SUBJECT: Allowing release of state interest in certain land

COMMITTEE: Energy Resources — favorable, without amendment

VOTE: 7 ayes — Holzheauser, West, Hawley, Hirschi, Jackson, Ramsay, Torres

0 nays

2 absent — Dutton, Smithee

WITNESSES: For — C.L. Miller, Kathey Collingsworth, Maurice Newton, Bill Powers, Texas Farm Bureau.

Against — None

On — Steve Hartmann, Land Manager for the University of Texas System; Pamela Bacon, University of Texas System.

BACKGROUND: In 1839 the Third Congress of Texas set aside 50 leagues of land, about 221,400 acres, to endow a university. The Constitution of 1876 established the Permanent University Fund (PUF) with a grant of one million acres and provided that all funds included in the PUF should be invested and the income accruing be available to provide for higher education. In 1883 the Legislature allotted an additional one million acres of land to the PUF. The income generated from the land, divided between the University of Texas and Texas A&M University, is primarily from oil, gas and other mineral leases, bonuses on oil and gas lease sales and mineral lease rentals. All royalties and proceeds from lease sales are placed in the PUF.

The 50 leagues originally granted to the university in 1839 were sold in the early 1900s, and the money put in the PUF.

A "land patent" is an original land title granted by the state.

DIGEST: HJR 30 would allow qualified persons to receive mineral land patents from the General Land Office, after applying to the University of Texas board of regents. An application would have to be filed before January 1, 1998.

The land would have to be surveyed or platted as university land, the minerals would have to be not patentable under law in effect before adoption of HJR 30, the person would have to have acquired the land without knowledge that the title was defective and the owners and any predecessors have to have held a recorded deed to the land and paid all applicable taxes continuously for at least 50 years as of January 1, 1996. If a patent were denied, an applicant could appeal the decision in a district court in the county in which the land is located.

The provisions would not apply to beach land, submerged land, filled land or an island and could not be used to settle a boundary dispute. They would not apply to any land determined by prior court ruling to belong to the state or land on which the state had given a mineral lease if the land was producing minerals.

The proposal would be submitted to the voters at the November 7, 1995, general election. The ballot proposal would read: "The constitutional amendment authorizing the commissioner of the General Land Office to issue patents without reservation of minerals from certain university fund land held in good faith under color of title for at least 50 years."

SUPPORTERS SAY:

HJR 30 is needed to clear titles to mineral rights on land purchased from the state by innocent parties over 50 years ago. It is unfair for the university to claim mineral rights on land that has been held in good faith for half a century under a state-issued land patent that makes no mention of reserving the mineral rights. At stake are the rights of 28 owners of about 3,000 acres.

These landowners, or their predecessors, received land patents dating from the early 1900s that make no mention that at the time of sale the university was reserving mineral rights or any mention that the land was classified as to its use (agriculture, grazing, mineral, etc.). The owners have held the land, and in some cases even leased it, without anyone questioning that the patent-holder owned the mineral rights.

The questions about ownership of the mineral rights arose in the mid 1980s when the university began claiming that the mineral rights to the land were reserved when the land was sold. If land purchasers had been aware at the

time of sale that the university was reserving the mineral rights, it is quite possible that they would not have bought the land. In addition, the landowners have been paying taxes for at least 50 years, and these include the price of the mineral rights. Landowners should be able to consider land patents granted by the state to be clear titles without having to be vulnerable to university claims to the mineral rights

Persons applying for a mineral patent would have to meet specific, restrictive criteria such as holding a recorded deed and having paid taxes on the land for at least 50 years. This would ensure that no one could take advantage of the state and apply for undeserved mineral rights.

This amendment would save money in the long run. Although the fiscal note claims a one-time loss to the PUF of between $300,000 to $400,000, the potential costs of litigation to settle the rights to the land could surpass this amount.

The voters have approved similar amendments in the past. In 1991 the Legislature adopted, and voter approved, SJR 11 (Art. 7, sec 4A) authorizing the General Land Office to issue a patent for land from the School Land Fund to qualified applicants whose land title is defective; it expired January 1, 1993. (A similar amendment, adopted in 1981, had expired in 1990.)

OPPONENTS SAY:

The mineral rights on the university lands in question legally belong to the state. The mineral rights on university lands are governed by the individual sales acts and terms of sale for each transaction, not necessarily by the patents.

Whether or not a patent for university land mentions minerals rights is not the last word on ownership of the rights. University land was generally not classified as to its use (agriculture, grazing, mineral, etc.) like public school land. Therefore, the lack of classification on certain land has no meaning concerning ownership of the land's mineral rights. This amendment would effectively be making a gift of state mineral rights.

This dispute over certain mineral rights should be settled in a court, not by a constitutional amendment. The different landowners that would be

affected by this amendment each could have purchased their land under different sales acts with different mineral rights provisions; these cases should be examined individually to ensure that the university retains what rightfully belongs to it and that landowners retain what is rightfully theirs. The voters should not be asked to judge land claims and amend the Constitution just to benefit a small group with land title problems.

NOTES:

HJR 91 by Cook, containing the same provisions as HJR 30, passed the House in 1993, but died in the Senate State Affairs Committee.

HJR 82 by McCoulskey, allowing the Legislature by law to release all or part of the state's interest in certain unsold permanent school fund land, including mineral rights, was adopted by the House on May 8.