SUBJECT: Allowing release of state interest in certain land

COMMITTEE: Land and Resource Management Committee — favorable, without amendment

VOTE: 6 ayes — Saunders, Alexander, Combs, Hamric, Howard, B. Turner

0 nays

3 absent — Mowery, Hilderbran, Krusee

WITNESSES: For — Kathryn Keller, Texas Farm Bureau

Against — None

BACKGROUND: A "land patent" is an original land title granted by the state. In 1900 all unpatented Texas land not granted to individuals or dedicated for other purposes reverted to the School Land Fund. However, in some cases the legal requirements for securing patents were not met in the 1800s, and some persons have belatedly learned that land they thought they had purchased years ago and on which they have been paying taxes does not belong to them but actually belongs to the state School Land Fund. To acquire a valid land patent, these individuals would have to purchase the land from the state.

A 1976 attorney general's opinion (H-881) determined that the Legislature was powerless to make a free grant of school lands without a constitutional amendment explicitly granting that authority. In 1981 and in 1991 the Legislature adopted and the voters approved temporary constitutional amendments authorizing the General Land Office to issue patents for public school land if a person met specific criteria. The 1981 amendment expired in 1990; the 1991 amendment expired in 1993. In 1993 the Legislature adopted and the voters approved another constitutional amendment (HJR 3 by Saunders), by which the state relinquished its claim to a one-third interest in lands and minerals for a specific tract in Fort Bend and Austin counties.

DIGEST: HJR 82 would allow the Legislature by law to release all or part of the

state's interest in surveyed, unsold Permanent School Fund land, including mineral rights, that was not patentable under the law in effect prior to January 1, 1996. Persons claiming title to the land would have to:

• hold the land under color of title;

• under a chain of title originating at least 50 years previously (on or before January 1, 1946) and not based on a patent or grant from the sovereign;

• have acquired the land without knowledge that title was not based on a patent or grant;

• have a deed to the land recorded in the appropriate county;

• have paid all taxes due on the land and any interest and penalties for any prior tax delinquency.

The provision would not apply to beach land, submerged or filled land or islands or land found state-owned in a court decision rendered on or after January 1, 1946. It could not be used to settle boundary disputes or change the mineral reservation on an existing patent.

The amendment would take effect January 1, 1996.

The proposed amendment would be submitted to the voters at the November 7, 1995, election. The ballot language would read: "The constitutional amendment authorizing the legislature to settle land title disputes between the state and a private party."

SUPPORTERS SAY:

HJR 82 and its implementing legislation, HB 1798 would establish an on-going mechanism for clearing land titles in a limited number of cases. In a handful of cases persons who purchased land in good faith face the prospect of having to buy it again, from the state, because of an error or oversight made decades ago. HB 1798, as amended, would establish a review board to consider such claims and would be permitted to clear a title under strictly limited circumstances.

Under this proposal persons applying for a patent would have to meet restrictive criteria such as holding a recorded deed with a chain of title dating back at least 50 years. This would ensure that no one could take advantage of the state and apply for land patents that were undeserved. The three-member board created by HB 1798, consisting of the attorney general, the comptroller and the land commissioner, would have discretion about whether to issue a patent.

The Legislature and the voters have twice overwhelmingly approved temporary provisions to grant land patents, but those provisions have expired. The state can only grant patents for permanent school fund land through a constitutional amendment. Some landowners may remain unaware of any question about their land title until they seek to sell or convey their land or have other reason to check their title. Rather than adopt a series of temporary constitutional amendments to take care of newly discovered claimants, HJR 82 would establish an on-going mechanism to settle these claims.

The state of Texas and the permanent school fund would lose very little future revenue, if any, because of this amendment. But in those cases where there might be more than a negligible loss, the review board set up by HB 1798 would have the discretion to decide whether or not to grant a patent; the process would not be automatic.

OPPONENTS SAY:

Approval of HJR 82 would mean that Texas and its public school system would be giving away public land, including mineral rights, and potential future revenue for the permanent school fund. The public school system is in need of additional funding and cannot afford to make a gift of even the smallest source of revenue.

OTHER OPPONENTS SAY:

The review board established by HB 1798 should not have discretionary authority to grant land patents. If landowners meet the restrictive criteria for gaining good title, the process should be automatic. Alternatively, the courts, not elected executive officials with an interest in maintaining state revenue, should decide these matters.

NOTES:

HB 1798 by McCoulskey, the implementing legislation for HJR 82, is also on the daily calendar for Monday.

A related proposal, HJR 30 by Cook, reported favorably by the Energy Resources Committee on April 10, would establish a similar procedure for granting patents for permanent university fund land.