

**SUBJECT:** Sale of surplus leased land by a governmental entity to a private party

**COMMITTEE:** State Affairs — committee substitute recommended

**VOTE:** 9 ayes — Cook, Menendez, Craddick, Frullo, Geren, Harless, Hilderbran, Huberty, Smithee

0 nays

4 absent — Gallego, Oliveira, Solomons, Turner

**WITNESSES:** For — Michael Patterson

Against — None

**BACKGROUND:** In 2009, the 81st Legislature enacted HB 3031 by Keffer, which allowed the Brazos River Authority to sell certain residential and commercial leased land in the Possum Kingdom Lake area to private entities. The bill authorized the bulk sale of the residential leased properties to a bulk purchaser and gave the lessees the right to purchase the property or to continue to lease the property. As a result, the Brazos River Authority was able to discontinue its lease management functions, and the lessees were able to purchase or continue leasing with the new owner, the bulk purchaser.

**DIGEST:** CSHB 1729 would amend the Government Code by adding ch. 2267 to authorize governmental entities to sell surplus leased land to private parties. The chapter would apply to government entities of the state and each political subdivision of the state. For purposes of this chapter, certain other laws would not apply, including: ch. 180, Finance Code - laws regarding residential mortgage loan originators; ch. 272, Local Government Code - sale or lease of property by municipalities, counties, and certain other local governments; ch. 31, Natural Resources Code - General Land Office enabling statute; sec. 8502.013, Special District Local Laws Code - Brazos River Authority law regarding its ability to mortgage or sell property; and sec. 49.226, Water Code - sale or exchange of real or personal property by water districts.

A government entity would be able to sell the surplus leased land to the

lessee for the fair market value without a bidding process. The bill sets out the appraisal process that would be required to determine the fair market value for a sale to a lessee.

CSHB 1729 also would authorize a governmental entity by resolution to pursue a bulk sale of all or part of the leased property to a bulk purchaser. Each lessee would be entitled to buy the lessee's individual leased tract from the purchaser for the current tax-assessed value for cash, through 100 percent lender financing, or seller-financed by the bulk purchaser with a down payment of 10 percent, 6 percent interest rate, and 30-year amortization, with no origination fees. The seller-financed loan option would have to be available to a lessee for at least a year after the closing date. The bill also would provide for how and under what conditions a lessee would be allowed to purchase leased property directly from the bulk purchaser at the same time the bulk purchaser bought the property from the governmental entity.

The lessee also would be allowed to obtain a 99-year lease with an option to purchase or a 20-year lease with an option to purchase for a lessee 65 years old or older. Both of these options would have to be available to a lessee for at least a year after the closing date. If neither of these options were exercised by the lessee, CSHB 1729 would provide for extensions of a lessee's current lease with a purchase option that would have to be in place for eight years from the closing date of the bulk purchase.

The bill would take effect September 1, 2011.

**NOTES:**

The fiscal note states that the fiscal implications of CSHB 1729 could not be determined, but does note that the analysis assumed that state governmental entities would choose to sell land only when the available purchase price exceeded the present value of future revenue streams from the leased property. The fiscal note also stated that the exemption of related properties from existing statutes governing state land sales could reduce the realized value of the properties by removing the state's lead agency for property sales, the General Land Office, from the process.