

BILL ANALYSIS

H.B. 2803
By: Morrison
Higher Education
Committee Report (Unamended)

BACKGROUND AND PURPOSE

House Bill 2803 makes changes to the *Education Code* so as to authorize the sale of junior college or higher education facilities to real estate investment trusts (REITs). A real estate investment trust is a corporation or business trust that combines the capital of many stockholders to acquire properties. Congress created REITs in 1960 to make investments in large-scale, income-producing real estate accessible to smaller investors. Congress decided that a way for average investors to invest in large-scale commercial properties was the same way they invest in other industries, through the purchase of equity. In the same way as shareholders benefit by owning stocks of other corporations, the stockholders of a REIT earn a pro-rata share of the economic benefits that are derived from the production of income through commercial real estate ownership. REITs utilize a conservative investment philosophy and a moderate leverage strategy.

HB 2803 authorizes the sale of a junior college or higher education facility to a real estate investment trust, or REIT. It allows a REIT to purchase any combination of junior college or higher education facilities. The bill provides for concurrent agreements whereby a junior college or higher education may enter into a lease under which the education institution has use of the facility. The bill ensures a focus on education activities in those facilities by requiring that the lessee, in this case the junior college or institution of higher education entering into the concurrent agreement, specify the use of the facility for the duration of the concurrent agreement. While REITs are common in the private sector and in higher education housing, this bill is innovative in so far that it broadens the use of REITs in Texas junior college and higher education systems. By so authorizing, the bill infuses equity funding into facilities in the Texas junior college and higher education systems. Under the bill, the education institution selling facilities to a REIT would receive a lump sum payment from the REIT. The education institution could use this payment to enhance services, instructional programs, or facilities in other needed areas without seeking new bonding authority.

This focus on equity funding will enhance local planning and responsibility for junior college and institution of higher education facilities and operations. It will also provide a resource to policy makers seeking to make higher education funding more efficient while providing governing boards financial alternatives to accommodate the rapid growth of the Texas higher education system. The value of junior college and institution of higher education facilities is an untapped resource in education system funding in Texas.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. Allows for the sale of institutions or junior college facilities to a real estate investment trust. Provides that concurrent with the sale of a facility, an institution of higher education or public junior college must enter into a lease and a contract, and sets forth provisions required in the lease and contract. Provides a list of actions that must be performed by the governing board prior to sale of a facility.

Provides that a real estate investment trust may make an unsolicited proposal to an institution of higher education or public junior college to purchase an institution or junior college facility.

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Provides that a proposal submitted by a real estate investment trust must include proposals relating to the terms of each concurrent agreement. Sets forth provisions required of the institution or junior college prior to accepting a proposal. Provides that a real estate investment trust may purchase facilities from any combination of institutions of higher education and public junior colleges.

Provides that if a real estate investment trust is established to purchase a facility of an institution of higher education or public junior college under this subchapter, the certificate of formation of the real estate investment trust must provide that the governing board of each institution of higher education or public junior college participating in the sale is entitled to appoint two members of the board to act as trust managers of the real estate investment trust for the duration of the lease. Provides if the trust was pre-existing to the sale of the facility, the trust must amend its certificate of formation or bylaws to allow for two board members from the institution of higher education or junior college.

Provides that any compensation paid by a real estate investment trust to a member of a governing board of an institution of higher education or public junior college for service as a trust manager is the property of the institution or junior college, as applicable.

SECTION 2. Effective date.

EFFECTIVE DATE

This Act takes effect September 1, 2005.