

By: Keffer

H.B. No. 1729

Substitute the following for H.B. No. 1729:

By: Cook

C.S.H.B. No. 1729

A BILL TO BE ENTITLED

AN ACT

relating to the sale of surplus leased land by a governmental entity to a private party.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle F, Title 10, Government Code, is amended by adding Chapter 2267 to read as follows:

CHAPTER 2267. SALE OF LEASED LAND BY GOVERNMENTAL ENTITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2267.001. DEFINITIONS. In this chapter:

(1) "Bulk purchaser" means any person, including successors in interest, heirs, or assigns, that acquires a leased tract, wholly or partly, from a governmental entity in accordance with Subchapter C. The term does not include a lessee who acquires an individual leased tract under Section 2267.051 or Subchapter D.

(2) "Bulk sale" means a sale to a bulk purchaser of multiple leased tracts, wholly or partly, from a governmental entity in accordance with Subchapter C. The term does not include a sale to a lessee who acquires an individual leased tract under Section 2267.051 or Subchapter D.

(3) "Closing date" means the date on which the governmental entity transfers its interest in the leased tract, wholly or partly, to a bulk purchaser. There may be multiple closing dates if the leased tract is sold in portions.

(4) "Consumer price index" means the consumer price

index for Housing, Dallas-Fort Worth, TX area, Series Id: CUURA316SAH, Base Period: 1982-84 = 100, as published by the Bureau of Labor Statistics of the United States Department of Labor, or its equivalent if the series is discontinued.

(5) "Leased tract" means all or any portion of government land that is:

(A) leased by a governmental entity before application of this chapter; and

(B) subject to this chapter under Section 2267.003.

(6) "Lessee" means a person that leases a leased tract under a residential or commercial lease from a governmental entity. The term includes the lessee's heirs, successors, and assigns.

Sec. 2267.002. APPLICABILITY TO ALL GOVERNMENTAL ENTITIES. 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. This chapter applies only to a leased tract:

(1) that is owned by, and designated as surplus property by, a governmental entity; and

(2) that the governmental entity elects to sell under this chapter.

Sec. 2267.004. OPTIONS CUMULATIVE. The options provided by this chapter are in addition to and not instead of any other lease or sale of surplus property options that a governmental entity

1 otherwise has.

2 Sec. 2267.005. CONTINUING APPLICABILITY OF PROVISIONS. A
3 provision of this chapter that applies to the lessee of a leased
4 tract under this chapter applies to any subsequent owner of the
5 leased tract.

6 Sec. 2267.006. PLATTING LAW INAPPLICABLE. A sale of the
7 leased tract under this chapter is not subject to Chapter 212 or
8 232, Local Government Code, or any other platting requirement.

9 Sec. 2267.007. NONAPPLICABILITY OF CERTAIN OTHER LAWS. The
10 following laws do not apply to the sale of an individual leased
11 tract or bulk sale under this chapter:

- 12 (1) Chapter 180, Finance Code;
13 (2) Chapter 272, Local Government Code;
14 (3) Chapter 31, Natural Resources Code;
15 (4) Section 8502.013, Special District Local Laws
16 Code; and
17 (5) Section 49.226, Water Code.

18 [Sections 2267.008-2267.050 reserved for expansion]

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

21 Sec. 2267.051. SALE OF LEASED LAND TO PERSON LEASING LAND
22 FOR FAIR MARKET VALUE. A governmental entity may, without notice or
23 the solicitation of bids, sell land it owns to the lessee for not
24 less than the fair market value of the unencumbered fee simple
25 estate as determined under Section 2267.052.

26 Sec. 2267.052. APPRAISALS. (a) An appraiser hired under
27 this section must be:

1 (1) disinterested; and

2 (2) a licensed appraiser under Chapter 1103,
3 Occupations Code.

4 (b) Before a sale under Section 2267.051, the lessee shall
5 hire an appraiser to determine the current fair market value of
6 land. Not later than the 60th day after the date the appraiser is
7 hired, the appraiser shall complete the appraisal and send the
8 completed appraisal to the lessee and the governmental entity.

9 (c) If the governmental entity rejects the fair market value
10 determined by the appraisal, the governmental entity shall hire
11 another appraiser to conduct a second appraisal. Not later than the
12 60th day after the date the governmental entity rejects the initial
13 appraisal, the second appraisal must be completed and sent to the
14 lessee and the governmental entity.

15 (d) If the lessee rejects the fair market value determined
16 by the second appraiser, the two appraisers shall meet and attempt
17 to reach an agreement on the fair market value not later than the
18 30th day after the date the lessee receives the governmental
19 entity's appraisal.

20 (e) If the two appraisers fail to reach agreement on or
21 before the 10th day after the date of the meeting, not later than
22 the 20th day after the date of the meeting the governmental entity
23 shall request that the comptroller appoint a third appraiser to
24 reconcile the two previous appraisals. Not later than the 30th day
25 after the date of the request, the comptroller shall appoint the
26 third appraiser.

27 (f) Not later than the 30th day after the date the third

1 appraiser is appointed, the third appraisal must be completed and
2 sent to the lessee and the governmental entity. The third appraisal
3 is final and binding on all parties.

4 (g) The appraisal costs must be paid by the person who
5 requests the appraisal, except that the lessee and the governmental
6 entity shall each pay one-half of the cost of any third appraisal.

7 (h) An appraisal may not:

8 (1) include consideration of a freeze or other
9 suspension of lease rate increases for the homestead of a person who
10 is 65 years of age or older; and

11 (2) include the value of any improvements constructed
12 on the lot or over the water that is the lessee's property.

13 Sec. 2267.053. NO WATER CODE PERMIT EXEMPTION. (a) A
14 leased tract sold by the governmental entity under this chapter is
15 ineligible for, and the owner is not entitled to, the exemption
16 provided by Section 11.142(a), Water Code. The purpose of this
17 section is to protect the public health, safety, or welfare and to
18 ensure an adequate municipal, county, water district, river
19 authority, or other governmental water supply.

20 (b) The instrument conveying the leased tract must include a
21 provision stating that the exemption does not apply to the
22 conveyance.

23 [Sections 2267.054-2267.100 reserved for expansion]

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

26 Sec. 2267.101. SALE OF LEASED LAND TO BULK PURCHASER. (a)
27 Instead of a sale under Section 2267.051, a governmental entity may

1 by resolution pursue a bulk sale of all or part of the property
2 leased to a lessee to a bulk purchaser under this subchapter.

3 (b) A lessee may not purchase land under Section 2267.051
4 from the effective date indicated in the resolution until the date
5 on which any resulting bulk purchase and sale agreement is declared
6 terminated by the governmental entity.

7 (c) If the bulk sale of the leased property is completed and
8 ownership of the land is transferred to the bulk purchaser, the
9 lessee may not purchase land under Section 2267.051 and the
10 lessee's only purchase and lease options are those described by
11 this subchapter and Subchapter D. This subsection does not apply to
12 a lessee who timely exercises an option to purchase the land it is
13 leasing.

14 Sec. 2267.102. OPPORTUNITY OF LESSEE TO BUY LEASED TRACT.
15 Each lessee is entitled to buy the lessee's individual leased tract
16 from the bulk purchaser or continue leasing the applicable leased
17 tract from the bulk purchaser in accordance with the purchase or
18 lease options described by Sections 2267.103 through 2267.106.

19 Sec. 2267.103. OPTION TO PURCHASE FOR CASH. (a) The lessee
20 may purchase the leased tract in cash or through lender financing
21 for 100 percent of land only assessed value without any exemptions,
22 as determined by the appraisal district, for the most current
23 tax-assessed value.

24 (b) This option must be available on the closing date and
25 until at least the first anniversary of the closing date.

26 Sec. 2267.104. OPTION TO PURCHASE FOR LOAN. (a) The lessee
27 may purchase the individual leased tract by seller financing for

1 the percent of assessed value only as set forth in Section 2267.103,
2 with a down payment of 10 percent and an interest rate of 6 percent,
3 with a 30-year amortization.

4 (b) The lessee may not be charged any origination fees or
5 points as a part of the closing costs involved in this option.

6 (c) This option must be available on the closing date and
7 until at least the first anniversary of the closing date.

8 Sec. 2267.105. OPTION FOR 99-YEAR LEASE. (a) The lessee
9 may enter into a new 99-year lease for the leased tract at a rental
10 rate of six percent of the land only assessed value without any
11 exemptions, as determined by the appraisal district, for the
12 tax-assessed value that was used to determine the bulk purchaser's
13 purchase price.

14 (b) The rental price is subject to annual consumer price
15 index increases or decreases.

16 (c) The 99-year lease must include an option to purchase the
17 applicable leased tract at the land only assessed value without any
18 exemptions, as determined by the appraisal district, at the time of
19 the lessee's purchase. This value may not be less than the
20 tax-assessed value that was used to determine the bulk purchaser's
21 purchase price.

22 (d) This option must be available until at least the first
23 anniversary of the closing date.

24 Sec. 2267.106. OPTION FOR 20-YEAR LEASE FOR SENIOR
25 CITIZENS. (a) This section applies only to a lessee who is 65 years
26 of age or older and who receives a property tax exemption under
27 Section 11.13, Tax Code, for a structure on the lessee's individual

1 leased tract. The lessee must have received the property tax
2 exemption for a structure on the lessee's individual leased tract
3 by the first day of January before the bulk purchaser's closing
4 date.

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

10 (c) The rental price is subject to annual consumer price
11 index increases or decreases. All annual consumer price index
12 increases or decreases are deferred, and accrued and compounded for
13 20 years at the six percent rate.

14 (d) The 20-year lease must include an option to purchase the
15 applicable leased tract at the land only assessed value without any
16 exemptions, as determined by the appraisal district, at the time of
17 the lessee's purchase. This value may not be less than the
18 tax-assessed value that was used to determine the bulk purchaser's
19 purchase price.

20 (e) This option must be available until at least the first
21 anniversary of the closing date.

22 Sec. 2267.107. EXTENSION OF EXISTING LEASE IF OPTIONS NOT
23 EXERCISED; EIGHT-YEAR OPTION TO PURCHASE. (a) The bulk purchaser
24 shall extend the existing lease of any lessee who does not timely
25 exercise one of the options in Sections 2267.103 through 2267.106.
26 The bulk purchaser shall extend the lease as necessary to allow for
27 the full eight-year purchase option period provided by this

1 section.

2 (b) Not later than the eighth anniversary of the closing
3 date, the lessee may purchase the lessee's individual leased tract
4 for the greater of:

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

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

10 (c) This section does not prevent the bulk purchaser from
11 offering additional purchase or lease options to a lessee.

12 Sec. 2267.108. DETERMINATION OF LEASE RATE OR PURCHASE
13 PRICE WHEN APPRAISAL DISTRICT VALUE UNAVAILABLE. (a) This section
14 applies when the appraisal district does not provide an assessed
15 value for the applicable portion of the leased tract for the
16 applicable year.

17 (b) To determine the purchase price or lease rate, the land
18 only assessed value without any exemptions for the applicable
19 portion of the leased tract must be calculated based on the assessed
20 value per square foot of comparable tracts with similar physical
21 characteristics in the applicable county or adjoining counties, as
22 determined by the selling governmental entity.

23 Sec. 2267.109. LIEN ON LEASED TRACT; LESSEE DUTIES. (a)
24 In this section, "lienholder" means any mortgagee under a mortgage,
25 or a trustee or beneficiary under a deed of trust, holding a lien on
26 any portion of the leased tract.

27 (b) On the date the sale of an individual leased tract

closes, the lessee shall:

(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. 2267.110. PROPERTY OWNERS' ASSOCIATION. The bulk purchaser may 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. 2267.111. DEED RESTRICTIONS. The selling governmental entity may impose a deed restriction on the leased tract conveyed to the bulk purchaser that was included in the individual leases conveyed.

[Sections 2267.112-2267.150 reserved 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) In the manner provided by this subchapter, a lessee may buy the lessee's individual leased tract from the bulk purchaser under Section 2267.103 or 2267.104 concurrently with the bulk purchaser making its purchase from the governmental entity on the closing date.

(b) The lessee shall 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

1 entity and the bulk purchaser of the lessee's intent to purchase the
2 applicable leased tract using the format provided by the entity and
3 the bulk purchaser.

4 (c) Not later than the closing date, the lessee and the bulk
5 purchaser must enter into a purchase and sale agreement in
6 substantially the form as agreed to between the selling
7 governmental entity and the bulk purchaser.

8 Sec. 2267.152. PURCHASE PRICE REQUIRED IN AGREEMENT. The
9 purchase and sale agreement must contain the purchase price for the
10 individual leased tract in accordance with the applicable purchase
11 option under Section 2267.103 or 2267.104.

12 Sec. 2267.153. SURVEY REQUIRED. (a) The lessee shall
13 deliver an accurate survey of the lessee's individual leased tract
14 to the selling governmental entity and the bulk purchaser not later
15 than the 45th day before the closing date, at the lessee's expense.

16 (b) The survey must be acceptable to the title company
17 selected by the bulk purchaser and lessee and approved by the
18 selling governmental entity for the purpose of issuing a policy of
19 title insurance on the applicable portion of the leased tract.

20 (c) The survey must be prepared by a licensed state land
21 surveyor or a registered professional land surveyor acceptable to
22 the selling governmental entity and the bulk purchaser.

23 (d) The survey must include the boundaries of the lessee's
24 leased tract. The boundaries must be consistent with any master
25 survey prepared on behalf of the selling governmental entity in
26 conjunction with the sale of the leased tract to the bulk purchaser.

27 (e) The survey must include all improvements on the leased

1 tract and indicate any encroachments across the applicable boundary
2 lines.

3 (f) The survey must be reviewed and approved by the selling
4 governmental entity and the bulk purchaser.

5 (g) The selling governmental entity or the bulk purchaser
6 may perform an inspection of the applicable leased tract to verify
7 the accuracy of the survey and any encroachments.

8 Sec. 2267.154. TITLE COMMITMENT REQUIRED. The lessee shall
9 provide a title commitment from the title company selected by the
10 lessee and the bulk purchaser. The lessee shall pay for the title
11 commitment.

12 Sec. 2267.155. OBJECTIONS TO TITLE COMMITMENT OR SURVEY.

13 (a) The lessee must notify the bulk purchaser of any objections to
14 any items on the title commitment or survey not later than:

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

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

18 (b) The bulk purchaser or the selling governmental entity is
19 not required to cure any items described by Subsection (a) or to
20 incur any expenses in curing the items, except that the bulk
21 purchaser or the entity, as applicable, shall use good faith
22 efforts to address or remove those requirements or exceptions shown
23 on Schedule C of the title commitment that apply to or are created
24 by the bulk purchaser or entity. Despite this good faith exception,
25 the bulk purchaser or entity is not required to cure any exceptions
26 on the attached Schedule C regarding legal right of access to or
27 from the applicable leased tract.

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

4 (b) The bulk purchaser:

5 (1) is not required to make any improvements or
6 modifications; and

7 (2) may not make any representations or warranties as
8 to the condition or use of the applicable leased tract.

9 Sec. 2267.157. NO RESPONSIBILITY FOR BROKER FEES OR
10 COMMISSIONS. The bulk purchaser is not responsible for any broker
11 fees or commissions due to any broker or agent engaged or claiming
12 to have been engaged by the lessee for the purchase and sale of the
13 applicable leased tract.

14 Sec. 2267.158. COSTS FOR WHICH BULK PURCHASER IS
15 RESPONSIBLE. The bulk purchaser is responsible for the following
16 costs:

17 (1) one-half of any escrow fee;

18 (2) costs to release existing liens placed on the
19 applicable portion of the leased tract by the bulk purchaser;

20 (3) prepayment penalties and recording fees;

21 (4) costs to release the bulk purchaser's loan
22 liability to the extent applicable to the individual leased tract;

23 (5) costs related to tax statements or certificates;
24 and

25 (6) costs to prepare the deed.

26 Sec. 2267.159. COSTS FOR WHICH LESSEE IS RESPONSIBLE. The
27 lessee is responsible for the following costs:

- 1 (1) one-half of any escrow fee;
- 2 (2) costs associated with a loan or financing for the
- 3 applicable portion of the leased tract, including:
- 4 (A) loan origination, discount, buy-down, and
- 5 commitment fees;
- 6 (B) appraisal fees;
- 7 (C) loan application fees;
- 8 (D) credit reports costs;
- 9 (E) costs to prepare loan documents;
- 10 (F) loan-related inspection fees; and
- 11 (G) interest on the loan from the date of
- 12 disbursement to the date of the first monthly payment;
- 13 (3) the cost of the survey prepared under Section
- 14 2267.153;
- 15 (4) recording fees;
- 16 (5) costs for copies of easements and restrictions;
- 17 (6) the cost of the mortgagee policy of title
- 18 insurance, including any endorsements required by the lender;
- 19 (7) the cost of any prepaid items, including insurance
- 20 premiums and reserves and taxes;
- 21 (8) underwriting fees; and
- 22 (9) the cost of any owner's policy of title insurance,
- 23 including endorsements obtained by the lessee.

24 Sec. 2267.160. TAXES. Taxes are prorated as of the closing

25 date. If the taxes are not paid as of the closing date, the lessee is

26 responsible for paying the taxes.

27 Sec. 2267.161. TITLE COMPANY AND ESCROW AGENT. The title

1 company and escrow agent must be acceptable to the selling
2 governmental entity and agreed to by the lessee and the bulk
3 purchaser in the purchase and sale agreement.

4 Sec. 2267.162. DELIVERY OF PURCHASE AND SALE AGREEMENT AND
5 EARNEST MONEY. On or before the closing date, \$1,000 in earnest
6 money and the executed purchase and sale agreement between the
7 lessee and the bulk purchaser must be timely delivered to the title
8 company or escrow agent.

9 Sec. 2267.163. DELIVERY OF COMPLETED DOCUMENTS TO ESCROW
10 AGENT. On or before the date of the sale to the lessee, the bulk
11 purchaser and the lessee shall complete all documentation necessary
12 to transfer the applicable leased tract from the bulk purchaser to
13 the lessee and deliver the completed and executed documents to the
14 applicable escrow agent.

15 Sec. 2267.164. RECORDING OF DOCUMENTS. (a) The special
16 warranty deed or any other documents transferring the applicable
17 portion of the leased tract to the lessee may not be recorded before
18 the closing date.

19 (b) Promptly after the escrow agent receives written notice
20 from the selling governmental entity or the title company or escrow
21 agent facilitating the closing of the leased tract from the entity
22 to the bulk purchaser that the closing has been completed, the agent
23 shall file the special warranty deed and any other applicable
24 documents to transfer the leased tract to the lessee in the real
25 property records of the county in which the leased tract is located.

26 SECTION 2. This Act takes effect September 1, 2011.