

BILL ANALYSIS

C.S.H.B. 2203
By: Hughes
Energy Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

A vacancy is a tract of unsold, unsurveyed public domain, dedicated to the permanent school fund. The vacancy issue arises when surveys conducted in the present raise questions regarding the correct location of the survey lines called for in the original patents issued by the state. The surveys of the original patents were supposed to adjoin each other; however, this was not always the situation and when the surveys do not actually adjoin, the result is a gap between surveys known as a "vacancy". These gaps represent areas that have never been included in surveyed land and thus never severed from state ownership. These lands, having never been conveyed from the state, remain part of the public domain dedicated to the permanent school fund. It is these gaps, if proven to exist, which constitute the vacant land.

Subchapter E, Chapter 51 Texas Natural Resource Code provides the statutory framework for the Commissioner of the General Land Office (GLO) and staff to determine the existence of a vacancy; however such determination is initiated only upon receipt of an application to lease or purchase the potential vacancy. This statutory authority has existed since the early 1900's. The statute has been significantly amended in 1939, 1993 and 2001.

The primary objective of this legislation is to ensure that the GLO can more efficiently and effectively processes all vacancy applications. The majority of the vacancy applications submitted to the GLO involve gaps between adjacent surveys, usually areas within property otherwise wholly owned by the applicant, and affect no more than five or six people. Vacancy applications involving either large acreage or numerous interest owners are extremely rare. The proposed vacancy statute attempts to balance the interests of the property owners in the majority of applications with those few applications that involve large tracts of land and interest owners while maintaining an efficient and just process which allows for the recovery permanent school fund of land and minerals.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Commissioner of the General Land Office and the School Land Board in SECTION 1 of this bill.

ANALYSIS

SECTION 1

Sec. 51.171--Purpose; Application of Other Law: Applies the Administrative Procedures Act to vacancy application proceedings.

Sec. 51.172--Definitions: Defines "Administratively Complete" as an application that meets all requirements under the Chapter and any rule adopted by the Commissioner. "Applicant" is any person, including a good-faith claimant, who files a vacancy application. Application commencement is the date designated in the commissioner's notice to the applicant and is generally the date on which the Land Office begins processing the vacancy application. A "Good-faith claimant" is defined as any person who occupies the land or any interest in the land for any purpose including the surface or mineral estate for any purpose, an easement or right-of-way, or a royalty or leasehold interest. An "interest" is defined as any right or title in or to real property, including a surface, subsurface, or mineral estate and a mineral royalty, nonparticipating royalty, or overriding royalty interest. A "Necessary Party" is a person who asserts a right to or who claims an interest in a land claimed to be vacant, and/or in land

adjoining land claimed to be vacant, a person whose name appears in the records, or an attorney ad litem appointed under this Chapter. "Vacancy" includes an area that was not, on the application commencement date, subject to a vacancy application denied with prejudice or subject to a previous vacancy application adjudicated by the commissioner or a court. "Vacancy Application" means a form submitted to the commissioner by an applicant to initiate a determination by the commissioner, purchase vacant land, or lease vacant land. Defines "survey report."

Sec. 51.174--General Powers and Duties of Commissioner: The commissioner may enter into a contract with a private party to provide the notices required by this Chapter. The commissioner may, at any time, terminate without prejudice a vacancy application if an applicant fails to comply with state law or a rule adopted under this Chapter. The commissioner may grant a time extension, not to exceed 30 days, to comply any one or more requirements under this Chapter, and may extend for 90 days a deadline related to completion of a survey report.

Sec. 51.176--Vacancy Application; Filing: A completed application to purchase or lease vacant land must include: (1) a description of the land sufficient for locating the land on the ground; (2) a written statement on whether the applicant wishes to purchase and/or lease land or minerals, or both; (3) a list, in a prescribed format by the commissioner, containing the name and last known mailing address of each necessary party; (4) an affidavit affirming a diligent search of the records listed in this Chapter; (5) a statement of good-faith-claimant status; and (6) at the applicant's discretion, either a survey report prepared by either a licensed state land surveyor or a county surveyor or an abstract of title to any land that adjoins the land claimed to be vacant. The applicant must file the original and a duplicate copy of the vacancy with the county clerk of each county in which all, or part of the land is located. The applicant must file a duplicate copy of the marked copy received from the county clerk with the county surveyor of each county no later than the fifth day after the date an applicant files the vacancy. Two duplicate copies of the marked copy that has been file-stamped by the county clerk must be submitted where the commissioner will mark the date on them. The commissioner shall charge a filing fee of at least \$100 for each vacancy application.

Sec. 51.177--Processing Vacancy Application: Within 45 days after the applicant files the application with the commissioner, the commissioner shall provide notice to the applicant stating whether the application is administratively complete or not. If the application is complete, the commissioner is required to provide a written notice to the applicant that states the application is complete and gives a commencement date and the amount of any deposit required by the applicant. If the commissioner determines that it is not complete, a notice shall be given that informs the applicant that it is incomplete and provides a list of any deficiencies the applicant must resolve, and states a reasonable period of not more than 30 days from the date of the notice to resolve any listed deficiencies. After this period, if the commissioner determines that the vacancy application is complete, the commissioner shall provide a notice required by the previous subsection. If the application is still not complete, the commissioner shall dismiss the application without prejudice and provide a written notice to the applicant informing the applicant that the application is not complete and is dismissed without prejudice. An application that is dismissed without prejudice may be re-filed.

Sec. 51.178--Deposit: The commissioner shall require the applicant to submit a deposit in an amount sufficient to pay reasonable costs incurred by the state. If the amount deposited is insufficient, the commissioner shall require a reasonable supplemental deposit.

Sec. 51.179 --Disposition of Deposits: The commissioner shall deposit any deposits to the credit of a separate trust in the state treasury. After proceedings on a vacancy application are concluded, the commissioner shall provide to the applicant a complete statement of all deposits and expenditures and shall remit to the applicant any balance remaining from the deposits made by the applicant.

Sec. 51.180--Attorney Ad Litem: If the applicant cannot provide evidence to the commissioner that the applicant owns all interest in the land surrounding the land claimed to be vacant, the commissioner shall appoint an attorney ad litem to identify all necessary parties and represent the interests of any necessary party that has not been located.

Sec. 51.181--Notice to Necessary Parties: Not later than the 30th day after the application commencement date, the commissioner shall provide a written notice that: (1) informs the necessary party that a vacancy application has been filed; (2) states the application commencement date; and (3) includes a copy of the vacancy application, any attachments, and a form for requesting subsequent notices regarding the application. A necessary party is not entitled to notices subsequent to the notice provided under the previous subsection unless the party requests subsequent notices. The commissioner is required to notify each party of a final order.

Sec. 51.182--Filing of Exceptions to Application: A necessary party may file an exception to the vacancy application, any documentation, or any other documents or public records that may be used by the commissioner to make a determination by the 60th day after a notice has been given. A necessary party must file an exception with the land office and provide a copy of the filing to each necessary party.

Sec. 51.183--Investigation: The commissioner shall conduct an investigation of the vacancy application. The investigation shall include: (1) an evaluation of the application; (2) a determination that the application was filed in accordance with all applicable statutes and rules; and (3) a review of the public records at the land office. The investigation may include: (1) any survey conducted by a licensed state land surveyor or the county surveyor in the county in which all or part of the land claimed to be vacant is located; (2) any documents or public records necessary to determine whether a vacancy exists, including records in the state archives or records in any county in which all or part of the land claimed to be vacant is located. The commissioner may commission a survey or a surveyor's report.

Sec. 51.184--Commissioner's Survey: If the commissioner requires a survey, the commissioner shall appoint a licensed state land surveyor who is not associated with the vacancy application to prepare a report. The commissioner shall mail a notice that must contain a statement informing the necessary party that any necessary party may observe the field work of the surveyor conducting the survey. A necessary party may observe a survey conducted under this section, but the survey will not be delayed to accommodate a necessary party. The commissioner must adopt rules that permit the commissioner to remove an appointed surveyor on the grounds of bias, prejudice, or conflict. The fees and expenses paid for the survey are the same as those provided by law.

Sec. 51.185--Surveyor's Report: Not later than the 120th day after the surveyor is appointed, the surveyor shall file a written report of the survey with the commissioner that contains all information required by the commissioner. The survey report must contain the name and last known mailing address of parties involved and all abstract numbers associated with surveys of land adjoining the land claimed to be vacant.

Sec. 51.186--Completion of Survey: The commissioner shall provide a copy of the survey report filed by the surveyor to each necessary party by certified mail, return receipt requested not later than the 30th business day after the date the report is filed with the Land Office. A necessary party may file exceptions to the surveyor's report not later than 30 days after the copy of the surveyor's report is mailed. Any exceptions must be filed with the Land Office and the necessary party must send a copy to each necessary party that has requested subsequent notices.

Sec. 51.187--Hearing: 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, the commissioner shall order a hearing to determine if a vacancy exists. A hearing under this subchapter shall be held by the 60th day after the hearing is ordered, shall be conducted as a contested case hearing, and may be waived by written agreement of all necessary parties and the commissioner. The commissioner is required to provide notice of the hearing date to each necessary party. The commissioner shall enter a final order not later than 60 days after the hearing.

Sec. 51.188--Commissioner's Final Order: At any time during or after an investigation of or hearing regarding a vacancy application, the commissioner may determine that a land claimed to be vacant is not vacant and issue a final order with a finding of "Not Vacant Land." A final

order finding a vacancy exists must contain a finding by the commissioner that the land claimed to be vacant is unsurveyed public school land that is not in conflict with land previously titled, awarded, or sold by the state as established by clear and convincing proof or a preponderance of the evidence for an application to which no exceptions have been filed. The commissioner shall attach to his final order a document entitled "Notice of Claim of Vacancy" where the commissioner shall prescribe the contents of the notice and file it with the county clerk.

Sec. 51.189--Appeal: A final order with a finding of "Not Vacant Land" may not be appealed. An order finding that a vacancy exists is subject to appeal by a necessary party not later than 30 days after the date the final order is issued. All necessary parties must be provided notice of an appeal under this section by the party filing the appeal. A person whose predecessor in title was bound by the outcome of an appeal is bound to the same extent the predecessor in title would be bound if the predecessor in title continued to hold title. If the commissioner does not issue a final order on or before the first anniversary of the application commencement date, the applicant may file an action in district court to determine whether a vacancy exists. The filing of an action under this subsection terminates the application with the land office.

Sec. 51.190--Scope of Review: In an appeal of the commissioner's final order that a vacancy does exist, the district court shall conduct a trial de novo.

Sec. 51.191--Issues Reviewable: The court may 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. 51.192--Standing to Appeal: A person may appeal a final order determining that a vacancy exists if the person is: (1) a necessary party; (2) has a present legal interest in the surface or mineral estate at the time a vacancy application is filed; or (3) acquires a legal interest before the date of the commissioner's final order.

Sec. 51.193--Application for and Determination of Good-Faith Claimant Status: A necessary party may apply for this status by the 60th day after a final order of the vacancy. The application must include certified copies of the applicable county records supporting the good-faith claimant's status. The commissioner shall declare whether a necessary party is a good-faith claimant. A person who is denied good-faith-claimant status may request a hearing by the commissioner or appeal the denial as part of any appeal of a final order finding that a vacancy exists. If the commissioner grants a hearing, the commissioner shall determine the scope of the hearing, provide timely notice of the time and place of the hearing to each necessary party, and provide each necessary party an opportunity to be heard. A declaration of good-faith-claimant status grants a preferential right to the claimant to purchase or lease the land or an interest in the land. The declaration does not confer any other rights.

Sec. 51.194--Preferential Right of Good Faith Claimant: A good-faith claimant that owns each separate surface interest, a contractual right to a mineral or leasehold interest, a leasehold interest, or a royalty interest in the land occupied or used that is found to be part of or to include a vacancy is entitled to purchase or lease that same interest in the portion of the land determined to be vacant for the duration of the contract or lease and subject to a division of the existing royalty between the state and the existing royalty owners.

Sec. 51.195--Purchase or Lease by Applicant: Allows the applicant to purchase or lease the land determined to be vacant under certain circumstances. Provides for the awarding of a nonparticipating royalty in certain circumstances.

SECTION 2--Applicability: Except as otherwise provided, the Act applies only to applications filed on or after the effective date of this Act.

SECTION 3--Effective Date

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2005.

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COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute varies from the originally filed version in that it adds a definition for "survey report" in Section 51.172.

The substitute also adds language clarifying that the exception to the application does not have to be filed on a form prescribed by the Commissioner.

The substitute clarifies the timeline for the Commissioner to declare whether a necessary party is a good faith claimant. The substitute further clarifies the timeline for exercising preferential right of good faith claimant.

The substitute adjust language in the originally filed bill to clarify the procedure for an applicant to purchase or lease land and minerals as well as the procedure for awarding a perpetual nonparticipating royalty.