

**SUBJECT:** Distribution from Permanent School Fund to Available School Fund

**COMMITTEE:** Appropriations — committee substitute recommended

**VOTE:** 20 ayes — Pitts, Aycock, Button, Chisum, Crownover, Darby, Eiland, Gooden, Hochberg, Johnson, Margo, McClendon, D. Miller, Morrison, Otto, Patrick, Riddle, Schwertner, Shelton, Zerwas

0 nays

7 absent — Turner, Dukes, Giddings, S. King, Martinez, Torres, Villarreal

**SENATE VOTE:** On final passage, April 28 — 29-2, (Carona, Hegar)

**WITNESSES:** No public hearing

**BACKGROUND:** The School Land Board (SLB) — housed within the General Land Office (GLO) — supervises the management, leasing, and sale of the public school lands. The board comprises the land commissioner and two citizen members. One citizen member is appointed by the governor, while the other is appointed by the attorney general. Citizen members serve two-year terms and may be reappointed, while the commissioner serves for the duration of his or her elected term.

Established under Texas Constitution, Art. 7, sec. 5, the Permanent School Fund (PSF) is a trust that holds the proceeds from state land and mineral rights dedicated to the support of the public schools and investment returns from the corpus of the fund. Sec. 51.401, Natural Resources Code, permits the SLB to designate funds received from any land, mineral, or royalty interest or real estate investment or other interest to the PSF, with the mineral estate deposits in the real estate special fund account to be used for investments to benefit the PSF. The market value of the investments in real estate made by the SLB may not exceed 15 percent of the market value of the PSF.

The PSF's investment returns are constitutionally dedicated to the benefit of Texas public schools. The State Board of Education (SBOE) manages the investment of the PSF, and if the fund's investment

performance permits, the SBOE makes distributions to the Available School Fund (ASF). The ASF consists of distributions from the PSF and revenue from one-fourth of motor fuels taxes and one-fourth of occupations taxes. Distributions to the ASF are used to fund instructional materials and technology for classrooms and can provide funding to school districts on a per-student basis in a distribution known as the per-capita distribution. To preserve the principal of the PSF, Art. 7, sec. 5 not only caps the percentage of PSF investment returns that may be distributed to the ASF, but also prohibits any distribution in years when the PSF value falls below a certain level.

Sec. 51.413, Natural Resources Code, permits the SLB to release investment funds directly to the ASF or to the SBOE for investment in the PSF. Atty. Gen. Opinion, GA-0617, issued April 9, 2008, determined that sec. 51.413(1), which permits the SLB to send funds directly to the ASF, likely is unconstitutional. The opinion concluded that the statute is inconsistent with constitutional provisions requiring land sale proceeds to be used to acquire other land for the PSF or invested. The opinion found that the authority to transfer state land and property proceeds directly to the ASF likely was unconstitutional because such proceeds were not listed as components of the ASF by the Texas Constitution.

**DIGEST:**

CSSJR 5 would amend Art. 7, sec. 5(a) of the Texas Constitution to include discretionary real estate investments and cash in the state treasury derived from property belonging to the Permanent School Fund (PSF) to determine the market value of the PSF for calculation of current total return distribution from the PSF to the Available School Fund (ASF). The change would apply only to a distribution from the PSF to the ASF made on or after September 1, 2011.

CSSJR 5 would authorize the GLO or an entity other than the SBOE that had responsibility for the management of PSF land or other properties to distribute revenue derived during that year from land or properties to the ASF in an amount not exceeding \$300 million each year.

CSSJR 5 also would amend various sections of the Texas Constitution by replacing “perpetual public school fund,” “public free school fund,” and “free public school fund” with “permanent school fund.”

The proposal would be presented to the voters at an election on Tuesday, November 8, 2011. The ballot proposal would read: “The constitutional

amendment clarifying references to the permanent school fund, allowing the General Land Office to distribute revenue from permanent school fund land or other properties to the available school fund to provide additional funding for public education, and providing for an increase in the market value of the permanent school fund for the purpose of allowing increased distributions from the available school fund.”

**SUPPORTERS  
SAY:**

CSSJR 5 would allow for the consolidation of Permanent School Fund investment assets to reflect accurately the full balance of the PSF. The amendment would include certain assets held by the school land board to the total asset base calculations.

CSSJR 5 is necessary because an attorney general’s opinion has clouded the constitutionality of the School Land Board’s statutory authority to transfer proceeds from PSF land and property directly to the Available School Fund. The SLB should have this authority to ensure that public schools benefit directly from the investment returns realized by the board. CSSJR 5 would amend the Texas Constitution to permit a direct transfer from the SLB to the ASF, at the discretion of the SLB and subject to a cap of no more than \$300 million per year. This could add millions of dollars in badly needed revenue for the public schools while preserving the corpus of the PSF.

Atty. Gen. Opinion, GA-0617, April 9, 2008, concluded that sec. 51.413(1), Natural Resources Code, allowing the SLB to send funds directly to the ASF, was likely unconstitutional. CSSJR 5 would permit legislation that would ensure that public schools benefited directly from the investment returns earned by the GLO from PSF lands. The proposed amendment also would ensure that the corpus of the PSF would remain secure by capping the distribution at no more than \$300 million per year. While the corpuses of the real estate special fund account and the PSF have grown, the SLB has transferred less money in recent biennia compared to 10 years ago.

Despite the claim that the SLB’s having the discretion to retain a portion of the returns ensures the fund’s ability to perform well in the future, this fails to appreciate the detriment of hoarding money meant for the public school finance system when the need for additional funding is so pressing. CSSJR 5 would promote transparency by permitting legislation that would allow a traceable path between the net revenue earned by the GLO and the ASF. There is no reason why funds transferred from the GLO must go first

to the PSF and then possibly to ASF.

While some claim that the SLB uses a specific methodology to determine a payout to the PSF, their actions do not demonstrate this. In fact, the SLB previously has transferred additional amounts to the PSF, contradicting its supposed methodology.

CSSJR 5 also would not change substantively the Texas Constitution by replacing “perpetual public school fund” and “free public school fund” with “permanent school fund.” These three terms are used interchangeably throughout the Texas Constitution — in practice, there is not a perpetual public school fund or a free public school fund. Attorney general opinion GA-0617 concluded that all three funds refer to the PSF. Conforming all references to the “permanent school fund” title simply would provide uniformity and prevent confusion.

OPPONENTS  
SAY:

By changing the manner in which total assets of the Permanent School Fund were calculated, CSSJR 5 would afford a short-term solution to the budget crisis, but would harm public schools in the long term.

CSSJR 5 is neither necessary nor appropriate. The SLB already acts in the best interest of the fund by fulfilling its duty to manage the land and mineral rights held by the PSF. Funds generated by SLB investments are used for what they were intended. The ability to transfer proceeds from PSF land and property directly to the ASF is not necessary. The SLB can transfer funds to the PSF, and then the SBOE can ensure that the proceeds directly benefit public schools through the annual distributions to the ASF. Alternately, the SLB is able to use the net revenue to invest, which ultimately benefits the public schools by increasing the total returns available for transfer to the PSF. It is not wise to spend directly funds that would otherwise be better invested as corpus funds to generate future income.

Some claim that the SLB has stored money in the corpus of the PSF that should benefit public schools, but the claim is unfounded. The corpus of the fund has grown due to increased royalties earned from oil and gas on

PSF lands. The royalties are PSF mineral rights and as such are dedicated constitutionally to the corpus of the PSF.

The SLB has not stored money. It has acted in accord with the Texas

Constitution and its adopted disbursement formula, which permits a distribution of 6 percent of total assets or \$100 million each year, whichever is greater. The SLB adopted the same disbursement mechanism used by the SBOE because it had been vetted by the Legislature and the voters.

The SLB should not be bound to a maximum transfer amount set by the Legislature. A predetermined maximum would pressure the board to divert funds from the PSF, regardless of its fiduciary duty. To protect the permanence of the PSF, the SLB's highest priority should be its fiduciary role. The SLB is better equipped to determine the distribution of available funds based on the market and investment returns.

**NOTES:**

CSSJR 5 differs from the Senate engrossed version by conforming the terms used to refer to the PSF and by authorizing direct distributions to the ASF by the GLO.

A similar proposal, HJR 109 by Orr, was adopted by the House by 147-0 on May 12 and by the Senate on May 21. The amended version of HJR 109 adopted by the Senate is identical to CSSJR 5.