

By: Orr

H.B. No. 3461

Substitute the following for H.B. No. 3461:

By: Bolton

C.S.H.B. No. 3461

A BILL TO BE ENTITLED

AN ACT

relating to the powers and duties of the School Land Board and the commissioner of the General Land Office.

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

SECTION 1. Section 32.001(4), Natural Resources Code, is amended to read as follows:

(4) "Land" means:

(A) land dedicated to or acquired on behalf of the permanent school fund and the asylum funds under ~~[by]~~ the constitution and laws of this state;

(B) the mineral estate in areas within tidewater limits, including islands, lakes, bays, and the bed of the sea which belong to the state;

(C) the mineral estate in river beds and channels; and

(D) land owned by the state or held in trust for the use and benefit of the state or of a department, board, or agency of the state.

SECTION 2. Section 32.016(a), Natural Resources Code, is amended to read as follows:

(a) When necessary, the board shall meet on the first and third Tuesdays of each month at a time and location to be designated by the board ~~[in the land office]~~.

SECTION 3. Section 32.061, Natural Resources Code, is

amended to read as follows:

Sec. 32.061. BOARD'S GENERAL DUTIES. Except as provided by Subchapter G, Chapter 51, of this code, the board shall:

(1) set the dates to open received bids for the sale of ~~[surveyed]~~ land ~~[dedicated to the permanent school fund]~~, for the lease of land for prospecting or exploring for, mining, producing, storing, caring for, transporting, preserving, selling, or disposing of oil, gas, or other minerals leased under this chapter, and for the commitment of land to a contract for development;

(2) determine the prices and set the terms and conditions under ~~[of the contract for]~~ which land shall be sold, leased, or committed to a contract for development;

(3) consult with the president, chairman, or other head of the department, board, or agency, as applicable, or with the representative of the head, on each matter before the board that affects land owned or held in trust for the use and benefit of a department, board, or agency of the state; and

(4) perform any other duties which may be required by law.

SECTION 4. Section 32.102, Natural Resources Code, is amended to read as follows:

Sec. 32.102. LIST OF LAND. From time to time as requested by the board, the commissioner shall furnish the board a list of land areas subject to the provisions of this chapter.

SECTION 5. Section 32.105, Natural Resources Code, is amended to read as follows:

Sec. 32.105. DATE FOR OPENING BIDS. The date for opening

1 bids for the sale, lease, or commitment to a contract for
2 development of land shall be:

3 (1) the first or third Tuesday of a [the] month in
4 which the board meets; or

5 (2) any date on which the board has a special meeting.

6 SECTION 6. Sections 32.107(a), (b), and (c), Natural
7 Resources Code, are amended to read as follows:

8 (a) The board shall publish notice that the board will
9 receive bids for the sale, lease, or commitment to a contract for
10 development of land in at least three issues of at least four daily
11 newspapers or other publications, two of which may be
12 Internet-based journals, trade publications, newsletters, or
13 similar news media, that are, in the opinion of the commissioner,
14 likely to reach the public interested in responding to the notice of
15 sale, lease, or commitment to a contract for development.

16 (b) The notice shall be published at least 30 days before
17 the date the bids are due ~~[advertised to be opened]~~.

18 (c) The notice shall state that land is to be offered for
19 sale, lease, or commitment to a contract for development on a
20 certain date and at a certain time and the method of the sale,
21 lease, or commitment to a contract for development and shall give
22 notice of how ~~[that]~~ a person may obtain additional information
23 concerning ~~[publications from the land office that describe]~~ the
24 land offered for sale, lease, or commitment to a contract for
25 development.

26 SECTION 7. Sections 32.110(a) and (c), Natural Resources
27 Code, are amended to read as follows:

1 (a) On land sales and mineral leases made by the board, the
2 purchaser or bidder is required to pay by separate check an amount
3 equal to one and one-half percent of the bid or sale amount payable
4 to the commissioner as a special fee. The board may waive the
5 special fee on land sales to any state agency, board, commission,
6 political subdivision, or other governmental entity.

7 (c) Failure to pay the special fee shall not void a bid, but
8 the commissioner shall demand payment of the fee before accepting
9 the bid and completing the transaction ~~[a lease is issued to the~~
10 ~~best bidder. If the best bidder fails or refuses to make the~~
11 ~~payment within 30 days after demand by the commissioner, the bidder~~
12 ~~is not entitled to a sale of or a lease on the tract covered by that~~
13 ~~bid and the cash bonus shall be automatically forfeited to be~~
14 ~~deposited by the commissioner in the State Treasury to the credit of~~
15 ~~the permanent school fund or the appropriate special mineral fund.~~
16 ~~The board, at its option, may offer the tract for sale or lease to~~
17 ~~the next best bidder under the same terms as submitted by and as~~
18 ~~would have been granted to the best bidder].~~

19 SECTION 8. Section 32.253, Natural Resources Code, is
20 amended to read as follows:

21 Sec. 32.253. PURPOSE OF TRADE. Land dedicated to or
22 acquired for the use and benefit of the permanent school fund may be
23 traded to:

24 (1) aggregate sufficient acreage of contiguous land to
25 create a manageable unit;

26 (2) acquire land having unique biological,
27 geological, cultural, or recreational value; ~~[or]~~

1 (3) create a buffer zone for the enhancement of
2 already existing public land, facilities, or amenities; or

3 (4) acquire land for the use and benefit of the
4 permanent school fund as determined by the board to be in the best
5 interest of the fund.

6 SECTION 9. Section 51.001, Natural Resources Code, is
7 amended by amending Subdivision (8) and adding Subdivision (12) to
8 read as follows:

9 (8) "Surveyed land" means all or part of any tract of
10 land surveyed either on the ground or by protraction and dedicated
11 to or acquired on behalf of the public school fund which is unsold
12 and for which field notes are on file in the land office or that may
13 be delineated on the maps of that office as such.

14 (12) "Sovereign land" means land that has not been
15 sold and severed by the sovereign.

16 SECTION 10. The heading to Section 51.013, Natural
17 Resources Code, is amended to read as follows:

18 Sec. 51.013. CLASSIFICATION ~~[AND VALUATION]~~ OF LAND.

19 SECTION 11. Section 51.013(b), Natural Resources Code, is
20 amended to read as follows:

21 (b) After the classification ~~[and determination of market~~
22 ~~value]~~ is entered on the records of the land office, no further
23 action needs to be taken by the commissioner and no notice is
24 required to be given to the county clerk for the classification ~~[and~~
25 ~~determination of market value]~~ to be effective.

26 SECTION 12. Section 51.014, Natural Resources Code, is
27 amended to read as follows:

1 Sec. 51.014. RULES. ~~[(a)]~~ The commissioner may adopt
2 rules necessary to carry out the provisions of this chapter and may
3 alter or amend the rules to protect the public interest.

4 ~~[(b) Before rules are adopted under Subsection (a) of this~~
5 ~~section, the commissioner shall submit the rules to the governor~~
6 ~~for his approval.]~~

7 SECTION 13. Sections 51.052(e), (f), (g), (i), and (k),
8 Natural Resources Code, are amended to read as follows:

9 (e) The owner of land that surrounds ~~[land in]~~ a tract of
10 land approved for sale by the board shall have a preference right to
11 purchase the tract before the land is made available for sale to any
12 other person, provided the person having the preference right pays
13 not less than the market value for the land as determined by the
14 board and the board finds use of the preference to be in the best
15 interest of the state. The board shall adopt rules to implement
16 this preference right.

17 (f) If the surrounding land is owned by more than one
18 person, the owners of land with a common boundary with a tract of
19 land approved ~~[1,200 acres or less that is]~~ for sale by the board
20 shall have a preference right to purchase the tract before it is
21 made available to any other person, provided the person with the
22 preference right pays not less than the market value of the land as
23 determined by the board and the board finds use of the preference to
24 be in the best interest of the state. The board shall adopt rules to
25 implement this preference right.

26 (g) If land is located within the boundaries of or adjacent
27 to any state park, refuge, natural area, or historical site subject

to the management and control of the Parks and Wildlife Department, the department has a preference right to purchase the land before it is made available ~~[for sale]~~ to any other person. A sale to the department under this section may not be for less than the market value of the land, as determined by the board.

(i) If no bid meeting minimum requirements is received for a tract of land offered at a sealed bid sale under Subchapter D of Chapter 32, or if the transaction involves commercial real estate and the board determines that it is in the best interest of the permanent school fund, the asset management division of the land office may solicit proposals or negotiate a sale, exchange, or lease of the land to any person. ~~[The asset management division may contract for the services of a real estate broker or of a private brokerage or real estate firm to assist in a transaction under this subsection.]~~ The board must approve any negotiated sale, exchange, or lease of any land under this section.

(k) The ~~[If an award of a bid under this section does not result in a final transaction, the]~~ asset management division of the land office may contract for the services of a real estate broker or of a private brokerage or real estate firm to assist in any sale, lease, or exchange of land under this subchapter ~~[the real estate transaction]~~.

SECTION 14. Section 51.056, Natural Resources Code, is amended to read as follows:

Sec. 51.056. APPLICATION OR REQUEST TO PURCHASE LAND. ~~[(a)]~~ A person who wants to purchase public school land shall submit to the commissioner a ~~[separate]~~ written application or

1 request in a form designated by the commissioner ~~[for each tract]~~.

2 ~~[(b) Each application shall:~~

3 ~~[(1) designate the land to be purchased,~~

4 ~~[(2) state the bid offered,~~

5 ~~[(3) include an affidavit disclosing the names of all~~
6 ~~persons or entities either directly or indirectly interested in the~~
7 ~~purchase of the land.~~

8 ~~[(c) The sale of the land is effective from the date of the~~
9 ~~receipt and filing of the application, affidavit, obligation, and~~
10 ~~the payment of the initial portion of the price offered.~~

11 ~~[(d) The application to purchase and the notice of award~~
12 ~~shall state that the land is sold without condition of settlement~~
13 ~~and with a reservation of minerals, as determined by the board.]~~

14 SECTION 15. Section 51.066, Natural Resources Code, is
15 amended to read as follows:

16 Sec. 51.066. LAND ~~[NOTICE OF]~~ AWARD. (a) The commissioner
17 shall prepare and issue a land ~~[notice of]~~ award for each tract of
18 sovereign land sold.

19 (b) Each land ~~[notice of]~~ award shall be appropriately
20 numbered and shall be worded in a manner that will constitute a
21 receipt for the first or full payment after it is signed by the
22 commissioner.

23 (c) One copy of the land ~~[notice of]~~ award shall be retained
24 in the land office and the other copy shall be sent to the
25 purchaser.

26 SECTION 16. The heading to Section 51.070, Natural
27 Resources Code, is amended to read as follows:

1 Sec. 51.070. UNPAID PRINCIPAL [~~AND INTEREST~~] ON PUBLIC
2 SCHOOL LAND SALES.

3 SECTION 17. Sections 51.070(a) and (b), Natural Resources
4 Code, are amended to read as follows:

5 (a) Unpaid and delinquent principal [~~and interest~~] on sales
6 of public school land shall bear interest at a rate set by the
7 board, which principal and interest shall be payable at the times
8 and on such terms as are established by the board [~~by rule or by~~
9 ~~contract~~].

10 (b) No patent may be issued for any public school land until
11 all [~~unpaid~~] principal, accrued [~~and compounded~~] interest, late
12 charges, and other fees and expenses are [~~is~~] paid in full [~~to the~~
13 ~~time of issuing the patent~~].

14 SECTION 18. Section 51.071, Natural Resources Code, is
15 amended to read as follows:

16 Sec. 51.071. FORFEITURE OF LAND. (a) If principal,
17 accrued [~~and~~] interest, late charges, and other fees and expenses
18 on a sale of sovereign land are [~~is~~] not paid when due as required by
19 the terms set by the board, the land is subject to forfeiture by the
20 commissioner by entry on the file [~~wrapper~~] containing the papers
21 "Land Forfeited" or similar words, the date of the forfeiture, and
22 the official signature of the commissioner.

23 (b) After the entry is made on the file [~~wrapper~~], the land
24 and all payments that have been made for it are forfeited to the
25 state, and the land may be resold in accordance with the provisions
26 of this subchapter [~~offered for sale on a subsequent sale date~~].

27 SECTION 19. Section 51.073, Natural Resources Code, is

amended to read as follows:

Sec. 51.073. CLASSIFICATION AND SALE OF LEASED AND FORFEITED LAND. ~~[(a)]~~ Before it is sold, the commissioner shall classify and determine the market value of land on which leases have expired and land forfeited to the state.

~~[(b) Except as provided in Section 51.064 of this code, no land may be sold until it is advertised.]~~

SECTION 20. Section 51.086(a), Natural Resources Code, is amended to read as follows:

(a) All sales of escheated land that is a part of the permanent school fund must be made ~~[to the highest bidder]~~ at a price that may not be less than ~~[the greater of \$2.50 an acre or]~~ the minimum price set by the court under Section 71.107, Property Code, and in the same manner as the sale of public school land as provided by this chapter.

SECTION 21. Sections 51.172(4) and (7), Natural Resources Code, are amended to read as follows:

(4) "Necessary party" means:

(A) an applicant or good-faith claimant whose present legal interest in the surface or mineral estate of the land claimed to be vacant may be adversely affected by a vacancy determination;

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

(C) a person who asserts a right to or who claims an interest in ~~[land claimed to be vacant or in]~~ land adjoining land claimed to be vacant as shown in the records of the land office or

the county records, including tax records, of any county in which all or part of the land claimed to be vacant is located;

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

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

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

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

(B) purchase [~~vacant land,~~] or
[~~(C)~~] lease vacant land.

SECTION 22. Section 51.177(a), Natural Resources Code, is amended to read as follows:

(a) Not later than the 45th day after the date the commissioner accepts [~~applicant files~~] the duplicate copies as properly filed by the applicant [~~with the commissioner~~] as provided by Section 51.176(f), the commissioner shall:

(1) determine whether the vacancy application is administratively complete; and

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

SECTION 23. Section 51.180, Natural Resources Code, is amended to read as follows:

Sec. 51.180. ATTORNEY AD LITEM. (a) If the [~~The~~] applicant cannot [~~must~~] provide evidence to the commissioner to establish the applicant's ownership of all interests as defined by

1 Section 51.172 in the land surrounding the land claimed to be
2 vacant, the commissioner shall investigate the ownership interests
3 of the land claimed to be vacant and the surrounding land to ensure
4 that all necessary parties have been identified and located.

5 (b) The investigation must conclude not later than the 60th
6 day after the application commencement date. If the investigation
7 yields any [~~applicant fails to provide sufficient~~] evidence that a
8 necessary party may not have been identified and located, as
9 determined by the commissioner, the commissioner shall, not later
10 than the 30th day after the conclusion of the investigation
11 [~~application commencement date~~], appoint an attorney ad litem to [~~+~~

12 [~~(1)~~] identify and locate all necessary parties
13 [~~+~~ ~~and~~

14 [~~(2)~~ ~~represent the interests of any necessary party~~
15 ~~that has not been located~~].

16 (c) The commissioner shall provide the attorney ad litem
17 with all documents submitted by the applicant and the results of the
18 investigation to identify necessary parties, and the attorney ad
19 litem shall search public land records and other available records
20 to identify and locate necessary parties.

21 (d) If any necessary party cannot be located, the attorney
22 ad litem shall represent the interests of that necessary party.

23 SECTION 24. Sections 51.181(a) and (b), Natural Resources
24 Code, are amended to read as follows:

25 (a) Not later than the 30th day after the application
26 commencement date, and at any time after that date that the
27 commissioner considers it necessary to notify an identified

1 necessary party, the commissioner shall provide to each necessary
2 party identified and located as of that date a written notice that:

3 (1) informs the necessary party that a vacancy
4 application has been filed;

5 (2) states the application commencement date; and

6 (3) includes:

7 (A) a copy of the vacancy application and any
8 attachments; and

9 (B) a form for requesting subsequent notices
10 regarding the application.

11 (b) If the attorney ad litem is unable to locate an
12 identified ~~[identify each]~~ necessary party, the attorney ad litem
13 shall notify the commissioner in writing, and the commissioner
14 ~~[applicant]~~ shall provide notice required under this section by
15 publication in the same manner prescribed by the Texas Rules of
16 Civil Procedure.

17 SECTION 25. Section 51.187(a), Natural Resources Code, is
18 amended to read as follows:

19 (a) If the commissioner has not issued a final order with a
20 finding of "Not Vacant Land" on or before the first anniversary of
21 the application commencement date and one or more exceptions have
22 been filed under Section 51.182(a) or 51.186(b), the commissioner
23 shall order a hearing to determine if a vacancy exists. A hearing
24 under this subchapter:

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

27 (2) shall be conducted as a contested case hearing

1 subject to Chapter 2001, Government Code; and

2 (3) may be waived by written agreement of all
3 necessary parties and the commissioner.

4 SECTION 26. Section 51.188(a), Natural Resources Code, is
5 amended to read as follows:

6 (a) At any time during or after an investigation of or
7 hearing regarding a vacancy application, the commissioner may
8 determine that land claimed to be vacant is not vacant and issue a
9 final order with a finding of "Not Vacant Land[~~-~~]" or an order
10 finding a vacancy if a hearing is not required under Section 51.187.

11 SECTION 27. Section 51.194, Natural Resources Code, is
12 amended by amending Subsection (a) and adding Subsections (a-1) and
13 (a-2) to read as follows:

14 (a) A good-faith claimant who has been notified by the
15 commissioner that a vacancy exists under this subchapter has a
16 preferential right to purchase or lease the interest claimed in the
17 land before the land was declared vacant. The preferential right
18 may be exercised after a final judicial determination or after the
19 commissioner's final order and the period for filing an appeal has
20 expired.

21 (a-1) If a good-faith claimant does not apply to purchase or
22 lease the interest before the later of the 121st day after the date
23 the commissioner's order becomes final or the 60th day after the
24 date of the final judicial determination of an appeal under this
25 subchapter, then the good-faith claimant's preferential right
26 expires.

27 (a-2) If a good-faith claimant does not close a transaction

1 to purchase or lease the interest before the 121st day after the
2 date the terms and conditions are determined by the board, then the
3 good-faith claimant's preferential right expires.

4 SECTION 28. The following provisions of the Natural
5 Resources Code are repealed:

- 6 (1) Section 32.103;
- 7 (2) Section 51.052(a);
- 8 (3) Section 51.057;
- 9 (4) Section 51.058;
- 10 (5) Section 51.059;
- 11 (6) Section 51.060;
- 12 (7) Section 51.061;
- 13 (8) Section 51.062;
- 14 (9) Section 51.063;
- 15 (10) Section 51.064;
- 16 (11) Section 51.068;
- 17 (12) Section 51.084; and
- 18 (13) Section 51.086(b).

19 SECTION 29. This Act takes effect immediately if it
20 receives a vote of two-thirds of all the members elected to each
21 house, as provided by Section 39, Article III, Texas Constitution.
22 If this Act does not receive the vote necessary for immediate
23 effect, this Act takes effect September 1, 2009.