

## **BILL ANALYSIS**

C.S.H.B. 2044  
By: McReynolds  
Land & Resource Management  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Chapter 31, Natural Resources Code, provides the statutory basis for the General Land Office (GLO) and lists its general powers and duties for real estate transactions involving state real property. The chapter also describes the agency's authority for the review and evaluation of state real property and outlines the processes for the disposition and acquisition of state property. Chapter 31 has been amended on numerous occasions and, as a result, can be confusing to even the regular user.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the General Land Office in SECTION 16 (Section 31.1572(b), Natural Resources Code) of this bill.

It is the committee's opinion that rulemaking authority is expressly granted to the General Land Office in SECTION 30 (Section 51.507, Natural Resources Code) of this bill.

### **ANALYSIS**

- SECTION 1. Amends Section 31.001, Definitions, to provide a complete set of uniform definitions for all terms used in Chapter 31. Additional terms are defined to help clarify the chapter.
- SECTION 2. Amends Section 31.013, Bonds, to explicitly authorize the Land Office to pay the expenses associated with the execution of statutorily required employee bonds as has been agency practice for years.
- SECTION 3. Amends Section 31.016, Abstract Clerk, by substituting the term "real property" for "land" to provide uniformity in terms used in the chapter.
- Amends Section 31.017, Receiver, by substituting the term "receiver" for "receiving clerk".
- SECTION 4. Amends Section 31.018, Translator, deleting an outdated provision requiring the agency's Spanish Translator to record translations "in a book". Substitutes the term "real property" for "land" to provide uniformity in terms used in the chapter.
- SECTION 5. Amends Section 31.019, Surveyors, substituting the term "surveyor" for "draftsman" to more accurately reflect the nature of the position.
- SECTION 6. Amends Section 31.051, General Duties, by substituting the term "real property" for "land" to provide uniformity in terms used in the chapter.
- SECTION 7. Amends Section 31.052, Custody of Records, by substituting the term "real property" for "land" to provide uniformity in terms used in the chapter. Provides that documents contained in the archives of the General Land Office constitute

prima facie evidence of the boundaries of real property described in the archive file.

SECTION 8. Amends Section 31.054, Public Access to and Removal of Papers, by combining two existing sections (Sections 31.054, 31.055) dealing with access and removal of land office records. Provides that any person who wishes to examine a file make a written request. Authorizes the commissioner to establish procedures to maintain the integrity of agency records. Requirement for written consent of commissioner or chief clerk for examination of land office records is deleted as is a requirement that the chief clerk be present during the records examination. A duplicative provision prohibiting the commissioner from releasing an official record while a court considers the record's genuineness is deleted.

Section 31.056, Revision, Compilation and Printing of Abstracts, is amended to combine two sections that have to do with the preparation, printing and distribution of volumes of abstracts of patented, titled, and surveyed land. Substitutes "real property" for "land". Authorizes the commissioner to make a sufficient number of abstract volumes and supplements available to meet demand and deletes current provision limiting the number of abstract volumes and supplements that may be printed to 1500. A new provision to allow publication and distribution of electronic abstract volumes and supplements is included. Clarifies that the cost of abstracts and supplements are to be funded through the Land Office budget. Deletes the current requirement that such volumes be printed and bound in Texas to enable the agency to seek the lowest cost for these services.

Section 31.058, Receiving Funds, is amended to clarify the procedures used by the receiver in processing funds. No substantive change from current law.

Section 31.059, Receiver's Books, is amended to clarify record keeping procedures for funds received and for the preparation of reports and payments to the comptroller related to such funds. No substantive change from current law.

Section 31.060, Financial Report is amended to require the commissioner to prepare a report on the agency's finances and furnish it to the governor. No substantive change from current law.

SECTION 9. Amends Section 31.064, Setting and Collecting Fees, granting the commissioner greater flexibility to set and collect fees for documents and services provided by the land office. No substantive change from current law.

SECTION 10. Amends Section 31.065, Authority to Accept Gifts, Grants, Devises, Trusts and Bequests, substituting the reference to "property" with the term "real property" to provide uniformity in terms used in the chapter.

SECTION 11. Amends Section 31.066, Authority to Accept Title to a Site Following Completion of a Remedial Action in Accordance with Federal Law, substituting the Texas Commission for Environmental Quality for Texas Natural Resources Conservation Commission to reflect new agency name.

SECTION 12. Amends Section 31.067, Authority to Sell Certain Agency Real Property. Substitutes the term "real property" to provide uniformity of terms throughout Chapter. New language provides that real property sales are to be conducted under the provisions of Chapter 31 unless the law provides otherwise.

SECTION 13. Creates new Section 31.0671, Agency Authority to Sell or Exchange Real Property, provides that any state agency or political subdivision may directly sell or exchange property with the School Land Board provided that the sale or exchange is for market value. (formerly Section 4(g), Chapter 633, Acts 1991, 72<sup>nd</sup> Legislature).

Creates new Section 31.0672, Authority to Conduct Certain Real Property Transactions, provides the asset management division with the authority to sell agency land directly to a person or political subdivision if the sale is in the best interest of the state and the governor approves the transaction. Clarifies the terms and conditions of sales under this chapter.

SECTION 14. Amends Section 31.068, Standing to Enforce Restrictions, substitutes the term "real property" for "land" to provide uniformity in terms used in the chapter. No substantive change from current law.

SECTION 15. Amends Section 31.153, Property Accounting and Records, directing that all real property owned by the state shall be accounted for by the property-owning agency. Substitutes the term "real property" for "property". New subsections (d) and (e) list the type of information agencies must furnish to the Texas Historical Commission to enable the Commission to maintain its inventory of historical buildings. Subsections (d) and (e) are transferred from current Section 31.160. No substantive change from current law.

Amends Section 31.154, Property Inventory, to substitute the term "real property" for "land" to provide uniformity in terms used in the chapter. No change from current law.

Amends Section 31.155, Special Status of Certain Agencies, by maintaining current law that the land office is not responsible for maintaining the real property inventory records of the Texas Department of Transportation, an institution of higher education, the Employees Retirement System or the Teachers Retirement System. Deletes references to the Texas National Research Laboratory Commission and directs the division to maintain the real property inventory records of the former Texas National Research Laboratory Commission while continuing to dispose the real property interests of the former commission. Continues the provisions in current law that TxDOT submit its real property inventory records to the land office and authorizes the land office to review and verify the department's records and make recommendations regarding those properties in the same manner that other agency properties are reviewed. Substitutes "real property" for property to provide uniformity in terms used in the chapter. Exempts the property administered by the Texas Historical Commission, the Alamo, the French Legation, the Governor's Mansion, the Texas State Cemetery and property owned by the State Preservation Board from the division's reporting and evaluation process.

Amends Section 31.156, Property Review, maintaining provisions in current law providing for a 4-year review cycle for state agency real property by the division. Provides that the division is to identify state real property that is unused or underused and recommend an alternate use of the property or a real estate transaction to the land commissioner. Subsections (c), (d) and (e) are deleted as requested by TDHCA. Former subsection (f) has been moved to 31.157(i). A new subsection (e) deletes an outdated reference the Texas National Guard Armory Board and substitutes the Texas Military Facilities Commission and provides notice to the commission. Substitutes "real property" for property to

provide uniformity in terms used in the chapter.

Amends Section 31.157, Evaluation Report, to clarify that this section deals with the report evaluating the current use of state property conducted under Section 31.156. Subsections (b) and (c) contain provisions requiring the land office to provide copies of evaluation reports to the Building and Procurement Commission. The commission and owning agency retain their right to make recommendations and comme

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underused in the land office report. Requires that agencies owning unused or underused property provide the land office with information on any plan the agency may have to convert the use of or dispose of the property. Such agencies are also required to provide updates on property updates upon G L O request. Former Section 31.156 ( f ) authorizing land office to

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Amends Section 31.1571, Governor's Report, addressing the process used by the land office in preparing its report to the governor on recommended real estate transactions on state real property evaluated by the land office. Authorizes the commissioner to make a report to the governor at any time to recommend real estate transactions or other action involving unused or underused state real property. Following the report to the governor, the commissioner is to notify the owning state agency and the Texas Department of Housing and Community Affairs of the recommendation for a transaction. The owning agency and TDHCA are given 60 days to file comments with the governor on the commissioner's recommendation. Maintains current law prohibiting an agency that owns property recommended to the governor from disposing of the recommended property or changing its use prior to either the governor's rejection of the recommendation or two years from the date the recommendation is made. Provides that the governor may extend this two-year period. Authorizes the governor to require an agency to provide the land office with a general development plan or other information needed for evaluation of the recommended property. Continues current law providing that the commissioner may conduct a transaction on the recommended property if not disapproved by the governor within 90 calendar days. No substantive change from current law.

SECTION 16. Adds a new Section 31.1572, Real Estate Transactions Authorized by the Governor, to consolidate and reorder provisions in current law governing the process used by the land office to conduct transactions authorized by the governor. These provisions were formerly Sections 31.504, 31.505, 31.512, 31.514, 31.515, and 31.516. Deletes "or held in trust" as redundant given new definition of real property owned by the state. No substantive change from current law.

SECTION 17. Amends Section 31.158, Real Estate Transactions Authorized by Legislature, to clarify that only bids meeting minimum appraised value of property may be accepted by commissioner. Deletes "or held in trust" as redundant given new definition of real property owned by the state. Clarifies reference to "land" and "property" to "real property". Subsection (c)(1) authorizes the use of a real estate broker to sell or lease state real property. New subsection (c) (6) (former Section 31.513) provides that if a property sold at sealed bid sale does not result in a closed transaction, the land office may solicit proposals and negotiate a transaction. However, the sales price in such a transaction may not be less than the property's market value.



Creates a new Section 31.1581, Affordable Housing, from provisions formerly located at Section 31.158(d) and (e). Deletes duplicative term "accessible" in describing affordable housing. Broadens the type of organization the legislature may transfer property to for affordable housing from "political subdivision" to "entity" to include non-profit groups organized for the development of affordable housing. New provision includes transactions approved by governor.

- SECTION 18. Amends Section 31.159, First Option to Purchase, revising language granting the School Land Board a first option to purchase, on behalf of the PSF, state agency property that has been authorized for sale by legislative act or gubernatorial approval. Reorganizes and streamlines the appraisal process to be used in determining the value of a property. No substantive change in current law.
- SECTION 19. Amends Section 31.161, Development Plan, to expand the type of transactions for which the land office may formulate a development plan. Under current law, a development plan may be prepared only on legislatively authorized transactions. The amended language would allow a development plan to be prepared for any property the state plans to offer for sale or lease. The remaining changes are intended to streamline and clarify existing language and make no substantive change.
- SECTION 20. Amends Section 31.1611, Public Hearing Before Preparation of Development Plan, to streamline and clarify existing language. No substantive change in current law.
- SECTION 21. Amends Section 31.162, Submission of the Plan to the Affected Local Government, to reduce the timeframe for review of state development plan by local government from 180 to 120 days. This change is intended to expedite local review and enable the state to take advantage of favorable market conditions.
- SECTION 22. Amends Section 31.163, Rezoning, by authorizing the division to request rezoning for state land from a local government. Reduces the timeframe for local government review of proposed rezoning from 180 to 120 days to enable the state to take advantage of favorable market conditions.
- SECTION 23. Amends Section 31.165, Special Board of Review, by making minor editorial changes to the process outlined in current law that provides an appeal for the state when its request for rezoning a state property is denied by a local government. No substantive change from current law.
- SECTION 24. Amends Section 31.166, Hearing, to include the central appraisal district to the list of political subdivisions that are to receive notice of a special board of review hearing.
- SECTION 25. Amends Section 31.167, Binding Effect of Development Plan, by substituting the term "real property" for "land" to provide uniformity in terms used in the chapter.
- SECTION 26. Section 31.307. Dedication of Roads. Provides that the commissioner may dedicate real property formerly owned by the Texas Natural Research Laboratory Commission for roads. Substitutes the term "real property" for "land" to provide uniformity in terms used in the chapter.
- SECTION 27. Section 31.308, Conveyance of Surface and Subsurface Estate. Substitutes the term "real property" for "land" to provide uniformity in terms used in the chapter.

- SECTION 28. Section 31.309, Preference Right to Purchase Certain Real Property. Substitutes the term "real property" for "land" to provide uniformity in terms used in the chapter.
- SECTION 29. Transfers Section 31.063, Location of Coastal Boundaries, directing the land commissioner to locate and set the state's coastal boundaries to Chapter 11, Natural Resources Code.
- SECTION 30. Transfers provisions of Chapter 31, Subchapter F, governing grants for the construction of permanent improvements available to lessees of Permanent School Fund land used for grazing or agricultural purposes to Chapter 51, Natural Resources Code.
- SECTION 31. Repealer.
- SECTION 32. Effective date

### **EFFECTIVE DATE**

This act takes effect immediately, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

C.S.H.B. 2044, in SECTION 1 (Section 31.001(6)) substitutes the words "accompanied by" for "for" to clarify that an exchange of real property may include a cash payment.

C.S.H.B. 2044, in SECTION 1 (Section 31.001(7)) deletes the term "annual" from the definition of the report containing recommended real estate transactions submitted by the land commissioner to the governor. This change would enable the commissioner to provide transaction recommendations for gubernatorial review as conditions warrant.

H.B. 2044, in SECTION 2, added a new Section 31.002 that is not in C.S.H.B. 2044.

H.B. 2044, in SECTION 3 (Section 31.011) makes conforming changes. No such changes are made in C.S.H.B. 2044.

C.S.H.B. 2044, in SECTION 8 (Section 31.056(f)) provides that the land office is to continue to print abstract volumes as well as supplementary abstracts.

C.S.H.B. 2044, in SECTION 12 (Section 31.067) replaces the term "Certain" to title of Section 31.067 to clarify the intent and applicability of this section.

C.S.H.B. 2044, in SECTION 13 (Sections 31.0671, 31.0672) creates two new subsections to clarify the processes used to conduct certain transactions. Section 31.0671 authorizes a state agency or political subdivision to perform a direct sale of real property with the School Land Board. Provides that such transactions do not include tax foreclosure properties owned by local governments. Section 31.0672 provides that the asset management division may conduct direct sales of state real property. Direct sales may be conducted only for a property that has been previously approved for sale by the legislature or governor. The governor would be required to approve all sales under this section and the sale of these properties must be for market value.

C.S.H.B. 2044, in SECTION 15 (Section 31.155(e)(5)) provides additional language to clearly identify the Texas State Cemetery property that is exempt from review by the asset management division.

C.S.H.B. 2044, in SECTION 15 (Sections 31.157(a) - (c)) maintains provisions providing for review of the asset management division's draft real property evaluation report by the Building and Procurement Commission. Deletes provisions authorizing review of evaluation reports by the Texas Department of Housing and Community Affairs. TDHCA review now applies to properties that are actually recommended for a transaction in the report to the governor.

C.S.H.B. 2044, in SECTION 16 (Section 31.1572(c)) adds the word "otherwise" to clarify current provisions dealing with the deposit of sales proceeds from real estate transactions governed by this Chapter.

C.S.H.B. 2044, in SECTION 17 (Section 31.1572(d)) deletes the phrase "held in trust". This phrase is unnecessary since it is now included in the definitions section of the Chapter.

C.S.H.B. 2044, in SECTION 17 (Section 31.158(c)(1)) allows the land office to use real estate brokers for transactions involving state real property that has been approved for sale by the governor or legislature. Under current law, sales must be conducted through a sealed bid sale or public auction. Given the costs associated with such sales, transactions are often postponed until a sufficient number of agency properties are ready for sale. Enabling the Land Office to use brokers to conduct sales will allow the agency to bring properties to the market in a more efficient and timely manner.

C.S.H.B. 2044, in SECTION 17 (Section 31.158(c)(6)) enables the land office to solicit proposals and negotiate a transaction in the event a bid award does not result in a final transaction.

C.S.H.B. 2044, in SECTION 17 (Section 31.158(c)(10)) deletes an unnecessary statutory reference contained in original bill draft.

C.S.H.B. 2044, in SECTION 17 (Section 31.158(d)) allows the asset management division to contract with a real estate broker or firm to conduct a real estate transaction on behalf of the state. Use of brokers should expedite the sale of agency real property that has been approved for sale. The use of brokers is expected to result in lower transaction costs.

C.S.H.B. 2044, in SECTION 17 (Section 31.1581) consolidates and streamlines provisions governing the transfer of real property for affordable housing developments. Removes references to "accessible" housing that are unnecessary since TDHCA' definition of "affordable" includes that term.

C.S.H.B. 2044, in SECTION 18 (Sections 31.159(c), (d)) provides a specific reference to real property sales "approved by the governor" to clarify the School Land Board's ability to exercise its first option to purchase such properties on behalf of the Permanent School Fund. Adds the term "market" to "value" to provide uniform terms.

C.S.H.B. 2044, in SECTION 31 (Repealer), replaces Subchapter H, Natural Resources Code, that was repealed in H.B. 2044.