

By: King of Hemphill

H.B. No. 3467

A BILL TO BE ENTITLED

AN ACT

relating to the acquisition and management of certain real property assets by the School Land Board for the use and benefit of the permanent school fund and the transfer of certain permanent school fund assets from the control of the School Land Board to the State Board of Education.

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

SECTION 1. Section 51.011, Natural Resources Code, is amended by amending Subsection (a) and adding Subsections (a-3) and (a-4) to read as follows:

(a) Any land or ~~or~~ mineral or royalty interest ~~[, real estate investment, or other interest, including revenue received from those sources,~~] that is set apart to the permanent school fund under the constitution and laws of this state together with the mineral estate in riverbeds, channels, and the tidelands, including islands, shall be controlled, sold, and leased by ~~[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-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

1 fund.

2 (a-4) Revenue received from land described by Subsection  
3 (a) that is not required to be transferred under Subsection (a-3)  
4 shall remain with the board.

5 SECTION 2. Section 51.401, Natural Resources Code, is  
6 amended by amending Subsection (a) and adding Subsections (c), (d),  
7 and (d-1) to read as follows:

8 (a) The board may designate money ~~[funds]~~ received from the  
9 sale of real property or [any land,] mineral or royalty interests  
10 ~~[interest, real estate investment, or other interest, including~~  
11 ~~revenue received from those sources, that is]~~ set apart to the  
12 permanent school fund under the constitution and laws of this state  
13 together with the mineral estate in riverbeds, channels, and the  
14 tidelands, including islands, for deposit in the real estate  
15 special fund account of the permanent school fund in the State  
16 Treasury to be used by the board to acquire fee or lesser interests  
17 in real property, including mineral or royalty interests, for the  
18 use and benefit of the permanent school fund, as provided by Section  
19 51.402 ~~[this subchapter]~~.

20 (c) Money received from the sale of real property, including  
21 mineral or royalty interests, and designated under this subchapter  
22 for the acquisition of real property, including mineral or royalty  
23 interests, must be used by the board not later than two years after  
24 the date of the sale from which the money is derived.

25 (d) Any money from a specific sale that remains in the real  
26 estate special fund account for longer than two years shall be  
27 immediately deposited in the State Treasury to the credit of the

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

3 (d-1) Each quarter, the board shall provide a cashflow  
4 report to the State Board of Education that specifies the use of all  
5 funds designated under Subsection (a) and the amount of time that  
6 money from each specific sale has remained in the real estate  
7 special fund account.

8 SECTION 3. Section 51.402, Natural Resources Code, is  
9 amended by amending Subsections (a) and (b) and adding Subsection  
10 (a-1) to read as follows:

11 (a) The board may use the money designated under Section  
12 51.401 for any of the following purposes:

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

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

16 (3) to acquire, as public school land, interests in  
17 real property for biological, commercial, geological, cultural, or  
18 recreational purposes;

19 (4) to acquire mineral or ~~and~~ royalty interests for  
20 the use and benefit of the permanent school fund; or

21 (5) to prudently manage any internally managed  
22 commercial real estate held or acquired by the board on or before  
23 August 31, 2019, subject to Subsection (a-1) [to protect, maintain,  
24 ~~or enhance the value of public school land,~~

25 ~~[(6) to acquire interests in real estate,~~

26 ~~[(7) to pay reasonable fees for professional services~~  
27 ~~related to a permanent school fund investment, or~~

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

(a-1) Not later than September 1, 2023, the board shall divest itself of all interests in assets described by Subsection (a)(5), except any asset for which divestment by that date would cause substantial loss to the permanent school fund. The board shall divest itself of an asset described by Subsection (a)(5) that is not divested on or before September 1, 2023, as soon as prudently practicable, and the board shall take direction from the State Board of Education regarding the timing of the divestment of that asset with respect to the best interest of the permanent school fund.

(b) Before acquiring real property, including mineral or royalty interests, ~~[using funds]~~ under Subsection (a), the board must determine, using the prudent investor standard, that the acquisition is ~~[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 4. Sections [51.4021](#)(a) and (b), Natural Resources Code, are amended to read as follows:

(a) The board may appoint investment managers, consultants,

1 or advisors to invest or assist the board in investing the money  
2 designated under Section [51.401](#), to the extent the investment of  
3 the money is authorized under this chapter, by contracting for  
4 professional investment management or investment advisory services  
5 with one or more organizations that are in the business of managing  
6 or advising on the management of real estate investments.

7 (b) To be eligible for appointment under this section, an  
8 investment manager, consultant, or advisor shall agree to abide by  
9 the policies, requirements, or restrictions, including ethical  
10 standards and disclosure policies and criteria for determining the  
11 quality of investments and for the use of standard rating services,  
12 that the board adopts for real estate investments of the permanent  
13 school fund. Money designated under Section [51.401](#) may only be  
14 invested to the extent the board has the authority under this  
15 chapter to make the investment, and may not be invested in a real  
16 estate investment trust, as defined by Section [200.001](#), Business  
17 Organizations Code, or otherwise invested in a manner not  
18 authorized under this chapter.

19 SECTION 5. Sections [51.408](#)(a), (b), (d), and (e), Natural  
20 Resources Code, are amended to read as follows:

21 (a) In addition to any other requirements provided by law,  
22 the board shall adopt and enforce an ethics policy that provides  
23 standards of conduct relating to the management and investment of  
24 the funds designated for that purpose under Section [51.401](#). The  
25 ethics policy must include provisions that address the following  
26 issues as they apply to the management and investment of the funds  
27 and to persons responsible for acquiring or managing real property

1 or mineral or royalty interests of the permanent school fund or  
2 [and] investing the funds to the extent authorized by this chapter:

- 3 (1) general ethical standards;
- 4 (2) conflicts of interest;
- 5 (3) prohibited transactions and interests;
- 6 (4) the acceptance of gifts and entertainment;
- 7 (5) compliance with applicable professional
- 8 standards;
- 9 (6) ethics training; and
- 10 (7) compliance with and enforcement of the ethics
- 11 policy.

12 (b) The ethics policy must include provisions applicable  
13 to:

- 14 (1) members of the board;
- 15 (2) the commissioner;
- 16 (3) employees of the board; and
- 17 (4) any person who provides services to the board
- 18 relating to the management ~~[or investment]~~ of the funds designated
- 19 under Section 51.401 or the investment of funds to the extent
- 20 authorized by this chapter.

21 (d) The provisions of the ethics policy that apply to a  
22 person who provides services to the board relating to the  
23 management ~~[or investment]~~ of the funds designated under Section  
24 51.401 or the investment of those funds to the extent authorized by  
25 this chapter must be based on the Code of Ethics and the Standards  
26 of Professional Conduct prescribed by the Association for  
27 Investment Management and Research or other ethics standards

1 adopted by another appropriate professionally recognized entity.

2 (e) The board shall ensure that applicable provisions of the  
3 ethics policy are included in any contract under which a person  
4 provides services to the board relating to the management [~~and~~  
5 ~~investment~~] of the funds designated under Section [51.401](#) or the  
6 investment of those funds to the extent authorized by this chapter.

7 SECTION 6. Section [51.409](#)(a), Natural Resources Code, is  
8 amended to read as follows:

9 (a) A member of the board, the commissioner, an employee of  
10 the board, or a person who provides services to the board that  
11 relate to the management [~~or investment~~] of the funds designated  
12 under Section [51.401](#) or the investment of those funds to the extent  
13 authorized under this chapter who has a business, commercial, or  
14 other relationship that could reasonably be expected to diminish  
15 the person's independence of judgment in the performance of the  
16 person's responsibilities relating to the management of public  
17 school lands or investment of the funds shall disclose the  
18 relationship in writing to the board.

19 SECTION 7. Section [51.410](#), Natural Resources Code, is  
20 amended to read as follows:

21 Sec. 51.410. REPORTS OF EXPENDITURES. A consultant,  
22 advisor, broker, or other person providing services to the board  
23 relating to the management [~~and investment~~] of the funds designated  
24 under Section [51.401](#) or the investment of those funds to the extent  
25 authorized by this chapter shall file with the board regularly, as  
26 determined by the board, a report that describes in detail any  
27 expenditure of more than \$50 made by the person on behalf of:

- (1) a member of the board;
- (2) the commissioner; or
- (3) an employee of the board.

SECTION 8. Section 51.412, Natural Resources Code, is amended to read as follows:

Sec. 51.412. REPORTS TO LEGISLATURE. ~~[(a)]~~ Not later than 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:

(1) the total amount of money received under this chapter and 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 a 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 ~~[of the board's~~



1 ~~investments]~~ by county of real property interests, including  
2 mineral or royalty interests, and including the actual or expected  
3 revenues from the interests, that were acquired by the board for the  
4 use and benefit of the permanent school fund since the most recently  
5 submitted report under this section;

6 (4) the market value of all investments and assets  
7 managed by the board and the total market value of the permanent  
8 school fund;

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

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

18 SECTION 9. Section 51.413(a), Natural Resources Code, is  
19 amended to read as follows:

20 (a) The board may, by a resolution adopted at a regular  
21 meeting, release from the real estate special fund account funds  
22 previously designated under Section 51.401 or used under Section  
23 51.402 to acquire real property, including mineral or royalty  
24 interests, ~~[managed, used, or encumbered under Section 51.402 or~~  
25 ~~Section 51.4021]~~ to be deposited in the State Treasury to the credit  
26 of:

27 (1) the available school fund; or

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

3           SECTION 10. The following provisions of the Natural  
4 Resources Code are repealed:

5           (1) Sections 51.011(a-1) and (a-2); and

6           (2) Section 51.402(c).

7           SECTION 11. The School Land Board shall:

8           (1) not later than September 30, 2019:

9           (A) provide the State Board of Education with a  
10 list of every investment held by the School Land Board that was  
11 acquired on or after September 1, 2001, other than sovereign lands,  
12 other state lands, mineral or royalty interests, and commercial  
13 real estate that is owned and internally managed by the School Land  
14 Board, including information on unfunded commitments and funding  
15 obligations related to every investment;

16           (B) provide to the State Board of Education a  
17 balance of the cash holdings as of the most recent month end; and

18           (C) provide notice of the enactment of this Act  
19 to the general partner or other managing entity of every investment  
20 described by Paragraph (A) of this subdivision;

21           (2) not later than November 30, 2019, provide to the  
22 State Board of Education all financial, contract, investment and  
23 related records and documents in the possession of the School Land  
24 Board, the General Land Office, or a service provider to the School  
25 Land Board or General Land Office relating to an asset described by  
26 Subdivision (1)(A) of this section;

27           (3) not later than July 31, 2020, transfer, at the

1 direction of the State Board of Education:

2 (A) all assets described by Subdivision (1)(A) of  
3 this section, provided that if the State Board of Education  
4 determines in its discretion that it cannot receive an asset, the  
5 School Land Board shall coordinate with the State Board of  
6 Education concerning the appropriate timing of a transfer of the  
7 asset that is in the best interest of the permanent school fund; and

8 (B) all cash holdings related to or derived from  
9 permanent school fund assets, except for an amount necessary to  
10 make distributions to the available school fund in fiscal years  
11 2020 and 2021, as directed by previously adopted School Land Board  
12 resolutions; and

13 (4) not later than September 1, 2020, submit to the  
14 legislature and the State Board of Education a report accounting  
15 for every investment and all cash holdings transferred to the State  
16 Board of Education or retained by the School Land Board in  
17 accordance with this Act.

18 SECTION 12. An asset transferred in accordance with this  
19 Act shall be managed by the State Board of Education in accordance  
20 with applicable laws, and any investment agreement, contract, or  
21 similar document related to the asset is assigned to the Texas  
22 Education Agency as of the date of the transfer of the asset.

23 SECTION 13. This Act takes effect September 1, 2019.