

By: Howard of Travis, Anchia, Branch,
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H.B. No. 2037

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the Permanent School Fund Management Council to manage the permanent school fund; providing a criminal penalty.

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

SECTION 1. Chapter 43, Education Code, is amended by adding Sections 43.0011, 43.0012, and 43.0013 and amending Sections 43.003, 43.0031, 43.0032, and 43.0033 to read as follows:

Sec. 43.0011. DEFINITION. In this chapter, "council" means the Permanent School Fund Management Council.

Sec. 43.0012. PERMANENT SCHOOL FUND MANAGEMENT COUNCIL.

(a) The Permanent School Fund Management Council consists of the following seven members:

(1) two members appointed by the governor;

(2) one member appointed by the governor from a list of candidates prepared by the speaker of the house of representatives;

(3) one member appointed by the governor from a list of candidates prepared by the State Board of Education;

(4) one member appointed by the lieutenant governor;

(5) one member appointed by the commissioner of the General Land Office; and

(6) one member appointed by the comptroller.

(b) Council members serve staggered terms of four years, with the terms of three members expiring on February 1 of one

1 odd-numbered year and the terms of four members expiring on
2 February 1 of the next odd-numbered year.

3 (c) A vacancy on the council is filled for the unexpired
4 portion of the member's term in the same manner as the original
5 appointment.

6 (d) The members of the council shall elect the presiding
7 officer of the council, who serves a term of two years expiring
8 February 1 of each odd-numbered year. A member may serve more than
9 one term as presiding officer.

10 (e) The council, by a majority vote of all members, shall
11 appoint a chief investment officer of the permanent school fund to
12 serve at the will of the council.

13 (f) The council may adopt rules and operating procedures as
14 necessary to administer the permanent school fund and perform other
15 duties imposed on the council by law.

16 (g) The council shall meet at least quarterly and may hold
17 other meetings called by the presiding officer.

18 (h) The council may create standing committees to advise the
19 council. The council shall create:

20 (1) an audit and ethics committee;

21 (2) a policy committee; and

22 (3) a risk committee.

23 (i) The council is subject to the open meetings law, Chapter
24 551, Government Code, except that the council is not required to
25 discuss an investment or potential investment with one or more
26 council employees or with a third party in an open meeting to the
27 same extent that the board of trustees of the Texas growth fund is

1 provided an exception from the open meetings law under Section
2 551.075, Government Code.

3 Sec. 43.0013. ADMINISTRATIVE SUPPORT AND MANAGEMENT. (a)
4 The council shall contract with a corporation formed by the
5 comptroller to provide administrative support to the council.

6 (b) The council may contract with the corporation described
7 by Subsection (a) to exercise any power or perform any duty of the
8 council relating to the investment of the permanent school fund.

9 Sec. 43.003. INVESTMENT OF PERMANENT SCHOOL FUND. (a) In
10 compliance with this section, the council [State Board of
11 Education] may invest the permanent school fund in any investment
12 permitted under Section 5(f), Article VII, Texas Constitution [the
13 types of securities], which must be carefully examined by the
14 council [State Board of Education] and be found to be safe and
15 proper investments for the fund [as specified below:

16 [(1) securities, bonds, or other obligations issued,
17 insured, or guaranteed in any manner by the United States
18 Government or any of its agencies and in bonds issued by this state,

19 [(2) obligations and pledges of The University of
20 Texas,

21 [(3) corporate bonds, debentures, or obligations of
22 United States corporations of at least "A" rating,

23 [(4) obligations of United States corporations that
24 mature in less than one year and are of the highest rating available
25 at the time of investment,

26 [(5) bonds issued, assumed, or guaranteed by the
27 Inter-American Development Bank, the International Bank of

1 ~~Reconstruction and Development (the World Bank), the African~~
2 ~~Development Bank, the Asian Development Bank, and the International~~
3 ~~Finance Corporation,~~

4 ~~[(6) bonds of counties, school districts,~~
5 ~~municipalities, road precincts, drainage, irrigation, navigation,~~
6 ~~and levee districts in this state, subject to the following~~
7 ~~requirements:~~

8 ~~[(A) the securities, before purchase, must have~~
9 ~~been diligently investigated by the attorney general both as to~~
10 ~~form and as to legal compliance with applicable laws;~~

11 ~~[(B) the attorney general's certificate of~~
12 ~~validity procured by the party offering the bonds, obligations, or~~
13 ~~pledges must accompany the securities when they are submitted for~~
14 ~~registration to the comptroller, who must preserve the~~
15 ~~certificates;~~

16 ~~[(C) the public securities, if purchased, and~~
17 ~~when certified and registered as specified under Paragraph (B), are~~
18 ~~incontestable unless issued fraudulently or in violation of a~~
19 ~~constitutional limitation, and the certificates of the attorney~~
20 ~~general are prima facie evidence of the validity of the bonds and~~
21 ~~bond coupons; and~~

22 ~~[(D) after the issuing political subdivision has~~
23 ~~received the proceeds from the sales of the securities, the issuing~~
24 ~~agency is estopped to deny their validity, and the securities are~~
25 ~~valid and binding obligations;~~

26 ~~[(7) preferred stocks and common stocks that the State~~
27 ~~Board of Education considers proper investments for the permanent~~

1 ~~school fund, subject to the following requirements:~~

2 ~~[(A) in making all of those investments, the~~
3 ~~State Board of Education shall exercise the judgment and care under~~
4 ~~the circumstances then prevailing that persons of ordinary~~
5 ~~prudence, discretion, and intelligence exercise in the management~~
6 ~~of their own affairs, not in regard to speculation but in regard to~~
7 ~~the permanent disposition of their funds, considering the probable~~
8 ~~income as well as the probable safety of their capital;~~

9 ~~[(B) the company issuing the stock must be~~
10 ~~incorporated in the United States, and the stocks must have paid~~
11 ~~dividends for five consecutive years or longer immediately before~~
12 ~~the date of purchase and the stocks, except for bank stocks and~~
13 ~~insurance stocks, must be listed on an exchange registered with the~~
14 ~~Securities and Exchange Commission or its successors; and~~

15 ~~[(C) not more than one percent of the permanent~~
16 ~~school fund may be invested in stock issued by one corporation and~~
17 ~~not more than five percent of the voting stock of any one~~
18 ~~corporation will be owned; and~~

19 ~~[(8) notwithstanding any other law or provision of~~
20 ~~this code, first lien real estate mortgage securities insured by~~
21 ~~the Federal Housing Administration under the National Housing Act~~
22 ~~of the United States, or in any other first lien real estate~~
23 ~~mortgage securities guaranteed in whole or in part by the United~~
24 ~~States].~~

25 (b) The council and the School Land Board shall enter into a
26 memorandum of understanding under which the council agrees not to
27 invest in real estate without the consent of the board.

1 Sec. 43.0031. PERMANENT SCHOOL FUND ETHICS POLICY. [~~(a)~~]

2 In addition to any other requirements provided by law, the council
3 must comply with, and is subject to, the [~~State Board of Education~~
4 ~~shall adopt and enforce an~~] ethics policy adopted by the
5 corporation that the council contracts with as required by Section
6 43.0013. If the corporation does not have an ethics policy the
7 council must adopt and comply with an ethics policy. The
8 comptroller shall enforce the ethics policy, regardless of whether
9 the policy is adopted by the corporation or the council [~~that~~
10 ~~provides standards of conduct relating to the management and~~
11 ~~investment of the permanent school fund. The ethics policy must~~
12 ~~include provisions that address the following issues as they apply~~
13 ~~to the management and investment of the permanent school fund and to~~
14 ~~persons responsible for managing and investing the fund:~~

15 ~~[(1) general ethical standards,~~

16 ~~[(2) conflicts of interest,~~

17 ~~[(3) prohibited transactions and interests,~~

18 ~~[(4) the acceptance of gifts and entertainment,~~

19 ~~[(5) compliance with applicable professional~~
20 ~~standards,~~

21 ~~[(6) ethics training, and~~

22 ~~[(7) compliance with and enforcement of the ethics~~
23 ~~policy.~~

24 ~~[(b) The ethics policy must include provisions applicable~~
25 ~~to:~~

26 ~~[(1) members of the State Board of Education,~~

27 ~~[(2) the commissioner,~~

1 ~~[(3) employees of the agency; and~~

2 ~~[(4) any person who provides services to the board~~
3 ~~relating to the management or investment of the permanent school~~
4 ~~fund.~~

5 ~~[(c) Not later than the 45th day before the date on which the~~
6 ~~board intends to adopt a proposed ethics policy or an amendment to~~
7 ~~or revision of an adopted ethics policy, the board shall submit a~~
8 ~~copy of the proposed policy, amendment, or revision to the Texas~~
9 ~~Ethics Commission and the state auditor for review and comments.~~
10 ~~The board shall consider any comments from the commission or state~~
11 ~~auditor before adopting the proposed policy.~~

12 ~~[(d) The provisions of the ethics policy that apply to a~~
13 ~~person who provides services to the board relating to the~~
14 ~~management or investment of the permanent school fund must be based~~
15 ~~on the Code of Ethics and the Standards of Professional Conduct~~
16 ~~prescribed by the Association for Investment Management and~~
17 ~~Research or other ethics standards adopted by another appropriate~~
18 ~~professionally recognized entity.~~

19 ~~[(e) The board shall ensure that applicable provisions of~~
20 ~~the ethics policy are included in any contract under which a person~~
21 ~~provides services to the board relating to the management and~~
22 ~~investment of the permanent school fund].~~

23 Sec. 43.0032. CONFLICTS OF INTEREST. (a) A member of the
24 council [~~State Board of Education~~], [~~the commissioner~~], an employee
25 of the council [~~agency~~], or a person who provides services to the
26 council [~~board~~] that relate to the management or investment of the
27 permanent school fund who has a business, commercial, or other

1 relationship that could reasonably be expected to diminish the
2 person's independence of judgment in the performance of the
3 person's responsibilities relating to the management or investment
4 of the fund shall disclose the relationship in writing to the
5 council [~~board~~].

6 (b) [~~The board or the board's designee shall, in the ethics~~
7 ~~policy adopted under Section 43.0031, define the kinds of~~
8 ~~relationships that may create a possible conflict of interest.~~

9 [~~(c)~~] A person who files a statement under Subsection (a)
10 disclosing a possible conflict of interest may not give advice or
11 make decisions about a matter affected by the possible conflict of
12 interest unless the council [~~board, after consultation with the~~
13 ~~general counsel of the agency,~~] expressly waives this prohibition.
14 The council [~~board~~] may delegate the authority to waive the
15 prohibition established by this subsection.

16 Sec. 43.0033. REPORTS OF EXPENDITURES. A consultant,
17 advisor, broker, or other person providing services to the council
18 [~~State Board of Education~~] relating to the management and
19 investment of the permanent school fund shall file with the council
20 [~~board~~] regularly, as determined by the council [~~board~~], a report
21 that describes in detail any expenditure of more than \$50 made by
22 the person on behalf of:

- 23 (1) a member of the council [~~board~~]; or
24 (2) [~~the commissioner, or~~
25 [~~(3)~~] an employee of the council, [~~agency or of~~] a
26 nonprofit corporation created under Section 43.006, or a
27 corporation contracting with the council under Section 43.0013.

1 SECTION 2. Sections 43.0034(a) and (c), Education Code, are
2 amended to read as follows:

3 (a) The council [~~board~~] shall prescribe forms for:

4 (1) statements of possible conflicts of interest and
5 waivers of possible conflicts of interest under Section 43.0032;
6 and

7 (2) reports of expenditures under Section 43.0033.

8 (c) The council [~~board~~] shall designate an employee of the
9 council [~~agency~~] to act as custodian of statements, waivers, and
10 reports described by Subsection (a) for purposes of public
11 disclosure.

12 SECTION 3. Chapter 43, Education Code, is amended by adding
13 Sections 43.0035, 43.0036, and 43.0037 and amending Sections
14 43.004, 43.005, and 43.0051 to read as follows:

15 Sec. 43.0035. APPEARANCE BY FORMER COUNCIL MEMBER. (a) A
16 former member of the council may not make any communication to or
17 appearance before the council or a member, chief investment
18 officer, or employee of the council before the second anniversary
19 of the date the individual ceased to be a member of the council if
20 the communication or appearance is made:

21 (1) with the intent to influence council action; and

22 (2) on behalf of any person in connection with any
23 matter on which the person seeks action by the council.

24 (b) A person commits an offense if the person violates this
25 section. An offense under this section is a Class A misdemeanor.

26 Sec. 43.0036. FINANCIAL AUDIT. (a) The state auditor shall
27 conduct an annual financial audit of the permanent school fund.

1 (b) The state auditor may contract with an independent and
2 internationally recognized accounting firm with substantial
3 experience in auditing investment accounts to conduct the financial
4 audit of the permanent school fund.

5 (c) The council shall reimburse the state auditor for the
6 cost of the audit.

7 (d) The state auditor or the accounting firm selected to
8 conduct the audit shall report the results of the audit directly to
9 the council.

10 (e) Not later than the 30th day after the date the council
11 receives a copy of the audit report, the council shall file a copy
12 of the audit report with the governor, the lieutenant governor, the
13 speaker of the house of representatives, the commissioner, and the
14 comptroller.

15 Sec. 43.0037. REPORTS. (a) Before December 1 of each year,
16 the council shall prepare a written report detailing the council's
17 investment and fiduciary practices and policies.

18 (b) Not later than January 1 of each year, the council shall
19 distribute the report to the governor, the lieutenant governor, the
20 speaker of the house of representatives, the presiding officers of
21 the standing committees of each house of the legislature with
22 primary jurisdiction over primary and secondary education, the
23 presiding officers of the standing committees of each house of the
24 legislature with primary jurisdiction over state finance or
25 appropriations, and the state auditor.

26 Sec. 43.004. WRITTEN INVESTMENT OBJECTIVES; PERFORMANCE
27 EVALUATION. (a) The council [~~State Board of Education~~] shall

1 develop written investment objectives concerning the investment of
2 the permanent school fund. The objectives may address desired
3 rates of return, risks involved, investment time frames, and any
4 other relevant considerations.

5 (b) The council [~~board~~] shall employ a well-recognized
6 performance measurement service to evaluate and analyze the
7 investment results of the permanent school fund. The service shall
8 compare investment results with the written investment objectives
9 developed by the council [~~board~~], and shall also compare the
10 investment of the permanent school fund with the investment of
11 other public and private funds.

12 Sec. 43.005. EXTERNAL INVESTMENT MANAGERS. (a) The
13 council [~~State Board of Education~~] may contract with private
14 professional investment managers to assist the council [~~board~~] in
15 making investments of the permanent school fund. A contract under
16 this subsection must be approved by the council [~~board~~] or
17 otherwise entered into in accordance with council [~~board~~] rules
18 relating to contracting authority.

19 (b) The council [~~State Board of Education~~] by rule may
20 delegate a power or duty relating to the investment of the permanent
21 school fund to a committee, officer, employee, or other agent of the
22 council [~~board~~].

23 Sec. 43.0051. TRANSFERS TO REAL ESTATE SPECIAL FUND ACCOUNT
24 OF THE PERMANENT SCHOOL FUND. The council [~~State Board of~~
25 ~~Education~~] may transfer funds from the portion of the permanent
26 school fund managed by the council [~~State Board of Education~~] to the
27 real estate special fund account of the permanent school fund if the

1 council [~~State Board of Education~~] determines, using the standard
2 of care set forth in Subsection (f), Section 5, Article VII, Texas
3 Constitution, that such transfer is in the best interest of the
4 permanent school fund.

5 SECTION 4. Sections 43.006(a), (b), (c), (d), and (f),
6 Education Code, are amended to read as follows:

7 (a) The council [~~State Board of Education~~] may delegate
8 investment authority for the investment of the permanent school
9 fund to the same extent as an institution with respect to an
10 institutional fund under Chapter 163, Property Code.

11 (b) The council [~~board~~] may enter into a contract with a
12 nonprofit corporation for the corporation to invest funds under the
13 control and management of the council [~~board~~], including the
14 permanent school fund, as designated by the council [~~board~~]. The
15 corporation may not engage in any business other than investing
16 funds designated by the council [~~board~~] under the contract.

17 (c) The council [~~board~~] must approve the:

18 (1) articles of incorporation and bylaws of the
19 corporation and any amendment to the articles of incorporation or
20 bylaws;

21 (2) investment policies of the corporation, including
22 changes to those policies;

23 (3) audit and ethics committee of the corporation; and

24 (4) code of ethics of the corporation.

25 (d) The board of directors of the corporation must be
26 members of the council [~~State Board of Education~~].

27 (f) The corporation shall file quarterly reports with the

1 council [~~State Board of Education~~] concerning matters required by
2 the council [~~board~~].

3 SECTION 5. Section 43.007, Education Code, is amended to
4 read as follows:

5 Sec. 43.007. PURCHASE AND SALE OR EXCHANGE OF SECURITIES.

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

17 (b) In making purchases, sales, exchanges, and reissues,
18 the council [~~State Board of Education~~] shall exercise the judgment
19 and care prescribed by Section 5(f), Article VII, Texas
20 Constitution [~~under the circumstances then prevailing that persons~~
21 ~~of ordinary prudence, discretion, and intelligence exercise in the~~
22 ~~management of their own affairs not in regard to speculation but in~~
23 ~~regard to the permanent disposition of their funds, considering the~~
24 ~~probable income as well as the probable safety of their capital].~~

25 (c) When any securities are sold, reissued, or exchanged as
26 provided by Subsection (a), the custodian of the securities shall
27 deliver the securities sold, reissued, or exchanged in accordance

1 with the directions of the council [~~State Board of Education~~].

2 SECTION 6. Sections 43.009(a), (b), and (c), Education
3 Code, are amended to read as follows:

4 (a) The council [~~State Board of Education~~] may authorize the
5 governing body of any political subdivision in this state to pay off
6 and discharge, at any interest paying date whether the bonds are
7 matured or not, all or any part of any outstanding bond indebtedness
8 owned by the permanent school fund.

9 (b) The governing body of a political subdivision desiring
10 to pay off and discharge any bonded indebtedness owned by the fund
11 shall apply in writing to the council [~~State Board of Education~~],
12 not later than the 30th day before any interest paying date on the
13 bonds, describing the bonds or part of the bonds it desires to pay
14 off and discharge. The application must be accompanied by an
15 affidavit stating that only tax money collected from a tax levy made
16 for the specific purpose of providing a sinking fund and paying
17 interest on the particular bonds to be redeemed will be spent in
18 redeeming, taking up, or paying off the bonds.

19 (c) The council [~~State Board of Education~~], on receiving the
20 application and affidavit, shall take action on them in the manner
21 it considers best and shall notify the applicant whether the
22 application is refused or granted in whole or in part.

23 SECTION 7. Sections 43.010(a), (c), and (d), Education
24 Code, are amended to read as follows:

25 (a) If interest or principal has not been paid for two years
26 or more on any bonds issued by any school district and held by the
27 permanent school fund, the council [~~State Board of Education~~] may

1 direct the commissioner to:

2 (1) compel the district to levy a tax sufficient to
3 meet the interest and principal payments then or later due; or

4 (2) if the district furnishes to the council [~~State~~
5 ~~Board of Education~~] satisfactory proof that the district's taxing
6 ability is insufficient, direct the commissioner to require the
7 district to:

8 (A) exhaust all legal remedies in collecting
9 delinquent taxes; and

10 (B) levy a tax at the maximum lawful rate on the
11 bona fide valuation of taxable property located in the district.

12 (c) As long as any school district is delinquent in its
13 payments of principal or interest on any of its bonds owned by the
14 permanent school fund, the council [~~State Board of Education~~] may
15 specify the method of crediting payments to the state made by the
16 district as to principal and interest.

17 (d) The comptroller may not issue any warrant from the
18 foundation school fund to or for the benefit of any district that
19 has been for as long as two years in default in the payment of
20 principal or interest on any security owned by the permanent school
21 fund until the council [~~State Board of Education~~] certifies that
22 the district has satisfactorily complied with the appropriate
23 provisions of this section, in which event the comptroller shall
24 resume making payments to or for the benefit of the district,
25 including the making of pretermitted payments.

26 SECTION 8. Sections 43.011(a), (b), (c), (d), and (e),
27 Education Code, are amended to read as follows:

1 (a) In compliance with this section, the council or State
2 Board of Education, as applicable, may revise, readjust, modify,
3 refinance, or refund defaulted bonds issued by any school district
4 in this state and owned by either the permanent school fund or the
5 available school fund.

6 (b) Application must be made to the council or State Board
7 of Education by the district that issued the bonds and must show
8 that:

9 (1) delinquent interest totals at least 50 percent of
10 the principal amount of the bonds; and

11 (2) taxable valuation has decreased to such an extent
12 that a full application of the proceeds of the voted authorized tax
13 authorized to be levied on the \$100 taxable property valuation will
14 not meet interest and principal annually maturing on the bonds.

15 (c) The council or State Board of Education may effect a
16 refunding of the debt due and to become due only if the council or
17 board, as applicable, finds that:

18 (1) the district is unable to pay the sums already
19 matured and the sums contracted to be paid as they mature by paying
20 annually to the council or board [~~State Board of Education~~] the full
21 proceeds of a 50-cent tax levy on the \$100 of all taxable valuation
22 of property in the district;

23 (2) the taxable valuation of property in the district
24 has decreased at least 75 percent since the bonds were issued and
25 that the decrease was not caused by the district or any of its
26 officials;

27 (3) the district for a period of at least five years

1 before applying to the council or board [~~State Board of Education~~]
2 for refunding has levied a tax of 50 cents on the \$100 of taxable
3 valuation of property in the district, and that despite such
4 levies, the aggregate amount due the council or board [~~State Board
5 of Education~~] exceeds the aggregate amount due at the beginning of
6 the period;

7 (4) the district has not authorized and sold
8 additional bonds during the five-year period immediately preceding
9 the application; and

10 (5) the district has in good faith endeavored to pay
11 its debt in accordance with the contract evidenced by the bonds held
12 for the account of the permanent school fund or the available school
13 fund.

14 (d) If the conditions specified by Subsection (c) are found
15 to exist, the district is, for purposes of this section, insolvent,
16 and the council or State Board of Education may exchange the bonds,
17 interest coupons, and other evidences of indebtedness for new
18 refunding bonds of the district issued in compliance with the
19 following:

20 (1) the principal amount of the refunding bonds may
21 not be less than the total amount of the bonds, matured interest
22 coupons, accrued interest, and interest on delinquent interest then
23 actually due to the permanent school fund or the available school
24 fund; and

25 (2) the rate of interest to be borne by the refunding
26 bonds may be lower than that borne by the bonds to be refunded if in
27 consideration of the interest reduction the district agrees to levy

1 a tax each year for a period of 40 years at a rate sufficient to
2 produce annually a sum equal to 90 percent of the amount that can be
3 calculated by the levy of a tax at the rate of 50 cents on the \$100
4 of taxable valuation of property as determined by the latest
5 approved tax roll of the district, and in determining the rate of
6 interest to be borne by the refunding bonds, the council or board
7 [~~State Board of Education~~] shall be governed by the following:

8 (A) the council or board [~~State Board of~~
9 ~~Education~~] may require the rate to be a percent per annum as in its
10 judgment will represent the maximum rate that can be paid by the
11 district and still permit an orderly and certain retirement of the
12 refunding bonds within 40 years from their date;

13 (B) the interest rate of refunding bonds to be
14 received in exchange for bonds owned by the permanent school fund
15 may not be less than the minimum rate at which bonds may then be
16 purchased as investments for the permanent school fund; and

17 (C) the rate of interest of refunding bonds to be
18 received in exchange for bonds owned by the available school fund
19 may be set by the council or board [~~State Board of Education~~] at any
20 rate the council or board considers feasible, and the refunding
21 bonds may, at the discretion of the council or board [~~State Board of~~
22 ~~Education~~], be made non-interest bearing to a date fixed by the
23 council or board.

24 (e) The council or State Board of Education may not make a
25 revision, readjustment, modification, refinancing, or refunding
26 that will release or extinguish any debt or obligation then due and
27 payable to the permanent school fund or to the available school

1 fund.

2 SECTION 9. Sections 43.012(e) and (f), Education Code, are
3 amended to read as follows:

4 (e) The council [~~State Board of Education~~] may accept
5 refunding bonds in lieu of either matured or unmatured bonds held
6 for the benefit of the permanent school fund if the rate of interest
7 on the new refunding bonds is at least the same rate as that of the
8 bonds being refunded.

9 (f) Refunding bonds issued with the approval or pursuant to
10 a refunding agreement with the council or the State Board of
11 Education in compliance with either this section or Section 43.011
12 shall, on the order of the council or board [~~State Board of~~
13 ~~Education~~], be exchanged by the comptroller for the defaulted
14 obligations they have been issued to refund.

15 SECTION 10. Section 43.014(a), Education Code, is amended
16 to read as follows:

17 (a) On or before July 1 of each year, the comptroller shall
18 estimate the amount of the available school fund receivable from
19 every source during the following school year and report the
20 estimate to the council and the State Board of Education.

21 SECTION 11. Sections 43.015(b), (e), and (f), Education
22 Code, are amended to read as follows:

23 (b) The comptroller shall provide the council and the State
24 Board of Education with the reports specified by Subsection (a) and
25 with additional reports concerning those funds requested by the
26 council or the State Board of Education.

27 (e) On order of the council or the State Board of Education,

1 as applicable, the comptroller shall exchange or accept refunding
2 bonds in lieu of:

3 (1) either matured or unmatured bonds held for the
4 benefit of the permanent school fund, which are being refunded
5 under this chapter;

6 (2) defaulted obligations held for the benefit of the
7 available school fund if the refunding bonds are issued in
8 compliance with Section 43.012;

9 (3) defaulted obligations of any school district of
10 this state held for the benefit of the permanent school fund or the
11 available school fund if the refunding bonds are issued in
12 compliance with Section 43.011; or

13 (4) refunding bonds of any school district of this
14 state for school bonds not matured held by the comptroller for the
15 permanent school fund if the new refunding bonds are issued by the
16 school district in compliance with this code.

17 (f) The comptroller shall be the custodian of all
18 [~~securities enumerated in Section 43.003(6) and of other~~]
19 securities as designated by the council or the State Board of
20 Education in which the school funds of the state are invested. The
21 comptroller shall keep those securities in the comptroller's
22 custody until paid off, discharged, delivered as required by the
23 council or the board, as applicable [~~State Board of Education~~], or
24 otherwise disposed of by the proper authorities of the state, and on
25 the proper installment of any interest or dividend, shall see that
26 the proper credit is given, and the coupons on bonds, when paid,
27 shall be separated from the bonds and cancelled by the comptroller.

1 SECTION 12. Section 43.017, Education Code, is amended to
2 read as follows:

3 Sec. 43.017. USE OF COMMERCIAL BANKS AS AGENTS FOR
4 COLLECTION OF INCOME FROM PERMANENT SCHOOL FUND INVESTMENTS. (a)
5 The council [~~State Board of Education~~] may contract with one or more
6 commercial banks to receive payments of dividends and interest on
7 securities in which the state permanent school funds are invested
8 and transmit that money with identification of its source to the
9 comptroller for the account of the available school fund by the
10 fastest available means.

11 (b) In choosing each commercial bank with which to contract
12 as authorized by Subsection (a), the council [~~State Board of
13 Education~~] shall assure itself of:

14 (1) the financial stability of the bank;

15 (2) the location of the bank with respect to its
16 proximity to the banks on which checks are drawn in payment of
17 dividends and interest on securities of the permanent school fund;

18 (3) the experience and reliability of the bank in
19 acting as agent for others in the similar collection and
20 expeditious remittance of money; and

21 (4) the reasonableness of the bank's charges for the
22 services, both in amount of the charges and in relation to the
23 increased investment earnings of the available school fund that
24 will result from speedier receipt by the comptroller of the money.

25 SECTION 13. Sections 43.018 and 43.019, Education Code, are
26 amended to read as follows:

27 Sec. 43.018. PARTICIPATION IN FULLY SECURED SECURITIES LOAN

1 PROGRAMS. (a) The council [~~State Board of Education~~] may contract
2 with a commercial bank to serve both as a custodian of securities in
3 which the state permanent school funds are invested and to lend
4 those securities, under the conditions prescribed by Subsection
5 (b), to securities brokers and dealers on short-term loan.

6 (b) The council [~~State Board of Education~~] may contract with
7 a commercial bank pursuant to this section only if:

8 (1) the bank is located in a city having a major stock
9 exchange;

10 (2) the bank is experienced in the operation of a fully
11 secured securities loan program;

12 (3) the bank has adequate capital in the prudent
13 judgment of the council [~~State Board of Education~~] to assure the
14 safety of the securities entrusted to it as a custodian;

15 (4) the bank will require of any securities broker or
16 dealer to which it lends securities owned by the state permanent
17 school fund that the broker or dealer deliver to it cash collateral
18 for the loan of securities, and that the cash collateral will at all
19 times be not less than 100 percent of the market value of the
20 securities lent;

21 (5) the bank executes an indemnification agreement,
22 satisfactory in form and content to the council [~~State Board of
23 Education~~], fully indemnifying the permanent and available school
24 funds against loss resulting from the bank's service as custodian
25 of securities of the permanent school fund and its operation of a
26 securities loan program using securities of the permanent school
27 fund;

1 (6) the bank will speedily collect and remit on the day
2 of collection by the fastest available means to the comptroller any
3 dividends and interest collectible by it on securities held by it as
4 custodian, together with identification as to the source of the
5 dividends or interest; and

6 (7) the bank is the bank agreeing to pay to the
7 available school fund the largest sum or highest percentage of the
8 income derived by the bank from use of the securities of the
9 permanent school fund in the operation of a securities loan
10 program.

11 Sec. 43.019. ACCOUNTING TREATMENT OF CERTAIN EXCHANGES.
12 The council [~~State Board of Education~~] may account for the exchange
13 of permanent school fund securities in a closely related sale and
14 purchase transaction in a manner in which the gain or loss on the
15 sale is deferred as an adjustment to the book value of the security
16 purchased, if:

17 (1) the security sold and the security purchased have
18 a fixed maturity value;

19 (2) the council [~~board~~] is authorized by law to invest
20 the permanent school fund in the security purchased;

21 (3) the sale is made in clear contemplation of
22 reinvesting substantially all of the proceeds;

23 (4) substantially all of the proceeds are reinvested;

24 (5) the transaction is completed within a reasonable
25 time after the sale, not to exceed 30 business days; and

26 (6) the transaction results in an improvement in
27 effective income yield, taking into consideration the deferral of

1 any gain or loss on the sale.

2 SECTION 14. Sections 45.053(a), (c), and (d), Education
3 Code, are amended to read as follows:

4 (a) Except as provided by Subsection (d), the commissioner
5 may not approve bonds for guarantee if the approval would result in
6 the total amount of outstanding guaranteed bonds exceeding an
7 amount equal to 2-1/2 times the cost value of the permanent school
8 fund, as estimated by the Permanent School Fund Management Council
9 [~~board~~] and certified by the state auditor.

10 (c) The commissioner shall prepare and the Permanent School
11 Fund Management Council [~~board~~] shall adopt an annual report on the
12 status of the guaranteed bond program.

13 (d) The Permanent School Fund Management Council [~~board~~] by
14 rule may increase the limit prescribed by Subsection (a) to an
15 amount not to exceed five times the cost value of the permanent
16 school fund, provided that the increased limit is consistent with
17 federal law and regulations and does not prevent the bonds to be
18 guaranteed from receiving the highest available credit rating, as
19 determined by the council [~~board~~]. The council [~~board~~] shall at
20 least annually consider whether to change any limit in accordance
21 with this subsection. This subsection may not be construed in a
22 manner that impairs, limits, or removes the guarantee of bonds that
23 have been approved by the commissioner.

24 SECTION 15. Section 45.055(c), Education Code, is amended
25 to read as follows:

26 (c) The application must be accompanied by a fee set by rule
27 of the Permanent School Fund Management Council [~~board~~] in an

1 amount designed to cover the costs of administering the guarantee
2 program.

3 SECTION 16. Section 45.061(b), Education Code, is amended
4 to read as follows:

5 (b) In accordance with the rules of the Permanent School
6 Fund Management Council [~~board~~], the commissioner may authorize
7 reimbursement to the permanent school fund with interest in a
8 manner other than that provided by this section.

9 SECTION 17. Section 45.063, Education Code, is amended to
10 read as follows:

11 Sec. 45.063. RULES. The Permanent School Fund Management
12 Council [~~board~~] may adopt rules necessary for the administration of
13 the bond guarantee program.

14 SECTION 18. Section 51.412(a), Natural Resources Code, is
15 amended to read as follows:

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

25 (1) the total amount of money designated by Section
26 51.401 for deposit in the real estate special fund account of the
27 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
4 distribute to the available school fund or the Permanent School
5 Fund Management Council [~~State Board of Education~~] for investment
6 in the permanent school fund after making the 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
13 necessary to include in the report.

14 SECTION 19. Section 51.413, Natural Resources Code, is
15 amended 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, release
19 from the real estate special fund account funds previously
20 designated under Section 51.401 of this chapter or managed, used,
21 or encumbered under Section 51.402 or Section 51.4021 of this
22 chapter to be deposited in the State Treasury to the credit of:

23 (1) the available school fund; or

24 (2) the Permanent School Fund Management Council
25 [~~State Board of Education~~] for investment in the permanent school
26 fund.

27 SECTION 20. Sections 7.102(c)(31), 43.006(e), and

1 45.051(1), Education Code, are repealed.

2 SECTION 21. (a) Not later than February 1, 2010, the
3 appropriate appointing authorities specified in Section 43.0012,
4 Education Code, as added by this Act, shall appoint the initial
5 members of the Permanent School Fund Management Council as required
6 by that section.

7 (b) In appointing the initial members of the Permanent
8 School Fund Management Council:

9 (1) the governor shall appoint four persons as
10 follows:

11 (A) two persons for a term expiring February 1,
12 2011; and

13 (B) two persons for a term expiring February 1,
14 2013;

15 (2) the lieutenant governor shall appoint one person
16 for a term expiring February 1, 2013;

17 (3) the commissioner of the General Land Office shall
18 appoint one person for a term expiring February 1, 2011; and

19 (4) the comptroller shall appoint one person for a
20 term expiring February 1, 2013.

21 (c) The Permanent School Fund Management Council may not
22 take any action until all of the appointed members have taken
23 office.

24 SECTION 22. As soon as practicable after the date on which
25 all of the members of the Permanent School Fund Management Council
26 have taken office, but not later than May 1, 2010, the Permanent
27 School Fund Management Council, the State Board of Education, the

1 Texas Education Agency, and the comptroller shall develop and adopt
2 a memorandum of understanding that:

3 (1) identifies in detail the applicable powers and
4 duties of the State Board of Education that are being transferred to
5 the Permanent School Fund Management Council as a result of this
6 Act; and

7 (2) establishes a plan for the identification and
8 transfer of records, property, and unspent appropriations of the
9 State Board of Education that are used for purposes of managing the
10 permanent school fund to the Permanent School Fund Management
11 Council.

12 SECTION 23. (a) Not later than September 1, 2010:

13 (1) all full-time employees of the Texas Education
14 Agency who provide support to the State Board of Education relating
15 to the investment of the permanent school fund become employees of
16 the comptroller;

17 (2) all functions and activities performed by the
18 State Board of Education with respect to the management of the
19 permanent school fund that, as a result of this Act, are subject to
20 management by the Permanent School Fund Management Council are
21 transferred to the Permanent School Fund Management Council;

22 (3) a rule, form, policy, procedure, or decision
23 adopted by the State Board of Education relating to the management
24 of the permanent school fund that, as a result of this Act, is
25 subject to management by the Permanent School Fund Management
26 Council continues in effect as a rule, form, policy, procedure, or
27 decision of the Permanent School Fund Management Council until

1 amended or replaced by the Permanent School Fund Management
2 Council;

3 (4) a reference in law or an administrative rule to the
4 State Board of Education relating to the permanent school fund
5 that, as a result of this Act, is subject to management by the
6 Permanent School Fund Management Council is a reference to the
7 Permanent School Fund Management Council; and

8 (5) a complaint, investigation, or other proceeding
9 before the State Board of Education relating to the permanent
10 school fund that, as a result of this Act, is subject to management
11 by the Permanent School Fund Management Council is transferred
12 without change in status to the Permanent School Fund Management
13 Council.

14 (b) The Permanent School Fund Management Council assumes,
15 as appropriate and without a change in status, the position of the
16 State Board of Education under a contract or in an action or
17 proceeding to which the State Board of Education is a party and
18 that:

19 (1) relates to the permanent school fund; and

20 (2) as a result of this Act, is subject to management
21 by the Permanent School Fund Management Council.

22 SECTION 24. This Act takes effect December 1, 2009, but only
23 if the constitutional amendment proposed by the 81st Legislature,
24 Regular Session, 2009, creating the Permanent School Fund
25 Management Council is approved by the voters. If that amendment is
26 not approved by the voters, this Act has no effect.