By:  Watson, et al. S.B. No. 1659

(In the Senate - Filed March 6, 2019; March 14, 2019, read first time and referred to Committee on Education; April 29, 2019, reported adversely, with favorable Committee Substitute by the following vote: Yeas 9, Nays 0; April 29, 2019, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Taylor            X

Lucio                          X

Bettencourt          X

Campbell             X

Fallon               X

Hall                 X

Hughes                         X

Paxton               X

Powell               X

Watson               X

West                 X

COMMITTEE SUBSTITUTE FOR S.B. No. 1659 By:  Watson

A BILL TO BE ENTITLED

AN ACT

relating to the management of the permanent school fund by the School Land Board and the State Board of Education and a study regarding distributions from the permanent school fund to the available school fund.

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

SECTION 1.  Chapter 43, Education Code, is amended by adding Section 43.0052 to read as follows:

Sec. 43.0052.  QUARTERLY REPORTS. Each quarter, the State Board of Education shall provide to the School Land Board a financial report on the portion of the permanent school fund assets and funds for which the State Board of Education is responsible. The report must include:

(1)  actual allocation and target allocation of assets;

(2)  a summary of investment types;

(3)  asset and sector performance; and

(4)  benchmark performance.

SECTION 2.  Subchapter C, Chapter 32, Natural Resources Code, is amended by adding Section 32.068 to read as follows:

Sec. 32.068.  QUARTERLY REPORTS. Each quarter, the board shall provide to the State Board of Education a financial report on the portion of the permanent school fund assets and funds for which the board is responsible. The report must include:

(1)  actual allocation and target allocation of assets;

(2)  a summary of investment types;

(3)  asset and sector performance; and

(4)  benchmark performance.

SECTION 3.  Section 51.011, Natural Resources Code, is amended by amending Subsections (a) and (a-1) and adding Subsection (a-3) to read as follows:

(a)  Any land, [~~mineral or royalty interest,~~] real estate investment, or other interest, including revenue received from those sources, and any mineral or royalty interest that is set apart to the permanent school fund under the constitution and laws of this state together with the mineral estate in riverbeds, channels, and the tidelands, including islands, shall be subject to the sole and exclusive management and control of the [~~school land~~] board and the commissioner under the provisions of this chapter and other applicable law.

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

(a-3)  All revenue received from mineral or royalty interests described by Subsection (a), including bonus payments, surface lease revenues, royalties, and any other type of revenue received from those interests, shall be transferred each month to the State Board of Education for investment in the permanent school fund.

SECTION 4.  Section 51.401, Natural Resources Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a)  The board may designate money [~~funds~~] received from any land, [~~mineral or royalty interest,~~] real estate investment, or other interest, including revenue received from those sources, that is set apart to the permanent school fund under the constitution and laws of this state together with the mineral estate in riverbeds, channels, and the tidelands, including islands, for deposit in the real estate special fund account of the permanent school fund in the State Treasury to be used by the board as provided by this subchapter.

(c)  Each quarter, the board shall provide a cashflow report to the State Board of Education that specifies the source and uses of all money designated under Subsection (a) and the amount of time that money from each specific source has remained in the real estate special fund account.

SECTION 5.  Section 51.402(b), Natural Resources Code, is amended to read as follows:

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

SECTION 6.  Section 51.412, Natural Resources Code, is amended to read as follows:

Sec. 51.412.  REPORTS TO LEGISLATURE. [~~(a)~~] Not later than October [~~September~~] 1 of each [~~even-numbered~~] year, the board shall submit to the legislature a report that includes[~~, specifically and in detail, assesses the direct and indirect economic impact, as anticipated by the board, of the investment of funds designated under Section 51.401 for deposit in the real estate special fund account of the permanent school fund.  The board may not disclose information under this section that is confidential under applicable state or federal law.  The report must include~~] the following information for the most recent state fiscal year:

(1)  the total amount of money received under this chapter, the sources of that money, and the amount designated under [~~by~~] Section 51.401 for deposit in the real estate special fund account of the permanent school fund that the board intends to use for each purpose authorized under that section [~~invest~~];

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

[~~(3)~~]  the amount of money the board expects to distribute to the available school fund or the State Board of Education for investment in the permanent school fund under Section 51.413 [~~after making the investments~~];

(3) [~~(4)~~]  the distribution by location of investments, including the actual or expected revenues from the investments, that were acquired by the board for the use and benefit of the permanent school fund in the most recent state fiscal year [~~of the board's investments by county~~];

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

(4) [~~(6)~~]  any other information the board considers necessary to include in the report.

[~~(b)  Not later than January 1 of each odd-numbered year, the board shall submit to the legislature a report that assesses the return and economic impact of the investments reported to the legislature before the preceding regular legislative session.~~]

SECTION 7.  Section 51.413, Natural Resources Code, is amended to read as follows:

Sec. 51.413.  TRANSFERS FROM THE REAL ESTATE SPECIAL FUND ACCOUNT TO THE AVAILABLE SCHOOL FUND AND THE PERMANENT SCHOOL FUND. (a)  The board shall [~~may~~], by a resolution made in accordance with this section and adopted at a regular meeting, release from the real estate special fund account funds previously designated under Section 51.401 or managed, used, or encumbered under Section 51.402 or Section 51.4021 to be deposited in the State Treasury to the credit of:

(1)  the available school fund; or

(2)  the State Board of Education for investment in the permanent school fund.

(b)  The board shall adopt rules to establish the procedure that will be used by the board to determine the dates that transfers [~~date a transfer~~] will be made [~~and the amount of money that will be transferred~~] to the available school fund or to the State Board of Education for investment in the permanent school fund from the real estate special fund account as provided by this section [~~Subsection (a)~~].

(c)  On the dates established by rules adopted under Subsection (b), the board shall release from the real estate special fund account a total amount for the state fiscal biennium that equals the amount determined under Subsection (d)(3). The board may release a higher amount if authorized under the Texas Constitution.

(d)  Not later than July 31 of each even-numbered year, the chief investment officer of the land office, or other land office employee designated by the commissioner, shall determine the following:

(1)  an amount based on the average market value, for a 16-calendar-quarter measurement period ending on March 31 of that year, of the permanent school fund discretionary real assets investments and cash derived from property belonging to the fund and managed by the board that is determined by averaging the market value of those investments and cash on the last day of each of the calendar quarters in that 16-calendar-quarter measurement period, multiplying that average market value by 0.06, and rounding the result up or down to the nearest $5 million increment;

(2)  an amount based on the average quarterly change of the investments and cash described by Subdivision (1), for the 16-calendar-quarter measurement period ending on March 31 of that year, that is determined by averaging the change in market value from the last day of a calendar quarter to the last day of the subsequent calendar quarter, multiplying that average quarterly change by four, and rounding the result up or down to the nearest $5 million increment; and

(3)  the sum of the amounts determined under Subdivisions (1) and (2).

SECTION 8.  Section 51.4131, Natural Resources Code, is amended to read as follows:

Sec. 51.4131.  REPORT ON ANTICIPATED TRANSFER OF FUNDS; DEADLINE. (a) Not later than September 1 of each even-numbered year, the board shall submit to the legislature, comptroller, State Board of Education, and Legislative Budget Board a report that, specifically and in detail, states the date a transfer will be made and the amount of money the board will transfer during the subsequent state fiscal biennium from the real estate special fund account of the permanent school fund established under Section 51.401 to the available school fund or the State Board of Education for investment in the permanent school fund.

(b)  The board shall make any transfer described in a report under Subsection (a) not later than September 1 of the next even-numbered year.

SECTION 9.  Subchapter I, Chapter 51, Natural Resources Code, is amended by adding Section 51.414 to read as follows:

Sec. 51.414.  PERMANENT SCHOOL FUND LIQUID ACCOUNT. (a) The permanent school fund liquid account is established as an account in the permanent school fund in the State Treasury to be used by the board and the State Board of Education as provided by this section.

(b)  Each quarter, the board shall hold a meeting and adopt a resolution to release from the real estate special fund account funds designated under Section 51.401 that are not being used for a purpose listed in Section 51.402(a) and are not required for the board's cash needs for the 90-day period following the date of the meeting, to be deposited to the credit of the permanent school fund liquid account in the State Treasury.

(c)  The State Board of Education may invest funds in the permanent school fund liquid account. The investments may be made only in liquid assets or markets, and the account is managed in the same manner that the permanent school fund is managed by the State Board of Education.

(d)  Investment income and capital gains derived from funds in the permanent school fund liquid account shall be deposited in the State Treasury to the credit of the State Board of Education for investment in the permanent school fund. This subsection does not require a deposit if the value of the assets held in the permanent school fund liquid account is below cost value.

(e)  The State Board of Education may use funds in the permanent school fund liquid account to pay for administrative costs associated with implementing this section, including costs associated with contracts for professional investment management, investment advisory services, or custodial services.

(f)  The board shall provide to the State Board of Education in each quarterly report required by Section 32.068 the board's anticipated cash needs for the six-month period following the date of the report, to allow the State Board of Education to ensure that the board's cash needs may be met as provided by Subsection (g). The board or land office must provide notice to the State Board of Education of a revision to the board's anticipated cash needs provided in the most recent report not later than the next business day following the date the board or land office determines a revision is necessary.

(g)  Not later than the 10th business day after the date of a request of the board, the State Board of Education shall release from the permanent school fund liquid account funds to be deposited to the credit of the real estate special fund account in the State Treasury in an amount requested by the board that is consistent with the reports provided under Subsection (f).

SECTION 10.  (a) The legislature finds that the periodic examination of distributions made from the permanent school fund to the available school fund is necessary for the effective management of permanent school fund investments.

(b)  The Texas Education Agency shall conduct a study regarding distributions from the permanent school fund to the available school fund. The study must:

(1)  examine historical patterns in the real value of distributions made from all assets and revenues of the permanent school fund and historical patterns in the real value of permanent school fund assets relative to the number of students enrolled in the public education system;

(2)  analyze the impact of underlying data and methodological assumptions on actual and projected distributions from the permanent school fund;

(3)  seek input from state government officials involved in public education policy or in the appropriation of state funds to support the public education system;

(4)  examine current and alternative approaches to balance the needs and interests of present and future beneficiaries of the permanent school fund and the available school fund;

(5)  develop options to maximize available revenue distributions for the education of students enrolled in the public education system while preserving the permanent school fund for future generations; and

(6)  consider any other subjects relevant to the purpose of the study.

(c)  The Texas Education Agency may contract for investment management expertise for the purpose of implementing this section.

(d)  Not later than June 1, 2020, the Texas Education Agency shall prepare and submit a report regarding the results of the study to the governor, the State Board of Education, the Legislative Budget Board, the lieutenant governor, the speaker of the house of representatives, and each legislative standing committee with primary jurisdiction over public education.

(e)  This section expires January 1, 2021.

SECTION 11.  This Act takes effect September 1, 2019.

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