

BILL ANALYSIS

C.S.H.B. 2373
By: Gallego
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Established in the early days of the Texas Republic, the General Land Office (GLO) has been responsible for managing vast holdings of land and property, including management of the permanent school fund's real estate assets. The GLO uses a private sector approach to maximize these real property resources. Similarly, the Texas Facilities Commission (TFC) is responsible for planning, providing, and managing 24 million square feet of leased and state-owned properties. These include office, warehouse, and parking facilities as well as most of the state agency office buildings in downtown Austin. In contrast to the GLO, the TFC, rather than the agencies, is responsible for the costs incurred in leasing these properties. Interested parties have asserted that transferring areas of responsibility and assets into the GLO would result in long-term savings for the state as long as the GLO is allowed to manage state properties in a manner that is consistent with the private sector.

C.S.H.B. 2373 seeks to address these matters by abolishing the Texas Facilities Commission and transferring its duties and functions to the General Land Office. The bill amends numerous statutory provisions to expand or clarify the offices' powers and duties with respect to real and personal property owned or leased to or by the state..

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority previously granted to the Texas Facilities Commission is transferred to the commissioner of the General Land Office in SECTIONS 10, 44, 48, 51, and 67 of this bill.

ANALYSIS

C.S.H.B. 2373 abolishes the Texas Facilities Commission (TFC) and transfers all power and duties of the TFC to the General Land Office (GLO). The bill establishes that the validity of an action taken by the TFC before it is abolished is not affected by the abolition and that a TFC rule, form, policy, procedure, or decision continues in effect as a GLO rule, form, policy, procedure, or decision until superseded by an act of the land commissioner or the land commissioner's designee.

C.S.H.B. 2373 establishes that a court case, administrative proceeding, contract negotiation, or other proceeding involving the TFC is transferred without change in status to the GLO and that the GLO assumes, without a change in status, the TFC's position in a negotiation or proceeding to which the TFC is a party. The bill transfers all TFC money, contracts, leases, rights, bonds, and obligations to the GLO and establishes that all personal property, including records, in the TFC's custody becomes GLO property. The bill transfers all funds appropriated by the legislature to the TFC from the TFC to the GLO.

C.S.H.B. 2373 amends the Government Code to include the John H. Reagan Building in the State Preservation Board's charge to preserve, maintain, and restore Capitol Complex buildings and their contents and grounds. The bill delegates all purchasing functions under certain Natural

Resources Code provisions relating to public domains to the GLO and delegates all purchasing functions under Natural Resources Code provisions relating to veterans' resources programs to the Veterans' Land Board.

C.S.H.B. 2373 establishes the state facilities fund as an account in the general revenue fund that may be appropriated only to the commissioner of the GLO for the purpose of implementing provisions relating to the control of state buildings, grounds, and property and the construction and acquisition for certain building construction projects of the state, and lease of space and facilities for state agencies. The bill establishes that the state facilities fund consists of all money received from the lease of space to public or private tenants, with certain exception, all money received from the lease of space in state-owned parking lots and garages, all money received from the use or lease of public buildings or grounds, and fines collected for violation of certain provisions relating to energy-saving devices on vending machines. The bill establishes that provisions relating to use of dedicated revenue do not apply to the fund. The bill authorizes the commissioner to recover all amounts spent from an account, other than the state facilities fund, for advertising, management, and leasing expenses incurred before deposit into the fund.

C.S.H.B. 2373 authorizes, rather than requires, the commissioner of the GLO to give preference to available state-owned space in filling a request for space and adds the condition of economic feasibility for such preference to be given. The bill authorizes all public grounds belonging to the state under the commissioner's charge and control to be leased for any purpose, rather than only for agricultural or commercial purposes. The bill requires the commissioner to advertise a lease of public grounds proposal in the state business daily or on the GLO's Internet website, rather than once a week for four consecutive weeks in certain newspapers. The bill also requires the commissioner to use the state business daily or the GLO's website, rather than a newspaper of general circulation, when soliciting competitive sealed proposals for space leasing.

C.S.H.B. 2373 requires money received from a lease of public grounds or state-owned parking lots and garages, minus certain costs incurred in leasing public grounds, to be deposited in the general revenue fund to the credit of the state facilities, rather than in the state treasury to the deposit of the general revenue fund.

C.S.H.B. 2373 authorizes the commissioner of the GLO, if economically feasible, to lease space to a child care facility in a state-owned building and prohibits the facility lease from impacting the official functions of the agencies housed in the building. The bill removes a provision giving such use first priority over all other uses of a building other than an essential purpose of a state agency housed in the building. The bill authorizes, rather than requires, the commissioner to sublease part of a space leased for and occupied by a state agency to a child care provider for the operation of a child care facility at the request of the occupying agency.

C.S.H.B. 2373 authorizes the commissioner of the GLO to furnish utilities and custodial services to a private tenant, including a child care provider, at cost plus any management fees associated with procurement of services, rather than requiring the services to be provided at cost. The bill removes a provision requiring the furnishing of utilities and custodial services to a child care provider at cost.

C.S.H.B. 2373 requires money received from a lease of space in state-owned buildings to private tenants to be deposited in the general revenue fund to the credit of the state facilities fund, rather than requiring the money to be used only for building and property services.

C.S.H.B. 2373 authorizes the commissioner of the GLO to allow a private vending facility to operate in a building under the commissioner's charge and control if the commissioner finds that it is in the best interest of the state and to give preference to an operator licensed under provisions for vending facilities operated by blind persons, including to an existing lessee, licensee, or contractor so licensed.

C.S.H.B. 2373 exempts a project constructed by and for the GLO from provisions governing state building construction and acquisition projects.

C.S.H.B. 2373 adds the condition of approval by the School Land Board for the acquisition of necessary real and personal property and the modernization, remodeling, building, or equipping of buildings for state purposes or contracting for those purposes. The bill authorizes the GLO, under those same conditions, to sell or otherwise dispose of real property of the state; requires the proceeds from such sale to be deposited in the general revenue fund to the credit of the state facilities fund; and authorizes the commissioner to recover all amounts spent from an account, other than the state facilities fund, for management, acquisition, and disposition expenses incurred from the sale proceeds before deposit into the fund.

C.S.H.B. 2373 creates temporary provisions, set to expire January 1, 2014, requiring the GLO to conduct a study of the functions transferred to the office from the Texas Facilities Commission to assess the best allocation of state resources for the acquisition and lease of state buildings, the construction of buildings owned by the state, the control and maintenance of buildings owned or leased by the state, and all other related responsibilities performed by the commissioner of the GLO. The bill requires the study to consider the benefits to the state of outsourcing any of the commissioner's functions to private entities or of allocating those functions to other state agencies. The bill requires the commissioner, not later than January 1, 2013, to report the study's findings and conclusions to the legislature and to include any recommendations the commissioner considers appropriate resulting from the study.

C.S.H.B. 2373, in a provision relating to the selection of a private design professional to be retained for a state building or acquisition project, removes a provision for consultation with the Texas Board of Architectural Examiners and the Texas Board of Professional Engineers in the adoption of evaluation criteria for such selection and removes a provision for the development of such criteria by rule.

C.S.H.B. 2373 transfers from the governor and the Legislative Budget Board (LBB) to the School Land Board the approval authority to be exercised with respect to each change to an approved project plan once the cost of a project reaches the amount authorized for the project. The bill transfers from the legislature and the LBB to the School Land Board the approval authority for the purchase or construction of a building when the acquisition of such property is made as an alternative to the continued leasing of space to meet the space needs of one or more state agencies.

C.S.H.B. 2373 requires a design professional or the design professional's authorized representative performing a professional inspection of a building project to comment on and contribute to, rather than approve or disapprove, all change order requests, as required by the commissioner.

C.S.H.B. 2373 requires a review of uniform general conditions in state construction contracts to be conducted by the commissioner of the GLO rather than by an appointed committee. The bill removes language relating to the composition of such a committee and authorizes the commissioner to consult certain agencies and entities that previously nominated or appointed members of the committee and other interested parties. The bill requires the commissioner to publish proposed amendments to the uniform general conditions of state building construction contracts in the Texas Register for comment not later than the 45th day before the amendments' adoption.

C.S.H.B. 2373, in a provision authorizing the GLO to lease space for a state agency, removes the condition that state-owned space not be otherwise available to the agency. The bill authorizes the commissioner of the GLO to lease space for any purpose the commissioner determines is in the best interest of the state, rather than only for the use of a state agency, and removes a requirement for the establishment by rule of guidelines for the determination of best value in a

lease contract. The bill, in provisions relating to leasing of space, including leasing through competitive bidding, changes the basis for certain decisions from a determination of best value for the state to the best interest of the state.

C.S.H.B. 2373 requires a state agency, if the agency disposes of surplus or salvage property, to report the transaction to the commissioner of the GLO. The bill requires the report to include a description of the disposed property, the reasons for disposal, and the price for and recipient of the disposed property. The bill requires the commissioner, if the commissioner determines that a violation of a state law or rule has occurred based on the report, to report the violation to the LBB.

C.S.H.B. 2373 requires a state agency that determines it has surplus or salvage property to inform the commissioner of the GLO and requires the commissioner to determine the method of disposal of such property. The bill requires a state agency, after a determination by the commissioner in cooperation with the agency whether the property is surplus property and eligible for transfer or sale or salvage property, to inform the comptroller of public accounts of the property's kind, number, location, condition, original cost or value, and date of acquisition. The bill requires the comptroller to provide the commissioner access to all records in the state property accounting system related to surplus and salvage property. The bill requires, rather than authorizes a state agency, political subdivision, or assistance organization to coordinate with the commissioner for a property transfer at a price set by the commissioner. The bill authorizes the commissioner of the GLO to contract with a private vendor to assist with disposition of surplus property by competitive bidding, auction, or direct sale.

C.S.H.B. 2373 requires the commissioner of the GLO, if the value of an item or a lot of property to be sold is estimated to be more than a certain amount, to advertise the sale at least once in the state business daily or on the GLO's Internet website, rather than at least one newspaper of general circulation in the vicinity in which the property is located. The bill increases the amount at which this requirement applies from \$5,000 to \$25,000.

C.S.H.B. 2373 excludes the cost of assistance from a private vendor from the amount of proceeds from the sale of surplus or salvage property that is required to be deposited to the credit of the general revenue fund of the state treasury.

C.S.H.B. 2373 includes equipment received from a municipality or state agency in the program established for the sale of gambling equipment received from a commissioners court. The bill requires the proceeds from the sale of gambling equipment transferred from a state agency, less certain costs, plus the amount of certain fees collected, to be deposited to the credit of the general revenue fund.

C.S.H.B. 2373 removes provisions making state surplus or salvage data processing equipment not otherwise disposed of available to the commissioner of education for the computer lending pilot program from provisions relating to the disposition of data processing equipment.

C.S.H.B. 2373 requires the commissioner of the GLO, on abolition of a state agency under the Texas Sunset Act, to take custody of all property or other assets as surplus property unless the legislature designates another appropriate governmental entity to take custody of the property or other assets.

C.S.H.B. 2373 exempts the Veterans' Land Board and the GLO from provisions governing statewide contract management and makes the Veterans' Land Board and the GLO subject to certain nepotism disclosure requirements. The bill exempts the construction, redevelopment, or improvement of a building or structure initiated by the GLO from provisions relating to the preservation of views of the state capitol.

C.S.H.B. 2373 amends the Government Code to make conforming changes relating to the abolition and transfer. The bill redefines "commission" in applicable provisions to make conforming changes.

C.S.H.B. 2373 amends the Utilities Code to exempt a state facility provided electric services under the State Energy Marketing Program from a limitation on retail transactions that exceed 2.5 percent of a retail electric utility's total retail load. The bill authorizes the commissioner, acting on behalf of the state under the State Energy Marketing Program to sell or otherwise convey power or natural gas generated from royalties taken in kind directly to a state facility, including a state facility in the certificated service area of a municipally owned utility or an electric cooperative that has not adopted customer choice. The bill entitles the commissioner, in providing electricity to a state facility under the program, to nondiscriminatory access to the transmission and distribution system for the certificated service area in which the customer is located, including the certificated service area of a municipally owned utility or an electric cooperative that has not adopted customer choice. The bill authorizes a municipally owned utility or an electric cooperative to continue to bill directly a state facility for entities that have opted for customer choice. The bill requires metering and billing services to be performed by the transmission and distribution utility, municipally owned utility, or electric cooperative in whose certificated service area the state facility is located if requested by the commissioner. The bill establishes that the authority of the commissioner to provide electricity to a state facility does not constitute the introduction of customer choice in the certificated service area of a municipally owned utility or electric cooperative. The bill defines "state facility."

C.S.H.B. 2373 amends the Education Code, to make a conforming change with respect to a renumbered statutory provision.

C.S.H.B. 2373 repeals the following provisions of the Government Code relating to the administration of the Texas Facilities Commission:

- Section 551.0726
- Chapter 2152
- Section 2155.147(c)
- Section 2165.155
- Section 2165.2035(f)
- Sections 2165.205(a) and (c)
- Section 2165.212(b)
- Section 2165.215
- Section 2166.052(b)
- Section 2166.056(c)
- Section 2166.152(e)
- Sections 2166.257(b), (c), (d), and (e)
- Section 2167.053(e)
- Section 2167.104(f)
- Subchapter C, Chapter 2175
- Section 2175.181

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2373 contains a provision not included in the original adding the John H. Reagan Building to the State Preservation Board's charge with respect to Capitol Complex buildings and grounds.

C.S.H.B. 2373 contains provisions not included in the original delegating all purchasing functions under certain provisions relating to public domains to the General Land Office (GLO) and delegating all purchasing functions under provisions relating to veterans' resources programs to the Veterans' Land Board.

C.S.H.B. 2373 contains a provision not included in the original establishing the state facilities fund as an account in the general revenue fund.

C.S.H.B. 2373 contains provisions not included in the original authorizing the commissioner of the GLO to give preference to available state-owned space in filling a request for space, adding the condition of economic feasibility for such preference to be given, and authorizing all public grounds belonging to the state under the charge and control of the commissioner to be leased for any purpose.

C.S.H.B. 2373 contains provisions not included in the original requiring the commissioner of the GLO to advertise a lease of public grounds proposal in the state business daily or on the GLO's Internet website and requiring the commissioner to use the state business daily or the GLO's website.

C.S.H.B. 2373 contains a provision not included in the original requiring money received from a lease of public grounds or state-owned parking lots and garages to be deposited in the general revenue fund to the credit of the state facilities fund.

C.S.H.B. 2373 contains provisions not included in the original authorizing the commissioner of the GLO to lease space to a child care facility in a state-owned building if economically feasible; prohibiting the facility lease from impacting the official functions of the agencies housed in the building; and removing a provision giving such use first priority over all other uses of a building other than an essential purpose of a state agency housed in the building.

C.S.H.B. 2373 contains provisions not included in the original authorizing the commissioner of the GLO to furnish utilities and custodial services to a private tenant, including a child care provider, at cost plus any management fees associated with procurement of services and requiring money received from leasing space in state-owned buildings to be deposited in the general revenue fund to the credit of the state facilities fund.

C.S.H.B. 2373 contains a provision not included in the original authorizing the commissioner to allow a private vending facility to operate in a building under the commissioner's charge and control if the commissioner finds that it is in the best interest of the state and to give preference to an operator licensed under provisions for vending facilities operated by blind persons.

C.S.H.B. 2373 contains a provision not included in the original exempting a project constructed by and for the GLO from provisions governing state building construction and acquisition projects.

C.S.H.B. 2373 contains provisions not included in the original adding the condition of approval by the School Land Board for the acquisition of necessary real and personal property and the improvement, building, or equipping of state buildings or contracting for those purposes; authorizing the GLO, with board approval, to sell or otherwise dispose of real property; requiring the proceeds from the sale to be deposited in the general revenue fund to the credit of the state

facilities fund; and authorizing the commissioner to recover all amounts spent from an account other than the state facilities fund for expenses incurred from the sale proceeds before deposit into the fund.

C.S.H.B. 2373 contains a provision not included in the original requiring the GLO to conduct a study of the functions transferred to the office from the Texas Facilities Commission to assess the best allocation of state resources for the acquisition and lease of state buildings, the construction of state-owned buildings, the control and maintenance of buildings owned or leased by the state, and all other related responsibilities performed by the commissioner of the GLO.

C.S.H.B. 2373 contains provisions not included in the original transferring from the governor and the Legislative Budget Board (LBB) to the School Land Board the approval authority to be exercised with respect to each change to an approved project plan once the cost of a project reaches the amount authorized for the project and transferring from the legislature and the LBB to the School Land Board the approval authority for the purchase or construction of a building when such acquisition is made as an alternative to the continued leasing of space for state use.

C.S.H.B. 2373 contains a provision not included in the original requiring a design professional or the professional's representative performing a professional inspection of a building project to comment on and contribute to all change order requests, as required by the commissioner.

C.S.H.B. 2373 omits a provision included in the original making use of money reserved from a project's appropriation contingent on a GLO employee's investigation of a change order and the employee's concurrence in the necessity of the proposed expenditure.

C.S.H.B. 2373 differs from the original by requiring the commissioner to conduct a review of uniform general conditions of state construction contracts and authorizes the commissioner to consult with certain organizations and interested parties, whereas the original requires an appointed committee to conduct the review and provides for the nomination or appointment of the committee members by such organizations. The substitute contains a provision not included in the original requiring the commissioner to publish proposed amendments to the uniform general conditions in such contracts in the Texas Register for comment within a specified time.

C.S.H.B. 2373 contains a provision not included in the original removing as a condition for authorizing the GLO to lease space for a state agency that state-owned space not be otherwise available to the agency.

C.S.H.B. 2373 contains a provision not included in the original authorizing the commissioner to lease space for any purpose the commissioner determines is in the best interest of the state. The substitute includes provisions not included in the original making the basis for certain decisions relating to leasing of space, including leasing through competitive bidding, a determination of the best interest of the state.

C.S.H.B. 2373 contains a provision not included in the original repealing the following provisions of the Government Code: Section 2155.147(c), Section 2165.155, Section 2165.2035(f), Sections 2165.205(a) and (c), Section 2165.212(b), Section 2165.215, Section 2166.052(b), Section 2166.056(c), Section 2166.152(e), Sections 2166.257(b), (c), (d), and (e), Section 2167.053(e), Section 2167.104(f), Subchapter C, Chapter 2175, and Section 2175.181.

C.S.H.B. 2373 contains a provision not included in the original requiring a state agency to report a transaction disposing of surplus or salvage property to the commissioner; setting out content requirements for the report; and requiring the commissioner, if the commissioner determines that a violation of a state law or rule has occurred based on the report, to report the violation to the Legislative Budget Board.

C.S.H.B. 2373 contains a provision not included in the original requiring a state agency that

determines it has surplus or salvage property to inform the commissioner; requiring the commissioner to determine the method of disposal; requiring the agency, after a determination regarding whether the property is surplus and eligible for transfer or sale or is salvage, to provide certain details regarding the property to the comptroller of public accounts; and requiring the comptroller to provide the commissioner access to all records in the state property accounting system related to surplus and salvage property. The substitute contains a provision not included in the original authorizing the commissioner to contract with a private vendor to assist with disposition of surplus property by competitive bidding, auction, or direct sale.

C.S.H.B. 2373 contains provisions not included in the original requiring the commissioner, if the value of an item or a lot of property to be sold is estimated to be more than \$25,000, to advertise the sale at least once in the state business daily or on the GLO website.

C.S.H.B. 2373 contains a provision not included in the original excluding the cost of a private vendor's assistance from the amount of the proceeds from the sale of surplus or salvage property that must be deposited to the credit of the general revenue fund of the state treasury.

C.S.H.B. 2373 contains provisions not included in the original including equipment received from a municipality or state agency in the program established for the sale of gambling equipment received from a commissioner's court and requiring the proceeds from the sale of gambling equipment transferred from a state agency, with some adjustments, to be deposited to the credit of the general revenue fund.

C.S.H.B. 2373 contains a provision not included in the original removing provisions making state surplus or salvage data processing equipment not otherwise disposed of available to the commissioner of education for the computer lending pilot program from provisions relating to the disposition of data processing equipment.

C.S.H.B. 2373 contains a provision not included in the original requiring the commissioner of the GLO, on abolition of a state agency under the Texas Sunset Act, to take custody of all property or other assets as surplus property unless the legislature designates another appropriate governmental entity to take custody of the property or other assets.

C.S.H.B. 2373 contains provisions not included in the original exempting the Veterans' Land Board and the GLO from provisions relating to statewide contract management; making the Veterans' Land Board and the GLO subject to certain nepotism disclosure requirements; and exempting the construction, redevelopment, or improvement of a building or structure initiated by the GLO from provisions relating to the preservation of views of the state capitol.

C.S.H.B. 2373 contains a definition not included in the original for "state facility" for purposes of Utilities Code provisions relating to the state's authority to sell or convey power.

C.S.H.B. 2373 contains provisions not included in the original exempting a state facility provided electric services under the State Energy Marketing Program from certain limitations on retail transactions for electricity and authorizing the commissioner, acting on behalf of the state under the State Energy Marketing Program, to sell or otherwise convey power or natural gas generated from royalties taken in kind directly to a state facility.

C.S.H.B. 2373 sets its effective date as September 1, 2011, whereas the original sets its effective date as October 1, 2011.