

CHAPTER 1061

S.B. No. 611

AN ACT

relating to the right of eminent domain for the purpose of obtaining access to certain land dedicated to the permanent school fund and to prospect and lease on state land.

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

SECTION 1. Chapter 11, Natural Resources Code, as amended, is amended by adding Section 11.079 to read as follows:

Sec. 11.079. ACCESS TO LAND. (a) The state, a permittee of the state, or a lessee or assignee of state land or minerals dedicated to the permanent school fund may exercise the power of eminent domain to obtain an easement whenever it is necessary to enter or cross the land of another person for the purpose of obtaining access to any land or interest in land that is owned by the state and that is dedicated by law to the permanent school fund.

(b) If the state or such permittee, lessee, or assignee and the private owner of the land through which an easement for access is sought cannot agree on the place or the terms for the easement to obtain access, either the state or such permittee, lessee, or assignee may, in order to provide that access, exercise this power of eminent domain in the manner provided by Chapter 21, Property Code.

(c) Easements acquired under this section are declared to be for the sole use and benefit of the state, its permittee, lessee, or assignee and may be used only to the extent necessary to achieve the required access or for the purposes for which the

permit, lease, or assignment was granted. An easement so acquired is hereby dedicated to the permanent school fund.

(d) If the state desires to utilize the power of eminent domain to obtain an easement under this section for access to a tract of land, the attorney general shall institute condemnation proceedings as provided under Chapter 21, Property Code. If agreement regarding an easement for access cannot be reached with a private landowner, a permittee of the state or a lessee or assignee of land or minerals dedicated to the permanent school fund desiring to utilize this section to obtain an easement for access to a tract of land must institute the condemnation proceedings authorized by this section.

(e) If the easement acquired under this section is taken solely to benefit a tract of land in which the permanent school fund owns only a mineral interest, the easement shall not be permanent but shall be limited to the term that the state minerals are held under a valid prospect permit or lease. The easement will terminate when the prospect permit and lease expires or terminates.

(f) This section is cumulative of the provisions of Subtitles C and D, Title 2, Natural Resources Code, relating to access to land and to the power of eminent domain. The special fund accounts established under Sections 51.401, 52.297, and 53.155 of this code may be used to compensate landowners for an easement to obtain access under this section.

SECTION 2. Chapter 11, Natural Resources Code, is amended by adding Section 11.080 to read as follows:

Sec. 11.080. DAMAGES TO PERSONS AND PERSONALTY. When access to any land is obtained by the state under Section 11.079 of this code, the state shall be liable to the property owner to the same extent that any private easement holder would be held liable for the use of access across privately owned property.

SECTION 3. Chapter 11, Natural Resources Code, is amended by adding Section 11.081 to read as follows:

Sec. 11.081. RULES. The General Land Office of the State of Texas shall promulgate and enforce rules governing the construction, maintenance, and use of roads created by access granted under Section 11.079 of this code.

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 all minerals except:

- (1) oil and gas leased under Subchapter F, Chapter 52, of this code;
- (2) minerals leased under Subchapter C of this chapter; and
- (3) minerals leased under Subchapter E of this chapter;

~~[(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. The title of Subchapter C, Chapter 53, Natural Resources Code, is amended to read as follows:

**SUBCHAPTER C. LEASE OF MINERALS BY SURFACE OWNER [COAL,
LIGNITE, SULPHUR, POTASH, URANIUM, AND THORIUM]**

SECTION 6. Subsection (a), Section 53.061, Natural Resources Code, is amended to read as follows:

(a) The state constitutes the owner of the surface its agent to lease to any person *any mineral, except oil and gas*, [~~the coal, lignite, sulphur, potash, uranium, thorium, and any minerals produced in conjunction with these~~] which may be within all or part of a survey previously sold with all minerals reserved to the state.

SECTION 7. Section 53.065, Natural Resources Code, is amended to read as follows:

Sec. 53.065. PAYMENTS UNDER LEASE. (a) Under a lease executed under this subchapter *before September 1, 1987*, the lessee shall pay to the state 60 percent of all bonuses agreed to be paid for the lease and 60 percent of all rentals and royalties that are payable under the lease.

~~[(b)]~~ The lessee shall pay to the owner of the surface 40 percent of all bonuses agreed to be paid for the lease and 40 percent of all rentals and royalties payable under the lease.

(b) Under a lease executed under this subchapter on or after September 1, 1987, the lessee shall pay to the state 80 percent of all bonuses agreed to be paid for the lease and 80 percent of all rentals and royalties that are payable under the lease. The lessee shall pay to the owner of the surface 20 percent of all bonuses agreed to be paid for the lease and 20 percent of all rentals and royalties payable under the lease.

(c) If production is obtained, the state shall receive not less than one-sixteenth of the value of the minerals produced.

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, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on March 26, 1987, by the following vote: Yeas 22, Nays 3; and that the Senate concurred in House amendments on May 20, 1987, by the following vote: Yeas 30, Nays 0. Passed the House, with amendments, on May 14, 1987, by a non-record vote.

Approved June 20, 1987.

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