

BILL ANALYSIS

C.S.H.B. 1729
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State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Many governmental entities are currently responsible for the management of land that they own as a result of certain events in the past. C.S.H.B. 1729 seeks to address these land management responsibilities by authorizing a governmental entity to sell land that it owns either to the person currently leasing the land or in a single bulk sale to a bulk purchaser and sets out terms and conditions for such sale and purchase, including options for a lessee to purchase or continue leasing an individual leased tract from the bulk purchaser.

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

C.S.H.B. 1729 amends the Government Code to authorize a governmental entity, without notice or the solicitation of bids, to sell land it owns to the lessee for not less than the fair market value of the unencumbered fee simple estate as determined under the bill's appraisal provisions. The bill requires the lessee, before such a sale, to hire a disinterested licensed appraiser to determine the current fair market value of land and requires the appraiser to complete the appraisal and send the completed appraisal to the lessee and the governmental entity not later than the 60th day after the appraiser is hired. The bill requires the governmental entity, if the governmental entity rejects the fair market value determined by the appraisal, to hire another appraiser to conduct a second appraisal and requires the second appraisal to be completed and sent to the lessee and the governmental entity not later than the 60th day after the date the governmental entity rejects the initial appraisal.

C.S.H.B. 1729 requires the two appraisers, if the lessee rejects the fair market value determined by the second appraiser, to meet and attempt to reach an agreement on the fair market value not later than the 30th day after the date the lessee receives the governmental entity's appraisal. The bill requires the governmental entity, if the two appraisers fail to reach agreement on or before the 10th day after the date of the meeting, to request not later than the 20th day after the date of the meeting that the comptroller of public accounts appoint a third appraiser to reconcile the two previous appraisals. The bill requires the comptroller to appoint the third appraiser not later than the 30th day after the date of the request. The bill requires the third appraisal to be completed and sent to the lessee and the governmental entity not later than the 30th day after the date the third appraiser is appointed. The bill establishes that the third appraisal is final and binding on all parties.

C.S.H.B. 1729 requires the appraisal costs to be paid by the person who requests the appraisal, except for any third appraisal, in which case the bill requires the lessee and the governmental entity to each pay one-half of the cost of that third appraisal. The bill prohibits an appraisal from including consideration of a freeze or other suspension of lease rate increases for the homestead of a person who is 65 years of age or older and from including the value of any improvements

constructed on the lot or over the water that is the lessee's property.

C.S.H.B. 1729 establishes that, to protect the public health, safety, or welfare and to ensure an adequate municipal, county, water district, river authority, or other governmental water supply, a leased tract sold by a governmental entity is ineligible for, and the owner is not entitled to, a permit exemption for the construction of a dam or reservoir with a limited storage capacity for domestic and livestock purposes. The bill requires the instrument conveying the leased tract to include a provision stating that the exemption does not apply to the conveyance.

C.S.H.B. 1729 authorizes a governmental entity, instead of holding a sale under the bill's provisions, to pursue by resolution a bulk sale of all or part of the property leased to a lessee to a bulk purchaser. The bill prohibits a lessee from purchasing land under the bill's provisions from the effective date indicated in the resolution until the date on which any resulting bulk purchase and sale agreement is declared terminated by the governmental entity. The bill prohibits the lessee, if the bulk sale of the leased property is completed and ownership of the land is transferred to the bulk purchaser, from purchasing land under the bill's provisions, and sets out the lessee's limited purchase and lease options. The bill exempts a lessee who timely exercises an option to purchase the land it is leasing from the prohibition against a purchase under this provision.

C.S.H.B. 1729 entitles each lessee to buy the lessee's individual leased tract from the bulk purchaser under an option to purchase for cash or an option to purchase for loan or to continue leasing the applicable leased tract from the bulk purchaser under an option for a 99-year lease or an option for a 20-year lease if the lessee is 65 years of age or older and receives a residence homestead exemption from property taxes for an elderly or disabled homeowner. The bill sets out the general terms of each purchase or lease option.

C.S.H.B. 1729 requires the bulk purchaser to extend the existing lease of any lessee who does not timely exercise one of the purchase or lease options and to extend the lease as necessary to allow for the full eight-year purchase option period provided by the bill's provisions for such circumstances. The bill authorizes the lessee, not later than the eighth anniversary of the closing date of the bulk purchase, to purchase the lessee's individual leased tract for the greater of the land only assessed value without any exemptions, as determined by the appraisal district at the time of the lessee's purchase, or the tax-assessed value that was used to determine the bulk purchaser's purchase price. The bill establishes that this provision for a lease extension and eight-year option to purchase does not prevent the bulk purchaser from offering additional purchase or lease options to a lessee.

C.S.H.B. 1729 requires the land only assessed value without any exemptions for the applicable portion of the leased tract to be calculated, for purposes of determining the purchase price or lease rate when the appraisal district does not provide an assessed value for that portion of the tract for the applicable year, on the basis of the assessed value per square foot of comparable tracts with similar physical characteristics in the applicable county or adjoining counties, as determined by the selling governmental entity.

C.S.H.B. 1729 requires the lessee, on the date the sale of an individual leased tract closes, to pay any debt secured by a lien on the lessee's leasehold estate or deliver the express written consent of each lienholder on the leasehold estate in the leased tract permitting the lessee to grant a purchase money lien on the fee simple estate in the leased tract.

C.S.H.B. 1729 authorizes the bulk purchaser to create a property owners' association with the power to assess property, impose a lien, and collect dues and assessments for the operation of the property owners' association. The bill authorizes the selling governmental entity to impose a deed restriction on the leased tract conveyed to the bulk purchaser that was included in the individual leases conveyed.

C.S.H.B. 1729 authorizes a lessee to buy the lessee's individual leased tract from the bulk purchaser concurrently with the bulk purchaser making its purchase from the governmental entity on the closing date. The bill requires the lessee to notify the selling governmental entity and the bulk purchaser not later than the 90th day after the effective date of the purchase and sale agreement between the entity and the bulk purchaser of the lessee's intent to purchase the applicable leased tract using the format provided by the entity and the bulk purchaser. The bill requires the lessee and the bulk purchaser, not later than the closing date, to enter into a purchase and sale agreement in substantially the form as agreed to between the selling governmental entity and the bulk purchaser. The bill requires the purchase and sale agreement to contain the purchase price for the individual leased tract in accordance with the applicable purchase option.

C.S.H.B. 1729 requires the lessee to deliver an accurate survey of the lessee's individual leased tract to the selling governmental entity and the bulk purchaser not later than the 45th day before the closing date, at the lessee's expense. The bill requires the survey to be acceptable to the title company selected by the bulk purchaser and lessee and approved by the selling governmental entity for the purpose of issuing a policy of title insurance on the applicable portion of the leased tract; to be prepared by a licensed state land surveyor or a registered professional land surveyor acceptable to the selling governmental entity and the bulk purchaser; to include the boundaries of the lessee's leased tract, which must be consistent with any master survey prepared on behalf of the selling governmental entity in conjunction with the sale of the leased tract to the bulk purchaser; to include all improvements on the leased tract and indicate any encroachments across the applicable boundary lines; and to be reviewed and approved by the selling governmental entity and the bulk purchaser. The bill authorizes the selling governmental entity or the bulk purchaser to perform an inspection of the applicable leased tract to verify the accuracy of the survey and any encroachments.

C.S.H.B. 1729 requires the lessee to provide and pay for a title commitment from the title company selected by the lessee and the bulk purchaser. The bill requires the lessee to notify the bulk purchaser of any objections to any items on the title commitment or survey not later than the 15th day after the date the lessee receives the title commitment or survey, as applicable, and not later than the 45th day before the proposed closing date. The bill exempts the bulk purchaser or the selling governmental entity from any requirement to cure any of these items or to incur any expenses in curing the items, except that the bulk purchaser or the entity, as applicable, is required to use good faith efforts to address or remove those requirements or exceptions shown on the title commitment that apply to or are created by the bulk purchaser or entity. The bill exempts the bulk purchaser or entity, despite this good faith exception, from the requirement to cure any exceptions indicated regarding legal right of access to or from the applicable leased tract.

C.S.H.B. 1729 establishes that the lessee purchases the applicable individual leased tract in its "as-is" condition. The bill exempts the bulk purchaser from any requirement to make any improvements or modifications and prohibits the bulk purchaser from making any representations or warranties as to the condition or use of the applicable leased tract. The bill establishes that the bulk purchaser is not responsible for any broker fees or commissions due to any broker or agent engaged or claiming to have been engaged by the lessee for the purchase and sale of the applicable leased tract. The bill assigns the responsibility for certain costs either to the bulk purchaser or to the lessee, as applicable.

C.S.H.B. 1729 establishes that taxes are prorated as of the closing date and makes the lessee responsible for paying the taxes if the taxes are not paid as of the closing date. The bill requires the title company and escrow agent to be acceptable to the selling governmental entity and agreed to by the lessee and the bulk purchaser in the purchase and sale agreement.

C.S.H.B. 1729 requires timely delivery of \$1,000 in earnest money and the executed purchase and sale agreement between the lessee and the bulk purchaser to the title company or escrow agent on or before the closing date. The bill requires the bulk purchaser and the lessee to

complete all documentation necessary to transfer the applicable leased tract from the bulk purchaser to the lessee and deliver the completed and executed documents to the applicable escrow agent on or before the date of the sale to the lessee.

C.S.H.B. 1729 prohibits recording of the special warranty deed or any other documents transferring the applicable portion of the leased tract to the lessee before the closing date. The bill requires the escrow agent, promptly after the agent receives written notice from the selling governmental entity or the title company or escrow agent facilitating the closing of the leased tract from the entity to the bulk purchaser that the closing has been completed, to file the special warranty deed and any other applicable documents to transfer the leased tract to the lessee in the real property records of the county in which the leased tract is located.

C.S.H.B. 1729 makes its provisions applicable to the state and each political subdivision of the state, including a municipality, a county, a river authority or other water district, a state agency, and any other state governmental entity and restricts such applicability to a leased tract that is owned by, and designated as surplus property by, a governmental entity and that the governmental entity elects to sell under the bill's provisions. The bill establishes that the options provided by the bill's provisions are in addition to and not instead of any other lease or sale of surplus property options that a governmental entity otherwise has. The bill makes its provisions that apply to the lessee of a leased tract under the bill's provisions applicable to any subsequent owner of the leased tract and exempts a sale of the leased tract under the bill's provisions from municipal regulation of subdivisions and property development, county regulation of subdivisions, or any other platting requirement. The bill exempts the sale of an individual leased tract or bulk sale from the following laws: the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009; laws regulating the sale or lease of property by municipalities, counties, and certain other local governments; certain laws governing the General Land Office; laws regulating the disposition of property by a specific river authority; and laws regulating the sale or exchange of property by general law districts.

C.S.H.B. 1729 defines "bulk purchaser," "bulk sale," "closing date," "consumer price index," "leased tract," "lessee," and "lienholder."

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1729 differs from the original by limiting the applicability of its provisions to a leased tract that is owned by, and designated as surplus property by, a governmental entity and that the governmental entity elects to sell under the bill's provisions, whereas the original limits its applicability to a leased tract that is owned by, and designated as surplus property by, a governmental entity and later sold or leased as provided by the bill's provisions.

C.S.H.B. 1729 contains a provision not included in the original establishing that the options provided by the bill's provisions are in addition to and not instead of any other lease or sale of surplus property options that a governmental entity otherwise has.

C.S.H.B. 1729 differs from the original by exempting the sale of an individual leased tract or bulk sale of multiple leased tracts from certain laws, whereas the original exempts only the sale of the leased tract.

C.S.H.B. 1729 omits a provision included in the original by establishing that, to the extent of a conflict between the bill's provisions and any other law, the bill's provisions control.

C.S.H.B. 1729 differs from the original by authorizing a governmental entity, without notice or

the solicitation of bids, to sell land it owns to the lessee for not less than the fair market value of the unencumbered fee simple estate as determined under the bill's provisions, whereas the original authorizes a governmental entity, without notice or the solicitation of bids, to sell land it owns to the lessee for the fair market value of the land as determined by a certified appraiser.

C.S.H.B. 1729 contains provisions not included in the original requiring the lessee, before a sale under the bill's provisions, to hire an appraiser to determine the land's current fair market value and establishing a deadline for the appraisal's completion and submission to the lessee and the governmental entity; requiring the governmental entity, if it rejects the original appraisal, to hire another appraiser to conduct a second appraisal and establishing a deadline for the second appraisal's completion and submission; and requiring the two appraisers, if the lessee rejects the second appraisal, to meet and attempt to reach an agreement within a specified period. The substitute contains a provision not included in the original requiring the governmental entity, if the two appraisers fail to reach agreement by the deadline, to request that the comptroller of public accounts appoint a third appraiser to reconcile the two previous appraisals; requiring the comptroller to appoint the third appraiser within a specified period; establishing a deadline for the third appraisal's completion and submission; making the third appraisal final and binding on all parties; and designating the party responsible for paying the costs of the various appraisals.

C.S.H.B. 1729 contains a provision not included in the original prohibiting an appraisal from including consideration of a freeze or other suspension of lease rate increases for the homestead of a person who is 65 years of age or older and from including the value of any improvements constructed on the lot or over the water that is the lessee's property.

C.S.H.B. 1729 omits a provision included in the original prohibiting a governmental entity that owns land that is under lease from selling the land to any person other than the lessee while the land is under lease, with certain exceptions.

C.S.H.B. 1729 differs from the original by authorizing a governmental entity, instead of holding a sale under the bill's provisions, to pursue by resolution a bulk sale of all or part of the property leased to a lessee to a bulk purchaser, whereas the original authorizes a governmental entity to suspend a lessee's right to purchase the land and, by passing a resolution, to pursue a bulk sale of all or part of the property leased to the lessee to a single purchaser.

C.S.H.B. 1729 differs from the original by prohibiting a lessee from purchasing land under the bill's provisions from the effective date indicated in the resolution until the date on which the governmental entity declares any resulting bulk purchase and sale agreement terminated, whereas the original suspends the lessee's right to purchase the land during that prescribed period.

C.S.H.B. 1729 differs from the original by prohibiting the lessee, if the bulk sale of the leased property is completed and ownership of the land is transferred to the bulk purchaser, from purchasing the land, whereas the original establishes that, if the bulk sale of the leased property is completed and ownership of the land is transferred to the bulk purchaser, the lessee's right to purchase the land ends.

C.S.H.B. 1729 contains a provision not included in the original exempting a lessee who timely exercises an option to purchase the land it is leasing from the prohibition against such a purchase with respect to a bulk sale of the leased property.

C.S.H.B. 1729 omits a provision included in the original authorizing a governmental entity to sell a leased tract wholly or partly to a bulk purchaser in accordance with the bill's provisions.

C.S.H.B. 1729 omits provisions included in the original relating to the transfer of an interest in certain roads held by the governmental entity selling property or by the bulk purchaser of the property to the applicable county in which the roads, or any portion of the roads, are situated,

and defining "driveway" and "road" for purposes of such provisions.

C.S.H.B. 1729 omits a provision included in the original making the purchase and sale agreement between the lessee and the bulk purchaser contingent on the closing date occurring within the periods provided by the bill's provisions.

C.S.H.B. 1729 contains a provision not included in the original defining "bulk sale."