

1-1 By: Orr (Senate Sponsor - Watson) H.B. No. 3461
1-2 (In the Senate - Received from the House May 1, 2009;
1-3 May 6, 2009, read first time and referred to Committee on Natural
1-4 Resources; May 15, 2009, reported favorably by the following vote:
1-5 Yeas 10, Nays 0; May 15, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the powers and duties of the School Land Board and the
1-9 commissioner of the General Land Office.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 32.001(4), Natural Resources Code, is
1-12 amended to read as follows:

1-13 (4) "Land" means:

1-14 (A) land dedicated to or acquired on behalf of
1-15 the permanent school fund and the asylum funds under ~~[by]~~ the
1-16 constitution and laws of this state;

1-17 (B) the mineral estate in areas within tidewater
1-18 limits, including islands, lakes, bays, and the bed of the sea which
1-19 belong to the state;

1-20 (C) the mineral estate in river beds and
1-21 channels; and

1-22 (D) land owned by the state or held in trust for
1-23 the use and benefit of the state or of a department, board, or
1-24 agency of the state.

1-25 SECTION 2. Subchapter A, Chapter 32, Natural Resources
1-26 Code, is amended by adding Section 32.003 to read as follows:

1-27 Sec. 32.003. APPLICATION OF SUNSET ACT. The School Land
1-28 Board is subject to Chapter 325, Government Code (Texas Sunset
1-29 Act). Unless continued in existence as provided by that chapter,
1-30 the board is abolished September 1, 2017.

1-31 SECTION 3. Section 32.016(a), Natural Resources Code, is
1-32 amended to read as follows:

1-33 (a) When necessary, the board shall meet on the first and
1-34 third Tuesdays of each month at a time and location to be designated
1-35 by the board [in the land office].

1-36 SECTION 4. Section 32.061, Natural Resources Code, is
1-37 amended to read as follows:

1-38 Sec. 32.061. BOARD'S GENERAL DUTIES. Except as provided by
1-39 Subchapter G, Chapter 51, of this code, the board shall:

1-40 (1) set the dates to open received bids for the sale of
1-41 ~~[surveyed] land [dedicated to the permanent school fund],~~ for the
1-42 lease of land for prospecting or exploring for, mining, producing,
1-43 storing, caring for, transporting, preserving, selling, or
1-44 disposing of oil, gas, or other minerals leased under this chapter,
1-45 and for the commitment of land to a contract for development;

1-46 (2) determine the prices and set the terms and
1-47 conditions under ~~[of the contract for]~~ which land shall be sold,
1-48 leased, or committed to a contract for development;

1-49 (3) consult with the president, chairman, or other
1-50 head of the department, board, or agency, as applicable, or with the
1-51 representative of the head, on each matter before the board that
1-52 affects land owned or held in trust for the use and benefit of a
1-53 department, board, or agency of the state; and

1-54 (4) perform any other duties which may be required by
1-55 law.

1-56 SECTION 5. Section 32.102, Natural Resources Code, is
1-57 amended to read as follows:

1-58 Sec. 32.102. LIST OF LAND. From time to time as requested
1-59 by the board, the commissioner shall furnish the board a list of
1-60 land areas subject to the provisions of this chapter.

1-61 SECTION 6. Section 32.105, Natural Resources Code, is
1-62 amended to read as follows:

1-63 Sec. 32.105. DATE FOR OPENING BIDS. The date for opening
1-64 bids for the sale, lease, or commitment to a contract for

2-1 development of land shall be:

2-2 (1) the first or third Tuesday of a [the] month in
 2-3 which the board meets; or

2-4 (2) any date on which the board has a special meeting.

2-5 SECTION 7. Sections 32.107(a), (b), and (c), Natural
 2-6 Resources Code, are amended to read as follows:

2-7 (a) The board shall publish notice that the board will
 2-8 receive bids for the sale, lease, or commitment to a contract for
 2-9 development of land in at least three issues of at least four daily
 2-10 newspapers or other publications, two of which may be
 2-11 Internet-based journals, trade publications, newsletters, or
 2-12 similar news media, that are, in the opinion of the commissioner,
 2-13 likely to reach the public interested in responding to the notice of
 2-14 sale, lease, or commitment to a contract for development.

2-15 (b) The notice shall be published at least 30 days before
 2-16 the date the bids are due [~~advertised to be opened~~].

2-17 (c) The notice shall state that land is to be offered for
 2-18 sale, lease, or commitment to a contract for development on a
 2-19 certain date and at a certain time and the method of the sale,
 2-20 lease, or commitment to a contract for development and shall give
 2-21 notice of how [~~that~~] a person may obtain additional information
 2-22 concerning [~~publications from the land office that describe~~] the
 2-23 land offered for sale, lease, or commitment to a contract for
 2-24 development.

2-25 SECTION 8. Sections 32.110(a) and (c), Natural Resources
 2-26 Code, are amended to read as follows:

2-27 (a) On land sales and mineral leases made by the board, the
 2-28 purchaser or bidder is required to pay by separate check an amount
 2-29 equal to one and one-half percent of the bid or sale amount payable
 2-30 to the commissioner as a special fee. The board may waive the
 2-31 special fee on land sales to any state agency, board, commission,
 2-32 political subdivision, or other governmental entity.

2-33 (c) Failure to pay the special fee shall not void a bid, but
 2-34 the commissioner shall demand payment of the fee before accepting
 2-35 the bid and completing the transaction [~~a lease is issued to the~~
 2-36 ~~best bidder. If the best bidder fails or refuses to make the~~
 2-37 ~~payment within 30 days after demand by the commissioner, the bidder~~
 2-38 ~~is not entitled to a sale of or a lease on the tract covered by that~~
 2-39 ~~bid and the cash bonus shall be automatically forfeited to be~~
 2-40 ~~deposited by the commissioner in the State Treasury to the credit of~~
 2-41 ~~the permanent school fund or the appropriate special mineral fund.~~
 2-42 ~~The board, at its option, may offer the tract for sale or lease to~~
 2-43 ~~the next best bidder under the same terms as submitted by and as~~
 2-44 ~~would have been granted to the best bidder].~~

2-45 SECTION 9. Section 32.253, Natural Resources Code, is
 2-46 amended to read as follows:

2-47 Sec. 32.253. PURPOSE OF TRADE. Land dedicated to or
 2-48 acquired for the use and benefit of the permanent school fund may be
 2-49 traded to:

2-50 (1) aggregate sufficient acreage of contiguous land to
 2-51 create a manageable unit;

2-52 (2) acquire land having unique biological,
 2-53 geological, cultural, or recreational value; [~~or~~]

2-54 (3) create a buffer zone for the enhancement of
 2-55 already existing public land, facilities, or amenities; or

2-56 (4) acquire land for the use and benefit of the
 2-57 permanent school fund as determined by the board to be in the best
 2-58 interest of the fund.

2-59 SECTION 10. Section 51.001, Natural Resources Code, is
 2-60 amended by amending Subdivision (8) and adding Subdivision (12) to
 2-61 read as follows:

2-62 (8) "Surveyed land" means all or part of any tract of
 2-63 land surveyed either on the ground or by protraction and dedicated
 2-64 to or acquired on behalf of the public school fund which is unsold
 2-65 and for which field notes are on file in the land office or that may
 2-66 be delineated on the maps of that office as such.

2-67 (12) "Sovereign land" means land that has not been
 2-68 sold and severed by the sovereign.

2-69 SECTION 11. The heading to Section 51.013, Natural

3-1 Resources Code, is amended to read as follows:

3-2 Sec. 51.013. CLASSIFICATION ~~[AND VALUATION]~~ OF LAND.

3-3 SECTION 12. Section 51.013(b), Natural Resources Code, is
3-4 amended to read as follows:

3-5 (b) After the classification ~~[and determination of market
3-6 value]~~ is entered on the records of the land office, no further
3-7 action needs to be taken by the commissioner and no notice is
3-8 required to be given to the county clerk for the classification ~~[and
3-9 determination of market value]~~ to be effective.

3-10 SECTION 13. Section 51.014, Natural Resources Code, is
3-11 amended to read as follows:

3-12 Sec. 51.014. RULES. ~~[(a)]~~ The commissioner may adopt
3-13 rules necessary to carry out the provisions of this chapter and may
3-14 alter or amend the rules to protect the public interest.

3-15 ~~[(b) Before rules are adopted under Subsection (a) of this
3-16 section, the commissioner shall submit the rules to the governor
3-17 for his approval.]~~

3-18 SECTION 14. Sections 51.052(e), (f), (g), (i), and (k),
3-19 Natural Resources Code, are amended to read as follows:

3-20 (e) The owner of land that surrounds ~~[land in]~~ a tract of
3-21 land approved for sale by the board shall have a preference right to
3-22 purchase the tract before the land is made available for sale to any
3-23 other person, provided the person having the preference right pays
3-24 not less than the market value for the land as determined by the
3-25 board and the board finds use of the preference to be in the best
3-26 interest of the state. The board shall adopt rules to implement
3-27 this preference right.

3-28 (f) If the surrounding land is owned by more than one
3-29 person, the owners of land with a common boundary with a tract of
3-30 land approved [1,200 acres or less that is] for sale by the board
3-31 shall have a preference right to purchase the tract before it is
3-32 made available to any other person, provided the person with the
3-33 preference right pays not less than the market value of the land as
3-34 determined by the board and the board finds use of the preference to
3-35 be in the best interest of the state. The board shall adopt rules to
3-36 implement this preference right.

3-37 (g) If land is located within the boundaries of or adjacent
3-38 to any state park, refuge, natural area, or historical site subject
3-39 to the management and control of the Parks and Wildlife Department,
3-40 the department has a preference right to purchase the land before it
3-41 is made available ~~[for sale]~~ to any other person. A sale to the
3-42 department under this section may not be for less than the market
3-43 value of the land, as determined by the board.

3-44 (i) If no bid meeting minimum requirements is received for a
3-45 tract of land offered at a sealed bid sale under Subchapter D of
3-46 Chapter 32, or if the transaction involves commercial real estate
3-47 and the board determines that it is in the best interest of the
3-48 permanent school fund, the asset management division of the land
3-49 office may solicit proposals or negotiate a sale, exchange, or
3-50 lease of the land to any person. ~~[The asset management division
3-51 may contract for the services of a real estate broker or of a
3-52 private brokerage or real estate firm to assist in a transaction
3-53 under this subsection.]~~ The board must approve any negotiated
3-54 sale, exchange, or lease of any land under this section.

3-55 (k) The [If an award of a bid under this section does not
3-56 result in a final transaction, the] asset management division of
3-57 the land office may contract for the services of a real estate
3-58 broker or of a private brokerage or real estate firm to assist in
3-59 any sale, lease, or exchange of land under this subchapter [the real
3-60 estate transaction].

3-61 SECTION 15. Section 51.056, Natural Resources Code, is
3-62 amended to read as follows:

3-63 Sec. 51.056. APPLICATION OR REQUEST TO PURCHASE LAND.

3-64 ~~[(a)]~~ A person who wants to purchase public school land shall
3-65 submit to the commissioner a ~~[separate]~~ written application or
3-66 request in a form designated by the commissioner [for each tract].

3-67 ~~[(b) Each application shall:~~

3-68 ~~[(1) designate the land to be purchased,~~

3-69 ~~[(2) state the bid offered,~~

4-1 ~~[(3) include an affidavit disclosing the names of all~~
 4-2 ~~persons or entities either directly or indirectly interested in the~~
 4-3 ~~purchase of the land.~~

4-4 ~~[(c) The sale of the land is effective from the date of the~~
 4-5 ~~receipt and filing of the application, affidavit, obligation, and~~
 4-6 ~~the payment of the initial portion of the price offered.~~

4-7 ~~[(d) The application to purchase and the notice of award~~
 4-8 ~~shall state that the land is sold without condition of settlement~~
 4-9 ~~and with a reservation of minerals, as determined by the board.]~~

4-10 SECTION 16. Section 51.066, Natural Resources Code, is
 4-11 amended to read as follows:

4-12 Sec. 51.066. LAND [NOTICE OF] AWARD. (a) The commissioner
 4-13 shall prepare and issue a land [notice of] award for each tract of
 4-14 sovereign land sold.

4-15 (b) Each land [notice of] award shall be appropriately
 4-16 numbered and shall be worded in a manner that will constitute a
 4-17 receipt for the first or full payment after it is signed by the
 4-18 commissioner.

4-19 (c) One copy of the land [notice of] award shall be retained
 4-20 in the land office and the other copy shall be sent to the
 4-21 purchaser.

4-22 SECTION 17. The heading to Section 51.070, Natural
 4-23 Resources Code, is amended to read as follows:

4-24 Sec. 51.070. UNPAID PRINCIPAL [AND INTEREST] ON PUBLIC
 4-25 SCHOOL LAND SALES.

4-26 SECTION 18. Sections 51.070(a) and (b), Natural Resources
 4-27 Code, are amended to read as follows:

4-28 (a) Unpaid and delinquent principal ~~[and interest]~~ on sales
 4-29 of public school land shall bear interest at a rate set by the
 4-30 board, which principal and interest shall be payable at the times
 4-31 and on such terms as are established by the board ~~[by rule or by~~
 4-32 ~~contract].~~

4-33 (b) No patent may be issued for any public school land until
 4-34 all ~~[unpaid] principal, accrued [and compounded] interest, late~~
 4-35 ~~charges, and other fees and expenses are [is] paid in full [to the~~
 4-36 ~~time of issuing the patent].~~

4-37 SECTION 19. Section 51.071, Natural Resources Code, is
 4-38 amended to read as follows:

4-39 Sec. 51.071. FORFEITURE OF LAND. (a) If principal,
 4-40 accrued [and] interest, late charges, and other fees and expenses
 4-41 on a sale of sovereign land are [is] not paid when due as required by
 4-42 the terms set by the board, the land is subject to forfeiture by the
 4-43 commissioner by entry on the file [wrapper] containing the papers
 4-44 "Land Forfeited" or similar words, the date of the forfeiture, and
 4-45 the official signature of the commissioner.

4-46 (b) After the entry is made on the file [wrapper], the land
 4-47 and all payments that have been made for it are forfeited to the
 4-48 state, and the land may be resold in accordance with the provisions
 4-49 of this subchapter [offered for sale on a subsequent sale date].

4-50 SECTION 20. Section 51.073, Natural Resources Code, is
 4-51 amended to read as follows:

4-52 Sec. 51.073. CLASSIFICATION AND SALE OF LEASED AND
 4-53 FORFEITED LAND. ~~[(a)]~~ Before it is sold, the commissioner shall
 4-54 classify and determine the market value of land on which leases have
 4-55 expired and land forfeited to the state.

4-56 ~~[(b) Except as provided in Section 51.064 of this code, no~~
 4-57 ~~land may be sold until it is advertised.]~~

4-58 SECTION 21. Section 51.086(a), Natural Resources Code, is
 4-59 amended to read as follows:

4-60 (a) All sales of escheated land that is a part of the
 4-61 permanent school fund must be made ~~[to the highest bidder]~~ at a
 4-62 price that may not be less than ~~[the greater of \$2.50 an acre or]~~ the
 4-63 minimum price set by the court under Section 71.107, Property Code,
 4-64 and in the same manner as the sale of public school land as provided
 4-65 by this chapter.

4-66 SECTION 22. Sections 51.172(4) and (7), Natural Resources
 4-67 Code, are amended to read as follows:

4-68 (4) "Necessary party" means:

4-69 (A) an applicant or good-faith claimant whose

5-1 present legal interest in the surface or mineral estate of the land
5-2 claimed to be vacant may be adversely affected by a vacancy
5-3 determination;

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

5-6 (C) a person who asserts a right to or who claims
5-7 an interest in [~~land claimed to be vacant or in~~] land adjoining land
5-8 claimed to be vacant as shown in the records of the land office or
5-9 the county records, including tax records, of any county in which
5-10 all or part of the land claimed to be vacant is located;

5-11 (D) a person whose name appears in the records
5-12 described by Paragraph (C); or

5-13 (E) an attorney ad litem appointed under Section
5-14 51.180.

5-15 (7) "Vacancy application" means a form submitted to
5-16 the commissioner by an applicant to:

5-17 (A) initiate a determination by the commissioner
5-18 whether land claimed to be vacant is vacant; and

5-19 (B) purchase [~~vacant land,~~] or
5-20 [~~(C)~~] lease vacant land.

5-21 SECTION 23. Section 51.177(a), Natural Resources Code, is
5-22 amended to read as follows:

5-23 (a) Not later than the 45th day after the date the
5-24 commissioner accepts [~~applicant files~~] the duplicate copies as
5-25 properly filed by the applicant [~~with the commissioner~~] as provided
5-26 by Section 51.176(f), the commissioner shall:

5-27 (1) determine whether the vacancy application is
5-28 administratively complete; and

5-29 (2) provide to the applicant the notice required by
5-30 this section.

5-31 SECTION 24. Section 51.180, Natural Resources Code, is
5-32 amended to read as follows:

5-33 Sec. 51.180. ATTORNEY AD LITEM. (a) If the [The]
5-34 applicant cannot [must] provide evidence to the commissioner to
5-35 establish the applicant's ownership of all interests as defined by
5-36 Section 51.172 in the land surrounding the land claimed to be
5-37 vacant, the commissioner shall investigate the ownership interests
5-38 of the land claimed to be vacant and the surrounding land to ensure
5-39 that all necessary parties have been identified and located.

5-40 (b) The investigation must conclude not later than the 60th
5-41 day after the application commencement date. If the investigation
5-42 yields any [applicant fails to provide sufficient] evidence that a
5-43 necessary party may not have been identified and located, as
5-44 determined by the commissioner, the commissioner shall, not later
5-45 than the 30th day after the conclusion of the investigation
5-46 [application commencement date], appoint an attorney ad litem to [+]

5-47 [(-)] identify and locate all necessary parties
5-48 [, and

5-49 (-)] represent the interests of any necessary party
5-50 that has not been located].

5-51 (c) The commissioner shall provide the attorney ad litem
5-52 with all documents submitted by the applicant and the results of the
5-53 investigation to identify necessary parties, and the attorney ad
5-54 litem shall search public land records and other available records
5-55 to identify and locate necessary parties.

5-56 (d) If any necessary party cannot be located, the attorney
5-57 ad litem shall represent the interests of that necessary party.

5-58 SECTION 25. Sections 51.181(a) and (b), Natural Resources
5-59 Code, are amended to read as follows:

5-60 (a) Not later than the 30th day after the application
5-61 commencement date, and at any time after that date that the
5-62 commissioner considers it necessary to notify an identified
5-63 necessary party, the commissioner shall provide to each necessary
5-64 party identified and located as of that date a written notice that:

5-65 (1) informs the necessary party that a vacancy
5-66 application has been filed;

5-67 (2) states the application commencement date; and

5-68 (3) includes:

5-69 (A) a copy of the vacancy application and any

6-1 attachments; and

6-2 (B) a form for requesting subsequent notices
6-3 regarding the application.

6-4 (b) If the attorney ad litem is unable to locate an
6-5 identified [~~identify each~~] necessary party, the attorney ad litem
6-6 shall notify the commissioner in writing, and the commissioner
6-7 [applicant] shall provide notice required under this section by
6-8 publication in the same manner prescribed by the Texas Rules of
6-9 Civil Procedure.

6-10 SECTION 26. Section 51.187(a), Natural Resources Code, is
6-11 amended to read as follows:

6-12 (a) If the commissioner has not issued a final order with a
6-13 finding of "Not Vacant Land" on or before the first anniversary of
6-14 the application commencement date and one or more exceptions have
6-15 been filed under Section 51.182(a) or 51.186(b), the commissioner
6-16 shall order a hearing to determine if a vacancy exists. A hearing
6-17 under this subchapter:

6-18 (1) shall be held not later than the 60th day after the
6-19 date the hearing is ordered;

6-20 (2) shall be conducted as a contested case hearing
6-21 subject to Chapter 2001, Government Code; and

6-22 (3) may be waived by written agreement of all
6-23 necessary parties and the commissioner.

6-24 SECTION 27. Section 51.188(a), Natural Resources Code, is
6-25 amended to read as follows:

6-26 (a) At any time during or after an investigation of or
6-27 hearing regarding a vacancy application, the commissioner may
6-28 determine that land claimed to be vacant is not vacant and issue a
6-29 final order with a finding of "Not Vacant Land[~~-~~]" or an order
6-30 finding a vacancy if a hearing is not required under Section 51.187.

6-31 SECTION 28. Section 51.194, Natural Resources Code, is
6-32 amended by amending Subsection (a) and adding Subsections (a-1) and
6-33 (a-2) to read as follows:

6-34 (a) A good-faith claimant who has been notified by the
6-35 commissioner that a vacancy exists under this subchapter has a
6-36 preferential right to purchase or lease the interest claimed in the
6-37 land before the land was declared vacant. The preferential right
6-38 may be exercised after a final judicial determination or after the
6-39 commissioner's final order and the period for filing an appeal has
6-40 expired.

6-41 (a-1) If a good-faith claimant does not apply to purchase or
6-42 lease the interest before the later of the 121st day after the date
6-43 the commissioner's order becomes final or the 60th day after the
6-44 date of the final judicial determination of an appeal under this
6-45 subchapter, then the good-faith claimant's preferential right
6-46 expires.

6-47 (a-2) If a good-faith claimant does not close a transaction
6-48 to purchase or lease the interest before the 121st day after the
6-49 date the terms and conditions are determined by the board, then the
6-50 good-faith claimant's preferential right expires.

6-51 SECTION 29. The following provisions of the Natural
6-52 Resources Code are repealed:

- 6-53 (1) Section 32.103;
- 6-54 (2) Section 51.052(a);
- 6-55 (3) Section 51.057;
- 6-56 (4) Section 51.058;
- 6-57 (5) Section 51.059;
- 6-58 (6) Section 51.060;
- 6-59 (7) Section 51.061;
- 6-60 (8) Section 51.062;
- 6-61 (9) Section 51.063;
- 6-62 (10) Section 51.064;
- 6-63 (11) Section 51.068;
- 6-64 (12) Section 51.084; and
- 6-65 (13) Section 51.086(b).

6-66 SECTION 30. This Act takes effect immediately if it
6-67 receives a vote of two-thirds of all the members elected to each
6-68 house, as provided by Section 39, Article III, Texas Constitution.
6-69 If this Act does not receive the vote necessary for immediate

7-1 effect, this Act takes effect September 1, 2009.

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