

BILL ANALYSIS

Senate Research Center
77R12252 PAM-F

C.S.S.B. 1806
By: Lucio
Natural Resources
4/23/2001
Committee Report (Substituted)

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. C.S.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:

Subchapter E. Sale and Lease of Vacancies.

Sec. 51.171. PURPOSE; APPLICATION OF OTHER LAW. Sets forth the purpose of this subchapter.

Sec. 51.172. DEFINITIONS. Defines “applicant,” “good-faith claimant,” “interested person,” “necessary party,” and “vacancy.”

Sec. 51.173. 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) 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. 51.174. GENERAL POWERS AND DUTIES OF COMMISSIONER. (a) Authorizes the commissioner of the general land office (commissioner) to perform certain procedures.

(b) Requires the commissioner to adopt rules necessary and convenient to the administration of this subchapter.

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

Sec. 51.175. GENERAL POWERS AND DUTIES OF BOARD. (a) Requires the board to set the terms and conditions for each sale and lease of a vacancy.

(b) Requires the board to adopt rules governing terms and conditions for the sale and lease of a vacancy. Requires the rules to be adopted and amended as necessary to be

consistent with property law of this state and other applicable law.

(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 the provisions prescribed by this subchapter.

Sec. 51.176. APPLICATION. (a) Requires a person, to purchase or lease land claimed to be vacant, to file an application 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, as applicable, 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 from the deed or real property records. Provides that the failure to record an application as provided by this subsection does not affect the validity of the application filing.

(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 30th day after the date the application is filed with the county surveyor or clerk. Authorizes the application, if the 30th day after the date of filing falls on a certain day, to be filed on the next regular business day following the 30th day. Requires the applicant to include a filing fee set by the commissioner in an amount of not less than \$100.

Sec. 51.177. PROCESSING APPLICATION. (a) Requires the commissioner to mark the date of filing on the application and assign a file number to the application.

(b) Requires the commissioner to accept an application filed in compliance with this subchapter and to notify the applicant on acceptance of the application.

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

(d) Provides that a rejected application is terminated. Provides that no further action is taken on the application, and the land office file is closed.

Sec. 51.178. APPLICATION FOR AND DETERMINATION OF GOOD-FAITH CLAIMANT STATUS. (a) Authorizes a person to apply for good-faith claimant status under certain conditions.

(b) Requires the application to include certain information.

(c) Requires the commissioner, after expiration of the period prescribed by Subsection (a)(2), to declare whether a person is a good-faith claimant. Authorizes the commissioner to consider documents filed in support of the person's good-faith claimant status and any other relevant information. Authorizes the commissioner to

conduct an investigation under Section 51.185 as necessary to make a determination on the application. Provides that the commissioner has sole discretion to declare a person a good-faith claimant, and a person is not otherwise entitled to a declaration of good-faith-claimant status. Provides that a declaration of the commissioner under this subsection is not a final order and is prohibited from being appealed, except as provided by Section 51.187.

(d) Provides that a declaration of good-faith claimant status grants a preferential right to the claimant to purchase or lease the land as provided by this subchapter. Provides that the declaration does not confer any other rights.

Sec. 51.179. IDENTIFICATION OF AND NOTICE TO NECESSARY PARTIES. (a)

Requires the applicant to identify each necessary party by the name and last known address of each owner or claimant of land or any interest in land or of a lease on, adjoining, overlapping, or including the land claimed to be vacant as can be determined from the records of the land office and the county clerk's office.

(b) Requires the applicant to provide each necessary party with the notice of the commissioner's acceptance of the application and a continuance for future notices form not later than the 90th day after the date the applicant receives the notice of the commissioner's acceptance of the application.

(c) Provides that except as provided by this subsection, a necessary party is not entitled to subsequent notices required by this subchapter unless the party requests subsequent notices. Requires the commissioner to notify a necessary party of a final order issued under Section 51.186.

(d) Requires the applicant, not later than the 30th day after the date the notices under Subsection (b), to publish the notice of the commissioner's acceptance of the application in each newspaper of general circulation in the county and the general area in which the land is located for a period determined by the commissioner. Requires the published notice to contain certain information.

Sec. 51.180. DEPOSIT. (a) Authorizes the commissioner to recover state funds expended in the investigations and hearings conducted under this subchapter.

(b) Authorizes the commissioner, not later than the 30th day after the date the notice is published as required by Section 51.179, to require the applicant to submit a deposit. Requires the applicant, if required, to make a deposit in a certain amount at a certain period.

(c) Authorizes the commissioner, if the amount deposited is insufficient, to make a written request for a reasonably necessary supplemental deposit. Requires the applicant, if a supplemental deposit is required, to make the deposit not later than the 30th day after the date the commissioner requests the deposit.

(d) Authorizes the commissioner and applicant to agree to alternative payment methods to recover state funds expended in the investigation and hearings conducted under this subchapter.

(e) 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. 51.181. DISPOSITION OF DEPOSITS. (a) Requires the commissioner to deposit all

initial and supplemental deposits received under this subchapter to the credit of a separate trust account in the state treasury. Requires the comptroller, on the commissioner's order, to make disbursements from that account for purposes authorized by this subchapter.

(b) 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. 51.182. COMMISSIONER'S SURVEY. (a) Authorizes the commissioner to appoint a licensed state land surveyor, or the county surveyor of the county in which the land claimed to be vacant or part of that land is located, to investigate the applicant's claim. Authorizes the commissioner to limit the scope of the work performed by the surveyor.

(b) Requires the commissioner to mail a notice of intention to survey to each necessary party not later than the 30th day before the date the surveyor begins work. Requires the notice to contain certain information.

(c) Provides that the fees and expenses paid for by the survey are the same as those provided by law. Requires the commissioner, if the fees and expenses are not provided by law, to contract for fees and expenses reasonably necessary for the scope of the required work. Requires contracts under this subsection to meet certain criteria.

(d) Provides that the appointment of a surveyor is not required. Authorizes the commissioner to rely on certain information.

Sec. 51.183. SURVEYOR'S REPORT. (a) Requires the surveyor, not later than the 120th day after the date a surveyor is appointed under Section 51.182, to file a certain report to the commissioner. Authorizes the commissioner to extend the time for filing the report.

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

Sec. 51.184. COMPLETION OF SURVEY. (a) Requires the commissioner to serve a true copy of the survey report to certain persons at a certain date.

(b) Authorizes any necessary party to file exceptions to the surveyor's report not later than the 30th day after the date the notice of completion is received. Authorizes a necessary party, if the commissioner does not appoint a surveyor, to file exceptions to a survey report filed by the applicant during a period established by the commissioner. Requires any exceptions to be filed with the land office and a copy sent to each necessary party.

Sec. 51.185. INVESTIGATION. (a) Requires the commissioner to conduct an investigation of 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 Chapter 2001, Government Code. Provides that the commissioner is not required to grant any hearings under this subchapter.

(b) 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) Authorizes the commissioner to consult with certain persons.

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

Sec. 51.186. COMMISSIONER'S FINAL ORDER. (a) Authorizes the commissioner, under a certain situation, to determine that a vacancy exists. Requires the commissioner to notify each necessary party by mailing each a copy of the vacancy determination. Provides that the vacancy determination is a final order of the commissioner and may be appealed as provided by Section 51.187.

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

(c) 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 describes the vacancy and is consistent with the investigation under this subchapter.

(d) Requires the commissioner, under a certain situation, to endorse the file with a certain finding and to notify each necessary party of the determination. Provides that a certain finding is conclusive with respect to land described in the application. Provides that a certain finding under this subsection is a final order of the commissioner and may be appealed as provided by Section 51.187.

Sec. 51.187. APPEAL. (a) Provides that the district court in the county in which a majority of the vacant land is located has jurisdiction of an appeal under this subsection. Requires a person to file an appeal not later than the 90th day after the date the commissioner's final order is issued under Section 51.186.

(b) Authorizes the district court to allow an interested person who did not receive notice of a proceeding under this subchapter to file an appeal after the expiration of the 90-day period prescribed by Subsection (a).

(c) Authorizes the applicant, under a certain situation, to file an action in district court to determine whether a vacancy exists. Provides that the filing of an action under this subsection terminates the application with the land office.

Sec. 51.188. 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. 51.189. ISSUES REVIEWABLE. Authorizes the court to review the commissioner's declaration of good-faith claimant status only in conjunction with a review of a final order determining that a vacancy exists.

Sec. 51.190. STANDING TO APPEAL. Authorizes a person who has a present legal interest in the surface or mineral estate at the time an application is filed of the filing or who acquires an interest before the date of the commissioner's final order to appeal the final order.

Sec. 51.191. PREFERENTIAL RIGHT OF GOOD-FAITH CLAIMANT. (a) Provides that a good-faith claimant who has been notified by the commissioner that a vacancy exists under this subchapter has a preferential right to purchase or lease the vacancy. Authorizes the preferential right to be exercised after a final judicial determination or after the commissioner's final order and the period for filing an appeal has expired. Provides that if the good-faith

claimant does not apply for purchase or lease the land before the 121st day 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 under certain conditions.

Sec. 51.192. PURCHASE OR LEASE BY APPLICANT. (a) Provides that if no good-faith claimant exists or if no good-faith claimant exercises a preferential right within the applicable period, the applicant has a preferential right to purchase or lease the land determined to be vacant for 30 days after certain periods.

(b) Requires the board to award an applicant, other than a good-faith claimant, a perpetual nonparticipating royalty of not less than a certain amount.

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

SUMMARY OF COMMITTEE CHANGES

SECTION 1. Differs from the As Filed S.B. 1806 by amending proposed Chapter 51E, Natural Resources Code (SALE AND LEASE OF VACANCIES).