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OIL & GAS -- CHAPTER 52 OF THE TEXAS NATURAL RESOURCES CODE

SUBCHAPTER A. GENERAL PROVISIONS

52.001. DEFINITIONS.

In this chapter:

- (1) "Commissioner" means the Commissioner of the General Land Office.
- (2) "Land office" means the General Land Office.
- (3) "Board" means the school land board.

Acts 1977, 65th Leg., p. 2445, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

SUBCHAPTER B. LEASE OF PUBLIC SCHOOL AND GULF LAND

52.011. AREA SUBJECT TO LEASE.

Under the provisions of this subchapter, the board may lease to any person for the production of oil and natural gas:

- (1) islands, saltwater lakes, bays, inlets, marshes, and reefs owned by the state within tidewater limits;
- (2) the portion of the Gulf of Mexico within the jurisdiction of the state;
- (3) all unsold surveyed and unsurveyed public school land;
and
- (4) all land sold with a reservation of minerals to the state under Section 51.054 or 51.086 of this code in which the state has retained leasing rights.

Acts 1977, 65th Leg., p. 2445, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5245, ch. 965, § 6, eff. June 19, 1983; Acts 2003, 78th Leg., ch. 1276, § 13.002(b), eff. Sept. 1, 2003.

52.012. CONDITIONS FOR LEASE.

Oil and gas shall only be leased together and shall be leased separately from other minerals.

Acts 1977, 65th Leg., p. 2445, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

52.013. DETERMINATION OF LEASE PRICE AND DELAY RENTALS.

The board shall determine the price at which areas under this subchapter shall be leased and the amount of delay rentals that shall be charged.

Acts 1977, 65th Leg., p. 2445, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

52.014. DATE FOR LEASE AND NOTICE.

The date for opening bids to lease areas covered by this subchapter shall be set and notice of the date shall be given in the manner provided in Sections 32.105 and 32.107 of this code.

Acts 1977, 65th Leg., p. 2445, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, § 16, eff. Sept. 1, 1993.

52.015. BID TO LEASE.

- (a) To apply to lease a tract, a bidder must submit a separate bid for each separate tract to be leased.
- (b) A bid must include a completed application to lease form, a payment to the commissioner in the amount of the actual bonus bid or set, and a separate payment to the commissioner in the amount of the special fee provided by Section 52.016 of this code.
- (c) A bid must be delivered to the land office on or before the date and time the board advertises that the bids will be opened.

Acts 1977, 65th Leg., p. 2445, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, § 17, eff. Sept. 1, 1993.

52.016. SPECIAL FEE.

Each bidder on a lease under this subchapter shall remit by separate check a special sale fee in the amount and in the manner provided in Section 32.110 of this code.

Acts 1977, 65th Leg., p. 2445, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, § 41, eff. Sept. 1, 1985.

52.017. KEEPING AND OPENING BIDS.

Bids shall be kept secure and unopened by the commissioner or the commissioner's designee until opened on the date and at the time set as provided in Section 52.014 of this code.

Acts 1977, 65th Leg., p. 2446, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, § 18, eff. Sept. 1, 1993.

52.018. VOID APPLICATION.

An application that includes two or more areas or that is for a price that is less than the fixed royalty and price per acre is void. Acts 1977, 65th Leg., p. 2446, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

52.019. TIE BIDS.

- (a) If the highest bid for an area is made by more than one applicant, all applications shall be rejected and the board shall set a date for lease of the area that shall not be later than the 15th day of the following month.
- (b) The area will be subject to lease in the same manner as it was originally subject to lease.
- (c) No bids for a lease shall be considered if the price is less than the highest bid offered in the original application.

Acts 1977, 65th Leg., p. 2446, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

52.020. RETURN OF PAYMENTS ON REJECTED APPLICATIONS.

The comptroller or commissioner shall return all amounts paid on rejected applications.

Acts 1977, 65th Leg., p. 2446, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 923, § 13, eff. Aug. 26, 1985; Acts 1997, 75th Leg., ch. 1423, § 14.11, eff. Sept. 1, 1997.

52.021. TERM OF LEASE.

A lease granted under this subchapter shall be for a primary term not to exceed 10 years and for as long after that time as oil or gas is produced from the leased area.

Acts 1977, 65th Leg., p. 2446, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5247, ch. 965, § 9, eff. June 19, 1983; Acts 1993, 73rd Leg., ch. 897, § 19, eff. Sept. 1, 1993.

52.022. ROYALTY RATE.

The board shall set the royalty rate on production of oil and gas from land leased under this subchapter. The royalty rate set must be at least one-eighth of the gross production or the market value of the oil and gas produced.

Acts 1977, 65th Leg., p. 2446, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, § 20, eff. Sept. 1, 1993.

52.023. LEASE PROVISIONS FOR DRILLING AND REWORKING.

Each lease shall provide that:

- (1) if the production of oil or gas on premises leased under this subchapter ceases for any reason after the expiration of the primary term, the lease will not terminate if the lessee commences additional drilling or reworking operations within 60 days after the cessation of production;
- (2) the lease shall remain in effect as long as drilling or reworking operations continue in good faith and in a workmanlike manner without interruptions totaling more than 60 days;
- (3) if the drilling or reworking operations result in the production of oil or gas, the lease shall remain in effect so long as oil or gas is produced from the leased premises in paying quantities or payment of shut-in royalties or payment of compensatory royalties is made as provided by law; and
- (4) if the drilling or reworking operations result in the completion of a well as a dry hole, the lease will not terminate if the lessee commences additional drilling or reworking operations within 60 days after the completion of the well as a dry hole, and the lease shall remain in effect so long as the lessee continues drilling or reworking operations in good faith and in a workmanlike manner without interruptions totaling more than 60 days.

Acts 1977, 65th Leg., p. 2446, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2005, ch. 785, § 6, eff. June 13, 1979; Acts 1993, 73rd Leg., ch. 897, § 21, eff. Sept. 1, 1993.

52.024. LEASE PROVISIONS FOR SHUT-IN OIL OR GAS ROYALTY AND COMPENSATORY ROYALTY.

- (a) For purposes of this section, "well" means any well that has been assigned a well number by the state agency having jurisdiction over the production of oil and gas.
- (b) Each lease shall provide that:
 - (1) if, at any time after the expiration of the primary term of a lease that, until being shut in, was being maintained in force and effect, a well capable of producing oil or gas in paying quantities is located on the leased premises but oil or gas is not being produced for lack of suitable production facilities or lack of a suitable market, then the lessee may pay as a shut-in oil or gas royalty an amount equal to double the annual rental provided in the lease but not less than \$1,200 a year for each well capable of producing oil or gas in paying quantities. To be effective, each initial shut-in oil or gas royalty must be paid on or before:
 - (A) the expiration of the primary term, (B) 60 days after the lessee ceases to produce oil or gas from the leased premises, or (C) 60 days after the lessee completes a drilling or reworking operation in accordance with the lease provisions, whichever date is latest;
 - (2) if the shut-in oil or gas royalty is paid, the lease shall be considered to be a producing lease and the payment shall extend the term of the lease for a period of one year from the end of the primary term or from the first day of the month following the month in which production ceased, and, after that, if no suitable production facilities or suitable market for the oil or gas exists, the lessee may extend the lease for four more successive periods of one year by paying the same amount each year on or before the expiration of each shut-in year;

- (3) if, during the period the lease is kept in effect by payment of the shut-in oil or gas royalty, oil or gas is sold and delivered in paying quantities from a well located within 1,000 feet of the leased premises and completed in the same producing reservoir, or in any case in which drainage is occurring, the right to continue to maintain the lease by paying the shut-in oil or gas royalty shall cease, but the lease shall remain effective for the remainder of the year for which the royalty has been paid. The lessee may maintain the lease for four more successive years by the lessee paying compensatory royalty at the royalty rate provided in the lease of the market value of production from the well causing the drainage or which is completed in the same producing reservoir and within 1,000 feet of the leased premises;
- (4) the compensatory royalty is to be paid monthly to the commissioner beginning on or before the last day of the month following the month in which the oil or gas is produced from the well causing the drainage or that is completed in the same producing reservoir and located within 1,000 feet of the leased premises;
- (5) if the compensatory royalty paid in any 12-month period is in an amount less than the annual shut-in oil or gas royalty, the lessee shall pay an amount equal to the difference within 30 days from the end of the 12-month period; and
- (6) none of these provisions will relieve the lessee of the obligation of reasonable development nor the obligation to drill offset wells as provided in Section 52.034 of this code; however, at the determination of the commissioner and with the commissioner's written approval, the payment of compensatory royalties shall satisfy the obligation to drill offset wells.

Acts 1977, 65th Leg., p. 2447, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 1858, ch. 438, § 1, eff. June 11, 1981; Acts 1987, 70th Leg., ch. 948, § 18, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 897, § 22, eff. Sept. 1, 1993.

52.025. DISPOSITION OF LEASE PAYMENTS.

The comptroller shall credit the permanent school fund with amounts received from unsurveyed school land and with two-thirds of the amount received from other areas and shall credit the General Revenue Fund with the remaining one-third of the payments for the other areas.

Acts 1977, 65th Leg., p. 2448, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1997, 75th Leg., ch. 1423, § 14.12, eff. Sept. 1, 1997.

52.026. LEASE TRANSFER.

- (a) A lessee of an area under this subchapter may transfer the lease at any time. The liability of the transferor to properly discharge its obligations under the lease, including properly plugging abandoned wells, removing platforms or pipelines, or remediation of contamination at drill sites shall pass to the transferee upon prior written consent of the commissioner. The commissioner may not withhold the consent unreasonably. The commissioner may require the transferee to demonstrate that it has the financial responsibility to properly discharge its obligations under the lease and may require the transferee to post a bond or provide other security to secure those obligations if the transferee is unable to demonstrate such financial responsibility to the satisfaction of the commissioner.
- (b) The transfer of the lease shall be recorded in any county in which all or part of the leased area is located.
- (c) Within 90 days after the execution of the transfer, the recorded transfer or a certified copy of the recorded transfer accompanied by a filing fee set by the commissioner in an amount not less than \$5 shall be filed in the land office.
- (d) Every transferee shall succeed to all rights and be subject to all obligations, liabilities, and penalties owed to the state by the original lessee or any prior transferee of the lease, including any liabilities to the state for unpaid royalties.
- (e) This section does not relieve a person from the duty to comply with a rule adopted or order issued by the Railroad Commission of Texas under another provision of this code.

Acts 1977, 65th Leg., p. 2448, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 404, ch. 81, § 21(i), eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 948, § 19, eff. Sept. 1, 1987; Acts 1999, 76th Leg., ch. 1125, § 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1483, § 2, eff. Aug. 30, 1999.

52.027. LEASE RELINQUISHMENT.

- (a) A lessee may relinquish his lease to the state at any time by recording the relinquishment in each county in which all or part of the leased area is located.
- (b) Within 90 days after the execution of the relinquishment, the recorded relinquishment or a certified copy of the recorded relinquishment together with a filing fee set by the commissioner in an amount not less than \$5 shall be filed in the land office.
- (c) After the lessee relinquishes the area, he is relieved of any further obligations to the state, but the relinquishment does not release the lessee from any obligations or liabilities previously accrued in favor of the state.

Acts 1977, 65th Leg., p. 2448, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 404, ch. 81, § 21(j), eff. Sept. 1, 1983.

52.028. SUSPENSION OF LEASE BECAUSE OF LITIGATION.

- (a) If an oil and gas lease that has been issued by the commissioner is involved in litigation relating to the validity of the lease or to the authority of the commissioner to issue the lease, the lease and all of the conditions and covenants contained in the lease shall be suspended during the period of the litigation, except as otherwise provided by this section.
- (b) If the litigation is instituted during the primary term of the lease, then, after a final, nonappealable judgment is entered in the litigation, the primary term provided in the lease shall resume and the lease shall continue to run for the remainder of the period specified in the lease, and all conditions and covenants contained in the lease shall be operative.
- (c) If the litigation is instituted during the secondary term of the lease, then, after a final, nonappealable judgment is entered in the litigation, the lease and all the conditions and covenants contained in the lease shall be operative, and the lessee shall have 60 days from the date a final, nonappealable judgment is entered in the litigation to produce in paying quantities or to commence drilling or reworking operations on the lease as if production had ceased on that date under Section 52.023 of this code.
- (d) The lessee shall pay any royalties that accrue during the period of suspension of the lease in the same manner as they are to be paid under the terms of the lease.

Acts 1977, 65th Leg., p. 2448, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 948, § 20, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 897, § 23, eff. Sept. 1, 1993.

52.029. FORFEITURE OF RIGHTS.

The provisions of Subchapter F of this chapter governing the forfeiture and reinstatement of rights apply to forfeiture and reinstatement of leases issued under this subchapter, and on forfeiture of a lease, the area covered by the lease may be leased, after advertisement, by any other person.

Acts 1977, 65th Leg., p. 2448, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

52.030. REFUND OF LEASE MONEY IN CERTAIN SITUATIONS.

- (a) If a lessee is prevented from exploring, developing, drilling, or producing oil and gas from the tract leased to him as a result of the action of any agency of the United States or of this state during the entire primary term of the lease, he is entitled to a refund of all money paid for bonus, delay rentals, and other fees under the lease as provided by legislative appropriation.
- (b) A refund shall be made only on verification of the claim by the board or on the judgment of a court of competent jurisdiction.
- (c) A lessee who has a claim under this section is given permission to bring suit against the state within two years after the expiration of the lease in any court of competent jurisdiction to recover the money paid.

Acts 1977, 65th Leg., p. 2448, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

52.0301. SUSPENSION OF TERMS OF LEASE IN CERTAIN SITUATIONS.

- (a) If the lessee of a valid oil and gas lease granted by the state is unable to obtain access to the leased premises, or is unable to obtain in a timely manner a permit to drill on or produce from the leased premises by any duly constituted authority of the United States or of this state after a diligent, good faith attempt has been made by the lessee to obtain access to, or a permit to drill on or produce from, the leased premises, the lessee may file with the board an application describing and giving the date of the action that deprives the lessee of access to or a permit to drill on or produce from the leased premises.
- (b) If the board is satisfied that the facts included in the application are true and that the lessee acted diligently and in good faith in an attempt to gain access to or the right to drill on or produce from the leased premises, the board may order the suspension of the lease or any condition or covenant contained in the lease from the date the board determines to be the date the cause for the suspension began, except as otherwise provided by this section.
- (c) The board may set as a condition to approving the application for a suspension of the lease any term or requirement that relates to the duration of the suspension, the administration of the property during the suspension, reporting requirements during the suspension, or another administrative matter that the board determines is in the best interest of the state.

- (d) If the lease is suspended during its primary term, the lessee shall make payments in the amount of the annual delay rental stipulated in the lease by each anniversary date of the lease during the period of suspension. If the payments in the amount of the annual delay rental are not paid by each anniversary date of the lease, the lease shall not automatically terminate. However, the amount of the annual delay rental stipulated in the lease due by each anniversary date of the lease during the period of suspension continues to be an obligation and debt owed by the lessee. The lessee shall pay all royalties, if any, that accrue during the period of suspension of the lease in the same manner as they are to be paid under the terms of the lease.
- (e) If the lease is suspended during its primary term, then, when the suspension ends, the primary term provided in the lease shall resume and continue to run for the remainder of the period specified in the lease, and all conditions and covenants contained in the lease shall be operative.
- (f) If the lease is suspended during its secondary term, then, when the suspension ends, the lease and all of the conditions and covenants contained in the lease shall be operative, and the lessee shall have 60 days from the date the suspension ends to produce in paying quantities or to commence drilling or reworking operations on the lease as if production had ceased on that date under Section 52.023 of this code.
- (g) This section may not be construed as abridging any rights or privileges conveyed under Chapter 287, Acts of the 47th Legislature, Regular Session, 1941 (Article 5366a, Vernon's Texas Civil Statutes).

Added by Acts 1979, 66th Leg., p. 2006, ch. 785, § 7, eff. June 13, 1979. Amended by Acts 1985, 69th Leg., ch. 923, § 14, eff. Aug. 26, 1985; Acts 1987, 70th Leg., ch. 948, § 21, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 897, § 24, eff. Sept. 1, 1993.

52.031. EXTENSION OF LEASE BY COMMISSIONER.

- (a) At the expiration of the primary term of a lease made under the provisions of this subchapter, if production of oil or gas has not been obtained on the leased premises but drilling operations are being conducted in good faith and in good and workmanlike manner, the lessee may file in the land office on or before the expiration of the primary term a written application to the commissioner for a 30-day extension of the lease accompanied by \$3,000 for 640 acres or less or \$6,000 for more than 640 acres.

- (b) The commissioner shall extend the lease in writing for a 30-day period from the expiration of the primary term and as long after that time as oil or gas is produced in paying quantities.
- (c) As long as drilling operations are being conducted, the lessee may submit an application and payment during any 30-day extended period for an additional extension of 30 days. On receiving the application and payment, the commissioner shall again extend the lease in writing so that it will remain effective for an additional 30-day period and as long after that time as oil or gas is produced in paying quantities.
- (d) No lease may be extended under this section for more than 390 days after the expiration of the primary term unless production is obtained in paying quantities.

Acts 1977, 65th Leg., p. 2449, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

52.032. REGULATION OF DEVELOPMENT AND OPERATIONS.

- (a) Development and operations on areas covered by this subchapter shall be done insofar as practicable in a manner that will prevent the pollution of water, destruction of fish, oysters, and other marine life, and obstruction of navigation.
- (b) The commissioner shall adopt and enforce rules that may be necessary for the purposes stated in Subsection (a) of this section.
- (c) Any rules and changes of rules adopted under this section shall be submitted to the attorney general for his written approval before the rules or their changes become effective.

Acts 1977, 65th Leg., p. 2449, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

52.033. ACCESS TO LAND.

- (a) If it is necessary for the lessee to enter the enclosed land of another person for the purpose of ingress and egress to and from the area leased from the state and if the lessee and the owner cannot agree on the place or the conditions of entry and exit, the lessee or his agent may petition the commissioners court of the county in which all or part of the enclosure is located to open the places of ingress and egress that may be necessary.
- (b) On filing the petition, the commissioners court shall delineate the roads necessary for the stated purpose in the manner provided for delineating third-class public roads.

Acts 1977, 65th Leg., p. 2449, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

52.034. OFFSET WELLS.

- (a) If oil or gas is produced in commercial quantities from a well located on a privately owned area or areas of state land leased at a lesser royalty and the well is located within 1,000 feet of an area leased under this subchapter, or in any case where such an area is being drained by such a well or wells, the lessee of the state area shall begin in good faith and prosecute diligently the drilling of an offset well or wells on the area leased from the state within 60 days after the initial production from the draining well or the well located within 1,000 feet of the leased state area.
- (b) An offset well shall be drilled to a depth and the means shall be employed which may be necessary to prevent undue drainage of oil or gas from beneath the state area.
- (c) Within 30 days after an offset well has been completed or abandoned, a log of each well shall be filed in the land office.
- (d) At the determination of the commissioner and with his written approval, the payment of a compensatory royalty shall satisfy the obligation to drill an offset well or wells required by Subsection (a) of this section. Such compensatory royalty shall be paid at the royalty rate provided by the state lease issued under this subchapter and shall be paid on the market value at the well of production from the draining well or the well located within 1,000 feet of the leased state area.

Acts 1977, 65th Leg., p. 2450, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 948, § 22, eff. Sept. 1, 1987.

52.035. AGREEMENTS WITH U.S. GOVERNMENT.

- (a) The governor may execute agreements on behalf of the state to obtain access to confidential and proprietary information from the secretary of the United States Department of the Interior regarding exploration, development, or production of oil, gas, or other minerals on the outer continental shelf. The governor may agree to waive sovereign immunity and other defenses as prescribed by this section, and may agree to indemnify the United States government from unauthorized disclosure of the information obtained.
- (b) The information obtained from the Department of the Interior under an agreement executed under Subsection (a) of this section is confidential and may not be used publicly, opened to public inspection, or disclosed, except that the information may be examined and used by the governor and the commissioner of the General Land Office, or their designees, for the administration of their official duties and to assure a fair and equitable division of federal revenues derived from leasing lands adjacent to the boundaries of this state.

- (c) The state waives its right to claim sovereign immunity in any action commenced against the state for unauthorized disclosure of the confidential information obtained from the Department of the Interior under an agreement executed by the governor under Subsection (a) of this section, and waives its right to claim that an employee who revealed privileged information was acting outside the scope of employment by disclosing the information.
- (d) The state agrees to hold the United States government harmless from any actions or damages brought as a result of the acts or omissions of the state or its employees in releasing proprietary information obtained under an agreement executed under Subsection (a) of this section.

Added by Acts 1985, 69th Leg., ch. 923, § 15, eff. Aug. 26, 1985.
Amended by Acts 1993, 73rd Leg., ch. 897, § 25, eff. Sept. 1, 1993.

SUBCHAPTER C. DEVELOPMENT OF RIVERBEDS AND CHANNELS

52.071. AUTHORITY OVER RIVERBEDS AND CHANNELS.

The riverbeds and channels belonging to the state are subject to development by the state and to lease or contract for recovery of oil and gas.

Acts 1977, 65th Leg., p. 2450, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

52.072. STATE POLICY.

- (a) With regard to leases and contracts for the development of riverbeds and channels, it is the policy of the state that activities of the state and all lessees and contracting parties or their heirs, successors, or assigns under a lease or contract shall comply with laws of the state and rules and orders of any state agency that are applicable to development of oil and gas bearing land in the state by persons other than the state.
- (b) Each lease and contract issued under the provisions of this subchapter is subject to the provisions of Subsection (a) of this section.

Acts 1977, 65th Leg., p. 2450, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

52.073. AREA SUBJECT TO LEASE.

Riverbeds and channels that belong to the state may be leased to any person by the board under the provisions of this subchapter.

Acts 1977, 65th Leg., p. 2450, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

52.074. SIZE OF TRACT.

Subject to the conditions in this subchapter, riverbeds and channels shall be leased in tracts of the size determined by the board.

Acts 1977, 65th Leg., p. 2450, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

52.076. DUTY TO ADVERTISE.

(a) The board may:

- (1) advertise for bids to lease riverbeds and channels for oil and gas development;
- (2) advertise for bids to contract to develop the oil or gas under riverbeds and channels on consideration involving compensation with oil and gas or money so that the state will receive a portion of the oil and gas as it is produced or advanced royalties paid in money;
- (3) advertise for bids to purchase oil and gas in place under riverbeds and channels without requiring mineral development; and
- (4) pool or bring an action to force pool unleased riverbeds and channels.

(b) The board shall advertise that the board will receive bids and award the right to lease, develop, or purchase under this section in the same manner as provided in Subchapter D, Chapter 32, of this code and Subchapter B of this chapter.

Acts 1977, 65th Leg., p. 2450, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 923, § 16, eff. Aug. 26, 1985; Acts 1993, 73rd Leg., ch. 897, § 26, eff. Sept. 1, 1993.

52.077. SPECIAL FEE.

Each bidder on a lease under this subchapter shall remit with each bid by separate payment a special sale fee in the amount and in the manner provided by Section 32.110 of this code.

Added by Acts 1993, 73rd Leg., ch. 897, § 27, eff. Sept. 1, 1993.

52.080. FORMS FOR LEASE AND CONTRACT.

Leases and contracts for the development of riverbeds and channels shall be executed on forms approved by the board.

Acts 1977, 65th Leg., p. 2451, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 923, § 17, eff. Aug. 26, 1985.

52.082. TERM OF LEASE.

A lease granted under this subchapter shall be for a primary term not to exceed 10 years and for as long after that time as oil or gas is produced from the leased area.

Acts 1977, 65th Leg., p. 2451, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5248, ch. 965, § 10, eff. June 19, 1983; Acts 1993, 73rd Leg., ch. 897, § 28, eff. Sept. 1, 1993.

52.083. CONDITIONS OF LEASE.

Oil and gas shall only be leased together and separately from other minerals.

Acts 1977, 65th Leg., p. 2451, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

52.084. SPECIAL LEASE PROVISIONS.

Each lease shall include the provisions required by Sections 52.023 and 52.024 of this code.

Acts 1977, 65th Leg., p. 2451, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

52.085. PREVENTION OF POLLUTION.

(a) Each lease and contract shall require the lessee or contracting party or his successors or assigns to use the highest degree of care and all proper safeguards to prevent pollution of streams.

(b) If the lessee or contracting party fails to meet the requirements in Subsection (a) of this section, the state is entitled to take charge of the property immediately and to cancel the lease.

Acts 1977, 65th Leg., p. 2451, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

52.087. DETERMINATION OF LEASE PRICE AND DELAY RENTALS.

The board shall determine the price at which riverbeds and channels shall be leased and the amount of delay rentals that shall be charged.

Acts 1977, 65th Leg., p. 2452, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

52.088. ROYALTY RATE.

The board shall set the royalty rate on production of oil and gas from riverbeds and channels leased under this subchapter. The royalty rate set must be at least one-eighth of the gross production or the market value of the oil and gas produced.

Acts 1977, 65th Leg., p. 2452, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, § 29, eff. Sept. 1, 1993.

52.090. EXTENSION OF LEASE.

A lease may be extended in the manner provided in Section 52.031 of this code.

Acts 1977, 65th Leg., p. 2453, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

52.091. REFUND OF LEASE MONEY IN CERTAIN SITUATIONS.

A lessee under this subchapter is entitled to a refund of all money paid for bonus, delay rentals, and other fees for the reasons and in the manner provided in Section 52.030 of this code.

Acts 1977, 65th Leg., p. 2453, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

52.092. POWER OF EMINENT DOMAIN.

The board or any person including a leaseholder or assignee, who has a contract with the board for the development of oil and gas resources in riverbeds and channels may exercise the power of eminent domain to condemn land as provided in the general laws of this state for the purposes stated in Section 52.093 of this code.

Acts 1977, 65th Leg., p. 2453, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

52.093. EMINENT DOMAIN PURPOSES.

The board and any person, including a leaseholder or assignee, who has a contract with the board for the development of oil and gas resources in riverbeds and channels may exercise the power of eminent domain for the following purposes:

- (1) to secure additional adjoining land that may be necessary to erect power machinery and to construct storage tanks and slush pits for the operation of the river or channel development and to prevent or lessen the dangers of pollution involved in the drilling of any well in the riverbed or channel; and
- (2) to secure a right-of-way to and from any well that is drilled in the riverbed or channel so that the board or any of the leaseholders or contracting parties may go to and from the well and may transport any materials necessary to develop the riverbed or channel and to transport oil and gas away from the well.

Acts 1977, 65th Leg., p. 2453, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

52.094. DRILLING OFFSET WELL ON CONDEMNED LAND.

- (a) If the landowner or other interested party and the board or the lessee of the riverbed or channel cannot agree on the amount of damages, if any, and it is necessary to commence condemnation proceedings and if it is necessary for the landowner or other interested party to drill an offset well within the area to be condemned, the mineral rights of the condemned party are superior to the surface rights of the condemning party.
- (b) If there is any conflict surrounding the drilling of an offset well under a permit from the Railroad Commission of Texas, the condemning party is required to move any interference or hindrance or to go around any offset well, and if he fails or refuses to immediately move the interference or hindrance on demand, the owner of the mineral rights is entitled to do so immediately without liability.

Acts 1977, 65th Leg., p. 2453, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

52.095. RIGHTS OF PARTIES TO CONDEMNATION.

It is the intent of this subchapter that the mineral rights of the owner are superior to the surface rights of the condemning party.

Acts 1977, 65th Leg., p. 2454, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

52.096. EXCLUSION FROM DAMAGES IN CONDEMNATION.

In determining the damages resulting from condemnation, the commissioners or any other tribunal shall not consider the value of oil or gas located beneath the rights-of-way of the condemned property.

Acts 1977, 65th Leg., p. 2454, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

52.097. INJUNCTION.

- (a) No injunction may be granted against the board, its agents, or persons with whom it has contracted, to restrain the board from enforcing its orders or contracts or from carrying out any development that has begun or was contemplated by the board until notice is given to the board and its agents or the contracting parties and a hearing is held.
- (b) Before an injunction or restraining order is issued or becomes effective, the court shall require the complaining party to execute a bond payable to the governor with good and sufficient sureties authorized to do business in this state in an amount determined by the court to be sufficient to protect the state from loss from drainage of the riverbed or channel, of lease or bonus or consideration, or from any other reason. In determining the amount of the bond, the court shall consider the probable and possible loss to the state by granting the injunction.
- (c) The attorney general shall bring suit on the bond to recover any loss to the state caused by the suit for injunction.

Acts 1977, 65th Leg., p. 2454, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

52.098. APPEAL.

- (a) Either party to the suit for an injunction or restraining order is entitled to appeal from the final judgment.
- (b) The appeal shall be returnable to the appellate court at once and shall have precedence in that court over all pending cases, proceedings, and causes of a different character.
- (c) The court of appeals shall decide the questions involved in the appeal at as early a date as possible.

- (d) If any question is certified to the supreme court or if writ of error is requested or granted, the supreme court shall set the cause for hearing immediately, and the cause shall have precedence over all other cases, proceedings, and causes of a different character. The supreme court shall decide the cause at as early a date as possible.

Acts 1977, 65th Leg., p. 2454, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 799, ch. 291, § 90, eff. Sept. 1, 1981.

52.099. VENUE.

The venue for any suit arising from this subchapter either by or against the board and regardless of the kind or nature shall be in Travis County.

Acts 1977, 65th Leg., p. 2454, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

52.100. EFFECT OF SUBCHAPTER.

The provisions of this subchapter do not repeal or supersede Chapter 138, Acts of the 41st Legislature, Regular Session, 1929 (Article 5414a, Vernon's Texas Civil Statutes), which validated, relinquished, quitclaimed, and granted to patentees and awardees and their assignees land and minerals that are included in surveys lying across or partly across watercourses and navigable streams in the state and that have been patented or awarded as provided in that chapter.

Acts 1977, 65th Leg., p. 2454, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

SUBCHAPTER D. ROYALTIES

52.131. PAYMENT OF ROYALTY GENERALLY.

- (a) Royalties due under a lease of state land or minerals that are required to be paid to the land office, including leases on land on which a free royalty is reserved pursuant to Section 51.201 or 51.054 of this title, shall be due and shall be paid as provided in this section.
- (b) The commissioner shall by rule set the date for making royalty payments and for filing any reports, documents, or other records required to be filed by the commissioner. However, the commissioner may not set the due date for royalty on oil before the 5th day of the second month succeeding the month of production and may not set the due date for royalty on gas before the 15th day of the second month succeeding the month of production.

- (c) Royalty payments shall be accompanied by:
- (1) an affidavit of the owner, manager, or other authorized agent, completed in the form and manner required by the land office and showing the gross amount and disposition of all oil and gas produced and the market value of the oil and gas;
 - (2) a copy of all documents, records, or reports required by the land office, confirming the gross production, disposition, and market value, including gas meter readings, pipeline receipts, gas line receipts, and other checks or memoranda of amount produced and put into pipelines, tanks, pools, and gas lines or gas storage;
 - (3) a check stub, schedule, summary, or other remittance advice showing by the assigned land office lease number the amount of royalty being paid on each lease; and
 - (4) other reports or records that the land office may require to verify the gross production, disposition, and market value.
- (d) The lessee has the responsibility for paying royalties or having royalties paid by the date provided for payment in this section.
- (e) If any royalty is not paid when due but is paid before the 31st day after the date on which it is due, a penalty of five percent of the royalty due shall be added to the unpaid amount due. If the royalty is not paid before the 31st day after the date on which it is due, a penalty of an additional five percent of the royalty due shall be imposed. The minimum penalty under this section is \$25. The penalty may not be imposed in cases of title dispute as to the state's portion of the royalty or to that portion of the royalty in dispute as to the market value of the production.
- (f) The commissioner shall add a penalty of 25 percent to any delinquent royalty if a part of the delinquency is due to fraud or an intent to evade the provisions of this chapter.
- (g) The annual interest rate on delinquent royalties is 12 percent. Interest accrues on delinquent royalties beginning 60 days after the date on which the royalty is due.
- (h) If any report, affidavit, supporting document, or any other instrument required to be filed under this chapter is not filed when due, the commissioner shall charge a reasonable penalty in an amount established by rule adopted by the commissioner.

- (i) Interest charged under Subsection (g) of this section or penalties under Subsection (e), (f), or (h) of this section are in addition to any other right, including forfeiture, that the commissioner may exercise for failure to submit a report or other instrument.
- (j) By rule, the board may provide procedures and standards for reduction of interest charged or penalties assessed under this section or any other interest or penalties assessed by the commissioner relating to unpaid or delinquent royalties.

Acts 1977, 65th Leg., p. 2455, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, § 42, 43, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 948, § 23, 24, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 897, § 30, eff. Sept. 1, 1993.

52.132. FORM OF PAYMENT.

Except as provided in Section 52.133 of this code, royalty payments shall be made in cash, by bank draft drawn on a state or national bank in Texas, by a post-office or express money order, or in any other form that the law may provide for making payments to the State Treasury and are payable to the commissioner in Austin.

Acts 1977, 65th Leg., p. 2455, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

52.133. PAYMENT OF ROYALTY IN KIND.

- (a) Each oil or gas lease covering land leased by the board, by a board for lease, or by the surface owner of land under which the state owns the minerals, commonly referred to as Relinquishment Act land, which shall be subject to approval by the commissioner before it is effective, shall include a provision granting the board authorized to lease the land or the owner of the soil of Relinquishment Act land and the commissioner authority to take their royalty in kind, and the commissioner and the boards for lease may include any other reasonable provisions that are not inconsistent with this section.
- (b) The option to take the royalty in kind may be exercised at any time or from time to time on not less than 60 days' notice to the holder of the lease.

- (c) The commissioner, the owner of the soil under Subchapter F, or the commissioner acting on the behalf of and at the direction of an owner of the soil under Subchapter F, the board, or a board for lease, or at the direction of the Board for Lease of University Lands, may negotiate and execute contracts or any other instruments or agreements necessary to dispose of or enhance their portion of the royalty taken in kind, including contracts for sale, marketing, purchase, transportation, including purchase and exchange agreements necessary to transport gas, and storage and including insurance contracts or other agreements, to secure or guarantee payment.
- (d) The commissioner, the owner of the soil under Subchapter F, or the commissioner acting on behalf of and at the direction of an owner of the soil under Subchapter F, the board, or a board for lease may negotiate and execute contracts or any other instruments or agreements necessary to convert that portion of the royalty taken in kind into other forms of energy, including electricity.
- (e) This section shall not be construed to surrender or in any way affect the right of the state or the owner of the soil under existing or future leases to receive royalty from its lessee on the basis of the market value of the production from state public land or land under the provisions of Subchapter F of this chapter.
- (f) For the purposes of this section, royalty taken in kind includes oil or gas sold or marketed by the commissioner that has been produced on state mineral lands or from the first three miles of federal waters adjacent to the state boundaries, also known as the 8g zone.

Acts 1977, 65th Leg., p. 2455, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, § 31, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 427, § 1, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 405, § 49, eff. Sept. 1, 1999.

52.134. FILING CONTRACTS AND AGREEMENTS.

Copies of contracts for the sale or processing of gas and subsequent agreements and amendments to those contracts shall be filed in the land office within 30 days after the contracts, agreements, or amendments are made. These contracts and agreements received by the land office shall be held in confidence by the land office unless otherwise authorized by the lessee.

Acts 1977, 65th Leg., p. 2456, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

52.135. INSPECTIONS AND EXAMINATIONS.

- (a) The books and accounts, receipts, and discharges of all lines, tanks, pools, and meters and all contracts and other records relating to the production, transportation, sale, and marketing of the oil and gas are subject at any time to inspection and examination by the commissioner and the attorney general and governor or their representatives.
- (b) If, after inspection and examination of books, accounts, reports, or other records, the commissioner or his representative determines that additional royalties are due under a lease of state land or minerals, the commissioner shall send to the lessee by certified mail, return receipt requested, an audit billing notice notifying the lessee of such additional royalties, and interest and penalty, due and of the reasons for such determination.
- (c) The lessee shall have 30 days from the date of the receipt of such audit billing notice in which to pay such audit deficiency assessment or to request a hearing before the commissioner or his representative for redetermination of such assessment. A statement of grounds setting out in detail the lessee's reasons for disagreement with such assessment and the factual and legal grounds on which the claim is based must be submitted by a lessee with its request for a hearing. Such hearing shall be conducted in accordance with the rules and procedures established by the commissioner.
- (d) In order to stop the further accrual of penalty or interest, the lessee may pay the additional royalties assessed at any time after receipt of an audit billing notice.

Acts 1977, 65th Leg., p. 2456, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1986, 69th Leg., 3rd C.S., ch. 5, § 1, eff. Sept. 30, 1986.

52.136. LIEN.

- (a) The state has a statutory first lien on all oil and gas produced on any lease area to secure payment of unpaid royalty and other amounts due.
- (b) By acceptance of a lease, the lessee grants to the state an express contractual lien on and security interest in all oil and gas in and extracted from the area covered by the lease, all proceeds which may accrue to the lessee from the sale of the oil and gas, whether the proceeds are held by the lessee or another person, and all fixtures on and improvements to the area covered by the lease used in connection with the production or processing of the oil and gas, to secure the payment of royalties and other amounts due or to become due under the lease or this subchapter and to secure payment of damages or loss that the state may suffer by reason of the lessee's breach of a covenant or condition of the lease, whether express or implied.

- (c) The statutory and contractual liens and security interests described in this section may be foreclosed with or without court proceedings in the manner provided under Chapter 9, Business & Commerce Code. The state may require the lessee to execute and record instruments reasonably necessary to acknowledge, attach, or perfect the liens.

Acts 1977, 65th Leg., p. 2456, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1997, 75th Leg., ch. 1324, § 2, eff. Jan. 1, 1998.

52.137. SUIT AFTER PROTEST PAYMENT.

- (a) If a lessee, who has received an audit deficiency assessment and has waived the right to request a hearing before the commissioner or who is required by final order of the commissioner following a hearing to pay additional royalties, contends that such audit deficiency assessment is unlawful or that the commissioner may not legally demand or collect such royalties the lessee shall pay to the commissioner the amount claimed by the commissioner, and if the lessee intends to bring suit under this section, the lessee must submit with the payment a protest in writing stating fully and in detail each reason why it contends such royalty is not due. Such payment shall be made to the commissioner within 30 days of the date of receipt of the audit billing notice or of the date of receipt of the final order of the commissioner following a hearing, as the case may be. All such mailings shall be by certified mail, return receipt requested.
- (b) The commissioner, upon receipt of such payment made under protest as authorized by this section, shall send to the comptroller the payment and a written statement that the payment was made under protest. Immediately upon receipt, the comptroller shall:
 - (1) place the payment in state depositories bearing interest in the same manner that other funds are required to be placed in state depositories at interest;
 - (2) allocate the interest earned on these funds;
 - (3) credit the amount allocated to an account established for this purpose until the status of the protest is finally determined; and
 - (4) upon final determination that some or all of the protested funds belong to the state, deposit the principal and the allocated interest to the permanent school fund.

- (c) A suit may be brought under this section against the commissioner to recover the payment under protest. A suit under this section is barred unless brought in the district courts of Travis County within 90 days after the date of the protest payment or within 90 days after the date of the final order of the commissioner following hearing, whichever is later.
- (d) The issues to be determined in a suit under this section are limited to those arising from the reasons stated in the written protest as originally filed.
- (e) The trial of the issues in a suit under this section is de novo and the substantial evidence rule will not apply.

Added by Acts 1986, 69th Leg., 3rd C.S., ch. 5, § 2, eff. Sept. 30, 1986. Amended by Acts 1987, 70th Leg., ch. 948, § 25, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 1423, § 14.13, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 328, § 7.

52.138. REFUND.

If a suit authorized by Section 52.137 of this code results in a final determination that all or part of the payment under protest was not due or was unlawfully demanded by the commissioner and belongs to the lessee, the comptroller shall refund the proper amount, with the pro rata interest earned on that amount, by issuance of a refund warrant drawn against the account established for such purpose. The refund warrant shall be returned to the commissioner and the commissioner shall deliver it to the person entitled to receive it.

Added by Acts 1986, 69th Leg., 3rd C.S., ch. 5, § 2, eff. Sept. 30, 1986. Amended by Acts 1997, 75th Leg., ch. 1423, § 14.14, eff. Sept. 1, 1997.

52.139. LIMITATIONS ON AUDIT ASSESSMENTS.

- (a) If an audit billing notice has been issued under Section 52.135 and any outstanding audit deficiency assessment has been paid either:
 - (1) voluntarily;
 - (2) after a hearing was requested and the commissioner has entered a final non-appealable order concerning the assessment; or
 - (3) after a final non-appealable judgment has been rendered by a court after payment of an audit assessment under protest and filing of a suit for refund under Section 52.137 of this code, then the commissioner may not issue another deficiency assessment which covers the same issues, time periods, and leases as those covered by the previous assessment.

- (b) If the commissioner audits a lessee's books and records under Section 52.135 of this code the commissioner shall notify the lessee upon completion of his findings. If the commissioner notifies the lessee that no additional royalties are due, the commissioner may not again audit the books and records covering the same issues, time periods, and leases involved in the first audit.
- (c) This section shall not preclude the commissioner from conducting subsequent audits or examinations covering the same issues, time periods, and leases in cases where fraud exists or where the first audit deficiency assessment results only from an examination of documents, records, or reports submitted to the commissioner and not from a complete audit of the books, accounts, reports, or other records of a lessee.

Added by Acts 1987, 70th Leg., ch. 948, § 26, eff. Sept. 1, 1987.

52.140. AUDIT INFORMATION CONFIDENTIAL.

- (a) All information secured, derived, or obtained during the course of an inspection or examination of books, accounts, reports, or other records, as provided in Section 52.135 of this code, is confidential and may not be used publicly, opened for public inspection, or disclosed, except for information set forth in a lien filed under this chapter and except as permitted under Subsection (d) of this section.
- (b) All information made confidential in this section shall not be subject to subpoena directed to the commissioner, the attorney general, or the governor except in a judicial or administrative proceeding in which this state is a party.
- (c) The commissioner or the attorney general may use information made confidential by the provisions of this section and contracts made confidential by Section 52.134 of this code to enforce any provisions of this chapter or may authorize their use in judicial or administrative proceedings in which this state is a party.
- (d) This section does not prohibit:
 - (1) the delivery of information made confidential by this section to the lessee or its successor, receiver, executor, guarantor, administrator, assignee, or representative;
 - (2) the publication of statistics classified to prevent the identification of a particular audit or items in a particular audit;
 - (3) the release of information which is otherwise available to the public; or

- (4) the release of information concerning the amount of royalty assessed as a result of an examination conducted under Section 52.135 of this code or the release of other information which would have been properly included in reports required under Section 52.131 of this code.

Added by Acts 1987, 70th Leg., ch. 948, § 27, eff. Sept. 1, 1987.

SUBCHAPTER E. UNITIZATION OF LEASED AREAS

52.151. AUTHORIZATION TO OPERATE AREAS AS UNITS.

- (a) The commissioner, on behalf of the state or any fund that belongs to the state, may execute agreements that provide for operating areas as a unit for the exploration, development, and production of oil or gas or both and to commit to the agreements:
 - (1) the royalty interests in oil, gas, or both oil and gas, reserved to the state or any fund of the state by law, in a patent, in a contract of sale, or under the terms of an oil and gas lease legally executed by an official, board, agent, agency, or authority of the state; or
 - (2) the free royalty interests, whether leased or unleased, reserved to the state pursuant to Section 51.201 or 51.054 of this code.
- (b) Before executing an agreement authorized by Subsection (a) of this section, the commissioner must find that the agreement is in the best interest of the state.

Acts 1977, 65th Leg., p. 2456, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 948, § 28, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 897, § 32, eff. Sept. 1, 1993.

52.152. APPROVAL OF AGREEMENTS.

- (a) An agreement must be approved by the board and executed by the commissioner to be effective if the agreement commits:
 - (1) a royalty interest in land belonging to the permanent school fund or the asylum funds, in riverbeds, inland lakes, and channels, or in an area within tidewater limits, including islands, lakes, bays, inlets, marshes, reefs, and the bed of the sea; or
 - (2) the free royalty interests, whether leased or unleased, reserved to the state pursuant to Section 51.201 or 51.054 of this code.

- (b) An owner of the soil who is subject to Subchapter F of this chapter may grant to a lessee prior authority to pool or unitize the interest of the owner in a lease executed under that subchapter. For the provisions of an agreement to bind the interest of an owner of the soil who is subject to Subchapter F of this chapter and who has not granted the lessee prior authorization to pool or unitize the owner's interest in an oil and gas lease executed under that subchapter, the agreement must be executed by the owner of the soil.
- (c) An agreement that commits any interest in any land not listed in Subsection (a) of this section must be approved by the board, official, agent, agency, or authority of the state which has the authority to lease or to approve the lease of the land for oil and gas and must be executed by the commissioner to be effective.

Acts 1977, 65th Leg., p. 2457, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 948, § 29, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 897, § 33, eff. Sept. 1, 1993.

52.153. PROVISIONS OF AGREEMENT.

- (a) An agreement executed under this subchapter may include the following provisions:
 - (1) that operations incident to drilling a well on any portion of a unit shall be considered for all purposes to be conduct of the operations on each tract in the unit;
 - (2) that production allocated by the agreement to each tract included in the unit when produced shall be considered for all purposes to have been production from the tract;
 - (3) that the interest reserved to or provided for the state or any of its funds on production from any tract included in the unit shall be paid only on that portion of the production from the unit that is allocated to the tract under the agreement; and
 - (4) that each lease included in the unit shall remain in effect as long as the agreement remains in effect and that on termination of the agreement each lease shall continue in effect under the terms and conditions of the lease.
- (b) The agreement may include any other terms and conditions the commissioner or any board, official, agent, agency, or authority of the state that has the authority to lease or to approve a lease of the land for oil and gas may consider to be in the best interest of the state.

Acts 1977, 65th Leg., p. 2457, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, § 34, eff. Sept. 1, 1993.

52.154. RATIFICATIONS AND OTHER AGREEMENTS.

- (a) The board may approve, by rule or order, a ratification or other agreement that includes in the benefits of production a mineral or royalty interest in land belonging to the permanent school fund or the asylum funds.
- (b) An agreement approved by the board under this section must be executed by the commissioner to be effective.
- (c) A ratification or other agreement that commits any of the interests listed in Subsection (a) of this section in land not belonging to the permanent school fund or the asylum funds must be approved by the board, official, agent, agency, or authority of the state that has the authority to lease or to approve the lease of the land for oil and gas and must be executed by the commissioner to be effective.

Added by Acts 1993, 73rd Leg., ch. 897, § 35, eff. Sept. 1, 1993.

SUBCHAPTER F. RELINQUISHMENT

52.171. SCHOOL AND ASYLUM LANDS.

The state hereby constitutes the owner of the soil its agent for the purposes herein named, and in consideration therefor, relinquishes and vests in the owner of the soil an undivided fifteen-sixteenths of all oil and gas which has been undeveloped and the value of the same that may be upon and within the surveyed and unsurveyed public free school land and asylum lands and portions of such surveys sold with a mineral classification or mineral reservation, subject to the terms of this law. The remaining undivided portion of said oil and gas and its value is hereby reserved for the use of and benefit of the public school fund and the several asylum funds.

Acts 1977, 65th Leg., p. 2457, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

52.172. SALE AND LEASE BY AGENT.

The owner of said land is hereby authorized to sell or lease to any person, firm, or corporation the oil and gas that may be thereon or therein upon such terms and conditions as such owner may deem best, subject only to the provisions hereof, and he may have a second lien thereon to secure the payment of any sum due him. All leases and sales so made shall be assignable. No oil or gas rights shall be sold or leased hereunder for a delay rental during the primary term of less than 10 cents per acre per year plus royalty, and in case of production, the lessee or purchaser shall pay the state the undivided one-sixteenth of the value of the oil and gas reserved herein, and like amounts to the owner of the soil.

Acts 1977, 65th Leg., p. 2457, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, § 44, eff. Sept. 1, 1985.

52.173. OFFSET WELLS.

- (a) If oil and/or gas should be produced in commercial quantities within 1,000 feet of land subject to this subchapter, or in any case where land subject to this subchapter is being drained by production of oil or gas the owner, lessee, sublessee, receiver, or other agent in control of land subject to this subchapter shall in good faith begin the drilling of a well or wells upon such state land within 100 days after the draining well or wells or the well or wells completed within 1,000 feet of the state land commence to produce in commercial quantities, and shall prosecute such drilling with diligence to reasonably develop the state land and to protect such state land against drainage.
- (b) An offset well shall be drilled to a depth and the means shall be employed which may be necessary to prevent undue drainage of oil or gas from beneath the state land.
- (c) Within 30 days after an offset well has been completed or abandoned, a log of each well shall be filed in the land office.
- (d) At the determination of the commissioner and with his written approval, the payment of a compensatory royalty shall satisfy the obligation to drill an offset well or wells. Such compensatory royalty shall be paid at a royalty rate established by the commissioner if the land is unleased, or at the royalty rate provided by the state lease, if the land is leased. Such compensatory royalty shall be paid on the market value at the well of production from the draining well or the well located within 1,000 feet of the state land.

Acts 1977, 65th Leg., p. 2458, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 948, § 30, eff. Sept. 1, 1987.

52.174. FAILURE TO DRILL OFFSET.

If such persons fail or refuse to begin the drilling of such well or wells within the time required or to prosecute such drilling as necessary for the purpose intended herein, any lease of such land executed under the provisions of this law shall be subject to forfeiture by the Commissioner of the General Land Office, and he shall forfeit same when he is sufficiently informed of the facts which authorize a forfeiture, and shall, on the wrapper containing the papers relating to such lease, write and sign officially words declaring such forfeiture, and the lease and all rights thereunder shall thereupon be forfeited together with all payments made thereunder. Notice of such action shall forthwith be mailed to the persons shown by the records of the General Land Office to be the owners of the surface and the owners of the forfeited lease at their last known addresses as shown by the records of said office. Upon proper showing by the owner of the forfeited lease within 30 days after the declaration of forfeiture, the lease may, at the discretion of the commissioner and upon the terms of this subchapter and such other terms as he may prescribe, be reinstated. If such lease be not reinstated within such time, or if the commissioner finds that any unleased land included in this law is being drained, the commissioner shall notify the person at his last known address, as shown by records of the General Land Office to be the surface owner, that the oil and gas is subject to sale or lease by the owner of the soil in accordance with this law, and that drilling is required. If such owner shall fail or refuse to obtain the commencement of such a well within 100 days after the date of such notice, the relinquishment herein granted and the rights acquired thereunder shall be subject to forfeiture by the commissioner by endorsing on the file wrapper containing the papers relating to the sale of the land, words indicating such forfeiture, and such rights shall thereupon be forfeited, and notice of such forfeiture shall be forwarded to the county clerk of the county wherein the land is situated. The rights of any owner of the soil which may have ipsofacto terminated under prior laws shall be reinstated and are hereby reinstated, together with all rights acquired thereunder except where rights of third parties may have intervened. All rights herein reinstated shall be subject to the terms and provisions of this subchapter.

Acts 1977, 65th Leg., p. 2458, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

52.175. LEASE OF OIL AND GAS AFTER FORFEITURE.

When the relinquishment or agency right herein granted has been forfeited, 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. The substantive provisions of Subchapter B of this chapter and Subchapters D and E, Chapter 32, of this code shall apply to the oil and gas lease. No oil and gas 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. Upon the termination or expiration of a lease so executed by the Commissioner of the General Land Office, the rights of the surface owner to act under this law shall be ipso facto reinstated.

Acts 1977, 65th Leg., p. 2459, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 912, § 1, eff. Aug. 31, 1987; Acts 1993, 73rd Leg., ch. 897, § 36, eff. Sept. 1, 1993.

52.176. FORFEITURE OF RIGHTS.

If any person, firm, or corporation operating under this law shall fail or refuse to make the payment of any sum within 30 days after it becomes due, or if such one or an authorized agent should knowingly make any false return or false report concerning production or drilling, or if such one should fail to file reports in the manner required by law or fail to comply with General Land Office rules and regulations or refuse the proper authority access to the records pertaining to the operations, or if such one or an authorized agent should knowingly fail or refuse to give correct information to the proper authority, or knowingly fail or refuse to furnish the land office a correct log of any well, or if any lease is assigned and the assignment is not filed in the General Land Office as required by law, the rights acquired under the permit or lease shall be subject to forfeiture by the commissioner, and he shall forfeit same when sufficiently informed of the facts which authorize a forfeiture, and the oil and gas shall be subject to sale in the manner provided for the sale of other forfeited rights hereunder, except that the owner of the soil shall not thereby forfeit his interest in the oil and gas. Such forfeiture may be set aside and all rights theretofore existing shall be reinstated at any time before the rights of another intervene, upon satisfactory evidence of future compliance with the provisions of this subchapter.

Acts 1977, 65th Leg., p. 2459, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

52.177. RIGHTS OF SUBSEQUENT PURCHASER.

If one acquires a valid right by permit or lease to the oil and gas in any unsold public free school or asylum land under any other law, a subsequent purchaser of such land shall not acquire any rights to any of the oil and gas that may be therein, but when the rights under such permit or lease terminate in the manner provided in the law under which they were obtained, then the owner of the soil shall become the owner of that portion of the oil and gas herein relinquished, and shall be thereafter subject to the provisions of this law. A forfeiture of the purchase of any survey or tract for any cause shall operate as a forfeiture of the minerals therein to the state. A relinquishment to the state of a lease producing oil or gas in paying quantities shall not operate to relinquish or convey to the owner of the soil any interest whatever in the oil and gas that may be in the land included in said lease.

Acts 1977, 65th Leg., p. 2459, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

52.178. OPERATION UNDER PERMIT.

The owner of a permit or combination of permits shall have 18 months from the date or average date thereof in which to begin drilling a well for oil and gas on some portion of the land included therein. The drilling on one permit shall be sufficient protection against forfeiture of all the permits included in a combination. Owners of permits or combination of permits included herein shall have three years after the date or average date thereof in which to complete the development of oil and gas thereon, and if oil and gas should not be found in paying quantities and a lease applied for within said time all rights in such permit or combination of permits shall terminate, and the oil and gas in such land shall become subject to the provisions of this law relating to the relinquishment of oil and gas to the owner of the soil.

Acts 1977, 65th Leg., p. 2460, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

52.179. LEASE UNDER PERMIT.

If oil or gas should be produced in paying quantities upon any land included in this law, the owner of the permit shall report the development to the commissioner within 30 days thereafter and apply for a lease upon such whole surveys or tracts in each permit as the owner or owners of a combination of permits may desire to be leased, and accompany the application with a log of the wells, and the correctness of the log shall be sworn to by the owner, manager, or driller, and thereupon a lease shall be issued without the payment of any additional sum of money and for a period not to exceed 10 years, subject to renewal or renewals.

Acts 1977, 65th Leg., p. 2460, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

52.180. PAYMENTS UNDER PERMIT.

The owner of a permit or combination of permits who desires to avail himself of the terms of this law, shall pay the state 10 cents per acre, annually in advance, for the second and third years, and shall likewise pay the owner of the soil 10 cents per acre for the first year of such permit, before availing himself of the privileges hereof, and a like sum thereafter annually in advance. A failure to make either of said payments shall subject the permit or permits to forfeiture by the commissioner, and when sufficiently informed of the facts which subject the permits to forfeiture, said commissioner shall forfeit the same by an endorsement of forfeiture upon the wrapper containing the papers relating to the permits and sign it officially. The payment of 10 cents per acre to the owner of the soil may be made to him or to the county clerk of the county in which the land is situated, and said clerk shall deposit such payment as he receives, in some bank at the county seat to the credit of the record owner of such land. If the owner of the soil refuses to accept such payment, said clerk shall withdraw such deposit and return it to the owner of the permit. The payment, or the tender of payment, shall be evidenced by the receipt of the owner or part owner or county clerk filed among the papers in the land office relating to such permits.

Acts 1977, 65th Leg., p. 2460, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

52.181. RELINQUISHMENT UNDER PERMIT.

The owner of a permit or combination of permits may relinquish to the state a permit or combination of permits or any whole survey or whole tract included in a permit at any time before obtaining a lease therefor by having such relinquishment recorded in the counties in which the land or part thereof is situated, and by filing it in the land office within 60 days after its execution, with a filing fee set by the commissioner in an amount not less than \$1.

Acts 1977, 65th Leg., p. 2460, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 405, ch. 81, § 21(k), eff. Sept. 1, 1983.

52.182. DAMAGES TO SOIL.

The payment of delay rentals and the obligation to pay the owner of the soil one-sixteenth of the production and the payment of same when produced and the acceptance of same by the owner, shall be in lieu of all damages to the soil.

Acts 1977, 65th Leg., p. 2461, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 923, § 18, eff. Aug. 26, 1985.

52.183. EFFECTIVE DATE OF LEASE.

No mineral lease executed by the owner of the land or minerals under this subchapter is effective until a certified copy of the lease is filed in the land office.

Acts 1977, 65th Leg., p. 2461, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

52.184. STATEMENT OF CONSIDERATION.

No lease executed under this subchapter after September 17, 1939, is binding on the state unless it recites the actual and true consideration paid or promised.

Acts 1977, 65th Leg., p. 2461, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

52.185. UNIVERSITY LAND.

The provisions of this subchapter relating to a combination of permits and extension of time for beginning development and time for development applies to permits on university land.

Acts 1977, 65th Leg., p. 2461, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

52.186. LEASE OF CERTAIN MINERALS WHEN OWNER OF THE SOIL UNAVAILABLE.

- (a) If an owner of the soil or of any undivided interest therein of any land subject to the terms of this subchapter or Subchapter C, Chapter 53, of this code is found to be unavailable under Subsection (b) of this section to act as the state's agent for leasing oil and gas or any mineral leased under Subchapter C, Chapter 53, of this code, such land or undivided interest therein shall be subject to lease for the applicable minerals under the procedure provided by Subchapter B of this chapter for the leasing of unsold surveyed public school lands. The substantive provisions of Subchapter B of this chapter and Subchapters D and E, Chapter 32, of this code shall apply to a lease of land subject to lease under this subchapter. The substantive provisions of Subchapter E, Chapter 53, of this code and Subchapters D and E, Chapter 32, of this code shall apply to a lease of land subject to lease under Subchapter C, Chapter 53, of this code. 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.

- (4) If the owner of the soil or of any undivided interest therein appears within two years after the execution of a 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 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, the rights of the owner of the soil to act under this subchapter shall be ipso facto reinstated.

Added by Acts 1979, 66th Leg., p. 860, ch. 384, § 1, eff. June 6, 1979. Amended by Acts 1987, 70th Leg., ch. 912, § 2, eff. Aug. 31, 1987; Acts 1993, 73rd Leg., ch. 897, § 37, eff. Sept. 1, 1993.

52.188. 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. In addition, 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 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 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.

(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, 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;

(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.

Added by Acts 1985, 69th Leg., ch. 624, § 45, eff. Sept. 1, 1985.
Renumbered from § 52.187 and amended by Acts 1987, 70th Leg., ch. 912, § 3, eff. Aug. 31, 1987.

52.189. AUTHORITY AND DUTIES OF AGENT.

(a) Prohibition Against Self-Dealing.

- (1) 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.
- (2) Except as provided by this section, the owner of the soil may not lease, directly or indirectly, to a person related to him within and including the second degree of consanguinity or affinity, including a person related by adoption, or to a corporation or subsidiary in which that person is a principal stockholder, or to a partnership in which that person is a partner, or to an employee of such a corporation or subsidiary or partnership.
- (3) An owner of the soil who wishes to lease to a person, corporation, or partnership described in Subdivision (2) may request the approval of the board for authority to execute such a lease before its execution. The owner of the soil requesting approval must also execute and file with the commissioner a sworn affidavit stating that the owner of the soil will not receive any benefit under a lease so approved by the board that will not be shared with the permanent school fund in the proportion prescribed by this subchapter.
- <4) If an owner of the soil makes any material misstatement of fact in connection with an application to the board or affidavit made pursuant to Subdivision (3), then any lease executed pursuant to the authority of the board shall be voidable at the election of the commissioner. The election to void such a lease shall be cumulative of and in addition to all other remedies available to the commissioner or the state.

(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) 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) 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 subsection. 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.

Added by Acts 1985, 69th Leg., ch. 652, § 1, eff. June 14, 1985.
Amended by Acts 1987, 70th Leg., ch. 912, § 6, eff. Aug. 31, 1987; Acts 1987, 70th Leg., ch. 948, § 31, eff. Sept. 1, 1987.
Renumbered from § 52.187 by Acts 1987, 70th Leg., ch. 167, § 5.01(a)(31), eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 937, § 2, eff. Sept. 1, 1995.

52.190. LEASE BY OWNER OF THE SOIL.

- (a) An owner of the soil of lands covered by this subchapter may lease those lands for the purpose of exploring for and producing oil and gas in the manner provided by this section.
- (b) An owner of the soil may apply in writing to the board for an oil and gas lease.
- (c) The application shall contain the following:
 - (1) the name and address of the applicant;
 - (2) a complete legal description of the land the applicant seeks to lease;
 - (3) the name and address of every owner of the soil of the land the applicant seeks to lease, if the applicant is not the sole owner of the soil;
 - (4) a brief letter opinion signed by an attorney licensed in this state setting out the surface ownership of the land sought to be leased;

- (5) a statement of the applicant's experience in oil and gas exploration and production, including, without limitation, the applicant's Railroad Commission of Texas operator number and a list of any State of Texas or federal oil and gas leases held or operated by the applicant or other entity in which the applicant has or had a significant interest during the five-year period preceding the date of the application;
- (6) a statement that the applicant intends to explore for and, if commercially reasonable, produce oil and gas or if the applicant plans that another person or firm shall conduct exploration and production:
 - (A) the name and address of the person or firm;
 - (B) a description of the person's or firm's experience in oil and gas exploration and production, including, without limitation, the person's or firm's Railroad Commission of Texas operator number and a list of any State of Texas or federal oil and gas leases held or operated by the person or firm during the five-year period preceding the date of the application; and
 - <C) a description of the applicant's intended degree and type of participation in the exploration of and production from the property and all consideration or benefits the applicant expects to receive in connection with the exploration of and production from the property; and
- (7) the amount of bonus, rental, royalty, and other lease terms that the applicant proposes to pay or offer or pay and offer for the lease.
- (d) The applicant shall provide geological, geophysical, geochemical, and other data or copies of the data, including interpretative data, pertinent to mineral exploration on the lands for which the application is made, in the applicant's possession or to which the applicant has reasonable access and which the applicant has the ability to provide to the land office. All such data shall be confidential and not subject to the provisions of the open records law, Chapter 552, Government Code, until one year after the expiration, termination, or forfeiture of a lease granted pursuant to this section. After one year after the expiration, termination, or forfeiture of such a lease, the data shall remain confidential to the extent permitted by Chapter 552, Government Code. If a lease is not issued, the data shall be returned to the applicant.
- (e) The board may prescribe the form of the application, specify information required to be submitted in support of an application, and, by rule, otherwise provide for the implementation of this section.
- (f) The staff of the land office shall review the information

presented in the application, other geological, geophysical, and geochemical data reasonably available to it relevant to the land proposed to be leased, and leasing information reasonably available to it relevant to the land proposed to be leased. The staff shall prepare a report to the board that contains:

- (1) a summary of bonus, rental, royalty, and other lease terms then being offered and asked for leases of similar lands in the area of the land proposed to be leased; and
 - (2) any factual data considered by the staff to be relevant, including, but not limited to, data concerning the land proposed to be leased and its estimated value for oil and gas exploration and production, recommended lease terms, and the applicant, including the applicant's history of leasing State of Texas or federal lands for oil and gas.
- (g) The board shall consider the application at a regular meeting. It may, in its sole discretion, grant or deny the application or grant the application subject to specified conditions. Such conditions may include a requirement that if the applicant does not materially participate in the exploration or development of the leased premises, through labor performed, cash or goods contributed, or supplying other enhancement in value, the applicant must share equally with the permanent school fund any benefit derived from the lease.
- (h) After the board has approved an application, the commissioner shall issue a lease to the applicant. The lease shall conform, as nearly as is practicable, to the form of lease prescribed by the board under Section 32.1071.
- (i) The commissioner may not deliver a lease issued under this section until the applicant has executed and delivered to the commissioner a waiver of the applicant's right and duty to act as agent for the state in leasing the leased premises and to receive any part of the bonus, rental, royalty, and other consideration accruing to the owner of the soil under this subchapter. The waiver and the lease shall be effective as of the date the commissioner executes the lease.
- (j) Upon the expiration, termination, or forfeiture of a lease issued under this section, the agency rights and duties of the applicant as owner of the soil are reinstated without the necessity for further action by the owner of the soil, the board, or the commissioner.

- (k) If an applicant is not the sole owner of the soil, the applicant may secure leases from the other owners of the soil from which the applicant is not prohibited from leasing under Section 52.189. If the applicant must obtain a lease from an owner of the soil from whom the applicant would otherwise not be permitted to lease in order reasonably to explore for or produce or explore for and produce oil or gas, the commissioner may approve the lease on the condition that the applicant shall not receive any benefit from the lease, and, if the applicant should acquire by any method, including devise or inheritance, the right to receive any rental, royalty, or other benefit accruing to the owner of the soil's interest under the lease, the applicant shall assign the benefit to the commissioner for the benefit of the permanent school fund.

- (l) The commissioner shall not approve any lease obtained by an applicant from another owner of the soil if the lease contains terms that are substantially inconsistent with or provide for a lesser bonus, rental, or royalty than the lease approved by the board. If the bonus, rental, or royalty in a lease obtained by an applicant from another owner of the soil for a comparable interest is greater than that approved by the board, then the lease approved by the board shall be amended to provide for the greater bonus, rental, or royalty, and the applicant shall be liable for all greater sums due. In determining whether an interest is comparable, the board shall consider the quantum of the interest, the time at which the lease was taken, and any other aspects of the lease transaction that the board considers to be relevant.

Added by Acts 1995, 74th Leg., ch. 937, § 1, eff. Sept. 1, 1995.

SUBCHAPTER H. LEASE LIMITATIONS

52.291. COVERAGE.

The following persons, agencies, and entities are subject to the provisions of Sections 52.292 through 52.293 of this code:

- (1) the commissioner;
- (2) the board;
- (3) boards for lease of land owned by a department, board, or agency of the state created by Chapter 34 of this code;
- (4) the Board for Lease of University Lands;
- (5) the Board of Regents of Texas A&M University;
- (6) the Board of Regents of Texas Tech University;

- (7) the Board of Regents of the Texas State University System;
- (8) the Board of Regents of the University of Houston;
- (9) any other board of regents or other governing board of a state-supported institution of higher learning having authority to execute oil and gas leases on land owned by the institution;
- (10) an owner of land or minerals in this state whose authority to lease the land or minerals as agent for the state arises in whole or in part from what is commonly known as the Relinquishment Act, codified in Subchapter F of this chapter;
- (11) the Board for Lease of State Park Lands;
- (12) the Board for Lease of the Texas Department of Criminal Justice; and
- (13) the commissioners court of any county in this state.

Acts 1977, 65th Leg., p. 2466, ch. 871, art. I, § 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, § 38, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 227, § 6, eff. May 23, 1997.

52.297. COMPENSATION FOR DAMAGES FROM USE OF SURFACE.

- (a) Leases issued under Subchapter B of this chapter for unsold surveyed or unsurveyed school land, other than land included in islands, saltwater lakes, bays, inlets, marshes, and reefs owned by the state in tidewater limits and other than that portion of the Gulf of Mexico within the jurisdiction of the state, must include a provision requiring the compensation for damages from the use of the surface in prospecting for, exploring, developing, or producing the leased minerals.
- (b) The commissioner by rule shall set the procedure for receiving compensation for damages to the surface of land dedicated to the permanent school fund.
- (c) Money collected for surface damages shall be deposited in a special fund account in the State Treasury to be used for conservation, reclamation, or construction of permanent improvements on land that belongs to the permanent school fund.
- (d) The special fund account must be an interest-bearing account, and the interest received on the account shall be deposited in the State Treasury to the credit of the permanent school fund.
- (e) Money collected under this section and designated for the construction of permanent improvements as provided by this section must be used not later than two years after the date on which the money is collected.

(f) Any money that remains in the special fund account for longer than two years shall be deposited in the State Treasury to the credit of the permanent school fund.

(g) The compensation for damages under this section is in addition to any bonus, rental, royalty, or other payment required by the lease.

Added by Acts 1985, 69th Leg., ch. 624, § 46, eff. Sept. 1, 1985.
Amended by Acts 1993, 73rd Leg., ch. 897, § 42, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 328, § 8, eff. Jan. 1, 2004.

SUBCHAPTER I. GEOPHYSICAL AND GEOCHEMICAL EXPLORATION PERMIT

52.321. DEFINITIONS.

In this subchapter:

- (1) "Geophysical exploration" means a survey or investigation conducted to discover or locate oil and gas prospects using magnetic, gravity, seismic, and/or electrical techniques.
- (2) "Geochemical exploration" means a survey or investigation conducted to discover or locate oil and gas prospects using techniques involving soil sampling and analysis.
- (3) "Public school land" means land dedicated by the constitution or laws of this state to the permanent free school fund, and specifically includes land with a mineral classification under Subchapter F of this chapter in which the state has retained the oil and gas interest and areas within tidewater limits.
- (4) "Areas within tidewater limits" means islands, saltwater lakes, bays, inlets, marshes, and reefs within tidewater limits and that portion of the Gulf of Mexico within the jurisdiction of Texas.
- (5) "Permit" means a license issued by the commissioner authorizing geophysical and/or geochemical exploration on public school land.
- (6) "Permittee" means the holder of a permit.

Added by Acts 1981, 67th Leg., p. 2451, ch. 631, § 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 624, § 47, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 897, § 43, eff. Sept. 1, 1993.

52.322. PERMIT REQUIRED FOR EXPLORATION.

- (a) Except for a person who has a valid oil and gas lease on public school land authorized by this chapter, a person may not conduct geophysical or geochemical exploration on public school land unless the person obtains a permit from the commissioner.
- (b) Every person who is authorized to conduct a geophysical or geochemical exploration on public school land shall comply with the commissioner's rules relating to such exploration. Any person with a valid oil and gas lease on land subject to this chapter must comply with the commissioner's rules concerning exploration.
- (c) Nothing in this title shall prohibit the conduct of airborne geophysical exploration.

Added by Acts 1981, 67th Leg., p. 2451, ch. 631, § 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 624, § 47, eff. Sept. 1, 1985.

52.323. APPLICATION FOR PERMIT.

- (a) The person responsible for conducting a geophysical or geochemical exploration is the person who must apply for a permit.
- (b) An application for a permit shall be made on a form prescribed by the commissioner and shall state the name and address of each person for whom the exploration is being conducted as well as any other information required by the commissioner.

Added by Acts 1981, 67th Leg., p. 2451, ch. 631, § 1, eff. Sept. 1, 1981.

52.324. AUTHORITY OF COMMISSIONER.

- (a) The commissioner:
 - (1) as a condition of issuing a permit, shall collect reasonable fees from the applicant in an amount determined by the commissioner;
 - (2) may require a permittee to furnish to the commissioner, upon the commissioner's request, copies of maps, plats, reports, data, and any other information in the possession of the permittee that relates to the progress or results of an exploration under a permit; provided however, the commissioner shall not require a permittee to furnish any of its interpretive data;
 - (3) shall by rule require a permittee to restore land explored under the permit as nearly as is practicable to its condition immediately prior to the exploration;

- (4) shall by rule determine the procedure for receiving compensation for damages to the surface of public school land except land with a mineral classification under Subchapter F of this chapter; and
 - (5) may make any other rules relating to geophysical or geochemical explorations, permits, or permittees the commissioner considers appropriate.
- (b) Money collected for surface damages shall be deposited and used in the manner provided by Section 52.297 of this chapter.
 - (c) In the case of areas within tidewater limits, the commissioner shall follow the recommendations of the Parks and Wildlife Department in making rules to prevent unnecessary pollution of water, destruction of fish, oysters, and other marine life, and obstruction of navigation.
 - (d) If a permittee violates a rule of the commissioner or a term of a permit, the commissioner may cancel the permit.
 - (e) If by authority of Subsection (a)(2) of this section the commissioner acquires information concerning a permittee's geophysical or geochemical exploration, the commissioner shall consider the information to be confidential and may not disclose it, except by authority of a court order, to the public or any other agency of this state.

Added by Acts 1981, 67th Leg., p. 2451, ch. 631, § 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 624, § 47, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 897, § 44, eff. Sept. 1, 1993.

52.325. PERMITTEE'S FAILURE TO COMPLY.

- (a) If a permittee fails to restore land in accordance with Section 52.324(a)(3) of this code and the rules of the commissioner, the commissioner and any surface lessee may maintain an action against the permittee for actual damages to the land, or to the improvements, growing crops, or domesticated animals on the land that were caused by the geophysical or geochemical exploration.
- (b) If a permittee violates this subchapter, the provisions of a permit issued by authority of this subchapter, or a rule of the commissioner, the permittee commits an offense. An offense under this subsection is a misdemeanor punishable by a fine of not less than \$100 nor more than \$1,000. Each day that a violation occurs is a separate offense.

Added by Acts 1981, 67th Leg., p. 2451, ch. 631, § 1, eff. Sept. 1, 1981.