

1-1 By: Estes S.B. No. 1326  
1-2 (In the Senate - Filed March 7, 2007; March 19, 2007, read  
1-3 first time and referred to Committee on Natural Resources;  
1-4 April 26, 2007, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 8, Nays 1, 2 present not  
1-6 voting; April 26, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1326 By: Estes

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the sale by the Brazos River Authority of certain  
1-11 residential and commercial lots in the immediate vicinity of Possum  
1-12 Kingdom Lake to leaseholders of those lots.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Chapter 221, Water Code, is amended by adding  
1-15 Section 221.020 to read as follows:

1-16 Sec. 221.020. SALE OF LOTS SUBJECT TO RESIDENTIAL AND  
1-17 COMMERCIAL LEASES. (a) In this section:

1-18 (1) "1980 FERC Order Amending License" means the  
1-19 modifying order issued by the Federal Energy Regulatory Commission  
1-20 in 1980 that removed from the project land the lots that were leased  
1-21 by the authority to residential and commercial leaseholders.

1-22 (2) "Buffer zone" means the strip of land abutting the  
1-23 lake as identified and defined in the FERC order.

1-24 (3) "Commercial leaseholder" means a person who, on or  
1-25 before the effective date of the Act enacting this section, leases a  
1-26 lot in the immediate vicinity of the lake from the authority to  
1-27 sublet for predominantly residential purposes, including a lot:

1-28 (A) subject to a lease that commenced on or  
1-29 before January 1, 1983;

1-30 (B) located on an island surrounded by water; and

1-31 (C) on which residential and other improvements  
1-32 have been constructed.

1-33 (4) "FERC order" means the order of the Federal Energy  
1-34 Regulatory Commission issuing a license to the authority for  
1-35 project number 1490-003-Texas.

1-36 (5) "Lake" means Possum Kingdom Lake.

1-37 (6) "Project land" means the land identified and  
1-38 defined by the FERC order. Except as provided by this section,  
1-39 project land does not include the lots offered for sale under this  
1-40 section to residential and commercial leaseholders.

1-41 (7) "Residential leaseholder" means a person who, on  
1-42 or before the effective date of the Act enacting this section,  
1-43 leases a lot in the immediate vicinity of the lake from the  
1-44 authority for residential purposes. The term does not include a  
1-45 person who temporarily leases project land.

1-46 (b) A leaseholder may purchase the leased lot as provided by  
1-47 this section.

1-48 (c) Not later than the 30th day after the effective date of  
1-49 the Act enacting this section, the authority shall provide to  
1-50 residential and commercial leaseholders a form for an application  
1-51 of intent to purchase the lot subject to the leaseholder's lease. A  
1-52 leaseholder who desires to purchase a lot must submit to the  
1-53 authority a completed application that includes the appraisal  
1-54 required under Subsection (d) and the survey required under  
1-55 Subsection (e). Until February 1, 2008, the authority shall give  
1-56 preference in processing applications to any applicant who receives  
1-57 an ad valorem tax exemption under Section 11.13, Tax Code, for a  
1-58 structure on the applicant's lot. The authority shall accept and  
1-59 process applications in the order in which they are received. A  
1-60 leaseholder who decides not to submit an application under this  
1-61 subsection shall submit a purchase application form waiver as  
1-62 provided by Subsection (g).

1-63 (d) A lot sold under this section must be sold for not less

2-1 than the fair market value of the land. The purchaser shall select  
 2-2 a disinterested appraiser certified under Chapter 1103,  
 2-3 Occupations Code, to determine the fair market value of the land as  
 2-4 of January 1 of the year in which the application of intent to  
 2-5 purchase is submitted to the authority. The appraiser shall  
 2-6 complete the appraisal and send the completed appraisal to the  
 2-7 prospective purchaser not later than the 60th day after the date of  
 2-8 the appraiser's selection. If the authority disputes the fair  
 2-9 market value determined by the appraisal, the authority may employ  
 2-10 another disinterested appraiser who satisfies the requirements of  
 2-11 this subsection to conduct a second appraisal. The second  
 2-12 appraisal must be completed and sent to the authority and to the  
 2-13 prospective purchaser not later than the 60th day after the date the  
 2-14 authority rejects the initial appraisal. If the purchaser rejects  
 2-15 the value determined by the second appraiser, the two appraisers  
 2-16 shall meet and attempt to reach an agreement on the fair market  
 2-17 value of the land not later than the 30th day after the date the  
 2-18 purchaser receives the authority's appraisal. If the two  
 2-19 appraisers fail to reach agreement on or before the 10th day after  
 2-20 the date of the meeting, not later than the 20th day after the date  
 2-21 of the meeting the authority shall request that the comptroller  
 2-22 appoint a disinterested third appraiser who satisfies the  
 2-23 requirements of this subsection to reconcile the two previous  
 2-24 appraisals. The fair market value as determined by the third  
 2-25 appraiser may not be more than 105 percent or less than 95 percent  
 2-26 of the average of the two previous appraisals. The third  
 2-27 appraiser's report must be completed on or before the 30th day after  
 2-28 the date of the third appraiser's appointment, and the fair market  
 2-29 value determined by the third appraiser is final and binding on all  
 2-30 parties. The appraisal costs must be paid by the person who  
 2-31 requests the appraisal, except that the purchaser and the authority  
 2-32 shall each pay one-half of the cost of the third appraisal if a  
 2-33 third appraisal is necessary. An appraisal may not include  
 2-34 consideration of a freeze or other suspension of lease rate  
 2-35 increases for the homestead of a person who is 65 years of age or  
 2-36 older and may not take into account the value of any improvements  
 2-37 constructed on the lot or over the water that are the property of  
 2-38 the prospective purchaser. If the closing of the sale of the lot  
 2-39 does not occur on or before the 60th day after the date on which the  
 2-40 fair market value is agreed to or is determined by the third  
 2-41 appraiser, the application of intent to purchase is terminated.

2-42 (e) A prospective purchaser of a lot is responsible for:

2-43 (1) a survey of the lot that:

2-44 (A) is prepared by a licensed state land surveyor  
 2-45 or a registered professional land surveyor;

2-46 (B) is dated not earlier than the date one year  
 2-47 before the effective date of the Act enacting this section, except  
 2-48 that a survey dated before that date is considered acceptable if  
 2-49 accompanied by an affidavit signed by the leaseholder stating facts  
 2-50 that indicate that:

2-51 (i) improvements have not been made to the  
 2-52 property that would change the submitted survey; and

2-53 (ii) the survey would be acceptable to a  
 2-54 title company for purposes of issuing a policy of title insurance;  
 2-55 and

2-56 (C) includes a depiction of the lot that shows  
 2-57 the 1,000-foot contour line, project land as it crosses the  
 2-58 property, property boundaries, structures on the property, and any  
 2-59 roads that cross the property;

2-60 (2) all reasonable, normal, customary, and documented  
 2-61 closing costs associated with the sale of the lot; and

2-62 (3) if applicable, reasonable and necessary costs  
 2-63 incurred and documented by the authority for Federal Energy  
 2-64 Regulatory Commission approval of the sale of the lot to be  
 2-65 purchased under this section.

2-66 (f) A lease in effect on the date an application of intent to  
 2-67 purchase a lot is submitted under Subsection (c) remains in effect  
 2-68 until the sale of the lot is completed or terminated. A lease of the  
 2-69 lot expires on the date the sale of the lot is completed.

3-1 (g) If a leaseholder decides not to purchase the lot, the  
 3-2 leaseholder shall submit a purchase application form waiver and  
 3-3 indicate on the form that the leaseholder wishes to continue  
 3-4 leasing the lot and to affirm the understanding that the right of a  
 3-5 prospective purchaser, transferee, heir, or devisee to purchase the  
 3-6 lot must be exercised on transfer of the property to any party not  
 3-7 subject to the lease existing on the date of the purchase  
 3-8 application form waiver. If the leaseholder of record is a  
 3-9 partnership, family trust, or other legal entity other than an  
 3-10 individual, the right to purchase a lot must be exercised on a  
 3-11 change in the majority ownership of the entity. The waiver shall be  
 3-12 memorialized in a written affirmation signed by all parties to the  
 3-13 existing lease, or any subsequent lease, and appended as an  
 3-14 amendment to the lease. If a leaseholder submits a waiver under  
 3-15 this subsection, on the sale of the lot, the fair market value of  
 3-16 the lot must be determined as of January 1 of the year in which the  
 3-17 property is sold or transferred.

3-18 (h) A lot sold under this section is subject to all existing  
 3-19 restrictions, including any applicable easements, placed on the lot  
 3-20 by the Federal Energy Regulatory Commission under the FERC order,  
 3-21 if any, but does not include the terms of the existing lease except  
 3-22 as provided by this section.

3-23 (i) A residential lot sold under this section may be used  
 3-24 only for a single-family residential structure and related  
 3-25 facilities and only for normal residential, noncommercial,  
 3-26 recreational use and enjoyment.

3-27 (j) If applicable, a commercial leaseholder that purchases  
 3-28 a lot and sublets the lot for residential use shall comply with  
 3-29 Section 94.204, Property Code. A lot subject to a commercial lease  
 3-30 that is purchased under this section must continue to be used for  
 3-31 the purpose in effect at the time of the purchase unless the lot is  
 3-32 subdivided for single-family residential use.

3-33 (k) The sale of a lot under this section does not include any  
 3-34 buffer zone that abuts the lot and is part of the project land.  
 3-35 Subject to approval by the Federal Energy Regulatory Commission,  
 3-36 the authority shall grant a person who purchases a lot an easement  
 3-37 for use of the buffer zone that abuts the lot. The authority shall  
 3-38 retain ownership of the buffer zone and exercise control over the  
 3-39 buffer zone consistent with the FERC order. An easement granted to  
 3-40 a purchaser must be limited to uses permitted under the terms of the  
 3-41 FERC order and the authority's shoreline management plan and must  
 3-42 be consistent with the use allowed since the implementation of the  
 3-43 buffer zone.

3-44 (l) Except as provided by this subsection, the owner of a  
 3-45 lot sold under this section shall pay the authority any reasonable  
 3-46 fees set by the authority for any services the authority provides.  
 3-47 The board shall set the fees annually when it adopts the operating  
 3-48 budget for the authority. The owner of a lot is not obligated to  
 3-49 accept or pay for services from the authority that are provided by  
 3-50 another public or private entity.

3-51 (m) If an existing road on land owned by the authority  
 3-52 connects a county road to a lot sold under this section, the  
 3-53 authority may not deny a person access to that road. The authority  
 3-54 does not have a duty to maintain any road.

3-55 (n) A purchaser of a lot under this section shall comply  
 3-56 with:

3-57 (1) the authority's "Shoreline Management Plan and  
 3-58 Customer Guide," and any amendments to that document to the extent  
 3-59 the plan applies to the buffer zone and any other land retained by  
 3-60 the authority;

3-61 (2) the applicable rules, regulations, and orders of  
 3-62 the Federal Energy Regulatory Commission;

3-63 (3) the authority's "Regulations for Governance for  
 3-64 Brazos River Authority Lakes and Associated Lands," as published on  
 3-65 the authority's Internet website; and

3-66 (4) other rules and regulations adopted by the  
 3-67 authority regarding conduct on and use of the lake or land owned by  
 3-68 the authority.

3-69 (o) To maintain the quality of the lake's water and of the

4-1 environment in the lake's vicinity, a person who purchases a lot  
 4-2 under this section agrees to:

4-3 (1) obtain the written consent of the authority before  
 4-4 altering the natural drainage of the terrain within the project  
 4-5 land or buffer zone;

4-6 (2) comply with any local, state, or federal laws  
 4-7 related to water quality or the environment, including laws  
 4-8 governing toxic wastes and hazardous substances;

4-9 (3) pay the cost of obtaining any Federal Energy  
 4-10 Regulatory Commission approvals required for improvements not  
 4-11 present on the lot on the date sold that are the property of the  
 4-12 purchaser and on project land; and

4-13 (4) connect to and use, at the lot owner's expense, any  
 4-14 wastewater treatment system that becomes available to lot owners  
 4-15 and lessees, not later than 24 months after the system becomes  
 4-16 available.

4-17 (p) A leaseholder who purchases a lot under this section may  
 4-18 not remove or disturb, or cause or permit to be removed or  
 4-19 disturbed, any historical, archaeological, architectural, or other  
 4-20 cultural artifact, relic, remains, or object of antiquity. If such  
 4-21 an item is discovered on the lot, the lot owner shall immediately  
 4-22 notify the authority and protect the site and the item from further  
 4-23 disturbance until the authority gives written clearance to proceed.

4-24 (q) A leaseholder who purchases a lot under this section  
 4-25 agrees that the water level in the lake varies and that the  
 4-26 authority is not responsible for keeping the lake full.

4-27 (r) The authority reserves the right to modify Morris  
 4-28 Sheppard (Possum Kingdom) Dam so that the water surface elevation  
 4-29 of the lake is raised from 1,000 feet above mean sea level to 1,015  
 4-30 feet above mean sea level. The authority is not responsible or  
 4-31 liable for any personal injury or damage to a lot or improvements on  
 4-32 the lot caused by the resultant increase in the water level or  
 4-33 caused by natural flooding.

4-34 (s) The authority reserves the right of ingress and egress  
 4-35 for a person authorized by the authority, including an authority  
 4-36 agent or employee, over and across a lot purchased under this  
 4-37 section for all reasonable purposes of the authority, including the  
 4-38 construction of any roads, drainage facilities, and power, water,  
 4-39 gas, and other utility mains and lines that the authority considers  
 4-40 necessary. The authority agrees to repair, or compensate the lot  
 4-41 owner for, any damage it causes under this subsection and to  
 4-42 compensate the lot owner for any property it takes under this  
 4-43 subsection.

4-44 (t) The authority reserves its interest in all oil, gas, and  
 4-45 other minerals in and under the real property sold under this  
 4-46 section.

4-47 (u) The authority may use the proceeds from the sale of a lot  
 4-48 under this section for any authority purpose.

4-49 (v) All purchases of lots under this section must be  
 4-50 completed on or before January 1, 2015.

4-51 (w) If the owner of a lot sold under this section does not  
 4-52 comply with this section, the authority may seek any available  
 4-53 legal remedy.

4-54 (x) The following laws do not apply to the sale of a lot  
 4-55 under this section:

4-56 (1) Chapters 232 and 272, Local Government Code;

4-57 (2) Section 49.226, Water Code; and

4-58 (3) Section 221.013, Water Code.

4-59 (y) In the event of a dispute arising under this section  
 4-60 between the authority and a person who purchases a lot under this  
 4-61 section, the prevailing party is entitled to recover court costs  
 4-62 and any reasonable attorney's fees.

4-63 (z) A provision that applies to the purchaser of a lot under  
 4-64 this section applies to any subsequent owner of the lot.

4-65 SECTION 2. Section 221.020, Water Code, as added by this  
 4-66 Act, prevails to the extent that it conflicts with any other state  
 4-67 law.

4-68 SECTION 3. This Act takes effect immediately if it receives  
 4-69 a vote of two-thirds of all the members elected to each house, as

5-1 provided by Section 39, Article III, Texas Constitution. If this  
5-2 Act does not receive the vote necessary for immediate effect, this  
5-3 Act takes effect September 1, 2007.

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