

By: Morrison

H.B. No. 2803

A BILL TO BE ENTITLED

AN ACT

relating to the sale of facilities of public institutions of higher education to real estate investment trusts.

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

SECTION 1. Chapter 55, Education Code, is amended by adding Subchapter D to read as follows:

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

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

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

(1) a lease with the real estate investment trust purchasing the facility under which the institution or junior college 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 hours when the institution of higher  
5 education or public junior college offers classes, the facility  
6 must be used for educational purposes; and

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

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

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

16 (2) determine the terms on which the board will  
17 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 institution or junior  
23 college 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 county in which the institution of higher  
2 education is located or in the junior college district, as  
3 applicable. The notice must include:

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

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

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

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

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

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

25 (2) evaluate any competing proposals submitted; and

26 (3) make a formal determination as to whether a  
27 competing proposal is more advantageous to the institution or

1 junior college than the unsolicited proposal.

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

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

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

8 (d) A notice under Subsection (b) must be published in the  
9 manner required by Section 55.103(b) for a notice under Section  
10 55.103(a)(3).

11 Sec. 55.105. PURCHASE BY REAL ESTATE INVESTMENT TRUST OF  
12 FACILITIES OF MORE THAN ONE INSTITUTION OR JUNIOR COLLEGE. A real  
13 estate investment trust may purchase facilities from any  
14 combination of institutions of higher education and public junior  
15 colleges.

16 Sec. 55.106. 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 facility of an institution of higher education or  
22 public junior college under this subchapter, the certificate of  
23 formation of the real estate investment trust must provide that:

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

1 lease required by Section 55.102(a)(1); and

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

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

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

18 SECTION 2. This Act takes effect September 1, 2005.