

EDUCATION CODE

CHAPTER 43. PERMANENT SCHOOL FUND AND AVAILABLE SCHOOL FUND

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 defined by Section 88.111;

(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 properties 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.

Text of subsec. (b) as amended by Acts 2003, 78th Leg., ch. 201, Sec. 36

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

(1) the interest and dividends arising from any securities or funds belonging to the permanent school fund, as determined in accordance with the accrual basis of accounting;

(2) all interest derivable from the proceeds of the sale of land set apart for the permanent school fund;

(3) all money derived from the lease of land belonging to the permanent school fund;

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

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

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

Text of subsec. (b) as amended by Acts 2003, 78th Leg., ch. 328, Sec. 2

(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 Section 5(a), 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.

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, eff. Jan. 1, 2004.

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.

(a-1) Expired.

(a-2) Expired.

(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 42.259, and 3-1/2 percent of the estimated annual available school fund apportionment to category 2 school districts, as defined by Section 42.259, 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.

Sec. 43.003. INVESTMENT OF PERMANENT SCHOOL FUND. In compliance with this section, the State Board of Education may invest the permanent school fund in the types of securities, which must be carefully examined by the State Board of Education and be found to be safe and proper investments for the fund as specified below:

(1) securities, bonds, or other obligations issued, insured, or guaranteed in any manner by the United States Government or any of its agencies and in bonds issued by this state;

(2) obligations and pledges of The University of Texas;

(3) corporate bonds, debentures, or obligations of United States corporations of at least "A" rating;

(4) obligations of United States corporations that mature in less than one year and are of the highest rating available at the time of investment;

(5) bonds issued, assumed, or guaranteed by the Inter-American Development Bank, the International Bank of Reconstruction and Development (the World Bank), the African Development Bank, the Asian Development Bank, and the International Finance Corporation;

(6) bonds of counties, school districts, municipalities, road precincts, drainage, irrigation, navigation, and levee districts in this state, subject to the following requirements:

(A) the securities, before purchase, must have been diligently investigated by the attorney general both as to form and as to legal compliance with applicable laws;

(B) the attorney general's certificate of validity procured by the party offering the bonds, obligations, or pledges must accompany the securities when they are submitted for registration to the comptroller, who must preserve the certificates;

(C) the public securities, if purchased, and when certified and registered as specified under Paragraph (B), are incontestable unless issued fraudulently or in violation of a constitutional limitation, and the certificates of the attorney general are prima facie evidence of the validity of the bonds and bond coupons; and

(D) after the issuing political subdivision has

received the proceeds from the sales of the securities, the issuing agency is estopped to deny their validity, and the securities are valid and binding obligations;

(7) preferred stocks and common stocks that the State Board of Education considers proper investments for the permanent school fund, subject to the following requirements:

(A) in making all of those investments, 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;

(B) the company issuing the stock must be incorporated in the United States, and the stocks must have paid dividends for five consecutive years or longer immediately before the date of purchase and the stocks, except for bank stocks and insurance stocks, must be listed on an exchange registered with the Securities and Exchange Commission or its successors; and

(C) not more than one percent of the permanent school fund may be invested in stock issued by one corporation and not more than five percent of the voting stock of any one corporation will be owned; and

(8) notwithstanding any other law or provision of this code, first lien real estate mortgage securities insured by the Federal Housing Administration under the National Housing Act of the United States, or in any other first lien real estate mortgage securities guaranteed in whole or in part by the United States.

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

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 or of a nonprofit corporation created under Section 43.006.

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

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. 43.006. INVESTMENT MANAGEMENT. (a) The State Board of Education may delegate investment authority and contract for the investment of the permanent school fund to the same extent as the governing board of an institution of higher education with respect to an institutional fund under Chapter 163, Property Code.

(b) The board may enter into a contract with a nonprofit corporation for the corporation to invest funds under the control and management of the board, including the permanent school fund, as designated by the board. The corporation may not engage in any business other than investing funds designated by the board under the contract.

(c) The board must approve the:

(1) articles of incorporation and bylaws of the corporation and any amendment to the articles of incorporation or bylaws;

(2) investment policies of the corporation, including changes to those policies;

(3) audit and ethics committee of the corporation; and

(4) code of ethics of the corporation.

(d) The board of directors of the corporation must be members of the State Board of Education.

(e) If an investment contract entered into under Subsection (b) includes the permanent school fund within the scope of funds under the control and management of the State Board of Education to be invested by the corporation, the board shall provide for an annual financial audit of the permanent school fund. Subject to the legislative audit committee's approval of including the audit in the audit plan under Section 321.013(c), Government Code, the audit shall be performed by the state auditor.

(f) The corporation shall file quarterly reports with the State Board of Education concerning matters required by the board.

(g) The corporation is subject to the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes).

(h) The corporation may not enter into an agreement or transaction with a:

(1) director, officer, or employee of the corporation acting in other than an official capacity on behalf of the corporation;

(2) business entity in which a director, officer, or employee of the corporation has an interest;

(3) former director, officer, or employee of the corporation on or before the second anniversary of the date the person ceased to be a director, officer, or employee of the corporation; or

(4) business entity in which a former director, officer, or employee of the corporation has an interest on or before the second anniversary of the date the person ceased to be a director, officer, or employee of the corporation.

(i) An agreement or transaction entered into in violation of Subsection (h) is void.

(j) For purposes of this section, a person has an interest in a business entity if:

(1) the person owns five percent or more of the voting stock or shares of the business entity;

(2) the person owns five percent or more of the fair market value of the business entity; or

(3) money received by the person from the business entity exceeds five percent of the person's gross income for the preceding calendar year.

(k) In this section:

(1) "Governing board" and "institutional fund" have the meanings assigned by Chapter 163, Property Code.

(2) "Institution of higher education" has the meaning assigned by Section 61.003.

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.

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 pretermitted 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.