

By: Howard of Travis

H.B. No. 2037

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the creation of the Permanent School Fund Management  
3 Council to manage the permanent school fund; providing a criminal  
4 penalty.

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

6 SECTION 1. Chapter 43, Education Code, is amended by adding  
7 Section 43.0011 and amending Sections 43.003, 43.0031, 43.0032, and  
8 43.0033 to read as follows:

9 Sec. 43.0011. PERMANENT SCHOOL FUND MANAGEMENT COUNCIL.

10 (a) The Permanent School Fund Management Council consists of the  
11 following nine members:

12 (1) two members appointed by majority vote of the  
13 legislative standing committee with primary jurisdiction over  
14 primary and secondary education in the house of representatives;

15 (2) two members appointed by majority vote of the  
16 legislative standing committee with primary jurisdiction over  
17 primary and secondary education in the senate;

18 (3) two members appointed by majority vote of the  
19 State Board of Education;

20 (4) one member appointed by the commissioner of  
21 education;

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

24 (6) one member appointed by the comptroller.

1       (b) Each member of the council must have substantial  
2 investment expertise or financial management experience.

3       (c) Council members serve staggered terms of four years,  
4 with the terms of five members expiring on February 1 of one  
5 odd-numbered year and the terms of four members expiring on  
6 February 1 of the next odd-numbered year.

7       (d) A vacancy on the council is filled for the unexpired  
8 portion of the member's term in the same manner as the original  
9 appointment.

10       (e) The members of the council shall elect the presiding  
11 officer of the council, who serves a term of two years expiring  
12 February 1 of each odd-numbered year. A member may serve more than  
13 one term as presiding officer.

14       (f) The council, by a majority vote of all members, shall  
15 appoint an executive administrator of the permanent school fund to  
16 serve at the will of the council.

17       (g) The council may adopt rules and operating procedures as  
18 necessary to administer the permanent school fund and perform other  
19 duties imposed on the council by law, except that a council rule or  
20 operating procedure may not take effect unless approved by the  
21 commissioner of education.

22       (h) The council shall file quarterly reports with the  
23 commissioner. The commissioner shall determine the information to  
24 be included in the report.

25       (i) The council may create standing committees to advise the  
26 council. The council shall create:

27               (1) an audit and ethics committee;

1           (2) a policy committee; and

2           (3) a risk committee.

3           (j) The council is subject to the open meetings law, Chapter  
4 551, Government Code, except that the council is not required to  
5 discuss an investment or potential investment with one or more  
6 council employees or with a third party in an open meeting to the  
7 same extent that the board of trustees of the Texas growth fund is  
8 provided an exception from the open meetings law under Section  
9 551.075, Government Code.

10           (k) The agency shall provide administrative support for the  
11 Permanent School Fund Management Council.

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

20           ~~[(1) securities, bonds, or other obligations issued,~~  
21 ~~insured, or guaranteed in any manner by the United States~~  
22 ~~Government or any of its agencies and in bonds issued by this state,~~

23           ~~[(2) obligations and pledges of The University of~~  
24 ~~Texas,~~

25           ~~[(3) corporate bonds, debentures, or obligations of~~  
26 ~~United States corporations of at least "A" rating,~~

27           ~~[(4) obligations of United States corporations that~~

1 ~~mature in less than one year and are of the highest rating available~~  
2 ~~at the time of investment;~~

3 ~~[(5) bonds issued, assumed, or guaranteed by the~~  
4 ~~Inter-American Development Bank, the International Bank of~~  
5 ~~Reconstruction and Development (the World Bank), the African~~  
6 ~~Development Bank, the Asian Development Bank, and the International~~  
7 ~~Finance Corporation;~~

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

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

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

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

26 ~~[(D) after the issuing political subdivision has~~  
27 ~~received the proceeds from the sales of the securities, the issuing~~

1 ~~agency is estopped to deny their validity, and the securities are~~  
2 ~~valid and binding obligations;~~

3 ~~[(7) preferred stocks and common stocks that the State~~  
4 ~~Board of Education considers proper investments for the permanent~~  
5 ~~school fund, subject to the following requirements:~~

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

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

19 ~~[(C) not more than one percent of the permanent~~  
20 ~~school fund may be invested in stock issued by one corporation and~~  
21 ~~not more than five percent of the voting stock of any one~~  
22 ~~corporation will be owned; and~~

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

1 States].

2 (b) The Permanent School Fund Management Council may not  
3 invest the permanent school fund in real estate, including  
4 commercial real estate, and may not compete with the School Land  
5 Board in any real estate investment market.

6 Sec. 43.0031. PERMANENT SCHOOL FUND ETHICS POLICY. (a) In  
7 addition to any other requirements provided by law, the Permanent  
8 School Fund Management Council [~~State Board of Education~~] shall  
9 adopt and enforce an ethics policy that provides standards of  
10 conduct relating to the management and investment of the permanent  
11 school fund. The ethics policy must include provisions that  
12 address the following issues as they apply to the management and  
13 investment of the permanent school fund and to persons responsible  
14 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 Permanent School Fund Management  
27 Council [~~State Board of Education~~];

1 (2) the commissioner;

2 (3) employees of the agency; and

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

6 (c) Not later than the 45th day before the date on which the  
7 Permanent School Fund Management Council ~~[board]~~ intends to adopt a  
8 proposed ethics policy or an amendment to or revision of an adopted  
9 ethics policy, the council ~~[board]~~ shall submit a copy of the  
10 proposed policy, amendment, or revision to the Texas Ethics  
11 Commission, ~~[and]~~ the state auditor, and the commissioner for  
12 review and comments. The council ~~[board]~~ shall consider any  
13 comments from the commission, ~~[or]~~ state auditor, or commissioner  
14 before adopting the proposed policy, and may not adopt the proposed  
15 policy or any change to the policy unless the policy or change is  
16 approved by the commissioner.

17 (d) The provisions of the ethics policy that apply to a  
18 person who provides services to the Permanent School Fund  
19 Management Council ~~[board]~~ relating to the management or investment  
20 of the permanent school fund must be based on the Code of Ethics and  
21 the Standards of Professional Conduct prescribed by the Association  
22 for Investment Management and Research or other ethics standards  
23 adopted by another appropriate professionally recognized entity.

24 (e) The Permanent School Fund Management Council ~~[board]~~  
25 shall ensure that applicable provisions of the ethics policy are  
26 included in any contract under which a person provides services to  
27 the council ~~[board]~~ relating to the management and investment of

1 the permanent school fund.

2           Sec. 43.0032. CONFLICTS OF INTEREST. (a) A member of the  
3 Permanent School Fund Management Council [~~State Board of~~  
4 ~~Education~~], the commissioner, an employee of the agency, or a  
5 person who provides services to the council [~~board~~] that relate to  
6 the management or investment of the permanent school fund who has a  
7 business, commercial, or other relationship that could reasonably  
8 be expected to diminish the person's independence of judgment in  
9 the performance of the person's responsibilities relating to the  
10 management or investment of the fund shall disclose the  
11 relationship in writing to the council [~~board~~].

12           (b) The Permanent School Fund Management Council [~~board~~] or  
13 the council's [~~board's~~] designee shall, in the ethics policy  
14 adopted under Section 43.0031, define the kinds of relationships  
15 that may create a possible conflict of interest.

16           (c) A person who files a statement under Subsection (a)  
17 disclosing a possible conflict of interest may not give advice or  
18 make decisions about a matter affected by the possible conflict of  
19 interest unless the Permanent School Fund Management Council  
20 [~~board~~], after consultation with the general counsel of the agency,  
21 expressly waives this prohibition. The council [~~board~~] may  
22 delegate the authority to waive the prohibition established by this  
23 subsection.

24           Sec. 43.0033. REPORTS OF EXPENDITURES. A consultant,  
25 advisor, broker, or other person providing services to the  
26 Permanent School Fund Management Council [~~State Board of Education~~]  
27 relating to the management and investment of the permanent school



1 fund shall file with the council [~~board~~] regularly, as determined  
2 by the council [~~board~~], a report that describes in detail any  
3 expenditure of more than \$50 made by the person on behalf of:

- 4 (1) a member of the council [~~board~~];  
5 (2) the commissioner; or  
6 (3) an employee of the agency or of a nonprofit  
7 corporation created under Section 43.006.

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

10 (a) The Permanent School Fund Management Council [~~board~~]  
11 shall prescribe forms for:

- 12 (1) statements of possible conflicts of interest and  
13 waivers of possible conflicts of interest under Section 43.0032;  
14 and  
15 (2) reports of expenditures under Section 43.0033.

16 (c) The Permanent School Fund Management Council [~~board~~]  
17 shall designate an employee of the agency to act as custodian of  
18 statements, waivers, and reports described by Subsection (a) for  
19 purposes of public disclosure.

20 SECTION 3. Chapter 43, Education Code, is amended by adding  
21 Sections 43.0035, 43.0036, and 43.0037 and amending Sections  
22 43.004, 43.005, and 43.0051 to read as follows:

23 Sec. 43.0035. APPEARANCE BY FORMER COUNCIL MEMBER. (a) A  
24 former member of the Permanent School Fund Management Council may  
25 not make any communication to or appearance before the council or a  
26 member, executive administrator, or employee of the council before  
27 the second anniversary of the date the individual ceased to be a

1 member of the council if the communication or appearance is made:

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

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

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

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

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

13 (c) The state auditor or the accounting firm selected to  
14 conduct the audit shall report the results of the audit directly to  
15 the Permanent School Fund Management Council.

16 (d) Not later than the 30th day after the date the Permanent  
17 School Fund Management Council receives a copy of the audit report,  
18 the council shall file a copy of the audit report with the governor,  
19 the lieutenant governor, the speaker of the house of  
20 representatives, the commissioner, and the comptroller.

21 Sec. 43.0037. REPORTS. (a) Before December 1 of each year,  
22 the Permanent School Fund Management Council shall prepare a  
23 written report detailing the council's investment and fiduciary  
24 practices and policies.

25 (b) Not later than January 1 of each year, the council shall  
26 distribute the report to the governor, the lieutenant governor, the  
27 speaker of the house of representatives, and the presiding officers

1 of the standing committees of each house of the legislature with  
2 primary jurisdiction over primary and secondary education.

3       Sec. 43.004. WRITTEN INVESTMENT OBJECTIVES; PERFORMANCE  
4 EVALUATION. (a) The Permanent School Fund Management Council  
5 [~~State Board of Education~~] shall develop written investment  
6 objectives concerning the investment of the permanent school fund.  
7 The objectives may address desired rates of return, risks involved,  
8 investment time frames, and any other relevant considerations.

9       (b) The Permanent School Fund Management Council [~~board~~]  
10 shall employ a well-recognized performance measurement service to  
11 evaluate and analyze the investment results of the permanent school  
12 fund. The service shall compare investment results with the  
13 written investment objectives developed by the council [~~board~~], and  
14 shall also compare the investment of the permanent school fund with  
15 the investment of other public and private funds.

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

23       (b) The Permanent School Fund Management Council [~~State~~  
24 ~~Board of Education~~] by rule may delegate a power or duty relating to  
25 the investment of the permanent school fund to a committee,  
26 officer, employee, or other agent of the council [~~board~~].

27       Sec. 43.0051. TRANSFERS TO REAL ESTATE SPECIAL FUND ACCOUNT

1 OF THE PERMANENT SCHOOL FUND. The Permanent School Fund Management  
2 Council [~~State Board of Education~~] may transfer funds from the  
3 portion of the permanent school fund managed by the council [~~State~~  
4 ~~Board of Education~~] to the real estate special fund account of the  
5 permanent school fund if the council [~~State Board of Education~~]  
6 determines, using the standard of care set forth in Subsection (f),  
7 Section 5, Article VII, Texas Constitution, that such transfer is  
8 in the best interest of the permanent school fund.

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

11 (a) The Permanent School Fund Management Council [~~State~~  
12 ~~Board of Education~~] may delegate investment authority for the  
13 investment of the permanent school fund to the same extent as an  
14 institution with respect to an institutional fund under Chapter  
15 163, Property Code.

16 (b) The Permanent School Fund Management Council [~~board~~]  
17 may enter into a contract with a nonprofit corporation for the  
18 corporation to invest funds under the control and management of the  
19 council [~~board~~], including the permanent school fund, as designated  
20 by the council [~~board~~]. The corporation may not engage in any  
21 business other than investing funds designated by the council  
22 [~~board~~] under the contract.

23 (c) The Permanent School Fund Management Council [~~board~~]  
24 must approve the:

25 (1) articles of incorporation and bylaws of the  
26 corporation and any amendment to the articles of incorporation or  
27 bylaws;

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

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

4           (4) code of ethics of the corporation.

5           (d) The board of directors of the corporation must be  
6 members of the Permanent School Fund Management Council [~~State~~  
7 ~~Board of Education~~].

8           (f) The corporation shall file quarterly reports with the  
9 Permanent School Fund Management Council [~~State Board of Education~~]  
10 concerning matters required by the council [~~board~~].

11           SECTION 5. Section 43.007, Education Code, is amended to  
12 read as follows:

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

14 (a) The Permanent School Fund Management Council [~~State Board of~~  
15 ~~Education~~] may authorize the purchase of all of the types of  
16 securities in which it is authorized by law to invest the permanent  
17 school fund in either registered or negotiable form. The council  
18 [~~board~~] may authorize the reissue of those securities held at any  
19 time for the account of the permanent school fund in either  
20 registered or negotiable form. The council [~~State Board of~~  
21 ~~Education~~] may authorize the sale of any of the securities held for  
22 the account of the permanent school fund and reinvest the proceeds  
23 of sale for the fund and may authorize the exchange of any of the  
24 securities held for the account of the permanent school fund.

25           (b) In making purchases, sales, exchanges, and reissues,  
26 the Permanent School Fund Management Council [~~State Board of~~  
27 ~~Education~~] shall exercise the judgment and care prescribed by

1 Section 5(f), Article VII, Texas Constitution [~~under the~~  
2 ~~circumstances then prevailing that persons of ordinary prudence,~~  
3 ~~discretion, and intelligence exercise in the management of their~~  
4 ~~own affairs not in regard to speculation but in regard to the~~  
5 ~~permanent disposition of their funds, considering the probable~~  
6 ~~income as well as the probable safety of their capital].~~

7 (c) When any securities are sold, reissued, or exchanged as  
8 provided by Subsection (a), the custodian of the securities shall  
9 deliver the securities sold, reissued, or exchanged in accordance  
10 with the directions of the Permanent School Fund Management Council  
11 [~~State Board of Education~~].

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

14 (a) The Permanent School Fund Management Council [~~State~~  
15 ~~Board of Education~~] may authorize the governing body of any  
16 political subdivision in this state to pay off and discharge, at any  
17 interest paying date whether the bonds are matured or not, all or  
18 any part of any outstanding bond indebtedness owned by the  
19 permanent school fund.

20 (b) The governing body of a political subdivision desiring  
21 to pay off and discharge any bonded indebtedness owned by the fund  
22 shall apply in writing to the Permanent School Fund Management  
23 Council [~~State Board of Education~~], not later than the 30th day  
24 before any interest paying date on the bonds, describing the bonds  
25 or part of the bonds it desires to pay off and discharge. The  
26 application must be accompanied by an affidavit stating that only  
27 tax money collected from a tax levy made for the specific purpose of

1 providing a sinking fund and paying interest on the particular  
2 bonds to be redeemed will be spent in redeeming, taking up, or  
3 paying off the bonds.

4 (c) The Permanent School Fund Management Council [~~State~~  
5 ~~Board of Education~~], on receiving the application and affidavit,  
6 shall take action on them in the manner it considers best and shall  
7 notify the applicant whether the application is refused or granted  
8 in whole or in part.

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

11 (a) If interest or principal has not been paid for two years  
12 or more on any bonds issued by any school district and held by the  
13 permanent school fund, the Permanent School Fund Management Council  
14 [~~State Board of Education~~] may direct the commissioner to:

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

17 (2) if the district furnishes to the council [~~State~~  
18 ~~Board of Education~~] satisfactory proof that the district's taxing  
19 ability is insufficient, direct the commissioner to require the  
20 district to:

21 (A) exhaust all legal remedies in collecting  
22 delinquent taxes; and

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

25 (c) As long as any school district is delinquent in its  
26 payments of principal or interest on any of its bonds owned by the  
27 permanent school fund, the Permanent School Fund Management Council

1 [~~State Board of Education~~] may specify the method of crediting  
2 payments to the state made by the district as to principal and  
3 interest.

4 (d) The comptroller may not issue any warrant from the  
5 foundation school fund to or for the benefit of any district that  
6 has been for as long as two years in default in the payment of  
7 principal or interest on any security owned by the permanent school  
8 fund until the Permanent School Fund Management Council [~~State~~  
9 ~~Board of Education~~] certifies that the district has satisfactorily  
10 complied with the appropriate provisions of this section, in which  
11 event the comptroller shall resume making payments to or for the  
12 benefit of the district, including the making of pretermitted  
13 payments.

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

16 (a) In compliance with this section, the Permanent School  
17 Fund Management Council or State Board of Education, as applicable,  
18 may revise, readjust, modify, refinance, or refund defaulted bonds  
19 issued by any school district in this state and owned by either the  
20 permanent school fund or the available school fund.

21 (b) Application must be made to the Permanent School Fund  
22 Management Council or State Board of Education by the district that  
23 issued the bonds and must show that:

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

26 (2) taxable valuation has decreased to such an extent  
27 that a full application of the proceeds of the voted authorized tax



1 authorized to be levied on the \$100 taxable property valuation will  
2 not meet interest and principal annually maturing on the bonds.

3 (c) The Permanent School Fund Management Council or State  
4 Board of Education may effect a refunding of the debt due and to  
5 become due only if the council or board, as applicable, finds that:

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

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

15 (3) the district for a period of at least five years  
16 before applying to the council or board [~~State Board of Education~~]  
17 for refunding has levied a tax of 50 cents on the \$100 of taxable  
18 valuation of property in the district, and that despite such  
19 levies, the aggregate amount due the council or board [~~State Board~~  
20 ~~of Education~~] exceeds the aggregate amount due at the beginning of  
21 the period;

22 (4) the district has not authorized and sold  
23 additional bonds during the five-year period immediately preceding  
24 the application; and

25 (5) the district has in good faith endeavored to pay  
26 its debt in accordance with the contract evidenced by the bonds held  
27 for the account of the permanent school fund or the available school

1 fund.

2 (d) If the conditions specified by Subsection (c) are found  
3 to exist, the district is, for purposes of this section, insolvent,  
4 and the Permanent School Fund Management Council or State Board of  
5 Education may exchange the bonds, interest coupons, and other  
6 evidences of indebtedness for new refunding bonds of the district  
7 issued in compliance with the following:

8 (1) the principal amount of the refunding bonds may  
9 not be less than the total amount of the bonds, matured interest  
10 coupons, accrued interest, and interest on delinquent interest then  
11 actually due to the permanent school fund or the available school  
12 fund; and

13 (2) the rate of interest to be borne by the refunding  
14 bonds may be lower than that borne by the bonds to be refunded if in  
15 consideration of the interest reduction the district agrees to levy  
16 a tax each year for a period of 40 years at a rate sufficient to  
17 produce annually a sum equal to 90 percent of the amount that can be  
18 calculated by the levy of a tax at the rate of 50 cents on the \$100  
19 of taxable valuation of property as determined by the latest  
20 approved tax roll of the district, and in determining the rate of  
21 interest to be borne by the refunding bonds, the council or board  
22 [~~State Board of Education~~] shall be governed by the following:

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

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

5 (C) the rate of interest of refunding bonds to be  
6 received in exchange for bonds owned by the available school fund  
7 may be set by the council or board [~~State Board of Education~~] at any  
8 rate the council or board considers feasible, and the refunding  
9 bonds may, at the discretion of the council or board [~~State Board of~~  
10 ~~Education~~], be made non-interest bearing to a date fixed by the  
11 council or board.

12 (e) The Permanent School Fund Management Council or State  
13 Board of Education may not make a revision, readjustment,  
14 modification, refinancing, or refunding that will release or  
15 extinguish any debt or obligation then due and payable to the  
16 permanent school fund or to the available school fund.

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

19 (e) The Permanent School Fund Management Council [~~State~~  
20 ~~Board of Education~~] may accept refunding bonds in lieu of either  
21 matured or unmatured bonds held for the benefit of the permanent  
22 school fund if the rate of interest on the new refunding bonds is at  
23 least the same rate as that of the bonds being refunded.

24 (f) Refunding bonds issued with the approval or pursuant to  
25 a refunding agreement with the Permanent School Fund Management  
26 Council or the State Board of Education in compliance with either  
27 this section or Section 43.011 shall, on the order of the council or

1 board [~~State Board of Education~~], be exchanged by the comptroller  
2 for the defaulted obligations they have been issued to refund.

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

5 (a) On or before July 1 of each year, the comptroller shall  
6 estimate the amount of the available school fund receivable from  
7 every source during the following school year and report the  
8 estimate to the Permanent School Fund Management Council and the  
9 State Board of Education.

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

12 (b) The comptroller shall provide the Permanent School Fund  
13 Management Council and the State Board of Education with the  
14 reports specified by Subsection (a) and with additional reports  
15 concerning those funds requested by the Permanent School Fund  
16 Management Council or the State Board of Education.

17 (e) On order of the Permanent School Fund Management Council  
18 or the State Board of Education, as applicable, the comptroller  
19 shall exchange or accept refunding bonds in lieu of:

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

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

26 (3) defaulted obligations of any school district of  
27 this state held for the benefit of the permanent school fund or the

1 available school fund if the refunding bonds are issued in  
2 compliance with Section 43.011; or

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

7 (f) The comptroller shall be the custodian of all  
8 [~~securities enumerated in Section 43.003(6) and of other~~]  
9 securities as designated by the Permanent School Fund Management  
10 Council or the State Board of Education in which the school funds of  
11 the state are invested. The comptroller shall keep those  
12 securities in the comptroller's custody until paid off, discharged,  
13 delivered as required by the council or the board, as applicable  
14 [~~State Board of Education~~], or otherwise disposed of by the proper  
15 authorities of the state, and on the proper installment of any  
16 interest or dividend, shall see that the proper credit is given, and  
17 the coupons on bonds, when paid, shall be separated from the bonds  
18 and cancelled by the comptroller.

19 SECTION 12. Section 43.017, Education Code, is amended to  
20 read as follows:

21 Sec. 43.017. USE OF COMMERCIAL BANKS AS AGENTS FOR  
22 COLLECTION OF INCOME FROM PERMANENT SCHOOL FUND INVESTMENTS.

23 (a) The Permanent School Fund Management Council [~~State Board of~~  
24 ~~Education~~] may contract with one or more commercial banks to  
25 receive payments of dividends and interest on securities in which  
26 the state permanent school funds are invested and transmit that  
27 money with identification of its source to the comptroller for the

1 account of the available school fund by the fastest available  
2 means.

3 (b) In choosing each commercial bank with which to contract  
4 as authorized by Subsection (a), the Permanent School Fund  
5 Management Council [~~State Board of Education~~] shall assure itself  
6 of:

7 (1) the financial stability of the bank;

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

11 (3) the experience and reliability of the bank in  
12 acting as agent for others in the similar collection and  
13 expeditious remittance of money; and

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

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

20 Sec. 43.018. PARTICIPATION IN FULLY SECURED SECURITIES LOAN  
21 PROGRAMS. (a) The Permanent School Fund Management Council [~~State~~  
22 ~~Board of Education~~] may contract with a commercial bank to serve  
23 both as a custodian of securities in which the state permanent  
24 school funds are invested and to lend those securities, under the  
25 conditions prescribed by Subsection (b), to securities brokers and  
26 dealers on short-term loan.

27 (b) The Permanent School Fund Management Council [~~State~~

1 ~~Board of Education~~] may contract with a commercial bank pursuant to  
2 this section only if:

3 (1) the bank is located in a city having a major stock  
4 exchange;

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

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

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

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

23 (6) the bank will speedily collect and remit on the day  
24 of collection by the fastest available means to the comptroller any  
25 dividends and interest collectible by it on securities held by it as  
26 custodian, together with identification as to the source of the  
27 dividends or interest; and

1           (7) the bank is the bank agreeing to pay to the  
2 available school fund the largest sum or highest percentage of the  
3 income derived by the bank from use of the securities of the  
4 permanent school fund in the operation of a securities loan  
5 program.

6           Sec. 43.019. ACCOUNTING TREATMENT OF CERTAIN EXCHANGES.

7 The Permanent School Fund Management Council [~~State Board of~~  
8 ~~Education~~] may account for the exchange of permanent school fund  
9 securities in a closely related sale and purchase transaction in a  
10 manner in which the gain or loss on the sale is deferred as an  
11 adjustment to the book value of the security purchased, if:

12           (1) the security sold and the security purchased have  
13 a fixed maturity value;

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

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

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

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

21           (6) the transaction results in an improvement in  
22 effective income yield, taking into consideration the deferral of  
23 any gain or loss on the sale.

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

26           (a) Except as provided by Subsection (d), the commissioner  
27 may not approve bonds for guarantee if the approval would result in



1 the total amount of outstanding guaranteed bonds exceeding an  
2 amount equal to 2-1/2 times the cost value of the permanent school  
3 fund, as estimated by the Permanent School Fund Management Council  
4 [~~board~~] and certified by the state auditor.

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

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

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

21 (c) The application must be accompanied by a fee set by rule  
22 of the Permanent School Fund Management Council [~~board~~] in an  
23 amount designed to cover the costs of administering the guarantee  
24 program.

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

27 (b) In accordance with the rules of the Permanent School

1 Fund Management Council [~~board~~], the commissioner may authorize  
2 reimbursement to the permanent school fund with interest in a  
3 manner other than that provided by this section.

4 SECTION 17. Section 45.063, Education Code, is amended to  
5 read as follows:

6 Sec. 45.063. RULES. The Permanent School Fund Management  
7 Council [~~board~~] may adopt rules necessary for the administration of  
8 the bond guarantee program, subject to Section 43.0011(g).

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

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

20 (1) the total amount of money designated by Section  
21 51.401 for deposit in the real estate special fund account of the  
22 permanent school fund that the board intends to invest;

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

25 (3) the amount of money the board expects to  
26 distribute to the available school fund or the Permanent School  
27 Fund Management Council [~~State Board of Education~~] for investment

1 in the permanent school fund after making the investments;

2 (4) the distribution of the board's investments by  
3 county;

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

7 (6) any other information the board considers  
8 necessary to include in the report.

9 SECTION 19. Section 51.413, Natural Resources Code, is  
10 amended to read as follows:

11 Sec. 51.413. TRANSFERS FROM THE REAL ESTATE SPECIAL FUND  
12 ACCOUNT TO THE AVAILABLE SCHOOL FUND AND THE PERMANENT SCHOOL  
13 FUND. The board may, by a resolution adopted at a regular meeting,  
14 release from the real estate special fund account funds previously  
15 designated under Section 51.401 of this chapter or managed, used,  
16 or encumbered under Section 51.402 or Section 51.4021 of this  
17 chapter to be deposited in the State Treasury to the credit of:

18 (1) the available school fund; or

19 (2) the Permanent School Fund Management Council  
20 [~~State Board of Education~~] for investment in the permanent school  
21 fund.

22 SECTION 20. Sections 7.102(c)(31), 45.006(e), and  
23 45.051(1), Education Code, are repealed.

24 SECTION 21. (a) Not later than January 1, 2010, the  
25 appropriate appointing authorities specified in Section 43.0011,  
26 Education Code, as added by this Act, shall appoint the initial  
27 members of the Permanent School Fund Management Council as required

1 by that section.

2 (b) In appointing the initial members of the Permanent  
3 School Fund Management Council:

4 (1) the House Public Education Committee shall appoint  
5 two persons as follows:

6 (A) one person for a term expiring February 1,  
7 2011; and

8 (B) one person for a term expiring February 1,  
9 2013;

10 (2) the Senate Education Committee shall appoint two  
11 persons as follows:

12 (A) one person for a term expiring February 1,  
13 2011; and

14 (B) one person for a term expiring February 1,  
15 2013;

16 (3) the State Board of Education shall appoint two  
17 persons as follows:

18 (A) one person for a term expiring February 1,  
19 2011; and

20 (B) one person for a term expiring February 1,  
21 2013;

22 (4) the commissioner of education shall appoint one  
23 person for a term expiring February 1, 2011;

24 (5) the commissioner of the General Land Office shall  
25 appoint one person for a term expiring February 1, 2011; and

26 (6) the comptroller shall appoint one person for a  
27 term expiring February 1, 2013.

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

4           SECTION 22. As soon as practicable after the date on which  
5 all of the members of the Permanent School Fund Management Council  
6 have taken office, but not later than March 1, 2010, the Permanent  
7 School Fund Management Council and the State Board of Education  
8 shall develop and adopt a memorandum of understanding that:

9           (1) identifies in detail the applicable powers and  
10 duties of the State Board of Education that are being transferred to  
11 the Permanent School Fund Management Council as a result of this  
12 Act; and

13           (2) establishes a plan for the identification and  
14 transfer of records, property, and unspent appropriations of the  
15 State Board of Education that are used for purposes of managing the  
16 permanent school fund to the Permanent School Fund Management  
17 Council.

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

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

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

1 Council continues in effect as a rule, form, policy, procedure, or  
2 decision of the Permanent School Fund Management Council until  
3 amended or replaced by the Permanent School Fund Management  
4 Council;

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

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

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

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

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

24 SECTION 24. This Act takes effect January 1, 2010, but only  
25 if the constitutional amendment proposed by the 81st Legislature,  
26 Regular Session, 2009, creating the Permanent School Fund  
27 Management Council is approved by the voters. If that amendment is

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1 not approved by the voters, this Act has no effect.