SUBJECT: Settling land-title disputes between the state and private land owners

COMMITTEE: Land and Resource Management — favorable, without amendment

VOTE: 8 ayes — Walker, Crabb, F. Brown, Geren, Howard, Krusee, Mowery, B. Turner

0 nays

1 absent — Truitt

WITNESSES: For — Billy Howe, Texas Farm Bureau

Against — None

On — Spencer Reid, Texas General Land Office

BACKGROUND: Art. 7, sec. 4 of the Texas Constitution, governing the sale of public school land, states that "the Legislature shall not have power to grant any relief to purchasers thereof," thus limiting the Legislature's authority to transfer public school land for less than its fair market value.

When Texas joined the union in 1845, it retained all its public lands and set aside vast tracts to establish a permanent source of revenue for public education. The state constitutions of 1845 and 1861 forbade the sale of school lands but allowed the state to lease those lands. The 1869 Constitution removed the prohibition against sale of school land. The 1876 Constitution directed the state to sell public school lands to enrich the Permanent School Fund but added the restriction under Art. 7, sec. 4.

Under a law dating to 1836, settlers could 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 not held or dedicated for other purposes reverted to the School Land Fund, overseen by the General Land Office (GLO).

In 1981, 1991, and 1993, Texas voters amended the Constitution to remedy title defects for certain landowners. Those amendments allowed the GLO to issue patents — original titles to land granted by the state — to qualified applicants whose land titles were defective.

DIGEST:

HJR 53 would amend Article 7 of the Constitution by adding sec. 2B, which would allow the state to relinquish claim to certain lands, except for mineral rights, and to clear title defects for the owners of those lands. The land would have to be surveyed, unsold Permanent School Fund land as recorded by the GLO, and the land could not be eligible for a state's original title or patent under any law in effect before January 1, 2002.

Those claiming title to the land would have to demonstrate that they held the land under color of title and that the chain of title originated on or before January 1, 1952. Claimants also would have to show that they acquired the land without knowing that it belonged to the state, that they held a deed recorded in the appropriate county, and that they had paid all taxes on the property, including interest and penalties on any delinquent taxes.

HJR 53 would not apply to beach land, submerged or filled lands, or islands, nor to land determined by a judicial decree to be state-owned. The amendment could not be used to resolve boundary disputes or change mineral rights in existing patents.

The proposed amendment would be presented to voters at an election on November 6, 2001. The ballot proposal would read: "The constitutional amendment authorizing the legislature to settle land title disputes between the state and a private party." If approved by voters, HJR 53 would take effect January 1, 2002.

SUPPORTERS SAY:

HJR 53 and its enabling legislation, HB 1402, would create a permanent mechanism to settle land-title disputes involving public school lands without the expense and trouble of a constitutional amendment election for each case in dispute. The Legislature, which must submit amendments to Texas voters, meets for only 140 days every two years. Currently, an owner of land subject to a disputed title must wait until the Legislature places a constitutional amendment on the ballot for that specific concern, after which voters may reject the amendment.

The state needs a way to clear the title to land held by innocent parties, resolve inequities, and save the state expensive court fights. In some cases, the current owner purchased land in good faith but now faces the prospect of having to buy it again — or possibly lose land held in the family for years — because of a dispute over events that occurred as long ago as the 1800s.

HJR 53 would allow the GLO to review cases in which inaccurate surveys or other mistakes in surveying land created vacancies, or areas of unsurveyed public school land. The GLO also could consider title disputes arising from when unscrupulous land dealers sold state lands to unsuspecting buyers, or cases in which state lands inadvertently were attached to adjacent private tracts because of faulty surveys.

The GLO estimates that as many as 1,000 claims over disputed titles remain to be resolved. Texas voters should not have to judge these individual land-title disputes. Similar amendments to remove uncertainty over land titles affecting relatively few landowners had to be placed on the statewide ballot in 1981, 1991, and 1993.

State law already directs the School Land Board to manage and sell state lands held in trust for the benefit of education programs. The board has experience and expertise in handling these matters and is the appropriate forum for evaluating the claims of individual property owners while also protecting the public interest.

Previous constitutional amendments have established a precedent of a clear chain of title for 50 years as being sufficient to demonstrate ownership of the land. In addition, the practice of land surveying has improved vastly in the past half century, and lands surveyed from 1953 on should be reasonably accurate.

OPPONENTS SAY:

The Legislature and Texas voters should retain the right to review specific decisions made to relinquish the state's interests and to resolve title problems involving individual landowners. Some of these lands could be very valuable, and adequate checks and balances should be in place to protect the state's interests.

The exact number of future claims cannot be known because it would be prohibitively expensive to complete a detailed survey of all public school lands in Texas. Future claims — and some claims now pending before the GLO, such as those involving landowners in Bastrop County — could fail to meet the restrictions established by HJR 53 and still would require a separate constitutional amendment.

NOTES:

HB 1204 by Cook, which would allow the GLO and the School Land Board to establish a procedure to review and approve applications for patents that would be allowed under HJR 53, is on today's General State Calendar.

A related proposal, HJR 52 by Cook, which would relinquish the state's title claims to specific properties in Bastrop County, was reported favorably as substituted by the House Land and Resource Management Committee on March 5.

HJR 53 substantially would duplicate the procedure for issuing patents for school fund lands held under color of title as spelled out in Art. 7, sec. 4A of the Constitution. That provision — which applies to land held continuously since January 1, 1941 — required an application for a patent to be filed before January 1, 1993. A similar provision approved by voters in 1981 expired January 1, 1990. In Art. 7, sec. 2A, adopted in 1993, the state relinquished its claim to a one-third interest in specific tracts in Fort Bend and Austin counties.