

BILL ANALYSIS

S.B. 1232
By: Taylor
Appropriations
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Permanent School Fund (PSF) is an endowment fund established by the Texas Constitution that consists of fixed income and equity holdings, state lands, mineral rights, and royalty earnings. The PSF is managed by the State Board of Education and the General Land Office to be a permanent, perpetual source of funding of public education for present and future generations of Texans. It has been suggested that the unified management of the PSF by one special-purpose governmental nonprofit corporation, akin to the management structure of the Permanent University Fund, which has been managed by UTIMCO since the 1990s, would be beneficial and could both reduce risks and result in some \$100 million being added to the PSF annually due to the diversified portfolio of investments and other PSF assets. S.B. 1232 seeks to provide for the creation of the Texas Permanent School Fund Corporation for this purpose.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the State Board of Education and to the Texas Permanent School Fund Corporation in SECTION 1.06 of this bill.

ANALYSIS

S.B. 1232 sets out provisions relating to the management and investment of the Permanent School Fund.

State Board of Education's Management of the Permanent School Fund

S.B. 1232 amends the Education Code to remove existing regulations regarding the manner in which the State Board of Education (SBOE) may invest the Permanent School Fund (PSF) and subject the investment of the PSF by the SBOE instead only to the prudent investor standard established in the Texas Constitution.

S.B. 1232 removes the authority of the SBOE to enter into a contract with a nonprofit corporation for the corporation to invest funds under the control and management of the SBOE, including the PSF, as designated by the SBOE. The bill authorizes the SBOE instead to incorporate the Texas Permanent School Fund Corporation and delegate to the corporation its authority to manage and invest the PSF and the charter district bond guarantee reserve fund. The bill requires that the corporation's initial articles of incorporation be adopted by the SBOE and establishes that the corporation is a special-purpose governmental corporation and instrumentality of the state with necessary and implied powers to accomplish its purpose.

S.B. 1232 provides for the governance of the corporation by a nine-member board of directors composed of the following members:

- five members of the SBOE, appointed by the SBOE in accordance with SBOE policy;
- the commissioner of the General Land Office (GLO);
- one member appointed by the commissioner of the GLO who has substantial background and expertise in investments and asset management; and
- two members appointed by the governor, with the advice and consent of the senate, from a list of the six nominees, three each nominated by the SBOE and the School Land Board (SLB), each of whom must have substantial background and expertise in investments and asset management and may not be members of either the SBOE or the SLB.

The bill sets out additional provisions relating to the appointment of directors, the election of board officers, and directors' terms of office, including a requirement for the SBOE by rule to establish the terms of the directors who are SBOE members. The bill requires the board of directors to meet at least three times per year.

S.B. 1232 requires the corporation to hire a CEO, who serves at the will of the board of directors, to manage and carry out the corporation's policies. The bill makes the CEO responsible for hiring all corporation employees, who serve at the will of the CEO, and establishes the following with respect to those employees:

- the CEO or their designee must develop both a system of compensation for corporation employees as necessary to retain qualified staff and a system of annual performance evaluations on which to base merit pay for employees;
- the CEO or their designee must prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin; and
- the corporation's employees are state employees for all purposes.

The bill authorizes the CEO to appoint an internal auditor for the corporation, who may be a corporation employee, and requires that the appointment of the internal auditor be approved by the board of directors. The board of directors may require the internal auditor to submit specified reports directly to the board.

S.B. 1232, in establishing the corporation's general powers and duties, authorizes the corporation to do the following:

- amend the articles of incorporation adopted by the SBOE when the corporation was established, subject to SBOE approval;
- adopt and amend bylaws for the corporation, subject to the SBOE approval; resolutions and policies of the corporation; and any other document necessary to carry out the corporation's purpose;
- engage in any activity necessary to manage the investments of the PSF to the extent the activity complies with applicable fiduciary duties;
- delegate investment authority for the investment of the PSF to one or more private professional investment managers or contract with one or more such managers to assist the corporation in making the investments;
- receive, transfer, and disburse money and securities of the fund as provided by statute or the Texas Constitution, except that the corporation may not distribute money from the PSF to the available school fund (ASF) other than as authorized under the bill; and
- enter into a contract with a state agency, a governmental body, or another entity to manage or invest funds on behalf of the agency, body, or entity.

The bill requires the corporation to make all purchases of goods and services in accordance with applicable fiduciary duties. The bill authorizes the corporation to use purchasing methods that ensure the best value to the corporation and, in determining best value, to consider the best value standards applicable to state agencies.

S.B. 1232 authorizes the corporation to contract with an applicable state agency or another entity to provide operational support, facilities, information and data technology, staff, or other support for the corporation. The corporation may but is expressly not required to request allocation of space to the corporation under applicable state law.

S.B. 1232 requires the corporation's board of directors, in accordance with applicable state law, to develop written investment objectives concerning the investment of the PSF and to employ a well-recognized performance measurement service to evaluate and analyze the investment results. The bill authorizes the corporation to distribute annually from the PSF to the ASF an amount not to exceed \$600 million that is determined in accordance with rules established by the corporation. The bill requires the corporation, in developing those rules, to develop and establish an annual minimum distribution rate for use in making such a distribution each state fiscal year. The bill sets out the factors the corporation may consider in developing that rate. The bill authorizes the corporation to accept, and to establish a nonprofit corporation or other entity for the purpose of accepting, a gift, grant, donation, or bequest of money, securities, property, or any other assets from any public or private source for the PSF.

S.B. 1232 requires the corporation, the SBOE, and the Texas Education Agency (TEA) to determine the corporation's role in the operation and management of the PSF in connection with the bond guarantee program for public school districts to ensure the proper and efficient operation of the program, including the handling of any associated reimbursements, transfers, and disbursements.

S.B. 1232 entitles the corporation, its board of directors, and its officers and employees to sovereign immunity to the same extent as any other state agency or officer or employee of a state agency. The bill prohibits any action taken by the corporation from being construed to waive the corporation's sovereign immunity, including immunity from suit or from liability. The bill exempts the corporation from statutory provisions providing for a contested case hearing for a contractor who is not satisfied with the results of negotiation with a unit of state government. The bill provides for the acquisition of liability insurance for the corporation's directors and employees and for the adoption of an ethics policy by the corporation's board of directors. The bill sets out provisions relating to the following with respect to the corporation and its employees:

- conflicts of interest with respect to the management and investment of the PSF;
- record retention policies; and
- the corporation's information technology and associated resources.

S.B. 1232 classifies the corporation as a governmental body for purposes of state open meetings law. The corporation's board of directors may conduct a closed meeting to deliberate or confer with one or more employees, consultants, or legal counsel of the corporation or with a third party if the only purpose of the meeting is to receive information from or question the employees, consultants, or legal counsel or third party relating to certain investments or procurements. Any vote or final action taken on a procurement discussed in a closed meeting must be conducted in an open meeting.

S.B. 1232 requires the corporation's board of directors, not less than once each year, to submit to the Legislative Budget Board (LBB) an audit report regarding the corporation's operations and authorizes the corporation to contract with a certified public accountant or the state auditor to conduct an independent audit of its operations. These provisions do not affect the state auditor's authority to conduct an audit of the corporation in accordance with applicable state law.

S.B. 1232 establishes the following reporting requirements:

- the corporation must annually submit to the SBOE and the GLO a report on the allocation of assets and investment performance of the portion of the PSF for which the corporation is responsible; and

- not later than November 1 of each even-numbered year, the corporation must submit to the legislature, comptroller of public accounts, the SBOE, and the LBB a report that in detail specifically states the date a transfer will be made from the PSF to the ASF and the amount the corporation will transfer during the subsequent state fiscal biennium.

S.B. 1232 makes the general provisions of the Business Organizations Code and the provisions of that code governing nonprofit corporations applicable to the corporation. The bill exempts the corporation from the following:

- to the extent the corporation's board of directors determines that an exemption is necessary for the corporation to perform the board's fiduciary duties:
 - the Position Classification Act;
 - the Travel Regulations Act; and
 - statutory provisions governing promotions, reclassifications, and salary adjustments for state officers and employees in the executive or judicial branch;
- all state laws regulating or limiting purchasing by state agencies;
- the franchise tax; and
- any filing costs or other fees imposed by the state on a corporation.

S.B. 1232 repeals Sections 43.006(b), (c), (d), (e), (f), (g), (h), (i), (j), and (k), Education Code.

School Land Board's Management of the Permanent School Fund

S.B. 1232 includes provisions and repeals certain statutory provisions, as follows, that relate to the management of the PSF. These provisions and repeals take effect December 31, 2022, but only if the SBOE incorporates the Texas Permanent School Fund Corporation on or before that date. Otherwise, the following provisions and repeals are not effective.

S.B. 1232 amends the Natural Resources Code to revise provisions relating to the management of public school land by the SLB and the commissioner of the GLO. Accordingly, the bill does the following:

- includes any real property holding that is set apart to the PSF under the Texas Constitution or state law among the interests that are subject to the sole and exclusive management and control of the SLB and the commissioner and removes from that sole and exclusive management and control other real estate investments and interests, as well as revenue received from mineral or royalty interests;
- defines "real property holding" as any direct or indirect interest in real property located in Texas or any interest in a joint venture whose primary purpose is the acquisition, development, holding, and disposing of real property located in Texas, excluding an interest in an investment vehicle, as defined by the bill; and
- requires that all revenue received from mineral or royalty interests that is set apart to the PSF be transferred each month to the corporation for investment in the PSF.

S.B. 1232 revises provisions relating to the use by the SLB of funds designated for deposit in the real estate special fund account of the PSF. Accordingly, the bill does the following:

- authorizes the SLB to use the funds to acquire, as public school land, interests in real property for residential purposes;
- authorizes the SLB to use the funds to protect, maintain, or enhance the value of mineral or royalty interests on public school land;
- replaces the authorization for the SLB to use the funds to acquire interests in real estate with an authorization for the SLB to use the funds to acquire real property holdings;
- replaces the authorization for the SLB to use the funds to acquire, sell, lease, trade, improve, maintain, protect, or use real estate investments, an investment or interest in public infrastructure, and certain other interests with an authorization for the SLB to use the funds to acquire, sell, lease, trade, improve, maintain, protect, or use real property holdings; and

- repeals limitations on the market value of the amount of the funds invested for certain purposes.

The bill provides for the appointment by the SLB of investment consultants or advisors to assist the SLB in using the designated funds in an authorized manner by contracting for professional investment advisory services with one or more organizations that are in the business of advising on the management of real estate investments. The bill includes the corporation and the LBB among the recipients of the biennial report from the SLB that assesses the direct and indirect economic impact of the use of the designated funds and revises the required contents of the report.

S.B. 1232 provides for the transfer of all powers, duties, functions, programs, and activities of the SBOE and the TEA relating to the management and investment of the PSF to the corporation by operation of law, as well as all powers, duties, functions, programs, and activities of the SLB relating to certain assets or investments of the PSF, as soon as practicable and on the date agreed to by the SBOE, TEA, the SLB, and the corporation. However, the corporation may delay the transfer of any power, duty, function, program, or activity if the corporation determines that the transfer would have an adverse impact on or is not in the best interest of the PSF. The bill sets out additional provisions effectuating these transfers, including with respect to the following:

- the transfer of certain employees to the corporation;
- a memorandum of understanding between the SBOE and any other agency the SBOE determines necessary to provide for the transfer to or continued use by the corporation for a period determined by the SBOE of any property, facilities, information and data technology, services, and support staff used in connection with operations relating to the management or investment of the PSF; and
- the transfer of certain unexpended and unobligated balance of appropriated money to the corporation.

With respect to the time line for the transfers from the SBOE and TEA, S.B. 1232 provides the following:

- not later than March 30, 2023, the SBOE and TEA must provide to the corporation all financial, contract, and investment records and documents maintained by the SBOE, TEA, or an applicable service provider relating to the management or investment of the PSF; and
- as soon as practicable but not later than that transfer date, all assets and investments of the PSF held by the SBOE or TEA and any related contracts are transferred to the corporation by operation of law in accordance with applicable law and any governing documentation applicable to those assets, investments, or contracts.

The bill requires the SBOE and TEA to retain any assets or investments that would otherwise be transferred to the corporation if the corporation determines the asset or investment cannot be transferred to the corporation, either because the corporation cannot properly hold custody of the asset or investment or for some other reason or because the transfer of the asset or investment would have an adverse effect on the PSF or on any asset or investment set apart to the PSF or is not in the best interest of the PSF. If an asset or investment cannot be transferred to the corporation in a timely manner, the SBOE, TEA, and the corporation must coordinate concerning the appropriate timing of the transfer or other disposition of the asset or investment. The bill requires the SBOE and the corporation to coordinate the ongoing management or other disposition of any assets or investments retained by the SBOE or TEA.

With respect to the time line for the transfers from the SLB, S.B. 1232 provides the following:

- not later than January 31, 2023, the SLB must provide the corporation a list of each asset and investment acquired on or after September 1, 2001, and held by the SLB on January 31, 2023, other than sovereign or other state lands, mineral or royalty interests, or real property holdings, and information on unfunded commitments and funding obligations related to the asset or investment;

- not later than January 31, 2023, the SLB must provide to the general partner or other managing entity of each asset or investment so identified notice of the transfer of the asset or investment to the corporation;
- not later than March 30, 2023, the SLB must provide to the corporation all financial, contract, and investment records and documents maintained by the SLB, the GLO, or an applicable service provider relating to the operations associated with or the management of an identified asset or investment;
- not later than December 31, 2023, all identified assets and investments and any related contracts are transferred from the SLB to the corporation by operation of law in accordance with applicable law and any governing documentation applicable to those assets, investments, or contracts; and
- not later than December 31, 2023, all cash holdings related to or derived from PSF assets held by the SLB must be transferred to the corporation for deposit to the credit of the PSF.

The bill requires the SLB to retain any assets or investments that would otherwise be transferred to the corporation if the corporation determines the asset or investment cannot be transferred to the corporation, either because the corporation cannot properly hold custody of the asset or investment or for some other reason or because the transfer of the asset or investment would have an adverse effect on the PSF or on any asset or investment set apart to the PSF or is not in the best interest of the PSF. If an asset or investment cannot be transferred to the corporation by December 31, 2023, the SLB and the corporation must coordinate concerning the appropriate timing of the transfer or other disposition of the asset or investment. The bill requires the SLB and the corporation to coordinate the ongoing management or other disposition of any assets or investments retained by the SLB.

S.B. 1232 abolishes the permanent school fund liquid account on the date on which the corporation determines that all outstanding commitments required to be paid from the account have been fully resolved and provides for the account balance to be transferred to the PSF.

S.B. 1232 repeals the following requirements:

- the requirements for the SBOE and the SLB to provide each other with a quarterly financial report on the portion of the PSF assets and funds for which the applicable agency is responsible;
- the requirement for the SLB and the SBOE to hold an annual joint public meeting to discuss the allocation of the assets of the PSF and the investment of the money therein; and
- the requirement for the SLB to submit a biennial report to the legislature, the comptroller, the SBOE, and the LBB that states the date a transfer will be made and the amount of the funds the SLB will transfer during the subsequent state fiscal biennium from the real estate special fund account of the PSF to the ASF or the SBOE for investment in the PSF.

S.B. 1232 repeals the following provisions:

- Section 43.0052, Education Code;
- Sections 32.0161 and 32.068, Natural Resources Code;
- Section 51.402(c), Natural Resources Code, as amended by Chapters 493 (H.B. 4388) and 524 (S.B. 608), Acts of the 86th Legislature, Regular Session, 2019; and
- Sections 51.4131 and 51.414, Natural Resources Code.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2021.