

SUBJECT: Revising procedures for determining and selling state land vacancies

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 8 ayes — Walker, Crabb, F. Brown, Geren, Howard, Mowery, Truitt, B. Turner
0 nays
1 absent — Krusee

WITNESSES: For — Jerry M. Goodson; Ben E. Jarvis
Against — None

BACKGROUND: Land titles in Texas are rooted in three strands of the state’s heritage: Spanish land grants, Mexican land grants, and Republic of Texas and State of Texas land grants and sales. Land conveyed through any of these three sovereigens would be identified through a survey.

Vacant land is public school land that has not been patented by the state and for which no legal title has passed to any person. This vacant land is an artifact of historical surveys that were far less accurate than today’s sophisticated surveying tools, such as Global Positioning Systems that use satellites for mapping. Original patents may be based on inaccurate surveys or may refer to corners marked by natural objects, such as trees or streams, that have disappeared or changed significantly. Vacancies may be the result of errors in transcribing state and local land records, conflicting deeds, and mathematical miscalculations. The General Land Office (GLO) estimates that about 10 to 15 vacancy applications have been filed since 1996.

In 1993, the 73rd Legislature enacted Natural Resources Code, chapter 51, subchapter E to delineate the procedure for determining and selling public school land vacancies. This statute was amended in 1995 to make it subject to the administrative procedures, including hearings before the State Office of Hearing Examiners (SOAH), under Government Code, chapter 2001.

The Texas Constitution, Art. 7, sec. 4, regulating the sale of Public School Fund land, provides that “the Legislature shall not have the power to grant any relief to purchasers thereof,” thus limiting the Legislature’s ability to transfer public school land for less than its fair market value.

DIGEST:

CSHB 3410 would repeal Natural Resources Code, chapter 51, subchapter E, and replace it with a new procedure for determining and selling state land vacancies. The bill would remove SOAH from the application process, grant the land commissioner discretion on ordering new surveys or conducting hearings before deciding a vacancy claim, and provide an appeal through a district court.

Extent of claims. A vacancy would be considered unsurveyed public school land that was not:

- ! in conflict with land previously titled, awarded, or sold;
- ! listed in GLO records as public school land; and
- ! subject to a previous application or subject to pending litigation.

Vacancy claims would not be accepted for submerged lands within tidewater limits; all islands, flats, and emergent lands within tidewater limits; natural lakes; or riverbeds.

Application process. A person wanting to buy or lease land claimed to be vacant would have to submit an application prescribed by the land commissioner. The completed application would have to:

- ! describe the land claimed to be vacant;
- ! state whether the applicant sought to purchase the land or obtain a mineral lease on the land;
- ! state the name and address of each person who asserted a legal claim to the land;
- ! state the basis and provide documentary proof for an assertion of good-faith claimant status, if applicable; and
- ! provide any other information required by the GLO.

The claimant would have to file the application with the county surveyor, or with the county clerk if there was no county surveyor, of the county where

the land claimed to be vacant was located. Each application would have to be marked with a date and hour stamp, and priority on claims to the same land would be given to the earliest applicant. The applicant would have to file a duplicate copy showing the county filing mark and would have to pay a filing fee of not less \$100 to the land commissioner. The commissioner also would have to mark the time and date of the filing and assign a file number to the application.

The commissioner could reject an application and notify the applicant if the form had material omissions, did not describe adequately the land claimed to be vacant, or described land that had been adjudicated not to be vacant in a state or federal court. A rejected application would be terminated and the case file would be closed.

Good-faith claimant status. CSHB 3410 would define a good-faith claimant as a person who occupied, used, or previously had occupied or used the land, other than for exploring for or removing oil, gas, sulphur, or other minerals. An applicant could assert status as a good-faith claimant at the time of the original application. A claim for good-faith claimant status would have to be accepted within 60 days of a notice that the land commissioner had determined the land to be vacant. The claim would have to include certified copies of county records supporting the claim. The commissioner would have sole discretion to declare a person a good-faith claimant, but the decision could be appealed to a district court in the county.

CSHB 3410 would grant a good-faith claimant the preferential right to buy or lease the land determined to be vacant.

Identification and notice. An applicant seeking a vacancy determination would have to identify and provide addresses for “necessary parties” or applicants, interested persons, and good-faith claimants who might be affected adversely by the vacancy determination. The applicant would have to notify each necessary party within 90 days of the commissioner’s acceptance of the vacancy claim and would have to publish a notice of the commissioner’s decision in a newspaper of general circulation within 30 days of mailing the notices.

Deposit. The land commissioner could charge for the investigation and hearings process and could require a deposit sufficient to pay the cost of a survey and investigation. The deposit would have to be placed in a trust account and used to pay for expenses. Any remaining money would have to be refunded once the application process was completed.

Survey, investigation, and hearing. The land commissioner could order any surveys, investigations, or hearings deemed necessary to determine the vacancy claim. A hearing would not be considered a contested case hearing and would not require a hearing before a SOAH administrative hearing officer under Government Code, chapter 2001. The commissioner also could consult with any GLO employee, including the chief surveyor, or any relevant expert during an investigation.

Final order and appeals. The land commissioner could enter an order declaring land to be vacant and would have to notify all necessary parties. The order would have to contain a field note description of the land, an accurate plat of the land consistent with field notes prepared by a licensed state surveyor, and any other appropriate information. If the commissioner found that the land claimed to be vacant was not vacant, the commissioner would have to endorse the file with the finding “Not Vacant Land.” Appeals of the land commissioner’s decision could be filed in a district court in the county where a majority of the land was located.

If the commissioner had not issued a final order within one year, an applicant could file suit in a district court to determine whether the vacancy existed. Filing such a suit would terminate the vacancy application with the GLO.

Exercising a claim. A good-faith claimant would have to apply to buy or lease the land within 120 days after the land commissioner’s final order or judicial determination. The land would have to be purchased or leased at a price set by the Permanent School Land Board and subject to royalty reservations set by the board. If no good-faith claimant was identified or if the claimant declined to exercise preferential rights, the board could sell or lease the land to another applicant. The board would have to award an applicant, other than a good-faith claimant, a permanent nonparticipating royalty of not less than 1/32 and not more than 1/16 of the value of the oil, gas, and sulphur, and 1 percent of the value of the geothermal energy and

other minerals produced.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001.

**SUPPORTERS
SAY:**

CSHB 3410 would expedite the present cumbersome proceedings needed to determine if land is vacant and would reduce costs for both the applicant and GLO. It would eliminate contested case proceedings and unnecessary appeals by removing the SOAH process. These changes could reduce the two-year period now needed to complete a vacancy hearing.

The bill would clarify confusing definitions of good-faith claimant in current law. It would grant special status to good-faith claimants in the vacancy process.

Findings of vacancies can cause hardships and engender a sense of outrage in people who find that their claims to land have been extinguished despite what may seem to be a long chain of title. Allowing the good-faith claimant first right to buy or lease the land would be in the best interest of the claimant. It also would protect the interest of all Texas citizens by clearing disputed titles and by ensuring that the state will be compensated for the land.

The land commissioner should have some discretion to determine the validity of vacancy claims. A vacancy determination differs from most administrative hearings by SOAH, and the “opposing party” may be as much of a phantom as the rotten tree trunk used by the Spanish surveyor to mark the corner of the property. These should not be formal contested hearings. Many of the surveys already are available, and the land commissioner has enough information and access to expertise to rule on these cases.

District courts would be the proper venue for appeals because these courts have the constitutional authority and experience to consider land disputes and to quit title. CSHB 3410 would provide earlier access to the judicial system without going through contested hearings before SOAH.

OPPONENTS

No apparent opposition.

SAY:

NOTES: The committee substitute would increase the time to file an application with the GLO from 10 to 30 days after the original was filed with the county surveyor or county clerk. The substitute also differs from the filed version in provisions that would not require future notification of necessary parties except at request of a necessary party. The substitute also would allow the land commissioner and applicant to agree to alternative payment methods to recover state costs for surveys and investigations and would set a deadline on when a final order must be issued.

The companion bill, SB 1806 by Lucio, passed the Senate on May 3.