

- SUBJECT:** Exempting city real property transfer to nonprofits from bidding procedure
- COMMITTEE:** Land and Resource Management — favorable, without amendment
- VOTE:** 6 ayes — Walker, Crabb, F. Brown, Geren, Mowery, B. Turner  
0 nays  
3 absent — Howard, Krusee, Truitt
- WITNESSES:** For — Mike Rush, United Way of Odessa Member Agencies; Jerry McGuire, City of Odessa  
  
Against — Ken Whalen, Texas Daily Newspaper Association and Texas Press Association
- BACKGROUND:** Local Government Code, sec. 272.001, requires a political subdivision of the state to notify potential purchasers and receive bids before selling or exchanging land. A political subdivision includes is a municipality, a county, a school district, or a township. A description of the land and the procedure for submitting sealed bids for its sale or exchange must be included in the notices. The notices must be published in a newspaper of general circulation on two separate dates, and sale or exchange may not be made until 14 days after the publication of the second notice.  
  
In certain situations, state law already exempts a political subdivision from following public notice and bid requirements, e.g., if it leases or conveys land acquired through an economic development program of the community development block grant program to a for-profit or nonprofit entity. Also, current law allows an exemption from the notice and bidding procedure for transfer of land to an institution of higher education. In both instances, the political subdivision's governing body — such as the city council or county commissioners court — must state the public purpose intended by the economic development program or by the institution of higher education.
- DIGEST:** HB 122 would permit a municipality to transfer real property — generally defined as land and buildings — or an interest in real property to a nonprofit organization to use for a public purpose without following the notice and bidding requirements in Local Government Code, sec. 272.001. A

“nonprofit organization” would be defined as being exempt from federal taxation under the Internal Revenue Code, sec. 501(c)(3). As part of the agreement to transfer the real estate, the nonprofit group would have to use the property for a public purpose and the property would revert to the municipality should it no longer be used at any time for the specified public purpose.

HB 122 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001.

**SUPPORTERS  
SAY:**

HB 122 would provide for a more effective use of scarce resources by both cities and local nonprofit groups. Cities would be able to transfer surplus properties to nonprofit groups — such as an office for the Red Cross, United Way agency, a rape crisis center, or an affordable housing program. This would allow these organizations to use their budgets to provide services rather than for the lease or purchase of real estate.

Local revitalization efforts can increase property values and make it impractical for nonprofit organizations to outbid developers who would purchase city-owned land for commercial use. The decision not to seek open bids for selected real estate would not be a hardship for the private sector because other land still would be available for private development. The value of keeping the needed services provided by nonprofits is not as easily quantified as the cash received for the sale or lease of the property. Cities also could reduce their costs for liability insurance and maintenance by transferring title of the property to nonprofit organizations.

To avoid constitutional prohibitions against giving away government-owned land at no cost, the bill would require the nonprofit organization to agree to use the property to promote a public purpose of the municipality. The bill would provide more protection than current law by requiring the nonprofit organization to specify in the transfer agreement how it would promote the public purpose. The city could reclaim the property should the public purpose no longer be provided. This restriction would prevent the nonprofit organization from selling the property for commercial gain.

Transfer of the property would require action by the city council, and that action would still be subject to the posting requirements of the Open

Meetings Act. Interested citizens would be notified of the proposed transfer 72 hours in advance, and the decision would be reached in a public meeting. Citizens do not regularly read legal notices about the city's plan to sell or transfer real property, and publication of notices is expensive. Many cities already use innovative approaches such as the Internet to notify the public in addition to the posting required by the Open Meetings Act.

OPPONENTS  
SAY:

HB 122 would not provide adequate notice to the public about a city's proposed agreement to transfer real estate to a nonprofit organization. Posting of a city council agenda item 72 hours in advance would be insufficient. Other potential purchasers of the property — including other nonprofit organizations that could offer alternative plans to provide valuable services to citizens — would not be notified of the proposal in time to compete.

The bill was designed to address a specific situation in Odessa to allow the city to transfer what it considers surplus property to nonprofit organizations already using the facilities. However, the scope of the legislation would be statewide. Other municipalities could possibly transfer properties worth several hundred thousands of dollars without providing adequate notice to their citizens.

OTHER  
OPPONENTS  
SAY:

HB 122 would permit a city — such as Austin — that includes sparsely populated land within its city limits but located in another county, to transfer property to a nonprofit organization without notifying other nearby cities in that county or the county commissioners court. The bill should at least require notice to other affected cities or the county commissioners court about plans to transfer such property to nonprofit organizations.

NOTES:

The companion bill, SB 396 by Duncan, was considered in a March 6 public hearing by the Senate Intergovernmental Relations Committee and was left pending.