

## CHAPTER 327

## H.B. No. 918

An Act relating to the mineral development and leasing of land acquired by the state to construct or maintain a highway, road, street, or alley.

*Be it enacted by the Legislature of the State of Texas:*

**SECTION 1.** Section 34.002(a), Natural Resources Code, is amended to read as follows:

(a) The provisions of this chapter do not apply to:

- (1) land dedicated by the constitution and laws of the state to the public school fund;
- (2) land dedicated by the constitution and laws of the state to The University of Texas, or land donated to the Board of Regents of The University of Texas System, as trustees, by a will, instrument in writing, or otherwise in trust for a scientific, educational, or other charitable or public purpose, or to any other land under the control of the Board of Regents of The University of Texas System;
- (3) land whose title is vested in the state for the use and benefit of any part of The Texas A&M University System, or land under the control of the Board of Regents of The Texas A&M University System;
- (4) land subject to lease under the provisions of Subchapter F, Chapter 52, of this code, commonly known as the "Relinquishment Act";
- (5) oil and gas underlying land owned by the state that was acquired to construct or maintain a highway, road, street, or alley, which is located in a producing area. Land is located in a producing area if the closest boundary line of the surface of such land is within 2,500 feet of a well capable of producing oil or gas in paying quantities as of January 1, 1985. Oil and gas underlying land not located within a producing area may be leased under the provisions of Section 34.0511 of this code; or
- (6) oil and gas underlying land owned by the state that was acquired to construct or maintain a highway, road, street, or alley if the State Highway and Public Transportation Commission has determined that such right-of-way is no longer needed for use by citizens as a road pursuant to Chapter 99, General Laws, Acts of the 42nd Legislature, Regular Session, 1931 (Article 6673a, Vernon's Texas Civil Statutes) [land owned by the state under the jurisdiction or control of the State Highway and Public Transportation Commission].

**SECTION 2.** Chapter 34, Natural Resources Code, is amended by adding Section 34.0511 to read as follows:

**Sec. 34.0511. PREFERENTIAL RIGHT TO LEASE CERTAIN LAND BY ADJOINING MINERAL OWNER.** (a) In this section, "mineral owner" means any person who owns the right to explore for, develop, and produce oil and gas from a tract of land adjoining lands owned by the state that were or may be acquired to construct or maintain a highway, road, street, alley, or other right-of-way.

(b) Oil and gas under lands owned by the state that were or may be acquired to construct or maintain a highway, road, street, alley, or other right-of-way may be offered for lease under this chapter only after the oil and gas are first offered for lease to the mineral owner of the land adjoining the length of the land to be leased. The board for lease shall set the terms and conditions of the lease as follows:

(1) In instances where the adjoining land is covered by an existing oil and gas lease currently in effect, the royalty, bonus, and rental shall be identical to those amounts contained in the lease covering the adjoining land or, in the event there is more than one lease covering adjoining land, shall be no less favorable to the state than the most favorable of such leases.

(2) In instances where the adjoining land is not covered by an existing oil and gas lease, the royalty, bonus, and rental for the lease shall be as provided in Sections 34.058 and 34.059 of this code.

(c) The preferential right of the mineral owner created by Subsection (b) of this section is subject to the following limitations:

(1) the lease of the oil and gas extends only to the center of the width of the particular highway, road, street, alley, or other right-of-way adjacent to the property in which the lessee is the mineral owner; and

(2) the preferential right to lease must be exercised by the mineral owner within 120 days of actual notice of the intention to lease as provided by Subsection (d) of this section.

(d) Actual notice, describing the land as required by Section 34.0514 of this code, has occurred upon mailing of the notice of the intention to lease by registered mail to the last known address of the affected mineral owner or owners, if more than one, as determined from records of the county clerk for the county in which the land to be leased is located. If the identity or address of a mineral owner is not known, and cannot be located after a diligent search of the records of the county clerk and tax assessor-collector for the county in which the land is located, the actual notice required by Subsection (c) of this section shall be provided by publication. The notice shall be published in the manner provided in the Texas Rules of Civil Procedure for citation by publication in actions against unknown owners or claimants of interest in the land. Actual notice has occurred on completion of all procedures required by the Rules of Civil Procedure.

(e) To exercise the preferential right under this section, the mineral owner must tender to the commissioner the bonus set by the board for lease for highway department lands, together with the appropriate statutory sales fee. The tender to the commissioner must be made on or before the end of the 120-day period provided by Subsection (c)(2) of this section.

(f) Failure by the mineral owner to exercise his preferential right to lease the land within the 120-day period provided by Subsection (c)(2) of this section results in forfeiture of the preferential right to lease the land.

(g) If the mineral owner fails to exercise his preferential right within the 120-day period provided by Subsection (c)(2) of this section, the land may be offered for lease by sealed bid as provided by this chapter. The board shall not offer nor accept a price or terms which are less than that offered to the adjoining mineral owner under this section. If not leased at a public offering within 18 months from the date the lease was offered to the adjoining mineral owner, it shall be reoffered to the mineral owner prior to public offering in accordance with the provisions of this section.

(h) An adjoining mineral owner shall have the right to seek a judicial determination of the state's title to minerals beneath the adjoining highway right-of-way, and legislative consent to sue the state is hereby granted. Within 60 days of a final nonappealable judgment finding the state did not have title, or only had partial title, the state shall refund all or the proportionate part of any bonus, rental, royalty, and other consideration to the lessee. The state's lessee shall pay to the lawful mineral owner the value of any oil and gas produced from or allocated to the minerals upon which the state's title failed.

**SECTION 3.** Chapter 34, Natural Resources Code, is amended by adding Sections 34.0512 through 34.0515 to read as follows:

**Sec. 34.0512. POOLING.** Any oil and gas lease offered under Sec. 34.0511 of this code shall provide:

(1) authority for pooling all of the leased area into units of no more than 160 acres for an oil well or 640 acres for a gas well plus a 10 percent tolerance;

(2) that the production allocable to the state lease shall be based upon the surface acreage of the state lease included in the unit;

(3) that the unit operations, production from any portion of the unit or payment of shut-in gas well royalty on a lease or unit well shall be considered for all purposes to be the conduct of operations and production on the state lease; and

(4) that neither unit production of oil or gas, nor unit operations, nor payment of shut-in royalties from a unit gas well, shall serve to hold the lease in force as to any area outside the unit, regardless of whether the production, maintenance of a shut-in gas well, or operations are actually located on the state tract or not.

**Sec. 34.0513. COMPENSATORY ROYALTY.** Compensatory royalty shall be paid to the state on any lease offered and granted under Section 34.0511 of this code if the lease is not being held by

production on the tract, by production from a pooled unit, or by payment of shut-in royalties in accordance with the terms of the lease, and if oil or gas is sold and delivered in paying quantities from a well located within 2,500 feet of the leased premises and completed in a producible reservoir underlying the state lease or in any case in which drainage is occurring. Such compensatory royalty shall be paid at the royalty rate provided in the state lease based on the value of production from the well as provided in the lease on which such well is located. The compensatory royalty shall be paid in the same proportion that the acreage of the state lease has to the acreage of the state lease plus the acreage of the proration unit surrounding the draining well. The compensatory royalty is to be paid monthly to the commissioner on or before the last day of the month next succeeding the month in which the oil or gas is sold and delivered from the well causing the drainage or from the well located within 2,500 feet of the leased premises and completed in a producible reservoir under the state lease. Notwithstanding anything herein to the contrary, compensatory royalty payable under this section shall be no less than an amount equal to double the annual rental payable under the state lease. Payment of compensatory royalty shall maintain the state lease in force and effect for so long as such payments are made as provided in this section.

Sec. 34.0514. **LEASE PROVISIONS.** Any lease offered under Section 34.0511 of this code shall contain a sufficient description of the land to be leased to enable the tract to be located on the ground. All other terms and conditions of the lease shall be identical to those contained in the lease covering such adjacent land, provided the terms and conditions are not inconsistent with any laws of this state. In the event there is more than one lease covering such land, the terms and conditions of the lease shall be no less favorable to the state than the most favorable of such leases. In those instances where the adjoining land is not covered by an existing oil and gas lease, all other terms and conditions of the lease shall be set by the board for lease for highway department lands.

Sec. 34.0515. **RULES.** The board for lease of state highway department lands may adopt rules to carry out the provisions of this chapter.

**SECTION 4.** Article 6673a-1, Revised Statutes, is amended to read as follows:

Art. 6673a-1. **LEASE OF RIGHT-OF-WAY FOR DEVELOPMENT OF OIL AND GAS.** The State Highway and Public Transportation Commission may not lease oil and gas owned by the state located in producing areas as defined by Section 34.002, Natural Resources Code, that was acquired to construct or maintain a highway, road, street, or alley.

[ (1) land owned by the state that was acquired to construct or maintain a highway, road, street, or alley; or

(2) land owned by the state under the jurisdiction or control of the commission.]

**SECTION 5.** Article 6673a-2, Revised Statutes, is repealed.

**SECTION 6.** Any money held by a leaseholder, producer, operator, or purchaser in a suspense, escrow, or other special account on January 1, 1985, which is attributable to unleased state-owned minerals under a highway right-of-way, shall, upon the effective date of this Act and upon the state establishing title to the minerals, be paid to the commissioner of the General Land Office for placement in the special fund for leasing of highway rights-of-way.

**SECTION 7.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on April 15, 1985, by the following vote: Yeas 132, Nays 1, 1 present, not voting; passed by the Senate on May 17, 1985, by the following vote: Yeas 29, Nays 1.

Approved: June 8, 1985

Effective: Immediately