

BILL ANALYSIS

Senate Research Center

S.B. 654
By: Seliger
Natural Resources
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Legislature has authorized the School Land Board (SLB) and the commissioner of the Texas General Land Office (GLO) to manage state-owned real property and real property interests 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, Gulf Coast beaches and bays, and the "submerged" lands extending 10.3 miles from the shoreline. The GLO and the SLB lease state land for a variety of purposes, including agriculture and hunting, oil and gas exploration and production, commercial development, and sustainable energy development.

Subchapter D, Chapter 51 (Sections 51.121-51.131), Natural Resources Code, authorizes the commissioner to lease PSF lands for "any purpose the commissioner determines is in the best interest of the state, under terms and conditions set by the commissioner." There are provisions, however, that limit the commissioner in his ability to negotiate and set terms and conditions that are truly in the best interest of the state. The same problem exists with the provisions of Subchapter G (Sections 51.291-51.307), which relates to the granting of easements authorizing various uses of this public land.

Situations often arise where property may be subject to conditions or circumstances that affect its marketability in a way that requires the negotiation of special or innovative terms and conditions in order to achieve the best return to the state. The commissioner may have knowledge about a property or about the market that indicates that it may be in the interest of the PSF to obtain a market value or better return for a particular property after considering all relevant factors.

In other instances, the commissioner may be called upon to consider a proposed use of these lands that cannot or should not be memorialized through lease or easements documents. For instance, these uses may be important scientific or educational projects, of short duration with no permanent effect on the land. These are more suited to the grant of a license or a simple access permit, uses not presently specified in the statute.

S.B. 654 modifies Chapter 51, Natural Resources Code, so that the commissioner may determine the terms and conditions of leases and easements that authorize the use of public lands for private purposes. Existing provisions that require specific terms and conditions or limit the ability of the commissioner to determine the terms and conditions that are in the best interest of the state are amended or eliminated.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to any state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 51.073(a), Natural Resources Code, to delete existing text relating to leases that have been cancelled from the list of leases the commissioner of the General Land Office (commissioner) is required to determine the market value of and classify.

SECTION 2. Amends Sections 51.121(a), (b), and (d), Natural Resources Code, as follows:

(a) Prohibits improvements, rather than commercial improvements, on unsold public school land under this subsection from becoming the property of the state and requires that they be taxed in the same manner as private property.

(b) Provides that improvements made to land leased under Subsection (a) are not required to be removed prior to the lease's expiration if the commissioner believes this to be in the state's best interest and includes this in the terms and conditions of the lease, rather than a renewal or extension of the lease that has been finalized prior to the lease's expiration. Deletes existing text providing that commercial improvements become state property if not removed prior to a lease's expiration and without renewal or extension. Makes a conforming change.

(d) Requires that all sales under this subsection be for a price, rather than not less than market value, determined by the School Land Board, rather than an appraiser. Deletes existing text specifying that the commissioner is authorized to grant a lessee a preference right to purchase leased premises only to leases granted from terms of 20 years or more.

SECTION 3. Amends Section 51.127, Natural Resources Code, as follows:

Sec. 51.127. New heading: RECORDING MEMORANDUM OF LEASE. (a) Requires the commissioner to prepare a descriptive memorandum of the lease at the time the lease is executed and deliver the lease and memorandum to the lessee, rather than the clerk of the county in which the leased land is located (clerk). Deletes existing text providing that this occur after the lessee has paid the rent for land one year in advance.

(b) Requires the lessee to deliver a memorandum of the lease to the clerk. Deletes existing text requiring the clerk, when a lease is filed for record, to prepare a memorandum or abstract of the lease and record the memorandum or abstract in a well-bound book or microfilm in his office.

(c) Requires the clerk to record the memorandum in the county clerk's office. Deletes existing text setting forth certain information the abstract must contain.

(d) Requires the clerk, upon payment of the recording fee, rather than fee required by law, to deliver the recorded memorandum to the lessee. Requires the lessee to provide the commissioner a certified copy of the recorded memorandum.

(e) Deletes existing text providing that no other record of lease is required except for the record made under this section.

SECTION 4. Amends Section 51.291(a), Natural Resources Code, to authorize the commissioner to execute grants of easements, as well as other interests in property for rights-of-way, as well as access across, through, and under certain land. Makes a conforming change.

SECTION 5. Amends Section 51.292, Natural Resources Code, to authorize the commissioner to execute grants of easements or leases for purposes the commissioner determines to be in the best interest of the state.

SECTION 6. Transfers Section 51.293, Natural Resources Code, to Subchapter C, Chapter 66, Education Code, redesignates it as Section 66.46, Education Code, and amends it, as follows:

Sec. 66.46. EASEMENTS ON UNIVERSITY LAND. (a) Authorizes the board of regents of The University of Texas System (board) to execute grants of easements or other interests in property for rights-of-way or access across certain land. Deletes existing text authorizing the board to continue to execute all right-of-way easements under authority already granted across certain land. Makes nonsubstantive changes.

(b) Authorizes the board to execute grants of easements for the erection and maintenance of certain operations on university land and for any other purpose the board determines to be in the best interest of the permanent university fund land. Deletes existing text authorizing the board to continue to execute under authority

already granted grants of easements or leases for certain purposes on university land.

(c) Authorizes the board of regents to execute grants of easements on university land for any other purpose and on any terms it considers to be in the best interest of the permanent university fund land. Makes a nonsubstantive change.

(d) Prohibits an easement under this section from being granted for a term that is longer than 10 years. Authorizes the easement to be renewed by the board. Requires rent charged for an easement under this section to be an amount agreed to by the grantee and the board.

(e) Requires that income received from university land under this section be credited to the available university fund.

(f) Requires payments under this subchapter that are past due to bear interest at a rate equal to the rate imposed by the comptroller under Section 111.060 (Interest on Delinquent Tax), Tax Code, for delinquent payments due the state, except that if the board enters into an agreement with the grantee of the easement specifying a lower rate, the payment is to bear interest at the lower rate.

(g) Requires that each easement granted under this section be recorded in the county clerk's office of the county in which the land is located. Requires the recording fee to be paid by the person who obtains the easement. Requires the person who obtains the easement to furnish to the board a certified copy of the easement.

(h) Provides that no person may construct or maintain any structure or facility on land dedicated to the support and maintenance of The University of Texas System. Provides that no person who has not acquired a certain instrument from the board and who owns or possesses a facility or structure that is now located on or across land dedicated to the support and maintenance of The University of Texas System may continue in possession of the land unless the person obtains from the board a certain instrument for the land on which the facility or structure is to be constructed or is located.

(i) Provides that a person who constructs, maintains, owns, or possesses a facility or structure on university land without a proper easement or lease is liable for a penalty of not less than \$50 or more than \$1,000 a day that a violation occurs. Requires the penalty to be recovered on behalf of the board in a civil action by the attorney general.

(j) Provides that a person who owns, maintains, or possesses an unauthorized facility or structure is, for purposes of this section, the person who last owned, maintained, or possessed the facility or structure.

(k) Provides that a person who constructs, maintains, owns, or possesses a facility or structure on university land without the proper easement or lease is liable to the board for the costs of removing that facility or structure.

(l) Provides that this section does not affect the authority of the board of regents under Section 66.41 (Management of University Lands), Education Code.

SECTION 7. Amends Section 51.295, Natural Resources Code, as follows:

Sec. 51.295. CONDITIONS FOR EASEMENT. Deletes existing text including the board among the list of entities required to determine terms upon which certain easements are required to be executed.

SECTION 8. Amends Section 51.296(a), Natural Resources Code, as follows:

(a) Deletes existing text providing that except as provided in Subsection (b) of this section, no grant of easement or lease enumerated under Section 51.293 (Easements on University Land), Natural Resources Code, is authorized to be granted for a term exceeding 10 years and authorizing an easement or lease to be renewed by the board. Makes a nonsubstantive change.

SECTION 9. Amends Section 51.297, Natural Resources Code, as follows:

Sec. 51.297. RECORDING EASEMENTS. (a) Requires that each easement granted under this subchapter, rather than Sections 51.291 (Grants of Easements), 51.292 (Easements and Leases for Certain Facilities), and 51.293 (Easements on University Land), Natural Resources Code, be recorded in the county clerk's office of the county in which the land is located.

(b) Deletes existing text requiring the person who obtains an easement under Section 51.293 (Easements on University Land), Natural Resources Code, to furnish to the board a certified copy of the easement. Makes conforming changes.

SECTION 10. Amends Section 51.299, Natural Resources Code, as follows:

Sec. 51.299. FEES FOR CERTAIN FACILITIES. Deletes Section 51.293 (Easements on University Land), Natural Resources Code, from the list of sections listing certain easements upon which the rent charged is required to be an amount agreed to between the lessee and the commissioner. Makes conforming and nonsubstantive changes.

SECTION 11. Amends Section 51.300, Natural Resources Code, to delete the requirement that income received from university land be credited to the available university fund.

SECTION 12. Amends Section 51.301, Natural Resources Code, to require payments under this subchapter (Interest on Past Due Payments) that are past due to bear an interest rate equal to the rate imposed by the comptroller of public accounts under Section 111.060 (Interest on Delinquent Tax), Tax Code, for delinquent payments due to the state unless the commissioner has entered into an agreement with the grantee of the easement or lease specifying a lower rate, rather than a rate of 10 percent a year. Deletes existing Subsection (b) relating to the interest rate for unpaid annual fees. Makes conforming changes.

SECTION 13. Amends Section 51.302 (a), Natural Resources Code, to make conforming and nonsubstantive changes.

SECTION 14. Repealer: Sections 51.121(c) (Prohibiting escheated land that is part of a permanent school fund from being leased for any purpose other than grazing for more than two years. Requires the lessee to pay rent with money), 51.128 (Cancellation of Lease), 51.130 (Removal of Improvements), 51.294 (Forms for Grant), and 51.298 (Annual Privilege Fee), Government Code.

SECTION 15. Effective date: upon passage or September 1, 2007.