

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 1354  
By: Brown  
Natural Resources  
4-9-97  
Committee Report (Substituted)

### **DIGEST**

In 1929, the statute governing the Board for Lease of University Lands, issuance of oil and gas leases on Permanent University Fund lands, and collection of oil and gas royalties from these lands was passed. Some of the provisions contained in existing law may be out of date or incomplete, and may not reflect the realities of the current oil and gas marketplace. This bill amends Chapter 66D, Education Code, to update, clarify, and modify existing law to accommodate the current needs of the university lands oil and gas program.

### **PURPOSE**

As proposed, C.S.S.B. 1354 amends Chapter 66D, Education Code, to update, clarify, and modify existing law to accommodate the current needs of the university lands oil and gas program.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the Board for the Lease of University Lands in SECTION 1 (Sections 66.64, 66.68, 66.77, and 66.78, Education Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 66D, Education Code, as follows:

Sec. 66.61. DEFINITIONS. Defines "affiliate," "board," "board of regents," "commissioner," "lessee," "oil and gas," "university lands," and "well."

Sec. 66.62. BOARD FOR LEASE OF UNIVERSITY LANDS. Sets forth composition of the Board for the Lease of University Lands (board). Authorizes the presiding officer of the board of regents of the University of Texas System, except as otherwise specified (board of regents) of the applicable system to appoint another member of the board as a substitute member to attend the meeting, if a regent member is unable to attend a meeting of the board. Requires a substitute member to exercise all the powers, duties, and responsibilities of the absent regent member. Provides that a substitute regent member is subject to the provisions of this subchapter. Requires members of the board to serve two-year terms expiring February 1 of each odd-numbered year, other than the commissioner. Requires regent members to serve until a successor is appointed and qualified. Provides that the commissioner is the chairman of the board. Prohibits a person who is directly or indirectly employed by or is an officer or employee of a person or entity actively engaged in the exploration for or production of oil and gas, other than as a landowner or royalty owner from being a regent member. Prohibits an officer, employee, or paid consultant of a trade association in the oil and gas industry or persons cohabiting with or who are the spouses of certain persons from being a regent member or non-classified employee of the board. Prohibits a person who is required to register as a lobbyist under Chapter 305, Government Code, from serving as a regent member or acting as general counsel of the board. Authorizes the board of regents of the university system appointing a regent member to remove the regent member from the board if the member does not meet certain requirements. Provides that the board is exempt from the provisions of Chapter 2001, Government Code.

Sec. 66.63. CERTAIN BOARD ACTIONS. Provides that a majority of the board

members have the power to act for the board on a matter before the board and that two members of the board have the power to award leases issued on a form of lease previously approved by a majority of the board. Provides that the validity of an action of the board is not affected because it was taken when a ground for removal of a regent member of the board existed. Provides that a regent member continues to serve until removed pursuant to Section 66.62(g) of this subchapter.

Sec. 66.64. **POWERS AND DUTIES OF THE BOARD.** Sets forth powers and duties of the board. Requires the board to hold meetings and keep records of its proceedings in a manner consistent with the requirement of the Texas Open Meetings Act, Chapter 551, Government Code. Requires the board to develop and implement policies which provide the public with a reasonable opportunity to appear before the board, to speak on an issue under the board's jurisdiction, or to be heard with respect to a declaration of forfeiture. Provides that the records of the board are subject to the requirements of the Texas Public Information Act, Chapter 552, Government Code, except as otherwise provided in this subchapter. Provides that the financial transactions of the board are subject to audit by the state auditor in accordance with Chapter 321, Government Code. Authorizes the board to delegate any duty to the staff provided to it by the board of regents, except as prohibited by law. Requires the board to appoint a secretary.

Sec. 66.65. **BOARD STAFF; EXCHANGE OF INFORMATION WITH STATE AGENCIES.** Requires the board of regents to employ and compensate personnel to assist the board in the performance of its powers and duties under this subchapter or to assign employees of the University of Texas System to those duties. Authorizes certain persons with a reasonable business interest in state or university lands, minerals, or resources to consult with each other and exchange information related to the administration of leases, collection and disposition of royalties, whether in cash or in-kind, and any other related matter, including certain energy forms on state and university lands. Requires exchanged information, consultations and related communications to be or remain confidential and privileged from discovery in the same manner as if the persons consulted, which includes counsel, were members of the same agency. Prohibits Sections 52.134 and 52.140, Natural Resources Code, from prohibiting the consultations or exchange of information provided for by this section. Requires each agency receiving confidential information to keep the information confidential under Sections 52.134 and 52.140, Natural Resources Code, and to take all reasonable actions necessary to protect the confidential and privileged nature of the information.

Sec. 66.66. **LEASE SALES.** Requires oil and gas leases to be offered at a public auction, or by sealed bid, or combination thereof, as the board elects. Authorizes contracts for development to be awarded in the same manner. Requires the board to publish notices in two or more daily newspapers in this state regarding bidding and contracting processes in oil and gas. Requires the board to publish notices at least 30 days before the date the bids will be opened. Requires notices to state that land is to be offered for lease or a contract for development and that a person is authorized to obtain a publication from the University of Texas System offices that describes the land offered and the minimum terms. Authorizes the board of regents to solicit and include advertising in the publication describing a lease sale. Sets forth requirements for fees paid for advertising. Authorizes the board to withdraw any lands advertised for lease before the hour is set for receiving bids. Provides that each bid is subject to the payment of a special fee equal to a certain amount. Authorizes the board of regents to direct the comptroller of the University of Texas System to transmit certain funds to the state comptroller to be deposited to the credit of the permanent university fund.

Sec. 66.67. **LEASE TERMS.** Requires the oil and gas lease for each tract to be offered for a bonus to be determined by high bid in addition to the stipulated royalty or bonus and royalty to be determined by high bid. Requires each tract to be offered separately, and requires the minimum bonus or royalty, depending on the basis for the bid, and the length of the primary term for each tract to be set out in the official publication describing the tracts and terms. Requires the minimum royalty rate to be one-eighth of the oil or gas produced or the value thereof, except as otherwise provided by law. Prohibits the primary term of a lease

from exceeding 10 years. Requires each lease to be subject to the provisions of this subchapter and rules promulgated by the board. Requires the successful bidder to pay to the board of regents the full amount of bonus on the day the bid is accepted, whether stipulated or bid, along with the special fee in the form of payment specified by the board.

Sec. 66.68. **MARGINAL PROPERTY ROYALTY RATES.** Defines "barrel of oil equivalent," "lease," "leases," "qualifying property," "qualifying reservoir," and "reservoir." Authorizes the board to provide, by rule, that the royalty rate for qualifying reservoirs may be reduced to not less than one-sixteenth (6.25 percent). Sets forth matters the board may consider in determining whether to grant a reduction in the royalty rate. Authorizes the board to modify the terms and conditions of the unit as a condition of approving a reduction in the royalty rate, if a qualifying reservoir for which royalty rate reduction is sought is included in a unit subject to the authority of the board.

Sec. 66.69. **AWARD OF LEASE.** Requires the board to award a lease for each tract to the person offering the highest bid that includes the terms adopted by the board and consistent with this subchapter, unless otherwise provided. Authorizes the board to reject all bids for one or more tracts. Requires the commissioner to execute a lease awarded by the board in conformance with this subchapter.

Sec. 66.70. **ADDITIONAL LEASE PROVISIONS.** Requires an oil and gas lease issued under this subchapter to include the provisions required by this subchapter and additional provisions not inconsistent herewith that the board is authorized to adopt to preserve the interests of the state. Authorizes the board to amend a lease that does not include certain required provisions, upon submission of an application containing certain information by all lessees under the lease.

Sec. 66.71. **LEASE PROVISIONS.** Requires an oil and gas lease issued by the board to provide for payment of a delay rental. Requires the lease to terminate on the anniversary date of the lease, unless certain conditions are met, during the primary term of the lease. Requires an oil and gas lease issued by the board to provide that if the oil or gas is being produced in paying quantities from the leased premises at the end of the primary term, the lease is to continue in force and effect as long as oil and gas is produced in paying quantities. Authorizes the board to specify when a lease will be considered to be producing in paying quantities. Requires an oil and gas lease issued by the board to provide that royalty may be taken in-kind at any time and from time to time at the discretion of the board in the manner provided by this subchapter.

Sec. 66.72. **CESSATION OF PRODUCTION; DRILLING AND REWORKING.** Authorize a board to specify when a lease will be considered to be producing in paying quantities. Requires an oil and gas lease issued under this subchapter to provide that the term of the lease be extended by drilling and reworking operations in the event of the cessation of production, upon terms as the board may adopt.

Sec. 66.73. **SHUT-IN ROYALTY.** Requires an oil and gas lease issued under this subchapter to provide for the extension of the lease by the payment of shut-in royalties upon terms the board may adopt.

Sec. 66.74. **LEASE EXTENSION OR SUSPENSION.** Authorizes the lessee to apply in writing to extend the lease for a period of 30 days at the expiration of the primary term of a lease, if certain conditions apply. Requires the applicant to submit with the application a fee in an amount set by the board of not less than \$7.50 for each acre in the lease requested to be extended. Authorizes the commissioner or an appointed designee to execute a written extension as provided by this section, if it is determined that conditions of this section have been met. Sets forth requirements for additional extensions of 30 days, if certain conditions are met and as long as drilling operations are being conducted in good faith and a good workmanlike manner. Sets forth requirements for the board to elect to suspend a lease and all of the conditions and covenants contained in the lease if there is a legitimate dispute regarding the validity of the lease.

Sec. 66.75. PROTECTION FROM DRAINAGE; COMPENSATORY ROYALTIES. Requires the lessee to protect the leased premises from drainage. Authorizes the lease to contain express terms regarding drainage as the board may adopt. Authorizes the commissioner to execute agreements that provide for the payment of compensatory royalty in lieu of drilling certain offset wells or university lands. Requires agreements providing for the payment of compensatory royalty to be approved by the board and found to be in the best interest of the state by the commissioner and the board. Provides that nothing in an agreement for the payment of compensatory royalty is to relieve the lessee of the obligation to engage in certain activities. Requires an agreement for the payment of compensatory royalty to provide that the royalty be paid at a certain rate and market value.

Sec. 66.76. ASSIGNMENT; RELINQUISHMENT. Authorizes rights acquired in a lease or contract for development issued under this subchapter to be assigned, if certain conditions are met. Sets forth conditions for rights of relinquishment to a lease or an assigned portion thereof. Provides that an assignment or relinquishment of a lease does not relieve the lessee of certain accrued obligations. Requires the board and the board of regents to be entitled to rely upon the state of title reflected by the records of the board of regents in the enforcement of lease obligations.

Sec. 66.77. ROYALTY PAYMENTS AND REPORTS. Requires royalty to be paid to the board of regents at Austin, Travis County, Texas. Requires the lessee of record in the records of the board of regents to be responsible for making all payments required by this subchapter in the manner required by the board of regents and as required by law. Requires the board to set the date for making royalty payments and filing necessary reports or documents. Sets forth the filing date. Provides that a royalty payment is made timely if certain conditions are met. Sets forth information the lessee is required to provide to the board of regents with each royalty payment. Authorizes the board of regents to require the lessee and a person with whom the lessee deals, including certain persons, to provide reports or other information as the board of regents may consider necessary in determining if the royalty has been paid correctly. Authorizes the board of regents to implement practices and procedures with regard to accounting for royalty payments that are determined to be in the best interest of the state.

Sec. 66.78. INTEREST AND PENALTIES. Sets forth penalties to be paid if royalty payments are not received within certain times. Requires the minimum penalty to be \$25, or the minimum penalty set by the board. Prohibits the board from adding a penalty under this subsection in cases of title disputes concerning the state's portion of the royalty or the fair market value that is disputed. Sets forth rates at which interest is required to accrue. Requires the board of regents to add a 25 percent penalty to delinquent sums, if the board makes certain determinations. Requires a penalty to accrue in an amount set by the board, but not less than \$10 per document for each 30-day period of delinquency, if certain documents are not filed as required under Sections 66.77 and 66.80. Provides that collection of penalty and interest charges under this section are in addition to any rights, including forfeiture, that the board or the board of regents may exercise for failure to pay a royalty or to submit a report or other instrument when due. Authorizes the board to provide, by rule, procedures and standards for the reduction of interest charged or penalties assessed or for unpaid or delinquent royalties or other amounts due under this subchapter.

Sec. 66.79. PAYMENT OF ROYALTY IN KIND. Requires an oil or gas royalty due under a lease on university lands to be paid in kind at the discretion of the board. Authorizes the board to exercise the option to take royalty in kind or in cash at any time or from time to time on not less than 60 days' notice to the lessee. Requires the board to enter into agreements to dispose of the portion of the royalty taken in kind, which may include certain items. Requires the commissioner to execute contracts approved by the board under this section that are consistent with applicable law. Authorizes the board of regents to enter into certain agreements to secure payment of instruments in order to dispose of the portion of the royalty taken in kind, including certain contracts. Provides that delivery of the correct amount of oil or gas by the lessee shall satisfy the lessee's obligation for payment of the

royalty due under the lease, if the board has elected to take the royalty in kind. Prohibits this section from being construed to prohibit the right of the board of regents under existing or future leases to receive royalty on the basis of market value of production not taken in kind.

Sec. 66.80. **RECORDS.** Requires the lessee to provide certain records to the board of regents. Requires certain records to be subject to inspection and copying by certain individuals at all times. Authorizes the board or the board of regents to compel the production of these records by enforceable subpoena through the state, if necessary.

Sec. 66.81. **AUDIT INFORMATION CONFIDENTIAL.** Provides that certain information provided to the board of regents under Section 66.80(a) is confidential and is prohibited from being disclosed in certain instances, except for information set forth in a lien filed under this chapter and as permitted by Subsections (c) and (d). Prohibits this section from applying to records or information provided by the lessee under Section 66.77. Prohibits all documents and information made confidential in this section from being subject to subpoena directed to certain individuals, except in a judicial or administrative proceeding in which the state and a person with an equitable or legal interest in the lease or land to which the information relates are parties. Authorizes certain persons or entities to use certain confidential information to enforce the provisions of this subchapter or for judicial or administrative proceedings in which this state is a party or to authorize the examination of administrative proceedings by certain persons. Sets forth actions this section does not prohibit regarding the delivery, publication, release, and sharing of certain information.

Sec. 66.82. **FORFEITURE; OTHER REMEDIES.** Authorizes the board to declare a forfeiture of the lease or an interest in the lease, if a lessee fails or refuses to perform a material requirement of this subchapter after the board has given notice and an opportunity to be heard to the lessee. Provides that material requirements include, but are not limited to, certain actions. Provides that forfeiture is not the exclusive remedy. Authorizes the attorney general, at the request of the board of regents, to bring suit for damages or specific performance, or both, or other remedy at law or in equity.

Sec. 66.83. **LIEN; ABANDONED PERSONAL PROPERTY.** Requires the board of regents to have a statutory first lien on oil and gas produced from the area covered by the lease in order to secure payment of all unpaid royalty and other sums of money that may become due under the lease of this subchapter. Provides that the lessee grants to the board of regents an express contractual lien on and security interest in certain items by acceptance of the lease. Authorizes the statutory and contractual liens and security interest described in this section to be foreclosed with or without court proceedings in the manner provided in Title 1, Chapter 9 of the Texas Business and Commerce Code. Authorizes the board of regents to require the lessee to execute and record instruments reasonably necessary to acknowledge, attach, or perfect the lien. Sets forth consideration provisions for the board of regents for abandoned property.

Sec. 66.84. **PAYMENTS; DISPOSITION.** Requires payments under this subchapter to be made to the board of regents which shall transmit certain funds to the comptroller and retain certain fees as authorized by this subchapter. Deletes existing Sections 66.61-66.84.

**SECTION 2.** Repealers: Sections 52.291, 52.292, 52.293, 52.294, 52.295, and 52.956, Natural Resources Code (Coverage; Prohibited Leases; Prerequisites to Sale Outside State; Prerequisite to Filing Leases; Certain Leases Null, Void, and of No Force and Effect; Granting Exceptions to Subchapter).

**SECTION 3.** Provides that the terms of any oil and gas lease executed before the effective date of this Act that impose the requirements of Section 52.291-52.296, Natural Resources Code, are of no force and effect.

**SECTION 4.** Makes application of this Act prospective.

SECTION 5. Amends Section 52.131(d), 52.135(a), and 52.136, Natural Resources Code, to authorize the commissioner to require the lessee and a person with whom the lessee deals, including an affiliate with regard to matters requiring certain reports or information the commissioner considers necessary to determine that a royalty has been correctly paid. Defines "affiliate." Requires certain records and contracts to be subject to inspection and copying by certain persons. Authorizes the commissioner to compel the production of certain records by subpoena, if necessary. Deletes a provision providing that certain materials are subject to inspection. Provides that the state has a statutory first lien on all oil and gas produced on certain leases. Sets forth the conditions and requirements of contractual and statutory liens.

SECTION 6. Provides that changes made by this Act to Sections 52.131(d), 52.135(a), and 52.136, Natural Resources Code, relate to the administration of leases and apply to existing and future leases, to the extent these changes do not conflict with existing contractual rights.

SECTION 7. Effective date: September 1, 1998.

SECTION 8. Emergency clause.

### **SUMMARY OF COMMITTEE CHANGES**

#### **SECTION 1.**

Redefines "oil and gas." Authorizes the board of regents to remove the regent member from the board if the member does not have or maintain qualifications as required by Section 66.62(a), Education Code, rather than qualifications required by this chapter. Requires an oil and gas lease to provide for a delay rental. Requires a lease to terminate on the anniversary date of the lease unless certain conditions are met. Requires the oil and gas lease to not terminate if the oil and gas is produced in paying quantities. Requires an oil and gas lease to provide that royalty may be taken-in kind. Deletes a provision prohibiting an agreement for the payment of a compensatory royalty to be determined to be necessary to prevent economic waste. Deletes a provision requiring an agreement for the payment of compensatory royalty for oil and gas to remain in force as long as the oil and gas are produced from certain wells. Deletes a requirement for the lessee to provide accurate reserve information. Deletes a provision authorizing a declaration of forfeiture to be appealed to the district court of Travis County. Deletes a provision requiring the standard for review to be substantial evidence and not do novo. Adds a new heading to Section 66.83. Sets forth a provision for the acceptance of a lease regarding oil and gas in an extracted area, rather than minerals. Sets forth a provision for statutory and contractual liens, rather than liens. Sets forth a provision regarding personal property.

#### **SECTION 2.**

Adds Section 52.296, Natural Resources Code, as a repealer.

#### **SECTION 3.**

Redesignates SECTION 3 to SECTION 4. Provides that the terms of any oil and gas lease executed before the effective date of this Act that impose the requirements of Section 52.291-52.296, Natural Resources Code, are of no force and effect.

#### **SECTION 4.**

Redesignates SECTION 4 to SECTION 5. Sets forth the prospective clause.

#### **SECTION 5.**

Redesignates SECTION 5 to SECTION 6. Sets forth the effective date.

## SECTION 6.

Sets forth the emergency clause.

### Amendment 1.

Page 17, line 9, deletes "All holders of undivided working interests, or an interest imposing an obligation to pay expenses or the lease, in a lease shall be jointly and severally liable for all obligations accruing under the lease."

### Amendment 2.

Page 52, line 21, strike "SECTION 5" and substitute with "SECTION 7." Redesignates existing section.

Page 52, line 22, strike "SECTION 6" and substitute with "SECTION 8." Redesignates existing section

Sets forth new SECTION 5.

### Amendment 3.

Page 12, line 23, delete, "The board may provide by rule procedures and standards for reinstatement of a lease that terminates as a result of the lessee's failure to timely pay a delay rental."

### Amendment 4.

Page 13, line 7, after the period add "The board may specify when a lease will be considered to be producing in paying quantities."

Page 21, line 15, after "e" and before "of" replace "Delivery" with "If the board has elected to take the royalty in kind, then delivery."

### Amendment 5.

Page 25, lines 15-17, delete proposed Subsection (b).

Page 25, line 18, redesignate proposed Subsection (c) as Subsection (b).