

AN ACT

relating to the powers and duties of the General Land Office and the disposition of certain unsurveyed public school land.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter E, Chapter 51, Natural Resources Code, is amended to read as follows:

SUBCHAPTER E. SALE AND LEASE OF VACANCIES

Sec. 51.171. PURPOSE; APPLICATION OF OTHER LAW. (a) This subchapter controls the purchase and lease of vacant land and the authority of the commissioner and the board to:

- (1) determine whether a vacancy exists; and
- (2) sell and lease vacant land.

(b) To the extent a provision of this subchapter conflicts with another law relating to vacant land or Chapter 2001, Government Code, this subchapter controls.

~~[(c) Chapter 2001, Government Code, does not apply to a proceeding under this subchapter.]~~

Sec. 51.172. DEFINITIONS. In this subchapter:

(1) "Administratively complete" means a vacancy application that complies with Section 51.176 and any rule adopted by the commissioner regarding the filing of a vacancy application.

(1-a) "Applicant" means any person, including a good-faith claimant, who files a vacancy ~~[an]~~ application ~~[to purchase or lease a vacancy]~~.

1 (1-b) "Application commencement date" means:

2 (A) the date, as designated in the commissioner's
3 notice to the applicant required by Section 51.177(b); or

4 (B) the date, as designated in the commissioner's
5 notice to the applicant required by Section 51.177(d), indicating
6 that any deficiency in the vacancy application has been resolved.

7 (2) "Good-faith claimant" means a person who, on the
8 application commencement date:

9 (A) occupies or uses or has previously occupied
10 or used, or whose predecessors in interest in the land claimed to be
11 vacant have occupied or used, the land or any interest in the land
12 [a vacancy] for any purposes, including occupying or using:

13 (i) the surface or mineral estate for any
14 purposes, including [other than] exploring for or removing oil,
15 gas, sulphur, or other minerals and geothermal resources from the
16 land;

17 (ii) an easement or right-of-way; or

18 (iii) a mineral royalty or leasehold
19 interest; [vacancy, and]

20 (B) has had, or whose predecessors in interest
21 have had, the land claimed to be vacant [vacancy] enclosed or within
22 definite boundaries recognized in the community and in possession
23 under a chain of title for a period of at least 10 years with a
24 good-faith belief that the land [vacancy] was included within the
25 boundaries of a survey or surveys that were previously titled,
26 awarded, or sold under circumstances that would have vested title
27 in the land [vacancy] if the land [vacancy] were actually located

1 within the boundaries of the survey or surveys;

2 (C) is the owner of land:

3 (i) that adjoins the land claimed to be
4 vacant; and

5 (ii) for which no vacancy application has
6 been previously filed; or

7 (D) holds title under a person described by
8 Paragraph (A), (B), or (C) or is entitled to a distributive share of
9 a title acquired under an application filed by a person described by
10 Paragraph (A), (B), or (C).

11 (3) "Interest" means any right or title in or to real
12 property, including a surface, subsurface, or mineral estate.

13 "Interest" includes a right or title described as follows:

14 (A) a fee simple title;

15 (B) a determinable fee or other leasehold or
16 mineral interest created under a conveyance instrument, including a
17 mineral lease;

18 (C) a mineral royalty, nonparticipating royalty,
19 or overriding royalty interest described by Section 51.194(c);

20 (D) a life estate;

21 (E) a remainder or reversionary interest; or

22 (F) a secured interest under a lien [~~"Interested~~
23 ~~person" means a person, excluding a good-faith claimant or an~~
24 ~~applicant, who has a present legal interest in the surface or~~
25 ~~mineral estate of the land claimed to be vacant].~~

26 (4) "Necessary party" means:

27 (A) an applicant or [~~interested person, and]~~

1 good-faith claimant whose present legal interest in the surface or
2 mineral estate of the land claimed to be vacant may be adversely
3 affected by a vacancy determination;

4 (B) a person who asserts a right to or who claims
5 an interest in land claimed to be vacant;

6 (C) a person who asserts a right to or who claims
7 an interest in land claimed to be vacant or in land adjoining land
8 claimed to be vacant as shown in the records of the land office or
9 the county records, including tax records, of any county in which
10 all or part of the land claimed to be vacant is located;

11 (D) a person whose name appears in the records
12 described by Paragraph (C); or

13 (E) an attorney ad litem appointed under Section
14 51.180.

15 (5) "Survey report" means a written report of a survey
16 conducted by a licensed state land surveyor or a county surveyor of
17 the county in which a majority of the land claimed to be vacant is
18 located.

19 (6) "Vacancy" means an area of unsurveyed public
20 school land that:

21 (A) is not in conflict on the ground with land
22 previously titled, awarded, or sold;

23 (B) has not been listed on the records of the land
24 office as public school land; and

25 (C) was not, on the application commencement date
26 [~~of filing of an application~~]:

27 (i) subject to an earlier subsisting

1 application; ~~or~~

2 (ii) subject to a vacancy application
3 denied with prejudice;

4 (iii) the subject of pending litigation
5 relating to state ownership or possession of the land; or

6 (iv) subject to a previous vacancy
7 application that has been finally adjudicated by the commissioner
8 or a court of this state or the United States.

9 (7) "Vacancy application" means a form submitted to
10 the commissioner by an applicant to:

11 (A) initiate a determination by the commissioner
12 whether land claimed to be vacant is vacant;

13 (B) purchase vacant land; or

14 (C) lease vacant land.

15 Sec. 51.173. DISPOSITION OF VACANT LAND. (a) Vacant and
16 unsurveyed public school land shall be located, sold, and leased
17 under this subchapter, except:

18 (1) submerged lands within tidewater limits;

19 (2) all islands, flats, and emergent lands within
20 tidewater limits;

21 (3) natural lakes; and

22 (4) riverbeds, including channels and islands in
23 riverbeds, above tidewater limits.

24 (b) This subchapter does not alter or diminish the public
25 domain status of the surface estate of riverbeds and channels and
26 islands in riverbeds that are located above tidewater limits.

27 Sec. 51.174. GENERAL POWERS AND DUTIES OF COMMISSIONER.

1 (a) The commissioner may:

2 (1) delegate responsibility for implementing this
3 subchapter; ~~and~~

4 (2) perform any other act necessary to administer and
5 implement the purposes of this subchapter, including entering into
6 a contract with a private party to provide the notices required
7 under this subchapter; and

8 (3) terminate without prejudice a vacancy application
9 if an applicant fails to comply with this subchapter or a rule
10 adopted under this subchapter.

11 (b) The commissioner may grant an extension of time to
12 comply with a requirement under this subchapter. For each
13 application, the commissioner may grant not more than a total of 30
14 days in extensions of time to comply with one or more requirements
15 of this subchapter, excluding any extensions of time related to the
16 survey report under this subchapter. The commissioner may grant
17 not more than 90 days in extensions of time to comply with a
18 requirement related to the survey report under this subchapter.

19 (c) The commissioner shall adopt rules necessary and
20 convenient to administer this subchapter.

21 (d) ~~(c)~~ The commissioner shall advise the board relating
22 to the market value of the surface, ~~and~~ mineral, and leasehold
23 estates of vacant land.

24 Sec. 51.175. GENERAL POWERS AND DUTIES OF BOARD. (a) The
25 board shall set the terms and conditions for each sale and lease of
26 a vacancy.

27 (b) The board shall adopt rules governing the terms and

1 conditions for the sale and lease of a vacancy. The rules shall be
2 adopted and amended as necessary to be consistent with real
3 property law of this state and other applicable law.

4 (c) The board may adopt rules governing mineral
5 classification, royalty reservations, and awards of royalty
6 reservations and preferential rights to an applicant or to a
7 good-faith claimant in addition to the provisions prescribed by
8 this subchapter.

9 Sec. 51.176. VACANCY APPLICATION; FILING. (a) To purchase
10 or lease land claimed to be vacant, a person must file a vacancy
11 ~~an~~ application on a form prescribed by the commissioner. A
12 completed application must include:

13 (1) a description of ~~[describe]~~ the land ~~[that is]~~
14 claimed to be vacant that is sufficient to locate the land on the
15 ground;

16 (2) a written statement indicating ~~[state]~~ whether the
17 applicant seeks to purchase the land ~~[that is]~~ claimed to be vacant
18 or obtain a mineral lease on the land or both purchase the land and
19 obtain a mineral lease on the land;

20 (3) a list, in a format prescribed by the
21 commissioner, containing ~~[state]~~ the name and last known mailing
22 address of each necessary party whose name appears in the records
23 described by Section 51.172(4)(C) ~~[person who, from facts known to~~
24 ~~the applicant, asserts a present legal interest in the land claimed~~
25 ~~to be vacant];~~

26 (4) an affidavit executed by the applicant affirming
27 that the applicant conducted a diligent search of all the records

1 described by Section 51.172(4)(C) in preparing the list required by
2 Subdivision (3);

3 (5) if applicable, a statement of ~~[state]~~ the basis
4 for and ~~[provide]~~ documentary proof for an assertion of
5 good-faith-claimant status;

6 (6) at the applicant's discretion:

7 (A) a survey report; or

8 (B) an abstract of title to any land that adjoins
9 the land claimed to be vacant; and

10 (7) ~~[(5) provide]~~ any other information required by
11 the commissioner.

12 (b) The applicant must file the original and a duplicate
13 copy of the vacancy application with the county clerk ~~[surveyor]~~ of
14 each ~~[the]~~ county in which all or part of the land claimed to be
15 vacant is located. ~~[If the county does not have a county surveyor,~~
16 ~~the application must be filed with the county clerk.]~~

17 (c) The ~~[county surveyor or]~~ county clerk~~[, as applicable,]~~
18 shall mark the exact date and hour of filing on the original and a
19 duplicate copy of the vacancy application and shall return a marked
20 copy to the person filing the application. The original shall be
21 recorded in a book kept for that purpose separate from the deed or
22 real property records. The failure to record a vacancy ~~[an]~~
23 application as provided by this subsection does not affect the
24 validity of the application filing.

25 (d) Not later than the fifth day after the date an applicant
26 files the vacancy application with the county clerk, the applicant
27 shall file a duplicate copy of the marked copy received from the

1 county clerk with the county surveyor of each county in which all or
2 part of the land claimed to be vacant is located if that county has a
3 county surveyor.

4 (e) Priority among vacancy applications covering the same
5 land claimed to be vacant is determined by the earliest time of
6 filing indicated by the date and hour marked on the application by
7 the [~~county surveyor or~~] county clerk.

8 (f) [~~e~~] The applicant shall submit to [~~file with~~] the
9 commissioner two duplicate copies of the marked copy that has been
10 file-stamped by the county clerk [~~the duplicate copy of the~~
11 ~~application with the county official's mark indicating the time of~~
12 ~~filing~~] not later than the 30th day after the date the vacancy
13 application is filed with the county [~~surveyor or~~] clerk. The
14 commissioner shall mark the date the two duplicate copies are
15 received on each copy, assign a file number to the vacancy
16 application, and return a marked duplicate copy containing the file
17 number to the applicant [~~If the 30th day after the date of filing~~
18 ~~falls on a Saturday, Sunday, or state or federal holiday, the~~
19 ~~application may be filed on the next regular business day following~~
20 ~~the 30th day~~].

21 (g) The applicant shall include a filing fee set by the
22 commissioner in an amount of not less than \$100.

23 Sec. 51.177. PROCESSING VACANCY APPLICATION. (a) Not
24 later than the 45th day after the date the applicant files the
25 duplicate copies with the commissioner as provided by Section
26 51.176(f), the commissioner shall:

27 (1) determine whether the vacancy application is

1 administratively complete; and

2 (2) provide to the applicant the notice required by
3 this section.

4 (b) If the commissioner determines that the vacancy
5 application is administratively complete, the commissioner shall
6 provide written notice to the applicant that:

7 (1) informs the applicant that the application is
8 administratively complete;

9 (2) states the application commencement date; and

10 (3) states the amount of any deposit required under
11 Section 51.178 and the date by which the applicant must pay the
12 deposit.

13 (c) If the commissioner determines that the vacancy
14 application is not administratively complete, the commissioner
15 shall provide written notice to the applicant that:

16 (1) informs the applicant that the application is not
17 administratively complete;

18 (2) provides a list of any deficiencies the applicant
19 must resolve; and

20 (3) states a reasonable period of not more than 30 days
21 from the date of the notice to resolve any listed deficiencies.

22 (d) Not later than the 30th day after the date provided
23 under Subsection (c)(3) to resolve any deficiencies, the
24 commissioner shall determine whether the vacancy application is
25 administratively complete. If the commissioner determines that the
26 vacancy application is administratively complete, the commissioner
27 shall provide the notice required by Subsection (b). If the

1 commissioner determines that the vacancy application is not
2 administratively complete, the commissioner shall:

3 (1) dismiss the application without prejudice; and

4 (2) provide written notice to the applicant informing
5 the applicant that the application is not administratively complete
6 and is dismissed without prejudice. [The commissioner shall mark
7 the date of filing on the application and assign a file number to
8 the application.]

9 ~~[(b) The commissioner shall accept an application filed in~~
10 ~~compliance with this subchapter and shall notify the applicant on~~
11 ~~acceptance of the application.]~~

12 ~~[(c) The commissioner may reject an application and shall~~
13 ~~notify the applicant of the rejection if the application:]~~

14 ~~[(1) has material omissions,~~

15 ~~[(2) does not describe the land claimed to be vacant~~
16 ~~adequately for the land to be located on the ground; or~~

17 ~~[(3) describes as vacant land that has been finally~~
18 ~~adjudicated in a court of this state or of the United States not to~~
19 ~~be vacant.]~~

20 ~~[(d) A rejected application is terminated. No further~~
21 ~~action is taken on the application, and the land office file is~~
22 ~~closed.]~~

23 ~~[Sec. 51.178. APPLICATION FOR AND DETERMINATION OF~~
24 ~~GOOD-FAITH-CLAIMANT STATUS. (a) A person may apply for~~
25 ~~good-faith-claimant status not later than the 90th day after:]~~

26 ~~[(1) the date of a final order by the commissioner~~
27 ~~finding that a vacancy exists; or~~

1 ~~[(2) the date of final judgment by a court that a~~
2 ~~vacancy exists, if the commissioner does not find that a vacancy~~
3 ~~exists.~~

4 ~~[(b) The application must include certified copies of~~
5 ~~applicable county records supporting the good-faith claimant's~~
6 ~~status.~~

7 ~~[(c) The commissioner shall, after expiration of the period~~
8 ~~prescribed by Subsection (a)(2), declare whether a person is a~~
9 ~~good-faith claimant. The commissioner may consider documents filed~~
10 ~~in support of the person's good-faith-claimant status and any other~~
11 ~~relevant information. The commissioner may conduct an~~
12 ~~investigation under Section 51.185 as necessary to make a~~
13 ~~determination on the application. The commissioner has sole~~
14 ~~discretion to declare a person a good-faith claimant, and a person~~
15 ~~is not otherwise entitled to a declaration of good-faith-claimant~~
16 ~~status. A declaration of the commissioner under this subsection is~~
17 ~~not a final order and may not be appealed, except as provided by~~
18 ~~Section 51.187.~~

19 ~~[(d) A declaration of good-faith-claimant status grants a~~
20 ~~preferential right to the claimant to purchase or lease the land as~~
21 ~~provided by this subchapter. The declaration does not confer any~~
22 ~~other rights.~~

23 ~~[Sec. 51.179. IDENTIFICATION OF AND NOTICE TO NECESSARY~~
24 ~~PARTIES. (a) The applicant shall identify each necessary party by~~
25 ~~the name and last known address of each owner or claimant of land or~~
26 ~~any interest in land or of a lease on, adjoining, overlapping, or~~
27 ~~including the land claimed to be vacant as can be determined from~~

1 ~~the records of the land office and the county clerk's office.~~

2 ~~[(b) The applicant shall provide each necessary party with~~
3 ~~the notice of the commissioner's acceptance of the application, a~~
4 ~~copy of the application, and a continuance for future notices form~~
5 ~~not later than the 90th day after the date the applicant receives~~
6 ~~the notice of the commissioner's acceptance of the application.~~

7 ~~[(c) Except as provided by this subsection, a necessary~~
8 ~~party is not entitled to subsequent notices required by this~~
9 ~~subchapter unless the party requests subsequent notices. The~~
10 ~~commissioner shall notify a necessary party of a final order issued~~
11 ~~under Section 51.186.~~

12 ~~[(d) Not later than the 30th day after the date the notices~~
13 ~~are mailed under Subsection (b), the applicant must publish the~~
14 ~~notice of the commissioner's acceptance of the application in each~~
15 ~~newspaper of general circulation in the county and the general area~~
16 ~~in which the land is located for a period determined by the~~
17 ~~commissioner. The published notice must contain a description of~~
18 ~~the land claimed to be vacant.]~~

19 Sec. 51.178 [~~51.180~~]. DEPOSIT. (a) The commissioner may
20 recover from the applicant state funds expended in evaluating and
21 investigating the application, providing notice, preparing a
22 survey, appointing an attorney ad litem, [the investigation] and
23 conducting hearings [~~conducted~~] under this subchapter.

24 (b) The [~~Not later than the 30th day after the date notice is~~
25 ~~published as required by Section 51.179, the]~~ commissioner shall
26 [~~may~~] require the applicant to submit a deposit[~~. If required, the~~
27 ~~applicant must make a deposit~~] in an amount sufficient to pay the

1 reasonable costs [~~of any survey and investigation required~~] under
2 Subsection (a) [~~this subchapter~~] not later than the 30th day after
3 the application commencement date [~~the commissioner notifies the~~
4 ~~applicant~~].

5 (c) If the amount deposited is insufficient, the
6 commissioner shall require [~~may make a written request for~~] a
7 reasonably necessary supplemental deposit. If a supplemental
8 deposit is required, the applicant must make the deposit not later
9 than the 30th day after the date the commissioner requests the
10 supplemental deposit.

11 (d) [~~The commissioner and applicant may agree to~~
12 ~~alternative payment methods to recover state funds expended in the~~
13 ~~investigation and hearings conducted under this subchapter.~~

14 [~~(e)~~] An applicant may not challenge or appeal the amount of
15 the required deposits, and the applicant's refusal or failure to
16 make the required deposits in the period prescribed by this section
17 terminates the application without prejudice.

18 Sec. 51.179 [~~51.181~~]. DISPOSITION OF DEPOSITS. (a) The
19 commissioner shall deposit all initial and supplemental deposits
20 received under this subchapter to the credit of a separate trust
21 account in the state treasury. The comptroller, on the
22 commissioner's order, shall make disbursements from that account
23 for purposes authorized by this subchapter.

24 (b) After proceedings on a vacancy [~~an~~] application are
25 concluded and all expenditures authorized under this subchapter are
26 paid, the commissioner shall provide to the applicant a complete
27 statement of all deposits and expenditures and shall remit to the

1 applicant any balance remaining from the deposit or supplemental
2 deposits made by the applicant.

3 Sec. 51.180. ATTORNEY AD LITEM. (a) The applicant must
4 provide evidence to the commissioner to establish the applicant's
5 ownership of all interests in the land surrounding the land claimed
6 to be vacant.

7 (b) If the applicant fails to provide sufficient evidence,
8 as determined by the commissioner, the commissioner shall, not
9 later than the 30th day after the application commencement date,
10 appoint an attorney ad litem to:

11 (1) identify all necessary parties; and
12 (2) represent the interests of any necessary party
13 identified under Section 51.176(a)(3) that has not been located.

14 Sec. 51.181. NOTICE TO NECESSARY PARTIES. (a) Not later
15 than the 30th day after the application commencement date, the
16 commissioner shall provide to each necessary party a written notice
17 that:

18 (1) informs the necessary party that a vacancy
19 application has been filed;

20 (2) states the application commencement date; and

21 (3) includes:

22 (A) a copy of the vacancy application and any
23 attachments; and

24 (B) a form for requesting subsequent notices
25 regarding the application.

26 (b) If the attorney ad litem is unable to identify each
27 necessary party, the applicant shall provide notice required under

1 this section by publication in the same manner prescribed by the
2 Texas Rules of Civil Procedure.

3 (c) Except as provided by Subsection (d), a necessary party
4 is not entitled to notices subsequent to the notice provided under
5 Subsection (a) unless the party requests subsequent notices.

6 (d) The commissioner shall notify each necessary party of a
7 final order issued under Section 51.188.

8 Sec. 51.182. FILING OF EXCEPTIONS TO APPLICATION. (a) Not
9 later than the 60th day after the date of the commissioner's notice
10 under Section 51.181(a), a necessary party may file an exception to
11 the vacancy application, any documentation attached to the
12 application, or any other documents or public records that may be
13 used by the commissioner to make a determination.

14 (b) A necessary party must:

15 (1) file an exception with the land office; and

16 (2) provide a copy of the filing to each necessary
17 party that requested subsequent notice as provided by Section
18 51.181.

19 Sec. 51.183. INVESTIGATION. (a) The commissioner shall
20 conduct an investigation of the vacancy application.

21 (b) The investigation shall include:

22 (1) an evaluation of the vacancy application;

23 (2) a determination that the vacancy application was
24 filed as provided by Section 51.176; and

25 (3) a review of public records at the land office
26 relating to the land claimed to be vacant.

27 (c) The investigation may include a review of:

1 (1) any survey conducted by a licensed state land
2 surveyor or by the county surveyor of a county in which all or part
3 of the land claimed to be vacant is located; or

4 (2) any documents or public records necessary to
5 determine whether a vacancy exists, including a review of public
6 records relating to the land claimed to be vacant at:

7 (A) the state archives; or

8 (B) any county in which all or part of the land
9 claimed to be vacant is located.

10 (d) An investigation may include a survey requested by the
11 commissioner under Section 51.184 or a surveyor's report as
12 provided by Section 51.185.

13 (e) The commissioner shall record the names of the persons
14 consulted, the documents and surveys reviewed, and the relevant law
15 and other materials used in the investigation.

16 Sec. 51.184 [~~51.182~~]. COMMISSIONER'S SURVEY. (a) To
17 investigate a vacancy application under Section 51.183, the
18 commissioner may require a survey. If the commissioner requires a
19 survey, the [The] commissioner shall [may] appoint a licensed state
20 land surveyor who is not associated with the vacancy application to
21 prepare a report as provided by Section 51.185[~~, or the county~~
22 ~~surveyor of the county in which the land claimed to be vacant or~~
23 ~~part of that land is located, to investigate the applicant's~~
24 ~~claim~~]. The commissioner may limit the scope of the work performed
25 by the surveyor.

26 (b) A necessary party may observe a survey conducted under
27 this section. A survey will not be delayed to accommodate a

1 necessary party who provides notice to the commissioner that the
2 party intends to observe the surveyor conducting the survey.

3 (c) The commissioner shall mail a notice of intention to
4 survey to each necessary party not later than the 30th day before
5 the date the surveyor begins work. The notice must contain:

6 (1) the proposed starting date of the survey;

7 (2) ~~and~~ the name, address, and telephone number of
8 the surveyor; and

9 (3) a statement informing the necessary party that any
10 necessary party may observe the field work of the surveyor
11 conducting the survey.

12 (d) ~~(c)~~ The fees and expenses paid for the survey are the
13 same as those provided by law. If the fees and expenses are not
14 provided by law, the commissioner shall contract for fees and
15 expenses reasonably necessary for the scope of the required work.
16 Contracts under this subsection:

17 (1) must include hourly rates, categories of
18 reimbursable expenses, and an estimated completion date; and

19 (2) may include other expenses the commissioner
20 considers reasonable.

21 (e) The commissioner shall adopt rules regarding the
22 removal of an appointed surveyor on the grounds of bias, prejudice,
23 or conflict. The rules must permit the commissioner to remove an
24 appointed surveyor on the commissioner's own motion or on the
25 motion of a necessary party ~~[(d) The appointment of a surveyor is~~
26 ~~not required. The commissioner may rely on:~~

27 ~~[(1) any survey conducted by a licensed state land~~

1 ~~surveyor or a county surveyor of the county in which the land~~
2 ~~claimed to be vacant or a part of that land is located; and~~

3 ~~[(2) any documents or public records required to~~
4 ~~determine whether a vacancy exists].~~

5 Sec. 51.185 [~~51.183~~]. SURVEYOR'S REPORT. (a) Not later
6 than the 120th day after the date a surveyor is appointed under
7 Section 51.184 [~~51.182~~], the surveyor shall file a written report
8 of the survey, the field notes describing the land and the lines and
9 corners surveyed, a plat depicting the results of the survey, and
10 any other information required by the commissioner. The
11 commissioner may extend the time for filing the report as
12 reasonably necessary.

13 (b) The survey report must also contain:

14 (1) the name and last known mailing [~~post office~~]
15 address of:

16 (A) each person who has possession of the land
17 described in the vacancy application; and

18 (B) [~~of~~] each person determined by the surveyor
19 to have an [~~a present legal~~] interest in the land; and

20 (2) all abstract numbers associated with surveys of
21 land adjoining the land claimed to be vacant.

22 Sec. 51.186 [~~51.184~~]. COMPLETION OF SURVEY. (a) The
23 commissioner shall serve a true copy of the survey report filed by
24 the surveyor on each necessary party, including those named in the
25 survey report, by certified mail, return receipt requested, not
26 later than the 30th [~~10th~~] business day after the date the survey
27 report is filed with the land office.

1 (b) Any necessary party may file exceptions to the
2 surveyor's report not later than the 30th day after the date the
3 survey report is mailed to the necessary party by the commissioner
4 ~~[notice of completion is received. If the commissioner does not~~
5 ~~appoint a surveyor, a necessary party may file exceptions to a~~
6 ~~survey report filed by the applicant during a period established by~~
7 ~~the commissioner]~~. Any exceptions must be filed with the land
8 office and a copy must be sent by the party filing the exception to
9 each necessary party who has requested subsequent notice under
10 Section 51.181.

11 Sec. 51.187 ~~[51.185]~~. HEARING ~~[INVESTIGATION]~~. (a) If the
12 commissioner has not issued a final order with a finding of "Not
13 Vacant Land" on or before the first anniversary of the application
14 commencement date, the ~~[The]~~ commissioner shall order ~~[conduct an~~
15 ~~investigation of the applicant's claim that a vacancy exists. The~~
16 ~~commissioner may conduct]~~ a hearing to determine if a vacancy
17 exists. A hearing under this subchapter:

18 (1) shall be held not later than the 60th day after the
19 date the hearing is ordered;

20 (2) shall be conducted as ~~[is not]~~ a contested case
21 hearing ~~[and is not]~~ subject to Chapter 2001, Government Code; and

22 (3) may be waived by written agreement of all
23 necessary parties and the commissioner. ~~[The commissioner is not~~
24 ~~required to grant any hearings under this subchapter.]~~

25 (b) Not later than the 30th day after the date a hearing is
26 ordered under Subsection (a), ~~[The commissioner shall determine the~~
27 ~~scope of any hearings to investigate an application for~~

1 ~~good faith claimant status and an application to purchase or lease~~
 2 ~~vacant land. If the commissioner grants a hearing,~~ the
 3 commissioner shall provide [timely] notice of the [time and place
 4 of the] hearing date to [necessary parties and shall provide] each
 5 necessary party [an opportunity to be heard. Any other procedural
 6 rights, including the right to examine or cross-examine witnesses,
 7 may be granted in the sole discretion of the commissioner].

8 (c) Not later than the 60th day after the date of the
 9 hearing, the commissioner shall enter a final order as provided by
 10 Section 51.188 [The commissioner may consult with any land office
 11 employee, including the chief surveyor, or a relevant expert during
 12 the investigation.]

13 [~~(d) The commissioner shall record the names of the persons~~
 14 ~~consulted, the documents and surveys reviewed, and the relevant law~~
 15 ~~and other materials used in the investigation].~~

16 Sec. 51.188 [~~51.186~~]. COMMISSIONER'S FINAL ORDER. (a) At
 17 any time during or after an investigation of or hearing regarding a
 18 vacancy application, the commissioner may determine that land
 19 claimed to be vacant is not vacant and issue a final order with a
 20 finding of "Not Vacant Land."

21 (b) After a hearing conducted under Section 51.187, the
 22 commissioner shall issue a final order with a finding of "Not Vacant
 23 Land" or issue an order finding [~~If the commissioner concludes that~~
 24 ~~the land claimed to be vacant is not in conflict with land~~
 25 ~~previously titled, awarded, or sold by the state, the commissioner~~
 26 ~~may determine that] a vacancy exists. Not later than the 15th day
 27 after the date the final order is issued, the [The] commissioner~~

1 shall notify each necessary party of the final order by providing
2 ~~[mailing]~~ each party a copy of the ~~[vacancy determination. The~~
3 ~~vacancy determination is a]~~ final order ~~[of the commissioner and~~
4 ~~may be appealed as provided by Section 51.187]~~.

5 (c) ~~[(b)]~~ A final order finding a vacancy exists
6 ~~[determination order]~~ must contain:

7 (1) a finding by the commissioner that the land
8 claimed to be vacant is unsurveyed public school land that is not in
9 conflict with land previously titled, awarded, or sold by the state
10 as established by:

11 (A) clear and convincing proof for an application
12 to which an exception has been filed as provided by Section 51.182;
13 or

14 (B) a preponderance of the evidence for an
15 application to which no exceptions have been filed as provided by
16 Section 51.182;

17 (2) the [a] field note description used to determine
18 the vacancy, which must be [of the land determined to be vacant that
19 is] sufficient to locate the land on the ground;

20 (3) ~~[(2)]~~ an accurate plat of the land that is:

21 (A) consistent with the field notes; and

22 (B) prepared by a ~~[county surveyor or]~~ licensed
23 state land surveyor or a county surveyor of the county in which a
24 majority of vacant land is located; and

25 (4) ~~[(3)]~~ any other matters required by law or as the
26 commissioner considers appropriate.

27 (d) ~~[(e)]~~ In determining the boundaries and size of a

1 vacancy, the commissioner is not restricted to a description of the
2 land claimed to be vacant that is provided by the applicant, the
3 surveyor, or any other person. The commissioner shall adopt the
4 description of a vacancy that best describes the land found to be
5 vacant [~~vacancy~~] and that is consistent with the investigation
6 under this subchapter.

7 (e) The commissioner shall attach to the commissioner's
8 final order a document entitled "Notice of Claim of Vacancy." The
9 commissioner shall prescribe the contents of the notice. The
10 commissioner shall file the notice with the county clerk and any
11 county surveyor of each county in which all or part of the vacancy
12 is located [~~(d) If the commissioner determines that the land~~
13 ~~claimed to be vacant is not vacant, the commissioner shall endorse~~
14 ~~the file with the finding "Not Vacant Land" and shall notify each~~
15 ~~necessary party of the determination. A finding of "Not Vacant~~
16 ~~Land" is conclusive with respect to land described in the~~
17 ~~application. A finding of "Not Vacant Land" under this subsection~~
18 ~~is a final order of the commissioner and may be appealed as provided~~
19 ~~by Section 51.187].~~

20 Sec. 51.189 [~~51.187~~]. APPEAL. (a) A final order with a
21 finding of "Not Vacant Land" under Section 51.188 may not be
22 appealed. The final order is conclusive regarding the land
23 described in the vacancy application or the land investigated by
24 the commissioner as a result of the vacancy application.

25 (b) A final order finding a vacancy exists is subject to
26 appeal by a necessary party that has standing to appeal under
27 Section 51.192. The district court in the county in which a

1 majority of the vacant land is located has jurisdiction of an appeal
2 under this subchapter. A necessary party [~~person~~] must file an
3 appeal not later than the 30th [~~90th~~] day after the date the
4 commissioner's final order is issued [~~under Section 51.186~~]. All
5 necessary parties must be provided notice of an appeal under this
6 section by the party filing the appeal.

7 (c) A person whose predecessor in title was bound by the
8 outcome of an appeal is bound to the same extent the predecessor in
9 title would be bound if the predecessor in title continued to hold
10 title [~~(b) The district court, in its discretion, may allow an~~
11 ~~interested person who did not receive notice of a proceeding under~~
12 ~~this subchapter to file an appeal after the expiration of the 90-day~~
13 ~~period prescribed by Subsection (a).~~

14 [~~(c) If the commissioner has not issued a final order under~~
15 ~~Section 51.186 on or before the first anniversary of the date the~~
16 ~~application was accepted under Section 51.177(b), the applicant may~~
17 ~~file an action in district court to determine whether a vacancy~~
18 ~~exists. The filing of an action under this subsection terminates~~
19 ~~the application with the land office].~~

20 Sec. 51.190 [~~51.188~~]. SCOPE OF REVIEW. In an appeal of [~~The~~
21 ~~district court shall conduct a de novo review of]~~ the
22 commissioner's final order determining that a vacancy exists, the
23 district court shall conduct a trial de novo [~~does or does not~~
24 ~~exist~~].

25 Sec. 51.191 [~~51.189~~]. ISSUES REVIEWABLE. The court may
26 review the commissioner's declaration of good-faith-claimant
27 status only in conjunction with a review of a final order

1 determining that a vacancy exists.

2 Sec. 51.192 [~~51.190~~]. STANDING TO APPEAL. A person may
3 appeal the commissioner's final order determining that a vacancy
4 exists if the person:

5 (1) is a necessary party [~~an applicant~~];

6 (2) has a present legal interest in the surface or
7 mineral estate at the time a vacancy [~~an~~] application is filed; or

8 (3) acquires a legal interest before the date of the
9 commissioner's final order.

10 Sec. 51.193. APPLICATION FOR AND DETERMINATION OF
11 GOOD-FAITH-CLAIMANT STATUS. (a) A necessary party may apply for
12 good-faith-claimant status not later than the 90th day after the
13 date the commissioner issues a final order finding that a vacancy
14 exists.

15 (b) The application must include certified copies of the
16 applicable county records supporting the good-faith claimant's
17 status.

18 (c) Not later than the 120th day after the date the
19 commissioner issues a final order finding that a vacancy exists,
20 the commissioner shall declare whether a necessary party is a
21 good-faith claimant.

22 (d) A person who is denied good-faith-claimant status may:

23 (1) request a hearing by the commissioner; or

24 (2) appeal the denial as part of any appeal of a final
25 order finding that a vacancy exists.

26 (e) If the commissioner grants a hearing, the commissioner
27 shall:

1 (1) determine the scope of the hearing;

2 (2) provide timely notice of the time and place of the
3 hearing to each necessary party; and

4 (3) provide each necessary party an opportunity to be
5 heard.

6 (f) A declaration of good-faith-claimant status grants a
7 preferential right to the claimant to purchase or lease the land or
8 an interest in the land as provided by Section 51.194. The
9 declaration does not confer any other rights.

10 Sec. 51.194 [~~51.191~~]. PREFERENTIAL RIGHT OF GOOD-FAITH
11 CLAIMANT. (a) A good-faith claimant who has been notified by the
12 commissioner that a vacancy exists under this subchapter has a
13 preferential right to purchase or lease the interest claimed in the
14 land before the land was declared vacant [~~vacancy~~]. The
15 preferential right may be exercised after a final judicial
16 determination or after the commissioner's final order and the
17 period for filing an appeal has expired. If a [~~the~~] good-faith
18 claimant does not apply to purchase or lease the interest [~~land~~]
19 before the later of the 121st day after the date the commissioner's
20 order becomes final or the 60th day after the date of the final
21 judicial determination of an appeal under this subchapter [~~the~~
22 ~~preferential right may be exercised~~], then the good-faith
23 claimant's preferential right expires.

24 (b) A [~~The~~] good-faith claimant may purchase or lease the
25 vacancy by submitting a written application to the board.

26 (c) A [~~The~~] good-faith claimant that owns a separate surface
27 interest, a contractual right to a mineral or leasehold interest, a

1 leasehold interest, or a royalty interest in the land occupied or
2 used that is found to be part of or to include a vacancy is entitled
3 to purchase or lease that same interest in the portion of the land
4 determined to be [~~that is~~] vacant[+]

5 [~~(1)~~] at the price and under the conditions set by the
6 board[+]

7 [~~(2) subject to the royalty reservations provided by~~
8 ~~the board,~~] and

9 [~~(3)~~] in accordance with the law in effect on the date
10 the application is filed.

11 (d) If the interest purchased under Subsection (c) is less
12 than a permanent interest, then:

13 (1) the interest purchased is limited to the duration
14 of a deed, contract, instrument, or lease in existence before the
15 filing of the vacancy application and subject to a division of the
16 amount of the royalty between the state and the existing royalty
17 owners, provided that the state retains at least one-half of the
18 amount of the royalty interest; and

19 (2) the interest and any remaining mineral interest,
20 including all executory rights, vest with the state at the
21 expiration of the deed, contract, instrument, or lease.

22 Sec. 51.195 [~~51.192~~]. PURCHASE OR LEASE BY APPLICANT.

23 (a) If no good-faith claimant exists or if no good-faith claimant
24 exercises a preferential right within the applicable period, the
25 applicant has a preferential right to purchase or lease the land
26 determined to be vacant on or before the 60th day [~~for 30 days~~]
27 after the date:

1 (1) the commissioner determines [~~a determination~~]
2 that no good-faith claimant exists; or

3 (2) [~~the expiration of~~] the period for a good-faith
4 claimant to exercise [~~exercising~~] a preferential right to purchase
5 or lease the land determined to be vacant expires.

6 (b) If a good-faith claimant exercises the claimant's
7 preferential right in the land determined to be vacant, the
8 applicant has a preferential right to either:

9 (1) an award by the board of a perpetual 1/32
10 nonparticipating royalty of the full mineral interest of the
11 vacancy; or

12 (2) a preferential right to purchase or lease any
13 remaining interest in the land determined to be vacant.

14 (c) If a lease described by Section 51.194(d)(1) exists on
15 the land determined to be vacant, the applicant's 1/32
16 nonparticipating royalty interest, as described by Subsection
17 (b)(1), shall be taken from the state's royalty interest as
18 reserved under Section 51.194(d)(1) for the duration of the lease,
19 provided that the applicant's share for the duration of the lease
20 may never equal more than the interest retained by the state.

21 (d) An applicant who exercises a preferential right under
22 Subsection (a) or (b)(2) may purchase or lease the land or an
23 interest in the land:

24 (1) at the price set by the board;

25 (2) subject to the royalty reservations provided by
26 the board; and

27 (3) in accordance with the law in effect on the date

1 the application is filed. [~~The board shall award an applicant,~~
2 ~~other than a good-faith claimant, a perpetual nonparticipating~~
3 ~~royalty of:~~

4 ~~[(1) not less than 1/32 or more than 1/16 of the value~~
5 ~~of oil, gas, and sulphur, and~~

6 ~~[(2) one percent of the value of all geothermal and~~
7 ~~other minerals produced.]~~

8 SECTION 2. (a) Except as provided by Subsection (b) of
9 this section, Subchapter E, Chapter 51, Natural Resources Code, as
10 amended by this Act, applies only to a vacancy application filed on
11 or after the effective date of this Act. A vacancy application
12 filed before the effective date of this Act is governed by the law
13 in effect when the vacancy application was filed, and the former law
14 continues in effect for that purpose.

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

20 SECTION 3. This Act takes effect immediately if it receives
21 a vote of two-thirds of all the members elected to each house, as
22 provided by Section 39, Article III, Texas Constitution. If this
23 Act does not receive the vote necessary for immediate effect, this
24 Act takes effect September 1, 2005.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1103 passed the Senate on April 14, 2005, by the following vote: Yeas 31, Nays 0; May 16, 2005, Senate refused to concur in House amendment and requested appointment of Conference Committee; May 18, 2005, House granted request of the Senate; May 26, 2005, Senate adopted Conference Committee Report by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1103 passed the House, with amendment, on May 9, 2005, by the following vote: Yeas 144, Nays 0, three present not voting; May 18, 2005, House granted request of the Senate for appointment of Conference Committee; May 28, 2005, House adopted Conference Committee Report by the following vote: Yeas 145, Nays 0.

Chief Clerk of the House

Approved:

Date

Governor