

The State Board of Education (SBOE) adopts an amendment to §33.2, concerning distributions to the Available School Fund (ASF). The amendment is adopted without changes to the proposed text as published in the December 22, 2023 issue of the *Texas Register* (48 TexReg 7733) and will not be republished. The adopted amendment reinserts information related to the Permanent School Fund (PSF) distribution policy that was mistakenly repealed when 19 TAC Chapter 33 was revised to implement Senate Bill (SB) 1232, 87th Texas Legislature, Regular Session, 2021.

REASONED JUSTIFICATION: SB 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The adopted amendment reinstates mistakenly repealed language in §33.2 that addresses the SBOE's responsibilities to determine a rate for PSF distributions to the ASF.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 amendment for first reading and filing authorization at its November 17, 2023 meeting and for second reading and final adoption at its February 2, 2024 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the amendment for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2024-2025 school year. The earlier effective date would ensure the reinstated provisions become effective as soon as possible. The effective date is 20 days after filing as adopted with the Texas Register.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began December 22, 2023, and ended at 5:00 p.m. on January 22, 2024. The SBOE also provided an opportunity for registered oral and written comments at its January-February 2024 meeting in accordance with the SBOE board operating policies and procedures. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted 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).

<rule>

§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.