SUBJECT: Relinquishing state claim to certain land in Upshur and Smith counties

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 6 ayes — Mowery, Harper-Brown, Blake, Escobar, Orr, Pickett

0 nays

3 absent — R. Cook, Leibowitz, Miller

WITNESSES: For — Jerry Patterson, General Land Office (*Registered, but did not testify:* Daniel Gonzales, Texas Association of Realtors; Ken Hodges, Texas Farm Bureau; Allen Place, Texas Land Title Association)

Against — None

BACKGROUND: The terms of Texas' annexation by the United States in 1845 provided that the state shall "retain all the vacant and unappropriated lands lying within its limit" (Natural Resources Code, Sec. 11.011). Under law dating to 1836, settlers in Texas had the right to 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 that was not held or dedicated for other purposes reverted to the Permanent School Fund, which is overseen by the School Land Board with administrative oversight from the General Land Office (GLO). As such, the GLO has the authority to determine vacancies. A "vacancy" is a piece of unsurveyed land that is property of the Permanent School Fund and not part of any patented survey. When someone locates vacant land, he or she may file an application with the GLO. If the GLO verifies the vacancy, the applicant may be eligible for one-sixteenth of the land's mineral royalties.

On January 16, 2004, Land Commissioner Jerry Patterson denied a claim that 4,600 acres of land in Upshur County in Northeast Texas belong to the state as a vacancy because of inaccuracies in the 1838 King Survey. On April 6, 2005, the 115th District Court ruled in favor of the GLO, confirming that no vacancy exists.

A vacancy claim involving multiple surveys for 950 acres in Smith County remains pending. The land commissioner denied this vacancy claim on March 23, 2004, after which the claimants filed an appeal in Smith County district court.

DIGEST:

CSHJR 82 would amend the Texas Constitution to relinquish any claim of sovereign ownership or title by the state to land or mineral rights in one tract of land in Upshur County and one tract of land in Smith County. The resolution specifies the boundaries of each tract of land. It would not apply to any public right-of-way, road, navigable waterway, park, or public land owned by a governmental entity. The resolution would be self-executing.

The proposal would be presented to the voters at an election on Tuesday, November 8, 2005. The ballot proposal would read: "The constitutional amendment providing for the clearing of land titles by relinquishing and releasing any state claim to sovereign ownership or title to interest in certain land in Upshur County and in Smith County."

SUPPORTERS SAY:

By permanently resolving two controversial land disputes involving more than 1,000 surface owners and 2,000 mineral interest owners, CSHJR 11 would ensure that the private property rights of several hundred landowners in Upshur County and Smith County were respected. Many of the citizens who reside in the areas targeted by the vacancy applications have lived on their land for decades, unaware that their ownership might be in doubt. These residents legally purchased or inherited their properties without any reason to suspect that trivial discrepancies in a century-old survey might rob them of their homes or royalty income from oil and gas development in the tracts. Failure to act in this case by the Legislature could leave the door open to a court-ordered vacancy finding and the unjust seizure of citizens' private land and mineral rights by the state. Such seizures would be particularly burdensome to older and lower income citizens who might not be able to repurchase their homes.

The state has determined that the Upshur County and Smith County vacancy applications have no merit, but many landowners in these areas have had the validity of their titles unnecessarily clouded because of this unfounded challenge. The land commissioner and the district court ruled that there is no vacancy in the King Survey and that the Upshur County challenge has no validity. The Smith County appeal, however, is pending in district court. Property titles in these areas are not clear, and landowners

are unable to sell their land, which has caused serious disruptions in the lives of many residents.

If a court overturned the land commissioner's ruling and ordered the transfer of land in Smith County to the state, landowners unfairly would be forced to buy back property they thought they owned. Landowners should not be forced to pay again for property they already have purchased. Equally troubling is that fact that current state law would require that all rights to the substantial privately held mineral resources in the area be forfeited to the state in the event of a vacancy ruling. Such a finding would be tantamount to government expropriation of the mineral rights of individuals and firms who hold interest in those resources.

Because of the unique nature of these disputes and the large number of people suffering because of this unwarranted application, these cases merit specific remediation through a constitutional amendment. Although Texas voters in 2001 approved Proposition 17 (Art. 7, sec. 2B) to authorize the School Land Board to settle land-title disputes, this constitutional provision cannot be used to settle boundary disputes and does not authorize the release of mineral rights on the part of the state. Thus, under current law, it is up to the Legislature and Texas voters to evaluate the merits of these cases. Constitutional amendments dealing with other specific instances of vacancies have been considered and overwhelmingly approved four times in the last quarter-century, most recently in 2001 involving a tract in Bastrop County. The cases in Upshur and Smith counties are no less compelling and justifiable.

Concerns that this resolution would deprive the Permanent School Fund of revenue are unjustified. The Legislative Budget Board estimates no fiscal implication to the state other than the small cost of publishing the resolution.

OPPONENTS SAY:

By denying any claim to vacant land in Upshur County and Smith County, Texas would be surrendering claim to what could be hundreds of millions of dollars in mineral resource revenue that would benefit the Permanent School Fund. It has been the policy of the state for more than 100 years to pursue vigorously vacant lands and to apply proceeds from state land toward funding public education. With the Legislature searching for additional revenue to enrich the state's public school system, it would be irresponsible for the state to relinquish its claim to resources that could greatly benefit the Permanent School Fund.

Concern over the threat to individuals' property rights is overblown. Should a district court find merit in the Smith County vacancy application, current property owners would have the first opportunity to purchase at a marginal rate the land to which they held a title. This provision ensures that no resident arbitrarily would be run off his or her land should a court find merit in the vacancy application. In any case, it would be premature for the state to intervene in a case in which an appeal of the land commissioner's decision remains pending.

OTHER OPPONENTS SAY:

Texas voters should not have to settle yet another land-title dispute by amending the Constitution. Such matters are better left to the courts. Instead of regularly amending the Constitution to address land disputes, the Legislature should enact some sort of ongoing mechanism to settle matters such as this without having to hold expensive constitutional elections.

NOTES:

The committee substitute specifically would not apply to public rights-of-ways, navigable waterways, or land owned by a governmental entity and reserved for public use.

The companion joint resolution, SJR 40 by Eltife, was adopted by the Senate by 31-0 on April 14 and was reported favorably, without amendment, by the House Land and Resource Management Committee on April 26, making it eligible to be considered in lieu of HJR 82.