

SUBJECT: Revising the land commissioner's authority to manage certain public land

COMMITTEE: Land and Resource Management —favorable, without amendment

VOTE: 6 ayes — Mowery, Zerwas, Callegari, Y. Davis, Geren, Pickett

0 nays

3 absent — Orr, R. Cook, Ritter

WITNESSES: For — Jerry Patterson, Texas General Land Office

Against — None

On — (*Registered, but did not testify*: Bob Hewgley, Noelle C. Letteri, Ned Polk, Texas General Land Office)

BACKGROUND: Natural Resources Code, ch. 51 provides for the management of public land administered primarily as part of the permanent school fund. The chapter sets guidelines for the management of state school lands and grants the authority to acquire, lease, and sell this land to the land commissioner and the State Land Board (SLB).

Ch. 51, subchs. C and D govern the sale and lease of permanent school fund lands. Secs. 51.073, 51.121, and 51.127 charge that:

- the commissioner determine the market value of land that has been forfeited to the state or is associated with cancelled or expired leases prior to resale;
- commercial improvements be removed from a property before the final termination of the lease with the state;
- land that has no rightful heirs be leased for no longer than two years, unless it is used for grazing;
- the commissioner may grant a preference right to purchase for leases of a duration of 20 years or longer; and
- granted leases must be kept on file with the respective county clerk and must include a memorandum describing the major details of the lease.

Ch. 51, subch. G governs the commissioner's ability to regulate the uses of public school land through easements and other grants of use. Secs. 51.291, 51.292, and 51.295 permit the commissioner to grant easements for:

- communications and electricity/power infrastructure;
- oil, gas, and other pipelines, and electric lines;
- irrigation canals, laterals, and water pipelines;
- roads; and
- any other purpose the commissioner considers to be in the best interest of the state.

Easements that would affect a state-owned river bed or navigable stream are subject to the provisions of ch. 86 of the Parks and Wildlife Code.

Sec. 51.298 subjects easements for oil and gas pipelines and electric transmission lines to an annual privilege fee of at least 2.5 cents per lineal rod per year.

Secs. 51.128 and 51.301 regulate penalties for non-payment and late payment of lease dues and easements. Lessees who make a payment to the land commissioner later than 15 days after it is due are subject to a penalty of 10 percent of the amount due. If a lessee fails to pay the rent within 60 days after it is due, the commissioner is required to cancel the lease in writing. Late payments on easements are subject to accrue 10 percent interest annually.

DIGEST:

HB 1556 would modify provisions regarding the sale, lease, and use of permanent school fund land. The bill would alter practices for assessing fees and fines on lease and easement payments, and it would modify records and retention practices for leaseholders. The commissioner would be granted explicit authority to grant easements determined to be in the best interest of the state.

For delinquent payments on easements, the bill would set the penalty at the interest rate established by the comptroller in Tax Code, sec. 111.060. The commissioner or the board of regents would be able to sign an agreement with the easement holder for a reduced penalty. The bill would strike the statutory penalties imposed on late payments from lessees.

HB 1556 would allow the commissioner to grant, in addition to easements, "other interests" in state property and to grant easements or leases for certain facilities on public land "for any other purpose" deemed in the state's best interest.

The collection of a privilege fee of at least 2.5 cents per lineal rod per year for certain easements no longer would be required.

The bill would require the removal of all improvements, rather than just commercial improvements, before the expiration of a lease and would give the commissioner the option of cancelling the removal requirement if it were deemed to be in the state's best interest.

The bill would modify statutes governing the recording and filing of leases. The lessee would be charged with filing with the county clerk a memorandum describing the lease, and certain descriptive details regarding the land and lessee no longer would be required.

Provisions governing land with no rightful heirs would be expunged, and such land would be subject to ch. 71 of the Property Code, which permits the state to sell the property through standard processes. In accord with that chapter, a court would issue of writ of possession for purchased land after two years, absent a claim filed by a rightful heir.

The bill 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, 2007.

**SUPPORTERS
SAY:**

HB 1556 is necessary to update and improve the management of permanent school fund land. The bill would permit the General Land Office (GLO) to be more flexible and responsive in its land management practices, which would result in more efficient business operations. Improved efficiency and business conduct ultimately would result in a higher payout to Texas schools and public education.

As of March 2007, the GLO had 749,680 acres of surface land holdings in the permanent school fund. In fiscal 2005-06, GLO contributions to the fund totaled \$417.5 million. Enhancing the agency's ability effectively to acquire, sell, and control land is essential to its ability to remain a reliable contributor to the fund.

In order to manage land effectively, the GLO requires the flexibility to negotiate penalties and payment plans for its lessees. Current statutory language provides the same penalties for all lessees and easement holders that fall into delinquency on payments. This requirement renders the same punishment for all partners, irrespective of their performance. HB 1556 would give the commissioner the same flexibility as private partners to work with lessees that proved to be good stewards of land.

The bill would allow the commissioner similar discretion to determine whether or not the termination of a lease warranted the removal of improvements. This modification would be important to ensure the most appropriate use of the land was continued. Certain improvements might have a value to future lessees that should not be negated by inflexible statutory language.

Administrative rules and in-house policies direct the GLO's negotiation of leases and easements. Privilege fees are out of date, since the value of easements and other access agreements generally far exceeds the amount specified by statute. The bill would remove these obsolete fees and better reflect the modern business practices the GLO employs to set fair fees for easements and other access agreements.

HB 1556 would update statutory provisions and conform them with the purpose and intent of law governing the management of state school land. Ch. 51 of the Natural Resources Code names the land commissioner and the SLB the guardians of state school land and gives them the sole authority to manage this land in the best interest of the fund. The bill would extend this authority to the granting of easements and other temporary access agreements where it already is implied.

The bill would strike several provisions that have negligible public value and significant administrative costs. Shifting some of the burden of filing requirements for leased property to the lessee and limiting the statutorily required content of memoranda would remove this burden from county clerks, who often are unaware of the specific requirements. Public records containing the lease information still would be available through a public information request submitted directly to the GLO. Similarly, expunging the requirement to sign two-year leases for land without rightful heirs would allow the GLO to extend to this land the same management practices it employs routinely and would eliminate the administrative burdens of frequent lease renewals.

OPPONENTS
SAY:

HB 1556 would delegate additional powers to the commissioner to make decisions on behalf of the state and thereby expand the already broad grant of discretionary authority afforded the GLO over state land. Several provisions in the bill would grant additional authority to the commissioner with respect to the removal of improvements pending the termination of a lease, the grant of easements and access agreements on school land, and the ability to negotiate payment plans for delinquent lessees and easement holders. The bill would provide no corresponding guarantee that the discretion it would grant would be applied with circumspection or would be subject to public input.

NOTES:

The identical companion bill, SB 654 by Seliger, passed the Senate on the Local and Uncontested Calendar on May 1 and has been referred to the House Land and Resource Management Committee.