

By: Keffer

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) "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.

(3) "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.

(4) "Leased tract" means all or any portion of

1 government land that is:

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

4 (B) subject to this chapter under Section
5 2267.003.

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

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

14 Sec. 2267.003. APPLICABILITY ONLY TO SURPLUS PROPERTY.
15 This chapter applies only to a leased tract that is:

16 (1) owned by, and designated as surplus property by, a
17 governmental entity; and

18 (2) later sold or leased as provided by this chapter.

19 Sec. 2267.004. CONTINUING APPLICABILITY OF PROVISIONS. A
20 provision of this chapter that applies to the lessee of a leased
21 tract under this chapter applies to any subsequent owner of the
22 leased tract.

23 Sec. 2267.005. PLATTING LAW INAPPLICABLE. A sale of the
24 leased tract under this chapter is not subject to Chapter 212 or
25 232, Local Government Code, or any other platting requirement.

26 Sec. 2267.006. NONAPPLICABILITY OF CERTAIN OTHER LAWS. The
27 following laws do not apply to the sale of an individual leased

tract under this chapter:

(1) Chapter 180, Finance Code;

(2) Chapter 272, Local Government Code;

(3) Chapter 31, Natural Resources Code;

(4) Section 8502.013, Special District Local Laws
Code; and

(5) Section 49.226, Water Code.

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

[Sections 2267.008-2267.050 reserved 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. A governmental entity may, 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.
While land described by Section 2267.051 is under lease, the
governmental entity that owns the land may not sell 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) 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), Water Code. The purpose of this

1 section is to protect the public health, safety, or welfare and to
2 ensure an adequate municipal, county, water district, river
3 authority, or other governmental water supply.

4 (b) The instrument conveying the leased tract must include a
5 provision stating that the exemption does not apply to the
6 conveyance.

7 [Sections 2267.054-2267.100 reserved for expansion]

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

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

16 (b) A lessee's right to purchase the land the lessee is
17 leasing is suspended from the effective date indicated in the
18 resolution until the date on which any resulting bulk purchase and
19 sale agreement is declared terminated by the governmental entity.

20 (c) If the bulk sale of the leased property is completed and
21 ownership of the land is transferred to the bulk purchaser, the
22 lessee's right to purchase the land the lessee is leasing ends and
23 the lessee's only purchase and lease options are those described by
24 this subchapter and Subchapter D.

25 Sec. 2267.102. SALE OF LEASED LAND TO BULK PURCHASER. A
26 governmental entity may sell a leased tract wholly or partly to a
27 bulk purchaser in accordance with this subchapter.

Sec. 2267.103. OPPORTUNITY OF LESSEE TO BUY LEASED TRACT.

Each lessee is entitled 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) The lessee may 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) This option must 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) The lessee may 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) The lessee may not be charged any origination fees or points as a part of the closing costs involved in this option.

(c) This option must 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) The lessee may 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.

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

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

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

11 Sec. 2267.107. OPTION FOR 20-YEAR LEASE FOR SENIOR
12 CITIZENS. (a) This section applies only to a lessee who is 65 years
13 of age or older and who receives a property tax exemption under
14 Section 11.13, Tax Code, for a structure on the lessee's individual
15 leased tract. The lessee must have received the property tax
16 exemption for a structure on the lessee's individual leased tract
17 by the first day of January before the bulk purchaser's closing
18 date.

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

24 (c) The rental price is subject to annual consumer price
25 index increases or decreases. All annual consumer price index
26 increases or decreases are deferred, and accrued and compounded for
27 20 years at the six percent rate.

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

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

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

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

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

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

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

26 Sec. 2267.109. DETERMINATION OF LEASE RATE OR PURCHASE
27 PRICE WHEN APPRAISAL DISTRICT VALUE UNAVAILABLE. (a) 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) To determine the purchase price or lease rate, the land only assessed value without any exemptions for the applicable portion of the leased tract must 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) In this section, "lienholder" means any mortgagee under a mortgage, or a trustee or beneficiary under a deed of trust, holding a lien on any portion of the leased tract.

(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. 2267.111. ROADS. (a) In this section:

(1) "Driveway" means a private gravel or paved driveway that connects a road or other street or thoroughfare to an individual leased tract or any improvements on the tract. The term includes a shared or common driveway that serves more than one lessee or individual leased tract.

1 (2) "Road" means a paved or gravel road or other street
2 or thoroughfare.

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

6 (c) This section does not apply to:

7 (1) a driveway;

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

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

12 (d) Except as provided by Subsection (e), the selling
13 governmental entity and the bulk purchaser shall transfer the
14 entity or the bulk purchaser's interest in any roads to the
15 applicable county in which the roads, or any portion of the roads,
16 are situated.

17 (e) The selling governmental entity or the bulk purchaser
18 shall retain ownership of any portion of a road that is inaccessible
19 to the public. For purposes of this section, a portion of the road
20 is considered inaccessible to the public if, on September 1, 2011,
21 the public can only access the portion of the road by crossing
22 property not owned by the selling governmental entity or the bulk
23 purchaser and not subject to an easement or other ownership
24 interest that allows the public to cross the leased tract without
25 restriction. If a retained portion of a road becomes accessible to
26 the public, the selling governmental entity or the bulk purchaser
27 shall transfer the retained portion, including any interest the

1 entity or the bulk purchaser has in any additional road constructed
2 or acquired by the entity or the bulk purchaser in order to make the
3 retained portion of the road accessible to the public, to the
4 applicable county in accordance with this subsection.

5 Sec. 2267.112. PROPERTY OWNERS' ASSOCIATION. The bulk
6 purchaser may create a property owners' association with the power
7 to assess property, impose a lien, and collect dues and assessments
8 for the operation of the property owners' association.

9 Sec. 2267.113. DEED RESTRICTIONS. The selling governmental
10 entity may impose a deed restriction on the leased tract conveyed to
11 the bulk purchaser that was included in the individual leases
12 conveyed.

13 [Sections 2267.114-2267.150 reserved for expansion]

14 SUBCHAPTER D. PROCEDURES FOR LESSEE PURCHASING LAND FROM BULK
15 PURCHASER

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

22 (b) The lessee shall notify the selling governmental entity
23 and the bulk purchaser not later than the 90th day after the
24 effective date of the purchase and sale agreement between the
25 entity and the bulk purchaser of the lessee's intent to purchase the
26 applicable leased tract using the format provided by the entity and
27 the bulk purchaser.

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

5 Sec. 2267.152. PURCHASE PRICE REQUIRED IN AGREEMENT. The
6 purchase and sale agreement must contain the purchase price for the
7 individual leased tract in accordance with the applicable purchase
8 option under Section 2267.104 or 2267.105.

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

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

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

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

24 (e) The survey must include all improvements on the leased
25 tract and indicate any encroachments across the applicable boundary
26 lines.

27 (f) The survey must be reviewed and approved by the selling

1 governmental entity and the bulk purchaser.

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

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

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

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

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

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

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

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

1 (b) The bulk purchaser:

2 (1) is not required to make any improvements or
3 modifications; and

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

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

11 Sec. 2267.158. COSTS FOR WHICH BULK PURCHASER IS
12 RESPONSIBLE. The bulk purchaser is responsible for the following
13 costs:

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

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

17 (3) prepayment penalties and recording fees;

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

20 (5) costs related to tax statements or certificates;
21 and

22 (6) costs to prepare the deed.

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

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

26 (2) costs associated with a loan or financing for the
27 applicable portion of the leased tract, including:

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

21 Sec. 2267.160. TAXES. Taxes are prorated as of the closing
22 date. If the taxes are not paid as of the closing date, the lessee is
23 responsible for paying the taxes.

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

1 Sec. 2267.162. TITLE COMPANY AND ESCROW AGENT. The title
2 company and escrow agent must be acceptable to the selling
3 governmental entity and agreed to by the lessee and the bulk
4 purchaser in the purchase and sale agreement.

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

10 Sec. 2267.164. DELIVERY OF COMPLETED DOCUMENTS TO ESCROW
11 AGENT. On or before the date of the sale to the lessee, the bulk
12 purchaser and the lessee shall complete all documentation necessary
13 to transfer the applicable leased tract from the bulk purchaser to
14 the lessee and deliver the completed and executed documents to the
15 applicable escrow agent.

16 Sec. 2267.165. RECORDING OF DOCUMENTS. (a) The special
17 warranty deed or any other documents transferring the applicable
18 portion of the leased tract to the lessee may not be recorded before
19 the closing date.

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

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