

SHORT TITLE: Public lands; removing certain loan preference; changing certain publication requirements; removing certain prescribed interest rates and rental fees; increasing terms of certain lease; deleting obsolete language.

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

SENATE BILL NO. 131

By: Herbert

AS INTRODUCED

An Act relating to public lands; amending 64 O.S. 1991, Sections 52, 82, 82.2, 86.1, 92a, 93 and 100, which relate to investments of permanent school funds and other educational funds in farm mortgages, foreclosure of mortgages, deficiency judgments, leasing preference right lands, fees on natural gas sold to state or political subdivision, appraisal of lands acquired by foreclosure, and loan interest rates; removing prescribed interest rates, terms, collateral requirements and maximum amounts of farm loans made by Commissioners of Land Office; removing loan preference for farmers; changing publication requirements of notice of sale of certain lands; removing prescribed interest rates and attorney fees on certain judgments; removing prescribed rental rates on certain lands; increasing maximum terms of certain leases; removing prescribed interest rates on balance of purchase price of certain lands; deleting obsolete language; and repealing 64 O.S. 1991, Sections 71, 72, 73, 74, 75, 76, 77, 78, 79, 89, 91, 129, 130, 131, 155, 214, 215, 216.2, 229.1, 229.2, 229.3, 229.4, 229.5, 260.2, 290, 291, 292 and 381, which relate to certificates of purchase, issuance of patents, lands acquired through foreclosure, farm loans on deeded lands, patents and warranty deeds

for certain land mortgaged to state, authority to sell certain lands, acceptance of certain act by Texas Legislature, preference right leases, reinstatement of certain purchase contracts and leases, auditor of the Commissioners of the Land Office, salary and bond of certain auditor, duties of certain auditor, certain penalties, waiver of interest on delinquent interest and delinquent rentals on certain mortgages and leases, interest on certain delinquent installments, allocation of unpaid balances on certain certificates of purchase, amendment of certain certificates of purchase, purpose of certain legislative act, credit for certain payments on certain certificates of purchase, renewals of certain leases, authority to lease certain lands for oil and gas purposes, procedures for certain leases, authority to execute certain contracts and authority to issue and redeem certain building bonds.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 64 O.S. 1991, Section 52, is amended to read as follows:

Section 52. Investments of the permanent funds and other educational funds in farm mortgages shall be made under the following rules ~~and regulations~~:

(a) Such investments shall be made in first mortgages upon good and improved farm lands located within the State of Oklahoma, the cash value of which, disregarding all improvements, is at least double the amount of the loan, and the fair rental value of which is

equal to the annual payments which are to be made by the borrower, and not to exceed One Hundred Fifty Thousand Dollars (\$150,000.00), shall be loaned to any individual or family.

(b) Persons to be eligible for a new loan from funds held by the Commissioners of the Land Office shall be citizens of the State of Oklahoma and shall be the owners of legal or equitable title, as determined by the Marketable Record Title Act, to the land offered as security for such loan on the date of filing application for said loan. The provisions of this act shall not prohibit the Commissioners of the Land Office from renewing or increasing existing loans at the current rate of interest in cases where the applicant offers adequate security to justify a renewal.

~~(c) All farm loans made by the Commissioners of the Land Office of the State of Oklahoma from the trust funds under their jurisdiction and control, as otherwise provided by the laws of this state, shall bear interest at the rate of eight and one-half percent (8 1/2%) per annum, payable annually or semiannually, until paid. All delinquent installments, both principal and interest, shall bear interest at a rate of ten percent (10%) per annum until paid. All such loans shall be paid in the manner and within such period of time as may be required by the Commissioners of the Land Office; provided, the entire amount of any loan shall be paid within a period of not to exceed thirty-three (33) years from the date of the loan. Provided, further, that persons receiving fifty percent (50%) or more of their total annual income from the operation of a farm shall be given preference by the Commissioners in approval of any loans made under the provisions of this act.~~

~~(d)~~ The Commissioners of the Land Office shall prepare applications for loans, appraisers' reports, notes and mortgages in conformity with these rules ~~and regulations~~ for use in making such loans. No application shall be accepted unless the Commission has funds available for timely closing of such loans. The necessary

services incident to the making and closing of loans shall be rendered as nearly as practicable in the order in which applications are filed.

~~(e)~~ (d) No loan shall be made until the applicant furnishes a duly certified abstract of title, showing that he is the owner of title to the security offered, and before any loan is paid out to a borrower a final certificate of the title examiner of the Commissioners shall be made approving the title. Before any loan can be closed, the records held by the loan division must show that state's mortgage is a first and superior lien on the lands described therein and that all prior liens have been subordinated or released of record. All abstracts furnished may be retained and filed in the Department or returned to the borrower when said loan is completed. In case of default and foreclosure the abstract shall be forfeited to and become the property of the School Land Department.

~~(f)~~ (e) When an application for a loan is filed and a deposit made of the required fees, the application shall be referred to an appraiser who shall view and appraise the land and improvements thereon and make his report to the Commissioners, setting forth the value of the security offered, together with his estimate of the annual rental value thereof, and his recommendations as to the necessary steps that should be taken to protect said land from erosion, wastage, and depletion, and such additional information as the Commissioners may require. If the report shows the security to be of sufficient value, said report shall be considered by the Commissioners at their next meeting following the filing of said report, and they shall either approve or reject said application; provided an applicant shall pay a loan fee on the basis of the amount of loan actually disbursed. The Commissioners are hereby given authority to, and shall, before completing any approved application, require the applicant to take any steps found necessary to properly conserve and protect the land from erosion, wastage, or

depletion. After the Commissioners approve any application for a loan, the abstract of title shall be presented to the title examiners for examination. The title examiners of the School Land Commission shall recognize and be bound by the title examination standards of the Oklahoma Bar Association, and the applicable curative statutes, in making title examinations for loan purposes. Provided, further, that, in lieu of furnishing a duly certified abstract of title showing that he is the owner of title to the security offered, any such applicant for loan from the Commissioners of the Land Office may furnish, at his cost, mortgage guaranty of title or mortgage title insurance. The instruments of guaranty or insurance shall be on forms approved by the Commissioners of the Land Office and issued by a title insurance company or title guaranty company authorized to transact title guaranty or title insurance business in the State of Oklahoma and approved by the Commissioners of the Land Office.

The guarantor or insurer shall be liable to the state for any and all damages or losses of the loan which the state may sustain by reason of any defect or irregularity in the chain of title to the subject land or encumbrance against said land covered by the state's mortgage, unless such defect or irregularity is shown as an exception in the guaranty or policy.

All instruments of guaranty or insurance in connection with any loan shall be retained by the Commissioners of the Land Office until such loan is liquidated. The abstracts used to write the title guaranty or insurance shall be retained by the title underwriter until possession thereof is required by the Commissioners of the Land Office.

~~(g)~~ (f) No loans shall be made to any state official, either legislative, executive, or judicial, whether elected or appointed, during his or her term of office or during his or her candidacy for an elective office; provided, that this rule and regulation shall

not affect existing loans, nor hereafter to loans made to persons eligible therefor and who are elected after securing said loans.

~~(h) No loan shall be made on a tract of land of less than twenty (20) acres and in no case shall more than an average of Three Hundred Fifty Dollars (\$350.00) per acre be loaned, regardless of value.~~

~~(i)~~ (g) The Commissioners shall permit payment of a loan in part or in whole at any time, provided, the borrower shall have the right at any time to pay all or any part of delinquent payments. The cashier in all cases, upon receipt of any payments of whatever nature, shall issue a receipt to the payer at the time said payment is made. Diligent effort shall be made to collect all matured installments of both interest and principal. When a loan is liquidated, the Commissioners of the Land Office shall issue a release of their mortgage to be filed and recorded in the office of the county clerk, at the expense of the mortgagors. No settlement shall be made by the Commissioners of the Land Office or any employee with any borrower for less than the amount due upon his obligation; provided, that in all cases where the Commissioners have heretofore accepted deeds to land in satisfaction of loans, such transactions are hereby confirmed and title in and to said lands is hereby validated and confirmed.

~~(j)~~ (h) It shall be the duty of the Commissioners of the Land Office to authorize and approve all loans made and see to it that same are made in strict conformity to this act, and to authorize and approve all investments made from funds under their management and control.

~~(k)~~ (i) The duties of the officers comprising the Commissioners of the Land Office when acting as such Commissioners shall be deemed to be a part of the official duties of the several offices to which they are elected and by reason whereof they are members of said Commission. If any Commissioner or employee of the School Land

Department knowingly permits, consents to, or participates in any act or transaction which is in violation of these rules, he shall be deemed guilty of a misdemeanor and shall be subject to removal from office, and shall be liable on his bond for any loss occasioned thereby.

~~(1) The terms and provisions of this act providing for making of loans shall not prevent or prohibit the Commissioners of the Land Office from making loans which are approved prior to the date this act becomes effective under the rules and regulations prescribed by the Legislature as existed on the date said loans were approved.~~

SECTION 2. AMENDATORY 64 O.S. 1991, Section 82, is amended to read as follows:

Section 82. All lands acquired by foreclosure of mortgages or the acceptance of deeds and all lands heretofore sold under a certificate of purchase contract where said certificate of purchase has been canceled, and all deficiency judgments owned by the Commissioners of the Land Office, shall be disposed of in the following manner.

(a) Upon resolution adopted by the Commissioners of the Land Office, any or all lands acquired by foreclosure of mortgage or the acceptance of deeds or lands heretofore sold under certificate of purchase contract, where said certificate of purchase has been canceled, or all land acquired by original grant, except original grant land which can be used for grazing purposes only, may be sold by the Commissioners of the Land Office for cash or on sales contracts to be denominated, "Certificates of Purchase", providing for an initial payment of not less than ten percent (10%) of the total purchase price, at the discretion of the Commissioners, the balance to be paid in not more than forty equal annual payments with deferred payments drawing interest at the rate of three percent (3%) per annum. Notice of the sale of such lands as may be offered for sale shall be published in ~~five~~ three (3) consecutive issues in at

least one weekly newspaper of general circulation in the county in which such tract or tracts of land are situated. Such notice shall give a brief description of the lands and improvements located thereon and the appraised value of both such lands and improvements, the time, place and terms of sale. Said lands shall be sold to the highest responsible bidder at public auction. No tract shall be sold for less than ninety percent (90%) of the appraised value thereof, and the same shall be appraised prior to sale by three duly authorized appraisers of the Commissioners of the Land Office. In all cases the Commissioners of the Land Office shall have the right to reject any and all bids. Said Commissioners are hereby authorized to pay for the cost of conducting said sales from the proceeds thereof.

(b) The state shall have first lien upon all lands sold, together with all improvements and appurtenances thereunto belonging, until all payments, being both principal and interest, are made thereon; and upon such payments being made, the Commissioners of the Land Office shall in forms of law, execute to each purchaser, as in this article provided, a patent in fee simple; provided, that a certificate of purchase reciting the conditions of such purchase shall be issued to every purchaser under this article immediately upon execution of the contract of purchase, and such certificate of purchase shall be entitled to record, as evidence of the same, under the provisions of the law of conveyance. Provided, that it shall be the duty of the tax assessor of each county wherein said lands are situated to place on the tax rolls all lands held under said certificate of purchase; said taxes to be paid by the purchaser named in said certificate of purchase or the assignee of said purchaser.

(c) The Commissioners of the Land Office are hereby authorized to subdivide any tract or tracts of land, or to combine any tracts of land, subject to sale under the provisions of this act, when in

their discretion it is deemed that such subdivision or combination would induce more purchasers for such sales.

(d) The Commissioners of the Land Office shall reserve and retain forever the title to not less than forty percent (40%) of all the oil, gas and other mineral rights in and under all lands to be sold; provided further, that the Commissioners of the Land Office are empowered to join in the execution of any oil, gas or mineral lease on school lands, which have been sold and in which they have retained mineral interest, at their own discretion and without the necessity of advertising as required on state-owned lands. Such reservation is to be set out and included in all certificates of purchase and patents issued to cover lands hereafter sold by the Commissioners of the Land Office. Provided, that the provisions of this section shall not apply to any state-owned lands which the Commissioners of the Land Office may, by resolution duly adopted, find to be suitably situated for townsite developmental purposes. Any such land may be by the Commissioners of the Land Office, platted and sold in separate town lots or in entire tracts at the discretion of the Commissioners, without reservation as to the mineral rights, and patent conveying the full fee simple title may be given the purchaser upon full payment of the purchase price. Provided that the provisions hereof, with reference to the reservation and retention of all or part of the oil, gas and mineral rights in and under state lands, shall not apply to any state-owned lands which may be sold by the Commissioners of the Land Office, at any voluntary sale, to any public or municipal corporation, board, commission, department, agency or instrumentality for the construction, development and operation of any hydroelectric power, flood control, reclamation or irrigation project; for any needful public buildings, or for any other public use or purpose. Provided however, that in the case of any lands being sold without the reservation of any mineral rights thereto, such sale shall be held

only upon resolution adopted by a unanimous vote of the Commission, following thirty (30) days' notice in writing to the Governor of the State of Oklahoma, of the meeting of said Commission at which such resolution is to be considered, and any such conveyance shall be made only with the written consent of the Governor endorsed thereon.

(e) When the lands, mortgaged to the state as security for a loan, have been acquired through foreclosure proceedings, or by deeds thereto accepted by the Commissioners of the Land Office and sold, the amount for which same is sold shall be applied as follows: Any payment received at the time of the sale and all unpaid balance shall, when and as collected, be apportioned as follows: 1st, the entire balance of the principal of the loan shall be transferred into the fund from which the loan is made; 2nd, interest; 3rd, cost; 4th, fees earned, and the remainder, if any, shall be paid into and become a part of the fund from which the loan was made.

(f) Diligent effort shall be made by the Commissioners of the Land Office to collect all deficiency judgments now held by the state or which may hereafter be rendered in favor of the state, and immediately after the passage and approval of this act, and after procuring any deficiency judgment, they shall cause execution to be issued thereon and placed in the hands of the sheriff of the proper county for service. In addition to the return of such execution now required by law, the sheriff shall mail to the Commissioners of the Land Office a duplicate of his return of such execution.

(g) From any monies collected upon a deficiency judgment there shall be paid: 1st, any balance of the principal, included therein; 2nd, interest; 3rd, costs; 4th, fees earned, and the remainder, if any, shall be paid into and become a part of the fund from which the loan was made.

(h) Upon the death of any judgment debtor, if his estate be administered, the Commissioners shall cause proper claim to be made in the probate court for the amount due the state upon the

deficiency judgment against said debtor and any sum collected shall be applied as provided for collections hereinabove. Should all the judgment debtors in any deficiency judgment die without estate, the deficiency judgment shall be charged off and no longer carried as an asset in the Department. Such death shall be noted upon the record of judgments in the office and the transaction closed. The same procedure shall be followed in cases where administrations are had and judgment cannot be collected from the estate.

(i) When executions are returned, "no property found," or the property of the defendant is exhausted and the balance of the judgment unsatisfied, the judgment may, at the discretion of the Commissioners of the Land Office, be advertised in the county wherein such judgment was obtained, and sold at public outcry to the highest and best bidder for cash. In case of a sale of any such judgment, the Commissioners of the Land Office shall cause notice of such sale, such notice to contain the pertinent facts, to be published in three (3) consecutive issues of a newspaper of general circulation in the county wherein such judgment was obtained, and will be sold, such sale to be held at a specified hour at the front door of the court house in such county. At any such judgment sale, the Commissioners of the Land Office shall reserve the right to reject any and all bids. Any judgment that may be sold hereunder shall be assigned to the purchaser, without recourse, by the Commissioners of the Land Office, and any deficiency existing thereon shall be charged off and no longer carried as an asset of the Department.

(j) Rules and regulations governing the sale of any lands to be sold under the terms and provisions of this act, not inconsistent herewith, may be made by the Commissioners of the Land Office.

SECTION 3. AMENDATORY 64 O.S. 1991, Section 82.2, is amended to read as follows:

Section 82.2 The Commissioners of the Land Office of the State of Oklahoma are hereby authorized, empowered and directed to release all deficiency judgments obtained by the State of Oklahoma, resulting from the foreclosure and judicial sale of lands encumbered by mortgages, wherein the State of Oklahoma was mortgagee, upon payment by the judgment debtor, or debtors, of the amount of the judgment rendered, less all credits due on said judgment by reason of the judicial sale of the land, plus interest thereon at ~~the rate of five percent (5%) per annum from the date of the aforesaid judgment, provided however the interest shall never exceed the principal and the costs of the action whereby said judgment was obtained, and the amount of attorney's fees provided in the note or mortgage, regardless of whether or not judgment was obtained for interest in excess of five percent (5%)~~ a sufficient rate to provide a reasonable return to the trust.

SECTION 4. AMENDATORY 64 O.S. 1991, Section 86.1, is amended to read as follows:

Section 86.1 The Commissioners of the Land Office when leasing or releasing preference right lands shall charge and collect therefor an annual rental ~~equal to three percent (3%) of the fair cash market value thereof, exclusive of improvements, as determined and fixed by the appraisal of such lands under the provisions of Section 86, Title 64, Oklahoma Statutes, 1951,~~ in a sufficient amount to provide a reasonable return to the trust provided that the Commissioners of the Land Office may, whenever the market value of the land is greater than its market value for the purpose for which it is being leased, charge and collect an annual rental ~~of not less than three percent (3%) of~~ in a sufficient amount to provide a reasonable return based on the value of the land for the purpose to which it is or may be devoted under the terms of the lease. Every lease shall specify and limit the purpose for which the land shall be used, and no improvements or structures not necessary for the use

of such land for agricultural or grazing purposes shall be placed thereon. No lease authorizing the use of such land for purposes other than agriculture and grazing shall operate to ratify the previous action of any lessee who may have erected structures and improvements for purposes other than agriculture and grazing, and no such lease shall extend for a term of more than ~~two (2)~~ fifty-five (55) years.

SECTION 5. AMENDATORY 64 O.S. 1991, Section 92a, is amended to read as follows:

Section 92a. The Commissioners of the Land Office are hereby authorized to charge a fee on natural gas sold to the state or political subdivisions thereof. Said fee shall be for the purpose of funding the administrative costs of the Commissioners of the Land Office for selling and marketing the gas. ~~For the fiscal year 1990 the total amount charged pursuant to the provisions of this section shall not exceed One Hundred Forty-nine Thousand Seven Hundred Fifty Dollars (\$149,750.00).~~

SECTION 6. AMENDATORY 64 O.S. 1991, Section 93, is amended to read as follows:

Section 93. ~~That the~~ The Commissioners of the Land Office are hereby authorized in their discretion to make a new and complete appraisal of such lands acquired by foreclosure of mortgages and the acceptance of warranty deeds, when such appraisal is necessary to carry out the provisions of this act. Such appraisals shall be made by two duly-appointed appraisers in order that the following points of information may be ascertained:

1. The present fair value of all such lands.
2. The present value of the improvements thereon.
3. The actual condition of the improvements thereon.
4. The type of soil on each farm, and crops for which it is best adapted.

5. Recommendations of said appraisers as to what should be done to make said farms saleable or to increase their value fairly and economically to the state, and to make them more productive through proper soil conservation practices and improvement methods. The cost of such appraisalment, together with other necessary expenses incurred under this act, shall be paid from the funds of the Commissioners of the Land Office now available for the care of these farms ~~and known as the Depletion and Management Fund.~~

SECTION 7. AMENDATORY 64 O.S. 1991, Section 100, is amended to read as follows:

Section 100. The balance of the purchase price of any and all lands sold by the Commissioners of the Land Office after the effective date of this act under sales contract shall bear interest at ~~the rate of seven and one-half percent (7 1/2%) per annum~~ a sufficient rate to provide a reasonable return to the trust. All delinquent installments, both principal and interest, shall bear interest at ~~the rate of ten percent (10%) per annum until paid~~ a sufficient rate to provide a reasonable return to the trust.

SECTION 8. REPEALER 64 O.S. 1991, Sections 71, 72, 73, 74, 75, 76, 77, 78, 79, 89, 91, 129, 130, 131, 155, 214, 215, 216.2, 229.1, 229.2, 229.3, 229.4, 229.5, 260.2, 290, 291, 292 and 381, are hereby repealed.

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