

CHAPTER 208

S.B. No. 478

AN ACT

relating to the acquiring and granting of interests in and management of personal or real property assets of the state and permanent school fund; providing a civil penalty.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subsection (a), Section 4.02, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) All public grounds belonging to the State of Texas under the charge and control of the commission may be leased for agricultural or commercial purposes. Lease proposals shall be advertised once a week for four consecutive weeks in at least two newspapers, one of which shall be published in the city where the property is located, or the nearest daily paper thereto, and the other in some paper with state-wide circulation. *Thirty days prior to executing a lease under this section, the lease proposal shall be sent to the asset management division of the General Land Office and during the 30-day period the asset management division of the General Land Office shall submit written comments to the commission concerning the lease. Comments submitted by the asset management division of the General Land Office shall be considered by the commission prior to executing the lease.* Each lease shall be subject to the approval of the attorney general of Texas, both as to substance and as to form. The money derived from the lease of such property, less the expense for advertising and leasing, shall be deposited in the state treasury to the credit of the General Revenue Fund except that if land leased belongs to any eleemosynary institution, that money must be deposited to the credit of said institution in the same manner that the special fund is now deposited or may hereafter be ordered deposited by the legislature.

SECTION 2. Subsection (b), Section 4.15, State Purchasing and General Services Act, as amended (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) In a state-owned building that is under the commission's control and that is used primarily for office space or vehicle parking for the state government, the commission may lease at fair market value an amount of space to private tenants for commercial, cultural, educational, or recreational activities. *However, 30 days before executing a lease under this section, the commission must submit a copy of the lease to the asset management division of the General Land Office. During this 30-day period the asset management division of the General Land Office shall submit written comments to the commission concerning the lease. Comments submitted by the asset management division of the General Land Office shall be considered by the commission prior to executing the lease.* Under this section the commission may not lease any space to a private tenant for use as private office space unless the private office space is related and

incidental to another commercial, cultural, educational, or recreational activity of the tenant in the building.

SECTION 3. Section 5.11, State Purchasing and General Services Act, as amended (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5.11. GRANT OF EASEMENTS AND RIGHTS-OF-WAY. The commission is authorized and empowered to grant such permanent and temporary easements and rights-of-way over and on lands of any state agency on any project administered by the commission as shall be necessary to insure the efficient and expeditious construction, improvement, renovation, use, and operation of such state agency project building or facility; *provided, however, any easement or right-of-way which may extend beyond the period of construction must be submitted to the asset management division of the General Land Office for written comment 30 days prior to its being granted by the commission. Comments submitted by the asset management division of the General Land Office shall be considered by the commission prior to granting the easement or right-of-way.*

SECTION 4. Section 51.121, Natural Resources Code, as amended, is amended by adding Subsection (d) to read as follows:

(d) In leases granted under this subchapter that are for terms of 20 years or more, the commissioner may grant the lessee a preference right to purchase the leased premises. In order to grant this preference right, the commissioner must include such a provision in the lease. The provision may provide that the preference right to purchase may be exercised at any time during the term of the lease. If the commissioner does include the preference right to purchase in the lease, the lessee shall have a preference right to purchase the leased premises before the leased premises are made available for sale to any other person. All sales under this subsection must be for not less than fair market value as determined by General Land Office appraisers and under any other terms and conditions that the commissioner deems to be in the best interest of the state. The preference right to purchase granted under this subsection is superior to any other preference right to purchase granted under any other section of this code or under any other law. Nothing in this subsection shall be construed to allow the commissioner to grant a preference right to purchase submerged land.

SECTION 5. Subsection (b), Section 51.056, Natural Resources Code, as amended, is amended to read as follows:

(b) Each application shall:

- (1) designate the land to be purchased;
- (2) state the bid offered;
- (3) include an affidavit *disclosing the names of all persons or entities [that the purchaser is purchasing the land for himself and that no other person or corporation is] either directly or indirectly interested in the purchase of the land.*

SECTION 6. Subchapter C, Chapter 31, Natural Resources Code, as amended, is amended by adding Section 31.065 to read as follows:

Sec. 31.065. AUTHORITY TO ACCEPT GIFTS, DEVISES, TRUSTS, AND BEQUESTS. (a) In the absence of any law to the contrary, the commissioner may, if he determines it to be in the best interest of the state, accept gifts, devises, or bequests, either absolutely or in trust, of money or real or personal property on behalf of the state. Real property so acquired by the state becomes public free school land unless the person making the gift, devise, or bequest provides that the real property is to be possessed, administered, or used by a particular state agency, board, commission, department, or other particular state entity.

(b) Under Subsection (a) of this section, the commissioner may accept a gift, devise, or bequest even if it is encumbered, restricted, or subject to a beneficial interest of private persons or corporations as long as any current or future use or interest in the gift, devise, or bequest is for the benefit of the state.

(c) If the commissioner determines that the real property acquired by the state by gift, devise, or bequest is not suitable for the purpose for which the gift, devise, or

bequest was originally made, the commissioner together with the agency, board, commission, department, or other state entity designated to possess, administer, or use the real property may exchange the property for property that is suitable for such purpose.

SECTION 7. Subsection (a), Section 51.296, Natural Resources Code, as amended, is amended to read as follows:

(a) Except as provided in Subsection (b) of this section, no grant of easement or lease enumerated under *Section [Sections 51.291 through] 51.293* of this code may be granted for a term that is longer than 10 years, but an easement or lease may be renewed by the board of regents of The University of Texas System ~~[officials responsible for execution of grants of easement and leases under this subchapter]~~. *The term for easements or leases granted under Sections 51.291 and 51.292 of this subchapter may be for any term the commissioner deems to be in the best interest of the state.*

SECTION 8. Section 2a, Chapter 372, Acts of the 51st Legislature, Regular Session, 1949, is amended to read as follows:

Sec. 2a. Any claimant to any portion of said land may perfect his title by applying to the Commissioner of the General Land Office to purchase the land claimed. Such application shall be accompanied by field notes of the tract claimed together with the filing fee *established by the General Land Office for field notes [of One Dollar (\$1)]* and evidence of such claimant's right and title. Upon receipt of a satisfactory application and satisfactory showing of right, such application shall be approved and the land awarded to the applicant. Within sixty (60) days after such award, the applicant shall pay to the Commissioner of the General Land Office for the use and benefit of the public school fund *not less than the fair market value of the land as determined by the School Land Board [the sum of Ten Dollars (\$10) per acre for the land]*, and upon receipt thereof, the Commissioner shall issue to the claimant a patent to the land. The Commissioner is hereby authorized to make such rules and regulations as may be appropriate and necessary to accomplish the purpose of this Act.

SECTION 9. Section 11.071, Natural Resources Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) *Except as otherwise provided by law, no person may use for his benefit or cut or remove any mineral, plant, or anything of value located on land belonging to the permanent school fund without proper authority from the commissioner.*

(f) *In addition to any other penalties provided by law, a person violating the provisions of Subsection (e) of this section shall be liable for a civil penalty of not more than \$10,000 for each thing of value cut, used, or removed. All civil penalties collected under this subsection shall be credited to the permanent school fund.*

SECTION 10. Subchapter D, Chapter 32, Natural Resources Code, as amended, is amended by adding Section 32.112 to read as follows:

Sec. 32.112. SALE OF TAX FORECLOSURE PROPERTY. (a) The board may sell by sealed bid all real property placed in the name of the state as a result of any tax foreclosure sale. The sealed bid sales shall be conducted in the same manner as sealed bid sales for public school land.

(b) The board may retain from the proceeds of a sale conducted under this section the cost of conducting the sale, including advertising, appraisal, and administrative costs. The balance of the proceeds shall be deposited in the State Treasury to the credit of the Texas capital trust fund.

SECTION 11. Section 31.159, Natural Resources Code, as amended, is amended to read as follows:

Sec. 31.159. FIRST OPTION TO PURCHASE. (a) If the real estate transaction authorized by the legislature is a sale of real property, the School Land Board has a first option to purchase the real property by cash purchase at current fair market value as determined by an independent appraisal.

(b) After the legislature authorizes the sale of real property, the division ~~[shall appoint an appraiser after complying with Subdivision (2) of Subsection (d) of this section. The~~

~~division] must give to the School Land Board a written notice of the proposed sale [and must include in the notice a description of the appointed appraiser]. To exercise the option, the School Land Board, not later than the 30th day after the date the notice can first be considered by the board at a regular meeting, must give written notice to the division stating that the board has decided to exercise the option. *If the School Land Board decides to exercise its option under this section, the division shall appoint an appraiser after complying with Subdivision (2) of Subsection (d) of this section.* The School Land Board must complete the cash purchase not later than the 120th day after the date the division receives the notice from the board.~~

(c) If the School Land Board fails to complete the purchase within the time permitted, the division may extend the time for completing the purchase or dispose of the real property as authorized by the legislature.

(d)(1) Current fair market value shall be determined in accordance with the procedure prescribed by this subsection. Within 21 days after the day the School Land Board receives the notice given to the board under Subsection (b) of this section, the School Land Board shall appoint a second appraiser. If the School Land Board fails to appoint the second appraiser, the division shall appoint a second appraiser within 21 days after the expiration of said 21-day period in which the board could have appointed an appraiser. The two appraisers shall meet promptly and shall attempt to reach agreement on the current fair market value. If the two appraisers so selected do not reach agreement within 10 days of such meeting, *a third appraiser shall be appointed by the division to reconcile the two previous appraisals. The determination of value by the third appraiser may not be less than the lower or more than the higher of the first two appraisals. The value determined by the third appraisal shall be final and binding on all parties.* ~~[the two original appraisers shall appoint another appraiser whose appraisal shall be final and binding on both parties if said appraisal is at least as high as the lower of the appraisals of the two original appraisers. If said appraisal is not at least as high as the lower of the two original appraisals, the two original appraisers shall continue to appoint additional appraisers until an additional appraiser's appraisal is at least as high as the lower of the two original appraisals, and that appraisal shall be final and binding.]~~

(2) Each appraiser shall be qualified and disinterested and shall have M.A.I. or other comparable professional designation. *The division may appoint an appraiser employed by the General Land Office for any one of the required appraisals. The* ~~and the~~ *appointment of any other* ~~each~~ *appraiser shall* ~~only~~ *be made by the appointing party following receipt of at least three competitive bids, and if the cost of the appraisal is reasonably expected to exceed \$10,000, the appointing party shall utilize the notification procedure set out in Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252-11c, Vernon's Texas Civil Statutes), and all time periods described in this Act shall be extended for the number of days necessary to comply with said notification procedure. The appointing party shall award the appraisal services contract to the bidder submitting the lowest and best bid, and in determining who has submitted the lowest and best bid, the appointing party shall consider the factors set out in Subdivisions (1) through (9) of Subsection (e) of Section 3.11, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes). Expense of the appraisal shall be paid by the division.*

SECTION 12. Subsection (b), Section 51.297, Natural Resources Code, as amended, is amended to read as follows:

(b) The person who obtains *an* ~~the~~ *easement under Sections 51.291 and 51.292 of this code shall furnish to the commissioner a certified copy of the easement. The person who obtains an easement under Section 51.293 of this code shall furnish to the board of regents of The University of Texas System a certified copy of the easement.*

SECTION 13. Subchapter E, Chapter 31, Natural Resources Code, is amended by adding Sections 31.161 through 31.167 to read as follows:

Sec. 31.161. DEVELOPMENT PLAN. (a) If the legislature authorizes the sale or lease for nongovernmental purposes of land belonging to the state, to the permanent school fund, or to any of the dedicated funds of the state, other than the permanent

university fund, or any other lands subject to the administration and control of the board of regents of The University of Texas System, the governing board or chief executive officer of the agency or institution possessing the land may request the asset management division of the General Land Office to promulgate a development plan on the land before it is offered for sale or lease.

(b) The purpose of a development plan is to conserve and enhance the value of land belonging to the state, taking into consideration the preservation of the health, safety, and general welfare of the communities in which the land is situated.

(c) The plan shall address such provisions as are necessary to implement the purposes of this section, including provisions for:

(1) allocation and location of specific uses of the land, including residential, commercial, industrial, recreational, or other appropriate uses;

(2) densities and intensities of designated land uses;

(3) the timing and rate of development;

(4) timely delivery of adequate facilities and services, including water, wastewater collection and treatment systems, parks and public recreational facilities, drainage facilities, school sites, and roads and transportation facilities; and

(5) needed zoning and other land use regulations.

(d) The plan shall comply with existing rules, regulations, orders, or ordinances for land development to the extent such rules, regulations, orders, or ordinances are not detrimental to the interests of the state as determined by the board of review.

Sec. 31.162. SUBMISSION OF THE PLAN TO AFFECTED LOCAL GOVERNMENT. (a) The plan shall be submitted to any local government having jurisdiction over the land in question for consideration.

(b) The local government shall evaluate the plan and either accept or reject the plan no later than six months after the submission of the plan by the asset management division.

(c) The plan may be rejected by the local government only on grounds that it does not comply with local ordinances and land use regulations, including but not limited to zoning and subdivision ordinances.

(d) If the plan is rejected, the local government shall specifically identify any ordinance with which the plan conflicts and propose specific modifications to the plan that will bring it into compliance with the local ordinance.

(e) If the plan is rejected by the affected local government, the asset management division may modify the plan to conform to the ordinances specifically identified by the local government and resubmit the plan for approval, or it may apply for necessary rezoning or variances from the local ordinances.

(f) Failure by the local government to act within six months will be deemed an acceptance by the local government of the plan.

Sec. 31.163. REZONING. (a) If the plan would require zoning inconsistent with any existing zoning or other land use regulation, the asset management division or its designated representative may submit a request for rezoning to the local government with jurisdiction over the lands in question.

(b) The rezoning or variance request shall be submitted in the same manner as any such request is submitted to the affected local government; provided, however, the local government must take final action on the request no later than six months after the request for rezoning or variance is submitted.

(c) Failure by the local government to act within the six-month period will be deemed an approval of the rezoning request by the local government.

Sec. 31.164. FEES AND ASSESSMENTS. (a) The local government may impose no application, filing, or other fees or assessments on the state for consideration of the plan or the application for rezoning or variance submitted by the state.

(b) *The local government may not require the submission of architectural, engineering, or impact studies to be completed at state expense before considering the plan or application for rezoning or variance.*

Sec. 31.165. BOARD OF REVIEW. (a) If the local government denies the rezoning request, the matter may be appealed to a special board of review consisting of the following members:

- (1) the members of the School Land Board;*
- (2) the chairman of the governing board of the agency or institution possessing the property or his or her designated representative; and*
- (3) the mayor of the city or town within whose corporate boundaries or extraterritorial jurisdiction the land is located; and*
- (4) the county judge of the county within which the land is located.*

(b) The Commissioner of the General Land Office shall serve as chairman of the special board of review.

(c) If the plan involves land belonging to the permanent school fund, the special board of review shall consist of the members of the School Land Board and the local officials, with the Commissioner of the General Land Office serving as chairman.

(d) If the land is not located within the corporate boundaries or the extraterritorial jurisdiction of a city or town, the board shall consist of the members of the School Land Board, the agency chairman, and the county judge, with the commissioner serving as chairman.

Sec. 31.166. HEARING. (a) The special board of review shall conduct one or more public hearings to consider the proposed development plan.

(b) Hearings shall be conducted in accordance with rules promulgated by the General Land Office for conduct of such special review.

(c) If land is located in more than one city or town, the hearings on any single tract of land may be combined.

(d) Any political subdivision in which the tract in question is located shall receive written notice of board hearings at least 14 days prior to the hearing.

(e) At least one hearing shall be conducted in the county where the land is located.

(f) If after the hearings, the special board of review determines that local zoning requirements are detrimental to the best interest of the state, it shall issue an order establishing a development plan to govern the use of the land as provided in this section.

(g) Development of the land shall be in accordance with the plan and must comply with all local rules, regulations, orders, or ordinances except as specifically identified in an order of the special board of review issued pursuant to Subsection (f) of this section. In the event that substantial progress is not made toward development of the tract within five years of the date of adoption by the special board of review, local development policies and procedures shall become applicable to development of the tract, unless the special board of review promulgates a new plan.

(h) The hearing shall not be considered a contested case proceeding under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and shall not be subject to appeal thereunder.

Sec. 31.167. BINDING EFFECT OF DEVELOPMENT PLAN. (a) A development plan promulgated by the special board of review and any plan accepted by a local government shall be final and binding on the state, its lessees, successors in interest and assigns, and affected local governments or political subdivisions unless revised by the special board of review.

(b) A local government, political subdivision, owner, builder, developer, or any other person may not modify the development plan without specific approval by the special board of review.

(c) The special board of review must file a copy of the development plan in the deed records of the county in which the land is located.

SECTION 14. Subsection (c), Section 51.052, Natural Resources Code, is repealed.

SECTION 15. Section 51.350, Natural Resources Code, is repealed.

SECTION 16. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on March 31, 1987, by a viva-voce vote; and that the Senate concurred in House amendments on May 15, 1987, by a viva-voce vote. Passed the House, with amendments, on May 14, 1987, by a non-record vote.

Approved May 28, 1987.

Effective Aug. 31, 1987, 90 days after date of adjournment.