

SUBJECT: Continuing the School Land Board

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 7 ayes — Craddick, Muñoz, C. Bell, Biedermann, Leman, Minjarez,
Thierry

0 nays

2 absent — Canales, Stickland

SENATE VOTE: On final passage, April 30 — 31-0

WITNESSES: For — (*Registered, but did not testify*: Colby Nichols, Instructional Materials Coordinators Association of Texas, Texas Rural Education Association; Barry Haenisch, Texas Association of Community Schools; Amy Beneski, Texas Association of School Administrators; Will Holleman, Texas Association of School Boards)

Against — None

On — (*Registered, but did not testify*: Jeff Gordon, General Land Office; Lauren Ames, Sunset Advisory Commission)

BACKGROUND: The Texas Constitution of 1876 established the Permanent School Fund (PSF) and transferred half of state-owned land to the PSF as an endowment to provide a perpetual source of funding for public education. The constitution assigned the General Land Office (GLO) with managing the land and the PSF. In 1939, the 46th Legislature established the School Land Board (SLB) within GLO to oversee the management, sale, and leasing of the PSF land, which generates revenue the SLB uses to purchase additional real estate and make investments that help fund public education.

In 2001, the 77th Legislature gave the SLB authority previously held only by the State Board of Education to make investments to generate revenue

for the PSF. The Legislature in 2005 and 2007 further expanded the SLB's investment authority by allowing the board to invest in real estate, energy, and infrastructure in addition to land.

Functions. The SLB exists to earn money for the PSF through its management of the fund's 13 million acres of land and investment portfolio, which was valued at about \$6.5 billion including cash at the end of fiscal 2017. The SLB, with administrative support from GLO staff, carries out the following activities:

- sells and trades PSF lands;
- leases PSF lands for energy development, mining, and various coastal uses;
- uses proceeds, such as from mineral leases and royalties, to acquire additional property and mineral interests on behalf of the PSF;
- approves investments; and
- leases recreational cabins on the Texas coast.

The portion of revenue GLO maintains for purchasing additional real estate and making investments is held in the Real Estate Special Fund Account (RESFA). Both the land commissioner on his own and SLB manage PSF land transactions, but SLB alone approves investments in the RESFA and any allowable distribution of money from the RESFA to the State Board of Education and the Available School Fund.

Gross revenue from PSF lands and SLB investments totaled about \$1.9 billion in fiscal 2017.

Governing structure. The board consists of three members, including the land commissioner who serves as board chair, one public member appointed by the governor, and one public member appointed by the attorney general. The public members must be confirmed by the Senate and serve two-year terms. The board meets publicly as often as twice per month and uses two committees to assist with investment decisions and to review applications to combine tracts of PSF land. The investment advisory committee consists of four GLO employees and the pooling

committee consists of a representative from the GLO, the governor's office, and the office of the attorney general.

Funding. The SLB primarily funds its activities with lease revenues and fees and earnings from the investment of funds in the RESFA. In fiscal 2017, oil and gas revenues comprised the largest source of revenue for the RESFA, totaling more than \$900 million. GLO uses a portion of the RESFA, including collected fees, to fund administration, management and oversight of the PSF. In fiscal 2017, SLB collected \$28.9 million in administrative fee revenue and GLO spent \$20.3 million in board-related administrative expenses.

Staffing. GLO staff support the board and its operations. In fiscal 2017, GLO employed about 163 staff who perform some SLB functions at least part of the time, with 145 employees working in Austin and 18 employees working in field offices around the state.

The SLB would be discontinued September 1, 2019, unless continued in statute.

DIGEST:

CSSB 608 would continue the School Land Board (SLB) until September 1, 2031. The bill would add two new public members to the board and remove the attorney general's authority to appoint one public member. The bill would require the SLB and State Board of Education (SBOE) to attend an annual joint meeting to discuss the investment and asset allocation of the Permanent School Fund (PSF). The SLB would be required to report the amounts of all fees and compensation paid to investment managers, consultants, and advisors.

Board membership. The SLB would be expanded from the land commissioner and two public members to the land commissioner and four public members. Two public members would be appointed by the governor from lists of nominees submitted by the SBOE, which would have to submit a list of six nominees for a vacant position. The governor could request that the SBOE submit a second list of six nominees if the governor did not choose to appoint a nominee from the first list.

At least one of the public members would have to be a resident of a county with a population of less than 200,000. The governor and the SBOE would have to collaborate to ensure that the SLB membership complied with this requirement.

The bill would remove the authority of the attorney general to appoint one of the public members.

Annual joint meeting. The SLB and the SBOE would be required to hold an annual joint public meeting to discuss the allocation of the assets of the PSF and the investment of the money in the fund. Each SLB member would have to attend the joint meeting unless excused by a majority vote of the SLB. Each SBOE member also would have to attend the joint meeting unless excused by a majority vote of the SBOE. If the SBOE delegated powers and duties relating to PSF investments to a board committee, only a majority of the committee members would have to attend the joint meeting.

Training. CSSB 608 would apply standard Sunset recommendations for board member training as well as SLB-specific requirements for training on the board's investment programs and strategies and the PSF, including a comprehensive overview of the law governing the fund.

The bill would apply standard Sunset recommendations for handling complaints and for separating the policymaking responsibilities of the board and the management responsibilities of the land commissioner and GLO staff.

Investment cap. The bill would amend the statutory cap on the market value of the SLB's real estate investments to specify that on January 1 of each even-numbered year, the market value of these investments could not exceed an amount equal to 15 percent of the market value of the assets held by the board and the SBOE as part of the PSF.

Fee disclosure. In its biennial reports to the Legislature on the investment

of funds in the Real Estate Special Fund Account, the SLB would have to include the amounts of all fees or other compensation paid by the board to investment managers, consultants, or advisors appointed or organizations contracted with for the investment of funds or to advise on the management of funds in the account.

Effective date. Changes to SLB membership would not affect the eligibility of a member serving immediately before the effective date of the bill to complete the member's term. As soon as possible after the effective date of the bill, the governor and the SBOE would have to collaborate to appoint members of the board.

A member of the SLB could not vote, deliberate, or be counted as a member in attendance at a board meeting held on or after December 1, 2019, unless the member completed the training required by the bill.

The bill would take effect September 1, 2019.

SUPPORTERS
SAY:

CSSB 608 would enable the School Land Board (SLB) to continue its responsibilities of managing state land and generating investment revenue for the Permanent School Fund (PSF) by continuing the board for 12 years and improving its operations by implementing recommendations from the Sunset Advisory Commission.

Board membership. The bill would improve the effectiveness of the board by expanding its members from three to five and restructuring how they were appointed. Since two members now constitute a quorum, an official meeting of the board occurs any time two members discuss SLB business. Having a larger board could improve the SLB's ability to make decisions when a member is recused from a vote for a conflict of interest. A larger board also would allow the SLB to create subcommittees to help oversee the board's investments, procurement practices, and other areas needing greater oversight.

The inclusion of a board member from a county of less than 200,000 would ensure that rural Texans were represented when the SLB made

important decisions about managing state land and making investments to fund Texas schools.

The bill would improve the relationship between the SLB and State Board of Education (SBOE), which share responsibility for managing the PSF. The SBOE would have a voice in appointing two SLB members by providing a list of recommended candidates for the governor to consider for appointment. As a safeguard, the governor could reject the SBOE's first list of candidates for a vacancy and request a second list of six names.

As the SLB is restructured and expanded, it would be appropriate to remove the attorney general's authority to appoint one of the SLB public members. The bill would vest appointment authority solely with the governor.

Joint meeting. Recent issues related to the joint management of the PSF by the SLB and SBOE indicate that both boards would benefit from a deeper understanding of the other board's work. CSSB 608 would improve coordination between the two boards by requiring an annual public joint meeting to discuss how each board was allocating assets and managing investments. This would ensure that the PSF investments, taken together, remain diversified to alleviate the risk of being overinvested in certain investment sectors.

Fee disclosure. The bill would improve transparency by requiring the SLB to disclose the fees it paid to outside investment managers and advisors.

While some have expressed concern that the Sunset process did not lead to recommendations to address the bifurcated management of the PSF and the resulting costs to education revenue, the Sunset process was appropriately focused on ensuring that the SLB had a strong governing structure to enable the board to make good decisions. Larger issues about the PSF would more appropriately be addressed in separate legislation.

OPPONENTS

The expansion and restructuring of the SLB proposed by CSSB 608

SAY: would do little to eliminate the potential for recusals by board members due to conflicts of interest when reviewing and voting on proposed investments and related considerations. A better structure would involve input from the land commissioner during the board member appointment process to allow GLO to perform due diligence in advance of any appointment to identify potential conflicts of interest.

The bill also should require at least some of the public members on the expanded board to have a background or expertise in investment strategies to better enable the board to make decisions about managing assets and investments.

OTHER
OPPONENTS
SAY: The Legislature should use the Sunset review process to end the problematic bifurcated management of the PSF, which costs revenue that could be used to improve school funding. This dual-management structure was created by the Legislature and should be fixed. Prior to 2001, the SLB managed the PSF's land and mineral rights and generated revenue for investment by the SBOE into the PSF. Due to legislative changes, the SLB now uses revenues from state lands to make its own investments. The bifurcated system has resulted in inefficiencies stemming from having two boards making similar investments that should be addressed in the bill.