

SUBJECT: Relinquishing state interest in land in Bastrop County

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 8 ayes — Walker, Crabb, F. Brown, Geren, Howard, Krusee, Mowery, B. Turner
0 nays
1 absent — Truitt

WITNESSES: For — Matthew Edling, Davis Family Trust (Stuart Nance and Bill England), Stuart E. Nance, Roy N. Davis Family Trust
Against — None

BACKGROUND: Art. 7, sec. 4 of the Texas Constitution, regulating the sale of Public School Fund (PSF) land, provides that “the Legislature shall not have the power to grant any relief to purchasers thereof,” thus limiting the Legislature’s ability to transfer public school lands for less than its fair market value.

Under a law dating to 1836, settlers were given 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 School Land Fund, which is overseen by the General Land Office (GLO).

A “vacancy” is a piece of unsurveyed land that is property of the PSF and not part of any patented survey. In 1925, a vacancy was discovered in Bastrop County as part of the A.P. Nance Survey of 221 acres. The tract consists of a strip of land 400 feet wide and about 4 miles long just outside Elgin. The Nance survey was completed and filed with the county and GLO. The survey was neither accepted nor rejected by the GLO. The 221-acre tract was included among the 741,000 acres of surveyed, unsold school land.

Some of the adjoining owners purchased portions of the tract, and others have occupied, fenced, and paid taxes on portions of the PSF land. In 1999,

the GLO resurveyed the Nance Survey and identified those occupying PSF land.

In 2000, several title companies paid the PSF the fair market value of the land to resolve a dispute with 11 individuals who held 21.16 acres and had purchased title insurance. Another individual was offered an opportunity to clear the title, but chose not to do so.

Still unresolved is the status of 127 acres held by 20 individuals. The remainder of Nance Survey tract is county roads, railroad lines, and land held by the Texas Department of Transportation (TxDOT).

In 1981, 1991, and 1993, Texas voters voted to amend the constitution to remedy title defects for certain landowners. These amendments allowed the General Land Office to issue patents — an original title to the land granted by the state — to qualified applicants whose land title was defective.

DIGEST:

CSHJR 53 would amend Art. 7, sec. 2A of the Texas Constitution to relinquish the state's surface interest in the 20 disputed tracts in the A.P. Nance Survey in Bastrop County. The amendment would not include the TxDOT land or the county roads and railroad lines. The state would continue to retain any mineral interest in the land.

CSHJR 53 would cancel any outstanding land award or land payment obligation owed to the state and would provide that any such previous payments would not be refunded. The proposed amendment would direct the GLO to issue patents to those landowners without requiring a filing or patent fee.

CSHJR 53 would be self-executing upon approval of the constitutional amendment and would not require separate enabling legislation.

The proposal would be presented to the voters at an election on November 6, 2001. The ballot proposal would read: "The constitutional amendment providing for clearing of land titles by the release of a state claim of its interest to the owners of certain land in Bastrop County."

**SUPPORTERS
SAY:**

This constitutional amendment is needed to clear the title to the land held by innocent parties, resolve an inequity, and save the state an expensive court fight. It also would provide a straightforward and fair way to resolve a complicated land dispute in which it is unclear whether landowners were aware they were occupying state land. Those who have built their homes and paid taxes on the property should not be penalized for a surveying mistake originally made more than 100 years ago.

This amendment would save the state money in the long run, largely by saving the expense of prolonged litigation. It is difficult to assign a monetary value to the state's decision to treat the remaining landowners in a fair and equitable manner. Currently, the lands do not have mineral leases and do not produce any income for the PSF. Also, Bastrop County would benefit if these lands are placed back on the tax roll.

The title companies should have alerted the claimants of the possible title problems when research was done regarding land sales and other transactions involving the Nance survey tracts. It was not unreasonable for the title companies to make restitution to the property owners and the PSF in this unique situation, but some other measure should be taken to provide for those claimants without title insurance.

CSHJR 52 would follow the precedent in resolving other disputes over state lands. Similar amendments to remove clouds over land titles affecting landowners were approved by a statewide vote in 1981, 1991, and 1993.

CSHJR 52 is likely to be the last amendment to address specific landowners' concerns if voters also approve another constitutional amendment on the November ballot that would allow the School Land Board to resolve such disputes without a constitutional amendment. The Bastrop claimants deserve a quicker resolution to their concerns through this amendment rather than waiting for the fate of the other constitutional amendment.

**OPPONENTS
SAY:**

CSHJR 52 would not treat all claimants to the Nance Survey equally. Those with title insurance were able to make claims to clear their land titles, and the state received compensation for 21.16 acres in the disputed tract. Also, the GLO estimates the value of the remaining tract to be about \$383,000, and relinquishing claims to the land would represent a loss to the PSF.

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NOTES:

On March 20, the House by 146-1 approved HJR 53 by Cook and on March 21, approved the enabling legislation, HB 1402 by Cook, which would provide an ongoing mechanism to resolve future land disputes. Both measures were referred to the Senate Natural Resources Committee on March 22.

HJR 52 as filed would have granted title to the owners of the remaining interests in the land, while the committee substitute would grant a patent to the holder of record title of the land.