

## **BILL ANALYSIS**

Senate Research Center  
79R5147 PAM-F

S.B. 1103  
By: Eltife  
Natural Resources  
4/4/2005  
As Filed

### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

A vacancy is defined as a tract of unsold, unsurveyed public domain, and is dedicated to the Permanent School Fund. A vacancy issue arises when surveys conducted in the present raise questions regarding the correct location of survey lines called for in the original patents issued by the state. The surveys or original patents were supposed to adjoin each other; however, if they do not, the gap between the surveys is a vacancy.

Subchapter E, Chapter 51, Natural Resources Code, provides the statutory framework for the commissioner of the General Land Office to determine the existence of a land vacancy. Such determination is initiated only upon receipt of an application to lease or purchase the potential vacancy.

As proposed, S.B. 1103 amends the statute to ensure that the General Land Office can more efficiently and effectively process vacancy applications. Specific timelines for processing the applications are established and additional procedures for property owners and royalty owners to continue ownership are included.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the commissioner of the General Land Office in SECTION 1 (Section 51.184, Natural Resources Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

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

#### **SUBCHAPTER E. SALE AND LEASE OF VACANCIES**

Sec. 51.171. **PURPOSE; APPLICATION OF OTHER LAW.** Provides that to the extent a provision of this subchapter conflicts with Chapter 2001 (Administrative Procedure), Government Code, this subchapter controls. Deletes the provision that Chapter 2001, Government Code, does not apply to a proceeding under this subchapter.

Sec. 51.172. **DEFINITIONS.** Defines "administratively complete," "application commencement date," "interest," and "vacancy application." Redefines "applicant," "good-faith claimant," "necessary party," and "vacancy." Deletes the definition of "interested person." Makes nonsubstantive changes.

Sec. 51.173. **DISPOSITION OF VACANT LAND.** No changes made to this section.

Sec. 51.174. **GENERAL POWERS AND DUTIES OF COMMISSIONER.** (a) Authorizes the commissioner of the General Land Office (commissioner) to enter into a contract with a private entity to provide the notices required under this subchapter and terminate without prejudice a vacancy application if an applicant fails to comply with this subchapter or a rule adopted under this subchapter.

(b) Authorizes the commissioner to grant an extension of time to comply with a requirement under this subchapter. Authorizes the commissioner to grant not more than a total of 30 days in extensions of time, for each application, to comply with one or more requirements of this subchapter, excluding any extensions of

time related to the survey report under this subchapter. Authorizes the commissioner to grant not more than 90 days in extensions of time to comply with a requirement related to the survey report.

(c) Redesignated from existing Subsection (b).

(d) Requires the commissioner to advise the School Land Board (board) relating to the market value of the leasehold estates of vacant land. Redesignated from existing Subsection (c).

Sec. 51.175. GENERAL POWERS AND DUTIES OF BOARD. No changes made to this section.

Sec. 51.176. New heading: VACANCY APPLICATION; FILING. (a) Requires a person, to purchase or lease land claimed to be vacant, to file a vacancy application, rather than an application, on a form prescribed by the commissioner. Modifies and adds to the list of information the application must include. Makes nonsubstantive changes.

(b) Requires the applicant to file the original and a duplicate copy of the vacancy application, rather than the application, with the county clerk, rather than the county surveyor, of each county, rather than the county, in which all or part of the land claimed to be vacant is located. Deletes existing text relating to filing with the county clerk if the county does not have a county surveyor.

(c) Makes conforming and nonsubstantive changes.

(d) Requires the applicant, not later than the fifth day after the date an applicant files the vacancy application with the county clerk, to file a duplicate copy of the marked copy received from the county clerk with the county surveyor of each county in which all or part of the land claimed to be vacant is located if that county has a county surveyor.

(e) Redesignated from existing Subsection (d). Makes conforming changes.

(f) Requires the applicant to submit to the commissioner two duplicate copies of the marked copy that has been file-stamped by the county clerk, rather than to file with the commissioner the duplicate copy of the application with the county official's mark indicating the time of filing, within a certain timeframe. Requires the commissioner to mark the date the two duplicate copies are received on each copy, assign a file number to the vacancy application, and return a marked duplicate copy containing the file number to the applicant. Deletes existing text relating to the filing deadline falling on a holiday or weekend. Redesignated from existing Subsection (e). Makes conforming changes.

(g) Created from existing text.

Sec. 51.177. New heading: PROCESSING VACANCY APPLICATION. (a) Requires the commissioner, not later than the 45th day after the applicant files the duplicate copies with the commissioner, to determine whether the vacancy application is administratively complete and provide to the applicant the notice required by this section.

(b) Requires the commissioner to provide written notice to the applicant containing certain information if the commissioner determines that the vacancy application is administratively complete.

(c) Requires the commissioner to provide written notice to the applicant containing certain information, including stating a reasonable period of not more than 30 days from the date of the notice to resolve any deficiencies, if the commissioner determines that the vacancy application is not administratively complete.

(d) Requires the commissioner, not later than the 30th day after the date provided in the notice to resolve any deficiencies, to determine whether the vacancy application is administratively complete. Requires the commissioner, if the commissioner determines the application is administratively complete, to provide the notice required in Subsection (b). Requires the commissioner, if the commissioner determines that the vacancy application is not administratively complete, to dismiss the application without prejudice, and provide written notice to the applicant. Deletes existing text relating to assigning file numbers and accepting and rejecting applications.

Sec. 51.178. APPLICATION FOR AND DETERMINATION OF GOOD-FAITH-CLAIMANT STATUS. Deletes text of this section.

Sec. 51.179. IDENTIFICATION OF AND NOTICE TO NECESSARY PARTIES. Deletes text of this section.

Sec. 51.178. DEPOSIT. Redesignated from existing Section 51.180. (a) Authorizes the commissioner to recover from the applicant state funds expended in evaluating and investigating the application, providing notice, preparing a survey, appointing an attorney at litem, and conducting hearings under this subchapter. Makes nonsubstantive changes.

(b) Requires, rather than authorizes, the commissioner to require the applicant to submit a deposit in an amount sufficient to pay the reasonable costs under Subsection (a), rather than to pay the costs of any survey and investigation required under this subchapter, within a certain timeframe of the application commencement date, rather than of the date the commissioner notifies the applicant. Deletes the existing text requiring the commissioner to require the applicant to submit the deposit not later than the 30th day after the date notice is published. Makes conforming and nonsubstantive changes.

(c) Requires the commissioner to require, rather than authorizes the commissioner to make a written request for, a reasonably necessary supplemental deposit if the amount deposited is insufficient. Makes a nonsubstantive change.

(d) Redesignated from existing Subsection (e). Provides that an applicant's refusal or failure to make the required deposits in the period prescribed by this section terminates the application without prejudice. Deletes existing text relating to alternative payment methods.

Sec. 51.179. DISPOSITION OF DEPOSITS. Redesignated from existing Section 51.181. Makes conforming and nonsubstantive changes.

Sec. 51.180. ATTORNEY AD LITEM. [Adds new Section 51.180.] (a) Requires the applicant to provide evidence to the commissioner to establish the applicant's ownership of all interests in the land surrounding the land claimed to be vacant.

(b) Requires the commissioner, if the applicant fails to provide sufficient evidence, to appoint an attorney ad litem within a certain timeframe to identify all necessary parties and represent the interest of any necessary party that has not been located.

Sec. 51.181. NOTICE TO NECESSARY PARTIES. [Adds new Section 51.181.] (a) Requires the commissioner, within a certain timeframe, to provide each necessary party written notice containing certain information, documents, and forms.

(b) Provides that, except as provided by Subsection (c), a necessary party is not entitled to notices subsequent to the notice provided under Subsection (a), unless the party requests subsequent notices.

(c) Requires the commissioner to notify each necessary party of a final order issued under Section 51.188.

Sec. 51.182. FILING OF EXCEPTIONS TO APPLICATION. [Adds new Section 51.182.] (a) Authorizes a necessary party, within a certain timeframe, to file an exception to the vacancy application, any documentation attached to the application, or any other documents or public records that may be used by the commissioner to make a determination.

(b) Requires a necessary party to file an exception with the General Land Office (land office) on a form prescribed by the commissioner and provide a copy of the filing to each necessary party that requested subsequent notice.

Sec. 51.183. INVESTIGATION. [Adds new Section 51.183.] (a) Requires the commissioner to conduct an investigation of the vacancy application.

(b) Requires the investigation to include certain evaluations, determinations, and reviews of public records.

(c) Sets forth other records the commissioner is authorized to review in the investigation.

(d) Authorizes an investigation to include a survey or a surveyor's report.

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

Sec. 51.184. COMMISSIONER'S SURVEY. Redesignated from existing Section 51.182. (a) Authorizes the commissioner to require a survey to investigate a vacancy application. Requires the commissioner, if the commissioner requires a survey, rather than authorizes the commissioner, to appoint a licensed state land surveyor. Specifies that the land surveyor who is not associated with the vacancy application prepares a report. Deletes existing text relating to appointing the county surveyor to do the survey and relating to having the surveyor investigate the applicant's claim. Makes nonsubstantive changes.

(b) Authorizes a necessary party to observe a survey conducted under this section. Provides that a survey will not be delayed to accommodate a necessary party who provides notice to the commissioner that the party intends to observe the surveyor conduct the survey.

(c) Requires the commissioner's notice of intention to survey to contain a statement informing the necessary party that any necessary party may observe the field work of the surveyor conducting the survey. Makes nonsubstantive changes. Redesignated from existing Subsection (b).

(d) Redesignated from existing Subsection (c).

(e) Requires the commissioner to adopt rules regarding the removal of an appointed surveyor on the grounds of bias, prejudice, or conflict. Requires the rules to permit the commissioner to remove an appointed surveyor on the commissioner's own motion or on the motion of a necessary party. Deletes existing text relating to the appointment of a surveyor not being required.

Sec. 51.185. SURVEYOR'S REPORT. Redesignated from existing Section 51.183. (a) Makes a conforming change.

(b) Requires the survey report to contain the last known mailing address, rather than post office address, of certain persons, including each person determined by the surveyor to have an interest, rather than a present legal interest, in the land. Requires the survey report to contain all abstract numbers associated with surveys of land adjoining the land claimed to be vacant. Makes a conforming change.

Sec. 51.186. COMPLETION OF SURVEY. Redesignated from existing Section 51.184. (a) Requires the commissioner to serve a copy of the survey report on each necessary party not later than the 30th, rather than the 10th, business day after the date the survey report is filed with the land office.

(b) Authorizes any necessary party to file exceptions to the surveyor's report not later than the 30th day after the date the survey report is mailed to the necessary party by the commissioner, rather than after the date the notice of completion is received. Deletes existing text relating to the situation in which the commissioner does not appoint a surveyor. Requires a copy of exceptions to be sent by the party filing the exception to each necessary party who has requested subsequent notice, rather than sent to each necessary party.

Sec. 51.187. New heading: HEARING. Redesignated from existing Section 51.185. (a) Requires 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, to order a hearing to determine if a vacancy exists. Sets forth when the hearing must be held and how the hearing must be conducted. Deletes existing text relating to a mandatory investigation and a permissive hearing by the commissioner. Deletes existing text that the commissioner is not required to grant any hearings under this subchapter.

(b) Requires the commissioner, not later than the 30th day after the date a hearing is ordered under Subsection (a), to provide notice of the hearing date to each necessary party. Deletes existing text requiring the commissioner to determine the scope of hearings. Deletes existing text requiring that the commissioner provide timely notice of the time and place of the hearing to necessary parties and an opportunity to be heard. Deletes existing text relating to other procedural rights.

(c) Requires the commissioner to enter a final order within a certain timeframe of a hearing. Deletes existing text authorizing the commissioner to consult with land office employees or relevant experts. Deletes existing text requiring that the commissioner make records of persons and materials consulted.

Sec. 51.188. COMMISSIONER'S FINAL ORDER. Redesignated from existing Section 51.186. (a) Authorizes the commissioner, at any time during or after an investigation of or hearing regarding a vacancy application, to determine that the land claimed to be vacant is not vacant and to issue a final order with that finding.

(b) Requires the commissioner, after a hearing conducted under Section 51.187, to issue a final order with a finding of "Not Vacant Land" or issue an order finding a vacancy exists. Requires the commissioner to notify each necessary party of the final order. Deletes existing text authorizing the commissioner to determine a vacancy exists. Deletes existing text relating to appealing the final order. Makes nonsubstantive changes.

(c) Requires a final order finding a vacancy exists to contain certain information. Deletes existing text relating to the determination order. Redesignated from existing Subsection (b).

(d) Redesignated from existing Subsection (c). Makes nonsubstantive changes.

(e) Requires the commissioner to attach to the commissioner's final order a document entitled "Notice of Claim of Vacancy." Requires the commissioner to prescribe the contents of the notice. Requires the commissioner to file the notice with the county clerk and any county surveyor of each county in which all or part of the vacancy is located. Deletes existing text relating to the finding of "Not Vacant Land."

Sec. 51.189. APPEAL. Redesignated from existing Section 51.187. (a) Provides that a final order with a finding of "Not Vacant Land" is conclusive and may not be appealed.

(b) Provides that a final order finding a vacancy exists is subject to appeal by a necessary party that has standing to appeal. Requires a necessary party, rather than a person, to file an appeal not later than the 30th, rather than 90th, day after the date the commissioner's final order is issued. Requires all necessary parties to be provided notice of an appeal under this section by the party filing the appeal. Makes a nonsubstantive change.

(c) Authorizes the district court to allow a necessary party, rather than an interested person, who did not receive notice to file an appeal after the deadline. Makes conforming changes. Redesignated from existing Subsection (b).

(d) Authorizes an applicant to file an action in district court to determine whether a vacancy exists if the commissioner has not issued a final order on or before the first anniversary of the application commencement date, rather than the date the application was accepted under Section 51.177(b). Makes a conforming change. Redesignated from existing Subsection (c).

(e) Provides that 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.

Sec. 51.190. SCOPE OF REVIEW. Redesignated from existing Section 51.188. Requires the district court, in an appeal of the commissioner's final order that a vacancy exists, to conduct a trial de novo. Deletes existing text requiring the district court to conduct a de novo review of the final order determining that a vacancy does or does not exist.

Sec. 51.191. ISSUES REVIEWABLE. Redesignated from existing Section 51.189.

Sec. 51.192. STANDING TO APPEAL. Redesignated from existing Section 51.190. Authorizes a person who is a necessary party, rather than an applicant, to appeal only the commissioner's final order that a vacancy exists. Makes a conforming change.

Sec. 51.193. APPLICATION FOR AND DETERMINATION OF GOOD-FAITH-CLAIMANT STATUS. [Adds new Section 51.193.] (a) Authorizes a necessary party to apply for good-faith-claimant status not later than the 90th day after the date the commissioner issues a final order finding that a vacancy exists.

(b) Requires the application to include certified copies of the applicable county records supporting the good-faith claimant's status.

(c) Requires the commissioner, after expiration of the period prescribed by Subsection (a), to declare whether a necessary part is a good-faith claimant.

(d) Authorizes a person who is denied good-faith-claimant status to request a hearing by the commissioner or appeal the denial as part of any appeal or a final order finding that a vacancy exists.

(e) Requires the commissioner, if the commissioner grants a hearing, to 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.

(f) Provides that a declaration of good-faith-claimant status only grants a preferential right to the claimant to purchase or lease the land or an interest in the land and provided by Section 51.194.

Sec. 51.194. PREFERENTIAL RIGHT OF GOOD-FAITH CLAIMANT. Redesignated from existing Section 51.191. (a) Provides that a good-faith claimant who has been notified by the commissioner that a vacancy exists has a preferential right to purchase or lease the interest claimed in the land before the land was declared vacant, rather than to purchase or lease the vacancy.

(b) No changes made to this subsection.

(c) Entitles a good-faith claimant that owns certain interests in the land occupied or used that is found to be part of or to include a vacancy to purchase or lease that same interest in the portion of the land determined to be vacant at the price and under the conditions set by the board, 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, provided that the state retains at least one-half of the royalty interest, and in accordance with the law in effect on the date the application is filed. Makes nonsubstantive changes. Deletes existing text relating to the royalty reservations provided by the board.

Sec. 51.195. PURCHASE OR LEASE BY APPLICANT. Redesignated from existing Section 51.192. (a) Entitles an applicant, if no good faith claimant exists or exercises a preferential right within the applicable period, to a preferential right to purchase or lease the land determined to be vacant on or before the 60th day, rather than for 30 days, after one of certain dates. Makes nonsubstantive changes.

(b) Authorizes an applicant who exercises a preferential right under Subsection (a) to purchase or lease the land or an interest in the land at the price set by the board, subject to the royalty reservations provided by the board, and in accordance with the law in effect on the date the application is filed.

(c) Requires the board to award an applicant a certain nonparticipating royalty of not less than 1/64 or more than 1/32 of the royalty paid to the state from the production of oil, gas and sulfur. Deletes existing text requiring the board to award an applicant, other than a good-faith claimant, a perpetual nonparticipating royalty of not less than 1/32 or more than 1/16 of the value of oil, gas, and sulfur. Redesignated from existing Subsection (b).

SECTION 2. (a) Makes application of this Act prospective to vacancy applications filed on or after the effective date of this Act, except as provided by Subsection (b).

(b) Provides that Section 51.188, Natural Resources Code, as renumbered from Section 51.186, Natural Resources Code, and amended by this Act, applies to a vacancy application filed before the effective date of this Act and for which no appeal has been filed as of the effective date of this Act.

SECTION 3. Effective date: upon passage or September 1, 2005.