

SUBJECT: Confidentiality for real estate transactions involving certain state agencies

COMMITTEE: Land and Resource Management — favorable, without amendment

VOTE: 6 ayes — Mowery, Orr, Zerwas, Callegari, Geren, Ritter
0 nays
3 absent — R. Cook, Y. Davis, Pickett

SENATE VOTE: On final passage, April 26 — 31-0, on Local and Uncontested Calendar

WITNESSES: (*On House companion bill, HB 699 by Turner:*)
For — None

Against — Susan Narvaiz, City of San Marcos; Doug Toney, Texas Daily Newspaper Association, Texas Press Association

On — Noelle C. Letteri and Bo Tanner, Texas General Land Office

BACKGROUND: Under Natural Resource Code, sec. 11.086, information relating to the location, purchase price, or sale price of real property bought or sold by or for the School Land Board (SLB), Veterans' Land Board (VLB), General Land Office (GLO), or land commissioner is confidential and exempt from disclosure under the Public Information Act until a deed for the property is executed.

Confidential information includes an appraisal, completed report, evaluation, investigation conducted for the purpose of locating or determining the purchase or sale price of the property, or any report prepared in anticipation of buying or selling real property. Information that is confidential and excluded from disclosure is not subject to a subpoena.

DIGEST: SB 596 would exempt from public disclosure documents related to the development of real property by the School Land Board, Veterans Land Board, and General Land Office. The bill would extend confidentiality until all deeds applicable to the transaction or series of transactions had

been executed and all substantive performance or executory requirements of applicable contracts had been satisfied.

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:**

SB 596 is necessary to ensure the state's ability to negotiate beneficial development agreements involving Permanent School Fund (PSF) land. Modernized development practices have resulted in improved management of PSF land and business conduct, which ultimately has resulted in a higher payout to Texas schools and public education. As of March 2007, the General Land Office (GLO) had 749,680 acres of surface land holdings in the PSF. In fiscal 2005-06, GLO contributions to the fund totaled \$417.5 million. Ensuring the state's ability to acquire, sell, and lease land competitively is essential to maintaining reliable contributions to the PSF. State brokered development agreements also contribute tax value to local entities through added sales taxes for retail developments and property taxes on vertical improvements.

The bill would protect the GLO and other state agencies from vulnerabilities created by increasingly complex business practices that do not necessarily result in the issuance of a single deed. The GLO, for instance, recently has instituted a number of updated land management practices that involve long-term leases or developments with multiple phases or partners. Current statutory provisions, which protect documents from release only until the execution of a deed, do not adequately account for modernized business practices. Inadequate confidentiality protections can seriously compromise development agreements and place the state at a competitive disadvantage if potential partners can access what normally would be private information about key aspects of a development proposal.

SB 596 would put the state at an equal bargaining position with private entities, which are not subject to the release of information regarding development proposals. Protected information would be limited to items specified in existing statutes and to contractual provisions related to the development, purchase, or sale of the property. The bill would protect documents from disclosure until "substantive performance or executory requirements of applicable contracts have been satisfied" would not give the state the authority to engage in development agreements in order to

prolong the retention of records. Any questions related to when the state would have to release information about a development agreement could be resolved with an inquiry to the attorney general, who could determine whether documents for a particular development were subject to the Public Information Act. The bill would allow enough flexibility to accommodate legitimate requests for information while preserving the state's ability to engage in development agreements that benefited the PSF.

State agencies are required to conduct public processes that provide an opportunity for public input into development proposals. The GLO almost never exercises its immunity from local zoning ordinances and works in conjunction with the School Land Board (SLB) – which includes the Texas Land Commissioner, a governor's appointee, and an appointee from the Attorney General's Office – on major decisions about public land. Such decisions are made publicly and with ample opportunity for public input. Documents relating to development agreements executed after public processes, however, must be kept confidential. Prematurely disclosed information about appraisals and other financial information about a property could put the state in a compromised bargaining position with respect to development agreements that benefit the PSF. Inadequate protections for privileged information can leave the state unable to conduct development agreements effectively.

**OPPONENTS
SAY:**

SB 596 would enshroud from public view information about real estate transactions involving public land developed in conjunction with the GLO and SLB. The bill would broaden considerably the range of information that would remain confidential and could be used to extend indefinitely the duration under which the information was immune from disclosure. Current statutory provisions stipulate that documents related to the location, purchase price, or sale price of property remain confidential until a deed for the subject property is executed. SB 596 would add ambiguous language to extend confidentiality until all deeds "applicable" to a transaction or series of related transactions were executed and until other performance or executory requirements of "applicable" contracts had been satisfied.

The highly permissive language contained in the bill would allow any documents associated with a development proposal of public land to be withheld until each property and phase in a project was fully executed. This could be years from the initiation of a development proposal, depending on the structure of the project. Such a broad grant of

confidentiality would make it difficult for municipalities, citizens, and other affected parties to find out what the state planned to do with public land in their jurisdiction. The bill effectively would allow the state to conduct business on public land without public scrutiny. The public would have access only to information about aspects of a development proposal that the GLO elected to supply.

The bill would augment the ample advantages the state already enjoys in engaging in land transactions. Local Government Code, sec. 211.013 gives the state immunity from local zoning ordinances. This exception means that the GLO and other agencies are not obligated by law to go through the same municipal, public processes that a private developer seeking a re-zoning must follow. Further, any land leased through the GLO is tax exempt. A major development brokered by the GLO on public land effectively takes that land off the tax rolls, depriving local school districts of much-needed property tax revenue in the name of state funds dedicated to the same purpose. State agencies do not need any more special advantages or protections to compete effectively for beneficial development agreements.

SB 596 could contribute to the erosion of local regulatory processes on development proposals involving PSF land. The bill would obscure the transparency of state real estate transactions and limit public scrutiny of the development of valuable public land. The state would be allowed to engage in development agreements with lasting impacts on local communities and potentially to withhold documents related to these transactions until public input was effectively irrelevant.

NOTES:

The companion bill, HB 699 by Turner, was reported favorably, without amendment, by the Land and Resource Management Committee on March 14.