

By: Estes

S.B. No. 1326

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the sale by the Brazos River Authority of certain
3 residential and commercial lots in the immediate vicinity of Possum
4 Kingdom Lake to leaseholders of those lots.

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

6 SECTION 1. Chapter 221, Water Code, is amended by adding
7 Section 221.020 to read as follows:

8 Sec. 221.020. SALE OF LOTS SUBJECT TO RESIDENTIAL AND
9 COMMERCIAL LEASES. (a) In this section:

10 (1) "1980 FERC Order Amending License" means the
11 modifying order issued by the Federal Energy Regulatory Commission
12 in 1980 that removed from the project land the lots that were leased
13 by the authority to residential and commercial leaseholders.

14 (2) "Buffer zone" means the strip of land abutting the
15 lake as identified and defined in the FERC order.

16 (3) "Commercial leaseholder" means a person who, on or
17 before the effective date of the Act enacting this section, leases a
18 lot in the immediate vicinity of the lake from the authority to
19 sublet for predominantly residential purposes, including a lot:

20 (A) subject to a lease that commenced on or
21 before January 1, 1983;

22 (B) located on an island surrounded by water; and

23 (C) on which residential and other improvements
24 have been constructed.

1 (4) "FERC order" means the order of the Federal Energy
2 Regulatory Commission issuing a license to the authority for
3 project number 1490-003-Texas.

4 (5) "Lake" means Possum Kingdom Lake.

5 (6) "Project land" means the land identified and
6 defined by the FERC order. Except as provided by this section,
7 project land does not include the lots offered for sale under this
8 section to residential and commercial leaseholders.

9 (7) "Residential leaseholder" means a person who, on
10 or before the effective date of the Act enacting this section,
11 leases a lot in the immediate vicinity of the lake from the
12 authority for residential purposes. The term does not include a
13 person who temporarily leases project land.

14 (b) A leaseholder may purchase the leased lot as provided by
15 this section.

16 (c) Not later than the 90th day after the effective date of
17 the Act enacting this section, the authority shall provide to
18 residential and commercial leaseholders a form for an application
19 of intent to purchase the lot subject to the leaseholder's lease. A
20 leaseholder who desires to purchase a lot must submit to the
21 authority a completed application that includes the appraisal
22 required under Subsection (d) and the survey required under
23 Subsection (e). Until February 1, 2008, the authority shall give
24 preference in processing applications to any applicant who receives
25 an ad valorem tax exemption under Section 11.13, Tax Code, for a
26 structure on the applicant's lot. The authority shall accept and
27 process applications in the order in which they are received.

1 (d) Before September 1, 2017, a lot sold under this section
2 must be sold for not less than the fair market value of the
3 unencumbered fee simple estate with an offset of 10 percent for the
4 value of the leasehold interest. On or after September 1, 2017, a
5 lot sold under this section must be sold for not less than the fair
6 market value of the unencumbered fee simple estate. The purchaser
7 shall select a disinterested appraiser certified under Chapter
8 1103, Occupations Code, to determine the fair market value as of
9 January 1 of the year in which the application of intent to purchase
10 is submitted to the authority. The appraiser shall complete the
11 appraisal and send the completed appraisal to the prospective
12 purchaser not later than the 60th day after the date of the
13 appraiser's selection. If an appraisal is disputed, the General
14 Land Office shall review the appraisal for compliance with the most
15 recently published Uniform Standards of Professional Appraisal
16 Practice and for mathematical accuracy. If the authority disputes
17 the fair market value determined by the appraisal, the authority
18 may employ another disinterested appraiser who satisfies the
19 requirements of this subsection to conduct a second appraisal. The
20 second appraisal must be completed and sent to the authority and to
21 the prospective purchaser not later than the 60th day after the date
22 the authority rejects the initial appraisal. If the purchaser
23 rejects the value determined by the second appraiser, the two
24 appraisers shall meet and attempt to reach an agreement on the fair
25 market value not later than the 30th day after the date the
26 purchaser receives the authority's appraisal. If the two
27 appraisers fail to reach agreement on or before the 10th day after

1 the date of the meeting, not later than the 20th day after the date
2 of the meeting the authority shall request that the comptroller
3 appoint a disinterested third appraiser who satisfies the
4 requirements of this subsection to reconcile the two previous
5 appraisals. The third appraiser's report must be completed on or
6 before the 30th day after the date of the third appraiser's
7 appointment, and the fair market value determined by the third
8 appraiser is final and binding on all parties. The appraisal costs
9 must be paid by the person who requests the appraisal, except that
10 the purchaser and the authority shall each pay one-half of the cost
11 of the third appraisal if a third appraisal is necessary. An
12 appraisal may not include consideration of a freeze or other
13 suspension of lease rate increases for the homestead of a person who
14 is 65 years of age or older and may not take into account the value
15 of any improvements constructed on the lot or over the water that
16 are the property of the prospective purchaser. If the closing of
17 the sale of the lot does not occur on or before the 60th day after
18 the date on which the fair market value is agreed to or is
19 determined by the third appraiser, the application of intent to
20 purchase is terminated.

21 (e) A prospective purchaser of a lot is responsible for:

22 (1) a survey of the lot that:

23 (A) is prepared by a licensed state land surveyor
24 or a registered professional land surveyor;

25 (B) is dated not earlier than the date one year
26 before the effective date of the Act enacting this section, except
27 that a survey dated before that date is considered acceptable if

1 accompanied by an affidavit signed by the leaseholder stating facts
2 that indicate that:

3 (i) improvements have not been made to the
4 property that would change the submitted survey; and

5 (ii) the survey would be acceptable to a
6 title company for purposes of issuing a policy of title insurance;
7 and

8 (C) includes a depiction of the lot that shows
9 the 1,000-foot contour line, project land as it crosses the
10 property, property boundaries, structures on the property, and any
11 roads that cross the property;

12 (2) all reasonable, normal, customary, and documented
13 closing costs associated with the sale of the lot; and

14 (3) if applicable, reasonable and necessary costs
15 incurred and documented by the authority for Federal Energy
16 Regulatory Commission approval of the sale of the lot to be
17 purchased under this section.

18 (f) A lease in effect on the date an application of intent to
19 purchase a lot is submitted under Subsection (c) remains in effect
20 until the sale of the lot is completed or terminated. A lease of the
21 lot expires on the date the sale of the lot is completed.

22 (g) If a leaseholder decides not to purchase the lot, the
23 leaseholder shall submit a purchase application form waiver and
24 indicate on the form that the leaseholder wishes to continue
25 leasing the lot and to affirm the understanding that the right of a
26 prospective purchaser, transferee, heir, or devisee to purchase the
27 lot must be exercised on transfer of the property to any party not

1 subject to the lease existing on the date of the purchase
2 application form waiver. If the leaseholder of record is a
3 partnership, family trust, or other legal entity other than an
4 individual, the right to purchase a lot must be exercised on a
5 change in the majority ownership of the entity. The waiver shall be
6 memorialized in a written affirmation signed by all parties to the
7 existing lease, or any subsequent lease, and appended as an
8 amendment to the lease. If a leaseholder submits a waiver under
9 this subsection, on the sale of the lot, the fair market value of
10 the lot must be determined as of January 1 of the year in which the
11 property is sold or transferred.

12 (h) A lot sold under this section is subject to all existing
13 restrictions, including any applicable easements, placed on the lot
14 by the Federal Energy Regulatory Commission under the FERC order,
15 if any, but does not include the terms of the existing lease except
16 as provided by this section.

17 (i) A residential lot sold under this section may be used
18 only for a single-family residential structure and related
19 facilities and only for normal residential, noncommercial,
20 recreational use and enjoyment.

21 (j) If applicable, a commercial leaseholder that purchases
22 a lot and sublets the lot for residential use shall comply with
23 Section 94.204, Property Code. A lot subject to a commercial lease
24 that is purchased under this section must continue to be used for
25 the purpose in effect at the time of the purchase unless the lot is
26 subdivided for single-family residential use.

27 (k) The sale of a lot under this section does not include any

1 buffer zone that abuts the lot and is part of the project land.
2 Subject to approval by the Federal Energy Regulatory Commission,
3 the authority shall grant a person who purchases a lot an easement
4 for use of the buffer zone that abuts the lot. The authority shall
5 retain ownership of the buffer zone and exercise control over the
6 buffer zone consistent with the FERC order. An easement granted to
7 a purchaser must be limited to uses permitted under the terms of the
8 FERC order and the authority's shoreline management plan and must
9 be consistent with the use allowed since the implementation of the
10 buffer zone.

11 (l) Except as provided by this subsection, the owner of a
12 lot sold under this section shall pay the authority any reasonable
13 fees set by the authority for any services the authority provides.
14 The board shall set the fees annually when it adopts the operating
15 budget for the authority. The owner of a lot is not obligated to
16 accept or pay for services from the authority that are provided by
17 another public or private entity.

18 (m) If an existing road on land owned by the authority
19 connects a county road to a lot sold under this section, the
20 authority may not deny a person access to that road. The authority
21 does not have a duty to maintain any road.

22 (n) A purchaser of a lot under this section shall comply
23 with:

24 (1) the authority's "Shoreline Management Plan and
25 Customer Guide," and any amendments to that document to the extent
26 the plan applies to the buffer zone and any other land retained by
27 the authority;

1 (2) the applicable rules, regulations, and orders of
2 the Federal Energy Regulatory Commission;

3 (3) the authority's "Regulations for Governance for
4 Brazos River Authority Lakes and Associated Lands," as published on
5 the authority's Internet website; and

6 (4) other rules and regulations adopted by the
7 authority regarding conduct on and use of the lake or land owned by
8 the authority.

9 (o) To maintain the quality of the lake's water and of the
10 environment in the lake's vicinity, a person who purchases a lot
11 under this section agrees to:

12 (1) obtain the written consent of the authority before
13 altering the natural drainage of the terrain within the project
14 land or buffer zone;

15 (2) comply with any local, state, or federal laws
16 related to water quality or the environment, including laws
17 governing toxic wastes and hazardous substances;

18 (3) pay the cost of obtaining any Federal Energy
19 Regulatory Commission approvals required for improvements not
20 present on the lot on the date sold that are the property of the
21 purchaser and on project land; and

22 (4) connect to and use, at the lot owner's expense, any
23 wastewater treatment system that becomes available to lot owners
24 and lessees, not later than 24 months after the system becomes
25 available.

26 (p) A leaseholder who purchases a lot under this section may
27 not remove or disturb, or cause or permit to be removed or

1 disturbed, any historical, archaeological, architectural, or other
2 cultural artifact, relic, remains, or object of antiquity. If such
3 an item is discovered on the lot, the lot owner shall immediately
4 notify the authority and protect the site and the item from further
5 disturbance until the authority gives written clearance to proceed.

6 (q) A leaseholder who purchases a lot under this section
7 agrees that the water level in the lake varies and that the
8 authority is not responsible for keeping the lake full.

9 (r) The authority reserves the right to modify Morris
10 Sheppard (Possum Kingdom) Dam so that the water surface elevation
11 of the lake is raised from 1,000 feet above mean sea level to 1,015
12 feet above mean sea level. The authority is not responsible or
13 liable for any personal injury or damage to a lot or improvements on
14 the lot caused by the resultant increase in the water level or
15 caused by natural flooding.

16 (s) The authority reserves the right of ingress and egress
17 for a person authorized by the authority, including an authority
18 agent or employee, over and across a lot purchased under this
19 section for all reasonable purposes of the authority, including the
20 construction of any roads, drainage facilities, and power, water,
21 gas, and other utility mains and lines that the authority considers
22 necessary. The authority agrees to repair, or compensate the lot
23 owner for, any damage it causes under this subsection and to
24 compensate the lot owner for any property it takes under this
25 subsection.

26 (t) The authority reserves its interest in all oil, gas, and
27 other minerals in and under the real property sold under this

1 section.

2 (u) The authority shall use a portion of the proceeds from
3 the sale of a lot under this section to bring to fruition plans for
4 the development and operation of a public use campground, including
5 sites to accommodate large recreational vehicles, within a park in
6 close proximity to the east side of the lake. The park must
7 preserve the area's natural landscape, be named in honor of John
8 Graves, and serve as a gateway to the John Graves Scenic Riverway
9 section of the Brazos River downstream from the lake. The remainder
10 of the proceeds may be used for any authority purpose.

11 (v) If the owner of a lot sold under this section does not
12 comply with this section, the authority may seek any available
13 legal remedy.

14 (w) The following laws do not apply to the sale of a lot
15 under this section:

16 (1) Chapters 232 and 272, Local Government Code;

17 (2) Section 49.226, Water Code; and

18 (3) Section 221.013, Water Code.

19 (x) In the event of a dispute arising under this section
20 between the authority and a person who purchases a lot under this
21 section, the prevailing party is entitled to recover court costs
22 and any reasonable attorney's fees.

23 (y) A provision that applies to the purchaser of a lot under
24 this section applies to any subsequent owner of the lot.

25 SECTION 2. Section 221.020, Water Code, as added by this
26 Act, prevails to the extent that it conflicts with any other state
27 law.

1 SECTION 3. This Act takes effect immediately if it receives
2 a vote of two-thirds of all the members elected to each house, as
3 provided by Section 39, Article III, Texas Constitution. If this
4 Act does not receive the vote necessary for immediate effect, this
5 Act takes effect September 1, 2007.