

BILL ANALYSIS

C.S.H.B. 2217
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Land & Resource Management
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Legislature has charged the School Land Board (board) and the Commissioner of the Texas General Land Office (GLO) with the duty and authority to manage the state-owned real property dedicated to the Permanent School Fund (PSF) under Article VII, Sections 4 and 5, Texas Constitution. The portfolio contains millions of acres, including ranching and grazing properties in West Texas, timberlands in East Texas, urban properties in a variety of locales, the Gulf Coast beaches and bays, and the "submerged" lands extending 10.3 miles out from the shoreline. The GLO and the board lease state land for a variety of purposes, including oil and gas production, commercial development, and sustainable energy development.

In Section 51.052(d), Natural Resources Code, the board is authorized to sell PSF land at a price not less than market value as determined by an appraiser, per the definition found in Section 51.001(11). This provision protects both the Commissioner and board by ensuring the PSF is properly compensated for any land it chooses to sell. Consistent with the foregoing, Section 51.403(a) restricts the board from paying more than market value for real property interests acquired on behalf of the PSF.

However, situations often arise where a property may be subject to conditions or circumstances that affect its marketability in a way that is not reflected in the market value determined by an appraisal. It could be of limited interest to the market because it is land-locked with no access via public roadways due to being surrounded on all sides by one property owner, or the cost to sell the property through sealed bid sale may be higher than the market value of the property. On the other hand, a property could be of greater interest to a particular segment of the market because of its location, some unique attribute, or its proximity to another tract. The board may have knowledge about a property or about the market that indicates that it may be in the best interest of the PSF to pay more than market value or to sell for less than market value for a particular property after considering all relevant factors.

The board is without clear authority to expend funds to make improvements to PSF real property assets or to otherwise enhance the value thereof. The potential return to the PSF can often be dramatically increased by basic improvements such as the installation of necessary infrastructure like water, electricity service, sewage, or roadways. Presently, the board relies on the use of ground leases to get these improvements made, but must share the benefits thereof with its lessee.

The PSF real property portfolio includes numerous properties that are not suited to sale through a sealed bid process; however, the board cannot respond to serious inquiries from potential buyers until such sealed bid process is completed. This is particularly problematic with regard to commercial properties. Presently if a sealed bid process does not result in a successful sale, the board can retain the services of a real estate broker to assist with disposition of a property.

CSHB 2217 modifies the Chapter 51 definition of "market value" so that the board may determine the market value of a particular property being bought or sold. The bill also clarifies the authority of the board to manage PSF lands and to expend funds to pay expenses related to PSF real property assets and to make improvements to and enhance the value of PSF real property assets.

Further, the bill adopts by incorporation the "prudent investor" as the standard to be used by the board in making expenditures of PSF funds and provides clear authority to retain the services of a fund manager to assist with real PSF estate investments.

C.S.H.B. 2217 79(R)

The bill eliminates the preferential right of an adjacent property owner to purchase PSF lands before it goes on the market because of the adverse impact such right has had on the ability of the board to realize the maximum return on some lands.

RULEMAKING AUTHORITY

SECTION 6. Authorizes the school land board to adopt rules to implement the preference right found in Section 51.051, Natural Resources Code.

ANALYSIS

SECTION 1. *Amends Section 51.001(11), Natural Resources Code, as follows:*

Defines "market value" to mean the price at which a property would transfer for cash or its equivalent under prevailing market conditions as defined by the Tax Code.

SECTION 2. *Amends the heading to Subchapter B, Chapter 51, Natural Resources Code, as follows:*

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO THE MANAGEMENT [~~SALE AND LEASE~~] OF PUBLIC SCHOOL AND ASYLUM LAND

SECTION 3. *Amends the heading to Section 51.011, Natural Resources Code, as follows:*

Sec. 51.011. MANAGEMENT [~~SALE AND LEASE~~] OF PUBLIC SCHOOL LAND.

SECTION 4. *Amends Section 51.011, Natural Resources Code, by amending Subsection (a), and adding Subsection (a-1), as follows:*

Clarifies the complete authority of the board to manage PSF lands.

SECTION 5. *Amends Section 51.051, Natural Resources Code, as follows:*

Makes conforming changes.

SECTION 6. *Amends Sections 51.052(d), (e), and (i), Natural Resources Code, as follows:*

Authorizes the board to determine the market value of PSF lands that is in the best interest of the State after receipt of an appraisal.

Requires the board to find that allowing someone who has a preference to buy a certain tract to be in the best interest of the state.

Authorizes the board to retain the services of a real estate broker to assist with a transaction involving commercial real estate without having first held an unsuccessful sealed bid sale if it is determined to be in the best interests of the PSF.

SECTION 7. *Amends Section 51.401(a) and (c), Natural Resources Code, as follows:*

Deletes language that is not needed when considering the more comprehensive list of purposes for which the special fund account may be used contained in Section 51.402, Natural Resources Code, as amended.

SECTION 8. *Amends Section 51.402, Natural Resources Code, as follows:*

Clarifies the purposes related to PSF real estate investments for which the board may use the special fund account, including the payment of certain professional fees and expenses related to the maintenance and enhancement of the value of the PSF real property assets.

SECTION 9. *Amends Subchapter I, Chapter 51, Natural Resources Code, by adding Section 51.4021, as follows:*

Provides authority, requirements, and compensation for the retention of the professional services of investment fund managers to assist the board in the fulfillment of its responsibilities to maximize returns on PSF real estate investments.

SECTION 10. Repeals Sections 32.254 and 51.403, Natural Resources Code.

SECTION 11. Effective Date.

EFFECTIVE DATE

Effective date is September 1, 2005 or immediately if approved by two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution.

COMPARISON OF ORIGINAL TO SUBSTITUTE

SECTION 1. The Original contains a provision that requires trades of PSF land must be made on an equivalent market, while the Substitute changes the definition of "market value" to mean the price at which a property would transfer for cash or its equivalent under prevailing market conditions as defined by the Tax Code.

SECTION 2. The Original redefines "market value" to be the value determined by the board, while the Substitute changes a heading in Chapter 51, Natural Resources Code.

SECTION 3. The Original is moved to SECTION 2 of the substitute, while the Substitute changes the heading to Section 51.011, Natural Resources Code.

SECTION 4. The Original is moved to SECTION 3 of the substitute, while the Substitute clarifies the complete authority of the board to manage PSF lands.

SECTION 5. The Original is moved to SECTION 4 of the substitute, while the Substitute makes conforming changes.

SECTION 6. The Original is moved to SECTION 5 of the substitute, while the Substitute includes the original SECTION 7 and a requirement that the board to find that allowing someone who has a preference to buy a certain tract to be in the best interest of the state.

SECTION 7. The Original is moved to SECTION 6 of the substitute, while the Substitute includes the original SECTION 8.

SECTION 8. The Original is moved to SECTION 7 of the substitute, while the Substitute includes the original SECTION 9.

SECTION 9. The Original is moved to SECTION 8 of the substitute, while the Substitute includes the original SECTION 10 and language regarding compensation.

- SECTION 10. The Original is moved to SECTION 9 of the substitute, while the Substitute repeals Sections 32.254 and 51.403, Natural Resources Code.
- SECTION 11. The Original contains the Repealer Clause, while the Substitute contains the Effective Date Clause.
- SECTION 12. The Original contains the Effective Date Clause, while the Substitute has no provision.