

CHAPTER 991

S.B. No. 964

AN ACT

relating to the location, survey, sale, and lease of vacant and unsurveyed public school land and certain public boundaries and related fees; to certain uses of and actions and transactions involving public school lands; and to certain other state land.

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

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

SUBCHAPTER E. SALE AND LEASE OF VACANCIES

Sec. 51.171. SALE AND LEASE OF VACANT LAND. (a) Vacant and unsurveyed public school land shall be located, sold, and leased under this subchapter, except:

- (1) submerged lands within tidewater limits;*
- (2) all islands, flats, and emergent lands within tidewater limits;*
- (3) natural lakes; and*
- (4) riverbeds, including channels and islands in riverbeds, above tidewater limits.*

(b) This subchapter does not alter or diminish the public domain status of the surface estate of riverbeds and channels and islands in riverbeds that are located above tidewater limits.

Sec. 51.172. *DEFINITIONS. In this subchapter:*

(1) *"Applicant" means any person who files an application. The term may include a good-faith claimant.*

(2) *"Application" means an application to purchase or lease a vacancy under this subchapter.*

(3) *"Good-faith claimant" means a person who:*

(A) occupies or uses or whose predecessors in interest have occupied or used a vacancy for purposes other than exploring for or removing or purporting to lease or otherwise convey oil, gas, sulphur, other minerals, or geothermal resources from the vacancy;

(B) has had, or whose predecessors in interest have had, the vacancy enclosed or within definite recognized boundaries and in possession for a period of 10 or more years with a good-faith belief that the vacancy was included within the boundaries of a survey or surveys that were previously titled, awarded, or sold under circumstances that would have vested title in the vacancy if it were actually located within the boundaries of the survey or surveys;

(C) is the owner of land adjoining a vacancy on which no application has previously been filed; or

(D) holds under a good-faith claimant or is entitled to a distributive share of any title acquired under an application made by a good-faith claimant.

(4) *"Interest" means any right or title in or to real property, whether affecting the surface, subsurface, or mineral estate, including:*

(A) fee simple title;

(B) a determinable fee created under a mineral lease or conveyance or otherwise;

(C) a royalty, nonparticipating royalty, or overriding royalty interest;

(D) a remainder or reversionary interest; or

(E) an interest arising under a lien.

(5) *"Interested person" means:*

(A) a person who may own or who claims any interest in land claimed to be vacant or in any land adjoining or overlapping that land as determined from the records of the land office, the records of the county clerk's office, and the tax records of the county or counties in which the land claimed to be vacant is located;

(B) any other person who asserts a right to or interest in the land claimed to be vacant and who is known to the applicant or whose identity could be ascertained by the applicant with the exercise of reasonable diligence;

(C) the attorney general; or

(D) the applicant.

(6) *"Vacancy" means an area of unsurveyed public school land that:*

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

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

(C) was not, on the date of filing of an application:

(i) subject to an earlier subsisting application by an applicant or good-faith claimant; or

(ii) the subject of pending litigation brought by the state to recover the land.

Sec. 51.173. *APPLICATION. (a) To purchase or lease a vacancy, a person must file an application. The filing of an application commences a proceeding under this subchapter. The applicant must file the application with the county surveyor of the county in which all*

or part of the land claimed to be vacant is located. If the county does not have a county surveyor, the application must be filed with the county clerk.

(b) The application must:

- (1) describe the land that is claimed to be vacant;
- (2) state whether the applicant is a good-faith claimant;
- (3) state whether the applicant seeks to purchase the vacancy or obtain a mineral lease on the vacancy;
- (4) state the name and last known address of all interested persons; and
- (5) provide any other information that the commissioner requires by rule.

(c) The commissioner by rule shall set an application filing fee in an amount of not less than \$5. The applicant shall pay the filing fee to the county surveyor or county clerk at the time the application is filed.

(d) The county surveyor or county clerk shall mark the exact date and hour of filing on the original and a duplicate copy of the application and shall return a marked copy to the person filing the application. The original shall be recorded in a book kept for that purpose separate from the deed or real property records.

(e) Priority among applications covering the same land claimed to be vacant is determined by the time of filing indicated by the date and hour marked on the application by the county surveyor or county clerk.

Sec. 51.174. FILING APPLICATION WITH COMMISSIONER. (a) The applicant shall file with the commissioner a copy of the application with the county surveyor's or clerk's mark indicating the time of filing not later than the 10th day after the application is filed with the county surveyor or clerk. The applicant shall include a filing fee set by the commissioner in an amount of not less than \$100. If the 10th day after filing falls on a Saturday, Sunday, or state or federal holiday, the application may be filed on the next regular business day following the 10th day.

(b) The commissioner shall mark the date of filing on the application and assign a file number to the application.

(c) An applicant who does not file the application with the commissioner in the time provided in this section or pay the filing fee waives all rights under the application.

(d) The commissioner may refuse to accept for filing an application that:

- (1) has material omissions;
- (2) does not describe the land claimed to be vacant adequately for the land to be located on the ground; or
- (3) describes as vacant land that has been finally adjudicated in a court of this state or of the United States not to be vacant.

Sec. 51.175. DEPOSIT. (a) If an applicant is not a good-faith claimant, the commissioner shall estimate the costs of proceeding under the application, including the costs of a survey made by a licensed state land surveyor or the county surveyor, the preparation of copies and working sketches by the land office, the mailing or publication of notices and copies, and other similar costs, excluding allocable costs of salaries and overhead expended by the land office in actually conducting a hearing or preparing orders and proposals for decision.

(b) The commissioner shall notify the applicant in writing of the estimated costs and the applicant shall make a deposit with the commissioner in the amount of the estimated costs.

(c) If at any time the commissioner determines that the funds on deposit are insufficient to pay the costs of the proceeding, the commissioner shall estimate the additional amount required and shall notify the applicant in writing to make a supplemental deposit of the estimated amount. The notice must be dated.

(d) The applicant shall make an initial deposit or a supplemental deposit not later than the 30th day after the date of the written notice to make the deposit. The commissioner shall cancel the application if the applicant does not make a required deposit within the prescribed time. Cancellation terminates all rights under that application.

Sec. 51.176. APPEAL OF AMOUNT OF DEPOSIT. (a) An applicant may appeal the amount of an initial deposit or supplemental deposit determined by the commissioner in the manner provided for the appeal of agency decisions under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(b) If the applicant does not pay the amount determined by the district court on or before the 15th day after the judgment of the district court becomes final and nonappealable, the commissioner shall cancel the application. Cancellation terminates all rights under that application.

Sec. 51.177. DISPOSITION OF DEPOSITS. (a) The commissioner shall deposit all initial and supplemental deposits received under this subchapter to the credit of a separate trust account in the treasury. The treasurer, on the commissioner's order, shall make disbursements from that account for purposes authorized by this subchapter.

(b) After proceedings on an application are concluded and all expenditures authorized under this subchapter are paid, the commissioner shall provide the applicant a complete statement of all deposits and expenditures and shall remit to the applicant any balance remaining from the deposit or supplemental deposits made by the applicant.

Sec. 51.178. APPOINTMENT OF SURVEYOR. (a) Not later than the 60th day after the date on which the required deposit is paid, the commissioner shall appoint a licensed state land surveyor or the county surveyor of the county in which all or a part of the land claimed to be vacant is located to make a survey of that land.

(b) The fees and expenses paid for the survey are those provided by law. If the fees and expenses are not provided by law, the commissioner and surveyor shall make an agreement as to the fees and expenses reasonable for the work to be performed.

(c) The fees and expenses shall be paid by the applicant and may be paid from the initial deposit or any supplementary deposits made by the applicant under this subchapter.

(d) The commissioner shall promulgate rules setting out the qualifications and method of selection of surveyors appointed pursuant to this section. The rules shall provide the greatest practicable opportunity for all qualified surveyors to obtain appointment and shall provide the opportunity for an interested party to move for the removal of an appointed surveyor on the grounds of bias, prejudice, or conflict of interest. No surveyor appointed shall be removed, however, except upon notice to the surveyor and all interested parties and hearing. The fact of removal of a surveyor shall not be a basis for any disciplinary action against that surveyor under the Professional Land Surveying Practices Act (Article 5282c, Vernon's Texas Civil Statutes).

Sec. 51.179. NOTICE TO INTERESTED PERSONS. (a) Not later than the 10th day after the date on which the commissioner appoints the surveyor, the commissioner shall give notice by certified mail, return receipt requested, to all interested persons at the last known address. The notice shall contain:

- (1) the date of the notice;*
- (2) a statement that a vacancy application has been made;*
- (3) the name, address, and telephone number of the surveyor appointed to make the survey;*
- (4) a statement that the survey may begin any time after the 20th day after the date of the notice;*
- (5) a statement that an interested party is entitled to:*
 - (A) observe the conduct of the survey;*
 - (B) receive a copy of the final survey report and other documents filed by the surveyor; and*
 - (C) participate in the vacancy proceeding;*
- (6) a true and legible copy of the application; and*
- (7) other information the commissioner by rule may prescribe.*

(b) If the location of an interested person is unknown or if a notice is returned as unclaimed or undeliverable, the commissioner shall publish notice as prescribed by the

Texas Rules of Civil Procedure. If notice by publication is made, the survey may not begin and further proceedings may not be held until the 30th day after publication is completed.

(c) *If the applicant, another interested person, or the surveyor shows that the delay required by Subsection (b) of this section may materially affect the accuracy of the survey because of destruction, alteration, or removal of natural features, monuments, or witness objects, or for other good cause, the commissioner may order the survey to proceed. Notice of the request to proceed with the survey and of any order issued in response to the request shall be mailed first class to all interested persons.*

(d) *The right of an interested person, personally or through a representative or representatives, to observe the conduct of a survey made under this subchapter does not require a delay in the conduct of a survey solely to allow an interested person or that person's representative to be present during the survey.*

Sec. 51.180. WAIVER OF NOTICE. (a) *An interested person may waive service of the notice required by Section 51.179 of this code by filing with the commissioner a sworn affidavit stating the person's intent to waive notice. The affidavit shall state that the person executing the waiver has been provided with a true copy of the application filed with the commissioner.*

(b) *The affidavit may also state clearly the interested person's intent to waive all further notice of the vacancy proceedings. If the affidavit states this intent, it must also state prominently and clearly that the interested person is aware that waiving the right to further notice may result in the loss of the opportunity to appear and to contest the application.*

(c) *The commissioner by rule may prescribe the form and specific content of the affidavit described in this section, including additional information to be included.*

Sec. 51.181. SURVEY. (a) *Except when notice by publication is required, at any time after the 20th day after the date of the notice required by Section 51.179(a) of this code, the surveyor shall begin the survey of the land claimed to be vacant.*

(b) *The surveyor shall prepare and file in the land office:*

(1) *a detailed written report of all aspects of the survey, including record research conducted, survey corners recovered in the course of the field survey, and details of boundary construction using recovered corners;*

(2) *field notes in the form and content prescribed by law, describing the land and the lines and corners surveyed;*

(3) *a complete plat depicting in detail the survey results;*

(4) *the names and addresses of all persons who have possession of the land described in the application and a description of the lands occupied by those persons; and*

(5) *the names and addresses of all persons known to the surveyor who have or claim any interest in the land.*

(c) *The surveyor shall file the report required by this section not later than the 140th day after the date of the notice required by Section 51.179(a) of this code. If notice by publication is required and the commissioner has not ordered the survey to proceed, the surveyor shall file the report not later than the 170th day after the date on which notice by publication is completed. If the commissioner has ordered the survey to proceed, the surveyor shall file the report not later than the 140th day after the date of the commissioner's order.*

(d) *For good cause shown, the commissioner by written order may extend the time for filing the survey. The order shall state the cause for the extension and shall be included in the record. A single order may not extend the time for filing by more than 60 days.*

(e) *An interested person at the person's own expense may have any surveying done that the person considers desirable, but a survey report, a plat, or field notes based on a survey made by a person not qualified by law to survey public lands in this state may not be admitted into evidence in a vacancy proceeding or filed in the land office.*

(f) *The commissioner shall serve a true copy of the survey report, field notes, plat, and all other documents filed by the surveyor on each interested person, including those named in the survey report, by certified mail, return receipt requested, not later than the fifth business day after the survey report is filed in the land office.*

Sec. 51.182. ADDITIONAL INTERESTED PERSONS. (a) All persons named in the survey report as occupying or as having or claiming any interest in the land described in the application shall be included in the proceeding as interested persons and shall be provided notice as prescribed by this subchapter.

(b) An application may not be canceled or a proceeding terminated because of the discovery of an additional interested person unless the commissioner finds that the person filing the application knowingly and intentionally omitted the name of the person from the application.

Sec. 51.183. EXCEPTIONS. An interested person may file exceptions to the survey report, field notes, and plat not later than the 30th day after the date the survey report is filed in the land office. A person filing exceptions shall serve a true copy on all interested persons and on the surveyor by certified mail, return receipt requested. The exceptions shall include a certificate of the fact of that service.

Sec. 51.184. ADDITIONAL SURVEYS. (a) The commissioner or the land office staff may consult with the surveyor. The commissioner, after notice to the interested persons, may direct the surveyor to make additional surveys, to investigate as the commissioner considers necessary, and to prepare supplemental reports, plats, and field notes the commissioner requires.

(b) The commissioner shall provide copies of all reports, plats, field notes, and other information resulting from additional surveys and investigation to all interested persons.

(c) An interested person may file exceptions or other responses not later than the 20th day after the surveyor files the required documents with the land office.

(d) Service of additional documents and exceptions or responses to those documents shall be made as provided by Sections 51.181 and 51.183 of this code.

Sec. 51.185. ACTION ON APPLICATION. (a) Not later than the 90th day after the date on which the surveyor files the survey report and other documents required to be filed, the commissioner shall either deny the application as provided by Section 51.186 of this code or hold a hearing to determine whether a vacancy exists.

(b) Except as provided by Section 51.192 of this code, the commissioner may not find that a vacancy exists unless a hearing is held.

(c) The commissioner shall decide all issues raised or that could be raised by the application and any exceptions or responses to the application, including the existence of a vacancy, the boundaries of a vacancy, and the status and rights of any interested person as a good-faith claimant or prior applicant.

(d) The commissioner may not decide in a proceeding on an application any claim of the state or permanent school fund for damages arising from trespass, the removal or use of minerals or geothermal resources, mispayment of proceeds from the sale or use of minerals or geothermal resources, damages to the soil, vegetation, or other life or habitat, and similar or related claims. Those claims may be asserted by the commissioner in administrative proceedings under rules adopted by the commissioner or through suit brought by the attorney general at the request of the commissioner.

(e) Evidence or testimony regarding the existence or extent of mineral development or other economic use of land claimed to be vacant may not be introduced or considered, unless that evidence or testimony is relevant to determine the existence or boundaries of the alleged vacancy or the status of a person as a good-faith claimant.

Sec. 51.186. DENIAL OF APPLICATION. (a) If, after reviewing the survey report, any supplemental reports, any exceptions to the reports, all pertinent publicly available records of the land office and the state archives, and land office staff recommendations, the commissioner decides that the land claimed to be vacant is not vacant, the commissioner may enter an order denying the application. The order shall contain findings of fact, conclusions of law, and other matters the commissioner considers appropriate.

(b) The commissioner shall promptly send a true copy of the order denying the application to the applicant by certified mail, return receipt requested.

(c) The commissioner shall place in the file assigned to the application the original order, all materials filed by the surveyor, all exceptions and responses to the surveyor's filings, all

memoranda provided to the commissioner by the land office staff, a list of all files and records of the land office and state archives examined by the staff or commissioner in connection with the application, and all other relevant papers.

(d) An interested person may request a rehearing and appeal the commissioner's order as provided by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and by rules adopted by the commissioner consistent with that Act. If a rehearing is not requested, the order becomes final on the 30th day after the date it is signed. If a rehearing is requested and denied, the order becomes final on the date that time for appeal to the district court expires. If appeal is taken, the order becomes final on the date that a judgment disposing of the order becomes final.

(e) When the commissioner's order denying the vacancy is final, all rights under the application are terminated.

Sec. 51.187. EFFECT OF FINAL ORDER. (a) A final order of the commissioner under this subchapter is conclusive with respect to the land described in the application or final order. A final order of the commissioner does not have the effect of stare decisis with respect to land not described in the application or final order, but may be considered with all other evidence.

(b) The cancellation, withdrawal, abandonment, or termination of an application, the refusal of the commissioner to accept an application for filing, or the order or judgment of any court resulting in or affecting such an action has no effect on a subsequent determination of whether any land described in the application is vacant.

(c) A decision of the commissioner issued before September 1, 1993, that denies a vacancy application or letter of inquiry is not conclusive as to the existence or nonexistence of a vacancy.

Sec. 51.188. RULEMAKING; VENUE OF APPEALS. (a) A hearing under this subchapter and further proceedings arising from the hearing shall be conducted in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and rules adopted by the commissioner consistent with that Act.

(b) Appeal of a final order of the commissioner is to a district court of the county in which the land claimed to be vacant or a part of that land is located. The district court shall review the commissioner's order under the substantial evidence rule.

Sec. 51.189. COMMISSIONER'S ORDER. (a) If it appears to the commissioner that the alleged vacancy is not in conflict with land previously titled, awarded, or sold by the state or its predecessor sovereigns, the commissioner shall enter an order declaring the existence of a vacancy and determining all other issues.

(b) If it appears to the commissioner that the land claimed to be vacant is not vacant, the commissioner shall enter an order denying the application and determining all other issues.

(c) The commissioner shall base the order on the testimony and other competent evidence presented at the hearing, the surveyor's filings and all supplements to those filings, any exceptions or responses to the surveyor's filings and all supplements to those filings, and the publicly available records of the land office and the state archives. The commissioner and the examiner or examiners who conduct hearings on the application may consult with the land office staff and the surveyor to the extent permitted by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The record shall include a list of the names and titles of all staff consulted, a list of the files and documents of the land office and state archives examined, and a copy of all memoranda provided to the examiners or commissioner by the land office staff or by the surveyor.

(d) The order shall contain:

- (1) findings of fact;
- (2) conclusions of law;

(3) a field note description of the land, if any, found to be vacant, sufficient to locate it on the ground, and other elements required by law;

(4) *an accurate plat of the land, if any, found to be vacant consistent with the field notes and prepared by the surveyor or a licensed state land surveyor on the land office staff; and*

(5) *other matters the commissioner considers appropriate.*

(e) *The commissioner's order may adopt, without restating, the findings of fact and conclusions of law stated in a proposal for decision prepared by the examiner or examiners who conducted the hearings and any opinion or statement contained in that proposal for decision.*

Sec. 51.190. DETERMINATION OF BOUNDARIES; REOPENING. (a) *In determining the boundaries and size of a vacancy, the commissioner is not restricted to a description of the land claimed to be vacant that is provided by the applicant, the surveyor, or an interested party. The commissioner shall adopt the description of a vacancy that best describes the vacancy and is consistent with the information available under this section.*

(b) *If in determining the boundaries and size of a vacancy it becomes apparent to the commissioner that persons who have not been named as interested persons and who have not been served notice of the proceeding under the application may be affected by the finding that a vacancy exists at the location and with the boundaries believed by the commissioner to conform to the record, the proceeding shall be reopened and the persons affected shall be joined as interested persons and given an opportunity to participate adequately in the proceeding. This subsection does not require the refiling of an application or the conduct of a new survey by the surveyor.*

Sec. 51.191. GOOD-FAITH CLAIMANT STATUS. (a) *An applicant or interested person who wishes to assert status as a good-faith claimant may file notice of claim of good-faith status at any time before the 20th day preceding the date on which the first hearing begins. The notice of claim of good-faith status shall state the grounds for the claim and describe the land claimed to be affected by the good-faith status. The notice shall be filed in the land office and served on all interested persons by certified mail, return receipt requested.*

(b) *Filing notice of claim of good-faith status is not an admission by the person asserting the claim that a vacancy exists.*

Sec. 51.192. ORDER WITHOUT NOTICE AND HEARING. (a) *An applicant who asserts status as a good-faith claimant may present evidence to the commissioner that:*

(1) *the good-faith claimant owns all of the land and interests in land completely surrounding the land claimed to be vacant;*

(2) *there is no subsisting prior application covering the land described in the good-faith claimant's application;*

(3) *no previous application has been made covering the land described in the good-faith claimant's application; and*

(4) *the good-faith claimant meets all other requirements of a good-faith claimant.*

(b) *If the commissioner finds that the evidence presented is accurate, further notice to other persons is not required and, on acceptance for filing by the commissioner of a survey made by a licensed state land surveyor or the county surveyor of the county in which the land claimed to be vacant or a part of that land is located, the commissioner may enter an order declaring the existence of the vacancy and determining the good-faith status of the applicant.*

(c) *For purposes of this section, land claimed to be vacant and surrounded by lands owned only by the good-faith claimant and the state is considered to be surrounded completely by land owned by the good-faith claimant.*

(d) *Two or more persons may jointly apply as good-faith claimants under this section if together they meet the requirements of Subsection (a) of this section.*

(e) *A person who would have been an interested person under an application made under this subchapter by a person other than a good-faith claimant may move to set aside an order entered under this section by filing a written motion with the commissioner not later than the second anniversary of the date of that order. The person shall serve a true copy of the*

motion by certified mail, return receipt requested, on the applicant and all persons holding or claiming under the applicant.

(f) The commissioner shall set aside an order issued under this section finding that a vacancy exists if, after notice and hearing, the commissioner finds that the person asserting rights under this section, at the time the order declaring the vacancy was entered, did not:

(1) qualify as a good-faith claimant under this subchapter;

(2) own all of the land and interests in land surrounding the land claimed to be vacant;

or

(3) meet another material requirement of this section.

(g) The commissioner on the commissioner's own motion may set aside an order after notice and hearing as required by Subsections (e) and (f) of this section.

(h) If the order is set aside, the commissioner shall reopen the proceeding on the application and conduct the reopened proceeding in the same manner as proceedings on other applications.

(i) The issues in a reopened proceeding are limited to the status of the applicant as a good-faith claimant entitled to rights under this section and the rights of any other person as an applicant or good-faith claimant.

(j) An application of a good-faith claimant who does not own all of the land and interests in land completely surrounding the land claimed to be vacant is treated as an application under other sections of this subchapter.

Sec. 51.193. SALE OR LEASE OF VACANCY. *(a) When a vacancy has been established by final order, the school land board may sell or lease the vacancy as provided by this subchapter.*

(b) The board shall set the sale price and other terms and conditions as in all other sales of other lands dedicated to the permanent school fund. The sale price may not be less than the fair market value as determined by an appraisal conducted by the land office.

(c) The fee prescribed in Section 32.110(a) of this code applies to all sales and leases made under this subchapter.

(d) The board may allow a credit against the sale price in an amount not to exceed the actual cost of the survey paid by an applicant or good-faith claimant if:

(1) the purchaser is a person exercising a preferential right to purchase under this subchapter;

(2) the board has reserved all mineral and geothermal leasing rights; and

(3) the board finds that the fair market value of the mineral estate is equal to or exceeds 50 percent of the amount of the credit.

Sec. 51.194. MARKET VALUE; MEDIATION; BINDING ARBITRATION. *(a) A person seeking to purchase a vacancy by exercising a right of preferential purchase under this subchapter, by filing a written request with the commissioner, may have the issue of market value submitted to mediation before a trained mediator acceptable to both the board and the person seeking to purchase the vacancy if:*

(1) the price set by the board under Section 51.193 of this code exceeds by 15 percent or more the market value estimated in an appraisal made by a real estate appraiser certified in Texas for the person seeking to purchase the vacancy; and

(2) the appraisal was made not more than six months before the date on which the board set the price.

(b) If agreement on price is not reached through mediation on or before the 60th day after the first mediation session, the person seeking to purchase the vacancy, by filing a written request with the commissioner, may have the issue of market value submitted to binding arbitration.

(c) A panel of three real estate appraisers certified in Texas shall conduct the arbitration. The person seeking to purchase the vacancy shall name one member of the panel, the board shall name one member of the panel, and the two panel members shall name the third member of the panel, who is the panel's presiding officer. The board or the person seeking to

purchase the vacancy may object to and have disqualified the first person named to the panel by the other party. Appraisers employed by or who contract with the land office are eligible to serve on the arbitration panel.

(d) The arbitration shall be conducted under the rules of the American Arbitration Association or under other rules agreed on by the parties.

(e) The decision of the arbitration panel is not subject to judicial review.

(f) The costs of mediation and arbitration shall be shared equally by the land office and the person seeking to purchase the vacancy.

Sec. 51.195. CONDITIONS OF SALE; MINERAL AWARDS. *(a) In all sales, the board shall reserve to the permanent school fund all oil, gas, sulphur, and other minerals and geothermal resources and shall determine the manner in which those minerals and geothermal resources are to be leased.*

(b) Before the sale of a vacancy, the land office shall prepare and present to the board a study of the mineral prospects and value of the vacancy, taking into consideration the size and configuration of the vacancy, its location with respect to other surrounding and nearby tracts, the proximity of mineral production, and the likelihood of future mineral leasing and development. The study shall include a recommendation as to the method most advantageous to the state by which the vacancy could be leased.

(c) The board shall review the study and land office recommendations and shall determine whether:

(1) the state shall retain all leasing rights and the vacancy shall be leased as provided in Subchapter B, Chapter 52, and Subchapters B and E, Chapter 53, of this code; or

(2) the owner of the soil shall be designated to execute leases as the agent of the state subject to the rights, obligations, and liabilities of Subchapter F, Chapter 52, and Subchapter C, Chapter 53, of this code.

(d) If the board determines that the owner of the soil shall act as agent under Subsection (c)(2) of this section, the board shall establish the division of bonus, rental, and royalty between the permanent school fund and the owner of the soil. The portion to be paid to the owner of the soil may not be less than 20 percent or more than 50 percent. The board may establish different portions to be paid to the owner of the soil for the lease of different substances.

(e) If the board provides for lease by the owner of the soil under Subsection (c)(2) of this section, the original purchaser is a good-faith claimant, and the vacancy was established under an application made by a person other than a good-faith claimant, the board shall award the applicant a perpetual nonparticipating royalty of not less than 1/32 or more than 1/16 of the value of all oil, gas, and sulphur produced and a perpetual nonparticipating royalty of not less than one percent or more than two percent of the value of all geothermal resources and all other minerals produced.

(f) If the board determines that the state shall retain all leasing rights as provided in Subsection (c)(1) of this section, the board shall award:

(1) to an applicant other than a good-faith claimant, a perpetual nonparticipating royalty of 1/32 of the value of oil and gas and sulphur and one percent of the value of all geothermal resources and all other minerals produced; and

(2) to a good-faith claimant purchasing the vacancy, a nonparticipating royalty of 1/32 of the value of oil and gas and sulphur and one percent of the value of all geothermal resources and all other minerals produced.

(g) If a preferential right to obtain the first mineral lease on a vacancy is exercised by any person, the state's royalty under the lease shall be reduced by 25 percent for a period of five years after the date of first production under the first lease if sales of production from or attributable to the lease are commenced during the primary term of the lease.

Sec. 51.196. PREFERENTIAL RIGHT OF GOOD-FAITH CLAIMANT. *(a) A good-faith claimant has a preferential right to purchase or lease the portion of a vacancy subject to the good-faith claim.*

(b) A good-faith claimant may exercise the preferential right by filing a notice of intent to purchase or lease, on a form prescribed by the board, not later than the 90th day after the date the order establishing the vacancy becomes final. The good-faith claimant shall describe in the notice the portion of the vacancy the good-faith claimant seeks to purchase or lease. The good-faith claimant shall mail a copy of the notice to the applicant and to all other interested persons who have asserted status as good-faith claimants.

(c) All preferential rights held by a good-faith claimant expire if the good-faith claimant does not file the notice of intent within the time prescribed by Subsection (b) of this section or does not complete the purchase or lease within 60 days after the board sets the terms of the purchase or lease. For good cause shown, the board may extend the time to complete the purchase or lease by a period not to exceed 90 days.

(d) A good-faith claimant exercising a preferential right shall repay to the applicant the applicant's reasonable expenses incurred in determining the existence of a vacancy, excluding filing and attorney fees, not later than the date on which the sale or purchase by the good-faith claimant is completed. Failure to pay the expenses cancels the preferential right of the good-faith claimant.

Sec. 51.197. PREFERENTIAL RIGHT OF APPLICANT OTHER THAN GOOD-FAITH CLAIMANT. (a) On the expiration of the preferential right of a good-faith claimant to purchase or lease or if there is no good-faith claimant, an applicant who is not a good-faith claimant has a preferential right to purchase or lease all or any portion of the vacancy.

(b) An applicant may exercise the preferential right by filing a notice of intent to purchase or lease, on a form prescribed by the board, not later than the 90th day after the date on which the rights of the good-faith claimant expire. The applicant shall describe in the notice the portion of the vacancy the applicant seeks to purchase or lease. The applicant shall mail a copy of the notice to all other interested persons asserting status as good-faith claimants.

(c) All preferential rights held by an applicant expire if the applicant does not file the notice of intent within the time prescribed by Subsection (b) of this section or does not complete the purchase or lease within 60 days after the date on which the board sets the terms of the purchase or lease. For good cause shown, the board may extend the time to complete the purchase or lease by a period not to exceed 90 days.

Sec. 51.198. RIGHTS ASSIGNABLE. An applicant or good-faith claimant may assign all rights in a vacancy or land claimed to be vacant. The assignment must be in writing. The assignor shall record the assignment in the real property records of the county or counties in which the vacancy or land claimed to be vacant is located and file a certified copy of the recorded assignment in the land office.

Sec. 51.199. LEASE TERMS UNDER PREFERENTIAL RIGHTS. The board shall prescribe terms for preferential purchases or leases consistent with this subchapter. The board may not grant a preferential lease with a royalty of less than $\frac{1}{8}$ of the value of all oil, gas, and sulphur produced or less than five percent of the value of all geothermal resources and all other minerals produced.

Sec. 51.200. EFFECT OF PRIOR CONVEYANCES. (a) A mineral lease, surface lease, deed, or any other conveyance of any interest in land executed by a good-faith claimant before the date of completion of a sale or lease under this subchapter does not give the grantee under that conveyance any interest in or to the vacancy or its minerals.

(b) A title to land or an interest in land acquired from the state under a preferential right does not pass as after-acquired title under a covenant of general warranty, description, or other provision contained in a conveyance executed before the date of completion of a sale or lease under this subchapter.

Sec. 51.201. RULEMAKING AUTHORITY. (a) The commissioner may adopt rules consistent with this subchapter relating to applications to purchase or lease vacancies and the determination of the existence of vacancies.

(b) The board may adopt rules consistent with this subchapter relating to the sale and lease of vacancies.

Sec. 51.202. CONFLICT WITH OTHER CODE PROVISIONS. To the extent that any provision of this subchapter pertaining to vacancies or the sale or lease of vacancies conflicts with any other provision of this code, this subchapter controls.

~~[Sec. 51.171. SALE AND LEASE OF VACANT LAND. Vacant and unsurveyed public school land except riverbeds, channels, islands, lakes, bays, and other areas in tidewater limits shall be sold and leased under the provisions of this subchapter.~~

~~[Sec. 51.172. DEFINITIONS. In this subchapter:~~

~~(1) "Good-faith claimant" and "claimant" mean any person:~~

~~(A) who occupies or uses or has previously occupied or used or whose predecessors in interest have occupied or used a vacancy for purposes other than exploring for or removing oil, gas, sulphur, or other minerals from the vacancy; and~~

~~(B) who has himself or whose predecessors in interest had the vacancy enclosed or within definite recognized boundaries and in possession for a period of 10 years with a good-faith belief that the vacancy was included inside the boundaries of the survey or surveys that were previously titled, awarded, or sold under circumstances that would have vested title in the vacancy if it were actually located within the boundaries of the survey or surveys whose boundaries are recognized boundaries in the community.~~

~~(2) "Vacancy" means an area of unsurveyed public school land that:~~

~~(A) is not in conflict on the ground with land previously titled, awarded, or sold;~~

~~(B) has not been listed on the records of the land office as public school land; and~~

~~(C) was, on the date of filing, neither subject to an earlier subsisting application to purchase or lease by a discoverer or claimant nor involved in pending litigation brought by the state to recover the land.~~

~~(3) "Applicant" means any person, other than a good-faith claimant, who discovers and files an application to purchase or lease a vacancy.~~

~~[Sec. 51.174. PURCHASE OF VACANCY BY ADJOINING LANDOWNER. If the owner of the land adjoining an alleged vacancy files an application to purchase the vacancy and no application to purchase or lease the vacancy has been previously filed, the owner of the adjoining land, who otherwise qualifies as a good-faith claimant, shall be considered a good-faith claimant regardless of the length of time he has owned the adjoining land or has enclosed the vacancy or has had it within definite recognized boundaries and in possession with the belief that the vacancy was included within his survey.~~

~~[Sec. 51.175. APPLICATION TO PURCHASE OR LEASE A VACANCY. (a) An applicant who claims that a vacancy exists and who desires to purchase or lease the vacancy shall file with the county surveyor in the county in which any part of the vacancy is located a sworn written application in duplicate to purchase or lease the vacancy.~~

~~(b) The application shall:~~

~~(1) describe the land that is claimed to be vacant;~~

~~(2) state the desire of the applicant to purchase or lease the land under the provisions of this chapter;~~

~~(3) give the names and addresses of any owners or claimants of land or any interest in land or of leases on, adjoining, overlapping, or including the land claimed to be vacant as far as can be determined from the records of the land office and the county clerk's office in the county in which the land is located and the tax records of the county in which the land is located;~~

~~(4) give the names and addresses of any persons who, from facts known to the applicant, assert any right to the alleged vacant land; and~~

~~(5) state that the applicant knows of no other claimants than those listed.~~

~~[Sec. 51.176. FILING FEE. At the time the application is filed, the applicant shall pay to the county surveyor a filing fee set by the board of not less than \$5.~~

~~[Sec. 51.177. FILING APPLICATION WITH COUNTY. (a) The county surveyor shall mark the exact date and hour of filing on the original and duplicate copy of each application~~

and shall return one copy of the application to the applicant and shall record the other copy in a book kept for that purpose.

~~[(b) If the county does not have a county surveyor, the preliminary filing of the application shall be with the county clerk. The county clerk shall record the application in a book kept for that purpose and not in the deed records.~~

~~[Sec. 51.178. FILING APPLICATION WITH COMMISSIONER. (a) Within 10 days after the application is filed with the county surveyor, the copy of the application that is returned to the applicant shall be filed with the commissioner.~~

~~[(b) The commissioner shall mark the date of filing on the application.~~

~~[(c) The applicant shall pay to the commissioner a filing fee set by the commissioner in an amount not less than \$100.~~

~~[(d) Failure to file the application with the commissioner in the time provided by this section and to pay the filing fee constitutes a waiver of all rights under the application.~~

~~[(e) As between applicants, priority dates from the time of filing the application with the county surveyor.~~

~~[Sec. 51.179. DEPOSIT. (a) The commissioner shall notify the applicant by letter of the estimated cost of proceeding under the application, and within 30 days after the date of the commissioner's letter, the applicant shall make a deposit with the commissioner to pay the cost of the work that may be necessary to comply with the request contained in the application.~~

~~[(b) On failure to make the deposit required under this section, all rights under the application are lost.~~

~~[Sec. 51.180. INSUFFICIENT DEPOSIT. (a) If the deposit is insufficient, the applicant shall be requested by letter to make a further deposit of an amount determined by the commissioner.~~

~~[(b) If the further deposit is not made within 30 days after the date of the letter, work shall be discontinued and the application canceled with the cancellation endorsed on the application.~~

~~[(c) On cancellation, the right to purchase or lease the vacancy under the application is lost.~~

~~[Sec. 51.181. APPEAL OF AMOUNT OF DEPOSIT. (a) The applicant is entitled to appeal the estimated cost determined by the commissioner to a district court in Travis County by giving written notice to the commissioner within 15 days after receiving the estimated cost from the commissioner as provided in Sections 51.179 through 51.180 of this code.~~

~~[(b) The applicant has 15 days after the district court enters its decision in which to pay the amount ordered by the court's decision.~~

~~[Sec. 51.182. DEPOSITS AS TRUST FUND. Deposits provided under Sections 51.179 through 51.180 of this code shall be a special trust fund to be used only for the purpose authorized by this subchapter.~~

~~[Sec. 51.183. STATEMENT AND REFUND OF REMAINING DEPOSIT. As soon as the total expense properly charged against the deposit is determined, the commissioner shall render a complete statement to the applicant together with any balance remaining from the deposit.~~

~~[Sec. 51.184. NOTICE OF INTENTION TO SURVEY. (a) After the application is filed with the commissioner and the deposit is made, the commissioner shall mail a notice of intention to survey to all persons named as interested persons in the application at the addresses provided in the application and to the attorney general.~~

~~[(b) The notices shall be deposited in the post office in Austin at least 10 days before the date set for the beginning of the survey.~~

~~[Sec. 51.185. APPOINTMENT OF SURVEYOR. (a) The commissioner shall appoint a surveyor to make the survey in accordance with the notice of intention to survey.~~

~~[(b) The surveyor shall be a surveyor licensed by the state or the county surveyor of the county in which the vacancy or part of the vacancy is located.~~

~~[(c) The fees and expenses paid for the survey shall be the same as provided by law, and if the fees and expenses are not provided by law, the commissioner and surveyor shall make an~~

agreement as to fees and expenses that shall not be more than an amount that is reasonable for the work performed.

~~[(d) The fees and expenses shall be paid by the applicant.~~

~~[Sec. 51.186. SURVEY REPORT. (a) Except as provided in Subsection (b) of this section, a written report of the survey, together with field notes describing the land and the lines and corners surveyed and a plat showing the results of the survey, shall be filed in the land office within 120 days from the filing of the application.~~

~~[(b) The commissioner may extend the time for filing the survey if good cause is shown. The cause for extension of time shall be stated in writing and filed as part of the record of the proceedings. An extension of time may not be more than 60 days.~~

~~[(c) The survey report shall give the names and post office addresses of all persons who have possession of the land described in the application and of all persons found by the surveyor who have or claim any interest in the land.~~

~~[Sec. 51.187. PERSONAL SURVEY. Any interested party at his own expense may have any surveying done that he considers desirable.~~

~~[Sec. 51.188. HEARING AND NOTICE. (a) Within 60 days after the surveyor makes his report, a hearing may be held before the commissioner to determine whether or not there is a vacancy.~~

~~[(b) The date for the hearing shall be provided in the notice that the commissioner shall give to all persons thought to be interested parties and to all persons shown by the record of the proceeding to be interested parties, including the attorney general.~~

~~[(c) The notice of the hearing shall be deposited at the post office in Austin at least 10 days before the date set for the hearing.~~

~~[(d) At the hearing, the state and each interested party, whether or not he received notice, is entitled to be heard.~~

~~[(e) The hearing shall be conducted in accordance with the provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).~~

~~[Sec. 51.189. DETERMINATION OF VACANCY BY COMMISSIONER. (a) If it appears to the commissioner that the alleged vacancy is not in conflict with land previously titled, awarded, or sold by the state, he shall give prompt notice of this finding to the applicant and to all persons who were previously identified as interested parties.~~

~~[(b) After the notice is given under Subsection (a) of this section, and subject to the preferential right of a good-faith claimant, the applicant is entitled for 120 days to purchase or lease the portion of the land that is determined to be vacant at a price set by the board as provided in this code and with the same royalty reservation as provided in Section 51.201 of this code.~~

~~[(c) No award may be made by the commissioner unless a hearing is held, and no presumption may obtain in a suit involving the existence of a vacancy as a result of the action of the commissioner in this respect.~~

~~[Sec. 51.190. PURCHASE OR LEASE BY APPLICANT. (a) If there is no good-faith claimant or if no good-faith claimant exercises his preferential right within the time allowed, the applicant is entitled to purchase or lease, according to his application, the vacancy for which he made application and which is found to exist.~~

~~[(b) Consideration shall be determined by the board as provided in this subchapter, but without consideration of potential mineral value.~~

~~[Sec. 51.191. SUIT TO RECOVER LAND. A good-faith claimant of a vacant or unsurveyed tract of land has 30 days after the sale or lease of the land to the applicant to institute suit to set aside the sale or lease of the land. If the suit is not instituted within the 30-day period by the good-faith claimant, he loses all preferential rights to purchase or lease the land.~~

~~[Sec. 51.192. DENIAL OF VACANCY BY COMMISSIONER. (a) If the commissioner decides that the area alleged to be vacant is not vacant, he shall endorse this decision on the application and file it with his finding.~~

~~[(b) The commissioner shall promptly notify the applicant of his decision by registered mail and shall file all reports and papers received in connection with the application.~~

~~[(c) After the commissioner takes all action provided under Subsections (a) and (b) of this section, he shall take no further action with respect to the application unless the existence of the alleged vacancy is determined by a court of competent jurisdiction.~~

~~[(d) Within 90 days after the commissioner's decision is mailed, unless the applicant files suit in a district court in a county in which part of the alleged vacancy is located to litigate the question of the existence of a vacancy, the applicant's application and all preference rights acquired to purchase or lease the alleged vacancy become null and void.~~

~~[Sec. 51.193. PREFERENTIAL RIGHT OF GOOD FAITH CLAIMANT. (a) A good-faith claimant who ascertains that a vacancy exists or that a claimed vacancy may exist or who has been notified by the commissioner that a vacancy has been found to exist on land claimed by him shall have a preferential right to purchase or lease the vacancy at any time until 90 days after a decision of the commissioner declaring the existence of a vacancy.~~

~~[(b) The good-faith claimant may purchase or lease the vacancy by submitting a written application to the commissioner for the purchase or lease of the vacancy and by furnishing to the commissioner satisfactory proof that he is a good-faith claimant.~~

~~[(c) The good-faith claimant is entitled to purchase or lease the portion of the land that is vacant at the price set by the board subject to the royalty reservations provided in this subchapter which are effective on the date the application is filed.~~

~~[Sec. 51.194. TERM OF PREFERENTIAL RIGHT. A good-faith claimant has a preferential right to purchase the land alleged or adjudicated to be vacant until 90 days after the final judicial determination of the existence of the vacancy.~~

~~[Sec. 51.195. EFFECT OF GOOD FAITH CLAIMANT'S APPLICATION. The application of a good-faith claimant may not be used or considered as an admission on his part that a vacancy exists.~~

~~[Sec. 51.196. PROCEDURE FOR PURCHASE OR LEASE BY GOOD FAITH CLAIMANT. (a) On the date a good-faith claimant's application is filed, if there is no valid and subsisting application previously filed by an applicant covering the alleged vacancy, the application of the good-faith claimant shall be filed and shall be accompanied by:~~

~~[(1) a filing fee set by the commissioner in an amount not less than \$1;~~

~~[(2) a written report of a surveyor licensed by the state or by the county surveyor of any county in which all or part of the alleged vacancy is located;~~

~~[(3) field notes describing the land and the lines and corners surveyed;~~

~~[(4) a plat showing the results of the survey; and~~

~~[(5) any proof that will show to the satisfaction of the commissioner that the applicant is a good-faith claimant.~~

~~[(b) The good-faith claimant may file his application to purchase or lease and within 120 days from the date of filing the application with the commissioner have a survey made of the alleged vacancy and file the report, field notes, and plat in the land office together with proof that he is a good-faith claimant.~~

~~[(c) If it appears to the commissioner that the alleged vacancy is not in conflict with land previously titled, awarded, or sold by the state, the commissioner shall grant the application under the provisions of this subchapter. Before the application is granted, the commissioner may hold a hearing at which interested persons may appear.~~

~~[Sec. 51.197. FAILURE TO EXERCISE PREFERENTIAL RIGHT WITHIN CERTAIN TIME. (a) If the good-faith claimant does not exercise his preferential right to purchase within 90 days after a decision of the commissioner under the provisions of this subchapter, the applicant shall be awarded an oil, gas, and mineral lease on not more than seven-eighths of the minerals.~~

~~[(b) The consideration for the lease shall not be less than \$1 an acre, and the lease shall be for a primary term set by the board of not more than five years.~~

~~[(e) The lease shall be subject to other consideration and terms required by the board and the preferential right of a good-faith claimant until 90 days after final judicial determination under Section 51.194 of this code.~~

~~[Sec. 51.198. REPAYMENT OF APPLICANT'S EXPENSES. Within 90 days after the commissioner declares the vacancy to exist, the good-faith claimant shall repay to the applicant the expenses incurred in determining the existence of a vacancy, except filing fees, as provided in this subchapter or the good-faith claimant will lose all preferential rights to purchase or lease the land.~~

~~[Sec. 51.199. JUDICIAL DETERMINATION OF GOOD-FAITH CLAIMANT. If the commissioner fails to determine whether or not there is a good-faith claimant or if his decision is questioned by an applicant or by a person asserting to be a good-faith claimant, the issue shall be determined in any suit brought under this subchapter to determine the existence of the alleged vacancy.~~

~~[Sec. 51.200. RIGHTS OF HOLDERS OF TITLE AND HOLDERS OF INTERESTS IN TITLE OF A CLAIMANT. (a) If all owners holding title under the claimant or an interest in the title under which the claimant claims to be a good-faith claimant accept the provisions of this section and contribute their proportionate part of the royalty reserved to the state and the royalty awarded to the applicant, the purchase by the good-faith claimant under the preferential right inures distributively to their benefit.~~

~~[(b) The royalty reservations shall be deducted distributively and proportionately from the mineral interest of each owner including mineral leases if the area is under a mineral lease.~~

~~[(c) As a condition of this subchapter, the good-faith claimant receiving the patent or award or for whose benefit a patent or award is received shall recognize the proportionate interests of other owners who benefit by the award of the preferential right.~~

~~[(d) The consideration for the purchase shall be determined by the board without considering the potential value of minerals or any improvements located on the vacancy but shall not be less than \$1 an acre. The state retains the right to recover from the party or parties liable the market value when produced of all oil, gas, sulphur, or other minerals that may have been produced from the area before the effective date of the patent or award less an offset to the operator for the actual cost of development and production.~~

~~[(e) No mineral lease executed by a good-faith claimant before filing the vacancy claim may give the lessee any interest in or to the vacancy.~~

~~[(f) No title to land or to a mineral interest in land acquired from the state under a preferential right may be held to pass as after-acquired title because of any covenant of general warranty, description, or other provision contained in any conveyance executed before the date of award under the preferential right.~~

~~[Sec. 51.201. RESERVATION OF MINERALS. (a) If a good-faith claimant purchases a vacancy located within five miles of a well producing oil, gas, or other minerals in commercial quantities, not less than a free royalty of one-eighth of all oil, gas, sulphur, and other minerals shall be reserved to the state.~~

~~[(b) If a vacancy that is not covered by Subsection (a) of this section is sold, not less than a free royalty of one-sixteenth of all oil and gas production and one-eighth of all sulphur and other minerals shall be reserved to the state.~~

~~[(c) If a good-faith claimant fails to exercise his preferential right to purchase a vacancy within 90 days after the commissioner determines the existence of the vacancy, the mineral interest reserved by the state shall be not less than a free royalty of one-eighth of the oil and gas and not less than a free royalty of one-sixth of the sulphur and other minerals.~~

~~[(d) The state shall reserve not less than a free royalty of one-eighth of all oil, gas, sulphur, and other minerals on vacancies that are leased by the state as determined by the board.~~

~~[(e) An oil, gas, or other mineral lease on land in which the state reserves a free royalty interest is not effective until a certified copy of the recorded lease is filed in the General Land Office.~~

~~[Sec. 51.202. MINERAL RESERVATIONS UNDER SALE MADE TO CLAIMANT AFTER 90-DAY DEADLINE. If a good-faith claimant does not exercise his preferential right to purchase until after 90 days after the decision of the commissioner determining the~~

existence of a vacancy, the sale made to the claimant shall be subject to a reservation to the state of not less than a free royalty of one-eighth of all oil, gas, sulphur, and other minerals and subject to any lease made by the state to the applicant.

~~[Sec. 51.203. ROYALTY FOR APPLICANT. If there is a valid subsisting application previously filed by an applicant on the date that the good-faith claimant files his application to purchase under a preferential right, and if the good-faith claimant exercises his preferential right to purchase within 90 days after the commissioner's decision under this subchapter, a free royalty of one-sixteenth of all oil, gas, sulphur, and other minerals that may be produced from the land shall be added to the royalty interest reserved to the state and shall be awarded by the state to the applicant. The free royalty shall be deducted proportionately from the good-faith claimant's award.]~~

~~[Sec. 51.205. APPEAL. (a) A person who is aggrieved by any action taken by the commissioner under the provisions of this subchapter or with reference to any application to purchase or lease a vacancy may institute suit in the district court of any county in which part of the land is located to try the issues of boundary, title, ownership of any alleged vacancy involved, and preferential rights of the person.]~~

~~[(b) Within 30 days after the suit is filed, the plaintiff shall have a certified copy of the original petition served on the attorney general and the commissioner by the sheriff or a constable of Travis County and shall have the officer's return filed with the papers in the suit.]~~

~~[(c) Whether the attorney general answers or intervenes in the suit or institutes a suit, the venue of all suits following the filing of the application shall be in the county in which the land or part of the land is located.]~~

~~[(d) If the litigation is prosecuted to a final judgment, the judgment is binding on the state.]~~

~~[(e) The attorney general must intervene on behalf of the state in suits brought under this section.]~~

~~[(f) The suit must be filed in accordance with the provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) relating to appeals from agency decisions.]~~

SECTION 2. Section 118.161, Local Government Code, is amended to read as follows:

Sec. 118.161. FEE SCHEDULE. A county surveyor shall collect the following fees:

(1) *for recording the field notes and plat of a survey for a tract of land, providing copies of field notes, plats, or other papers or records, and certifying any copies, the same amount collected by the county clerk of the county as a filing fee;*

(2) *for surveying a tract of land or designating a homestead:*

(A) *the actual expenses incurred, including all expenses of making the survey, preparing a survey report, field notes, plat, and other documents required by law, and filing those documents in the records of the county surveyor or the General Land Office; and*

(B) *any fees for surveying services agreed on by the county surveyor and the person seeking the services; and*

(3) *for filing an application to purchase or lease a vacancy or for surveying a vacancy, the amounts provided by Subchapter E, Chapter 51, Natural Resources Code. [Inspecting and recording the field notes and plat of a survey for any tract of land;*

[A] less than one-third of a league	\$1.00
[B] one-third of a league	\$2.00
[C] more than one-third of a league	\$3.00

[2] Recording surveys and plats required by law to be placed on the map of a new county, for each 100 words	\$0.20
[3] Examination of papers and records in his office at the request of any person	\$0.25
[4] Copies of all field notes and plats, or other papers or records in the office, for each 100 words, including certificate	\$0.20
[5] Surveying of any tract of land, including all expenses in making the survey, and returning the plat and field notes of the survey:	

[(A) for each English lineal mile actually run	\$3.00
[(B) for less than one English lineal mile run	\$2.50
[(6) Services in designating a homestead, including pay for chain carriers, for each day's service	\$5.00]

SECTION 3. Subsection (b), Section 72.006, Local Government Code, is amended to read as follows:

(b) A surveyor appointed under this chapter is entitled to receive *the actual expenses incurred in making the survey and any fees for surveying services agreed on by the surveyor and the counties* [~~\$3 for each mile surveyed~~].

SECTION 4. Subsection (a), Section 21.078, Natural Resources Code, is amended to read as follows:

(a) The plane coordinate values for a point on the earth's surface, to be used in expressing the position or location of the point in the appropriate zone, of either system, shall consist of two distances, expressed in U.S. Survey Feet and decimals of a foot *or varas or tenths of a vara* when using the Texas Coordinate System of 1927 and expressed in meters and decimals of a meter, *in U.S. Survey Feet or decimals of a foot, or in varas or tenths of a vara* when using the Texas Coordinate System of 1983.

SECTION 5. (a) The change in law made by Sections 1 through 4 of this Act applies only to an application to purchase or lease a vacancy under Subchapter E, Chapter 51, Natural Resources Code, that is filed with a county surveyor or county clerk on or after the effective date of this Act.

(b) An application filed before that date is governed by the law in effect on the date the application is filed, and the former law is continued in effect for that purpose.

SECTION 6. Section 5.115, Water Code, is amended to read as follows:

Sec. 5.115. NOTICE OF APPLICATION. (a) At the time an application for a permit or license under this code is filed with the executive director and is administratively complete, the commission shall give notice of the application to any person who may be affected by the granting of the permit or license.

(b) *At the time an application for any formal action by the commission that will affect lands dedicated to the permanent school fund is filed with the executive director or the commission and is administratively complete, the commission shall give notice of the application to the School Land Board. Notice shall be delivered by certified mail, return receipt requested, addressed to the deputy commissioner of the asset management division of the General Land Office. Delivery is not complete until the return receipt is signed by the deputy commissioner of the asset management division of the General Land Office and returned to the commission.*

(c) The commission shall adopt rules for the notice required by this section.

(d) [(e)] The notice must state:

- (1) the identifying number given the application by the commission;
- (2) the type of permit or license sought under the application;
- (3) the name and address of the applicant;
- (4) the date on which the application was submitted; and
- (5) a brief summary of the information included in the permit application.

(e) *The notice to the School Land Board under this section shall additionally:*

- (1) *state the location of the permanent school fund land to be affected; and*
- (2) *describe any foreseeable impact or effect of the commission's action on permanent school fund land.*

(f) *A formal action or ruling by the commission on an application affecting permanent school fund land that is made without the notice required by this section is voidable by the School Land Board as to any permanent school fund lands affected by the action or ruling.*

SECTION 7. Subchapter D, Chapter 11, Natural Resources Code, is amended by adding Section 11.082 to read as follows:

Sec. 11.082. **NOTICE TO SCHOOL LAND BOARD.** (a) A state agency or political subdivision may not formally take any action that may affect state land dedicated to the permanent school fund without first giving notice of the action to the board. Notice of the proposed action shall be delivered by certified mail, return receipt requested, addressed to the deputy commissioner of the asset management division of the General Land Office on or before the state agency's or political subdivision's formal initiation of the action.

(b) The notice must:

- (1) describe the proposed action;
- (2) state the location of the permanent school fund land to be affected; and
- (3) describe any foreseeable impact or effect of the state agency's or political subdivision's action on the permanent school fund land.

(c) An action taken by a state agency or political subdivision without the notice required by Subsection (a) of this section that affects state land dedicated to the permanent school fund is not effective as to permanent school fund land affected by the action.

(d) In this section:

(1) "Action" means:

- (A) formal adoption of an agency or political subdivision policy;
- (B) final adoption of an administrative rule;
- (C) issuance of findings of fact or law;
- (D) issuance of an administrative order in an administrative hearing; or
- (E) adoption of a local ordinance or resolution.

(2) "Board" means the School Land Board.

(3) "Initiation" means the commencement of the first phase of public consideration of a formal policy, rule, or ordinance, or a hearing undertaken by a state agency or political subdivision that is intended to result in final adoption of a formal policy, rule, or ordinance.

(4) "Political subdivision" means a county, public school district, or special-purpose district or authority.

(5) "State agency" means:

(A) a department, commission, board, office, bureau, council, or other agency in the executive branch of state government other than the Texas Department of Transportation and the Railroad Commission of Texas; or

(B) a university system or an institution of higher education as defined in Section 61.003, Education Code.

SECTION 8. Section 32.112, Natural Resources Code, is amended to read as follows:

Sec. 32.112. **SALE OF TAX FORECLOSURE PROPERTY.** (a) All real property or any interest in real property placed in the name of the state as a result of a tax foreclosure sale may be sold or leased by the board in the same manner as provided for the sale or lease of land under Chapter 51 of this code. ~~[The board may sell by sealed bid all real property placed in the name of the state as a result of any tax foreclosure sale. The sealed bid sales shall be conducted in the same manner as sealed bid sales for public school land.]~~

(b) The board may retain from the proceeds of a sale or lease conducted under this section the cost of conducting the transaction [sale], including advertising, appraisal, and administrative costs. The balance of the proceeds shall be deposited in the State Treasury to the credit of the Texas capital trust fund.

SECTION 9. Section 33.015, Natural Resources Code, is amended to read as follows:

Sec. 33.015. **SPECIAL ACCOUNT[FUND].** (a) A dedicated account [special fund] is created, and money received by the board for the grant of permits under this chapter shall be deposited in the State Treasury to the credit of this dedicated account [special fund].

(b) Sections 403.094(h) and 403.095(b), Government Code, do not apply to the dedicated account created under this section.

SECTION 10. Section 33.131, Natural Resources Code, is amended to read as follows:

Sec. 33.131. **STRUCTURES AS PROPERTY OF THE STATE.** A structure presently existing or to be constructed in the future for which a permit is required under Section 33.119 of this code [subchapter] is the property of the state. Any construction, maintenance, or use of the structure other than as provided in this subchapter is declared to be a nuisance per se and is expressly prohibited.

SECTION 11. Subchapter D, Chapter 33, Natural Resources Code, is amended by adding Section 33.135 to read as follows:

Sec. 33.135. **NOTICE TO PURCHASER OR GRANTEE OF COASTAL AREA PROPERTY.** (a) *A person who sells, transfers, or conveys an interest other than a mineral, leasehold, or security interest in real property adjoining and abutting the tidally influenced waters of the state must include the following notice as a part of a written executory contract for the sale, transfer, or conveyance:*

"NOTICE REGARDING COASTAL AREA PROPERTY

"(1) The real property described in and subject to this contract adjoins and shares a common boundary with the tidally influenced submerged lands of the state. The boundary is subject to change and can be determined accurately only by a survey on the ground made by a licensed state land surveyor in accordance with the original grant from the sovereign. The owner of the property described in this contract may gain or lose portions of the tract because of changes in the boundary.

"(2) The seller, transferor, or grantor has no knowledge of any prior fill as it relates to the property described in and subject to this contract.

"(3) State law prohibits the use, encumbrance, construction, or placing of any structure in, on, or over state-owned submerged lands below the applicable tide line, without proper permission.

"(4) The purchaser or grantee is hereby advised to seek the advice of an attorney or other qualified person as to the legal nature and effect of the facts set forth in this notice on the property described in and subject to this contract. Information regarding the location of the applicable tide line as to the property described in and subject to this contract may be obtained from the surveying division of the General Land Office in Austin."

(b) If property described under Subsection (a) of this section is sold, transferred, or conveyed without an executory contract for conveyance, a written statement containing the notice prescribed by that subsection must be delivered to the grantee for execution and acknowledgement of receipt before the conveyance is recorded.

(c) Failure to include the statement in an executory contract for conveyance shall be grounds for the purchaser to terminate such contract, and upon termination any earnest money shall be returned to the party making the deposit.

(d) Failure to provide this statement prior to closing, either in the executory contract for conveyance or in a separate written statement, shall constitute a deceptive act under Section 17.46, Business & Commerce Code.

(e) This section or the action of any party subject to this section does not diminish or modify the beach access and use rights of the public as acquired by statute or under common law.

SECTION 12. Subchapter B, Chapter 51, Natural Resources Code is amended by adding Section 51.0125 to read as follows:

Sec. 51.0125. **LAND USED BY STATE AGENCY.** *Land that belongs to the permanent school fund as a result of having been deeded or given to the state and that has been used in the past by a state agency shall be first offered for sale or lease to state agencies before it can be sold or leased to any other party. No permanent school fund land may be used by a state agency without fair market value compensation to the permanent school fund.*

SECTION 13. Section 51.052, Natural Resources Code, is amended by amending Subsections (e) and (f) and adding Subsection (i) to read as follows:

(e) The owner of land that surrounds land in a tract of 700 [320] acres or less shall have a preference right to purchase the tract before the land is made available for sale to any other person, provided the person having the preference right pays not less than the market value for the land as determined by the board.

(f) If the surrounding land is owned by more than one person, the owners of land with a common boundary with a tract of 700 [320] acres or less that is for sale shall have a preference right to purchase the tract before it is made available to any other person, provided the person with the preference right pays not less than the market value of the land as determined by the board and the board finds use of the preference to be in the best interest of the state. The board shall adopt rules to implement this preference right.

(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 of this code, the asset management division of the land office may solicit proposals or negotiate a sale, exchange, or lease of the property to any person. The sale price may not be less than the appraised value of the land as determined by the asset management division. The board must approve any negotiated sale, exchange, or lease of any land under this section.*

SECTION 14. Section 51.121, Natural Resources Code, is amended by adding Subsection (e) to read as follows:

(e) Subject to the provisions of the Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), any district created by Article XVI, Section 59, of the Texas Constitution that leases unsold public school or asylum land for power generation through the use of renewable energy sources, such as wind, solar, or geothermal energy and other sustainable sources, or a district participating in a power generation project using renewable energy sources which is located on unsold public school or asylum lands may distribute and sell electric energy generated on public school or asylum lands within or without the boundaries of the district and may issue bonds to accomplish such purposes pursuant to Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717g, Vernon's Texas Civil Statutes), or other applicable law. For any such power generation project which is located on both public lands and private lands, the district may sell outside its boundaries only the pro rata portion of the total amount as is generated on the public lands. All electric energy generated pursuant to this section shall be sold for resale only to utilities authorized to make retail sales under the Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes) and shall be subject to the solicitation process and integrated resource planning process authorized by that Act.

SECTION 15. Section 51.291, Natural Resources Code, is amended to read as follows:

Sec. 51.291. GRANTS OF EASEMENTS. *(a) Except as provided by Subsection (b) of this section, the [The] commissioner may execute grants of easements for rights-of-way across, through, and under unsold public school land, the portion of the Gulf of Mexico within the jurisdiction of the state, the state-owned riverbeds and beds of navigable streams in the public domain, and all islands, saltwater lakes, bays, inlets, marshes, and reefs owned by the state within tidewater limits for:*

(1) telephone, telegraph, electric transmission, and powerlines;

(2) oil pipelines, including pipelines connecting the onshore storage facilities with the offshore facilities of a deepwater port, as defined by the federal Deepwater Port Act of 1974 (33 U.S.C.A. Section 1501 et seq.), gas pipelines, sulphur pipelines, and other electric lines and pipelines of any nature;

(3) irrigation canals, laterals, and water pipelines;

(4) roads; and

(5) any other purpose the commissioner considers to be in the best interest of the state.

(b) Consent to conduct an activity that would disturb or remove marl, sand, gravel, shell, or mudshell on or near the surface of a state-owned riverbed or the bed of a navigable stream in the public domain may be granted only under Chapter 86, Parks and Wildlife Code.

(c) Money received by the land office for the grants of easements through and under the state-owned riverbeds and beds of navigable streams in the public domain shall be deposited in a special fund account in the state treasury to be used for the removal or improvement of

unauthorized structures on permanent school fund land. This fund does not impose a duty or obligation on the state to accept ownership of, remove, or improve unauthorized structures on permanent school fund land.

SECTION 16. Section 51.302, Natural Resources Code, is amended to read as follows:

Sec. 51.302. PROHIBITION AND PENALTY. (a) No person may construct or maintain any structure or facility on land [of the facilities listed in Sections 51.291 through 51.293 of this code or any other facility on or across any section or part of a section of land of the character enumerated in Sections 51.291 through 51.293 of this code and] owned by the state, nor may any person who has not acquired a proper easement, lease, permit, or other instrument from the state as required by this chapter or Chapter 33 of this code [provided in this subchapter] and who owns or possesses a [any of the facilities listed in Sections 51.291 through 51.293 of this code or any other] facility or structure that is now located on or across [any section or part of a section of land of the character enumerated in Sections 51.291 through 51.293 of this code and owned by the] state land continue in possession of the land unless he obtains from the commissioner, the board, or the board of regents an easement, lease, permit, [a grant of a right-of-way easement] or other instrument required by this chapter or Chapter 33 of this code [easement] for the land on which the facility or structure is to be constructed or is located.

(b) A person who constructs, maintains, owns, or possesses a facility or structure on state land without a proper easement or lease from the state under this chapter or under Chapter 33 [or 51] of this code is liable for a penalty of not less than \$50 or more than \$1,000 a day for each day that a violation occurs. The penalty shall be recovered by the commissioner under Section 51.3021 of this code or in a civil action by the attorney general.

(c) A person who owns, maintains, or possesses an unauthorized [abandoned] facility or structure is, for purposes of this section, the person who last owned, maintained, or possessed the facility or structure [immediately before abandonment].

(d) The commissioner or attorney general may also recover from a person who constructs, maintains, owns, or possesses a facility or structure on state land without the proper easement the costs to the state of removing that facility or structure under Section 51.3021 of this code.

(e) Penalties and costs recovered under this section shall be deposited in the special fund established under Sections 52.297 and 53.155 of this code.

(f) This section is cumulative of all other applicable penalties or enforcement provisions of this code.

(g) *In lieu of seeking administrative penalties or removal of the facility or structure under Section 51.3021 of this code, the commissioner may elect to accept ownership of the facility or structure as a fixture and may exercise the state's rights as owner of the facility or structure by filing notice of such ownership in the real property records of the county in which the facility or structure is located. For facilities or structures located on coastal public land, notice of ownership shall be filed in the county adjacent to the property on which the facility or structure is located. A notice under this subsection shall contain a legal description of the adjacent property, the owner of property if known, and a description of the facility or structure. A state agency fund or trust fund is not liable for the condition of any facility or structure as a result of acquiring an interest in the facility or structure under this section.*

SECTION 17. Subsections (b), (g), and (h), Section 51.3021, Natural Resources Code, are amended to read as follows:

(b) Before the commissioner may remove a facility or structure under this section or impose a penalty under Section 51.302 of this code, the commissioner must give written notice to a person who is constructing, maintains, owns, or possesses the facility or structure. The notice must state:

(1) the specific facility or structure that is without proper easement or lease or that threatens public health, safety, or welfare;

(2) that the person who is constructing, maintains, owns, or possesses the facility or structure shall remove the facility or structure:

(A) not later than the 30th day after the date on which the notice is served, if the facility or structure is on state land without a proper lease or easement; or

(B) within a reasonable time specified by the commissioner if the facility or structure is an imminent and unreasonable threat to public health, safety, or welfare;

(3) that failure to remove the facility or structure may result in liability for a penalty under Section 51.302(b) of this code in an amount specified, removal by the commissioner and liability for the costs of removal, *attachment of a lien to the adjacent littoral property to secure payment of the penalty and costs of removal, or any combination of such remedies [both];* and

(4) that the person who is constructing, *maintains*, owns, or possesses the facility or structure may submit, not later than the 30th day after the date on which the notice is served, written request for a hearing.

(g) The commissioner may contract for the removal and disposal of a facility or structure under this section and may pay the costs of removal from the special fund established under Sections 52.297 and 53.155 of this code or from funds appropriated by the legislature.

(h) If the person who is constructing, *maintains*, owns, or possesses the facility or structure does not pay *assessed penalties, removal costs, and other assessed fees and expenses not later than the 60th day after the entry of a final order assessing the penalties, costs, and expenses*, the commissioner may:

(1) sell salvageable parts or attachments of the facility or structure to offset those costs;

(2) *record a lien, in the total amount of the penalties, costs, and other fees and expenses assessed, against the adjacent littoral property;*

(3) *request the attorney general to institute civil proceedings to collect the penalties, costs of removal, and other fees and expenses remaining unpaid; or*

(4) *use any combination of the remedies prescribed by this subsection, or other remedies authorized by law, to collect the unpaid penalties, costs of removal, and other fees and expenses assessed on account of the unauthorized facility or structure on state land and its removal by the commissioner.*

(i) *The lien authorized by this section arises and attaches at the time a notice of lien is recorded and indexed in the real property records in the county where the adjacent littoral property is located. The notice of lien must contain a legal description of the adjacent littoral property, the name of the owner of the adjacent littoral property, if known, and the total amount of the penalties, costs, and other fees. The lien is subordinate to the rights of prior bona fide purchasers or lienholders on the adjacent littoral property.*

(j) [(h)] The decision to remove a facility or structure under this section is discretionary with the commissioner. This section does not impose a duty on the state to remove a facility or structure or to remedy or warn of a hazardous condition on state land.

SECTION 18. Section 51.401, Natural Resources Code, is amended by adding Subsection (e) to read as follows:

(e) *Sections 403.094 and 403.095, Government Code, do not apply to a fund account created under this section.*

SECTION 19. (a) The change in law made by Section 5.115, Water Code, as amended by this Act, applies only to an application filed with the Texas Water Commission or its successor on or after the effective date of this Act.

(b) The change in law made by Section 11.082, Natural Resources Code, as added by this Act, applies to an action, as defined by that section, that is pending before a state agency or political subdivision, as defined by that section, on the effective date of this Act.

(c) The change in law made by Section 33.135, Natural Resources Code, as added by this Act, applies only to a transfer that occurs on or after the effective date of this Act.

(d) The change in law relating to the attachment of a lien made by Section 51.3021, Natural Resources Code, as amended by this Act, applies only to a penalty imposed or costs of removal assessed on or after the effective date of this Act.

SECTION 20. Section 51.206, Natural Resources Code, is repealed.

SECTION 21. This Act takes effect September 1, 1993.

SECTION 22. 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.

Passed the Senate on April 6, 1993, by a viva-voce vote; the Senate concurred in House amendments on May 28, 1993, by a viva-voce vote; passed the House, with amendments, on May 26, 1993, by a non-record vote.

Approved June 19, 1993.

Effective Sept. 1, 1993.