

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 2217
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Finance
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Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The Texas Legislature has charged the school land board (board) and the commissioner of the General Land Office with the duty and authority to manage the state-owned real property dedicated to the permanent school fund, under Sections 4 and 5, Article VII, Texas Constitution. These real property assets are leased for a variety of purposes, including oil and gas production, commercial development, and sustainable energy development. However, the board does not have clear authority to expend funds to make improvements to these real property assets, or to otherwise enhance their value.

C.S.H.B. 2217 eliminates and modifies many old and out-dated provisions in Chapter 51, Natural Resources Code, governing the board's authority, thereby granting the board the authority it needs to operate as a modern real estate fund.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the school land board in SECTION 6 (Section 51.052, Natural Resources Code) and SECTION 9 (Section 51.4021, Natural Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 51.001(11), Natural Resources Code, by redefining "market value."

SECTION 2. Amends the heading to Subchapter B, Chapter 51, Natural Resources Code, to read as follows:

**SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE
TO THE MANAGEMENT
OF PUBLIC SCHOOL AND ASYLUM LAND**

SECTION 3. Amends the heading to Section 51.011, Natural Resources Code, to read as follows:

Sec. 51.011. MANAGEMENT OF PUBLIC SCHOOL LAND.

SECTION 4. Amends Section 51.011, Natural Resources Code, by amending Subsection (a) and adding Subsections (a-1) and (a-2), as follows:

(a) Requires certain lands and mineral estates to be subject to the sole and exclusive management and control of the school land board (board) and the commissioner of the General Land Office (commissioner), rather than be controlled, sold, and leased by the board and commissioner, under the provisions of this chapter and other applicable law.

(a-1) Authorizes the board to acquire, sell, lease, trade, improve, or otherwise manage, control, or use land that is set apart to the permanent school fund in any manner, at such prices, and under such terms and conditions, as the board finds to be in the best interest of the fund.

(a-2) Requires the board, not later than October 15 of each year, to report to the Legislative Budget Board (LBB) the sale of any land that is set apart to the permanent school fund for less than appraised value or the purchase of any land that is set apart to the permanent school fund for more than appraised value during the preceding state fiscal year.

SECTION 5. Amends Section 51.051, Natural Resources Code, as follows:

Sec. 51.051. SALE OF LAND. Requires all sales of land described in Section 51.011 (Sale and Lease of Public School Land) to be made by or under the direction of the board. Deletes reference to the provisions of Section 32.109 (Acceptance and Rejection of Bids). Deletes the requirement that the sale be made to the applicant who submits the highest bid for the land at a price that is not less than the price set by the board for purchase of the land. Makes a nonsubstantive change.

SECTION 6. Amends Sections 51.052, Natural Resources Code, by amending Subsections (d), (e), and (i), and adding Subsection (l), as follows:

(d) Deletes the prohibition against selling land covered by this chapter for less than the market value that appears in the appraisal made under this subsection.

(e) Adds the requirement that for an owner of land surrounding a tract made available for sale, in order to exercise the preference right to purchase the tract, the board find the use of the preference to be in the best interest of the state. Requires the board to adopt rules to implement this preference right.

(i) Authorizes the asset management division of the General Land Office, if the transaction involves commercial real estate and the board determines that it is in the best interest of the permanent school fund, to solicit proposal or negotiate a sale, exchange, or lease of the land to any person. Deletes the prohibition that the sale price may not be less than the market value. Makes conforming and nonsubstantive changes.

(l) Requires the lessee, if the board leases land under this subchapter and the lease includes the right to produce groundwater from the land, to comply with statutory provisions governing and the rules adopted by the groundwater conservation district, if any, in which the land is located, including the statutory provisions and rules governing the production and use of groundwater and the transfer of groundwater out of the district.

SECTION 7. Amends Sections 51.401(a) and (c), Natural Resources Code, as follows:

(a) Deletes the requirement that certain funds deposited in a special fund account of the permanent school fund be used by the board to acquire fee or lesser interests in real property, including mineral and royalty interests, for the use and benefit of the permanent school fund, as provided by Section 51.402 (Acquisition of Interest in Real Property). Deletes the reference to active leases. Makes a nonsubstantive change.

(c) Requires money received from the sale of a particular piece of land under this subchapter to be used by the board, as provided by this subchapter, rather than requiring money received from the sale of a particular piece of land and designated for the acquisition of interests in real property under this subchapter be used by the board, by a certain date. Requires money received from the lease of minerals and royalties derived from leases, rather than from active leases, and designated for use by the board as provided by this subchapter, rather than for the acquisition of interests in real property under this subchapter, to be used by the board by a certain date.

SECTION 8. Amends Section 51.402, Natural Resources Code, as follows:

Sec. 51.402. New heading. USE OF DESIGNATED FUNDS. Includes among those purposes for which the board may use the money under Section 51.401 (Special Fund Account): protecting, maintaining, or enhancing the value of public school land; acquiring interests in real estate; and paying reasonable fees for professional services

related to permanent school fund investment. Requires the board, before using funds under Subsection (a), to determine, using the prudent investor standard, that the use of the funds for the intended purpose is in the best interest of the permanent school fund. Makes conforming and nonsubstantive changes.

SECTION 9. Amends Subchapter I, Chapter 51, Natural Resources Code, by adding Sections 51.4021 and 51.408-51.412, as follows:

Sec. 51.4021. APPOINTMENT OF SPECIAL FUND MANAGERS. Authorizes the board to appoint investment managers to invest the money designated under Section 51.401 by contracting for professional investment management services with one of more organizations that are in the business of managing real estate investment. Sets forth the eligibility requirements for an appointment as investment manager under this section. Specifies the requirements of a contract under this section. Prohibits money designated under Section 51.401 from being invested in a real estate investment trust as defined by Section 200.001 (Definition), Business Organizations Code. Requires compensation paid to an investment manager by the board to be consistent with the compensation standards of the investment industry and compensation paid by similarly situated institutional investors. Provides that Chapter 2263 (Ethics and Disclosure Requirements for Outside Financial Advisors and Service Providers). Requires the board by rule to adopt standards of conduct for investment managers appointed under this section as required by Section 2263.004 (Ethics Requirements for Outside Financial Advisors or Service Providers), Government Code, and to implement the disclosure requirements of Section 2263.005 (Disclosure Requirements for Outside Financial Advisor or Service Provider) of that code.

Sec. 51.408. ETHICS POLICY AND TRAINING. (a) Requires the board, in addition to any other requirements provided by law, to adopt and enforce an ethics policy that provides standards of conduct relating to management and investment of the funds designated under Section 51.401. Requires the ethics policy to include certain provisions as they apply to the management and investment of the funds and to persons responsible for managing and investing funds.

(b) Requires the ethics policy to include certain provisions applicable to certain persons.

(c) Requires the board, no later than the 45th day before the date on which the board intends to adopt a proposed ethics policy or an amendment to or revision of an adopted ethics policy, to submit a copy of the proposed policy, amendment, or revision to the Texas Ethics Commission and the state auditor for review and comments. Requires the board to consider any comments from the commission or state auditor before adopting the proposed policy.

(d) Requires the provisions of the ethics policy that apply to a person who provides services to the board relating to the management or investment of the funds designated under Section 51.401 to be based on the Code of Ethics and Standards of Professional Conduct prescribed by the Association for Investment Management and Research or other ethics standards adopted by another appropriate professionally recognized entity.

(e) Requires the board to ensure that applicable provisions of the ethics policy are included in any contract under which a person provides services to the board relating to the management and investment of the funds designated under Section 51.401.

Sec. 51.409. DISCLOSURE OF CONFLICTS OF INTEREST AND FINANCES. (a) Provides that a member of the board, the commissioner, an employee of the board, or a person who provides services to the board that relate to the management or investment of the funds designated under Section 51.401 who has a business, commercial, or other relationship that could reasonably be expected to diminish the person's responsibilities

relating to the management or investment of the funds to disclose the relationship in writing to the board.

(b) Requires the board or the board's designee to, in the ethics policy adopted under Section 51.408, define the kinds of relationships that may create a possible conflict of interest.

(c) Requires a person who is required to file a disclosure statement under Subsection (a) to refrain from giving advice or making decisions about matters affected by the conflict of interest unless the board, after consultation with the general counsel of the board, expressly waives this prohibition. Requires the board to maintain a written record of each waiver and the reasons for it. Authorizes the board to delegate the authority to waive prohibitions under this subsection to one or more designated employees of the land office on a vote of a majority of the members of the board at an open meeting called and held in compliance with Chapter 551 (Open Meetings), Government Code. Requires the board to have any order delegating authority to waive prohibitions under this section entered into the minutes of the meeting. Authorizes the board to adopt criteria for designated employees to use to determine the kinds of relationships that do not constitute a material conflict of interest for purpose to this subsection.

(d) Requires each employee of the board who exercises significant decision-making or fiduciary authority, as determined by the board, to file financial disclosure statements with a person designated by the board. Requires the content of a financial disclosure statement to comply substantially with the requirements of Subchapter B (Record of Open Meeting), Chapter 572, Government Code. Requires a statement to be filed not later than the 30th day after the date a person is employed in a significant decision-making or fiduciary position and annually after employment not later than April 30. Authorizes the filing deadline to be postponed by the board for not more than 60 days on written request or for an additional period for good cause, as determined by the chairman of the board. Requires the board to maintain a financial disclosure statement for at least five years after the date of its filing.

Sec. 51.410. REPORTS OF EXPENDITURES. Requires certain persons providing services to the board relating to the management and investment of the funds designated under Section 51.401 to file with the board regularly, as determined by the board, a report that describes in detail any expenditure of more than \$50 made by the person on behalf of certain persons.

Sec. 51.411. FORMS; PUBLIC INFORMATION. (a) Requires the board to prescribe forms for certain statements and reports.

(b) Provides that a statement, waiver, or report described by Subsection (a) is public information.

(c) Requires the board to designate an employee of the board to act as custodian of statement, waivers, and reports described by Subsection (a) for purposes of public disclosure.

Sec. 51.412. REPORTS TO LEGISLATURE. (a) Requires the board, not later than September 1 of each even-numbered year, to submit to the legislature a report that, specifically and in detail, assesses the direct and indirect economic impact, as anticipated by the board, of the investment of funds designated under Section 51.401 for deposit in the special fund account of the permanent school fund. Prohibits the board from disclosing information under this section that is confidential under applicable state or federal law. Requires the report to include certain information.

(b) Requires the board, not later than January 1 of each odd-numbered year, to submit to the legislature a report that assesses the return and economic impact of

the investments reported to the legislature before the preceding regular legislative session.

SECTION 10. Repealer: Sections 32.254 (Land To Be Traded For Land Of At Least Equal Value) and 51.403 (Market Value), Natural Resources Code.

SECTION 11. Effective date: upon passage or September 1, 2005.