

SUBJECT: Non-school land sale proceeds for farm and ranchland conservation

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 8 ayes — Bonnen, Farrar, Alvarado, Bolton, Hamilton, Orr, Paxton, Thibaut

0 nays

1 absent — Homer

WITNESSES: For — David Braun, Clients of Braun & Associates; Blair Fitzsimons, American Farmland Trust (*Registered, but did not testify*: Christy Muse, Hill Country Alliance; Kunda Wicce, Native Prairies Association of Texas; Chris Hale; Michael Reese; Pam Reese; Jeremy Smitheal

Against — None

On — Jerry Patterson, General Land Office

BACKGROUND: Natural Resource Code, sec. 31.065 enables the Texas land commissioner to accept any gifts of land or other property on behalf of the state. Land acquired as a gift becomes part of the Permanent School Fund (PSF) unless the person making the gift instructs that the land be dedicated to a specific state agency or other entity. Ch. 183, subch. B establishes the Texas Farm and Ranch Lands Conservation Fund as a program of the General Land Office (GLO) to enable and facilitate the purchase and donation of agricultural conservation easements.

If the state intends to sell or lease property for nongovernmental purposes, the GLO may offer a development plan on the property. The plan is submitted to relevant local governments, including any changes in zoning that would be necessary as part of the development plan. If the local government denies a request for a zoning change, the petition can be appealed to a special board of review that includes members of the School Land Board and state and local officials. A development plan put in action by the special board of review is binding and may not be modified without specific approval by the special board of review.

DIGEST:

CSHB 3632 would amend Natural Resources Code provisions governing the land commissioner's ability to manage or sell land held outside of Permanent School Fund (PSF) or that is given to the state through the federal Superfund Act. It also would amend certain provisions on the special board of review that oversees development plans applying to state land.

CSHB 3632 would allow parties that give land or other property to the state to request that the state hold the land outside the PSF. The bill would allow the commissioner to manage or sell property not held in the PSF under terms deemed to be in the best interest of the state. Land would be sold using standard processes, and proceeds of the sale would be deposited in the Texas Farm and Ranch Lands Conservation Fund. The Commissioner could gift property not held in the PSF to other state agencies or governmental bodies for public use. The Commissioner could adopt rules necessary to implement provisions for land not held in the PSF.

The bill would shift the responsibility for accepting land given to the state under federal Superfund Act provisions from the GLO to the commissioner. The commissioner could sell any title or interest acquired through the Superfund Act and could place the proceeds from the sale into the Texas Farm and Ranch Lands Conservation Fund. Statutes establishing the farm and ranch lands conservation fund would be amended to reflect additional revenue sources available to the fund.

CSHB 3632 also would modify provisions governing the special board of review over land development. Proposed revisions to a development plan would cease to be governed by state policies and procedures after either the 10th anniversary after the plan was put into action or when the state no longer held a financial or property interest in the property subject to the plan. After a development plan for property that was not part of the PSF was established, a special board of review called to consider revisions in the plan would include:

- the presiding officer or a representative of the entity that possessed the property, who would preside over the board of review;
- two members who were employed by the entity that possessed the property, appointed by the presiding officer or a representative;
- the county judge in the county where the property was located; and
- the mayor of a municipality, if applicable.

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, 2009.

SUPPORTERS
SAY:

CSHB 3632 would increase the Texas Land Commissioner's flexibility in managing land given to the state of Texas. The bill would allow parties who donated land or other property to the state to request that the gift be held outside the PSF, which is currently the default destination of land donations. This would provide an important distinction because the commissioner is charged with maximizing profit from land in the PSF to secure the greatest possible return to public education in the state. Some foundations and other organizations offer donations of land to the state that they intend to be conserved. If the Texas Parks and Wildlife Department (TPWD) opted not to take the land, then the land may revert to the PSF, where the commissioner is charged with generating maximum profit by its sale. The bill would not affect revenue for the PSF because the change would encourage donation of land that otherwise might be retained by the owner or given to a nonprofit conservation group.

The bill would allow the commissioner to hold land outside the PSF and would direct proceeds of the land to the farm and ranch lands conservation fund, which the Legislature established in 2005. The fund has a mission of purchasing conservation easements from private owners to protect land from development. Sales proceeds from certain donated land would provide a critical source of revenue to the fund, which has not received funding since its inception. Purchasing conservation easements offers a more economical means of conserving land than trying to buy the land and dedicating it to TPWD. Such land is prohibitively expensive to buy and maintain, and may not be well suited for development as part of the state parks system.

CSHB 3632 also would allow the commissioner to sell land given to the state as part of a federal Superfund cleanup and direct the proceeds to the conservation fund. Land currently conveyed to the state through the Superfund program is retained outside the PSF. Amending the statutes to allow the commissioner to sell this land would give the state another option for deciding the best use of the remediated land. Private parties would purchase the land with full knowledge of the land's former status as a Superfund site and would have to accept risks associated with developing the property upon purchase.

The bill also would amend statutes on the special board of review that oversees state land development plans, allowing control of the review board to transfer to municipalities after 10 years or when the state no longer had an interest in the development plan. When the state has no clear interest in a development plan, local entities are much more capable of approving changes to development plans than state officials who have been removed from local decision-making processes with respect to the particular development.

OPPONENTS
SAY:

CSHB 3632 would alter the long-standing practice of using income from land and other property granted to the state to supplement funding for education through the PSF. The bill would allow land that may otherwise may have gone to PSF to be held by the state. This could have a fiscal impact on funding for Texas schools, which would not receive revenues from land held outside the PSF.

OTHER
OPPONENTS
SAY:

CSHB 3632 would dedicate funds from sales of land held outside the PSF to purchasing conservation easements, which is not an ideal option. Conservation easements do not grant the extent of control of outright ownership and expire after a period specified in the easement. Direct ownership by the state, such as through TPWD, would be the best way to ensure that land was conserved. Proceeds from land sales identified in the bill should be directed to TPWD with instructions that the funds be used to expand the state parks system.

NOTES:

The committee substitute differs from the bill as filed by adding provisions governing the funding sources of the Texas Farm and Ranch Lands Conservation Fund to include proceeds of the sale of property held outside the PSF or land remediated through the federal Superfund Act.

The LBB estimates the bill would cost \$200,000 in general revenue-related funds for fiscal 2010-11. The estimated expense would come from funds needed to establish the Texas Farm and Ranch Lands Conservation Program. The LBB estimates \$100,000 could accrue to the Texas Farm and Ranch Lands Conservation Fund per year through the program, subject to great variance based on the property donated to and sold by the state.

The companion bill, SB 2049 by Averitt, was reported favorably as substituted by the Natural Resources Committee on April 21 and recommended for the Local and Uncontested Calendar.