

Amend CSSB 3 (House Committee Substitute Version) as follows:

(1) Delete beginning at line 1, page 54, through line 22, page 56, and insert the following:

SUBCHAPTER L. SURFACE WATER FEES.

Sec. 11.601. SURCHARGE ON SURFACE WATER IMPOUNDED IN A RESERVOIR. (a) The holder of a permit to impound surface water in a reservoir subject to Section 16.143, Water Code shall submit to the commission on an annual basis a surcharge fee equal to the ad valorem tax rate of each political subdivision that assessed ad valorem taxes on property within the reservoir site multiplied by each acre-foot of surface water the permit authorizes be impounded.

(b) Not later than 90 days after the surcharge is submitted under Subsection (a), the commission shall appropriate the surcharge to the political subdivisions that assessed ad valorem taxes on the property located within the reservoir site based upon the proportion of the total ad valorem tax revenue collected by the political subdivisions before the property was acquired to construct the reservoir.

(c) The commission may assess the permit holder a fee in an amount necessary to administer this section.

Sec. 11.602. ROYALTY FEE ON SURFACE WATER IMPOUNDED IN A RESERVOIR. (a) The holder of a permit to impound surface water in a reservoir subject to Section 16.143, Water Code shall submit on an annual basis to the commission a royalty fee equal to 10% of the total net revenue earned by the permit holder for the sale or lease of the water authorized to be impounded under the permit.

(b) Not later than 90 days after the royalty fee is submitted under Subsection (a), the fee shall be appropriated by the commission to the property owners listed in Section 16.143(a)(3) based upon the number of acres the property owner had purchased or taken for the construction of the reservoir.

(c) The commission may assess the permit holder a fee in an amount necessary to administer this section.

SECTION 2A.02. Subchapter E, Chapter 16, Water Code is amended by adding Sections 16.143 through 16.147 to read as follows:

Sec. 16.143. INTENT TO CONSTRUCT A RESERVOIR. (a) No later

than two years after a proposed reservoir site is approved in the state water plan, or designated by the legislature under Sec. 16.051(f) of this chapter, an agency, political subdivision, person, or entity must submit to the board:

(1) a letter of intent to construct the proposed or designated reservoir;

(2) a metes and bounds description of the area that is included in the reservoir site;

(3) a list of all the property owners with an estate within the area of the proposed reservoir;

(4) a drought contingency plan and water conservation plan based on specific targets and goals using appropriate best management practices that will be implemented by each retail public water utility that provides potable water service to a population of 3,300 or more that may receive water from the proposed reservoir; and

(5) evidence of the ability to finance the purchase of development rights from the property owners with an estate within the area of the proposed reservoir under Section 16.144 of this chapter.

(b) If the board does not receive the items required to be submitted under Subsection (a) within two years of the approval of the reservoir site in the state water plan, the board shall remove the reservoir site from the state water plan.

(c) If the board does not receive the items required to be submitted under Subsection (a) within two years of the designation of the site under Sec. 16.051(f) of this chapter, the designation of the site is repealed, and Sec. 16.051(f) of this chapter no longer applies to the site.

(d) The board shall provide notice to each municipality and county commissioners court within the area of the proposed reservoir of the items submitted under Subsection (a).

(e) The board shall promulgate any rules necessary to implement this section.

Sec. 16.144. PURCHASE OF DEVELOPMENT RIGHTS FOR RESERVOIR SITE. (a) Within four years of submitting the items required under Section 16.143(a), an agency, political subdivision, person, or

entity that submitted the items required under Section 16.143(a) shall make a bona fide good faith effort to negotiate a purchase of development rights agreement with every property owner with an estate within the area of the proposed reservoir. Eminent domain may not be used to purchase development rights under this section.

(b) The purchase of developments rights agreement under Subsection (a) shall:

(1) allow the property owner to continue with the existing use of the property;

(2) allow improvements that will not change the primary existing use of the property; and

(3) for property in agricultural use, be held and administered by an agricultural land trust originally chartered in the state and organized solely to protect property for agricultural use.

(c) The agency, political subdivision, person, or entity required to purchase development rights under this section shall provide the agricultural land trust holding the agreement under Subsection (b) (3) with the funds to necessary to administer the agreement.

(d) No later than thirty days after the purchase of development rights was to be completed under Subsection (a), the agency, political subdivision, person, or entity that is required to purchase development rights under Subsection (a) shall submit a list to the board of the development rights purchased, and the property owners that refused to sell the development rights of their estate. If a property owner of an estate within the reservoir site refused to sell their development rights, the agency, political subdivision, person, or entity shall provide the board with proof that a bona fide good faith effort was made to voluntarily purchase the development rights.

(e) If the commissioners court in the county where the land is located finds after conducting a hearing (that shall be held by the commissioners court on petition of any owner of an interest in the property filed with the commissioners court at any time after the fourth anniversary of the date on which the filing with the board required by Section 16.143(a) is made) at which the landowner

is entitled to appear and present evidence, that an agency, political subdivision, person, or entity required to purchase development rights under Subsection (a) did not make a bona fide good faith effort to purchase the development rights of every property owner with an estate within the area of the proposed reservoir:

(1) the board shall remove the proposed reservoir from the approved state water plan; and

(2) if the reservoir site was designated under Section 16.051 (f), the designation of the site is repealed, and Sec. 16.051(f) of this chapter no longer applies to the site.

(f) If the agency, political subdivision, person, or entity that was required to purchase development rights under this section ceases the process of constructing the reservoir, the reservoir no longer is designated as a unique reservoir site under Section 16.144 of this chapter, or the reservoir site is removed from the state water plan under Section 16.144 of this chapter the purchase of development rights agreement required under this section is void and the property owner has no obligation to comply with its provisions.

(g) "Purchase of Development Rights Agreement" means purchasing a nonpossessory interest of a holder in property that imposes limitations or affirmative obligations designed to retain its existing use.

(h) "Agricultural value" and "Fair market value" have the same meaning under Section 183.056, Natural Resources Code. The minimum amount that may be paid to purchase development rights under this section is the difference between the agricultural value and the fair market value of the property.

(i) The agency, political subdivision, person, or entity required to purchase development rights under Subsection (a) shall pay the reasonable attorneys and expert fees incurred by the property owner in connection with any purchase of development rights and any hearing required pursuant to this section.

Sec. 16.145. POWER OF EMINENT DOMAIN; LEASE-BACK OPTION.

(a) The use of eminent domain to acquire property for a reservoir is subject to Section 21.0122, Property Code.

(b) A property owner of an estate that was acquired, voluntarily or with eminent domain, for a reservoir shall be offered a reasonable lease agreement that will allow the property owner to utilize the property for its existing use until physical construction of the reservoir commences.

Sec. 16.146. ENVIRONMENTAL MITIGATION. (a) If authorized by the applicable regulatory authority, the agency, political subdivision, person, or entity constructing a reservoir shall enter into a purchase of development rights agreement instead of acquiring or managing property for the mitigation of a past, present, or future adverse environmental effect arising from construction or operation of any part of the reservoir or its related facilities.

(b) Development rights purchased on agricultural property under this section shall be held and administered by an agricultural land trust originally chartered in the state and organized solely to protect property for agricultural use.

Sec. 16.147. ELIGIBILITY TO PARTICIPATE IN GOVERNMENT PROGRAMS. Property located within the area of a reservoir site designated under 16.051 shall be eligible for any public program which does not change the primary existing use of the property. State agencies and political subdivisions may not consider the inclusion of the property within a designated unique reservoir site when determining the property's eligibility to participate in a public program whose term is not longer than the period before physical construction of the reservoir will begin.

SECTION 2A.03. Chapter 21, Property Code is amended by adding a new Section 21.0122 to read as follows:

Sec. 21.0122. CONDEMNATION TO ACQUIRE PROPERTY FOR A RESERVOIR AND RELATED FACILITIES. (a) In addition to the contents prescribed by Section 21.012(b), a condemnation petition filed for the purpose of acquiring property for a reservoir, including related facilities necessary to manage, store, divert, or transport water impounded by the reservoir, must state that the facts to be proven are:

(1) that each retail public water utility that provides potable water service to a population of 3,300 or more that

may receive water from the proposed reservoir prepared a drought contingency plan;

(2) that each retail public water utility that provides potable water service to a population of 3,300 or more that may receive water from the proposed reservoir developed and implemented a water conservation plan based on specific targets and goals using appropriate best management practices that will result in the highest practicable levels of water conservation and efficiency achievable in the utility's jurisdiction;

(3) that the condemnor made a bona fide good faith effort to obtain practicable alternative water supplies to the reservoir;

(4) that the condemnor made a bona fide good faith effort to acquire the property by voluntary purchase or lease; and

(5) that the reservoir is included in the approved state water plan.

(b) A court shall deny the right to condemn unless the political subdivision proves to the court that the political subdivision has met the requirements of Subsection (a).

SECTION 2A.04. Chapter 21, Property Code is amended by adding Section 21.0422 to read as follows:

Sec. 21.0422. ASSESSMENT OF DAMAGES: PROPERTY CONDEMNED FOR A RESERVOIR AND RELATED FACILITIES. (a) In a condemnation proceeding initiated to acquire property under Section 21.0122, the special commissioners or court shall admit and consider evidence relating to each injury and loss, if any, to the property owner that a reasonably prudent person would consider in a negotiated transaction that is not subject to this chapter.

(b) If the property to be condemned under Section 21.0122 is agricultural property subject to a purchase of development rights agreement acquired under Section 16.145, Water Code, the minimum damages awarded shall be the difference between the agricultural value and fair market of the property when the petition to condemn the property was submitted to the court.

SECTION 2A.05. Chapter 21, Property Code is amended by adding Section 21.0471 to read as follows:

Sec. 21.0471. ASSESSMENT OF FEES: CONDEMNATION OF PROPERTY

FOR A RESERVOIR. If a court hearing a suit under Section 21.0122 finds that the damages awarded by the special commissioners or the court exceeds the damages a condemnor offered to the property owner before the proceeding began, the court shall order the condemnor to pay any reasonable attorney and expert fees incurred by the owner.