

By: Harper-Brown

H.B. No. 2204

A BILL TO BE ENTITLED

AN ACT

relating to the sale of public educational facilities to real estate investment trusts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 45, Education Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. SALE OF SCHOOL DISTRICT OR CHARTER SCHOOL FACILITIES TO REAL ESTATE INVESTMENT TRUST

Sec. 45.251. SALE OF SCHOOL DISTRICT OR CHARTER SCHOOL FACILITIES TO REAL ESTATE INVESTMENT TRUST AUTHORIZED. An independent school district or open-enrollment charter school may sell a district or school facility to a real estate investment trust as provided by this subchapter.

Sec. 45.252. CONCURRENT AGREEMENTS. (a) Concurrent with the sale of a facility under this subchapter, a school district or charter school must enter into:

(1) a lease with the real estate investment trust purchasing the facility under which the school district or charter school may use the facility as provided by Subsection (c); and

(2) a contract with the investment trust or another entity for the trust or other entity to manage, maintain, and, as necessary, improve the facility.

(b) A lease under Subsection (a)(1) must be for a term of at least 20 years. A contract under Subsection (a)(2) for a facility

1 must be for the same term as the lease relating to that facility.

2 (c) A lease under Subsection (a)(1) must provide that, for  
3 the duration of the lease:

4 (1) during mandatory school hours, the facility must  
5 be used for educational purposes; and

6 (2) at times other than during mandatory school hours,  
7 the facility may be used for other purposes as determined by the  
8 trust managers of the real estate investment trust.

9 Sec. 45.253. NOTICE OF PROPOSED SALE; PROPOSAL. (a) Except  
10 as provided by Section 45.254, before selling a facility to a real  
11 estate investment trust under this subchapter or executing a lease  
12 or contract in connection with the sale, the board of trustees of a  
13 school district or the governing body of an open-enrollment charter  
14 school shall:

15 (1) determine which facility is proposed to be sold;

16 (2) determine the terms on which the board or  
17 governing body will consider selling the facility;

18 (3) publish a notice to prospective purchasers  
19 requesting sealed written proposals from prospective purchasers to  
20 purchase the facility; and

21 (4) make a formal determination as to which sealed  
22 written proposal is most advantageous to the district or charter  
23 school and accept that proposal or reject all proposals if  
24 considered advisable.

25 (b) A notice under Subsection (a)(3) must be published at  
26 least two weeks before the date set for receiving proposals in a  
27 real estate journal and in at least two newspapers of general

1 circulation in the school district or the area served by the charter  
2 school, as applicable. The notice must include:

3 (1) the terms of sale and the matters to be addressed  
4 by concurrent agreements required under Section 45.252 that will be  
5 considered; and

6 (2) the time and date by which, and place where, the  
7 proposals must be received.

8 (c) A proposal submitted by a real estate investment trust  
9 under this section must include proposals relating to the terms of  
10 each concurrent agreement required by Section 45.252.

11 Sec. 45.254. UNSOLICITED PROPOSALS BY REAL ESTATE  
12 INVESTMENT TRUSTS. (a) A real estate investment trust may make an  
13 unsolicited proposal to a school district or open-enrollment  
14 charter school to purchase a district or school facility under this  
15 subchapter. A proposal submitted by a real estate investment trust  
16 under this subsection must include proposals relating to the terms  
17 of each concurrent agreement required by Section 45.252.

18 (b) Before a school district or charter school may accept a  
19 proposal received under Subsection (a), the district or school  
20 must:

21 (1) publish a notice of the proposed sale and a request  
22 for competing sealed written proposals;

23 (2) evaluate any competing proposals submitted; and

24 (3) make a formal determination as to whether a  
25 competing proposal is more advantageous to the district or charter  
26 school than the unsolicited proposal.

27 (c) A notice under Subsection (b) must include:

1           (1) the terms of sale and the matters to be addressed  
2 by concurrent agreements required under Section 45.252 that are  
3 contained in the unsolicited proposal; and

4           (2) the time and date by which, and place where, the  
5 competing proposals must be received.

6           (d) A notice under Subsection (b) must be published in the  
7 manner required by Section 45.253(b) for a notice under Section  
8 45.253(a)(3).

9           Sec. 45.255. PURCHASE BY REAL ESTATE INVESTMENT TRUST OF  
10 FACILITIES OF MORE THAN ONE EDUCATIONAL INSTITUTION. (a) In this  
11 section, "institution of higher education" has the meaning assigned  
12 by Section 61.003.

13           (b) A real estate investment trust may purchase facilities  
14 from any combination of school districts, open-enrollment charter  
15 schools, and institutions of higher education.

16           Sec. 45.256. MANAGEMENT OF TRUST. (a) Notwithstanding  
17 Chapter 200, Business Organizations Code, or the Texas Real Estate  
18 Investment Trust Act (Article 6138A, Vernon's Texas Civil  
19 Statutes):

20           (1) if a real estate investment trust is established  
21 to purchase a school district or open-enrollment charter school  
22 facility under this subchapter, the certificate of formation of the  
23 real estate investment trust must provide that:

24           (A) the board of trustees of each school district  
25 or the governing body of each open-enrollment charter school  
26 participating in the sale is entitled to appoint two members of the  
27 board or governing body, as applicable, to act as trust managers of

1 the real estate investment trust for the duration of the lease  
2 required by Section 42.252(a)(1); and

3 (B) the requirement of Paragraph (A) may not be  
4 altered by amending the certificate of formation or bylaws; and

5 (2) if an existing real estate investment trust seeks  
6 to purchase a school district or open-enrollment charter school  
7 facility under Section 42.254, the certificate of formation or  
8 bylaws of the real estate investment trust must be amended to  
9 provide that if the purchase is completed, the board of trustees of  
10 each school district or the governing body of each open-enrollment  
11 charter school participating in the sale is entitled to appoint two  
12 members of the board or governing body, as applicable, to act as  
13 trust managers of the real estate investment trust for the duration  
14 of the lease required by Section 42.252(a)(1).

15 (b) Any compensation paid by a real estate investment trust  
16 to a member of a school district board of trustees or of a governing  
17 body of an open-enrollment charter school for service as a trust  
18 manager is the property of the school district or open-enrollment  
19 charter school, as applicable.

20 SECTION 2. Subchapter A, Chapter 46, Education Code, is  
21 amended by adding Section 46.0041 to read as follows:

22 Sec. 46.0041. LEASES WITH REAL ESTATE INVESTMENT TRUSTS.

23 (a) A district may receive state assistance in connection with a  
24 lease with a real estate investment trust under Subchapter I,  
25 Chapter 45, concerning an instructional facility. For purposes of  
26 this subchapter:

27 (1) taxes levied for purposes of maintenance and

1 operations that are necessary to pay a district's share of the  
2 payments under a lease with a real estate investment trust for which  
3 the district receives state assistance under this subchapter are  
4 considered to be bond taxes; and

5 (2) payments under a lease with a real estate  
6 investment trust are considered to be payments of principal of and  
7 interest on bonds.

8 (b) Section 46.003(b) applies to taxes levied to pay a  
9 district's share of the payments under a lease with a real estate  
10 investment trust for which the district receives state assistance  
11 under this subchapter.

12 SECTION 3. Subchapter B, Chapter 46, Education Code, is  
13 amended by adding Section 46.0331 to read as follows:

14 Sec. 46.0331. LEASES WITH REAL ESTATE INVESTMENT TRUSTS.

15 (a) A district that sells a school facility to a real estate  
16 investment trust under Subchapter I, Chapter 45, may receive state  
17 assistance in connection with a lease of the facility if the  
18 facility was acquired or constructed with eligible bonds for which  
19 the district was receiving assistance under this subchapter. For  
20 purposes of this subchapter:

21 (1) taxes levied for purposes of maintenance and  
22 operations that are necessary to pay a district's share of the  
23 payments under a lease with a real estate investment trust for which  
24 the district receives state assistance under this subchapter are  
25 considered to be bond taxes; and

26 (2) payments under a lease with a real estate  
27 investment trust are considered to be payments of principal of and

1 interest on bonds.

2 (b) Section 46.003(b) applies to taxes levied to pay a  
3 district's share of the payments under a lease with a real estate  
4 investment trust for which the district receives state assistance  
5 under this subchapter.

6 SECTION 4. Chapter 55, Education Code, is amended by adding  
7 Subchapter D to read as follows:

8 SUBCHAPTER D. SALE OF INSTITUTION OR JUNIOR COLLEGE FACILITIES TO  
9 REAL ESTATE INVESTMENT TRUST

10 Sec. 55.101. SALE OF INSTITUTION OR JUNIOR COLLEGE  
11 FACILITIES TO REAL ESTATE INVESTMENT TRUST AUTHORIZED. An  
12 institution of higher education or public junior college may sell  
13 an institution or junior college facility to a real estate  
14 investment trust as provided by this subchapter.

15 Sec. 55.102. CONCURRENT AGREEMENTS. (a) Concurrent with  
16 the sale of a facility under this subchapter, an institution of  
17 higher education or public junior college must enter into:

18 (1) a lease with the real estate investment trust  
19 purchasing the facility under which the institution or junior  
20 college may use the facility as provided by Subsection (c); and

21 (2) a contract with the investment trust or another  
22 entity for the trust or other entity to manage, maintain, and, as  
23 necessary, improve the facility.

24 (b) A lease under Subsection (a)(1) must be for a term of at  
25 least 20 years. A contract under Subsection (a)(2) for a facility  
26 must be for the same term as the lease relating to that facility.

27 (c) A lease under Subsection (a)(1) must provide that, for

1 the duration of the lease:

2 (1) during hours when the institution of higher  
3 education or public junior college offers classes, the facility  
4 must be used for educational purposes; and

5 (2) at times other than during class hours, the  
6 facility may be used for other purposes as determined by the trust  
7 managers of the real estate investment trust.

8 Sec. 55.103. NOTICE OF PROPOSED SALE; PROPOSAL. (a) Except  
9 as provided by Section 55.104, before selling a facility to a real  
10 estate investment trust under this subchapter or executing a lease  
11 or contract in connection with the sale, the governing board of an  
12 institution of higher education or public junior college shall:

13 (1) determine which facility is proposed to be sold;

14 (2) determine the terms on which the board will  
15 consider selling the facility;

16 (3) publish a notice to prospective purchasers  
17 requesting sealed written proposals from prospective purchasers to  
18 purchase the facility; and

19 (4) make a formal determination as to which sealed  
20 written proposal is most advantageous to the institution or junior  
21 college and accept that proposal or reject all proposals if  
22 considered advisable.

23 (b) A notice under Subsection (a)(3) must be published at  
24 least two weeks before the date set for receiving proposals in a  
25 real estate journal and in at least two newspapers of general  
26 circulation in the county in which the institution of higher  
27 education is located or in the junior college district, as



1 applicable. The notice must include:

2 (1) the terms of sale and the matters to be addressed  
3 by concurrent agreements required under Section 55.102 that will be  
4 considered; and

5 (2) the time and date by which, and place where, the  
6 proposals must be received.

7 (c) A proposal submitted by a real estate investment trust  
8 under this section must include proposals relating to the terms of  
9 each concurrent agreement required by Section 55.102.

10 Sec. 55.104. UNSOLICITED PROPOSALS BY REAL ESTATE  
11 INVESTMENT TRUSTS. (a) A real estate investment trust may make an  
12 unsolicited proposal to an institution of higher education or  
13 public junior college to purchase an institution or junior college  
14 facility under this subchapter. A proposal submitted by a real  
15 estate investment trust under this subsection must include  
16 proposals relating to the terms of each concurrent agreement  
17 required by Section 55.102.

18 (b) Before an institution of higher education or junior  
19 college may accept a proposal received under Subsection (a), the  
20 institution or junior college must:

21 (1) publish a notice of the proposed sale and a request  
22 for competing sealed written proposals;

23 (2) evaluate any competing proposals submitted; and

24 (3) make a formal determination as to whether a  
25 competing proposal is more advantageous to the institution or  
26 junior college than the unsolicited proposal.

27 (c) A notice under Subsection (b) must include:

1           (1) the terms of sale and the matters to be addressed  
2 by concurrent agreements required under Section 55.102 that are  
3 contained in the unsolicited proposal; and

4           (2) the time and date by which, and place where, the  
5 competing proposals must be received.

6           (d) A notice under Subsection (b) must be published in the  
7 manner required by Section 55.103(b) for a notice under Section  
8 55.103(a)(3).

9           Sec. 55.105. PURCHASE BY REAL ESTATE INVESTMENT TRUST OF  
10 FACILITIES OF MORE THAN ONE EDUCATIONAL INSTITUTION. (a) In this  
11 section, "open-enrollment charter school" means a school that has  
12 been granted a charter under Subchapter D, Chapter 12.

13           (b) A real estate investment trust may purchase facilities  
14 from any combination of institutions of higher education, public  
15 junior colleges, independent school districts, and open-enrollment  
16 charter schools.

17           Sec. 55.106. MANAGEMENT OF TRUST. (a) Notwithstanding  
18 Chapter 200, Business Organizations Code, or the Texas Real Estate  
19 Investment Trust Act (Article 6138A, Vernon's Texas Civil  
20 Statutes):

21           (1) if a real estate investment trust is established  
22 to purchase a facility of an institution of higher education or  
23 public junior college under this subchapter, the certificate of  
24 formation of the real estate investment trust must provide that:

25           (A) the governing board of each institution of  
26 higher education or public junior college participating in the sale  
27 is entitled to appoint two members of the board to act as trust

1 managers of the real estate investment trust for the duration of the  
2 lease required by Section 55.102(a)(1); and

3 (B) the requirement of Paragraph (A) may not be  
4 altered by amending the certificate of formation or bylaws; and

5 (2) if an existing real estate investment trust seeks  
6 to purchase a facility of an institution of higher education or  
7 public junior college under Section 55.104, the certificate of  
8 formation or bylaws of the real estate investment trust must be  
9 amended to provide that if the purchase is completed, the governing  
10 board of each institution of higher education or public junior  
11 college participating in the sale is entitled to appoint two  
12 members of the board to act as trust managers of the real estate  
13 investment trust for the duration of the lease required by Section  
14 55.102(a)(1).

15 (b) Any compensation paid by a real estate investment trust  
16 to a member of a governing board of an institution of higher  
17 education or public junior college for service as a trust manager is  
18 the property of the institution or junior college, as applicable.

19 SECTION 5. This Act takes effect September 1, 2005.