

1 AN ACT

2 relating to the management and investment of the permanent school
3 fund, including authorizing the creation of the Texas Permanent
4 School Fund Corporation to manage and invest the fund and limiting
5 the authority of the School Land Board to manage and invest the fund
6 if the corporation is created.

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

8 ARTICLE 1. STATE BOARD OF EDUCATION'S MANAGEMENT OF PERMANENT
9 SCHOOL FUND

10 SECTION 1.01. Sections 43.001, 43.002, 43.003, 43.0031,
11 43.0032, 43.0033, 43.0034, 43.004, 43.005, 43.0051, 43.006,
12 43.007, 43.009, 43.010, 43.011, 43.012, 43.013, 43.014, 43.015,
13 43.016, 43.017, 43.018, 43.019, and 43.020, Education Code, are
14 redesignated as Subchapter A, Chapter 43, Education Code, and a
15 heading for Subchapter A is added to read as follows:

16 SUBCHAPTER A. GENERAL PROVISIONS

17 SECTION 1.02. Section 43.001(a), Education Code, is amended
18 to read as follows:

19 (a) Except as provided by Subsection (b), the permanent
20 school fund, which is a perpetual endowment for the public schools
21 of this state, consists of:

22 (1) all land appropriated for the public schools by
23 the constitution and laws of this state;

24 (2) all of the unappropriated public domain remaining

1 in this state, including all land recovered by the state by suit or
2 otherwise except pine forest land as described [~~defined~~] by Section
3 [88.111](#) and property described by Section [12.128](#);

4 (3) all proceeds from the authorized sale of permanent
5 school fund land;

6 (4) all proceeds from the lawful sale of any other
7 properties belonging to the permanent school fund;

8 (5) all investments authorized by Section [43.003](#) of
9 assets [~~properties~~] belonging to the permanent school fund; and

10 (6) all income from the mineral development of
11 permanent school fund land, including income from mineral
12 development of riverbeds and other submerged land.

13 SECTION 1.03. Section [43.003](#), Education Code, is amended to
14 read as follows:

15 Sec. 43.003. INVESTMENT OF PERMANENT SCHOOL FUND. The [~~In~~
16 ~~compliance with this section, the~~] State Board of Education may
17 invest the permanent school fund as authorized by Section 5(f),
18 Article VII, Texas Constitution [~~in the types of securities, which~~
19 ~~must be carefully examined by the State Board of Education and be~~
20 ~~found to be safe and proper investments for the fund as specified~~
21 ~~below:~~

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

25 [~~(2) obligations and pledges of The University of~~
26 ~~Texas,~~

27 [~~(3) corporate bonds, debentures, or obligations of~~

1 ~~United States corporations of at least "A" rating,~~

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

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

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

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

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

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

1 ~~[(D) after the issuing political subdivision has~~
2 ~~received the proceeds from the sales of the securities, the issuing~~
3 ~~agency is estopped to deny their validity, and the securities are~~
4 ~~valid and binding obligations;~~

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

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

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

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

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

1 ~~of the United States, or in any other first lien real estate~~
2 ~~mortgage securities guaranteed in whole or in part by the United~~
3 ~~States].~~

4 SECTION 1.04. Section 43.0033, Education Code, is amended
5 to read as follows:

6 Sec. 43.0033. REPORTS OF EXPENDITURES. A consultant,
7 advisor, broker, or other person providing services to the State
8 Board of Education relating to the management and investment of the
9 permanent school fund shall file with the board regularly, as
10 determined by the board, a report that describes in detail any
11 expenditure of more than \$50 made by the person on behalf of:

- 12 (1) a member of the board;
- 13 (2) the commissioner; or
- 14 (3) an employee of the agency ~~[or of a nonprofit~~
15 ~~corporation created under Section 43.006].~~

16 SECTION 1.05. Section 43.006(a), Education Code, is amended
17 to read as follows:

18 (a) The State Board of Education may delegate investment
19 authority for the investment of the permanent school fund to the
20 Texas Permanent School Fund Corporation as provided by Subchapter B
21 ~~[same extent as an institution with respect to an institutional~~
22 ~~fund under Chapter 163, Property Code].~~

23 SECTION 1.06. Chapter 43, Education Code, is amended by
24 adding Subchapter B to read as follows:

25 SUBCHAPTER B. TEXAS PERMANENT SCHOOL FUND CORPORATION

26 Sec. 43.051. DEFINITIONS. In this subchapter:

- 27 (1) "Board of directors" means the board of directors

1 of the corporation.

2 (2) "Chief executive officer" means the chief
3 executive officer of the corporation employed under Section 43.054.

4 (3) "Corporation" means the Texas Permanent School
5 Fund Corporation.

6 Sec. 43.052. CREATION OF CORPORATION. (a) The State Board
7 of Education may incorporate the Texas Permanent School Fund
8 Corporation and delegate to the corporation the board's authority
9 to manage and invest:

10 (1) the permanent school fund under Section 43.003;
11 and

12 (2) the charter district bond guarantee reserve fund
13 under Section 45.0571.

14 (b) The State Board of Education shall adopt the initial
15 articles of incorporation for the corporation.

16 (c) The corporation is a special-purpose governmental
17 corporation and instrumentality of the state with necessary and
18 implied powers to accomplish its purpose. The corporation is
19 subject to regulation and limitation only as provided by this
20 subchapter.

21 Sec. 43.053. BOARD OF DIRECTORS; MEETINGS. (a) The board
22 of directors is composed of the following nine members:

23 (1) five members of the State Board of Education,
24 appointed by the board in accordance with board policy;

25 (2) the commissioner of the General Land Office;

26 (3) one member appointed by the commissioner of the
27 General Land Office who has substantial background and expertise in

1 investments and asset management; and

2 (4) two members appointed by the governor, with the
3 advice and consent of the senate, each of whom must have substantial
4 background and expertise in investments and asset management and
5 may not be members of the State Board of Education or the School
6 Land Board.

7 (b) The State Board of Education by rule shall establish the
8 terms of members of the board of directors appointed under
9 Subsection (a)(1).

10 (c) Members of the board of directors appointed under
11 Subsections (a)(3) and (4) serve staggered six-year terms, with the
12 term of one member expiring on January 1 of each odd-numbered year.

13 (d) The initial members described by Subsection (c) shall
14 determine by lot which one of the initial members will serve a term
15 expiring January 1 of the first odd-numbered year following the
16 establishment of the corporation, which one of the initial members
17 will serve a term expiring January 1 of the second odd-numbered year
18 following the establishment of the corporation, and which one of
19 the initial members will serve a term expiring January 1 of the
20 third odd-numbered year following the establishment of the
21 corporation.

22 (e) Appointments to the board of directors must be made
23 without regard to the race, color, disability, sex, religion, age,
24 or national origin of the appointees.

25 (f) The board of directors shall elect officers of the board
26 in accordance with the corporation's bylaws.

27 (g) The board of directors shall meet at least three times

1 per year.

2 Sec. 43.054. CHIEF EXECUTIVE OFFICER. (a) The corporation
3 shall employ a chief executive officer to manage and carry out the
4 policies of the corporation. The board of directors shall
5 determine the process for hiring the chief executive officer.

6 (b) The chief executive officer serves at the will of the
7 board of directors.

8 Sec. 43.055. EMPLOYEES. (a) The chief executive officer
9 is responsible for hiring all employees of the corporation.

10 (b) Employees of the corporation serve at the will of the
11 chief executive officer.

12 (c) The chief executive officer or the chief executive
13 officer's designee shall develop a system of compensation for
14 employees of the corporation as necessary to retain qualified
15 staff.

16 (d) The chief executive officer or the chief executive
17 officer's designee shall develop a system of annual performance
18 evaluations. Merit pay for corporation employees must be based on
19 the system established under this subsection.

20 (e) The chief executive officer or the chief executive
21 officer's designee shall prepare and maintain a written policy
22 statement to assure implementation of a program of equal employment
23 opportunity under which all personnel decisions are made without
24 regard to race, color, disability, sex, religion, age, or national
25 origin.

26 (f) The chief executive officer may appoint an internal
27 auditor for the corporation, who may be an employee of the

1 corporation. The appointment of the internal auditor must be
2 approved by the board of directors. The board of directors may
3 require the internal auditor to submit specified reports directly
4 to the board of directors.

5 (g) Except as otherwise provided by this subchapter,
6 employees of the corporation are state employees for all purposes,
7 including:

8 (1) accrual of leave time, insurance benefits, and
9 retirement benefits;

10 (2) Chapter 104, Civil Practice and Remedies Code; and

11 (3) Chapter 501, Labor Code.

12 Sec. 43.056. SOVEREIGN IMMUNITY. (a) The corporation, the
13 board of directors, and the officers and employees of the
14 corporation are entitled to sovereign immunity to the same extent
15 as any other state agency or officer or employee of a state agency.

16 (b) No action taken by the corporation, including the
17 acceptance of benefits under a contract, may be construed to waive
18 the corporation's sovereign immunity, including immunity from suit
19 or from liability.

20 (c) Subchapter C, Chapter 2260, Government Code, does not
21 apply to the corporation.

22 Sec. 43.057. LIABILITY INSURANCE FOR BOARD MEMBERS AND
23 EMPLOYEES. (a) The corporation may purchase or otherwise acquire
24 insurance to protect members of the board of directors and
25 employees of the corporation, subject to Subsection (c).

26 (b) Insurance purchased or acquired by the corporation
27 under this section may:

1 (1) protect against any type of liability to third
2 persons that might be incurred while conducting corporation
3 business; and

4 (2) provide for all costs of defending a cause of
5 action for such liability, including court costs and attorney's
6 fees.

7 (c) This section does not authorize the purchase or
8 acquisition of insurance to protect against liability not described
9 in Subsection (b).

10 Sec. 43.058. ETHICS POLICY; CONFLICTS OF INTEREST.

11 (a) The board of directors shall adopt an ethics policy that
12 provides standards of conduct relating to the management and
13 investment of the permanent school fund in accordance with Section
14 43.0031(a). The ethics policy must include provisions applicable
15 to:

16 (1) members of the board of directors;
17 (2) employees of the corporation; and
18 (3) any person who provides services to the
19 corporation relating to the management or investment of the
20 permanent school fund.

21 (b) A member of the board of directors, an employee of the
22 corporation, and a person who provides services to the corporation
23 relating to the management or investment of the permanent school
24 fund shall disclose in writing to the corporation any business,
25 commercial, or other relationship that could reasonably be expected
26 to diminish the person's independence of judgment in the
27 performance of the person's responsibilities relating to the

1 management or investment of the permanent school fund.

2 (c) The board of directors shall define in the ethics policy
3 adopted under Subsection (a) the types of relationships that may
4 create a possible conflict of interest.

5 (d) A person who makes a written disclosure under Subsection
6 (b) stating a possible conflict of interest may not give advice or
7 make decisions about a matter affected by the possible conflict of
8 interest unless the board of directors expressly waives this
9 prohibition. The board of directors may delegate the authority to
10 waive the prohibition established by this subsection.

11 Sec. 43.059. APPLICABILITY OF CERTAIN LAWS. (a) Except as
12 otherwise provided by and to the extent consistent with this
13 subchapter, Title 1, Business Organizations Code, and Chapter 22,
14 Business Organizations Code, apply to the corporation.

15 (b) Subject to Section 43.060, the corporation is a
16 governmental body for purposes of Chapter 551, Government Code.

17 (c) The corporation is exempt from:

18 (1) Chapters 654 and 660, Government Code, and
19 Subchapter K, Chapter 659, Government Code, to the extent the board
20 of directors determines that an exemption from those provisions is
21 necessary for the corporation to perform the board's fiduciary
22 duties under this subchapter;

23 (2) all state laws regulating or limiting purchasing
24 by state agencies, including Subtitle D, Title 10, Government Code,
25 and Chapters 2254, 2261, and 2262, Government Code;

26 (3) the franchise tax under Chapter 171, Tax Code; and

27 (4) any filing costs or other fees imposed by the state

1 on a corporation.

2 Sec. 43.060. EXCEPTION TO OPEN MEETING REQUIREMENTS FOR
3 CERTAIN CONSULTATIONS CONCERNING INVESTMENTS. (a) In this
4 section, "private investment fund," "reinvestment," and
5 "restricted securities" have the meanings assigned by Section
6 552.143, Government Code.

7 (b) The board of directors may conduct a closed meeting in
8 accordance with Subchapter E, Chapter 551, Government Code, to
9 deliberate or confer with one or more employees, consultants, or
10 legal counsel of the corporation or with a third party if the only
11 purpose of the meeting is to receive information from or question
12 the employees, consultants, or legal counsel or third party
13 relating to:

14 (1) investment transactions or potential investment
15 transactions if, before conducting the closed meeting, a majority
16 of the board of directors in an open meeting vote that deliberating
17 or conferring in an open meeting would have a detrimental effect on
18 the corporation's position in negotiations with third parties or
19 put the corporation at a competitive disadvantage in the market;

20 (2) the purchase, holding, or disposal of restricted
21 securities or a private investment fund's investment in restricted
22 securities if, under Section 552.143, Government Code, the
23 information discussed would be confidential and excepted from the
24 requirements of Section 552.021, Government Code, if the
25 information were included in the records of a governmental body; or

26 (3) a procurement proposed to be awarded by the board
27 of directors if, before conducting the closed meeting, a majority

1 of the board of directors in an open meeting vote that deliberating
2 or conferring in an open meeting would have a detrimental effect on
3 the corporation's position in negotiations with third parties.

4 (c) Any vote or final action taken on a procurement
5 described by Subsection (b)(3) must be conducted in an open
6 meeting.

7 Sec. 43.061. RECORD RETENTION. (a) Subchapter L, Chapter
8 441, Government Code, does not apply to the corporation.

9 (b) The corporation may establish record retention policies
10 for the corporation. In establishing the policies under this
11 section, the corporation may consider relevant rules and guidelines
12 adopted by the Texas State Library and Archives Commission.

13 Sec. 43.062. INFORMATION TECHNOLOGY AND ASSOCIATED
14 RESOURCES. (a) Chapters 2054 and 2055, Government Code, do not
15 apply to the corporation or to any state agency with respect to a
16 contract entered into between the agency and the corporation for
17 information technology or associated resources.

18 (b) The corporation shall control all aspects of, and may
19 contract with third parties for, the corporation's information
20 technology and associated resources, including:

21 (1) computer, data management, and telecommunications
22 operations;

23 (2) procurement of hardware, software, and middleware
24 and telecommunications equipment and systems;

25 (3) location, operation, and replacement of
26 computers, computer systems, software provided as a service, and
27 telecommunications systems;

- 1 (4) data processing;
- 2 (5) security;
- 3 (6) disaster recovery; and
- 4 (7) storage.

5 (c) The Department of Information Resources shall assist
6 the corporation at the request of the corporation and must consider
7 the corporation a customer of the department. Notwithstanding any
8 other law, the corporation may:

- 9 (1) purchase any item through the department; and
- 10 (2) contract with the department for and use any
11 service available through the department.

12 Sec. 43.063. GENERAL POWERS AND DUTIES OF CORPORATION. (a)
13 The corporation may amend the articles of incorporation adopted by
14 the State Board of Education when the corporation was established,
15 subject to board approval.

16 (b) The corporation may adopt and amend:

- 17 (1) subject to State Board of Education approval,
18 bylaws for the corporation;
- 19 (2) resolutions and policies of the corporation; and
- 20 (3) any other document necessary to carry out the
21 corporation's purpose.

22 (c) The corporation may engage in any activity necessary to
23 manage the investments of the permanent school fund, including
24 entering into any contract in connection with the investment of the
25 permanent school fund, to the extent the activity complies with
26 applicable fiduciary duties.

27 (d) The corporation shall make all purchases of goods and

1 services in accordance with applicable fiduciary duties and may use
2 purchasing methods that ensure the best value to the corporation.
3 In determining best value, the corporation may consider the best
4 value standards applicable to state agencies under Section
5 2155.074, Government Code.

6 (e) The corporation may:

7 (1) delegate investment authority for the investment
8 of the permanent school fund to one or more private professional
9 investment managers; or

10 (2) contract with one or more private professional
11 investment managers to assist the corporation in making investments
12 of the permanent school fund.

13 (f) The corporation may receive, transfer, and disburse
14 money and securities of the fund as provided by statute or the Texas
15 Constitution, except that the corporation may not distribute money
16 from the permanent school fund to the available school fund except
17 as authorized under Section 43.066.

18 (g) The corporation may enter into a contract with a state
19 agency, a governmental body, or another entity to manage or invest
20 funds on behalf of the agency, body, or entity.

21 Sec. 43.064. CONTRACTING FOR FACILITIES AND NECESSARY
22 SUPPORT. The corporation may contract with a state agency or
23 another entity to provide operational support, facilities,
24 information and data technology, staff, or other support for the
25 corporation. The corporation may but is not required to request
26 allocation of space to the corporation under Subchapter C, Chapter
27 2165, Government Code.

1 Sec. 43.065. WRITTEN INVESTMENT OBJECTIVES; PERFORMANCE
2 EVALUATION. In accordance with Section 43.004, the board of
3 directors shall:

4 (1) develop written investment objectives concerning
5 the investment of the permanent school fund; and

6 (2) employ a well-recognized performance measurement
7 service to evaluate and analyze the investment results of the
8 permanent school fund.

9 Sec. 43.066. DISTRIBUTIONS BY CORPORATION FROM PERMANENT
10 SCHOOL FUND TO AVAILABLE SCHOOL FUND. (a) The corporation may
11 distribute from the permanent school fund to the available school
12 fund under Section 5(g), Article VII, Texas Constitution, an amount
13 not to exceed the limitation under that section that is determined
14 in accordance with rules established by the corporation.

15 (b) In developing the rules for distributions under
16 Subsection (a), the corporation shall develop and establish an
17 annual minimum distribution rate that the corporation will use in
18 making a distribution from the permanent school fund to the
19 available school fund each state fiscal year. In developing the
20 annual minimum distribution rate under this subsection, the
21 corporation may consider:

22 (1) transfers made from the permanent school fund to
23 the available school fund under Section 43.002 in accordance with
24 Section 5(a), Article VII, Texas Constitution;

25 (2) factors that relate to the current and future
26 public school students in the state; and

27 (3) any other factors the corporation determines

1 relevant.

2 Sec. 43.067. BOND GUARANTEE PROGRAM. The corporation, the
3 State Board of Education, and the agency shall coordinate to
4 determine the corporation's role in the operation and management of
5 the permanent school fund in connection with the bond guarantee
6 program under Subchapter C, Chapter 45, to ensure the proper and
7 efficient operation of the program, including the handling of any
8 associated reimbursements, transfers, and disbursements.

9 Sec. 43.068. ANNUAL AUDIT. (a) Not less than once each
10 year, the board of directors shall submit to the Legislative Budget
11 Board an audit report regarding the operations of the corporation.

12 (b) The corporation may contract with a certified public
13 accountant or the state auditor to conduct an independent audit of
14 the operations of the corporation.

15 (c) This section does not affect the state auditor's
16 authority to conduct an audit of the corporation in accordance with
17 Chapter 321, Government Code.

18 Sec. 43.069. ANNUAL INVESTMENT REPORT. The corporation
19 shall annually submit to the State Board of Education and the
20 General Land Office a report on the allocation of assets and
21 investment performance of the portion of the permanent school fund
22 for which the corporation is responsible.

23 Sec. 43.070. REPORT ON ANTICIPATED TRANSFER TO AVAILABLE
24 SCHOOL FUND. Not later than November 1 of each even-numbered year,
25 the corporation shall submit to the legislature, comptroller, State
26 Board of Education, and Legislative Budget Board a report that in
27 detail specifically states the date a transfer will be made and the

1 amount the corporation will transfer during the subsequent state
2 fiscal biennium from the permanent school fund to the available
3 school fund under Section 43.066.

4 Sec. 43.071. GIFTS, GRANTS, AND DONATIONS. The corporation
5 may accept, and establish a nonprofit corporation or other entity
6 for the purpose of accepting, a gift, grant, donation, or bequest of
7 money, securities, property, or any other assets from any public or
8 private source for the permanent school fund.

9 SECTION 1.07. Section 2157.068(j), Government Code, is
10 amended to read as follows:

11 (j) The following entities may purchase commodity items
12 through the department, and be charged a reasonable administrative
13 fee, as provided by this section:

14 (1) the Electric Reliability Council of Texas;

15 (2) the Lower Colorado River Authority;

16 (3) a private school, as defined by Section 5.001,
17 Education Code;

18 (4) a private or independent institution of higher
19 education, as defined by Section 61.003, Education Code;

20 (5) a volunteer fire department, as defined by Section
21 152.001, Tax Code;

22 (6) subject to Section 418.193, a public safety
23 entity, as defined by 47 U.S.C. Section 1401; [~~or~~]

24 (7) subject to Section 418.193, a county hospital,
25 public hospital, or hospital district; or

26 (8) the Texas Permanent School Fund Corporation, if
27 incorporated under Section 43.052, Education Code.

1 SECTION 1.08. Sections 43.006(b), (c), (d), (e), (f), (g),
2 (h), (i), (j), and (k), Education Code, are repealed.

3 ARTICLE 2. SCHOOL LAND BOARD'S MANAGEMENT OF PERMANENT SCHOOL FUND

4 SECTION 2.01. Section 51.001, Natural Resources Code, is
5 amended by adding Subdivisions (13) and (14) to read as follows:

6 (13) "Real property holding" means any direct or
7 indirect interest in real property located in the state or any
8 interest in a joint venture whose primary purpose is the
9 acquisition, development, holding, and disposing of real property
10 located in the state. The term does not include an interest in an
11 investment vehicle.

12 (14) "Investment vehicle" means:

13 (A) a multi-investment separately managed
14 account or similar investment fund;

15 (B) a multi-asset closed-end or open-end
16 investment fund sponsored and managed by a third party;

17 (C) a real estate investment trust;

18 (D) an investment managed by a third party
19 alongside a multi-asset closed-end or open-end investment fund that
20 is also managed by the third party or by any of the third party's
21 related persons or affiliates; or

22 (E) a corporation, partnership, limited
23 liability company, or other entity whose primary purpose is to:

24 (i) sponsor and manage investments on
25 behalf of third parties, including institutional investors; or

26 (ii) operate assets or provide brokerage or
27 other services to third parties under circumstances in which the

1 entity does not directly or indirectly own the underlying assets.

2 SECTION 2.02. Section 51.011, Natural Resources Code, is
3 amended by amending Subsections (a) and (a-1) and adding Subsection
4 (a-3) to read as follows:

5 (a) Any land, mineral or royalty interest, or real property
6 holding, and [~~estate investment, or other interest, including~~]
7 revenue received from any land or real property holding [~~these~~
8 ~~sources~~], that is set apart to the permanent school fund under the
9 constitution and laws of this state together with the mineral
10 estate in riverbeds, channels, and the tidelands, including
11 islands, shall be subject to the sole and exclusive management and
12 control of the School Land Board [~~school land board~~] and the
13 commissioner under the provisions of this chapter and other
14 applicable law.

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

23 (a-3) All revenue received from mineral or royalty
24 interests described by Subsection (a), including bonus payments,
25 mineral lease rental revenues, royalties, and any other type of
26 revenue received from those interests, less any amount specified by
27 appropriation to be retained by the board under this subsection,

1 shall be transferred each month to the Texas Permanent School Fund
2 Corporation for investment in the permanent school fund.

3 SECTION 2.03. Section 51.017, Natural Resources Code, is
4 amended to read as follows:

5 Sec. 51.017. FURNISHING DATA TO TEXAS PERMANENT SCHOOL FUND
6 CORPORATION [~~BOARD OF EDUCATION~~]. On request, the commissioner
7 shall furnish to the Texas Permanent School Fund Corporation [~~State~~
8 ~~Board of Education~~] all available data.

9 SECTION 2.04. Section 51.401(a), Natural Resources Code, is
10 amended to read as follows:

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

21 SECTION 2.05. Section 51.402(a), Natural Resources Code, is
22 amended to read as follows:

23 (a) The [~~Except as provided by Subsection (c), the~~] board
24 may use funds designated under Section 51.401 for any of the
25 following purposes:

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

- 1 (2) to add contiguous land to public school land;
- 2 (3) to acquire, as public school land, interests in
3 real property for biological, residential, commercial, geological,
4 cultural, or recreational purposes;
- 5 (4) to acquire mineral and royalty interests for the
6 use and benefit of the permanent school fund;
- 7 (5) to protect, maintain, or enhance the value of
8 public school land and mineral or royalty interests on that land;
- 9 (6) to acquire real property holdings [~~interests in~~
10 ~~real estate~~];
- 11 (7) to pay reasonable fees for professional services
12 related to a permanent school fund investment; or
- 13 (8) to acquire, sell, lease, trade, improve, maintain,
14 protect, or use land, mineral and royalty interests, or real
15 property holdings [~~estate investments, an investment or interest in~~
16 ~~public infrastructure, or other interests~~], at such prices and
17 under such terms and conditions the board determines to be in the
18 best interest of the permanent school fund.

19 SECTION 2.06. Section 51.4021, Natural Resources Code, is
20 amended to read as follows:

21 Sec. 51.4021. APPOINTMENT OF [~~SPECIAL FUND MANAGERS,~~
22 INVESTMENT CONSULTANTS[7] OR ADVISORS. (a) The board may appoint
23 investment [~~managers,~~] consultants[7] or advisors to [~~invest or~~]
24 assist the board in using [~~investing~~] funds designated under
25 Section 51.401 in a manner authorized under Section 51.402 by
26 contracting for professional [~~investment management or~~] investment
27 advisory services with one or more organizations that are in the

1 business of [~~managing or~~] advising on the management of real estate
2 investments.

3 (b) To be eligible for appointment under this section, an
4 investment [~~manager,~~] consultant[~~or~~] or advisor shall agree to abide
5 by the policies, requirements, or restrictions, including ethical
6 standards and disclosure policies and criteria for determining the
7 quality of investments and for the use of standard rating services,
8 that the board adopts for real estate investments of the permanent
9 school fund. Funds designated under Section 51.401 may not be
10 invested in a real estate investment trust, as defined by Section
11 200.001, Business Organizations Code.

12 (c) Compensation paid to an investment [~~manager,~~]
13 consultant[~~or~~] or advisor by the board must be consistent with the
14 compensation standards of the investment industry and compensation
15 paid by similarly situated institutional investors.

16 (d) Chapter 2263, Government Code, applies to investment
17 [~~managers,~~] consultants and[~~or~~] advisors appointed under this
18 section. The board by rule shall adopt standards of conduct for
19 investment [~~managers,~~] consultants and[~~or~~] advisors appointed
20 under this section as required by Section 2263.004, Government
21 Code, and shall implement the disclosure requirements of Section
22 2263.005 of that code.

23 SECTION 2.07. The heading to Section 51.412, Natural
24 Resources Code, is amended to read as follows:

25 Sec. 51.412. REPORT ON USE OF CERTAIN MONEY [~~REPORTS TO~~
26 ~~LEGISLATURE~~].

27 SECTION 2.08. Sections 51.412(a) and (c), Natural Resources

1 Code, are amended to read as follows:

2 (a) Not later than September 1 of each even-numbered year,
3 the board shall submit to the legislature, the Texas Permanent
4 School Fund Corporation, and the Legislative Budget Board a report
5 that, specifically and in detail, assesses the direct and indirect
6 economic impact, as anticipated by the board, of the use
7 ~~[investment]~~ of funds:

8 (1) retained by the board as provided by Section
9 51.011(a-3); or

10 (2) designated under Section 51.401 for deposit in the
11 real estate special fund account of the permanent school fund.

12 (c) The report must include the following information:

13 (1) the total amount of the funds designated by
14 Section 51.401 for deposit in the real estate special fund account
15 of the permanent school fund that the board intends to use in a
16 manner authorized under Section 51.402 ~~[invest]~~;

17 (2) the amount of funds retained by ~~[rate of return]~~
18 the board as provided by Section 51.011(a-3) and the purposes for
19 which the board intends to use those funds ~~[expects to attain on the~~
20 ~~investment]~~;

21 (3) the amount of the funds the board expects to
22 distribute to the available school fund or the Texas Permanent
23 School Fund Corporation ~~[State Board of Education]~~ for investment
24 in the permanent school fund under Section 51.413 ~~[after making the~~
25 ~~investments]~~;

26 (4) ~~[the distribution of the board's investments by~~
27 ~~county,~~

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

4 ~~[(6)]~~ the amounts of all fees or other compensation
5 paid by the board to investment ~~[managers,~~ consultants and ~~[, or]~~
6 advisors appointed or organizations contracted with under Section
7 [51.4021](#); and

8 (5) ~~[(7)]~~ any other information the board considers
9 necessary to include in the report.

10 SECTION 2.09. Section [51.413](#), Natural Resources Code, is
11 amended to read as follows:

12 Sec. 51.413. TRANSFERS FROM THE REAL ESTATE SPECIAL FUND
13 ACCOUNT TO THE AVAILABLE SCHOOL FUND AND THE PERMANENT SCHOOL FUND.

14 (a) The board may, by a resolution adopted at a regular meeting,
15 release from the real estate special fund account funds previously
16 designated under Section [51.401](#) or managed, used, or encumbered
17 under Section [51.402](#) or Section [51.4021](#) to be deposited in the State
18 Treasury to the credit of:

- 19 (1) the available school fund; or
20 (2) the Texas Permanent School Fund Corporation ~~[State~~
21 ~~Board of Education]~~ for investment in the permanent school fund.

22 (b) The board shall adopt rules to establish the procedure
23 that will be used by the board to determine the date a transfer will
24 be made and the amount of the funds that will be transferred to the
25 available school fund or to the Texas Permanent School Fund
26 Corporation ~~[State Board of Education]~~ for investment in the
27 permanent school fund from the real estate special fund account as

1 provided by Subsection (a).

2 SECTION 2.10. The following provisions are repealed:

3 (1) Section 43.0052, Education Code;

4 (2) Sections 32.0161 and 32.068, Natural Resources
5 Code;

6 (3) Section 51.402(c), Natural Resources Code, as
7 amended by Chapters 493 (H.B. 4388) and 524 (S.B. 608), Acts of the
8 86th Legislature, Regular Session, 2019; and

9 (4) Sections 51.4131 and 51.414, Natural Resources
10 Code.

11 SECTION 2.11. (a) Subject to Subsection (b) of this
12 section, as soon as practicable after the effective date of this
13 article and on the date agreed to by the State Board of Education,
14 the Texas Education Agency, the School Land Board, and the Texas
15 Permanent School Fund Corporation, as applicable:

16 (1) all powers, duties, functions, programs, and
17 activities of the State Board of Education and the Texas Education
18 Agency relating to the management and investment of the permanent
19 school fund transfer to the Texas Permanent School Fund Corporation
20 by operation of law; and

21 (2) all powers, duties, functions, programs, and
22 activities of the School Land Board relating to assets or
23 investments of the permanent school fund described by Section
24 2.15(a)(1) of this article transfer to the Texas Permanent School
25 Fund Corporation by operation of law.

26 (b) The Texas Permanent School Fund Corporation may delay
27 the transfer of any power, duty, function, program, or activity

1 under Subsection (a) of this section if the corporation determines
2 that the transfer would have an adverse impact on or is not in the
3 best interest of the permanent school fund.

4 (c) All rules, policies, and procedures relating to the
5 management and investment of the permanent school fund adopted by
6 the State Board of Education or the School Land Board before the
7 transfer under this section remain in effect until the Texas
8 Permanent School Fund Corporation adopts substitute rules,
9 policies, or procedures. In the event of a conflict between rules,
10 policies, or procedures adopted by the State Board of Education and
11 rules, policies, or procedures adopted by the School Land Board,
12 the corporation shall determine which rules, policies, or
13 procedures control.

14 SECTION 2.12. On the date the transfers under Section
15 2.11(a) of this article occur:

16 (1) an employee of the permanent school fund division
17 of the Texas Education Agency or the investment management division
18 of the General Land Office becomes an employee of the Texas
19 Permanent School Fund Corporation; and

20 (2) any employee compensation plan, program,
21 agreement, or arrangement, including any incentive compensation
22 plan and outstanding balance or award, relating to each employee
23 described by Subdivision (1) of this section transfers from the
24 Texas Education Agency or the General Land Office, as applicable,
25 to the Texas Permanent School Fund Corporation.

26 SECTION 2.13. (a) As soon as practicable after the
27 effective date of this article but not later than the date the

1 transfers under Section 2.11(a) of this article occur, the State
2 Board of Education shall enter into a memorandum of understanding
3 with any state agency the board determines necessary to provide for
4 the transfer to or continued use by the Texas Permanent School Fund
5 Corporation for a period determined by the board of any property,
6 facilities, information and data technology, services, and support
7 staff of the state agency used in connection with operations
8 relating to the management or investment of the permanent school
9 fund.

10 (b) On the date the transfers under Section 2.11(a) of this
11 article occur, the unexpended and unobligated balance of any money
12 appropriated to a state agency relating to the powers, duties,
13 programs, functions, and activities that are transferred to the
14 Texas Permanent School Fund Corporation is transferred to that
15 corporation.

16 SECTION 2.14. (a) Not later than March 30, 2023, the State
17 Board of Education and the Texas Education Agency shall provide to
18 the Texas Permanent School Fund Corporation all financial,
19 contract, and investment records and documents maintained by the
20 board, the agency, or a service provider of the board or agency
21 relating to the management or investment of the permanent school
22 fund.

23 (b) Except as provided by Subsection (c) or (d) of this
24 section, as soon as practicable after the effective date of this
25 article and not later than the date the transfers under Section
26 2.11(a) of this article occur, all assets and investments of the
27 permanent school fund held by the State Board of Education or the

1 Texas Education Agency and any related contracts are transferred to
2 the Texas Permanent School Fund Corporation by operation of law in
3 accordance with applicable law and any governing documentation
4 applicable to those assets, investments, or contracts, including
5 any applicable limited partnership agreement, limited liability
6 company agreement, subscription agreement, letter agreement, or
7 side letter.

8 (c) The State Board of Education and the Texas Education
9 Agency shall retain any assets or investments that would otherwise
10 be transferred to the Texas Permanent School Fund Corporation under
11 Subsection (b) of this section if the corporation determines that:

12 (1) the asset or investment cannot be transferred to
13 the corporation, either because the corporation cannot properly
14 hold custody of the asset or investment or for some other reason; or

15 (2) the transfer of the asset or investment:

16 (A) would have an adverse effect on the permanent
17 school fund or on any asset or investment set apart to the permanent
18 school fund; or

19 (B) is not in the best interest of the permanent
20 school fund.

21 (d) If an asset or investment required to be transferred to
22 the Texas Permanent School Fund Corporation under Subsection (b) of
23 this section cannot be transferred to the corporation in a timely
24 manner, the State Board of Education, the Texas Education Agency,
25 and the corporation shall coordinate concerning the appropriate
26 timing of the transfer or other disposition of the asset or
27 investment.

1 (e) The State Board of Education and the Texas Permanent
2 School Fund Corporation shall coordinate the ongoing management or
3 other disposition of any assets or investments retained by the
4 board or the Texas Education Agency under Subsection (c) or (d) of
5 this section, including:

6 (1) providing direction to the Texas Education Agency
7 regarding the asset or investment;

8 (2) the funding of any outstanding commitments related
9 to the asset or investment;

10 (3) the handling of any distributions, income, or
11 revenues from the asset or investment; and

12 (4) the making of any decisions required with respect
13 to the asset or investment.

14 SECTION 2.15. (a) Not later than January 31, 2023, the
15 School Land Board shall provide to:

16 (1) the Texas Permanent School Fund Corporation a list
17 of each asset and investment acquired on or after September 1, 2001,
18 and held by the board on January 31, 2023, other than sovereign or
19 other state lands, mineral or royalty interests, or real property
20 holdings, as that term is defined by Section 51.001, Natural
21 Resources Code, as amended by this article, and information on
22 unfunded commitments and funding obligations related to the asset
23 or investment; and

24 (2) the general partner or other managing entity of
25 each asset or investment identified under Subdivision (1) of this
26 subsection notice of the transfer of the asset or investment to the
27 Texas Permanent School Fund Corporation under this section.

1 (b) Not later than March 30, 2023, the School Land Board
2 shall provide to the Texas Permanent School Fund Corporation all
3 financial, contract, and investment records and documents
4 maintained by the board, the General Land Office, or a service
5 provider of the board or office relating to the operations
6 associated with or the management of an asset or investment
7 identified under Subsection (a)(1) of this section.

8 (c) Except as provided by Subsection (d) or (e) of this
9 section, not later than December 31, 2023, all assets and
10 investments identified under Subsection (a)(1) of this section and
11 any related contracts are transferred from the School Land Board to
12 the Texas Permanent School Fund Corporation by operation of law in
13 accordance with applicable law and any governing documentation
14 applicable to those assets, investments, or contracts, such as any
15 applicable limited partnership agreement, limited liability
16 company agreement, subscription agreement, letter agreement, or
17 side letter.

18 (d) The School Land Board shall retain any assets or
19 investments that would otherwise be transferred to the Texas
20 Permanent School Fund Corporation under Subsection (c) of this
21 section if the corporation determines that:

22 (1) the asset or investment cannot be transferred to
23 the corporation, either because the corporation cannot properly
24 hold custody of the asset or investment or for some other reason; or

25 (2) the transfer of the asset or investment:

26 (A) would have an adverse effect on the permanent
27 school fund or on any asset or investment set apart to the permanent

1 school fund; or

2 (B) is not in the best interest of the permanent
3 school fund.

4 (e) If an asset or investment required to be transferred to
5 the Texas Permanent School Fund Corporation under Subsection (c) of
6 this section cannot be transferred to the corporation by December
7 31, 2023, the School Land Board and the corporation shall
8 coordinate concerning the appropriate timing of the transfer or
9 other disposition of the asset or investment.

10 (f) The School Land Board and the Texas Permanent School
11 Fund Corporation shall coordinate the ongoing management or other
12 disposition of any assets or investments retained by the board
13 under Subsection (d) or (e) of this section, including:

14 (1) the funding of any outstanding commitments related
15 to the asset or investment;

16 (2) the handling of any distributions, income, or
17 revenues from the asset or investment; and

18 (3) the making of any decisions required with respect
19 to the asset or investment.

20 (g) Not later than December 31, 2023, all cash holdings
21 related to or derived from permanent school fund assets held by the
22 School Land Board shall be transferred to the Texas Permanent
23 School Fund Corporation for deposit to the credit of the permanent
24 school fund.

25 (h) On the date on which the Texas Permanent School Fund
26 Corporation determines that all outstanding commitments required
27 to be paid from the permanent school fund liquid account have been

1 fully resolved, the account is abolished and the balance of that
2 account is transferred to the permanent school fund.

3 SECTION 2.16. This article takes effect December 31, 2022,
4 but only if the State Board of Education incorporates the Texas
5 Permanent School Fund Corporation under Subchapter B, Chapter 43,
6 Education Code, as added by this Act, on or before that date. If the
7 State Board of Education does not incorporate the Texas Permanent
8 School Fund Corporation on or before December 31, 2022, this
9 article has no effect.

10 ARTICLE 3. EFFECTIVE DATE

11 SECTION 3.01. Except as otherwise provided by this Act,
12 this Act takes effect September 1, 2021.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1232 passed the Senate on May 6, 2021, by the following vote: Yeas 30, Nays 0; and that the Senate concurred in House amendments on May 29, 2021, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1232 passed the House, with amendments, on May 26, 2021, by the following vote: Yeas 140, Nays 5, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor