

BILL ANALYSIS

Senate Research Center

H.B. 3461
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Natural Resources
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The School Land Board (SLB) is responsible for overseeing the management of public lands, minerals, and other real estate assets dedicated to the Permanent School Fund. Chapters 32 (School Land Board) and 51 (Land, Timber, and Surface Resources), Natural Resources Code, provide the statutory basis for the authority of the School Land Board. The commissioner of the General Land Office (commissioner) is responsible for the administration of public lands under Chapter 51, Natural Resources Code. Subchapter C (Sale of Public School and Asylum Land), Chapter 51, relates to the procedures for the sale of public land. Subchapter E (Sale and Lease of Vacancies), Chapter 51, relates to the procedures for the determination of unsurveyed public land by the commissioner and the preference right of certain parties.

The SLB and General Land Office authorities have been changed in recent sessions and real estate practices have advanced, but there are many outdated practices still in statute.

Vacancy statutes in Chapter 51 were updated significantly in the 79th Legislature. The General Land Office (GLO) has been implementing these new statutes and has found there are small changes that would improve the current process.

This bill would update outdated real estate and accounting practices and allow GLO to conduct land sales in a consistent, modern manner. It would also improve administrative efficiency when processing a vacancy application.

H.B. 3461 relates to the powers and duties of SLB and the commissioner of GLO.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the commissioner of the General Land Office is modified in SECTION 13 (Section 51.014, Natural Resources Code) of this bill.

Rulemaking authority previously granted to the School Land Board is rescinded in SECTION 18 (Section 51.070, Natural Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 32.001(4), Natural Resources Code, to redefine "land."

SECTION 2. Amends Subchapter A, Chapter 32, Natural Resources Code, by adding Section 32.003, as follows:

Sec. 32.003. APPLICATION OF SUNSET ACT. Provides that the School Land Board (SLB) is subject to Chapter 325, Government Code (Texas Sunset Act). Provides that unless continued in existence as provided by that chapter, SLB is abolished September 1, 2017.

SECTION 3. Amends Section 32.016(a), Natural Resources Code, to require SLB to meet on the first and third Tuesdays of each month at a time and location to be designated by SLB, rather than in the General Land Office (GLO).

SECTION 4. Amends Section 32.061, Natural Resources Code, as follows:

Sec. 32.061. BOARD'S GENERAL DUTIES. Requires SLB, except as provided by Subchapter G, Chapter 51, of this code, to set the dates to open received bids for the sale of land, rather than for the sale of surveyed land dedicated to the permanent school fund, for the lease of land for prospecting or exploring for, mining, producing, storing, caring for, transporting, preserving, selling, or disposing of oil, gas, or other minerals leased under this chapter, and for the commitment of land to a contract for development; and determining the prices and set the terms and conditions under, rather than the contract for, which land is required to be sold, leased, or committed to a contract for development.

SECTION 5. Amends Section 32.102, Natural Resources Code, to require the commissioner of GLO (commissioner), from time to time as requested by SLB, to furnish SLB a list of land areas subject to the provisions of this chapter.

SECTION 6. Amends Section 32.105, Natural Resources Code, to require that the date for opening bids for the sale, lease, or commitment to a contract for development of land be the first or third Thursday of a month, rather than the month, in which SLB meets, or any date on which SLB has a special meeting.

SECTION 7. Amends Sections 32.107(a)-(c), Natural Resources Code, as follows:

(a) Requires SLB to publish notice that SLB will receive bids for the sale, lease, or commitment to a contract for development of land in at least three issues of at least four daily newspapers or other publications, two of which may be Internet-based journals, trade publications, newsletters, or similar news media, that are, in the opinion of the commissioner, likely to reach the public interested in responding to the notice of sale, lease, or commitment to a contract for development.

(b) Requires that the notice be published at least 30 days before the date the bids are due, rather than advertised to be opened.

(c) Requires that the notice state that the land is to be offered for sale, lease, or commitment to a contract for development on a certain date and at a certain time and the method of the sale, lease, or commitment to a contract for development and is required to give notice of how, rather than that, a person is authorized to obtain additional information concerning, rather than publications from the land office that describe, the land offered for sale, lease, or commitment to a contract for development.

SECTION 8. Amends Sections 32.110(a) and (c), Natural Resources Code, as follows:

(a) Provides that on land sales and mineral leases made by SLB, the purchaser or bidder is required to pay by separate check an amount equal to one and one-half percent of the bid or sale amount payable to the commissioner as a special fee. Authorizes SLB to waive the special fee on land sales to any state agency, board, commission, political subdivision, or other governmental entity.

(c) Requires that failure to pay the special fee not void a bid, but requires the commissioner to demand payment of the fee before accepting the bid and completing the transaction, rather than a lease is issued to the best bidder. Deletes existing text providing that if the best bidder fails or refuses to make the payment within 30 days after demand by the commissioner, the bidder is not entitled to a sale of or a lease on the tract covered by that bid and the cash bonus is required to be automatically forfeited to be deposited by the commissioner in the State Treasury to the credit of the permanent school fund or the appropriate special mineral fund. Deletes existing text authorizing SLB, at its option, to offer the tract for sale or lease to the next best bidder under the same terms as submitted by and as would have been granted to the best bidder.

SECTION 9. Amends Section 32.253, Natural Resources Code, to authorize land dedicated to or acquired for the use and benefit of the permanent school fund to be traded to acquire land for the use and benefit of the permanent school fund as determined by SLB to be in the best interest of the fund. Makes a nonsubstantive change.

SECTION 10. Amends Section 51.001, Natural Resources Code, by amending Subdivision (8) and adding Subdivision (12), to redefine "surveyed land" and to define "sovereign land."

SECTION 11. Amends the heading to Section 51.013, Natural Resources Code, to read as follows:

Sec. 51.013. CLASSIFICATION OF LAND.

SECTION 12. Amends Section 51.013(b), Natural Resources Code, to provide that after the classification, rather than after the classification and determination of market value, is entered on the records of the land office, no further action needs to be taken by the commissioner and no notice is required to be given to the county clerk for the classification, rather than for the classification and determination of market value, to be effective.

SECTION 13. Amends Section 51.014, Natural Resources Code, as follows:

Sec. 51.014. RULES. Deletes existing Subsection (a) designation. Authorizes the commissioner to adopt rules necessary to carry out the provisions of this chapter and alter or amend the rules to protect the public interest. Deletes existing subsection (b), requiring the commissioner, before rules are adopted under Subsection (a) of this section, to submit the rules to the governor for his approval.

SECTION 14. Amends Sections 51.052(e)-(g), (i), and (k), Natural Resources Code, as follows:

(e) Requires the owner of land that surrounds a tract, rather than surrounds land in a tract, of land approved for sale by SLB to have a preference right to purchase the tract before the land is made available for sale to any other person, provided the person having the preference right pays not less than the market value for the land as determined by SLB and SLB finds use of the preference to be in the best interest of the state.

(f) Requires the owners of the land with a common boundary with a tract of land approved or sale by SLB, rather than 1,200 acres or less that is for sale, if the surrounding land is owned by more than one person, to have a preference right to purchase the tract before it is made available to any other person, provided the person with the preference right pays not less than the market value of the land as determined by SLB and SLB finds use of the preference to be in the best interest of the state.

(g) Provides that if land is located within the boundaries of or adjacent to any state park, refuge, natural area, or historical site subject to the management and control of the Texas Parks and Wildlife Department (TPWD), TPWD has a preference right to purchase the land before it is made available to any other person, rather than made available for sale to any other person.

(i) Deletes existing text authorizing the asset management division of GLO to contract for the services of a real estate broker or of a private brokerage or real estate firm to assist in a transaction under this subsection.

(k) Authorizes the asset management division of GLO to contract for the services of a real estate broker or of a private brokerage or real estate firm to assist in any sale, lease, or exchange of land under this subchapter. Deletes existing text authorizing the asset management district, if an award of a bid under this section does not result in a final transaction, to contract for the services of a real estate broker or of a private brokerage or a real estate firm to assist in the real estate transaction.

SECTION 15. Amends Section 51.056, Natural Resources Code, as follows:

Sec. 51.056. New heading: APPLICATION OR REQUEST TO PURCHASE LAND. Deletes existing Subsection (a) designation. Requires a person who wants to purchase public school land to submit to the commissioner a written application or request in a form designated by the commissioner, rather than a separate written application for each tract. Deletes existing Subsection (b) requiring each application to designate the land to

be purchased, state the bid offered, include an affidavit disclosing the names of all persons or entities either directly or indirectly interested in the purchase of the land. Deletes existing Subsection (c) providing that the sale of the land is effective from the date of the receipt and filing of the application, affidavit, obligation, and the payment of the initial portion of the price offered. Deletes existing Subsection (d) requiring the application to purchase and the notice of award to state that the land is sold without condition of settlement and with a reservation of minerals, as determined by SLB.

SECTION 16. Amends Section 51.066, Natural Resources Code, as follows:

Sec. 51.066. New heading: LAND AWARD. (a) Requires the commissioner to prepare and issue a land award, rather than a notice of award, for each tract of sovereign land sold.

(b) Requires that each land award, rather than each notice of award, be appropriately numbered and worded in a manner that will constitute a receipt for the first or full payment after it is signed by the commissioner.

(c) Requires that one copy of the land award, rather than notice of award, be retained in the land office and the other copy to be sent to the purchaser.

SECTION 17. Amends the heading to Section 581.070, Natural Resources Code, to read as follows:

Sec. 51.070. UNPAID PRINCIPAL ON PUBLIC SCHOOL LAND SALES.

SECTION 18. Amends Sections 51.070(a) and (b), Natural Resources Code, as follows:

(a) Requires that unpaid and delinquent principal on sales, rather than delinquent principal and interest on sales, of public school land to bear interest at a rate set by SLB, which principal and interest is required to be payable at the times and on such terms as are established by SLB, rather than by rule or by contract.

(b) Provides that no patent may be issued for any public school land until all principal, accrued interest, late charges, and other fees and expenses are paid in full, rather than all unpaid principal and compounded interest is paid to the time of issuing the patent.

SECTION 19. Amends Section 51.071, Natural Resources Code, as follows:

Sec. 51.071. FORFEITURE OF LAND. (a) Provides that if principal, accrued interest, rather than principal and interest, late charges, and other fees and expenses on a sale of sovereign land are, rather than is, not paid when due as required by the terms set by SLB, to the land is subject to forfeiture by the commissioner by entry on the file, rather than wrapper, containing the papers "Land Forfeited" or similar words, the date of the forfeiture, and the official signature of the commissioner.

(b) Provides that after the entry is made on the file, rather than wrapper, the land and all payments that have been made for it are forfeited to the state, and the land is authorized to be resold in accordance with the provisions of this subchapter, rather than offered for sale on a subsequent sale date.

SECTION 20. Amends Section 51.073, Natural Resources Code, as follows:

Sec. 51.073. CLASSIFICATION AND SALE OF LEASED AND FORFEITED LAND. Deletes existing Subsection (a) designation. Makes no further changes to this subsection. Deletes existing Subsection (b) providing that except as provided in Section 51.064 of this code, no land is authorized to be sold until it is advertised.

SECTION 21. Amends Section 51.086(a), Natural Resources Code, to require that all sales of escheated land that is a part of the permanent school fund be made at a price that is prohibited from being less than the minimum price set by the court under Section 71.107 (Judgment for

State), Property Code, and in the same manner as the sale of public school land as provided by this chapter, rather than be made to the highest bidder at a price that is prohibited from being less than the greater of \$2.50 an acre or the minimum price set by the court under Section 71.107, Property Code.

SECTION 22. Amends Sections 51.172(4) and (7), Natural Resources Code, to redefine "necessary party" and "vacancy application."

SECTION 23. Amends Section 51.177(a), Natural Resources Code, to require the commissioner, not later than the 45th day after the date the commissioner accepts the duplicate copies, rather than applicant files, as properly filed by the applicant, rather than with the commissioner, as provided by Section 51.176(f) (relating to the requirement that the applicant submit to the commissioner duplicate copies of the vacancy application), to determine whether the vacancy application is administratively complete, and provide to the applicant the notice required by this section.

SECTION 24. Amends Section 51.180, Natural Resources Code, as follows:

Sec. 51.180. ATTORNEY AD LITEM. (a) Requires the commissioner, if the applicant cannot provide evidence, rather than is required to provide evidence, to the commissioner to establish the applicant's ownership of all interests as defined by Section 51.172 in the land surrounding the land claimed to be vacant, to investigate the ownership interests of the land claimed to be vacant and the surrounding land to ensure that all necessary parties have been identified and located. Makes a nonsubstantive change.

(b) Requires that the investigation conclude not later than the 60th day after the application commencement date. Requires the commissioner, if the investigation yields any evidence, rather than the applicant fails to provide sufficient evidence, that a necessary party may not have been identified and located, as determined by the commissioner, to, not later than the 30th day after the conclusion of the investigation, rather than application commencement date, to appoint an attorney ad litem to identify and locate all necessary parties, rather than identify all necessary parties and represent the interests of any necessary party that has not been located.

(c) Requires the commissioner to provide the attorney ad litem with all documents submitted by the applicant and the results of the investigation to identify necessary parties, and the attorney ad litem is required to search public land records and other available records to identify and locate necessary parties.

(d) Requires the attorney ad litem, if any necessary party cannot be located, to represent the interests of that necessary party.

SECTION 25. Amends Sections 51.181(a) and (b), Natural Resources Code, as follows:

(a) Requires the commissioner, not later than the 30th day after the application commencement date, and at any time after that date that the commissioner considers it necessary to notify an identified necessary party, to provide to each necessary party identified and located as of that date a written notice containing certain information.

(b) Requires the attorney ad litem, if the attorney ad litem is unable to locate an identified necessary party, rather than identify each necessary party, to notify the commissioner in writing, and the commissioner, rather than applicant, is required to provide notice required under this section by publication in the same manner prescribed by the Texas Rules of Civil Procedure.

SECTION 26. Amends Section 51.187(a), Natural Resources Code, to require the commissioner, if the commissioner has not issued a final order with a finding of "Not Vacant Land" on or before the first anniversary of the application commencement date and one or more exceptions have been filed under Section 51.182(a) or 51.186(b), to order a hearing to determine if a vacancy exists.

SECTION 27. Amends Section 51.188(a), Natural Resources Code, to authorize the commissioner, at any time during or after an investigation of or hearing regarding a vacancy application, to determine that land claimed to be vacant is not vacant and issue a final order with a finding of "Not Vacant Land" or an order finding a vacancy if a hearing is not required under Section 51.187. Makes a nonsubstantive change.

SECTION 28. Amends Section 51.194, Natural Resource Code, by amending Subsection (a) and adding Subsections (a-1) and (a-2), as follows:

(a) Makes no further changes to this subsection.

(a-1) Creates this subsection from existing text. Makes no further changes to this subsection.

(a-2) Provides that if a good-faith claimant does not close a transaction to purchase or lease the interest before the 121st day after the date the terms and conditions are determined by SLB, then the good-faith claimant's preferential right expires.

SECTION 29. Repealers: (1) Section 32.103 (Appraised Value of Land), Natural Resources Code;

(2) Section 51.052(a) (relating to the requirement that land sold under the provisions of Subchapter C (Sale of Public School and Asylum Land) be sold without condition of settlement and residence), Natural Resources Code;

(3) Section 51.057 (Delivery of Applications), Natural Resources Code;

(4) Section 51.058 (Method for Making First Payment), Natural Resources Code;

(5) Section 51.059 (Opening Applications), Natural Resources Code;

(6) Section 51.060 (Recordation of First Payments), Natural Resources Code;

(7) Section 51.061 (Collection of Remittances), Natural Resources Code;

(8) Section 51.062 (Disposition of First Payments), Natural Resources Code;

(9) Section 51.063 (Duplicate High Bids), Natural Resources Code;

(10) Section 51.064 (Individual Bids), Natural Resources Code;

(11) Section 51.068 (Fund Accounts), Natural Resources Code;

(12) Section 51.084 (Sale Without Condition of Residence), Natural Resources Code;
and

(13) Section 51.086(b) (relating to the requirement that the initial payment on a contract for sale of escheated permanent school land be in cash and not less than one-tenth of the purchase price, and that the purchaser is required to pay the balance of the purchase price in nine equal installments and pay interest on the deferred amount at the rate set by SLB), Natural Resources Code.

SECTION 30. Effective date: upon passage or September 1, 2009.