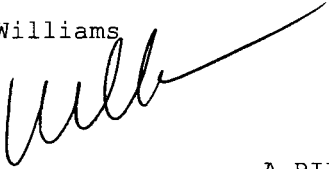
By: McCall

H.B. No. 3699

Substitute the following for H.B. No. 3669:

By: Williams

C.S.H.B. No. 3699



A BILL TO BE ENTITLED

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AN ACT

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(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

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1 be in the best interest of the fund.

2 SECTION 2. Section 51.121(b), Natural Resources Code, is amended
3 to read as follows:

4 (b) Improvements [~~Commercial improvements~~] on land leased
5 under Subsection (a) [~~of this section~~] shall be removed prior to
6 the expiration of the lease unless the commissioner determines it
7 to be in the best interest of the state that removal of the
8 improvements not be required and includes a provision in the
9 terms and conditions of the lease [~~a renewal or an extension of~~
10 ~~the lease has been finalized prior to the expiration of the term~~
11 ~~of the lease. If commercial improvements are not removed prior~~
12 ~~to the expiration of the lease and if there has been no renewal~~
13 ~~or extension prior to the expiration of the lease, then the~~
14 ~~commercial] that the improvements on the land shall become
15 property of the state upon termination or expiration of the
16 lease.~~

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17 SECTION 3. The heading to Section 51.401, Natural Resources
18 Code, is amended to read as follows:

19 Sec. 51.401 REAL ESTATE SPECIAL FUND ACCOUNT.

20 SECTION 4. Sections 51.401(a) and (b), Natural Resources
21 Code, are amended to read as follows:

22 (a) The board may designate funds received from any land,
23 mineral or royalty interest, real estate investment, or other
24 interest, including revenue received from those sources, that is
25 set apart to the permanent school fund under the constitution and

1 laws of this state together with the mineral estate in riverbeds,
2 channels, and the tidelands, including islands, [the sale of
3 permanent school fund land under this chapter and the proceeds of
4 future mineral leases and royalties generated from existing and
5 future leases of permanent school fund mineral interests received
6 under Chapters 52 and 53] for deposit in the real estate [a]
7 special fund account of the permanent school fund in the State
8 Treasury to be used by the board as provided by this subchapter.

9 (b) The real estate special fund account must be an interest-
10 bearing account, and the interest received on the account shall be
11 deposited in the State Treasury to the credit of the real estate
12 special fund account of the permanent school fund.

13 SECTION 5. Section 51.402, Natural Resources Code, is amended
14 by amending Subsections (a) and (b) and adding Subsection (b-1) to
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17 51.401 for any of the following purposes:

18 (1) to add to a tract of public school land to form a
19 tract of sufficient size to be manageable;

20 (2) to add contiguous land to public school land;

21 (3) to acquire, as public school land, interests in real
22 property for biological, commercial, geological, cultural, or
23 recreational purposes;

24 (4) to acquire mineral and royalty interests for the use
25 and benefit of the permanent school fund;

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

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

4 (7) to pay reasonable fees for professional services
5 related to a permanent school fund investment; or

6 (8) to acquire, sell, lease, trade, improve, maintain,
7 protect, or use land, mineral and royalty interests, or real estate
8 investments, an investment or interest in public infrastructure, or
9 other interests, at such prices and under such terms and conditions
10 the board determines to be in the best interest of the permanent
11 school fund.

12 (b) Before using funds under Subsection (a), the board must
13 determine, using the prudent investor standard, that the use of the
14 funds for the intended purpose is authorized by Subsection (a) and
15 in the best interest of the permanent school fund. A determination
16 by the board on the use of funds under this section is conclusive
17 unless the determination was made as a result of fraud or obvious
18 error.

19 (b-1) The board may confer with one or more employees of the
20 board or with a third party regarding an investment or potential
21 investment in real estate, including the acquisition or potential
22 acquisition of interests in real estate, to the extent permitted to
23 the board of trustees of the Texas growth fund under Section
24 551.075, Government Code.

25 SECTION 6. Section 51.4021, Natural Resources Code, is

1 amended to read as follows:

2 Sec. 51.4021. APPOINTMENT OF SPECIAL FUND MANAGERS,
3 INVESTMENT CONSULTANTS, OR ADVISORS. (a) The board may appoint
4 investment managers, consultants, or advisors to invest or assist
5 the board in investing the money designated under Section 51.401 by
6 contracting for professional investment management or investment
7 advisory services with one or more organizations that are in the
8 business of managing or advising on the management of real estate
9 investments.

10 (b) To be eligible for appointment under this section, an
11 investment manager, consultant, or advisor shall agree to abide by
12 the ~~[must be]~~

13 ~~[(1) registered under the Investment Advisers Act of~~
14 ~~1940 (15 U.S.C. Section 80b-1 et seq.)];~~

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

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

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

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

5 (d) [~~(e)~~] Chapter 2263, Government Code, applies to
6 investment managers, consultants, or advisors appointed under this
7 section. The board by rule shall adopt standards of conduct for
8 investment managers, consultants, or advisors appointed under this
9 section as required by Section 2263.004, Government Code, and shall
10 implement the disclosure requirements of Section 2263.005 of that
11 code.

12 SECTION 7. Section 51.412(a), Natural Resources Code, is
13 amended to read as follows:

14 (a) Not later than September 1 of each even-numbered year,
15 the board shall submit to the legislature a report that,
16 specifically and in detail, assesses the direct and indirect
17 economic impact, as anticipated by the board, of the investment of
18 funds designated under Section 51.401 for deposit in the real
19 estate special fund account of the permanent school fund. The
20 board may not disclose information under this section that is
21 confidential under applicable state or federal law. The report
22 must include the following information:

23 (1) the total amount of money designated by Section
24 51.401 for deposit in the real estate special fund account of the
25 permanent school fund that the board intends to invest;

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

3 (3) the amount of money the board expects to distribute
4 to the available school fund or the State Board of Education for
5 investment in the permanent school fund after making the
6 investments;

7 (4) the distribution of the board's investments by
8 county;

9 (5) the effect of the board's investments on the level
10 of employment, personal income, and capital investment in the
11 state; and

12 (6) any other information the board considers necessary to
13 include in the report.

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

16 Sec. 51.413. TRANSFERS FROM THE REAL ESTATE SPECIAL FUND
17 ACCOUNT TO THE AVAILABLE SCHOOL FUND AND THE PERMANENT SCHOOL FUND.

18 The board may, by a resolution adopted at a regular meeting,
19 release from the real estate special fund account funds previously
20 designated under Section 51.401 of this chapter or managed, used or
21 encumbered under Section 51.402 or Section 51.4021 of this chapter
22 to be deposited in the State Treasury to the credit of:

23 (a) the available school fund; or

24 (b) the State Board of Education for investment in the
25 permanent school fund.

1 SECTION 9. Chapter 43, Education Code, is amended to add a
2 new section 43.0051 that reads as follows:

3 § 43.0051. TRANSFERS TO REAL ESTATE SPECIAL FUND ACCOUNT OF
4 THE PERMANENT SCHOOL FUND. The State Board of Education may
5 transfer funds from the portion of the permanent school fund
6 managed by the State Board of Education to the real estate special
7 fund account of the permanent school fund if the State Board of
8 Education determines, using the standard of care set forth in
9 subsection (f), Section 5, Article VII, Texas Constitution, that
10 such transfer is in the best interest of the permanent school fund.

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

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

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 21, 2007

TO: Honorable Steve Ogden, Chair, Senate Committee on Finance

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3699 by McCall (Relating to the management of public school land and the investment of the permanent school fund.), **Committee Report 2nd House, Substituted**

No fiscal implication to the State is anticipated.

The bill would provide the School Land Board (SLB) additional authority to manage and control land, mineral and royalty interests, real estate investments and other interests that are dedicated to the Permanent School Fund No. 44, along with revenues arising from those sources. The bill would allow the SLB to designate funds received from the lands and interests dedicated to the Permanent School Fund No. 44 for deposit in the special fund account, which is renamed the Real Estate Special Fund Account (RESF) by the bill. The bill also would clarify the potential uses of proceeds of the RESF Account. The bill would allow the SLB to consult with employees or third parties regarding investments and potential investments in the same manner as the board of trustees for the Texas Growth Fund are authorized to have such consultations by Section 551.075 of the Government Code.

The bill would allow the SLB to work with investment consultants and advisors and applies the same policies, requirements, restrictions and ethical standards to investment consultants and advisors as currently apply to investment managers. The bill would delete certain federal registration requirements for managers, consultants and advisors that are inapplicable to real estate investments.

Finally, the bill would permit the SLB to release funds from the RESF to the Available School Fund (ASF) or the Permanent School Fund (PSF), and allow the State Board of Education to transfer funds from the investment portion of the PSF to the RESF.

According to the Texas Constitution, Article VII, Section 5(a), the ASF consists of distributions from the total return on all investment assets of the PSF, authorized taxes, and appropriations made to the ASF by the legislature. Without a related constitutional amendment, a distribution made to the ASF from the RESF under Section 8 of the bill does not appear to qualify as one of the constitutional components of the ASF. Therefore, this fiscal note assumes that the transfer of funds would not occur, and so the bill's passage would not result in a fiscal impact to the PSF or the ASF.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts, 305 General Land Office and Veterans' Land Board, 701 Central Education Agency

LBB Staff: JOB, CT, UP, JGM, WK, ZS, TL

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 10, 2007

TO: Honorable Steve Ogden, Chair, Senate Committee on Finance

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3699 by McCall (Relating to the management of public school land and the investment of the permanent school fund.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3699, As Engrossed: a positive impact of \$200,000,000 through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	\$100,000,000
2009	\$100,000,000
2010	\$98,815,868
2011	\$98,815,868
2012	\$94,500,700

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from <i>AVAILABLE SCHOOL FUND</i> 2	Probable Revenue Gain/(Loss) from <i>PERMANENT SCHOOL FUND</i> 44
2008	\$100,000,000	(\$124,509,822)
2009	\$100,000,000	(\$135,859,440)
2010	\$98,815,868	(\$146,195,946)
2011	\$98,815,868	(\$158,804,786)
2012	\$94,500,700	(\$167,704,751)

Fiscal Analysis

The bill would grant the School Land Board and the Commissioner of the General Land Office (GLO) sole and exclusive authority over the management of mineral or royalty interest, real estate investment, or other interests in public school lands, including revenue received from those sources. The bill would change the name of the Special Fund Account, which receives funds from the sale of Permanent School Fund (PSF) No. 44 land, to the Real Estate Special Fund Account. The bill would provide for the Real Estate Special Fund Account to accept the deposit of funds received from any land, mineral, or royalty interest, real estate investment, or other interest in public school fund lands.

The bill would direct the Comptroller, on the first working day of each month in a fiscal year, to transfer from the Real Estate Special Fund Account of the PSF to the Available School Fund (ASF)

No. 2 an amount equal to one-twelfth of the annual distribution from the Real Estate Special Fund Account as provided by Section 4, Article VII of the Texas Constitution for the fiscal year.

Sections 4 and 7 through 20 of the bill, which relate to the Real Estate Special Fund Account, would take effect on January 1, 2008, but only if the constitutional amendment to create the Real Estate and Investment Special Fund Accounts within the PSF and to allow the returns from the PSF real estate portfolio investments to be added to the ASF for the support of public schools were approved by the voters. If the proposed constitutional amendment were not approved by the voters, those sections would have no effect. The remainder of the bill would take effect immediately, if approved by two-thirds of the members of both houses of the Legislature. Otherwise, it would take effect on September 1, 2007.

Methodology

This estimate assumes that the constitutional amendment would be approved by voters on November 6, 2007. The bill would be expected to result in an increase in revenues to the Available School Fund (ASF) because of the distribution of funds from the Real Estate Special Fund provided by the bill and related constitutional amendment. Based on estimates from the General Land Office (GLO), it is assumed that the average market value of the real estate special fund account of the permanent school fund for the preceding 16 fiscal quarters would be approximately \$1.25 billion in fiscal year 2008. The related constitutional amendment would limit distributions from the real estate special fund account to the ASF to 8 percent of the average market value of the account, which would yield an annual distribution of \$100 million per fiscal year. Since the amount is effectively transferring out of the Permanent School Fund No. 44, the PSF would experience a corresponding loss of \$100 million per fiscal year.

Because the constitutional amendment relating to the bill, Senate Joint Resolution 66, would need to pass for the fiscal implications of the bill to be realized, and because that resolution would prohibit the Texas Education Agency (TEA) from investing the remaining funds in the PSF, other than the Real Estate Special Fund, in real estate, the TEA estimates that this provision would result in a decrease in the rate of return on the PSF from 7.89 percent to 7.81 percent. This translates to a loss of an estimated \$24.5 million in fiscal year 2008, increasing to \$67.7 million by fiscal year 2012, which is incorporated into the net loss to the PSF shown in the table above.

This estimate also assumes that because the amount of money in the PSF would decline, the annual distribution from the PSF to the ASF would begin to decrease starting in fiscal year 2010. Because this distribution is based on a rolling 16-quarter average, no impact is expected in fiscal years 2008 and 2009. However, in fiscal years 2010 and 2011, a loss of \$1.0 million in distributions to the ASF is expected, and in 2012, a loss of \$6.5 million is expected. These losses are also incorporated in the amounts shown in the table above as the net fiscal impact to the ASF.

Local Government Impact

According to TEA, section 17 of the bill would reduce the capacity of the PSF to guarantee bonds issued by school districts by excluding the value of the assets in the PSF's real estate special fund account from the calculation of that capacity. This could have the potential to increase costs of issuing debt for districts who would not be able to participate in the PSF bond guarantee program.

Source Agencies: 304 Comptroller of Public Accounts, 305 General Land Office and Veterans' Land Board, 582 Commission on Environmental Quality

LBB Staff: JOB, CT, WK, UP, JGM, TL

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

April 25, 2007

TO: Honorable Anna Mowery, Chair, House Committee on Land & Resource Management

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3699 by McCall (Relating to the management of public school land and the investment of the permanent school fund.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3699, Committee Report 1st House, Substituted: a positive impact of \$200,000,000 through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	\$100,000,000
2009	\$100,000,000
2010	\$98,815,868
2011	\$98,815,868
2012	\$94,500,700

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from <i>AVAILABLE SCHOOL FUND</i> 2	Probable Revenue Gain/(Loss) from <i>PERMANENT SCHOOL FUND</i> 44
2008	\$100,000,000	(\$124,509,822)
2009	\$100,000,000	(\$135,859,440)
2010	\$98,815,868	(\$146,195,946)
2011	\$98,815,868	(\$158,804,786)
2012	\$94,500,700	(\$167,704,751)

Fiscal Analysis

The bill would grant the School Land Board and the Commissioner of the General Land Office (GLO) sole and exclusive authority over the management of mineral or royalty interest, real estate investment, or other interests in public school lands, including revenue received from those sources. The bill would change the name of the Special Fund Account, which receives funds from the sale of Permanent School Fund (PSF) No. 44 land, to the Real Estate Special Fund Account. The bill would provide for the Real Estate Special Fund Account to accept the deposit of funds received from any land, mineral, or royalty interest, real estate investment, or other interest in public school fund lands.

The bill would direct the Comptroller, on the first working day of each month in a fiscal year, to transfer from the Real Estate Special Fund Account of the PSF to the Available School Fund (ASF)

No. 2 an amount equal to one-twelfth of the annual distribution from the Real Estate Special Fund Account as provided by Section 4, Article VII of the Texas Constitution for the fiscal year.

Sections 4 and 7 through 20 of the bill, which relate to the Real Estate Special Fund Account, would take effect on January 1, 2008, but only if the constitutional amendment to create the Real Estate and Investment Special Fund Accounts within the PSF and to allow the returns from the PSF real estate portfolio investments to be added to the ASF for the support of public schools were approved by the voters. If the proposed constitutional amendment were not approved by the voters, those sections would have no effect. The remainder of the bill would take effect immediately, if approved by two-thirds of the members of both houses of the Legislature. Otherwise, it would take effect on September 1, 2007.

Methodology

This estimate assumes that the constitutional amendment would be approved by voters on November 6, 2007. The bill would be expected to result in an increase in revenues to the Available School Fund (ASF) because of the distribution of funds from the Real Estate Special Fund provided by the bill and related constitutional amendment. Based on estimates from the General Land Office (GLO), it is assumed that the average market value of the real estate special fund account of the permanent school fund for the preceding 16 fiscal quarters would be approximately \$1.25 billion in fiscal year 2008. The related constitutional amendment would limit distributions from the real estate special fund account to the ASF to 8 percent of the average market value of the account, which would yield an annual distribution of \$100 million per fiscal year. Since the amount is effectively transferring out of the Permanent School Fund No. 44, the PSF would experience a corresponding loss of \$100 million per fiscal year.

Because the constitutional amendment relating to the bill, Senate Joint Resolution 66, would need to pass for the fiscal implications of the bill to be realized, and because that resolution would prohibit the Texas Education Agency (TEA) from investing the remaining funds in the PSF, other than the Real Estate Special Fund, in real estate, the TEA estimates that this provision would result in a decrease in the rate of return on the PSF from 7.89 percent to 7.81 percent. This translates to a loss of an estimated \$24.5 million in fiscal year 2008, increasing to \$67.7 million by fiscal year 2012, which is incorporated into the net loss to the PSF shown in the table above.

This estimate also assumes that because the amount of money in the PSF would decline, the annual distribution from the PSF to the ASF would begin to decrease starting in fiscal year 2010. Because this distribution is based on a rolling 16-quarter average, no impact is expected in fiscal years 2008 and 2009. However, in fiscal years 2010 and 2011, a loss of \$1.0 million in distributions to the ASF is expected, and in 2012, a loss of \$6.5 million is expected. These losses are also incorporated in the amounts shown in the table above as the net fiscal impact to the ASF.

Local Government Impact

According to TEA, section 17 of the bill would reduce the capacity of the PSF to guarantee bonds issued by school districts by excluding the value of the assets in the PSF's real estate special fund account from the calculation of that capacity. This could have the potential to increase costs of issuing debt for districts who would not be able to participate in the PSF bond guarantee program.

Source Agencies: 304 Comptroller of Public Accounts, 305 General Land Office and Veterans' Land Board, 582 Commission on Environmental Quality

LBB Staff: JOB, WK, UP, JGM, TL

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

April 3, 2007

TO: Honorable Anna Mowery, Chair, House Committee on Land & Resource Management

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3699 by McCall (Relating to the management of public school land and the investment of the permanent school fund.), **As Introduced**

No fiscal implication to the State is anticipated.

The bill would provide the School Land Board (SLB) additional authority to manage and control land, mineral and royalty interests, real estate investments and other interests that are dedicated to the Permanent School Fund No. 44, along with revenues arising from those sources. The bill would allow the SLB to designate funds received from the lands and interests dedicated to the Permanent School Fund No. 44 for deposit in the special fund account, which is renamed the Real Estate Special Fund Account (RESF) by the bill. The bill would designate the SLB as the manager of the RESF Account. The bill also would clarify the potential uses of proceeds of the RESF Account. The bill would allow the SLB to consult with employees or third parties regarding investments and potential investments in the same manner as the board of trustees for the Texas Growth Fund are authorized to have such consultations by Section 551.075 of the Government Code.

The bill would allow the SLB to work with real estate investment consultants and advisors in addition to investment managers, and applies the same policies, requirements, restrictions and ethical standards to investment consultants and advisors as currently apply to investment managers. The bill would delete certain federal registration requirements for managers, consultants and advisors that are inapplicable to real estate investments.

Finally, the bill would direct the Comptroller, on the first working day of each month in a fiscal year to transfer from the RESF Account of the Permanent School Fund to the Available School Fund an amount equal to one-twelfth of the annual distribution from the RESF Account of the Permanent School Fund which is made each fiscal year according to the Texas Constitution, Texas Constitution, Article VII, Section 4.

Because the Texas Constitution, Article VII, Section 4, does not provide for a transfer of funds from the RESF Account of the Permanent School Fund to the Available School Fund, this estimate assumes that the transfer of funds would not occur, and, therefore, the bill's passage would not result in a fiscal impact to the Permanent School Fund or the Available School Fund.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts, 305 General Land Office and Veterans' Land Board, 701 Central Education Agency

LBB Staff: JOB, WK, ZS, TL

