

EDUCATION CODE

TITLE 2. PUBLIC EDUCATION

SUBTITLE I. SCHOOL FINANCE AND FISCAL MANAGEMENT

CHAPTER 43. PERMANENT SCHOOL FUND AND AVAILABLE SCHOOL FUND

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 43.001. COMPOSITION OF PERMANENT SCHOOL FUND AND AVAILABLE SCHOOL FUND. (a) Except as provided by Subsection (b), the permanent school fund, which is a perpetual endowment for the public schools of this state, consists of:

(1) all land appropriated for the public schools by the constitution and laws of this state;

(2) all of the unappropriated public domain remaining in this state, including all land recovered by the state by suit or otherwise except pine forest land as described by Section 88.111 and property described by Section 12.128;

(3) all proceeds from the authorized sale of permanent school fund land;

(4) all proceeds from the lawful sale of any other properties belonging to the permanent school fund;

(5) all investments authorized by Section 43.003 of assets belonging to the permanent school fund; and

(6) all income from the mineral development of permanent school fund land, including income from mineral development of riverbeds and other submerged land.

(b) The available school fund, which shall be apportioned annually to each county according to its scholastic population, consists of:

(1) the distributions to the fund from the permanent school fund as provided by Sections 5(a) and (g), Article VII, Texas Constitution;

(2) one-fourth of all revenue derived from all state occupation taxes, exclusive of delinquencies and cost of collection;

(3) one-fourth of revenue derived from state gasoline and special fuels excise taxes as provided by law; and

(4) all other appropriations to the available school fund made by the legislature for public school purposes.

(c) The term "scholastic population" in Subsection (b) or any other law governing the apportionment, distribution, and transfer of the available school fund means all students of school age enrolled in average daily attendance the preceding school year in the public elementary and high school grades of school districts within or under the jurisdiction of a county of this state.

(d) Each biennium the State Board of Education shall set aside an amount equal to 50 percent of the distribution for that biennium from the permanent school fund to the available school fund as provided by Sections 5(a) and (g), Article VII, Texas Constitution, to be placed, subject to the General Appropriations Act, in the state instructional materials and technology fund established under Section 31.021.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Amended by Acts 2003, 78th Leg., ch. 201, Sec. 36, eff. June 10, 2003; Acts 2003, 78th Leg., ch. 328, Sec. 2.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 65, eff. July 19, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 66, eff. July 19, 2011.

Acts 2015, 84th Leg., R.S., Ch. 731 (H.B. 1474), Sec. 4, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 581 (S.B. 810), Sec. 34, eff. June 9, 2017.

Acts 2017, 85th Leg., R.S., Ch. 705 (H.B. 3526), Sec. 22, eff. June 12, 2017.

Acts 2019, 86th Leg., R.S., Ch. 461 (H.B. 4611), Sec. 1, eff. January 1, 2020.

Acts 2019, 86th Leg., R.S., Ch. 461 (H.B. 4611), Sec. 2, eff. January 1, 2020.

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 5.028, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 631 (S.B. 1454), Sec. 12, eff. June 10, 2019.

Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. 1232), Sec. 1.02, eff. September 1, 2021.

Sec. 43.002. TRANSFERS FROM PERMANENT SCHOOL FUND AND GENERAL REVENUE FUND TO AVAILABLE SCHOOL FUND. (a) On the first working day of each month in a state fiscal year, the comptroller shall transfer from the permanent school fund to the available school fund an amount equal to one-twelfth of the annual distribution from the permanent school fund to the available school fund as provided by Section 5(a), Article VII, Texas Constitution, for the fiscal year.

(b) Of the amounts available for transfer from the general revenue fund to the available school fund for the months of January and February of each fiscal year, no more than the amount necessary to enable the comptroller to distribute from the available school fund an amount equal to 9-1/2 percent of the estimated annual available school fund apportionment to category 1 school districts, as defined by Section 48.273, and 3-1/2 percent of the estimated annual available school fund apportionment to category 2 school districts, as defined by Section 48.273, may be transferred from the general revenue fund to the available school fund. Any remaining amount that would otherwise be available for transfer for the months of January and February shall be transferred from the general revenue fund to the available school fund in equal amounts in June and in August of the same fiscal year.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Amended by Acts 2003, 78th Leg., ch. 328, Sec. 3, eff. Jan. 1, 2004.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 943 (H.B. 3), Sec. 3.048, eff. September 1, 2019.

Sec. 43.003. INVESTMENT OF PERMANENT SCHOOL FUND. The State Board of Education may invest the permanent school fund as authorized by Section 5(f), Article VII, Texas Constitution.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. 1232), Sec. 1.03,

eff. September 1, 2021.

Sec. 43.0031. PERMANENT SCHOOL FUND ETHICS POLICY. (a) In addition to any other requirements provided by law, the State Board of Education shall adopt and enforce an ethics policy that provides standards of conduct relating to the management and investment of the permanent school fund. The ethics policy must include provisions that address the following issues as they apply to the management and investment of the permanent school fund and to persons responsible for managing and investing the fund:

- (1) general ethical standards;
- (2) conflicts of interest;
- (3) prohibited transactions and interests;
- (4) the acceptance of gifts and entertainment;
- (5) compliance with applicable professional standards;
- (6) ethics training; and
- (7) compliance with and enforcement of the ethics policy.

(b) The ethics policy must include provisions applicable to:

- (1) members of the State Board of Education;
- (2) the commissioner;
- (3) employees of the agency; and
- (4) any person who provides services to the board relating to the management or investment of the permanent school fund.

(c) Not 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, the board shall submit a copy of the proposed policy, amendment, or revision to the Texas Ethics Commission and the state auditor for review and comments. The board shall consider any comments from the commission or state auditor before adopting the proposed policy.

(d) 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 permanent school fund must be based

on the Code of Ethics and the 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) The board shall 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 permanent school fund.

Added by Acts 1999, 76th Leg., ch. 1488, Sec. 1, eff. Sept. 1, 1999.

Sec. 43.0032. CONFLICTS OF INTEREST. (a) A member of the State Board of Education, the commissioner, an employee of the agency, or a person who provides services to the board that relate to the management or investment of the permanent school fund who has a business, commercial, or other relationship that could reasonably be expected to diminish the person's independence of judgment in the performance of the person's responsibilities relating to the management or investment of the fund shall disclose the relationship in writing to the board.

(b) The board or the board's designee shall, in the ethics policy adopted under Section [43.0031](#), define the kinds of relationships that may create a possible conflict of interest.

(c) A person who files a statement under Subsection (a) disclosing a possible conflict of interest may not give advice or make decisions about a matter affected by the possible conflict of interest unless the board, after consultation with the general counsel of the agency, expressly waives this prohibition. The board may delegate the authority to waive the prohibition established by this subsection.

Added by Acts 1999, 76th Leg., ch. 1488, Sec. 1, eff. Sept. 1, 1999.

Sec. 43.0033. REPORTS OF EXPENDITURES. A consultant, advisor, broker, or other person providing services to the State Board of Education relating to the management and investment of the permanent school fund shall 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:

- (1) a member of the board;
- (2) the commissioner; or
- (3) an employee of the agency.

Added by Acts 1999, 76th Leg., ch. 1488, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. [1232](#)), Sec. 1.04, eff. September 1, 2021.

Sec. 43.0034. FORMS; PUBLIC INFORMATION. (a) The board shall prescribe forms for:

(1) statements of possible conflicts of interest and waivers of possible conflicts of interest under Section [43.0032](#); and

(2) reports of expenditures under Section [43.0033](#).

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

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

Added by Acts 1999, 76th Leg., ch. 1488, Sec. 1, eff. Sept. 1, 1999.

Sec. 43.004. WRITTEN INVESTMENT OBJECTIVES; PERFORMANCE EVALUATION. (a) The State Board of Education shall develop written investment objectives concerning the investment of the permanent school fund. The objectives may address desired rates of return, risks involved, investment time frames, and any other relevant considerations.

(b) The board shall employ a well-recognized performance measurement service to evaluate and analyze the investment results of the permanent school fund. The service shall compare investment results with the written investment objectives developed by the board, and shall also compare the investment of the permanent school fund with the investment of other public and private funds.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 43.005. EXTERNAL INVESTMENT MANAGERS. (a) The State Board of Education may contract with private professional

investment managers to assist the board in making investments of the permanent school fund. A contract under this subsection must be approved by the board or otherwise entered into in accordance with board rules relating to contracting authority.

(b) The State Board of Education by rule may delegate a power or duty relating to the investment of the permanent school fund to a committee, officer, employee, or other agent of the board. Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 43.0051. TRANSFERS TO REAL ESTATE SPECIAL FUND ACCOUNT OF THE PERMANENT SCHOOL FUND. The State Board of Education may transfer funds from the portion of the permanent school fund managed by the State Board of Education to the real estate special fund account of the permanent school fund if the State Board of Education determines, using the standard of care set forth in Subsection (f), Section 5, Article VII, Texas Constitution, that such transfer is in the best interest of the permanent school fund. Added by Acts 2007, 80th Leg., R.S., Ch. 1368 (H.B. 3699), Sec. 9, eff. June 15, 2007.

Sec. 43.006. INVESTMENT MANAGEMENT. (a) The State Board of Education may delegate investment authority for the investment of the permanent school fund to the Texas Permanent School Fund Corporation as provided by Subchapter B.

(b) Repealed by Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. 1232), Sec. 1.08, eff. September 1, 2021.

(c) Repealed by Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. 1232), Sec. 1.08, eff. September 1, 2021.

(d) Repealed by Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. 1232), Sec. 1.08, eff. September 1, 2021.

(e) Repealed by Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. 1232), Sec. 1.08, eff. September 1, 2021.

(f) Repealed by Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. 1232), Sec. 1.08, eff. September 1, 2021.

(g) Repealed by Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. 1232), Sec. 1.08, eff. September 1, 2021.

(h) Repealed by Acts 2021, 87th Leg., R.S., Ch. 875 (S.B.

1232), Sec. 1.08, eff. September 1, 2021.

(i) Repealed by Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. 1232), Sec. 1.08, eff. September 1, 2021.

(j) Repealed by Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. 1232), Sec. 1.08, eff. September 1, 2021.

(k) Repealed by Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. 1232), Sec. 1.08, eff. September 1, 2021.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Amended by Acts 2003, 78th Leg., ch. 785, Sec. 58, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 834 (H.B. 860), Sec. 2, eff. September 1, 2007.

Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. 1232), Sec. 1.05, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. 1232), Sec. 1.08, eff. September 1, 2021.

Sec. 43.007. PURCHASE AND SALE OR EXCHANGE OF SECURITIES.

(a) The State Board of Education may authorize the purchase of all of the types of securities in which it is authorized by law to invest the permanent school fund in either registered or negotiable form. The board may authorize the reissue of those securities held at any time for the account of the permanent school fund in either registered or negotiable form. The State Board of Education may authorize the sale of any of the securities held for the account of the permanent school fund and reinvest the proceeds of sale for the fund and may authorize the exchange of any of the securities held for the account of the permanent school fund.

(b) In making purchases, sales, exchanges, and reissues, the State Board of Education shall exercise the judgment and care under the circumstances then prevailing that persons of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

(c) When any securities are sold, reissued, or exchanged as

provided by Subsection (a), the custodian of the securities shall deliver the securities sold, reissued, or exchanged in accordance with the directions of the State Board of Education.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 43.009. PREPAYMENT OF CERTAIN BONDS HELD BY THE PERMANENT SCHOOL FUND. (a) The State Board of Education may authorize the governing body of any political subdivision in this state to pay off and discharge, at any interest paying date whether the bonds are matured or not, all or any part of any outstanding bond indebtedness owned by the permanent school fund.

(b) The governing body of a political subdivision desiring to pay off and discharge any bonded indebtedness owned by the fund shall apply in writing to the State Board of Education, not later than the 30th day before any interest paying date on the bonds, describing the bonds or part of the bonds it desires to pay off and discharge. The application must be accompanied by an affidavit stating that only tax money collected from a tax levy made for the specific purpose of providing a sinking fund and paying interest on the particular bonds to be redeemed will be spent in redeeming, taking up, or paying off the bonds.

(c) The State Board of Education, on receiving the application and affidavit, shall take action on them in the manner it considers best and shall notify the applicant whether the application is refused or granted in whole or in part.

(d) A person who has a duty under this section may not give or receive any commission, premium, or compensation for the performance of that duty.

(e) Only tax money collected from tax levies made for the specific purpose of providing a sinking fund and paying interest on the particular bonds to be redeemed may be spent in redeeming, taking up, or paying off of bonds as provided by this section, unless the bonds are being redeemed for the purpose of being refunded.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 43.010. DEFAULT OF SCHOOL DISTRICT SECURITIES HELD BY

THE PERMANENT SCHOOL FUND. (a) If interest or principal has not been paid for two years or more on any bonds issued by any school district and held by the permanent school fund, the State Board of Education may:

(1) compel the district to levy a tax sufficient to meet the interest and principal payments then or later due; or

(2) if the district furnishes to the State Board of Education satisfactory proof that the district's taxing ability is insufficient, require the district to:

(A) exhaust all legal remedies in collecting delinquent taxes; and

(B) levy a tax at the maximum lawful rate on the bona fide valuation of taxable property located in the district.

(b) Revenue collected by either method specified by Subsection (a) shall be distributed proportionately to all owners of the defaulted securities in compliance with the following:

(1) the proportionate share for each owner is based on the interest and principal requirements of the original security before authorized refunding; and

(2) prior acceptance of refunding securities does not reduce an owner's proportionate share.

(c) As long as any school district is delinquent in its payments of principal or interest on any of its bonds owned by the permanent school fund, the State Board of Education may specify the method of crediting payments to the state made by the district as to principal and interest.

(d) The comptroller may not issue any warrant from the foundation school fund to or for the benefit of any district that has been for as long as two years in default in the payment of principal or interest on any security owned by the permanent school fund until the State Board of Education certifies that the district has satisfactorily complied with the appropriate provisions of this section, in which event the comptroller shall resume making payments to or for the benefit of the district, including the making of premitted payments.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 43.011. AUTHORIZED REFUNDING OF DEFAULTED SCHOOL BONDS. (a) In compliance with this section, the State Board of Education may revise, readjust, modify, refinance, or refund defaulted bonds issued by any school district in this state and owned by either the permanent school fund or the available school fund.

(b) Application must be made to the State Board of Education by the district that issued the bonds and must show that:

(1) delinquent interest totals at least 50 percent of the principal amount of the bonds; and

(2) taxable valuation has decreased to such an extent that a full application of the proceeds of the voted authorized tax authorized to be levied on the \$100 taxable property valuation will not meet interest and principal annually maturing on the bonds.

(c) The State Board of Education may effect a refunding of the debt due and to become due only if the board finds that:

(1) the district is unable to pay the sums already matured and the sums contracted to be paid as they mature by paying annually to the State Board of Education the full proceeds of a 50-cent tax levy on the \$100 of all taxable valuation of property in the district;

(2) the taxable valuation of property in the district has decreased at least 75 percent since the bonds were issued and that the decrease was not caused by the district or any of its officials;

(3) the district for a period of at least five years before applying to the State Board of Education for refunding has levied a tax of 50 cents on the \$100 of taxable valuation of property in the district, and that despite such levies, the aggregate amount due the State Board of Education exceeds the aggregate amount due at the beginning of the period;

(4) the district has not authorized and sold additional bonds during the five-year period immediately preceding the application; and

(5) the district has in good faith endeavored to pay its debt in accordance with the contract evidenced by the bonds held for the account of the permanent school fund or the available school

fund.

(d) If the conditions specified by Subsection (c) are found to exist, the district is, for purposes of this section, insolvent, and the State Board of Education may exchange the bonds, interest coupons, and other evidences of indebtedness for new refunding bonds of the district issued in compliance with the following:

(1) the principal amount of the refunding bonds may not be less than the total amount of the bonds, matured interest coupons, accrued interest, and interest on delinquent interest then actually due to the permanent school fund or the available school fund; and

(2) the rate of interest to be borne by the refunding bonds may be lower than that borne by the bonds to be refunded if in consideration of the interest reduction the district agrees to levy a tax each year for a period of 40 years at a rate sufficient to produce annually a sum equal to 90 percent of the amount that can be calculated by the levy of a tax at the rate of 50 cents on the \$100 of taxable valuation of property as determined by the latest approved tax roll of the district, and in determining the rate of interest to be borne by the refunding bonds, the State Board of Education shall be governed by the following:

(A) the State Board of Education may require the rate to be a percent per annum as in its judgment will represent the maximum rate that can be paid by the district and still permit an orderly and certain retirement of the refunding bonds within 40 years from their date;

(B) the interest rate of refunding bonds to be received in exchange for bonds owned by the permanent school fund may not be less than the minimum rate at which bonds may then be purchased as investments for the permanent school fund; and

(C) the rate of interest of refunding bonds to be received in exchange for bonds owned by the available school fund may be set by the State Board of Education at any rate the board considers feasible, and the refunding bonds may, at the discretion of the State Board of Education, be made non-interest bearing to a date fixed by the board.

(e) The State Board of Education may not make a revision,

readjustment, modification, refinancing, or refunding that will release or extinguish any debt or obligation then due and payable to the permanent school fund or to the available school fund.

(f) Except as otherwise provided or permitted by this section, the refunding of the bonds of school districts authorized by this section must be in compliance with the general provisions with regard to the refunding of school district bonds.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 43.012. REFUNDING OTHER DEFAULTED OBLIGATIONS. (a) Defaulted obligations, other than bonds of school districts as provided by Section 43.011, due the available school fund may be refinanced or refunded with the approval of the State Board of Education in compliance with this section.

(b) In this section, "defaulted obligations" includes delinquent interest whether represented by coupons or not, interest on delinquent interest, and any other form of obligation due the available school fund.

(c) The obligor must apply to the State Board of Education and show:

(1) that the obligations due the available school fund have been in default in whole or in part for a continuous period of at least 15 years; and

(2) that the obligor is not in default in the payment of the principal of any bonds owned by the permanent school fund.

(d) If the State Board of Education finds that the requirements provided by Subsection (c) have been met, it may approve a refinancing or the issuance of refunding bonds on the conditions:

(1) that the refunding bonds must mature serially in not exceeding 40 years from the date of issuance;

(2) that the principal amount of the refunding bonds may be not less than the total amount of the obligations then in default and due the available school fund; and

(3) that the refunding bonds must bear interest at a rate or rates determined by the State Board of Education to be for the best interest of the available school fund.

(e) The State Board of Education may accept refunding bonds in lieu of either matured or unmatured bonds held for the benefit of the permanent school fund if the rate of interest on the new refunding bonds is at least the same rate as that of the bonds being refunded.

(f) Refunding bonds issued with the approval or pursuant to a refunding agreement with the State Board of Education in compliance with either this section or Section 43.011 shall, on the order of the State Board of Education, be exchanged by the comptroller for the defaulted obligations they have been issued to refund.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.
Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 5.02, eff. Sept. 1, 1997.

Sec. 43.013. JURISDICTION. The district courts of Travis County have jurisdiction of any suit on bonds or obligations belonging to the permanent school fund, or purchased therewith, concurrent with that of any other court having jurisdiction in the case.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 43.014. DUTIES OF COMPTROLLER. (a) On or before July 1 of each year, the comptroller shall estimate the amount of the available school fund receivable from every source during the following school year and report the estimate to the State Board of Education.

(b) On or before the meeting of each regular session of the legislature, the comptroller shall report to the legislature an estimate of the amount of the available school fund that is to be received for the following two years, and the sources from which that amount accrues, and that is subject to appropriation for the establishment and support of public schools.

(c) On or before the first working day of each month, the comptroller shall certify to the commissioner the total amount of money collected from every source during the preceding month and on hand to the credit of the available school fund.

(d) On receipt of certificates issued to the comptroller by the commissioner, the comptroller shall draw warrants in favor of the treasurer of the available school fund of each school district for the amounts stated in the certificates. All such warrants shall be registered.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 5.03, eff. Sept. 1, 1997.

Sec. 43.015. DUTIES OF COMPTROLLER. (a) Not later than the 30th day before the first day of each regular session of the legislature and not later than the 10th day before the first day of any special session at which there can be legislation respecting the public schools, the comptroller shall report to the governor the condition of the permanent school fund and the available school fund, the amount of each fund, and the manner of its disbursement.

(b) The comptroller shall provide the State Board of Education with the reports specified by Subsection (a) and with additional reports concerning those funds requested by the State Board of Education.

(c) The comptroller shall ensure that no portion of either the permanent school fund or the available school fund is used to pay any warrant drawn against any other fund.

(d) The comptroller shall receive and hold in a special deposit and account for all properties belonging to the available school fund. All warrants drawn on that fund by the comptroller pursuant to a certificate of the commissioner must be registered by the comptroller and then transmitted to the commissioner, and when properly endorsed shall be paid by the comptroller in the order of their presentation.

(e) On order of the State Board of Education, the comptroller shall exchange or accept refunding bonds in lieu of:

(1) either matured or unmatured bonds held for the benefit of the permanent school fund, which are being refunded under this chapter;

(2) defaulted obligations held for the benefit of the available school fund if the refunding bonds are issued in

compliance with Section 43.012;

(3) defaulted obligations of any school district of this state held for the benefit of the permanent school fund or the available school fund if the refunding bonds are issued in compliance with Section 43.011; or

(4) refunding bonds of any school district of this state for school bonds not matured held by the comptroller for the permanent school fund if the new refunding bonds are issued by the school district in compliance with this code.

(f) The comptroller shall be the custodian of all securities enumerated in Section 43.003(6) and of other securities as designated by the State Board of Education in which the school funds of the state are invested. The comptroller shall keep those securities in the comptroller's custody until paid off, discharged, delivered as required by the State Board of Education, or otherwise disposed of by the proper authorities of the state, and on the proper installment of any interest or dividend, shall see that the proper credit is given, and the coupons on bonds, when paid, shall be separated from the bonds and cancelled by the comptroller.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.
Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 5.04, eff. Sept. 1, 1997.

Sec. 43.016. USE OF AVAILABLE SCHOOL FUND. All available school funds shall be appropriated in each county for the education of its children.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 43.017. USE OF COMMERCIAL BANKS AS AGENTS FOR COLLECTION OF INCOME FROM PERMANENT SCHOOL FUND INVESTMENTS. (a) The State Board of Education may contract with one or more commercial banks to receive payments of dividends and interest on securities in which the state permanent school funds are invested and transmit that money with identification of its source to the comptroller for the account of the available school fund by the fastest available means.

(b) In choosing each commercial bank with which to contract

as authorized by Subsection (a), the State Board of Education shall assure itself of:

- (1) the financial stability of the bank;
 - (2) the location of the bank with respect to its proximity to the banks on which checks are drawn in payment of dividends and interest on securities of the permanent school fund;
 - (3) the experience and reliability of the bank in acting as agent for others in the similar collection and expeditious remittance of money; and
 - (4) the reasonableness of the bank's charges for the services, both in amount of the charges and in relation to the increased investment earnings of the available school fund that will result from speedier receipt by the comptroller of the money.
- Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.
Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 5.05, eff. Sept. 1, 1997.

Sec. 43.018. PARTICIPATION IN FULLY SECURED SECURITIES LOAN PROGRAMS. (a) The State Board of Education may contract with a commercial bank to serve both as a custodian of securities in which the state permanent school funds are invested and to lend those securities, under the conditions prescribed by Subsection (b), to securities brokers and dealers on short-term loan.

(b) The State Board of Education may contract with a commercial bank pursuant to this section only if:

- (1) the bank is located in a city having a major stock exchange;
- (2) the bank is experienced in the operation of a fully secured securities loan program;
- (3) the bank has adequate capital in the prudent judgment of the State Board of Education to assure the safety of the securities entrusted to it as a custodian;
- (4) the bank will require of any securities broker or dealer to which it lends securities owned by the state permanent school fund that the broker or dealer deliver to it cash collateral for the loan of securities, and that the cash collateral will at all times be not less than 100 percent of the market value of the

securities lent;

(5) the bank executes an indemnification agreement, satisfactory in form and content to the State Board of Education, fully indemnifying the permanent and available school funds against loss resulting from the bank's service as custodian of securities of the permanent school fund and its operation of a securities loan program using securities of the permanent school fund;

(6) the bank will speedily collect and remit on the day of collection by the fastest available means to the comptroller any dividends and interest collectible by it on securities held by it as custodian, together with identification as to the source of the dividends or interest; and

(7) the bank is the bank agreeing to pay to the available school fund the largest sum or highest percentage of the income derived by the bank from use of the securities of the permanent school fund in the operation of a securities loan program.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 5.06, eff. Sept. 1, 1997.

Sec. 43.019. ACCOUNTING TREATMENT OF CERTAIN EXCHANGES.

The State Board of Education may account for the exchange of permanent school fund securities in a closely related sale and purchase transaction in a manner in which the gain or loss on the sale is deferred as an adjustment to the book value of the security purchased, if:

(1) the security sold and the security purchased have a fixed maturity value;

(2) the board is authorized by law to invest the permanent school fund in the security purchased;

(3) the sale is made in clear contemplation of reinvesting substantially all of the proceeds;

(4) substantially all of the proceeds are reinvested;

(5) the transaction is completed within a reasonable time after the sale, not to exceed 30 business days; and

(6) the transaction results in an improvement in

effective income yield, taking into consideration the deferral of any gain or loss on the sale.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 43.020. TREATMENT OF ACCRUED INCOME. All interest and dividends accruing from the investments of the permanent school fund shall be deposited to the credit of the available school fund in accordance with the accrual basis of accounting. Funds recognized under this section are considered part of the available school fund and may be appropriated as provided by Section 5, Article VII, Texas Constitution.

Added by Acts 2003, 78th Leg., ch. 201, Sec. 37, eff. June 10, 2003.

SUBCHAPTER B. TEXAS PERMANENT SCHOOL FUND CORPORATION

Sec. 43.051. DEFINITIONS. In this subchapter:

(1) "Board of directors" means the board of directors of the corporation.

(2) "Chief executive officer" means the chief executive officer of the corporation employed under Section 43.054.

(3) "Corporation" means the Texas Permanent School Fund Corporation.

Added by Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. 1232), Sec. 1.06, eff. September 1, 2021.

Sec. 43.052. CREATION OF CORPORATION. (a) The State Board of Education may incorporate the Texas Permanent School Fund Corporation and delegate to the corporation the board's authority to manage and invest:

(1) the permanent school fund under Section 43.003; and

(2) the charter district bond guarantee reserve fund under Section 45.0571.

(b) The State Board of Education shall adopt the initial articles of incorporation for the corporation.

(c) The corporation is a special-purpose governmental corporation and instrumentality of the state with necessary and

implied powers to accomplish its purpose. The corporation is subject to regulation and limitation only as provided by this subchapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. [1232](#)), Sec. 1.06, eff. September 1, 2021.

Sec. 43.053. BOARD OF DIRECTORS; MEETINGS. (a) The board of directors is composed of the following nine members:

(1) five members of the State Board of Education, appointed by the board in accordance with board policy;

(2) the commissioner of the General Land Office;

(3) one member appointed by the commissioner of the General Land Office who has substantial background and expertise in investments and asset management; and

(4) two members appointed by the governor, with the advice and consent of the senate, each of whom must have substantial background and expertise in investments and asset management and may not be members of the State Board of Education or the School Land Board.

(b) The State Board of Education by rule shall establish the terms of members of the board of directors appointed under Subsection (a)(1).

(c) Members of the board of directors appointed under Subsections (a)(3) and (4) serve staggered six-year terms, with the term of one member expiring on January 1 of each odd-numbered year.

(d) The initial members described by Subsection (c) shall determine by lot which one of the initial members will serve a term expiring January 1 of the first odd-numbered year following the establishment of the corporation, which one of the initial members will serve a term expiring January 1 of the second odd-numbered year following the establishment of the corporation, and which one of the initial members will serve a term expiring January 1 of the third odd-numbered year following the establishment of the corporation.

(e) Appointments to the board of directors must be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(f) The board of directors shall elect officers of the board in accordance with the corporation's bylaws.

(g) The board of directors shall meet at least three times per year.

Added by Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. [1232](#)), Sec. 1.06, eff. September 1, 2021.

Sec. 43.054. CHIEF EXECUTIVE OFFICER. (a) The corporation shall employ a chief executive officer to manage and carry out the policies of the corporation. The board of directors shall determine the process for hiring the chief executive officer.

(b) The chief executive officer serves at the will of the board of directors.

Added by Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. [1232](#)), Sec. 1.06, eff. September 1, 2021.

Sec. 43.055. EMPLOYEES. (a) The chief executive officer is responsible for hiring all employees of the corporation.

(b) Employees of the corporation serve at the will of the chief executive officer.

(c) The chief executive officer or the chief executive officer's designee shall develop a system of compensation for employees of the corporation as necessary to retain qualified staff.

(d) The chief executive officer or the chief executive officer's designee shall develop a system of annual performance evaluations. Merit pay for corporation employees must be based on the system established under this subsection.

(e) The chief executive officer or the chief executive officer's designee shall 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.

(f) The chief executive officer may appoint an internal auditor for the corporation, who may be an employee of the corporation. The appointment of the internal auditor must be

approved by the board of directors. The board of directors may require the internal auditor to submit specified reports directly to the board of directors.

(g) Except as otherwise provided by this subchapter, employees of the corporation are state employees for all purposes, including:

(1) accrual of leave time, insurance benefits, and retirement benefits;

(2) Chapter 104, Civil Practice and Remedies Code; and

(3) Chapter 501, Labor Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. 1232), Sec. 1.06, eff. September 1, 2021.

Sec. 43.056. SOVEREIGN IMMUNITY. (a) The corporation, the board of directors, and the officers and employees of the corporation are entitled to sovereign immunity to the same extent as any other state agency or officer or employee of a state agency.

(b) No action taken by the corporation, including the acceptance of benefits under a contract, may be construed to waive the corporation's sovereign immunity, including immunity from suit or from liability.

(c) Subchapter C, Chapter 2260, Government Code, does not apply to the corporation.

Added by Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. 1232), Sec. 1.06, eff. September 1, 2021.

Sec. 43.057. LIABILITY INSURANCE FOR BOARD MEMBERS AND EMPLOYEES. (a) The corporation may purchase or otherwise acquire insurance to protect members of the board of directors and employees of the corporation, subject to Subsection (c).

(b) Insurance purchased or acquired by the corporation under this section may:

(1) protect against any type of liability to third persons that might be incurred while conducting corporation business; and

(2) provide for all costs of defending a cause of action for such liability, including court costs and attorney's

fees.

(c) This section does not authorize the purchase or acquisition of insurance to protect against liability not described in Subsection (b).

Added by Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. [1232](#)), Sec. 1.06, eff. September 1, 2021.

Sec. 43.058. ETHICS POLICY; CONFLICTS OF INTEREST.

(a) The board of directors shall adopt an ethics policy that provides standards of conduct relating to the management and investment of the permanent school fund in accordance with Section [43.0031](#)(a). The ethics policy must include provisions applicable to:

- (1) members of the board of directors;
- (2) employees of the corporation; and
- (3) any person who provides services to the corporation relating to the management or investment of the permanent school fund.

(b) A member of the board of directors, an employee of the corporation, and a person who provides services to the corporation relating to the management or investment of the permanent school fund shall disclose in writing to the corporation any business, commercial, or other relationship that could reasonably be expected to diminish the person's independence of judgment in the performance of the person's responsibilities relating to the management or investment of the permanent school fund.

(c) The board of directors shall define in the ethics policy adopted under Subsection (a) the types of relationships that may create a possible conflict of interest.

(d) A person who makes a written disclosure under Subsection (b) stating a possible conflict of interest may not give advice or make decisions about a matter affected by the possible conflict of interest unless the board of directors expressly waives this prohibition. The board of directors may delegate the authority to waive the prohibition established by this subsection.

Added by Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. [1232](#)), Sec. 1.06, eff. September 1, 2021.

Sec. 43.059. APPLICABILITY OF CERTAIN LAWS. (a) Except as otherwise provided by and to the extent consistent with this subchapter, Title 1, Business Organizations Code, and Chapter 22, Business Organizations Code, apply to the corporation.

(b) Subject to Section 43.060, the corporation is a governmental body for purposes of Chapter 551, Government Code.

(c) The corporation is exempt from:

(1) Chapters 654 and 660, Government Code, and Subchapter K, Chapter 659, Government Code, to the extent the board of directors determines that an exemption from those provisions is necessary for the corporation to perform the board's fiduciary duties under this subchapter;

(2) all state laws regulating or limiting purchasing by state agencies, including Subtitle D, Title 10, Government Code, and Chapters 2254, 2261, and 2262, Government Code;

(3) the franchise tax under Chapter 171, Tax Code; and

(4) any filing costs or other fees imposed by the state on a corporation.

Added by Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. 1232), Sec. 1.06, eff. September 1, 2021.

Sec. 43.060. EXCEPTION TO OPEN MEETING REQUIREMENTS FOR CERTAIN CONSULTATIONS CONCERNING INVESTMENTS. (a) In this section, "private investment fund," "reinvestment," and "restricted securities" have the meanings assigned by Section 552.143, Government Code.

(b) The board of directors may conduct a closed meeting in accordance with Subchapter E, Chapter 551, Government Code, 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:

(1) investment transactions or potential investment transactions if, before conducting the closed meeting, a majority of the board of directors in an open meeting vote that deliberating

or conferring in an open meeting would have a detrimental effect on the corporation's position in negotiations with third parties or put the corporation at a competitive disadvantage in the market;

(2) the purchase, holding, or disposal of restricted securities or a private investment fund's investment in restricted securities if, under Section [552.143](#), Government Code, the information discussed would be confidential and excepted from the requirements of Section [552.021](#), Government Code, if the information were included in the records of a governmental body; or

(3) a procurement proposed to be awarded by the board of directors if, before conducting the closed meeting, a majority of the board of directors in an open meeting vote that deliberating or conferring in an open meeting would have a detrimental effect on the corporation's position in negotiations with third parties.

(c) Any vote or final action taken on a procurement described by Subsection (b)(3) must be conducted in an open meeting.

Added by Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. [1232](#)), Sec. 1.06, eff. September 1, 2021.

Sec. 43.061. RECORD RETENTION. (a) Subchapter [L](#), Chapter [441](#), Government Code, does not apply to the corporation.

(b) The corporation may establish record retention policies for the corporation. In establishing the policies under this section, the corporation may consider relevant rules and guidelines adopted by the Texas State Library and Archives Commission.

Added by Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. [1232](#)), Sec. 1.06, eff. September 1, 2021.

Sec. 43.062. INFORMATION TECHNOLOGY AND ASSOCIATED RESOURCES. (a) Chapters [2054](#) and [2055](#), Government Code, do not apply to the corporation or to any state agency with respect to a contract entered into between the agency and the corporation for information technology or associated resources.

(b) The corporation shall control all aspects of, and may contract with third parties for, the corporation's information technology and associated resources, including:

(1) computer, data management, and telecommunications operations;

(2) procurement of hardware, software, and middleware and telecommunications equipment and systems;

(3) location, operation, and replacement of computers, computer systems, software provided as a service, and telecommunications systems;

(4) data processing;

(5) security;

(6) disaster recovery; and

(7) storage.

(c) The Department of Information Resources shall assist the corporation at the request of the corporation and must consider the corporation a customer of the department. Notwithstanding any other law, the corporation may:

(1) purchase any item through the department; and

(2) contract with the department for and use any service available through the department.

Added by Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. [1232](#)), Sec. 1.06, eff. September 1, 2021.

Sec. 43.063. GENERAL POWERS AND DUTIES OF CORPORATION.

(a) The corporation may amend the articles of incorporation adopted by the State Board of Education when the corporation was established, subject to board approval.

(b) The corporation may adopt and amend:

(1) subject to State Board of Education approval, bylaws for the corporation;

(2) resolutions and policies of the corporation; and

(3) any other document necessary to carry out the corporation's purpose.

(c) The corporation may engage in any activity necessary to manage the investments of the permanent school fund, including entering into any contract in connection with the investment of the permanent school fund, to the extent the activity complies with applicable fiduciary duties.

(d) The corporation shall make all purchases of goods and

services in accordance with applicable fiduciary duties and may use purchasing methods that ensure the best value to the corporation. In determining best value, the corporation may consider the best value standards applicable to state agencies under Section [2155.074](#), Government Code.

(e) The corporation may:

(1) delegate investment authority for the investment of the permanent school fund to one or more private professional investment managers; or

(2) contract with one or more private professional investment managers to assist the corporation in making investments of the permanent school fund.

(f) The corporation may 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 permanent school fund to the available school fund except as authorized under Section [43.066](#).

(g) The corporation may 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.

Added by Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. [1232](#)), Sec. 1.06, eff. September 1, 2021.

Sec. 43.064. CONTRACTING FOR FACILITIES AND NECESSARY SUPPORT. The corporation may contract with a 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 not required to request allocation of space to the corporation under Subchapter C, Chapter [2165](#), Government Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. [1232](#)), Sec. 1.06, eff. September 1, 2021.

Sec. 43.065. WRITTEN INVESTMENT OBJECTIVES; PERFORMANCE EVALUATION. In accordance with Section [43.004](#), the board of directors shall:

(1) develop written investment objectives concerning

the investment of the permanent school fund; and

(2) employ a well-recognized performance measurement service to evaluate and analyze the investment results of the permanent school fund.

Added by Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. [1232](#)), Sec. 1.06, eff. September 1, 2021.

Sec. 43.066. DISTRIBUTIONS BY CORPORATION FROM PERMANENT SCHOOL FUND TO AVAILABLE SCHOOL FUND. (a) The corporation may distribute from the permanent school fund to the available school fund under Section [5\(g\)](#), Article VII, Texas Constitution, an amount not to exceed the limitation under that section that is determined in accordance with rules established by the corporation.

(b) In developing the rules for distributions under Subsection (a), the corporation shall develop and establish an annual minimum distribution rate that the corporation will use in making a distribution from the permanent school fund to the available school fund each state fiscal year. In developing the annual minimum distribution rate under this subsection, the corporation may consider:

(1) transfers made from the permanent school fund to the available school fund under Section [43.002](#) in accordance with Section [5\(a\)](#), Article VII, Texas Constitution;

(2) factors that relate to the current and future public school students in the state; and

(3) any other factors the corporation determines relevant.

Added by Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. [1232](#)), Sec. 1.06, eff. September 1, 2021.

Sec. 43.067. BOND GUARANTEE PROGRAM. The corporation, the State Board of Education, and the agency shall coordinate to determine the corporation's role in the operation and management of the permanent school fund in connection with the bond guarantee program under Subchapter [C](#), Chapter [45](#), to ensure the proper and efficient operation of the program, including the handling of any associated reimbursements, transfers, and disbursements.

Added by Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. [1232](#)), Sec. 1.06, eff. September 1, 2021.

Sec. 43.068. ANNUAL AUDIT. (a) Not less than once each year, the board of directors shall submit to the Legislative Budget Board an audit report regarding the operations of the corporation.

(b) The corporation may contract with a certified public accountant or the state auditor to conduct an independent audit of the operations of the corporation.

(c) This section does not affect the state auditor's authority to conduct an audit of the corporation in accordance with Chapter [321](#), Government Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. [1232](#)), Sec. 1.06, eff. September 1, 2021.

Sec. 43.069. ANNUAL INVESTMENT REPORT. The corporation shall annually submit to the State Board of Education and the General Land Office a report on the allocation of assets and investment performance of the portion of the permanent school fund for which the corporation is responsible.

Added by Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. [1232](#)), Sec. 1.06, eff. September 1, 2021.

Sec. 43.070. REPORT ON ANTICIPATED TRANSFER TO AVAILABLE SCHOOL FUND. Not later than November 1 of each even-numbered year, the corporation shall submit to the legislature, comptroller, State Board of Education, and Legislative Budget Board a report that in detail specifically states the date a transfer will be made and the amount the corporation will transfer during the subsequent state fiscal biennium from the permanent school fund to the available school fund under Section [43.066](#).

Added by Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. [1232](#)), Sec. 1.06, eff. September 1, 2021.

Sec. 43.071. GIFTS, GRANTS, AND DONATIONS. The corporation may accept, and 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 permanent school fund.

Added by Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. [1232](#)), Sec. 1.06, eff. September 1, 2021.