

By: Averitt

S.B. No. 2001

A BILL TO BE ENTITLED

AN ACT

relating to the construction and operation of reservoirs, including the assessment of a fee on the sale or lease of water impounded in a reservoir to compensate the owners of property in the reservoir site and the protection of the rights of owners or former owners of property in a reservoir site.

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

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

SUBCHAPTER L. ROYALTY FEE ON SALE OR LEASE OF IMPOUNDED SURFACE

WATER

Sec. 11.601. ACQUISITION OF PROPERTY IN RESERVOIR SITE IN EXCHANGE FOR ROYALTY FEE. The holder of a permit to impound surface water in a reservoir may, with the agreement of the owner of real property in the site of the reservoir, acquire the property in exchange for a royalty fee as provided by this subchapter.

Sec. 11.602. PROVISION OF INFORMATION AND PAYMENT OF ROYALTY FEE TO COMMISSION. The holder of a permit to impound surface water in a reservoir annually shall:

(1) notify the commission of the name and address of each person whose property the permit holder acquired to construct the reservoir under an agreement under Section 11.601 and the number of acres of real property acquired from the person under the agreement; and

1 (2) pay to the commission a royalty fee in an amount
2 equal to 10 percent of the total revenue received by the permit
3 holder for the wholesale or retail sale or lease of the water
4 authorized to be impounded under the permit multiplied by a
5 fraction the numerator of which is the total number of acres of real
6 property acquired from all persons who entered into agreements
7 under Section 11.601 and the denominator of which is the total
8 number of acres of real property in the reservoir site acquired from
9 all property owners voluntarily, including under an agreement under
10 Section 11.601, or through the exercise of the power of eminent
11 domain.

12 Sec. 11.603. ALLOCATION OF ROYALTY FEE BY COMMISSION. Not
13 later than the 90th day after the date the royalty fee is submitted
14 under Section 11.602(2), the commission shall allocate the fee to
15 each person included in the notification under Section 11.602(1) in
16 the proportion that the number of acres of real property acquired
17 from the person under an agreement under Section 11.601 bears to the
18 total number of acres of real property acquired from all persons
19 under agreements under Section 11.601.

20 Sec. 11.604. ASSESSMENT OF FEE ON PERMIT HOLDER. The
21 commission may assess a holder of a permit to impound surface water
22 in a reservoir a fee in an amount necessary to administer this
23 subchapter.

24 SECTION 2. Section 16.051, Water Code, is amended by adding
25 Subsections (i) and (j) to read as follows:

26 (i) A person may not bring a cause of action under
27 Subsection (h) for a violation of Subsection (g) if the political

1 subdivision that violated that subsection acquired the fee title or
2 easement for the purpose of:

3 (1) providing retail public utility service, other
4 than water or wastewater service, to property in the reservoir
5 site; or

6 (2) allowing an owner of property in the reservoir
7 site to improve or develop the property.

8 (j) Notwithstanding Subsection (i), a political subdivision
9 affected by an action described by Subsection (i) may bring a cause
10 of action for a violation of Subsection (g) if the political
11 subdivision has complied with Section 16.143(a).

12 SECTION 3. Subchapter E, Chapter 16, Water Code, is amended
13 by adding Sections 16.143 through 16.146 to read as follows:

14 Sec. 16.143. INTENT TO CONSTRUCT RESERVOIR; ENCUMBRANCE
15 PAYMENT. (a) Before bringing a cause of action under Section
16 16.051(h), a political subdivision must:

17 (1) file with the commission a letter of intent to
18 construct a reservoir on the site affected by the violation of
19 Section 16.051(g); and

20 (2) offer to pay each owner of real property in the
21 reservoir site an encumbrance payment.

22 (b) An owner of real property to whom an encumbrance payment
23 is offered may reject the offer.

24 (c) An encumbrance payment must be paid annually to an owner
25 of real property in the reservoir site who has accepted the offer of
26 the payment until:

27 (1) the property is acquired for the reservoir; or

1 (2) the property is no longer in the reservoir site.

2 (d) An encumbrance payment must be in an amount that is not
3 less than 2.5 times the total amount of ad valorem taxes imposed in
4 the tax year that precedes the year in which the payment is made on
5 the property for which the payment is made.

6 Sec. 16.144. OPTION TO LEASE. (a) A former owner of real
7 property that was acquired, voluntarily or through the exercise of
8 the power of eminent domain, for a reservoir is entitled to lease
9 the property from the person who acquired the property under terms
10 that allow the former owner to continue to use the property for its
11 existing use until physical construction of the reservoir begins.

12 (b) A former owner of real property used for agricultural
13 purposes is entitled to lease the property for not more than the
14 property's agricultural rental value.

15 Sec. 16.145. ENVIRONMENTAL MITIGATION. (a) If a person
16 constructing a reservoir is required to mitigate the past, present,
17 or future adverse environmental effects arising from the
18 construction or operation of the reservoir or its related
19 facilities, the person shall, if authorized by the applicable
20 regulatory authority, attempt to mitigate those effects by offering
21 to contract with and pay an amount of money to an owner of real
22 property to maintain, control, hold, restore, enhance, develop, or
23 redevelop the property instead of acquiring or managing property
24 for that purpose.

25 (b) An owner of real property may reject an offer made under
26 Subsection (a).

27 Sec. 16.146. ELIGIBILITY TO PARTICIPATE IN GOVERNMENT

1 PROGRAMS. Property located in the site of a reservoir designated
2 under Section 16.051 continues to be eligible for any public
3 program for which it was eligible before the designation. A state
4 agency or political subdivision may not consider the fact that the
5 property is included in a site that has been designated as being of
6 unique value for the construction of a reservoir when determining
7 the property's eligibility to participate in a public program whose
8 term is not longer than the period before physical construction of
9 the reservoir will begin.

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