

BILL ANALYSIS

S.B. 654
By: Seliger
Land & Resource Management
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Texas Legislature has authorized the School Land Board (SLB) and the Commissioner of the Texas General Land Office (commissioner) to manage the state-owned real property and real property interests dedicated to the Permanent School Fund (PSF). 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 General Land Office (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.

Chapter 51, 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 other provisions, however, that limit the commissioner's ability to negotiate and set terms and conditions that are truly in the best interest of the state. The same problem exists with provisions in Chapter 51 regarding the granting of easements authorizing various uses of this public land.

Situations often arise where a 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 best 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.

The purpose of S.B. 654 is generally, to enable the commissioner to 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.

Deleted: to modify Chapter 51, Natural Resources Code.

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

This bill amends Section 51.073, Natural Resources Code, to relieve the commissioner of the duty to reclassify and reevaluate lands on which leases have been cancelled prior to their sale.

This bill amends Section 51.121, Natural Resources Code, to provide that improvements (instead of just commercial improvements) on land under Section 51.121(a) shall not become the property of the state and shall be taxed in the same manner as other private property. This amended Section also requires that improvements (instead of just commercial improvements) on land leased under Section 51.121(a) shall be removed prior to the expiration of the lease unless the commissioner determines it to be in the best interest of the state that removal of the

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improvements not be required and includes such a provision in the terms and conditions of the lease (instead of unless a renewal or an extension of the lease has been finalized prior to the expiration of the term of the lease). Deletes a provision requiring that if commercial improvements are not removed prior to the expiration of the lease and if there has been no renewal or extension prior to the expiration of the lease, then the commercial improvements on the land shall become property of the state. This amended Section also eliminates the requirement that a lease must have a term of 20 years or more before a preference right to purchase can be granted by the commissioner, and allows the SLB to set the sales price (instead of not less than the fair market value determined by an appraiser) as the SLB is already authorized to do for other land sales. Makes conforming changes.

This bill amends Section 51.127, Natural Resources Code, to generally provide a procedure for the recording of a memorandum of a lease (instead of the lease). This amended Section requires the commissioner to prepare a descriptive memorandum of a lease at the time the lease is executed (instead of after the lessee has paid the rent for the land for a year in advance) and deliver the lease and the memorandum to the lessee (instead of to the clerk in the county in which the land is located). This amended Section also requires the lessee to deliver the memorandum of the lease to the clerk of the county in which the land is located (instead of requiring the county clerk to prepare an abstract of the lease and recording the memorandum or abstract in a well-bound book or on microfilm kept in his office). This amended Section also requires the clerk to record the memorandum in the county clerk's office (instead of requiring the memorandum or abstract to require certain information). This amended Section requires the clerk on payment of the recording fee (instead of the fee required by law) to deliver the recorded memorandum (instead of lease) to the lessee. Requires the lessee to provide to the commissioner a certified copy of the recorded memorandum. This bill deletes Section 51.127(e) providing that except for the record made under Section 51.127, no other record of a lease is required.

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This bill amends Section 51.291, Natural Resource Code, to recognize an easement as not necessarily the appropriate document to authorize some of the requested uses of public school lands that must be processed by the commissioner, and to authorize the commissioner to execute grants of easements or other interests in property (instead of just grants and easements) for rights-of-way or access (instead of just right-of-ways) across, through, and under various places for various purposes. Makes conforming changes.

This bill amends Section 51.292, Natural Resources Code, to authorize the commissioner to execute grants of easements or leases for electric substations, pumping stations, loading racks, and tank farms (as currently is law), and for any other purpose the commissioner determines to be in the best interest of the state, to be located on state land other than land owned by The University of Texas System.

This bill transfers Section 51.293, Natural Resources Code, to Subchapter C, Chapter 66, Education Code, and redesignates it as Section 66.46, Education Code. This redesigned Section 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, and deletes existing text authorizing the board to continue to execute all right-of-way easements under authority already granted across certain land. This redesigned Section also 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, and 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. This redesigned Section also 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. This redesigned Section prohibits an easement under this section from being granted for a term that is longer than 10 years, but the easement may be renewed by the board of regents, and provides for the rent to be charged for an easement under this section shall be an amount agreed to by the grantee and the board. This redesigned Section requires income received from university land under this section to be credited to the available university fund. This redesigned Section 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, Tax Code, for delinquent payments due the state, except that if the board of regents enters into an agreement with the grantee of the easement specifying a lower rate, the

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payments bear interest at that lower rate. This redesignated Section requires each easement granted under this section to be recorded in the county clerk's office of the county in which the land is located, and the recording fee shall be paid by the person who obtains the easement, and that the person who obtains the easement shall furnish to the board of regents a certified copy of the easement. This redesigned Section prohibits any person from constructing or maintaining any structure or facility on land dedicated to the support and maintenance of The University of Texas System, nor may any person who has not acquired a proper easement, lease, permit, or other instrument from the board of regents 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 continue in possession of the land unless the person obtains from the board an easement, lease, permit, or other instrument for the land on which the facility or structure is to be constructed or is located. This redesigned Section 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 for each day that a violation occurs, and that the penalty shall be recovered on behalf of the board of regents in a civil action by the attorney general. This redesigned Section 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. This redesigned Section 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 of regents for the costs of removing that facility or structure, and that this redesigned Section provides that it does not affect the authority of the board of regents under Section 66.41, Education Code. Makes conforming changes.

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This bill amends Section 51.295, Natural Resources Code, to delete a "privilege fee" that has been supplanted by the assessment and collection of fees based on the type of easement granted and the extent of the encumbrance or impact on public land.

This bill amends Section 51.296, Natural Resources Code, by deleting existing text providing that except as provided in Subsection (b) of this section, no grant of easement or lease enumerated under Section 51.293, 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, and makes conforming changes.

This bill amends Section 51.297, Natural Resources Code, to require that each easement granted under this subchapter, rather than Sections 51.291, 51.292, and 51.293, Natural Resources Code, be recorded in the county clerk's office of the county in which the land is located. This bill also deletes existing text requiring the person who obtains an easement under Section 51.293, Natural Resources Code, to furnish to the board a certified copy of the easement. Makes conforming changes.

This bill amends Section 51.299, Natural Resources Code, to delete Section 51.293, 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 changes.

This bill amends Section 51.300, Natural Resources Code, to delete the requirement that income received from university land be credited to the available university fund.

This bill amends Section 51.301, Natural Resources Code, to provide for the collection of interest on late payments due under this subchapter at the same rate as charged by the comptroller on delinquent payments due to the state (instead of 10 percent a year) unless the commissioner or the board of regents, as appropriate, negotiates a lower rate, and deletes Subsection (b).

This bill amends Section 51.302(a), Natural Resources Code, to make conforming and nonsubstantive changes.

This bill repeals various provisions in Chapter 51, Natural Resources Code, that are no longer necessary, supplanted by or combined with other provisions, or inconsistent with newer provisions.

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This bill provides for an effective date (upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007).

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.