

BILL ANALYSIS

C.S.H.B. 2611
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The comptroller of public accounts is authorized to hold unclaimed property for its rightful owners. When oil and gas exploration and production companies are unable to identify or locate the heirs of an owner of mineral interests who has died without a will, or when the royalties go unclaimed for a certain period of time, the companies deliver those mineral royalties to the comptroller.

Interested parties note that there are descendents of the recipients of original Spanish, Mexican, Republic of Texas, and State of Texas land grants who own mineral rights from the grants because substantial portions of the mineral interests on the grants were not conveyed out of the estate of the original land grantee. Some observers note that some of these heirs, unknown to the oil and gas companies at the time the companies became obligated to pay mineral royalties, have obtained judicial declarations to establish ownership in unconveyed mineral rights. The interested parties note that these previously unknown heirs are judicially established and should be able to make claims against the mineral royalties held in trust by the comptroller. At present, however, the parties report that there is no adequate mechanism for connecting an heir's claim to specific mineral royalties held by the comptroller because the companies failed to specify the land from which the royalties were derived.

C.S.H.B. 2611 seeks to address these matters by requiring a third-party data provider to calculate the extent of the mineral estate of each original land grant and by providing for claims for and distribution of unclaimed land grant mineral proceeds.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller of public accounts in SECTIONS 4, 6, and 7 of this bill.

ANALYSIS

C.S.H.B. 2611 amends the Property Code to authorize a third-party data provider, in accordance with rules adopted by the comptroller of public accounts, to determine the net mineral estate of each original land grant based on evidence provided by one or more land surveyors registered, licensed, or certified under the Professional Land Surveying Practices Act and, based on records of the Railroad Commission of Texas, the total amount of mineral production for each original land grant having a net mineral estate from January 1, 1985, until the date the determination is made. The bill requires these two determinations to be multiplied together to determine the percentage that each original land grant constitutes of the whole of the original land grants and requires the comptroller, not later than November 1, 2011, to adopt rules for purposes of the determinations. The bill requires the percentage that each original land grant constitutes of the whole of the original land grants to be multiplied by the total amount of money in the unclaimed land grant mineral proceeds revenue account, beginning on January 1, 2012, to determine the maximum amount for which a claim may be made by a claimant for an original land grant.

C.S.H.B. 2611 authorizes a person to submit a claim for the person's net mineral estate against

unclaimed land grant mineral proceeds held by the comptroller in the unclaimed land grant mineral proceeds revenue account by filing with the comptroller a form adopted by comptroller rule. The bill requires the person to submit, in addition to the form, an affidavit stating that, to the best of the claimant's information, knowledge, and belief the claimant does not receive and has never received mineral proceeds from the original land grant and the claimant's ancestors do not or did not receive mineral proceeds from the original land grant and to submit a copy of a final, unappealable judgment establishing the claimant's heirship as a descendent of the grantee of an original land grant and the extent of the claimant's interest in the mineral proceeds of the land grant. The bill authorizes a claimant to submit a claim under any line of descendency established in a final, unappealable judgment. The bill requires the comptroller to approve a claim that complies with the filing requirements.

C.S.H.B. 2611 authorizes an attorney licensed in Texas to represent a claimant of unclaimed land grant mineral proceeds or a claimant in a judicial or administrative proceeding related to unclaimed land grant mineral proceeds. The bill authorizes an attorney who represents such a claimant to contract with the claimant for attorney's fees on an hourly or contingency basis or otherwise, as prescribed by the Texas Disciplinary Rules of Professional Conduct.

C.S.H.B. 2611 limits the payment of comptroller expenses in executing the bill's provisions relating to unclaimed land grant mineral proceeds to the unclaimed land grant mineral proceeds revenue account. The bill requires the comptroller, not later than November 1, 2011, to adopt rules as necessary to administer this provision.

C.S.H.B. 2611 makes its provisions relating to unclaimed land grant mineral proceeds applicable to all mineral proceeds that are derived directly or indirectly from real property located in Texas regardless of the location of the holder's formation, organization, incorporation, or domicile; unclaimed and presumed abandoned under applicable provisions of law; held by a holder or the comptroller; and reportable to the comptroller under provisions of law relating to an unclaimed property report. The bill defines "original land grant," "net mineral estate," and "third-party data provider."

C.S.H.B. 2611 authorizes the distribution of unclaimed land grant mineral proceeds delivered to the comptroller as property presumed abandoned only as provided under the bill's provisions relating to unclaimed land grant mineral proceeds. The bill defines "unclaimed land grant mineral proceeds."

C.S.H.B. 2611 authorizes a person who informs a potential claimant of a claim under the bill's provisions relating to unclaimed land grant mineral proceeds to file or receive a form to claim on behalf of the claimant as provided by contract or other written agreement between the potential claimant and the person.

C.S.H.B. 2611 requires the comptroller, not later than the 90th day after the end of each fiscal year, to deposit to the credit of the unclaimed land grant mineral proceeds revenue account in the general revenue fund any unclaimed land grant mineral proceeds delivered to the comptroller as property presumed abandoned and authorizes the distribution of money in that account only as provided under the bill's provisions relating to unclaimed land grant mineral proceeds. The bill requires the comptroller, not later than the 30th day after the bill's effective date, to transfer to the unclaimed land grant mineral proceeds revenue account all unclaimed land grant mineral proceeds delivered to and held by the comptroller under statutory provisions governing the disposition of property presumed abandoned.

C.S.H.B. 2611 makes its provisions relating to attorney's fees applicable to a contract executed before, on, or after the bill's effective date and makes conforming changes.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2611 contains a provision not included in the original authorizing a person who informs a potential claimant of a claim under the substitute's provisions relating to unclaimed land grant mineral proceeds to file or receive a form to claim on behalf of the claimant as provided by contract or other written agreement between the potential claimant and the person.

C.S.H.B. 2611 differs from the original by referring to the unclaimed land grant mineral proceeds revenue account, whereas the original refers to the unclaimed mineral land grant mineral proceeds account.

C.S.H.B. 2611 contains a provision not included in the original defining "third-party data provider" and omits a provision included in the original defining "commission."

C.S.H.B. 2611 differs from the original by authorizing a third-party data provider, in accordance with rules adopted by the comptroller of public accounts, to determine the net mineral estate of each original land grant based on certain evidence and the total amount of mineral production for each original land grant having a net mineral estate for a certain period, as based on records of the Railroad Commission of Texas, whereas the original requires the railroad commission to determine and report to the comptroller the extent of the mineral estate of each original land grant based on certain commission information, archives, and records. The substitute differs from the original by requiring the comptroller to adopt rules for purposes of the third-party data provider net mineral estate calculations, whereas the original requires the comptroller and the railroad commission to adopt certain rules and procedures required for the performance of their powers, duties, and functions under the bill's provisions relating to unclaimed land grant mineral proceeds. The substitute omits provisions included in the original requiring the comptroller and the commission to send copies of those rules as proposed to certain recipients and to allow such recipients to submit comments and recommendations.

C.S.H.B. 2611 contains a provision not included in the original specifying, in a provision authorizing a person to submit a claim for the person's net mineral estate against unclaimed land grant mineral proceeds held by the comptroller, that the proceeds held by the comptroller are held in the unclaimed mineral proceeds revenue account.

C.S.H.B. 2611 differs from the original by requiring the percentage that each original land grant constitutes of the whole of the original land grants to be multiplied by the total amount of money in the unclaimed land grant mineral proceeds revenue account, beginning on January 1, 2012, to determine the maximum amount for which a claim may be made by a claimant for an original land grant, whereas the original requires the comptroller to calculate the amount of an approved claim for a person's net mineral estate in accordance with rules and procedures adopted by the comptroller and based on certain factors and requires an approved claim to be paid an amount so calculated.

C.S.H.B. 2611 contains a provision not included in the original limiting the payment of comptroller expenses in executing the substitute's provisions relating to unclaimed land grant mineral proceeds to the unclaimed land grant mineral proceeds revenue account and requiring the comptroller to adopt related administrative rules, as necessary.

C.S.H.B. 2611 differs from the original by setting a deadline of November 1, 2011, by which the comptroller is required to adopt certain rules, whereas the original sets a deadline of April 1, 2012, for the comptroller to adopt certain rules and procedures. The substitute differs from the original in nonsubstantive ways by making clarifying changes, conforming changes, and

technical corrections.