

BILL ANALYSIS

Senate Research Center
82R759 MXM-F

S.B. 1570
By: Estes
State Affairs
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1570 authorizes a governmental entity of the state to sell property it owns to a lessee for the fair market value of the property without public notice or solicitation of the bid. The bill authorizes the governmental entity to pursue a sale of the land to a bulk purchaser, instead of a lessee, through passage of a resolution. The bill sets options and processes for lessees to purchase or lease land from a bulk purchaser at or after the closing date of the purchase from the governmental entity. The bill defines the costs for which the bulk purchaser and the lessee are responsible.

As proposed, S.B. 1570 amends current law relating to the sale of surplus leased land by a governmental entity to a private party.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle F, Title 10, Government Code, by adding Chapter 2267, as follows:

CHAPTER 2267. SALE OF LEASED LAND BY GOVERNMENTAL ENTITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2267.001. DEFINITIONS. Defines, in this chapter, "bulk purchaser," "closing date," "consumer price index," "leased tract," and "lessee."

Sec. 2267.002. APPLICABILITY TO ALL GOVERNMENTAL ENTITIES. Provides that this chapter applies to this state and each political subdivision of this state, including a municipality, a county, a river authority or other water district, a state agency, and any other governmental entity of this state.

Sec. 2267.003. APPLICABILITY ONLY TO SURPLUS PROPERTY. Provides that this chapter applies only to a leased tract that is:

- (1) owned by, and designated as surplus property by, a governmental entity; and
- (2) later sold or leased as provided by this chapter.

Sec. 2267.004. CONTINUING APPLICABILITY OF PROVISIONS. Provides that a provision of this chapter that applies to the lessee of a leased tract under this chapter applies to any subsequent owner of the leased tract.

Sec. 2267.005. PLATTING LAW INAPPLICABLE. Provides that a sale of the leased tract under this chapter is not subject to Chapter 212 (Municipal Regulation of

Subdivisions and Property Development) or 232 (County Regulation of Subdivisions), Local Government Code, or any other platting requirement.

Sec. 2267.006. **NONAPPLICABILITY OF CERTAIN OTHER LAWS.** Provides that the following laws do not apply to the sale of an individual leased tract under this chapter:

- (1) Chapter 180 (Residential Mortgage Loan Originators), Finance Code;
- (2) Chapter 272 (Sale or Lease of Property by Municipalities, Counties, and Certain Other Local Governments), Local Government Code;
- (3) Chapter 31 (General Land Office), Natural Resources Code;
- (4) Section 8502.013 (Disposition of Property), Special District Local Laws Code; and
- (5) Section 49.226 (Sale or Exchange of Real or Personal Property), Water Code.

Sec. 2267.007. **CONFLICT OF LAWS.** Provides that, to the extent of a conflict between this chapter and any other law, this chapter controls.

[Reserves Sections 2267.008-2267.050 for expansion.]

SUBCHAPTER B. SALE OF LEASED LAND BY GOVERNMENTAL ENTITY DIRECTLY TO INDIVIDUAL WHO IS LEASING LAND FROM GOVERNMENTAL ENTITY

Sec. 2267.051. **SALE OF LEASED LAND TO PERSON LEASING LAND FOR FAIR MARKET VALUE.** Authorizes a governmental entity to, without notice or the solicitation of bids, sell land it owns to the lessee for the fair market value of the land as determined by a certified appraiser.

Sec. 2267.052. **SALE TO OTHER PERSONS GENERALLY PROHIBITED.** Prohibits the governmental entity that owns the land, while land described by Section 2267.051 is under lease, from selling the land to any person other than the lessee, except as provided by Section 2267.101.

Sec. 2267.053. **NO WATER CODE PERMIT EXEMPTION.** (a) Provides that a leased tract sold by the governmental entity under this chapter is ineligible for, and the owner is not entitled to, the exemption provided by Section 11.142(a) (authorizing a person, without obtaining a permit, to construct on the person's own property a dam or reservoir with normal storage of not more than 200 acre-feet of water for domestic and livestock purposes), Water Code. Provides that the purpose of this section is to protect the public health, safety, or welfare and to ensure an adequate municipal, county, water district, river authority, or other governmental water supply.

- (b) Requires that the instrument conveying the leased tract include a provision stating that the exemption does not apply to the conveyance.

[Reserves Sections 2267.054-2267.100 for expansion.]

SUBCHAPTER C. SALE OF LEASED LAND BY GOVERNMENTAL ENTITY TO BULK PURCHASERS; LESSEE OPTIONS TO PURCHASE OR LEASE FROM BULK PURCHASER

Sec. 2267.101. **SUSPENSION OF LESSEE'S RIGHT TO PURCHASE LEASED LAND.** (a) Authorizes a governmental entity to suspend a lessee's right to purchase land under Sections 2267.051 and 2267.052 by passing a resolution to pursue a bulk sale of all or part of the property leased to a lessee to a single purchaser under this subchapter.

(b) Provides that a lessee's right to purchase the land the lessee is leasing is suspended 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.

(c) Provides 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 the lessee is leasing ends and the lessee's only purchase and lease options are those described by this subchapter and Subchapter D.

Sec. 2267.102. **SALE OF LEASED LAND TO BULK PURCHASER.** Authorizes a governmental entity to sell a leased tract wholly or partly to a bulk purchaser in accordance with this subchapter.

Sec. 2267.103. **OPPORTUNITY OF LESSEE TO BUY LEASED TRACT.** Entitles each lessee to buy the lessee's individual leased tract from the bulk purchaser or continue leasing the applicable leased tract from the bulk purchaser in accordance with the purchase or lease options described by Sections 2267.104 through 2267.107.

Sec. 2267.104. **OPTION TO PURCHASE FOR CASH.** (a) Authorizes the lessee to purchase the leased tract in cash or through lender financing for 100 percent of land only assessed value without any exemptions, as determined by the appraisal district, for the most current tax-assessed value.

(b) Requires that this option be available on the closing date and until at least the first anniversary of the closing date.

Sec. 2267.105. **OPTION TO PURCHASE FOR LOAN.** (a) Authorizes the lessee to purchase the individual leased tract by seller financing for the percent of assessed value only as set forth in Section 2267.104, with a down payment of 10 percent and an interest rate of 6 percent, with a 30-year amortization.

(b) Prohibits the lessee from being charged any origination fees or points as a part of the closing costs involved in this option.

(c) Requires that this option be available on the closing date and until at least the first anniversary of the closing date.

Sec. 2267.106. **OPTION FOR 99-YEAR LEASE.** (a) Authorizes the lessee to enter into a new 99-year lease for the leased tract at a rental rate of six percent of the land only assessed value without any exemptions, as determined by the appraisal district, for the tax-assessed value that was used to determine the bulk purchaser's purchase price.

(b) Provides that the rental price is subject to annual consumer price index increases or decreases.

(c) Requires that the 99-year lease include an option to purchase the applicable leased tract at the land only assessed value without any exemptions, as determined by the appraisal district, at the time of the lessee's purchase. Prohibits this value from being less than the tax-assessed value that was used to determine the bulk purchaser's purchase price.

(d) Requires that this option be available until at least the first anniversary of the closing date.

Sec. 2267.107. **OPTION FOR 20-YEAR LEASE FOR SENIOR CITIZENS.** (a) Provides that this section applies only to a lessee who is 65 years of age or older and who receives a property tax exemption under Section 11.13, Tax Code, for a structure on the lessee's individual leased tract. Provides that the lessee must have received the property

tax exemption for a structure on the lessee's individual leased tract by the first day of January before the bulk purchaser's closing date.

(b) Authorizes the lessee to enter into a 20-year lease for the leased tract at a rental rate of six percent of the land only assessed value without any exemptions, as determined by the appraisal district, for the tax-assessed value that was used to determine the bulk purchaser's purchase price.

(c) Provides that the rental price is subject to annual consumer price index increases or decreases. Provides that all annual consumer price index increases or decreases are deferred, and accrued and compounded for 20 years at the six percent rate.

(d) Requires that the 20-year lease include an option to purchase the applicable leased tract at the land only assessed value without any exemptions, as determined by the appraisal district, at the time of the lessee's purchase. Prohibits this value from being less than the tax-assessed value that was used to determine the bulk purchaser's purchase price.

(e) Requires that this option be available until at least the first anniversary of the closing date.

Sec. 2267.108. EXTENSION OF EXISTING LEASE IF OPTIONS NOT EXERCISED; EIGHT-YEAR OPTION TO PURCHASE. (a) Requires the bulk purchaser to extend the existing lease of any lessee who does not timely exercise one of the options in Sections 2267.104 through 2267.107. Requires the bulk purchaser to extend the lease as necessary to allow for the full eight-year purchase option period provided by this section.

(b) Authorizes the lessee, not later than the eighth anniversary of the closing date, to purchase the lessee's individual leased tract for the greater of:

(1) the land only assessed value without any exemptions, as determined by the appraisal district at the time of the lessee's purchase; or

(2) the tax-assessed value that was used to determine the bulk purchaser's purchase price.

(c) Provides that this section does not prevent the bulk purchaser from offering additional purchase or lease options to a lessee.

Sec. 2267.109. DETERMINATION OF LEASE RATE OR PURCHASE PRICE WHEN APPRAISAL DISTRICT VALUE UNAVAILABLE. (a) Provides that this section applies when the appraisal district does not provide an assessed value for the applicable portion of the leased tract for the applicable year.

(b) Requires that the land only assessed value without any exemptions for the applicable portion of the leased tract, to determine the purchase price or lease rate, be calculated based on 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.

Sec. 2267.110. LIEN ON LEASED TRACT; LESSEE DUTIES. (a) Defines, in this section, "lienholder."

(b) Requires the lessee, on the date the sale of an individual leased tract closes, to:

(1) pay any debt secured by a lien on the lessee's leasehold estate; or

(2) 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.

Sec. 2267.111. ROADS. (a) Defines, in this section, "driveway" and "road."

(b) Provides that this section applies only to a road owned and maintained by the selling governmental entity that provides access to and from the leased tract.

(c) Provides that this section does not apply to:

(1) a driveway;

(2) a paved or gravel road located wholly within the selling governmental entity's public-use areas; or

(3) a paved or gravel road located within a gated-operations area of the selling governmental entity.

(d) Requires the selling governmental entity and the bulk purchaser, except as provided by Subsection (e), to transfer the entity or the bulk purchaser's interest in any roads to the applicable county in which the roads, or any portion of the roads, are situated.

(e) Requires the selling governmental entity or the bulk purchaser to retain ownership of any portion of a road that is inaccessible to the public. Provides that, for purposes of this section, a portion of the road is considered inaccessible to the public if, on September 1, 2011, the public can only access the portion of the road by crossing property not owned by the selling governmental entity or the bulk purchaser and not subject to an easement or other ownership interest that allows the public to cross the leased tract without restriction. Requires the selling governmental entity or the bulk purchaser, if a retained portion of a road becomes accessible to the public, to transfer the retained portion, including any interest the entity or the bulk purchaser has in any additional road constructed or acquired by the entity or the bulk purchaser in order to make the retained portion of the road accessible to the public, to the applicable county in accordance with this subsection.

Sec. 2267.112. PROPERTY OWNERS' ASSOCIATION. 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.

Sec. 2267.113. DEED RESTRICTIONS. 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.

[Reserves Sections 2267.114-2267.150 for expansion.]

SUBCHAPTER D. PROCEDURES FOR LESSEE PURCHASING LAND FROM BULK PURCHASER

Sec. 2267.151. LESSEE'S RIGHT TO PURCHASE LEASED TRACT WHEN BULK PURCHASER CLOSES. (a) Authorizes a lessee, in the manner provided by this subchapter, to buy the lessee's individual leased tract from the bulk purchaser under Section 2267.104 or 2267.105 concurrently with the bulk purchaser making its purchase from the governmental entity on the closing date.

(b) 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.

(c) 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.

Sec. 2267.152. PURCHASE PRICE REQUIRED IN AGREEMENT. Requires that the purchase and sale agreement contain the purchase price for the individual leased tract in accordance with the applicable purchase option under Section 2267.104 or 2267.105.

Sec. 2267.153. SURVEY REQUIRED. (a) 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.

(b) Requires that the survey 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.

(c) Requires that the survey be prepared by a licensed state land surveyor or a registered professional land surveyor acceptable to the selling governmental entity and the bulk purchaser.

(d) Requires that the survey include the boundaries of the lessee's leased tract. Requires that the boundaries 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.

(e) Requires that the survey include all improvements on the leased tract and indicate any encroachments across the applicable boundary lines.

(f) Requires that the survey be reviewed and approved by the selling governmental entity and the bulk purchaser.

(g) 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.

Sec. 2267.154. TITLE COMMITMENT REQUIRED. Requires the lessee to provide a title commitment from the title company selected by the lessee and the bulk purchaser. Requires the lessee to pay for the title commitment.

Sec. 2267.155. OBJECTIONS TO TITLE COMMITMENT OR SURVEY. (a) Requires that the lessee notify the bulk purchaser of any objections to any items on the title commitment or survey not later than:

(1) the 15th day after the date the lessee receives the title commitment or survey, as applicable; and

(2) the 45th day before the proposed closing date.

(b) Provides that the bulk purchaser or the selling governmental entity is not required to cure any items described by Subsection (a) 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 Schedule C of the title commitment that apply to or are created by the bulk purchaser or entity. Provides that, despite this good faith exception, the bulk purchaser or entity is not required to cure any exceptions on

the attached Schedule C regarding legal right of access to or from the applicable leased tract.

Sec. 2267.156. "AS-IS" PURCHASE; NO WARRANTIES. (a) Provides that the lessee purchases the applicable individual leased tract in its "as-is" condition.

(b) Provides that the bulk purchaser:

- (1) is not required to make any improvements or modifications; and
- (2) may not make any representations or warranties as to the condition or use of the applicable leased tract.

Sec. 2267.157. NO RESPONSIBILITY FOR BROKER FEES OR COMMISSIONS. Provides 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.

Sec. 2267.158. COSTS FOR WHICH BULK PURCHASER IS RESPONSIBLE. Provides that the bulk purchaser is responsible for the following costs:

- (1) one-half of any escrow fee;
- (2) costs to release existing liens placed on the applicable portion of the leased tract by the bulk purchaser;
- (3) prepayment penalties and recording fees;
- (4) costs to release the bulk purchaser's loan liability to the extent applicable to the individual leased tract;
- (5) costs related to tax statements or certificates; and
- (6) costs to prepare the deed.

Sec. 2267.159. COSTS FOR WHICH LESSEE IS RESPONSIBLE. Provides that the lessee is responsible for the following costs:

- (1) one-half of any escrow fee;
- (2) costs associated with a loan or financing for the applicable portion of the leased tract, including loan origination, discount, buy-down, and commitment fees, appraisal fees, loan application fees, credit reports costs, costs to prepare loan documents, loan-related inspection fees, and interest on the loan from the date of disbursement to the date of the first monthly payment;
- (3) the cost of the survey prepared under Section 2267.153;
- (4) recording fees;
- (5) costs for copies of easements and restrictions;
- (6) the cost of the mortgagee policy of title insurance, including any endorsements required by the lender;
- (7) the cost of any prepaid items, including insurance premiums and reserves and taxes;
- (8) underwriting fees; and

(9) the cost of any owner's policy of title insurance, including endorsements obtained by the lessee.

Sec. 2267.160. TAXES. Provides that taxes are prorated as of the closing date. Provides that, if the taxes are not paid as of the closing date, the lessee is responsible for paying the taxes.

Sec. 2267.161. PURCHASE AND SALE AGREEMENT CONTINGENT ON CLOSING. Provides that the purchase and sale agreement between the lessee and the bulk purchaser is contingent on the closing date occurring within the periods provided by this subchapter.

Sec. 2267.162. TITLE COMPANY AND ESCROW AGENT. Requires that the title company and escrow agent be acceptable to the selling governmental entity and agreed to by the lessee and the bulk purchaser in the purchase and sale agreement.

Sec. 2267.163. DELIVERY OF PURCHASE AND SALE AGREEMENT AND EARNEST MONEY. Requires that \$1,000 in earnest money and the executed purchase and sale agreement between the lessee and the bulk purchaser, on or before the closing date, be timely delivered to the title company or escrow agent.

Sec. 2267.164. DELIVERY OF COMPLETED DOCUMENTS TO ESCROW AGENT. Requires the bulk purchaser and the lessee, on or before the date of the sale to 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.

Sec. 2267.165. RECORDING OF DOCUMENTS. (a) Prohibits the special warranty deed or any other documents transferring the applicable portion of the leased tract to the lessee from being recorded before the closing date.

(b) Requires the agent, promptly after the escrow 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.

SECTION 2. Effective date: September 1, 2011.