

1-1 By: Eltife S.B. No. 1103
1-2 (In the Senate - Filed March 8, 2005; March 21, 2005, read
1-3 first time and referred to Committee on Natural Resources;
1-4 April 11, 2005, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 10, Nays 0; April 11, 2005,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1103 By: Jackson

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the powers and duties of the General Land Office and the
1-11 disposition of certain unsurveyed public school land.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subchapter E, Chapter 51, Natural Resources
1-14 Code, is amended to read as follows:

1-15 SUBCHAPTER E. SALE AND LEASE OF VACANCIES

1-16 Sec. 51.171. PURPOSE; APPLICATION OF OTHER LAW. (a) This
1-17 subchapter controls the purchase and lease of vacant land and the
1-18 authority of the commissioner and the board to:

1-19 (1) determine whether a vacancy exists; and

1-20 (2) sell and lease vacant land.

1-21 (b) To the extent a provision of this subchapter conflicts
1-22 with another law relating to vacant land or Chapter 2001,
1-23 Government Code, this subchapter controls.

1-24 [~~(c) Chapter 2001, Government Code, does not apply to a~~
1-25 ~~proceeding under this subchapter.~~]

1-26 Sec. 51.172. DEFINITIONS. In this subchapter:

1-27 (1) "Administratively complete" means a vacancy
1-28 application that complies with Section 51.176 and any rule adopted
1-29 by the commissioner regarding the filing of a vacancy application.

1-30 (1-a) "Applicant" means any person, including a
1-31 good-faith claimant, who files a vacancy [an] application [to
1-32 purchase or lease a vacancy].

1-33 (1-b) "Application commencement date" means:

1-34 (A) the date, as designated in the commissioner's
1-35 notice to the applicant required by Section 51.177(b); or

1-36 (B) the date, as designated in the commissioner's
1-37 notice to the applicant required by Section 51.177(d), indicating
1-38 that any deficiency in the vacancy application has been resolved.

1-39 (2) "Good-faith claimant" means a person who, on the
1-40 application commencement date:

1-41 (A) occupies or uses or has previously occupied
1-42 or used, or whose predecessors in interest in the land claimed to be
1-43 vacant have occupied or used, the land or any interest in the land
1-44 [a vacancy] for any purposes, including occupying or using:

1-45 (i) the surface or mineral estate for any
1-46 purposes, including [other than] exploring for or removing oil,
1-47 gas, sulphur, or other minerals and geothermal resources from the
1-48 land;

1-49 (ii) an easement or right-of-way; or

1-50 (iii) a mineral royalty or leasehold
1-51 interest; [vacancy, and]

1-52 (B) has had, or whose predecessors in interest
1-53 have had, the land claimed to be vacant [vacancy] enclosed or within
1-54 definite boundaries recognized in the community and in possession
1-55 under a chain of title for a period of at least 10 years with a
1-56 good-faith belief that the land [vacancy] was included within the
1-57 boundaries of a survey or surveys that were previously titled,
1-58 awarded, or sold under circumstances that would have vested title
1-59 in the land [vacancy] if the land [vacancy] were actually located
1-60 within the boundaries of the survey or surveys;

1-61 (C) is the owner of land:

1-62 (i) that adjoins the land claimed to be
1-63 vacant; and

2-1 (ii) for which no vacancy application has
2-2 been previously filed; or

2-3 (D) holds title under a person described by
2-4 Paragraph (A), (B), or (C) or is entitled to a distributive share of
2-5 a title acquired under an application filed by a person described by
2-6 Paragraph (A), (B), or (C).

2-7 (3) "Interest" means any right or title in or to real
2-8 property, including a surface, subsurface, or mineral estate.
2-9 "Interest" includes a right or title described as follows:

2-10 (A) a fee simple title;

2-11 (B) a determinable fee or other leasehold or
2-12 mineral interest created under a conveyance instrument, including a
2-13 mineral lease;

2-14 (C) a mineral royalty, nonparticipating royalty,
2-15 or overriding royalty interest described by Section 51.194(c);

2-16 (D) a life estate;

2-17 (E) a remainder or reversionary interest; or

2-18 (F) a secured interest under a lien ["Interested
2-19 person" means a person, excluding a good-faith claimant or an
2-20 applicant, who has a present legal interest in the surface or
2-21 mineral estate of the land claimed to be vacant].

2-22 (4) "Necessary party" means:

2-23 (A) an applicant ~~or [interested person, and]~~
2-24 good-faith claimant whose present legal interest in the surface or
2-25 mineral estate of the land claimed to be vacant may be adversely
2-26 affected by a vacancy determination;

2-27 (B) a person who asserts a right to or who claims
2-28 an interest in land claimed to be vacant;

2-29 (C) a person who asserts a right to or who claims
2-30 an interest in land claimed to be vacant or in land adjoining land
2-31 claimed to be vacant as shown in the records of the land office or
2-32 the county records, including tax records, of any county in which
2-33 all or part of the land claimed to be vacant is located;

2-34 (D) a person whose name appears in the records
2-35 described by Paragraph (C); or

2-36 (E) an attorney ad litem appointed under Section
2-37 51.180.

2-38 (5) "Survey report" means a written report of a survey
2-39 conducted by a licensed state land surveyor or a county surveyor of
2-40 the county in which a majority of the land claimed to be vacant is
2-41 located.

2-42 (6) "Vacancy" means an area of unsurveyed public
2-43 school land that:

2-44 (A) is not in conflict on the ground with land
2-45 previously titled, awarded, or sold;

2-46 (B) has not been listed on the records of the land
2-47 office as public school land; and

2-48 (C) was not, on the application commencement date
2-49 [~~of filing of an application~~]:

2-50 (i) subject to an earlier subsisting
2-51 application; ~~or~~

2-52 (ii) subject to a vacancy application
2-53 denied with prejudice;

2-54 (iii) the subject of pending litigation
2-55 relating to state ownership or possession of the land; or

2-56 (iv) subject to a previous vacancy
2-57 application that has been finally adjudicated by the commissioner
2-58 or a court of this state or the United States.

2-59 (7) "Vacancy application" means a form submitted to
2-60 the commissioner by an applicant to:

2-61 (A) initiate a determination by the commissioner
2-62 whether land claimed to be vacant is vacant;

2-63 (B) purchase vacant land; or

2-64 (C) lease vacant land.

2-65 Sec. 51.173. DISPOSITION OF VACANT LAND. (a) Vacant and
2-66 unsurveyed public school land shall be located, sold, and leased
2-67 under this subchapter, except:

2-68 (1) submerged lands within tidewater limits;

2-69 (2) all islands, flats, and emergent lands within

3-1 tidewater limits;
 3-2 (3) natural lakes; and
 3-3 (4) riverbeds, including channels and islands in
 3-4 riverbeds, above tidewater limits.
 3-5 (b) This subchapter does not alter or diminish the public
 3-6 domain status of the surface estate of riverbeds and channels and
 3-7 islands in riverbeds that are located above tidewater limits.
 3-8 Sec. 51.174. GENERAL POWERS AND DUTIES OF COMMISSIONER.
 3-9 (a) The commissioner may:
 3-10 (1) delegate responsibility for implementing this
 3-11 subchapter; ~~and~~
 3-12 (2) perform any other act necessary to administer and
 3-13 implement the purposes of this subchapter, including entering into
 3-14 a contract with a private party to provide the notices required
 3-15 under this subchapter; and
 3-16 (3) terminate without prejudice a vacancy application
 3-17 if an applicant fails to comply with this subchapter or a rule
 3-18 adopted under this subchapter.
 3-19 (b) The commissioner may grant an extension of time to
 3-20 comply with a requirement under this subchapter. For each
 3-21 application, the commissioner may grant not more than a total of 30
 3-22 days in extensions of time to comply with one or more requirements
 3-23 of this subchapter, excluding any extensions of time related to the
 3-24 survey report under this subchapter. The commissioner may grant
 3-25 not more than 90 days in extensions of time to comply with a
 3-26 requirement related to the survey report under this subchapter.
 3-27 (c) The commissioner shall adopt rules necessary and
 3-28 convenient to administer this subchapter.
 3-29 (d) ~~(c)~~ The commissioner shall advise the board relating
 3-30 to the market value of the surface, ~~and~~ mineral, and leasehold
 3-31 estates of vacant land.
 3-32 Sec. 51.175. GENERAL POWERS AND DUTIES OF BOARD. (a) The
 3-33 board shall set the terms and conditions for each sale and lease of
 3-34 a vacancy.
 3-35 (b) The board shall adopt rules governing the terms and
 3-36 conditions for the sale and lease of a vacancy. The rules shall be
 3-37 adopted and amended as necessary to be consistent with real
 3-38 property law of this state and other applicable law.
 3-39 (c) The board may adopt rules governing mineral
 3-40 classification, royalty reservations, and awards of royalty
 3-41 reservations and preferential rights to an applicant or to a
 3-42 good-faith claimant in addition to the provisions prescribed by
 3-43 this subchapter.
 3-44 Sec. 51.176. VACANCY APPLICATION; FILING. (a) To purchase
 3-45 or lease land claimed to be vacant, a person must file a vacancy
 3-46 an application on a form prescribed by the commissioner. A
 3-47 completed application must include:
 3-48 (1) a description of ~~describe~~ the land ~~that is~~
 3-49 claimed to be vacant that is sufficient to locate the land on the
 3-50 ground;
 3-51 (2) a written statement indicating ~~state~~ whether the
 3-52 applicant seeks to purchase the land ~~that is~~ claimed to be vacant
 3-53 or obtain a mineral lease on the land or both purchase the land and
 3-54 obtain a mineral lease on the land;
 3-55 (3) a list, in a format prescribed by the
 3-56 commissioner, containing ~~state~~ the name and last known mailing
 3-57 address of each necessary party whose name appears in the records
 3-58 described by Section 51.172(4)(C) ~~person who, from facts known to~~
 3-59 the applicant, asserts a present legal interest in the land claimed
 3-60 to be vacant];
 3-61 (4) an affidavit executed by the applicant affirming
 3-62 that the applicant conducted a diligent search of all the records
 3-63 described by Section 51.172(4)(C) in preparing the list required by
 3-64 Subdivision (3);
 3-65 (5) if applicable, a statement of ~~state~~ the basis
 3-66 for and ~~provide~~ documentary proof for an assertion of
 3-67 good-faith-claimant status;
 3-68 (6) at the applicant's discretion:
 3-69 (A) a survey report; or

4-1 (B) an abstract of title to any land that adjoins
4-2 the land claimed to be vacant; and

4-3 (7) [~~(5) provide~~] any other information required by
4-4 the commissioner.

4-5 (b) The applicant must file the original and a duplicate
4-6 copy of the vacancy application with the county clerk [~~surveyor~~] of
4-7 each [~~the~~] county in which all or part of the land claimed to be
4-8 vacant is located. [~~If the county does not have a county surveyor,~~
4-9 ~~the application must be filed with the county clerk.~~]

4-10 (c) The [~~county surveyor or~~] county clerk[~~, as applicable,~~]
4-11 shall mark the exact date and hour of filing on the original and a
4-12 duplicate copy of the vacancy application and shall return a marked
4-13 copy to the person filing the application. The original shall be
4-14 recorded in a book kept for that purpose separate from the deed or
4-15 real property records. The failure to record a vacancy [~~an~~]
4-16 application as provided by this subsection does not affect the
4-17 validity of the application filing.

4-18 (d) Not later than the fifth day after the date an applicant
4-19 files the vacancy application with the county clerk, the applicant
4-20 shall file a duplicate copy of the marked copy received from the
4-21 county clerk with the county surveyor of each county in which all or
4-22 part of the land claimed to be vacant is located if that county has a
4-23 county surveyor.

4-24 (e) Priority among vacancy applications covering the same
4-25 land claimed to be vacant is determined by the earliest time of
4-26 filing indicated by the date and hour marked on the application by
4-27 the [~~county surveyor or~~] county clerk.

4-28 (f) [~~(e)~~] The applicant shall submit to [~~file with~~] the
4-29 commissioner two duplicate copies of the marked copy that has been
4-30 file-stamped by the county clerk [~~the duplicate copy of the~~
4-31 ~~application with the county official's mark indicating the time of~~
4-32 ~~filing] not later than the 30th day after the date the vacancy~~
4-33 ~~application is filed with the county [~~surveyor or~~] clerk. The~~
4-34 ~~commissioner shall mark the date the two duplicate copies are~~
4-35 ~~received on each copy, assign a file number to the vacancy~~
4-36 ~~application, and return a marked duplicate copy containing the file~~
4-37 ~~number to the applicant [If the 30th day after the date of filing~~
4-38 ~~falls on a Saturday, Sunday, or state or federal holiday, the~~
4-39 ~~application may be filed on the next regular business day following~~
4-40 ~~the 30th day].~~

4-41 (g) The applicant shall include a filing fee set by the
4-42 commissioner in an amount of not less than \$100.

4-43 Sec. 51.177. PROCESSING VACANCY APPLICATION. (a) Not
4-44 later than the 45th day after the date the applicant files the
4-45 duplicate copies with the commissioner as provided by Section
4-46 51.176(f), the commissioner shall:

4-47 (1) determine whether the vacancy application is
4-48 administratively complete; and

4-49 (2) provide to the applicant the notice required by
4-50 this section.

4-51 (b) If the commissioner determines that the vacancy
4-52 application is administratively complete, the commissioner shall
4-53 provide written notice to the applicant that:

4-54 (1) informs the applicant that the application is
4-55 administratively complete;

4-56 (2) states the application commencement date; and

4-57 (3) states the amount of any deposit required under
4-58 Section 51.178 and the date by which the applicant must pay the
4-59 deposit.

4-60 (c) If the commissioner determines that the vacancy
4-61 application is not administratively complete, the commissioner
4-62 shall provide written notice to the applicant that:

4-63 (1) informs the applicant that the application is not
4-64 administratively complete;

4-65 (2) provides a list of any deficiencies the applicant
4-66 must resolve; and

4-67 (3) states a reasonable period of not more than 30 days
4-68 from the date of the notice to resolve any listed deficiencies.

4-69 (d) Not later than the 30th day after the date provided

5-1 under Subsection (c)(3) to resolve any deficiencies, the
 5-2 commissioner shall determine whether the vacancy application is
 5-3 administratively complete. If the commissioner determines that the
 5-4 vacancy application is administratively complete, the commissioner
 5-5 shall provide the notice required by Subsection (b). If the
 5-6 commissioner determines that the vacancy application is not
 5-7 administratively complete, the commissioner shall:

5-8 (1) dismiss the application without prejudice; and

5-9 (2) provide written notice to the applicant informing
 5-10 the applicant that the application is not administratively complete
 5-11 and is dismissed without prejudice [~~The commissioner shall mark the~~
 5-12 ~~date of filing on the application and assign a file number to the~~
 5-13 ~~application].~~

5-14 [~~(b) The commissioner shall accept an application filed in~~
 5-15 ~~compliance with this subchapter and shall notify the applicant on~~
 5-16 ~~acceptance of the application.~~

5-17 [~~(c) The commissioner may reject an application and shall~~
 5-18 ~~notify the applicant of the rejection if the application:~~

5-19 [~~(1) has material omissions;~~

5-20 [~~(2) does not describe the land claimed to be vacant~~
 5-21 ~~adequately for the land to be located on the ground; or~~

5-22 [~~(3) describes as vacant land that has been finally~~
 5-23 ~~adjudicated in a court of this state or of the United States not to~~
 5-24 ~~be vacant.~~

5-25 [~~(d) A rejected application is terminated. No further~~
 5-26 ~~action is taken on the application, and the land office file is~~
 5-27 ~~closed.~~

5-28 [~~Sec. 51.178. APPLICATION FOR AND DETERMINATION OF~~
 5-29 ~~GOOD-FAITH-CLAIMANT STATUS. (a) A person may apply for~~
 5-30 ~~good-faith-claimant status not later than the 90th day after:~~

5-31 [~~(1) the date of a final order by the commissioner~~
 5-32 ~~finding that a vacancy exists; or~~

5-33 [~~(2) the date of final judgment by a court that a~~
 5-34 ~~vacancy exists, if the commissioner does not find that a vacancy~~
 5-35 ~~exists.~~

5-36 [~~(b) The application must include certified copies of~~
 5-37 ~~applicable county records supporting the good-faith claimant's~~
 5-38 ~~status.~~

5-39 [~~(c) The commissioner shall, after expiration of the period~~
 5-40 ~~prescribed by Subsection (a)(2), declare whether a person is a~~
 5-41 ~~good-faith claimant. The commissioner may consider documents filed~~
 5-42 ~~in support of the person's good-faith-claimant status and any other~~
 5-43 ~~relevant information. The commissioner may conduct an~~
 5-44 ~~investigation under Section 51.185 as necessary to make a~~
 5-45 ~~determination on the application. The commissioner has sole~~
 5-46 ~~discretion to declare a person a good-faith claimant, and a person~~
 5-47 ~~is not otherwise entitled to a declaration of good-faith-claimant~~
 5-48 ~~status. A declaration of the commissioner under this subsection is~~
 5-49 ~~not a final order and may not be appealed, except as provided by~~
 5-50 ~~Section 51.187.~~

5-51 [~~(d) A declaration of good-faith-claimant status grants a~~
 5-52 ~~preferential right to the claimant to purchase or lease the land as~~
 5-53 ~~provided by this subchapter. The declaration does not confer any~~
 5-54 ~~other rights.~~

5-55 [~~Sec. 51.179. IDENTIFICATION OF AND NOTICE TO NECESSARY~~
 5-56 ~~PARTIES. (a) The applicant shall identify each necessary party by~~
 5-57 ~~the name and last known address of each owner or claimant of land or~~
 5-58 ~~any interest in land or of a lease on, adjoining, overlapping, or~~
 5-59 ~~including the land claimed to be vacant as can be determined from~~
 5-60 ~~the records of the land office and the county clerk's office.~~

5-61 [~~(b) The applicant shall provide each necessary party with~~
 5-62 ~~the notice of the commissioner's acceptance of the application, a~~
 5-63 ~~copy of the application, and a continuance for future notices form~~
 5-64 ~~not later than the 90th day after the date the applicant receives~~
 5-65 ~~the notice of the commissioner's acceptance of the application.~~

5-66 [~~(c) Except as provided by this subsection, a necessary~~
 5-67 ~~party is not entitled to subsequent notices required by this~~
 5-68 ~~subchapter unless the party requests subsequent notices. The~~
 5-69 ~~commissioner shall notify a necessary party of a final order issued~~

6-1 ~~under Section 51.186.~~

6-2 ~~[(d) Not later than the 30th day after the date the notices~~
6-3 ~~are mailed under Subsection (b), the applicant must publish the~~
6-4 ~~notice of the commissioner's acceptance of the application in each~~
6-5 ~~newspaper of general circulation in the county and the general area~~
6-6 ~~in which the land is located for a period determined by the~~
6-7 ~~commissioner. The published notice must contain a description of~~
6-8 ~~the land claimed to be vacant.]~~

6-9 Sec. 51.178 [51.180]. DEPOSIT. (a) The commissioner may
6-10 recover from the applicant state funds expended in evaluating and
6-11 investigating the application, providing notice, preparing a
6-12 survey, appointing an attorney ad litem, [the investigation] and
6-13 conducting hearings [conducted] under this subchapter.

6-14 (b) The [Not later than the 30th day after the date notice is
6-15 published as required by Section 51.179, the] commissioner shall
6-16 [may] require the applicant to submit a deposit[. If required, the
6-17 applicant must make a deposit] in an amount sufficient to pay the
6-18 reasonable costs [of any survey and investigation required] under
6-19 Subsection (a) [this subchapter] not later than the 30th day after
6-20 the application commencement date [the commissioner notifies the
6-21 applicant].

6-22 (c) If the amount deposited is insufficient, the
6-23 commissioner shall require [may make a written request for] a
6-24 reasonably necessary supplemental deposit. If a supplemental
6-25 deposit is required, the applicant must make the deposit not later
6-26 than the 30th day after the date the commissioner requests the
6-27 supplemental deposit.

6-28 (d) ~~[The commissioner and applicant may agree to~~
6-29 ~~alternative payment methods to recover state funds expended in the~~
6-30 ~~investigation and hearings conducted under this subchapter.~~

6-31 ~~[(e)]~~ An applicant may not challenge or appeal the amount of
6-32 the required deposits, and the applicant's refusal or failure to
6-33 make the required deposits in the period prescribed by this section
6-34 terminates the application without prejudice.

6-35 Sec. 51.179 [51.181]. DISPOSITION OF DEPOSITS. (a) The
6-36 commissioner shall deposit all initial and supplemental deposits
6-37 received under this subchapter to the credit of a separate trust
6-38 account in the state treasury. The comptroller, on the
6-39 commissioner's order, shall make disbursements from that account
6-40 for purposes authorized by this subchapter.

6-41 (b) After proceedings on a vacancy [an] application are
6-42 concluded and all expenditures authorized under this subchapter are
6-43 paid, the commissioner shall provide to the applicant a complete
6-44 statement of all deposits and expenditures and shall remit to the
6-45 applicant any balance remaining from the deposit or supplemental
6-46 deposits made by the applicant.

6-47 Sec. 51.180. ATTORNEY AD LITEM. (a) The applicant must
6-48 provide evidence to the commissioner to establish the applicant's
6-49 ownership of all interests in the land surrounding the land claimed
6-50 to be vacant.

6-51 (b) If the applicant fails to provide sufficient evidence,
6-52 as determined by the commissioner, the commissioner shall, not
6-53 later than the 30th day after the application commencement date,
6-54 appoint an attorney ad litem to:

- 6-55 (1) identify all necessary parties; and
- 6-56 (2) represent the interests of any necessary party
6-57 identified under Section 51.176(a)(3) that has not been located.

6-58 Sec. 51.181. NOTICE TO NECESSARY PARTIES. (a) Not later
6-59 than the 30th day after the application commencement date, the
6-60 commissioner shall provide to each necessary party a written notice
6-61 that:

- 6-62 (1) informs the necessary party that a vacancy
6-63 application has been filed;
- 6-64 (2) states the application commencement date; and
- 6-65 (3) includes:
 - 6-66 (A) a copy of the vacancy application and any
6-67 attachments; and
 - 6-68 (B) a form for requesting subsequent notices
6-69 regarding the application.

7-1 (b) Except as provided by Subsection (c), a necessary party
 7-2 is not entitled to notices subsequent to the notice provided under
 7-3 Subsection (a) unless the party requests subsequent notices.

7-4 (c) The commissioner shall notify each necessary party of a
 7-5 final order issued under Section 51.188.

7-6 Sec. 51.182. FILING OF EXCEPTIONS TO APPLICATION. (a) Not
 7-7 later than the 60th day after the date of the commissioner's notice
 7-8 under Section 51.181(a), a necessary party may file an exception to
 7-9 the vacancy application, any documentation attached to the
 7-10 application, or any other documents or public records that may be
 7-11 used by the commissioner to make a determination.

7-12 (b) A necessary party must:

7-13 (1) file an exception with the land office; and

7-14 (2) provide a copy of the filing to each necessary
 7-15 party that requested subsequent notice as provided by Section
 7-16 51.181.

7-17 Sec. 51.183. INVESTIGATION. (a) The commissioner shall
 7-18 conduct an investigation of the vacancy application.

7-19 (b) The investigation shall include:

7-20 (1) an evaluation of the vacancy application;

7-21 (2) a determination that the vacancy application was
 7-22 filed as provided by Section 51.176; and

7-23 (3) a review of public records at the land office
 7-24 relating to the land claimed to be vacant.

7-25 (c) The investigation may include a review of:

7-26 (1) any survey conducted by a licensed state land
 7-27 surveyor or by the county surveyor of a county in which all or part
 7-28 of the land claimed to be vacant is located; or

7-29 (2) any documents or public records necessary to
 7-30 determine whether a vacancy exists, including a review of public
 7-31 records relating to the land claimed to be vacant at:

7-32 (A) the state archives; or

7-33 (B) any county in which all or part of the land
 7-34 claimed to be vacant is located.

7-35 (d) An investigation may include a survey requested by the
 7-36 commissioner under Section 51.184 or a surveyor's report as
 7-37 provided by Section 51.185.

7-38 (e) The commissioner shall record the names of the persons
 7-39 consulted, the documents and surveys reviewed, and the relevant law
 7-40 and other materials used in the investigation.

7-41 Sec. 51.184 ~~[51.182]~~. COMMISSIONER'S SURVEY. (a) To
 7-42 investigate a vacancy application under Section 51.183, the
 7-43 commissioner may require a survey. If the commissioner requires a
 7-44 survey, the ~~[The]~~ commissioner shall ~~[may]~~ appoint a licensed state
 7-45 land surveyor who is not associated with the vacancy application to
 7-46 prepare a report as provided by Section 51.185~~[, or the county~~
 7-47 ~~surveyor of the county in which the land claimed to be vacant or~~
 7-48 ~~part of that land is located, to investigate the applicant's~~
 7-49 ~~claim]. The commissioner may limit the scope of the work performed~~
 7-50 ~~by the surveyor.~~

7-51 (b) A necessary party may observe a survey conducted under
 7-52 this section. A survey will not be delayed to accommodate a
 7-53 necessary party who provides notice to the commissioner that the
 7-54 party intends to observe the surveyor conducting the survey.

7-55 (c) The commissioner shall mail a notice of intention to
 7-56 survey to each necessary party not later than the 30th day before
 7-57 the date the surveyor begins work. The notice must contain:

7-58 (1) the proposed starting date of the survey;

7-59 (2) ~~and~~ the name, address, and telephone number of
 7-60 the surveyor; and

7-61 (3) a statement informing the necessary party that any
 7-62 necessary party may observe the field work of the surveyor
 7-63 conducting the survey.

7-64 (d) ~~[(c)]~~ The fees and expenses paid for the survey are the
 7-65 same as those provided by law. If the fees and expenses are not
 7-66 provided by law, the commissioner shall contract for fees and
 7-67 expenses reasonably necessary for the scope of the required work.
 7-68 Contracts under this subsection:

7-69 (1) must include hourly rates, categories of

8-1 reimbursable expenses, and an estimated completion date; and

8-2 (2) may include other expenses the commissioner
8-3 considers reasonable.

8-4 (e) The commissioner shall adopt rules regarding the
8-5 removal of an appointed surveyor on the grounds of bias, prejudice,
8-6 or conflict. The rules must permit the commissioner to remove an
8-7 appointed surveyor on the commissioner's own motion or on the
8-8 motion of a necessary party [~~(d) The appointment of a surveyor is~~
8-9 ~~not required. The commissioner may rely on:~~

8-10 [~~(1) any survey conducted by a licensed state land~~
8-11 ~~surveyor or a county surveyor of the county in which the land~~
8-12 ~~claimed to be vacant or a part of that land is located; and~~

8-13 [~~(2) any documents or public records required to~~
8-14 ~~determine whether a vacancy exists].~~

8-15 Sec. 51.185 [~~51.183~~]. SURVEYOR'S REPORT. (a) Not later
8-16 than the 120th day after the date a surveyor is appointed under
8-17 Section 51.184 [~~51.182~~], the surveyor shall file a written report
8-18 of the survey, the field notes describing the land and the lines and
8-19 corners surveyed, a plat depicting the results of the survey, and
8-20 any other information required by the commissioner. The
8-21 commissioner may extend the time for filing the report as
8-22 reasonably necessary.

8-23 (b) The survey report must also contain:

8-24 (1) the name and last known mailing [~~post office~~]
8-25 address of:

8-26 (A) each person who has possession of the land
8-27 described in the vacancy application; and

8-28 (B) [~~of~~] each person determined by the surveyor
8-29 to have an [~~a present legal~~] interest in the land; and

8-30 (2) all abstract numbers associated with surveys of
8-31 land adjoining the land claimed to be vacant.

8-32 Sec. 51.186 [~~51.184~~]. COMPLETION OF SURVEY. (a) The
8-33 commissioner shall serve a true copy of the survey report filed by
8-34 the surveyor on each necessary party, including those named in the
8-35 survey report, by certified mail, return receipt requested, not
8-36 later than the 30th [~~10th~~] business day after the date the survey
8-37 report is filed with the land office.

8-38 (b) Any necessary party may file exceptions to the
8-39 surveyor's report not later than the 30th day after the date the
8-40 survey report is mailed to the necessary party by the commissioner
8-41 [~~notice of completion is received. If the commissioner does not~~
8-42 ~~appoint a surveyor, a necessary party may file exceptions to a~~
8-43 ~~survey report filed by the applicant during a period established by~~
8-44 ~~the commissioner]. Any exceptions must be filed with the land~~
8-45 office and a copy must be sent by the party filing the exception to
8-46 each necessary party who has requested subsequent notice under
8-47 Section 51.181.

8-48 Sec. 51.187 [~~51.185~~]. HEARING [~~INVESTIGATION~~]. (a) If the
8-49 commissioner has not issued a final order with a finding of "Not
8-50 Vacant Land" on or before the first anniversary of the application
8-51 commencement date, the [~~The~~] commissioner shall order [~~conduct an~~
8-52 ~~investigation of the applicant's claim that a vacancy exists. The~~
8-53 ~~commissioner may conduct~~] a hearing to determine if a vacancy
8-54 exists. A hearing under this subchapter:

8-55 (1) shall be held not later than the 60th day after the
8-56 date the hearing is ordered;

8-57 (2) shall be conducted as [~~is not~~] a contested case
8-58 hearing [~~and is not~~] subject to Chapter 2001, Government Code; and

8-59 (3) may be waived by written agreement of all
8-60 necessary parties and the commissioner. [~~The commissioner is not~~
8-61 ~~required to grant any hearings under this subchapter.~~]

8-62 (b) Not later than the 30th day after the date a hearing is
8-63 ordered under Subsection (a), [~~The commissioner shall determine the~~
8-64 ~~scope of any hearings to investigate an application for~~
8-65 ~~good-faith-claimant status and an application to purchase or lease~~
8-66 ~~vacant land. If the commissioner grants a hearing,~~] the
8-67 commissioner shall provide [~~timely~~] notice of the [~~time and place~~
8-68 ~~of the~~] hearing date to [~~necessary parties and shall provide~~] each
8-69 necessary party [~~an opportunity to be heard. Any other procedural~~

9-1 ~~rights, including the right to examine or cross-examine witnesses,~~
 9-2 ~~may be granted in the sole discretion of the commissioner].~~

9-3 (c) Not later than the 60th day after the date of the
 9-4 hearing, the commissioner shall enter a final order as provided by
 9-5 Section 51.188 [The commissioner may consult with any land office
 9-6 employee, including the chief surveyor, or a relevant expert during
 9-7 the investigation].

9-8 ~~[(d) The commissioner shall record the names of the persons~~
 9-9 ~~consulted, the documents and surveys reviewed, and the relevant law~~
 9-10 ~~and other materials used in the investigation.]~~

9-11 Sec. 51.188 [51.186]. COMMISSIONER'S FINAL ORDER. (a) At
 9-12 any time during or after an investigation of or hearing regarding a
 9-13 vacancy application, the commissioner may determine that land
 9-14 claimed to be vacant is not vacant and issue a final order with a
 9-15 finding of "Not Vacant Land."

9-16 (b) After a hearing conducted under Section 51.187, the
 9-17 commissioner shall issue a final order with a finding of "Not Vacant
 9-18 Land" or issue an order finding [If the commissioner concludes that
 9-19 the land claimed to be vacant is not in conflict with land
 9-20 previously titled, awarded, or sold by the state, the commissioner
 9-21 may determine that] a vacancy exists. Not later than the 15th day
 9-22 after the date the final order is issued, the [The] commissioner
 9-23 shall notify each necessary party of the final order by providing
 9-24 [mailing] each party a copy of the [vacancy determination. The
 9-25 vacancy determination is a] final order [of the commissioner and
 9-26 may be appealed as provided by Section 51.187].

9-27 (c) ~~[(b)]~~ A final order finding a vacancy exists
 9-28 [determination order] must contain:

9-29 (1) a finding by the commissioner that the land
 9-30 claimed to be vacant is unsurveyed public school land that is not in
 9-31 conflict with land previously titled, awarded, or sold by the state
 9-32 as established by:

9-33 (A) clear and convincing proof for an application
 9-34 to which an exception has been filed as provided by Section 51.182;
 9-35 or

9-36 (B) a preponderance of the evidence for an
 9-37 application to which no exceptions have been filed as provided by
 9-38 Section 51.182;

9-39 (2) the field note description used to determine the
 9-40 vacancy, which must be [of the land determined to be vacant that is]
 9-41 sufficient to locate the land on the ground;

9-42 (3) ~~[(2)]~~ an accurate plat of the land that is:
 9-43 (A) consistent with the field notes; and
 9-44 (B) prepared by a [county surveyor or] licensed
 9-45 state land surveyor or a county surveyor of the county in which a
 9-46 majority of vacant land is located; and

9-47 (4) ~~[(3)]~~ any other matters required by law or as the
 9-48 commissioner considers appropriate.

9-49 (d) ~~[(c)]~~ In determining the boundaries and size of a
 9-50 vacancy, the commissioner is not restricted to a description of the
 9-51 land claimed to be vacant that is provided by the applicant, the
 9-52 surveyor, or any other person. The commissioner shall adopt the
 9-53 description of a vacancy that best describes the land found to be
 9-54 vacant [vacancy] and that is consistent with the investigation
 9-55 under this subchapter.

9-56 (e) The commissioner shall attach to the commissioner's
 9-57 final order a document entitled "Notice of Claim of Vacancy." The
 9-58 commissioner shall prescribe the contents of the notice. The
 9-59 commissioner shall file the notice with the county clerk and any
 9-60 county surveyor of each county in which all or part of the vacancy
 9-61 is located ~~[(d) If the commissioner determines that the land~~
 9-62 ~~claimed to be vacant is not vacant, the commissioner shall endorse~~
 9-63 ~~the file with the finding "Not Vacant Land" and shall notify each~~
 9-64 ~~necessary party of the determination. A finding of "Not Vacant~~
 9-65 ~~Land" is conclusive with respect to land described in the~~
 9-66 ~~application. A finding of "Not Vacant Land" under this subsection~~
 9-67 ~~is a final order of the commissioner and may be appealed as provided~~
 9-68 ~~by Section 51.187].~~

9-69 Sec. 51.189 [51.187]. APPEAL. (a) A final order with a

10-1 finding of "Not Vacant Land" under Section 51.188 may not be
10-2 appealed. The final order is conclusive regarding the land
10-3 described in the vacancy application or the land investigated by
10-4 the commissioner as a result of the vacancy application.

10-5 (b) A final order finding a vacancy exists is subject to
10-6 appeal by a necessary party that has standing to appeal under
10-7 Section 51.192. The district court in the county in which a
10-8 majority of the vacant land is located has jurisdiction of an appeal
10-9 under this subchapter. A necessary party [person] must file an
10-10 appeal not later than the 30th [90th] day after the date the
10-11 commissioner's final order is issued [under Section 51.186]. All
10-12 necessary parties must be provided notice of an appeal under this
10-13 section by the party filing the appeal.

10-14 (c) A person whose predecessor in title was bound by the
10-15 outcome of an appeal is bound to the same extent the predecessor in
10-16 title would be bound if the predecessor in title continued to hold
10-17 title [(b) The district court, in its discretion, may allow an
10-18 interested person who did not receive notice of a proceeding under
10-19 this subchapter to file an appeal after the expiration of the 90-day
10-20 period prescribed by Subsection (a)].

10-21 [(c) If the commissioner has not issued a final order under
10-22 Section 51.186 on or before the first anniversary of the date the
10-23 application was accepted under Section 51.177(b), the applicant may
10-24 file an action in district court to determine whether a vacancy
10-25 exists. The filing of an action under this subsection terminates
10-26 the application with the land office.]

10-27 Sec. 51.190 [51.188]. SCOPE OF REVIEW. In an appeal [The
10-28 district court shall conduct a de novo review] of the
10-29 commissioner's final order determining that a vacancy exists, the
10-30 district court shall conduct a trial de novo [does or does not
10-31 exist].

10-32 Sec. 51.191 [51.189]. ISSUES REVIEWABLE. The court may
10-33 review the commissioner's declaration of good-faith-claimant
10-34 status only in conjunction with a review of a final order
10-35 determining that a vacancy exists.

10-36 Sec. 51.192 [51.190]. STANDING TO APPEAL. A person may
10-37 appeal the commissioner's final order determining that a vacancy
10-38 exists if the person:

- 10-39 (1) is a necessary party [an applicant];
- 10-40 (2) has a present legal interest in the surface or
10-41 mineral estate at the time a vacancy [an] application is filed; or
- 10-42 (3) acquires a legal interest before the date of the
10-43 commissioner's final order.

10-44 Sec. 51.193. APPLICATION FOR AND DETERMINATION OF
10-45 GOOD-FAITH-CLAIMANT STATUS. (a) A necessary party may apply for
10-46 good-faith-claimant status not later than the 90th day after the
10-47 date the commissioner issues a final order finding that a vacancy
10-48 exists.

10-49 (b) The application must include certified copies of the
10-50 applicable county records supporting the good-faith claimant's
10-51 status.

10-52 (c) Not later than the 120th day after the date the
10-53 commissioner issues a final order finding that a vacancy exists,
10-54 the commissioner shall declare whether a necessary party is a
10-55 good-faith claimant.

10-56 (d) A person who is denied good-faith-claimant status may:
10-57 (1) request a hearing by the commissioner; or
10-58 (2) appeal the denial as part of any appeal of a final
10-59 order finding that a vacancy exists.

10-60 (e) If the commissioner grants a hearing, the commissioner
10-61 shall:

- 10-62 (1) determine the scope of the hearing;
- 10-63 (2) provide timely notice of the time and place of the
10-64 hearing to each necessary party; and
- 10-65 (3) provide each necessary party an opportunity to be
10-66 heard.

10-67 (f) A declaration of good-faith-claimant status grants a
10-68 preferential right to the claimant to purchase or lease the land or
10-69 an interest in the land as provided by Section 51.194. The

11-1 declaration does not confer any other rights.

11-2 Sec. 51.194 [51.191]. PREFERENTIAL RIGHT OF GOOD-FAITH
 11-3 CLAIMANT. (a) A good-faith claimant who has been notified by the
 11-4 commissioner that a vacancy exists under this subchapter has a
 11-5 preferential right to purchase or lease the interest claimed in the
 11-6 land before the land was declared vacant [vacancy]. The
 11-7 preferential right may be exercised after a final judicial
 11-8 determination or after the commissioner's final order and the
 11-9 period for filing an appeal has expired. If a [the] good-faith
 11-10 claimant does not apply to purchase or lease the interest [land]
 11-11 before the later of the 121st day after the date the commissioner's
 11-12 order becomes final or the 60th day after the date of the final
 11-13 judicial determination of an appeal under this subchapter [the
 11-14 preferential right may be exercised], then the good-faith
 11-15 claimant's preferential right expires.

11-16 (b) A [The] good-faith claimant may purchase or lease the
 11-17 vacancy by submitting a written application to the board.

11-18 (c) A [The] good-faith claimant that owns each separate
 11-19 surface interest, a contractual right to a mineral or leasehold
 11-20 interest, a leasehold interest, or a royalty interest in the land
 11-21 occupied or used that is found to be part of or to include a vacancy
 11-22 is entitled to purchase or lease that same interest in the portion
 11-23 of the land determined to be [that is] vacant:

11-24 (1) at the price and under the conditions set by the
 11-25 board;

11-26 (2) for the duration of the contract or lease and
 11-27 subject to a division of the existing [the] royalty between the
 11-28 state and the existing royalty owners, provided that the state
 11-29 retains at least one-half of the royalty interest [reservations
 11-30 provided by the board]; and

11-31 (3) in accordance with the law in effect on the date
 11-32 the application is filed.

11-33 Sec. 51.195 [51.192]. PURCHASE OR LEASE BY APPLICANT.
 11-34 (a) If no good-faith claimant exists or if no good-faith claimant
 11-35 exercises a preferential right within the applicable period, the
 11-36 applicant has a preferential right to purchase or lease the land
 11-37 determined to be vacant on or before the 60th day [for 30 days]
 11-38 after the date:

11-39 (1) the commissioner determines [a determination]
 11-40 that no good-faith claimant exists; or

11-41 (2) [the expiration of] the period for a good-faith
 11-42 claimant to exercise [exercising] a preferential right expires.

11-43 (b) An applicant who exercises a preferential right under
 11-44 Subsection (a) may purchase or lease the land or an interest in the
 11-45 land:

11-46 (1) at the price set by the board;

11-47 (2) subject to the royalty reservations provided by
 11-48 the board; and

11-49 (3) in accordance with the law in effect on the date
 11-50 the application is filed.

11-51 (c) The board shall award an applicant[, other than a
 11-52 good-faith claimant,] a [perpetual] nonparticipating royalty of:

11-53 (1) not less than 1/64 [1/32] or more than 1/32 [1/16]
 11-54 of the royalty paid to the state from the production [value] of oil,
 11-55 gas, and sulphur; and

11-56 (2) one percent of the value of all geothermal and
 11-57 other minerals produced.

11-58 SECTION 2. (a) Except as provided by Subsection (b) of
 11-59 this section, Subchapter E, Chapter 51, Natural Resources Code, as
 11-60 amended by this Act, applies only to a vacancy application filed on
 11-61 or after the effective date of this Act. A vacancy application
 11-62 filed before the effective date of this Act is governed by the law
 11-63 in effect when the vacancy application was filed, and the former law
 11-64 continues in effect for that purpose.

11-65 (b) Section 51.188, Natural Resources Code, as renumbered
 11-66 from Section 51.186, Natural Resources Code, and amended by this
 11-67 Act, applies to a vacancy application filed before the effective
 11-68 date of this Act and for which no appeal has been filed as of the
 11-69 effective date of this Act.

12-1 SECTION 3. This Act takes effect immediately if it receives
12-2 a vote of two-thirds of all the members elected to each house, as
12-3 provided by Section 39, Article III, Texas Constitution. If this
12-4 Act does not receive the vote necessary for immediate effect, this
12-5 Act takes effect September 1, 2005.

12-6

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