

BILL ANALYSIS

Senate Research Center

S.B. 1806
By: Lucio
Natural Resources
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DIGEST AND PURPOSE

Under the current statutory process the General Land Office (GLO) and certain applicants endure lengthy and expensive administrative hearings when determining whether certain lands are vacant. As proposed, S.B. 1806 clarifies and simplifies the procedures for determining whether land is vacant.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the School Land Board in SECTION 1 (Section 51.174, Natural Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 51E, Natural Resources Code, as follows:

Deletes existing Sections 51.171-51.201.

Subchapter E. Sale and Lease of Vacancies.

Sec. 51.170. PURPOSE. Sets forth the purpose of this subchapter.

Sec. 51.171. DEFINITIONS. Defines “applicant,” “commissioner,” “good-faith claimant,” “interested person,” “necessary party,” “terminated application” or “application terminates,” and “vacancy.”

Sec. 51.172. Disposition of Vacant Land. (a) Requires vacant and unsurveyed public land to be located, sold, and leased under this subchapter, with the exception of certain lands.

(b) Public Domain. Provides that this subchapter does not alter or diminish the public domain status of the surface estate of riverbeds and channels and islands in riverbeds that are located above tidewater limits.

Sec. 51.173. General Powers and Duties of Commissioner. (a) Authorizes the commissioner of the general land office (commissioner), for good cause shown, to waive any provision of this subchapter, to delegate responsibility for implementing the requirements of this subchapter, and to perform any other act necessary to administer and effectuate the purposes of this subchapter.

(b) Authorizes the commissioner to promulgate rules necessary and convenient to the administration of this subchapter.

(c) Requires the commissioner to advise the School Land Board regarding the fair market value of the surface and mineral estates of vacant land.

Sec. 51.174. General Powers and Duties of the School Land Board. Requires the School Land Board (board) to set the terms and conditions for the sale and lease of vacant land.

(b) Requires the board to adopt rules governing such terms and conditions. Requires the rules to be promulgated and amended as necessary to be consistent with Texas property law and other applicable prevailing laws.

(c) Authorizes the board to adopt rules governing certain items regarding royalty reservations and preferential rights to an applicant or a good-faith claimant in addition to those provided for in this subchapter.

Sec. 51.175. Application. (a) Requires an application to purchase or lease land claimed to be vacant to be on a form prescribed by the commissioner. Requires a completed application to contain certain information.

(b) Requires the applicant to file the application with the county surveyor of the county in which all or part of the land claimed to be vacant is located. Requires the application, if the county does not have a county surveyor, to be filed with the county clerk.

(c) Requires the county surveyor or county clerk to mark the exact date and hour of filing on the original and a duplicate copy of the application and to return a marked copy to the person filing the application. Requires the original to be recorded in a book kept for that purpose separate the deed or real property records.

(d) Provides that priority among applications covering the same land claimed to be vacant is determined by the time of filing indicated by the date and hour marked on the application by the county surveyor or county clerk.

(e) Requires the applicant to file with the commissioner the duplicate copy of the application with the county official's mark indicating the time of filing not later than the 10th day after the application is filed with the county surveyor or clerk. Authorizes the application, if the 10th day after filing falls on a certain day, to be filed on the next regular business day following the 10th day. Requires the applicant to include a filing fee set by the commissioner in an amount of not less than \$100.

Sec. 51.176. Processing the Application. (a) Filing the Application. Requires the commissioner to assign a file number to and mark the date of filing on the application.

(b) Acceptance of Application. Requires the commissioner to accept any application filed in compliance with this subchapter and to notify the applicant upon acceptance.

(c) Rejection of Application. Authorizes the commissioner to reject any application and requires the commissioner to notify the applicant of the rejection when the application meets certain criteria.

(d) Termination of Application. Provides that a rejected application is terminated.

Sec. 51.177. Application for Determination of Good-Faith Claimant Status. (a) Time of Application. Authorizes any person to apply for good-faith claimant status, either at the time of the filing of an application under Section 51.176 or within 60 days after publication of the notices required under Section 51.179(d).

(b) Contents of Application. Requires the application to include certain information.

(c) Declaration of Status. Requires the commissioner, after expiration of the time for application in Subsection (a), to declare whether any person is a good-faith claimant. Authorizes the commissioner to consider documents filed in support of good-faith claimant status, any other relevant information, and to conduct an investigation under

Section 51.184 as necessary to decide the application. Provides that the declaration of good-faith claimant status is solely within the discretion of the land commissioner and no person is entitled to a declaration of good-faith claimant status. Provides that the declaration of the commissioner under this subsection is not a final order and cannot be appealed, except as provided by Section 51.187.

(d) Effect of Declaration. Provides that the declaration of good-faith claimant status bestows a preferential right to purchase or lease the land in accordance with this subchapter, but does not confer any other rights.

Sec. 51.178 Identification of and notice to necessary parties. (a) Identification. Requires the applicant to identify necessary parties by the name and last known address of any owners or claimants of land or any interest in land or of leases on, adjoining, overlapping, or including the land claimed to be vacant as far as can be determined from the records of the land office and the county clerk's office.

(b) Notice. Requires the applicant to provide each necessary party with the notice of the commissioner's acceptance of the application, a copy of the application and a waiver of notice form within 90 days of receipt of notice of commissioner's acceptance of the application.

(c) Waiver of Notice. Provides that a necessary party is entitled to notices required by this subchapter. Authorizes a necessary party, upon execution of a waiver of right to notice, to decline future notices by informing the applicant and the general land office. Requires the waiver to not affect the rights of the party and to not waive any party's right to notice of a final order under section 51.185.

(d) Publication of Notice. Requires the applicant, within 30 days after mailing of the notices under subsection (c), to publish notice of the commissioner's acceptance of the application in newspapers of general circulation in the county and the general area where the land is located for a period determined by the commissioner. Requires the published notice to contain certain information.

Sec. 51.179. Deposit. (a) Cost Recovery. Authorizes the commissioner to recover state funds expended in the investigations and hearings conducted under this subchapter.

(b) Initial Deposit. Authorizes the commissioner, within 30 days after the publication required by Section 51.178 is complete, to require the applicant to submit a deposit, within 30 days, in an amount sufficient to pay the costs of any survey and investigation required under this subchapter.

(c) Supplemental Deposit. Authorizes the commissioner, if the amount deposited becomes insufficient, to make a written request for a reasonably necessary supplemental deposit, which is required to be tendered within 30 days after the request.

(d) No Appeal. Prohibits an applicant from challenging or appealing the amount of the required deposits and provides that the applicant's refusal or failure to make the required deposits terminates the application.

Sec. 51.180. Disposition of Deposits. (a) Trust Account. Requires the commissioner to deposit all initial and supplemental deposits received under this subchapter to the credit of a separate trust account in the treasury. Requires the comptroller, on the commissioner's order, to make disbursements from that account for purposes authorized by this subchapter.

(b) Accounting. Requires the commissioner, after the proceedings on an application are

concluded and all expenditures authorized under this subchapter are paid, to provide the applicant a complete statement of all deposits and expenditures and to remit to the applicant any balance remaining from the deposit or supplemental deposits made by the applicant.

Sec. 51.181. Commissioner's Survey. (a) Appointment. Authorizes the commissioner to appoint a surveyor, who is required to be a licensed state land surveyor or the county surveyor of the county in which the alleged vacancy or part of the alleged vacancy is located, to investigate the applicant's claim.

(b) Notice of Appointment. Requires the commissioner, at least 30 days prior to initiation of the appointed surveyor's on the ground work, to mail a notice of intention to survey to all necessary parties. Requires the notice to contain certain information.

(c) Fees and Expenses. Requires the fees and expenses paid for by the survey to be the same as provided by law. Requires the commissioner, when the fees and expenses are not provided by law, to contract for fees and expenses reasonably necessary for the scope of the required work.

(d) Reliance on existing surveys and records. Provides that the appointment of a surveyor is not required. Authorizes the commissioner to rely on any survey conducted by a licensed state land surveyor or a county surveyor and any documents or public records required to determine whether a vacancy exists.

Sec. 51.182. Surveyor's report. (a) Report required. Requires the surveyor to file a certain report to the commissioner within a certain date. Authorizes the commissioner to extend the time for filing the report.

(b) Requires the survey report to contain or state certain information.

Sec. 51.183. Completion of Survey. Notice of Completion. Requires the commissioner to serve a true copy of the survey report to certain persons at a certain date.

(b) Exceptions. Authorizes any necessary party to file exceptions to the appointed surveyor's report within 30 days of receipt of the notice of completion. Authorizes the necessary parties, if the commissioner does not appoint a surveyor, to file exceptions to a survey report filed by the applicant during a time established by the commissioner. Requires any exceptions to be filed with the land office and a copy sent to each necessary party.

Sec. 51.184. Investigation. (a) Nature of investigation. Requires the commissioner to conduct an investigation into the applicant's claim that a vacancy exists. Authorizes the commissioner to conduct a hearing. Provides that a hearing under this subchapter is not a contested case hearing and is not subject to the Administrative Procedure Act, Government Code 2001, et seq. Provides that the commissioner is not required to grant any hearings under this subchapter.

(b) Notice of hearing; scope of hearing. Requires the commissioner to determine the scope of any hearings to investigate an application for good-faith claimant status and an application to purchase or lease vacant land. Requires the commissioner, if granting a hearing, to provide timely notice of the time and place of the hearing to necessary parties to afford a necessary party an opportunity to be heard. Authorizes any other procedural rights, including any right to examine or cross-examine witnesses, to be granted in the sole discretion of the commissioner.

(c) Scope of Investigation. Authorizes the commissioner to consult with certain persons.

(d) Investigation Record. Requires the commissioner to record the names of the persons consulted, the documents and surveys reviewed, the relevant law and any other materials used in the investigation.

Sec. 51.185. Commissioner's Final Order. (a) Authorizes the commissioner, under a certain situation, to determine that a vacancy exists. Requires the commissioner to notify all necessary parties by mailing them a copy of the vacancy determination. Provides that the vacancy determination is a final order of the commissioner and may be appealed in accordance with Section 51.186.

(b) Contents of Order. Requires a vacancy determination order to contain certain information.

(c) Description of Vacant Land. Provides that in determining the boundaries and size of a vacancy, the commissioner is not restricted to a description of the land claimed to be vacant that is provided by certain persons. Requires the commissioner to adopt the description of a vacancy that best described the vacancy and is consistent with the investigation under this subchapter.

(d) Denial of Application. Requires the commissioner, under a certain situation, to endorse the file with a certain finding and to notify all necessary persons of the determination. Provides that a certain finding terminates the application and is conclusive with respect to land described in the application.

Sec. 51.186. Appeal. Requires the district court, in the county where the majority of the vacant land is located, to have jurisdiction of an appeal filed within 90 days of the commissioner's final order under Section 51.184.

Sec. 51.187. Scope of Review. Requires the district court to conduct a de novo review of the commissioner's final order determining that a vacancy exists.

Sec. 51.188. Issues reviewable. Authorizes the court to review the commissioner's declaration of good-faith claimant status only in conjunction with review of a final order determining that a vacancy exists.

Sec. 51.189. Standing to Appeal. Authorizes a person who has a present legal interest in the surface or mineral estate at the time of the filing of the application or who acquires such interest prior to the commissioner's final order to appeal the final order.

Sec. 51.190. Preferential Right of Good-Faith Claimant. (a) Requires a good-faith claimant, who has been notified by the commissioner that a vacancy has been found to exist under this subchapter, to have a preferential right to purchase or lease the vacancy. Authorizes the preferential right to purchase or lease to be exercised after the final judicial determination or after the commissioner's final order when the period for filing an appeal has expired. Provides that if the good-faith claimant does not apply for purchase or lease the land within 120 days after the preferential right can be exercised, then the preferential right expires.

(b) Authorizes the good-faith claimant to purchase or lease the vacancy by submitting a written application to the board.

(c) Provides that the good-faith claimant is entitled to purchase or lease the portion of the land that is vacant at the price set by the board and subject to the royalty reservations provided by the board and in accordance with the law effective on the date the application is filed.

Sec. 51.191. Purchase or Lease by the Applicant. (a) Requires the applicant, under a certain situation, to have a preferential right for 30 days thereafter to purchase or lease the land determined to be vacant.

(b) Requires the board to award an applicant, other than a good-faith claimant, a perpetual nonparticipating royalty of not less than a certain portion of the value of oil, gas and sulphur and one percent of the value of all geothermal and other minerals produced.

SECTION 2. Effective date: upon passage or September 1, 2001.