

BILL ANALYSIS

Senate Research Center

C.S.H.B. 3699
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Finance
5/21/2007
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The legislature has charged the school land board (board) and the commissioner of the general land office (commissioner) with the duty and authority to manage the state-owned lands dedicated to the permanent school fund (PSF) under Sections 4 and 5, Article VII, Texas Constitution. These lands consist of millions of acres, including upland properties, the Gulf Coast beaches and bays, and the "submerged" lands extending 10.3 miles out from the shoreline. The general land office (GLO) and the board can authorize the use of these state lands for a variety of private and commercial purposes, including conservation and ecological projects, public and private piers, docks, channels, and wharves, oil and gas exploration and production, pipeline and roadway rights of way, commercial development, and sustainable energy development.

The 77th, 78th, and 79th Legislatures amended Subchapter I (Acquisition of Public School Land), Chapter 51, Natural Resources Code, to create a special fund account of PSF, consisting primarily of revenues from oil and gas leases on PSF lands. This legislation authorized the board to use these revenues to build a portfolio of commercial real estate investments in order to diversify the holdings of PSF and to create a new source of revenue for public education that, unlike oil and gas revenues, does not deplete over time.

C.S.H.B. 3699 allows the board and GLO to operate in the modern real estate market as they build PSF's commercial real estate portfolio. This bill ensures that the board has the authority to make prudent investments in real estate, either directly or through the services of fund advisors, managers, or consultants. The bill makes conforming changes to confirm the board's authority to manage the lands and other interests dedicated to PSF or the special fund account. The bill also provides a mechanism for payments from the real estate special fund account.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 51.011(a) and (a-1), Natural Resources Code, as follows:

(a) Includes a mineral or royalty interest, real estate investment, or other interest, including revenue received from those sources in addition to any land interest and certain mineral estate (sources of finance), that is set apart to the permanent school fund, as being required 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).

(a-1) Authorizes the board to maintain and protect in a certain manner, among other certain actions, mineral and royalty interests, real estate investments, or other interests, including sources of finance. Makes a conforming change.

SECTION 2. Amends Section 51.121(b), Natural Resources Code, as follows:

(b) Requires improvements on land leased under Subsection (a) (regarding lease of unsold public school land) to be removed prior to the expiration of the lease unless the

commissioner determines it to be in the best interest of the state that removal of the improvements not be required and includes a provision in the terms and conditions of the lease that the improvements on the land shall become property of the state upon termination or expiration of the lease. Deletes existing text requiring commercial improvements on land leased under Subsection (a) of this section to be removed prior to the expiration of the lease unless a renewal or an extension of the lease has been finalized prior to the expiration of the term of the lease. Deletes existing text requiring the commercial improvements on the land to become property of the state if commercial improvements are not removed prior to the expiration of the lease and if there has been no removal or extension prior to the expiration of the lease.

SECTION 3. Amends the heading to Section 51.401, Natural Resources Code, to read as follows:

Sec. 51.401. REAL ESTATE SPECIAL FUND ACCOUNT.

SECTION 4. Amends Sections 51.401(a) and (b), Natural Resources Code, as follows:

(a) Authorizes the board to designate funds received from sources of finance that is set apart to the permanent school fund (PSF) under the constitution and laws of this state together with the mineral estate in certain areas for deposit in the real estate special fund account (account). Deletes existing text authorizing the board to designate funds from the sale of PSF land under Chapter 51 (Land, Timber, and Surface Resources), and the proceeds of future mineral leases and royalties generated from existing and future leases of fund mineral interests received under Chapters 52 (Oil and Gas) and 53 (Minerals), Natural Resource Code.

(b) Makes conforming changes.

SECTION 5. Amends Section 51.402, Natural Resources Code, by amending Subsections (a) and (b) and adding Subsection (b-1), as follows:

(a) Authorizes the board to use the money designated under Section 51.401, Natural Resources Code, for certain purposes, including to acquire, sell, lease, trade, improve, maintain, protect, or use land, mineral, and royalty interests, or real estate investments, an investment or interest in public infrastructure, or other interests, at such prices and under such terms and conditions the board determines to be in the best interest of PSF.

(b) Requires the board, using the prudent investor standard and before using funds under Subsection (a), to determine that the use of the funds for the intended purpose is authorized by Subsection (a). Provides that a determination by the board on the use of funds under this section is conclusive unless the determination was made due to fraud or obvious error.

(b-1) Authorizes the board to confer with one or more of the board's employees or with a third party regarding an investment or potential acquisition of interest in real estate, to the extent permitted to the board of trustee of the Texas growth fund under Section 551.075 (Conference Relating to Investments and Potential Investments Attended by Board of Trustees of Texas Growth Fund; Closed Meeting), Government Code.

SECTION 6. Amends Section 51.4021, Natural Resources Code, as follows:

Sec. 51.4021. New heading: APPOINTMENT OF SPECIAL FUND MANAGERS, INVESTMENT CONSULTANTS, OR ADVISORS. (a) Authorizes the board to appoint investment managers, consultants, or advisors to invest or to assist the board in investing money designated under Section 51.401 by contracting for professional investment management or investment advisory services with one or more organizations that are in the business of manage or advising on the management of real estate investments.

(b) Requires an investment manager, consultant, or advisor to abide by certain policies, requirements, or restrictions to be eligible for appointment under this section. Deletes existing text setting forth certain requirements for a person to be eligible for appointment under this section as an investment manager. Deletes existing text prohibiting the investment of money in the fund in a real estate investment trust.

(c) and (d) Redesignated from existing Subsections (d) and (e). Makes conforming changes.

SECTION 7. Amends Section 51.412(a), Natural Resources Code, to require the report submitted by the board regarding funds deposited in the account to include the amount of money the board expects to distribute to the available school fund (ASF) or the State Board of Education (SBOE) for investment in PSF after making the investments. Makes conforming changes.

SECTION 8. Amends Subchapter I, Chapter 51, Natural Resources Code, by adding Section 51.413, as follows:

Sec. 51.413. TRANSFERS FROM THE REAL ESTATE SPECIAL FUND ACCOUNT TO THE AVAILABLE SCHOOL FUND AND THE PERMANENT SCHOOL FUND. Authorizes the board, by a resolution adopted at a regular meeting, to release from the account funds previously designated under Section 51.401 of this chapter or managed, used, or encumbered under Section 51.402 or Section 51.4021 of this chapter to be deposited in the state treasury to the credit of ASF or SBOE for investment in PSF.

SECTION 9. Amends Chapter 43, Education Code, by adding Section 43.0051, as follows:

Sec. 43.0051. TRANSFERS TO REAL ESTATE SPECIAL FUND ACCOUNT OF THE PERMANENT SCHOOL FUND. Authorizes SBOE to transfer funds from the portion of PSF managed by SBOE to the account if SBOE determines, using the standard of care set forth in Subsection (f) (regarding managing the assets of the permanent school fund), Section 5, Article VII, Texas Constitution, that such transfer is in the best interest of PSF.

SECTION 10. Repealer: Sections 51.401(c) and (d) (regarding required spending of money within the special fund account within two years), Natural Resources Code.

SECTION 11. Effective date: upon passage or September 1, 2007.