

By: Watson, et al.

S.B. No. 1659

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the acquisition and management of certain real property
3 assets by the School Land Board for the use and benefit of the
4 permanent school fund and the transfer of certain permanent school
5 fund assets from the control of the School Land Board to the State
6 Board of Education.

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

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

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

20 (a-3) All revenue received from mineral or royalty
21 interests described by Subsection (a), including bonus payments,
22 surface lease revenues, royalties, and any other type of revenue
23 received from those interests, shall be transferred each month to
24 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~~

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

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

17 (b) Before acquiring real property, including mineral or
18 royalty interests, [using funds] under Subsection (a), the board
19 must determine, using the prudent investor standard, that the
20 acquisition is [use of the funds for the intended purpose is
21 authorized by Subsection (a) and] in the best interest of the
22 permanent school fund. ~~[A determination by the board on the use of~~
23 ~~funds under this section is conclusive unless the determination was~~
24 ~~made as a result of fraud or obvious error.]~~

25 SECTION 4. Sections [51.4021](#)(a) and (b), Natural Resources
26 Code, are amended to read as follows:

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

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

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

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

21 (2) ~~[the rate of return the board expects to attain on~~
22 ~~the investment,~~

23 ~~[(3)]~~ the amount of money the board expects to
24 distribute to the available school fund or the State Board of
25 Education for investment in the permanent school fund under Section
26 51.413 ~~[after making the investments]~~;

27 (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.