

The State Board of Education (SBOE) proposes an amendment to §33.2, concerning distributions to the Available School Fund (ASF). The proposed amendment would reinsert information related to the Permanent School Fund (PSF) distribution policy that was mistakenly repealed when 19 TAC Chapter 33 was revised to implement Senate Bill (SB) 1232, 87th Texas Legislature, Regular Session, 2021.

BACKGROUND INFORMATION AND JUSTIFICATION: Senate Bill 1232, 87th Texas Legislature, Regular Session, 2021, established the Texas PSF Corporation and transferred responsibilities to manage and invest the fund to the Texas PSF Corporation. As a result, SBOE rules in Chapter 33 were significantly revised and reorganized effective March 1, 2023.

The proposed amendment would reinstate mistakenly repealed language in §33.2 that addresses the SBOE's responsibilities to determine a rate for PSF distributions to the ASF.

The SBOE approved the proposed amendment for first reading and filing authorization at its November 17, 2023 meeting.

FISCAL IMPACT: Mike Meyer, deputy commissioner of finance, has determined that for the first five years the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: Texas Education Agency (TEA) staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by reestablishing mistakenly repealed provisions to align with SB 1232, 87th Texas Legislature, Regular Session, 2021. The provisions would address the SBOE's responsibilities to determine a rate for PSF distributions to the ASF.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Meyer has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be clarifying provisions related to distributions to the ASF required by the Texas Constitution, Article VII, §5(a)(1), that were mistakenly repealed when Chapter 33 was revised to implement SB 1232, 87th Texas Legislature, Regular Session, 2021. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data or reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins December 22, 2023, and ends at 5:00 p.m. on January 22, 2024. A form for submitting public comments is available on the TEA website at <https://tea.texas.gov/about-tea/laws-and-rules/sboe-rules-tac/proposed-state-board-of-education-rules>. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in January-February 2024 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on December 22, 2023.

STATUTORY AUTHORITY. The amendment is proposed under Texas Constitution, Article VII, §5(a)(2), which authorizes the State Board of Education (SBOE) to make distributions from the Permanent School Fund (PSF) to the available school fund with certain limits; and Texas Constitution, Article VII, §5(f), which authorizes the SBOE to manage and invest the PSF according to the prudent investor standard and make investments it deems appropriate.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Constitution, Article VII, §5(a)(2) and (f).

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§33.2. Distributions to the Available School Fund.

Each year, the State Board of Education (SBOE) shall determine whether a distribution to the Available School Fund (ASF) shall be made for the current state fiscal year. The SBOE shall determine whether such distribution is permitted under the Texas Constitution, Article VII, §5(a)(2). The annual determination for the current fiscal year shall include a projection of the expected total return of the Permanent School Fund (PSF) at the end of the current fiscal year and the realized returns during the nine preceding state fiscal years. Any one-year distribution to the ASF shall not exceed 6.0% of the average market value of the PSF, excluding real property managed, sold, or acquired under the Texas Constitution, Article VII, §4, as determined under the Texas Constitution, Article VII, §5(a)(1). When adopting the rate of distribution, the SBOE shall strive to balance the needs of current and future generations of Texas school children by attempting to maintain consistent levels of distributions per student and assets per student, after adjusting for inflation.