

SUBJECT: Settling land-title disputes between the state and private landowners

COMMITTEE: Land and Resource Management — favorable, without amendment

VOTE: 8 ayes — Walker, Crabb, F. Brown, Geren, Howard, Krusee, Mowery, B. Turner

0 nays

1 absent — Truitt

WITNESSES: For — Billy Howe, Texas Farm Bureau

Against — None

On — Spencer Reid, Texas General Land Office

BACKGROUND: Art. 7, sec. 4 of the Texas Constitution, governing the sale of public school land, states that “the Legislature shall not have power to grant any relief to purchasers thereof,” thus limiting the Legislature’s authority to transfer public school lands for less than its fair market value.

When Texas joined the union in 1845, it retained all its public lands and set aside vast tracts to establish a permanent source of revenue for public education. The state constitutions of 1845 and 1861 forbade the sale of school lands but allowed the state to lease those lands. The 1869 Constitution removed the prohibition against sale of school land. The 1876 Constitution directed the state to sell public school lands to enrich the Permanent School Fund but added the restriction under Art. 7, sec. 4.

Under a law dating to 1836, settlers could survey land they wanted to claim or purchase, but the state retained all land not specifically claimed in those surveys. In 1900, all unpatented Texas land not held or dedicated for other purposes reverted to the School Land Fund, overseen by the General Land Office (GLO).

In 1981, 1991, and 1993, Texas voters amended the Constitution to remedy title defects for certain landowners. Those amendments allowed the GLO to issue patents — original titles to land granted by the state — to qualified applicants whose land titles were defective.

DIGEST:

HB 1204 would allow the School Land Board to approve a tract of land for patenting to release the state's claim to certain lands, except for mineral rights. The board would have to find that the land was surveyed, unsold Permanent School Fund land as recorded by the GLO, and that the land was not eligible for the state's original title or patent under any law in effect before January 1, 2002.

Those claiming title to the land would have to demonstrate that they held the land under color of title and that the chain of title originated on or before January 1, 1952. Claimants also would have to show that they acquired the land without knowing that it belonged to the state, that they held a deed recorded in the appropriate county, and that they had paid all taxes on the property, including interest and penalties on any delinquent taxes.

HB 1204 would allow a landowner claiming title to file an application for a patent and supporting documentation with the general land commissioner on a form prescribed by the commissioner. The GLO staff would have to determine whether the claim met the statutory requirements. If the staff found that the application was complete, the commissioner would have to convene the land board to determine whether to grant the patent. The commissioner could adopt rules as necessary to administer these duties.

HB 1204 would take effect January 1, 2002, if voters approved a constitutional amendment adopted by the 77th Legislature authorizing the Legislature to settle land title disputes between the state and private parties.

**SUPPORTERS
SAY:**

HB 1402, the enabling legislation for HJR 53 by Cook, a proposed constitutional amendment, would create a permanent mechanism to settle land-title disputes involving public school lands without the expense and trouble of a constitutional amendment election for each case in dispute. The Legislature, which must submit amendments to Texas voters, meets for only 140 days every two years. Currently, an owner of land subject to a disputed

title must wait until the Legislature places a constitutional amendment on the ballot for that specific concern, after which voters possibly may reject the amendment.

The state needs a way to clear the title to land held by innocent parties, resolve inequities, and save the state expensive court fights. In some cases, the current owner purchased land in good faith but now faces the prospect of having to buy it again — or possibly lose land held in the family for years — because of a dispute over events that occurred as long ago as the 1800s.

HB 1204 would allow the GLO to review cases in which inaccurate surveys or other mistakes in surveying land created vacancies, or areas of unsurveyed public school land. The GLO also could consider title disputes arising from when unscrupulous land dealers sold state lands to unsuspecting buyers, or cases in which state lands inadvertently were attached to adjacent private tracts because of faulty surveys.

The GLO estimates that as many as 1,000 claims over disputed titles remain to be resolved. Texas voters should not have to judge these individual land-title disputes. Similar amendments to remove uncertainty over land titles affecting relatively few landowners had to be placed on the statewide ballot in 1981, 1991, and 1993.

State law already directs the School Land Board to manage and sell state lands held in trust for the benefit of education programs. The board has experience and expertise in handling these matters and is the appropriate forum for evaluating the claims of individual property owners while also protecting the public interest.

Previous constitutional amendments have established a precedent of a clear chain of title for 50 years as being sufficient to demonstrate ownership of the land. In addition, the practice of land surveying has improved vastly in the past half century, and lands surveyed from 1953 on should be reasonably accurate.

**OPPONENTS
SAY:**

The Legislature and Texas voters should retain the right to review specific decisions made to relinquish the state's interests and to resolve title problems involving individual landowners. Some of these lands could be

very valuable, and adequate checks and balances should be in place to protect the state's interests.

The exact number of future claims cannot be known because it would be prohibitively expensive to complete a detailed survey of all public school lands in Texas. Future claims — and some claims now pending before the GLO, such as those involving landowners in Bastrop County — could fail to meet the restrictions established by HJR 53 and still would require a separate constitutional amendment.

NOTES:

HJR 53 by Cook, which would submit a proposed constitutional amendment to voters on the November 2001 ballot to authorize the Legislature to provide a mechanism for the state to clear disputed land titles, is on today's Constitutional Amendments Calendar.