

By: Eltife

S.B. No. 1103

Substitute the following for S.B. No. 1103:

By: Farabee

C.S.S.B. No. 1103

A BILL TO BE ENTITLED

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, notice required under this section may be provided

1 to unidentified necessary parties by publication in the same manner  
2 as service of citation by publication as in other civil cases.  
3 Notice by publication under this subsection shall be:

- 4 (1) addressed to "All Whom It May Concern"; and  
5 (2) published one time in a newspaper of general  
6 circulation in the county in which the land claimed to be vacant is  
7 located.

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

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

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

19 (b) A necessary party must:

- 20 (1) file an exception with the land office; and  
21 (2) provide a copy of the filing to each necessary  
22 party that requested subsequent notice as provided by Section  
23 51.181.

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

26 (b) The investigation shall include:

- 27 (1) an evaluation of the vacancy application;



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

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

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

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

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

12                   (A) the state archives; or

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

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

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

21           Sec. 51.184 [~~51.182~~]. COMMISSIONER'S SURVEY. (a) To  
22 investigate a vacancy application under Section 51.183, the  
23 commissioner may require a survey. If the commissioner requires a  
24 survey, the [The] commissioner shall [may] appoint a licensed state  
25 land surveyor who is not associated with the vacancy application to  
26 prepare a report as provided by Section 51.185 [~~, or the county~~  
27 ~~surveyor of the county in which the land claimed to be vacant or~~

1 ~~part of that land is located, to investigate the applicant's~~  
2 ~~claim].~~ The commissioner may limit the scope of the work performed  
3 by the surveyor.

4 (b) A necessary party may observe a survey conducted under  
5 this section. A survey will not be delayed to accommodate a  
6 necessary party who provides notice to the commissioner that the  
7 party intends to observe the surveyor conducting the survey.

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

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

12 (2) [and] the name, address, and telephone number of  
13 the surveyor; and

14 (3) a statement informing the necessary party that any  
15 necessary party may observe the field work of the surveyor  
16 conducting the survey.

17 (d) ~~(e)~~ The fees and expenses paid for the survey are the  
18 same as those provided by law. If the fees and expenses are not  
19 provided by law, the commissioner shall contract for fees and  
20 expenses reasonably necessary for the scope of the required work.  
21 Contracts under this subsection:

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

24 (2) may include other expenses the commissioner  
25 considers reasonable.

26 (e) The commissioner shall adopt rules regarding the  
27 removal of an appointed surveyor on the grounds of bias, prejudice,

1 or conflict. The rules must permit the commissioner to remove an  
2 appointed surveyor on the commissioner's own motion or on the  
3 motion of a necessary party [~~(d) The appointment of a surveyor is~~  
4 ~~not required. The commissioner may rely on:~~

5 ~~[(1) any survey conducted by a licensed state land~~  
6 ~~surveyor or a county surveyor of the county in which the land~~  
7 ~~claimed to be vacant or a part of that land is located; and~~

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

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

18 (b) The survey report must also contain:

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

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

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

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

27 Sec. 51.186 [~~51.184~~]. COMPLETION OF SURVEY. (a) The

1 commissioner shall serve a true copy of the survey report filed by  
2 the surveyor on each necessary party, including those named in the  
3 survey report, by certified mail, return receipt requested, not  
4 later than the 30th [~~10th~~] business day after the date the survey  
5 report is filed with the land office.

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

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

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

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

27 (3) may be waived by written agreement of all

1 necessary parties and the commissioner. [~~The commissioner is not~~  
2 ~~required to grant any hearings under this subchapter.~~]

3 (b) Not later than the 30th day after the date a hearing is  
4 ordered under Subsection (a), [~~The commissioner shall determine the~~  
5 ~~scope of any hearings to investigate an application for~~  
6 ~~good-faith-claimant status and an application to purchase or lease~~  
7 ~~vacant land. If the commissioner grants a hearing,~~] the  
8 commissioner shall provide [~~timely~~] notice of the [~~time and place~~  
9 ~~of the~~] hearing date to [~~necessary parties and shall provide~~] each  
10 necessary party [~~an opportunity to be heard. Any other procedural~~  
11 ~~rights, including the right to examine or cross-examine witnesses,~~  
12 ~~may be granted in the sole discretion of the commissioner~~].

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

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

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

26 (b) After a hearing conducted under Section 51.187, the  
27 commissioner shall issue a final order with a finding of "Not Vacant

1 Land" or issue an order finding [~~If the commissioner concludes that~~  
2 ~~the land claimed to be vacant is not in conflict with land~~  
3 ~~previously titled, awarded, or sold by the state, the commissioner~~  
4 ~~may determine that~~] a vacancy exists. Not later than the 15th day  
5 after the date the final order is issued, the [~~The~~] commissioner  
6 shall notify each necessary party of the final order by providing  
7 [~~mailing~~] each party a copy of the [~~vacancy determination. The~~  
8 ~~vacancy determination is a~~] final order [~~of the commissioner and~~  
9 ~~may be appealed as provided by Section 51.187~~].

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

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

16 (A) clear and convincing proof for an application  
17 to which an exception has been filed as provided by Section 51.182;  
18 or

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

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

25 (3) [(2)] an accurate plat of the land that is:

26 (A) consistent with the field notes; and

27 (B) prepared by a [~~county surveyor or~~] licensed

1 state land surveyor or a county surveyor of the county in which a  
2 majority of vacant land is located; and

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

5 (d) [(e)] In determining the boundaries and size of a  
6 vacancy, the commissioner is not restricted to a description of the  
7 land claimed to be vacant that is provided by the applicant, the  
8 surveyor, or any other person. The commissioner shall adopt the  
9 description of a vacancy that best describes the land found to be  
10 vacant [~~vacancy~~] and that is consistent with the investigation  
11 under this subchapter.

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

25 Sec. 51.189 [~~51.187~~]. APPEAL. (a) A final order with a  
26 finding of "Not Vacant Land" under Section 51.188 may not be  
27 appealed. The final order is conclusive regarding the land

1 described in the vacancy application or the land investigated by  
2 the commissioner as a result of the vacancy application.

3 (b) A final order finding a vacancy exists is subject to  
4 appeal by a necessary party that has standing to appeal under  
5 Section 51.192. The district court in the county in which a  
6 majority of the vacant land is located has jurisdiction of an appeal  
7 under this subchapter. A necessary party [~~person~~] must file an  
8 appeal not later than the 30th [~~90th~~] day after the date the  
9 commissioner's final order is issued [~~under Section 51.186~~]. All  
10 necessary parties must be provided notice of an appeal under this  
11 section by the party filing the appeal.

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

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

25 Sec. 51.190 [~~51.188~~]. SCOPE OF REVIEW. In an appeal of [~~The~~  
26 ~~district court shall conduct a de novo review of~~] the  
27 commissioner's final order determining that a vacancy exists, the



1 district court shall conduct a trial de novo [~~does or does not~~  
2 ~~exist~~].

3 Sec. 51.191 [~~51.189~~]. ISSUES REVIEWABLE. The court may  
4 review the commissioner's declaration of good-faith-claimant  
5 status only in conjunction with a review of a final order  
6 determining that a vacancy exists.

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

- 10 (1) is a necessary party [~~an applicant~~];  
11 (2) has a present legal interest in the surface or  
12 mineral estate at the time a vacancy [~~an~~] application is filed; or  
13 (3) acquires a legal interest before the date of the  
14 commissioner's final order.

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

20 (b) The application must include certified copies of the  
21 applicable county records supporting the good-faith claimant's  
22 status.

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

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

- 1           (1) request a hearing by the commissioner; or  
2           (2) appeal the denial as part of any appeal of a final  
3 order finding that a vacancy exists.

4           (e) If the commissioner grants a hearing, the commissioner  
5 shall:

- 6           (1) determine the scope of the hearing;  
7           (2) provide timely notice of the time and place of the  
8 hearing to each necessary party; and  
9           (3) provide each necessary party an opportunity to be  
10 heard.

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

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

1 claimant's preferential right expires.

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

4 (c) A [~~The~~] good-faith claimant that owns a separate surface  
5 interest, a contractual right to a mineral or leasehold interest, a  
6 leasehold interest, or a royalty interest in the land occupied or  
7 used that is found to be part of or to include a vacancy is entitled  
8 to purchase or lease that same interest in the portion of the land  
9 determined to be [~~that is~~] vacant[+]

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

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

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

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

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

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

27 Sec. 51.195 [~~51.192~~]. PURCHASE OR LEASE BY APPLICANT. (a)

1 If no good-faith claimant exists or if no good-faith claimant  
2 exercises a preferential right within the applicable period, the  
3 applicant has a preferential right to purchase or lease the land  
4 determined to be vacant on or before the 60th day [~~for 30 days~~]  
5 after the date:

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

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

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

14 (1) an award by the board of a perpetual 1/32  
15 nonparticipating royalty of the full mineral interest of the  
16 vacancy; or

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

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

26 (d) An applicant who exercises a preferential right under  
27 Subsection (a) or (b)(2) may purchase or lease the land or an

1 interest in the land:

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

3 (2) subject to the royalty reservations provided by  
4 the board; and

5 (3) in accordance with the law in effect on the date  
6 the application is filed. [~~The board shall award an applicant,~~  
7 ~~other than a good-faith claimant, a perpetual nonparticipating~~  
8 ~~royalty of:~~

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

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

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

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

25 SECTION 3. This Act takes effect immediately if it receives  
26 a vote of two-thirds of all the members elected to each house, as  
27 provided by Section 39, Article III, Texas Constitution. If this

C.S.S.B. No. 1103

- 1 Act does not receive the vote necessary for immediate effect, this
- 2 Act takes effect September 1, 2005.