

By: Cook of Colorado

H.B. No. 2470

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the construction of reservoirs and assessing fees on
3 water impounded in a reservoir.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Chapter 11, Water Code is amended by adding
6 Subchapter K to read as follows:

7 SUBCHAPTER K. SURFACE WATER FEES.

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

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

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

24 Sec. 11.602. ROYALTY FEE ON SURFACE WATER IMPOUNDED IN A

1 RESERVOIR. (a) The holder of a permit to impound surface water in a
2 reservoir subject to Section 16.143, Water Code shall submit on an
3 annual basis to the commission a royalty fee equal to 10% of the
4 total net revenue earned by the permit holder for the sale or lease
5 of the water authorized to be impounded under the permit.

6 (b) Not later than 90 days after the royalty fee is
7 submitted under Subsection (a), the fee shall be appropriated by
8 the commission to the property owners listed in Section
9 16.143(a)(3) based upon the number of acres the property owner had
10 purchased or taken for the construction of the reservoir.

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

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

15 Sec. 16.143. INTENT TO CONSTRUCT A RESERVOIR. (a) No later
16 than two years after a proposed reservoir site is approved in the
17 state water plan, or designated by the legislature under Sec.
18 16.051(f) of this chapter, an agency, political subdivision,
19 person, or entity must submit to the board:

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

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

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

26 (4) a drought contingency plan and water conservation
27 plan based on specific targets and goals using appropriate best

1 management practices that will be implemented by each retail public
2 water utility that provides potable water service to a population
3 of 3,300 or more that may receive water from the proposed reservoir;
4 and

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

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

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

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

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

23 Sec. 16.144. PURCHASE OF DEVELOPMENT RIGHTS FOR RESERVOIR
24 SITE. (a) Within four years of submitting the items required under
25 Section 16.143(a), an agency, political subdivision, person, or
26 entity that submitted the items required under Section 16.143(a)
27 shall make a bona fide good faith effort to negotiate a purchase of

1 development rights agreement with every property owner with an
2 estate within the area of the proposed reservoir. Eminent domain
3 may not be used to purchase development rights under this section.

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

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

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

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

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

19 (d) No later than thirty days after the purchase of
20 development rights was to be completed under Subsection (a), the
21 agency, political subdivision, person, or entity that is required
22 to purchase development rights under Subsection (a) shall submit a
23 list to the board of the development rights purchased, and the
24 property owners that refused to sell the development rights of
25 their estate. If a property owner of an estate within the reservoir
26 site refused to sell their development rights, the agency,
27 political subdivision, person, or entity shall provide the board

1 with proof that a bona fide good faith effort was made to
2 voluntarily purchase the development rights.

3 (e) If the board finds that an agency, political
4 subdivision, person, or entity required to purchase development
5 rights under Subsection (a) did not make a bona fide good faith
6 effort to purchase the development rights of every property owner
7 with an estate within the area of the proposed reservoir:

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

10 (2) if the reservoir site was designated under Section
11 16.051 (f), the designation of the site is repealed, and Sec.
12 16.051(f) of this chapter no longer applies to the site.

13 (f) If the agency, political subdivision, person, or entity
14 that was required to purchase development rights under this section
15 ceases the process of constructing the reservoir, the reservoir no
16 longer is designated as a unique reservoir site under Section
17 16.144 of this chapter, or the reservoir site is removed from the
18 state water plan under Section 16.144 of this chapter the purchase
19 of development rights agreement required under this section is void
20 and the property owner has no obligation to comply with its
21 provisions.

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

26 (h) "Agricultural value" and "Fair market value" have the
27 same meaning under Section 183.056, Natural Resources Code. The

1 minimum amount that may be paid to purchase development rights
2 under this section is the difference between the agricultural value
3 and the fair market value of the property.

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

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

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

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

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

24 Sec. 16.147. ELIGIBILITY TO PARTICIPATE IN GOVERNMENT
25 PROGRAMS. Property located within the area of a reservoir site
26 designated under 16.051 shall be eligible for any public program
27 which does not change the primary existing use of the property.

1 State agencies and political subdivisions may not consider the
2 inclusion of the property within a designated unique reservoir site
3 when determining the property's eligibility to participate in a
4 public program whose term is not longer than the period before
5 physical construction of the reservoir will begin.

6 SECTION 3.01. Chapter 21, Property Code is amended by
7 adding a new Section 21.0122 to read as follows:

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

15 (1) that each retail public water utility that
16 provides potable water service to a population of 3,300 or more that
17 may receive water from the proposed reservoir prepared a drought
18 contingency plan;

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

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

1 reservoir;

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

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

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

9 SECTION 3.02. Chapter 21, Property Code is amended by
10 adding Section 21.0422 to read as follows:

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

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

24 SECTION 3.03. Chapter 21, Property Code is amended by
25 adding Section 21.0471 to read as follows:

26 Sec. 21.0471. ASSESSMENT OF FEES: CONDEMNATION OF PROPERTY
27 FOR A RESERVOIR. If a court hearing a suit under Section 21.0122

1 finds that the damages awarded by the special commissioners or the
2 court exceeds the damages a condemnor offered to the property owner
3 before the proceeding began, the court shall order the condemnor to
4 pay any reasonable attorney and expert fees incurred by the owner.

5 SECTION 4. This Act takes effect immediately if it receives
6 a vote of two-thirds of all the members elected to each house, as
7 provided by Section 39, Article III, Texas Constitution. If this
8 Act does not receive the vote necessary for immediate effect, this
9 Act takes effect September 1, 2007.