

CHAPTER 912

H.B. No. 2143

AN ACT

relating to the rights, duties, and obligations of surface owners who act as the leasing agent for certain state minerals and to the issuance of state prospecting permits for certain minerals.

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

SECTION 1. Section 52.175, Natural Resources Code, is amended to read as follows:

Sec. 52.175. LEASE OF OIL AND GAS AFTER FORFEITURE. When the relinquishment or agency right herein granted has been [se] forfeited [by the commissioner], the land shall be subject to lease for oil and gas under the procedure provided by law for the leasing of unsold surveyed public school lands. No lease shall be executed which provides for a royalty of less than one-eighth, payable to the state for the benefit of the permanent free school fund. *The owner of the soil shall not be entitled to any revenue generated by a lease executed pursuant to this section*, and the lessee shall in every case pay to the surface owner amounts equal to the bonus money and the delay rentals paid to the state, and in case of production such lessee shall pay to the surface owner amounts equal to one-half of all royalty above the reserved one-eighth. Upon the termination or expiration of a lease so executed by the Commissioner of the General Land Office, [or if no acceptable offer is received for such lease after due advertisement,] the rights of the surface owner to act under this law shall be ipso facto reinstated.

SECTION 2. Section 52.186, Natural Resources Code, is amended to read as follows:

Sec. 52.186. LEASE OF CERTAIN MINERALS [OIL AND GAS] WHEN OWNER OF THE SOIL UNAVAILABLE. (a) *If an* [When the commissioner finds, upon the written request of any party interested in bargaining for an oil and gas lease, that the] owner of the soil or of any undivided interest therein of any land subject to the terms of this subchapter is found to be unavailable under Subsection (b) of this section to act as the state's agent for [oil and gas] leasing oil and gas or any mineral leased under Subchapter C, Chapter 53, of this code [purposes, or that his name, identity, or place of residence is unknown], such land or undivided interest therein shall be subject to lease for the applicable minerals [oil and gas] under the procedure provided by Subchapter B of this Chapter 52 for the leasing of unsold surveyed public school lands. *Subject to the provisions of Subsection (b)(4) of this section, the owner of the soil shall not be entitled to any revenue generated by a lease executed pursuant to this section.*

(b) An owner of the soil or of an undivided interest therein may be found to be unavailable to act as the state's agent for leasing oil and gas or any mineral leased under Subchapter C, Chapter 53, of this code, if the following conditions have been satisfied:

(1) *Any party who has been unable to locate an owner of any interest, including an undivided interest, in the surface of land subject to this subchapter or Subchapter C, Chapter 53, of this code must submit a written affidavit to the commissioner stating that the party (hereafter called affiant) has been unable to locate said owner. This affidavit must specify the legal description of the land which the affiant has been unable to lease and the extent of the interest and type of mineral which the affiant has been unable to lease. In the affidavit, the affiant must also attest to the fact that he diligently searched the county clerk's records and the tax assessor's records to determine the name, identity, and last known place of residence of the owner of the soil who could lease the interest that the affiant has been unable to lease. The affiant must further attest to the results of his search of such records and to any other steps taken to locate the owner of the soil.*

(2) *The commissioner shall provide notice to any owner of the soil identified by the affiant in Subdivision (1) of this subsection of the consequences of a finding that such owner of the soil is unavailable to act as the state's leasing agent. Such notice shall be in writing to the owner of the soil's last known address and shall also be provided by publication in the manner provided by the Texas Rules of Civil Procedure for citation by publication in actions against unknown owners or claimants of an interest in land.*

(3) *If the owner of the soil has not contacted the commissioner within 30 days after the completion of all notice procedures provided under Subdivision (2) of this subsection, then the owner of the soil will be deemed unavailable to act as the state's leasing agent and the School Land Board may lease the state's mineral interest under Subsection (a) of this section. However, if prior to the execution of a lease under Subsection (a) the owner of the soil notifies the commissioner in writing that he can and will act as the state's agent, then the owner of the soil's ability to act as a leasing agent under this subchapter or under Subchapter C, Chapter 53, of this code shall be reinstated. [by the commissioner if the written request for such finding is supported by a sworn affidavit detailing attempts to locate and contact such surface owner, which attempts satisfy the commissioner that reasonable diligence has been used in attempting to locate and contact such surface owner and by written certification from the tax assessor-collector of each taxing entity in which the land is located stating that ad valorem taxes owed to that entity have not been paid by the owner of the soil or an undivided interest therein or his representative for any year within the five years preceding the year in which the written request is submitted to the commissioner under this section. Notice of such finding shall forthwith be mailed to the person shown by the records of the tax assessor-collector in the county where the land is located to be the surface owner at his last known address as shown by the records of said office. [If the surface owner appears within 30 days after the date of such finding or prior to the execution of an oil and gas lease on his land pursuant to this section, his rights to act under this subchapter may, at the discretion of the commissioner and upon such terms as the commissioner may prescribe, be reinstated.]*

(4) *If the owner of the soil or of any undivided interest therein appears within two years after the execution of a [such oil and gas] lease on his land pursuant to this section, he shall be entitled to one-half of all royalties theretofore paid or thereafter to be paid under such [oil and gas] lease, reduced in the proportion which his interest bears to the whole and undivided surface estate, upon showing to the satisfaction of the commissioner that the information submitted under Subsection (b)(1) was inaccurate or that a reasonably diligent search would have resulted in his being located.*

(c) *Upon the termination or expiration of a lease for oil and gas or any mineral leased under Subchapter C, Chapter 53, of this code executed pursuant to this section, [or if no acceptable offer is received for such lease after due advertisement,] the rights of the owner of the soil to act under this subchapter shall be ipso facto reinstated.*

SECTION 3. Section 52.187, Natural Resources Code, as added by Chapter 624, Acts of the 69th Legislature, Regular Session, 1985, is redesignated as Section 52.188, Natural Resources Code, and amended to read as follows:

Sec. 52.188 [Sec. 52.187]. ASSIGNMENTS TO THE OWNER OF THE SOIL. (a) An owner of the soil may acquire by assignment a lease which he executed on land subject to the Relinquishment Act, Subchapter F, Chapter 52 of this code; however, such an assignment is subject to the terms of this section.

(b) *When an owner of the soil seeks an assignment under Subsection (a) of this section, both the current lessee and the owner of the soil should notify the General Land Office of the proposed assignment. This notification must include proof of the consideration to be paid for the assignment. The land commissioner may then approve the assignment; if the commissioner does approve it, then both the current lessee and the owner of the soil will receive written notice of this approval. Such written approval shall also become part of the General Land Office's mineral file on this land.*

(c) *A lease which has been assigned to an owner of the soil without the advance approval of the land commissioner is void as of the time of assignment [may be forfeited*

by the commissioner at any time]. In addition [to forfeiting the lease], the land commissioner may also forfeit the agency powers of the owner of the soil, and the state will execute a subsequent lease pursuant to Section 52.175 of this code.

(d) Whenever an owner of the soil is assigned a Relinquishment Act lease that he executed, he shall be accountable to the state [for a portion of the consideration he receives upon assignment of the lease] as follows:

(1) If the lease was assigned to the owner of the soil without the advance approval of the commissioner *and the owner of the soil subsequently assigns the lease*, the owner of the soil must pay the state *two times* [one-half of] the entire consideration that he received upon subsequent assignment of the lease. Payment of this money in no way *alters the fact that the lease is void under Subsection (c) of this section* [limits the forfeiture remedies outlined in Subsection (c) of this section].

(2) When an assignment to an owner of the soil has the commissioner's advance approval and the owner of the soil subsequently assigns the lease [within three years], the owner of the soil must pay the state one-half of his profit on the subsequent assignment. His profit is the difference between what he paid for his assignment and what he received for the subsequent assignment.

(e) Under this section, an assignment will be treated as if it were made to the owner of the soil when:

- (1) the assignee is a nominee of the owner of the soil;
- (2) the assignee is a corporation or subsidiary in which the owner of the soil is a principal stockholder *or is an employee of such a corporation or subsidiary*;
- (3) the assignee is a partnership in which the owner of the soil is a partner *or is an employee of such a partnership*;
- (4) the assignee is a principal stockholder *or employee* of the corporation which is the owner of the soil; [or]
- (5) the assignee is a partner *or employee* in a partnership which is the owner of the soil;
- (6) *the assignee is a fiduciary for the owner of the soil, including but not limited to a guardian, trustee, executor, administrator, receiver, or conservator for the owner of the soil; or*
- (7) *the assignee is a family member of the owner of the soil or related to the owner of the soil by marriage, blood, or adoption.*

SECTION 4. Section 53.011, Natural Resources Code, is amended to read as follows:

Sec. 53.011. LAND SUBJECT TO PROSPECT. Any tract of land that belongs to the state, including islands, salt and freshwater lakes, bays, inlets, marshes, and reefs owned by the state within tidewater limits, the part of the Gulf of Mexico within the state's jurisdiction, unsold surveyed public school land, rivers and channels that belong to the state, and land sold with a reservation of minerals to the state are subject to prospect by any person for *those minerals which are not subject to lease or permit under any other statute.* [all minerals except:

- [1] ~~oil and gas;~~
- [2] ~~coal, lignite, sulphur, salt, and potash;~~
- [3] ~~shell, sand, and gravel; and~~
- [4] ~~fissionable minerals other than uranium and thorium on land sold with a reservation of minerals to the state.]~~

SECTION 5. Subchapter C, Chapter 53, Natural Resources Code, is amended by adding Section 53.074 to read as follows:

Sec. 53.074. AUTHORITY AND DUTIES OF AGENT. (a) *Prohibition Against Self-Dealing. The owner of the soil may not lease, either directly or indirectly, to himself or to a nominee, to any corporation or subsidiary in which he is a principal stockholder, or to an employee of such a corporation or subsidiary, or to a partnership in which he is a partner, or to an employee of such a partnership. If the owner*

of the soil is a corporation or a partnership, then the owner of the soil may not lease, either directly or indirectly, to a principal stockholder of the corporation or to a partner of the partnership, or any employee of the corporation or partnership. The owner of the soil may not lease, either directly or indirectly, to his fiduciary, including but not limited to a guardian, trustee, executor, administrator, receiver, or conservator. Further, the owner of the soil may not lease, directly or indirectly, to a member of his family or anyone related to him by marriage, blood, or adoption.

(b) *Fiduciary Duty of Agent.* An owner of the soil owes the state a fiduciary duty and a duty of utmost good faith. An owner of the soil must fully disclose any facts affecting the state's interest and must act in the best interest of the state. Any conflict of interest must be resolved by putting the interests of the state before the interests of the owner of the soil. In addition to these specific statutory duties, the owner of the soil owes the state all the common-law duties of a holder of executive rights.

(c) *Consequences of a Breach of the Surface Owner's Fiduciary Duty or a Violation of the Prohibition Against Self-Dealing.* When the commissioner determines that an owner of the soil has breached any duty or obligation under this subchapter, the commissioner may request that the attorney general file an action or proceeding either to enforce the duties and obligations of the owner of the soil or to forfeit the then applicable agency rights of the surface owner. Such an action or proceeding shall be filed in a district court in Travis County.

(d) *Leasing Procedure When Surface Owner's Agency Rights Have Been Forfeited.* When the surface owner's agency rights have been forfeited in accordance with Subsection (c) of this section, the minerals subject to lease under this subchapter can then be leased under the leasing procedure set out for the lease of oil and gas under Section 52.175 of this code.

(e) A penalty of 10 percent shall be imposed on any sums due the state because a surface owner breaches a fiduciary duty. This penalty shall be applied only to amounts owed as a result of breaches occurring on and after the effective date of this section. The imposition of this penalty will not limit the right of the state to obtain punitive damages, exemplary damages, or interest. Any punitive damages or exemplary damages assessed by a court shall be offset by the 10 percent penalty imposed by this subsection.

SECTION 6. Subsection (a), Section 52.187, Natural Resources Code, as added by Chapter 652, Acts of the 69th Legislature, Regular Session, 1985, is amended to read as follows:

(a) *Prohibition Against Self-Dealing.* The owner of the soil may not lease, either directly or indirectly, to himself or to a nominee, to any corporation or subsidiary in which he is a principal stockholder, or to an employee of such a corporation or subsidiary, or to a partnership in which he is a partner, or to an employee of such a partnership. If the owner of the soil is a corporation or a partnership, then the owner of the soil may not lease, either directly or indirectly, to a principal stockholder of the corporation or to a partner of the partnership, or any employee of the corporation or partnership. The owner of the soil may not lease, either directly or indirectly, to his fiduciary, including but not limited to a guardian, trustee, executor, administrator, receiver, or conservator. Further, the owner of the soil may not lease, directly or indirectly, to a member of his family or anyone related to him by marriage, blood, or adoption.

SECTION 7. Regardless of any other legislation passed by the 70th Legislature, Regular Session, Section 4 of this bill is intended to be the sole and controlling amendment to Section 53.011, Natural Resources Code.

SECTION 8. 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 by the House on May 18, 1987, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 2143 on May 29, 1987, by a

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non-record vote. Passed by the Senate, with amendments, on May 27, 1987, by a viva-voce vote.

Approved June 19, 1987.

Effective Aug. 31, 1987, 90 days after date of adjournment.