

1-1 By: Keffer (Senate Sponsor - Estes) H.B. No. 3032
1-2 (In the Senate - Received from the House April 29, 2009;
1-3 May 6, 2009, read first time and referred to Committee on
1-4 Agriculture and Rural Affairs; May 12, 2009, reported favorably by
1-5 the following vote: Yeas 4, Nays 0; May 12, 2009, sent to
1-6 printer.)

1-7 A BILL TO BE ENTITLED
1-8 AN ACT

1-9 relating to the sale of certain property at Possum Kingdom Lake by
1-10 the Brazos River Authority.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Chapter 8502, Special District Local Laws Code,
1-13 is amended by adding Section 8502.0132 to read as follows:

1-14 Sec. 8502.0132. SALE OF CAPTIVE PROPERTY AT POSSUM KINGDOM
1-15 LAKE. (a) In this section:

1-16 (1) "Adjacent Land" means the real property owned by
1-17 the applicable Offeree that is adjacent to the applicable Captive
1-18 Property To Be Sold.

1-19 (2) "Captive Property To Be Sold" means those portions
1-20 of the following tracts of real property owned by the Authority at
1-21 the Lake that are located above the 1000' contour line, but does not
1-22 include any portion of the following tracts that is part of Project
1-23 Land or property that is leased for single-family residential
1-24 purposes as of the effective date of the Act enacting this section:

1-25 (A) two tracts of land totaling 2019.86 acres,
1-26 more or less, in Palo Pinto County, Texas, described in Brazos River
1-27 Authority Records as Tracts 8-1-93 and 9-3-9, as such Tracts are
1-28 more particularly described in an Award of Commissioners entered
1-29 June 28, 1940, in the County Court of Palo Pinto County, Texas, in
1-30 Cause No. 2539, styled Brazos River Conservation and Reclamation
1-31 District versus Orland R. Seaman, Et Al., as the same appears on
1-32 file and of record in Volume 5, Pages 414 and 419, et seq., Civil
1-33 Minutes of the County Court of Palo Pinto County, Texas; and

1-34 (B) a 2278.3 acre tract of land, more or less, in
1-35 Palo Pinto County, Texas, described in Brazos River Authority
1-36 records as Tract 11-2-46, as such tract is more particularly
1-37 described in deeds recorded at Book 181, Page 325, Book 182, Page
1-38 339, Book 183, Page 12, and Book 183, Page 16, in Palo Pinto County
1-39 Records, Palo Pinto County, Texas.

1-40 (3) "FERC License" means the order of the Federal
1-41 Energy Regulatory Commission issuing a license to the Authority for
1-42 project number 1490-003-Texas on September 8, 1989, as such license
1-43 has been renewed, extended, or amended and may be further renewed,
1-44 extended, or amended at any time and from time to time, and
1-45 including the Amendment to the original FERC license that was
1-46 issued on May 15, 1980, to the extent incorporated or referenced in
1-47 the FERC License.

1-48 (4) "Lake" means Possum Kingdom Lake located in Young,
1-49 Palo Pinto, Stephens, and Jack Counties. The boundary of the Lake is
1-50 defined by the 1000' contour line, as that contour may meander and
1-51 change over time with natural forces, including erosion and
1-52 accretion. The "1000' contour line" means the line running along
1-53 the periphery of the Lake if the surface of the Lake is at an
1-54 elevation of 1000 feet above mean sea level, as measured from the
1-55 top of the spillway crest gates of the Morris Sheppard Dam, as such
1-56 line may move and shift from time to time due to natural forces.

1-57 (5) "Offeree" means any person to whom an offer to sell
1-58 Captive Property To Be Sold is to be made under this section. To
1-59 qualify as an Offeree, a person must own in fee simple the real
1-60 property adjacent to the Captive Property To Be Sold, and be able to
1-61 provide an attorney's opinion or other satisfactory legal
1-62 documentation that such Offeree meets the qualifications of an
1-63 Offeree under this subdivision.

1-64 (6) "Project Land" means that portion of Authority

property that is subject to the FERC License, as identified and defined in the FERC License, as may be amended at any time, and from time to time, and which Project Land may move or change over time due to natural forces.

(b) Notwithstanding any other provision of this chapter, the Authority is directed to sell all Captive Property To Be Sold in accordance with the directives of this section, including the following:

(1) Within 90 days of the effective date of the Act enacting this section, the Authority shall publish a list of the parcels at the Lake that qualify as Captive Property To Be Sold and an "Application Of Intent To Purchase" form for use by the Offerees as provided by this section.

(2) Each listed parcel of Captive Property To Be Sold shall be offered for sale at its fair market value to the Offeree who owns any Adjacent Land that is adjacent to that specific parcel of Captive Property To Be Sold, and each Adjacent Land owner has the right (but not the obligation) to purchase the parcel in equal proportion among those wishing to acquire same.

(3) Any Offeree who desires to purchase Captive Property To Be Sold must, within 180 days of the inclusion of that property on the published list of Captive Property To Be Sold under Subdivision (1), submit a completed Application Of Intent To Purchase form to the Authority.

(4) If the Authority does not receive an Application Of Intent To Purchase from an Offeree within the required time, the Offeree shall be deemed to have waived any right to purchase the subject property under this section and the Authority shall have the right to retain or sell such property as directed by the board.

(5) The Authority shall accept and process all Application Of Intent To Purchase forms in the order in which they are received.

(6) Any sale of property under this section must be handled as if it were a private sale for fair market value under Section 49.226(a), Water Code.

(7) The fair market value of the Captive Property To Be Sold must be determined as follows:

(A) Within forty-five (45) days of the Authority's receipt of the Offeree's completed Application Of Intent To Purchase and an acceptable survey as provided by Subsection (d)(1), the Authority shall provide the Offeree with an appraisal of the fair market value of the Captive Property To Be Sold dated within one year of the date of the Authority's receipt of the Application Of Intent To Purchase (the "First Appraisal"). The Authority's appraiser must be an appraiser certified under Chapter 1103, Occupations Code. Within fifteen (15) days of receipt of the First Appraisal, the Offeree shall notify the Authority in writing as to whether the Offeree agrees with or disputes the fair market value set forth in the First Appraisal. If the Offeree does not dispute the fair market value as determined by the First Appraisal within such 15-day time period, then the First Appraisal shall be final and binding on all parties to establish the fair market value for the Captive Property To Be Sold.

(B) If the Offeree disputes the fair market value determined by the First Appraisal, the Offeree may withdraw its application to purchase the Captive Property To Be Sold or employ a disinterested appraiser certified under Chapter 1103, Occupations Code, to conduct a second appraisal of the fair market value of the Captive Property To Be Sold (the "Second Appraisal"). The Second Appraisal must be completed and sent to the Authority not later than the 45th day after the date the Offeree notifies the Authority that the Offeree disputes the First Appraisal. If the Authority does not receive the Second Appraisal within such 45-day time period, then the Offeree's Application Of Intent To Purchase will be deemed withdrawn.

(C) Within fifteen (15) days of receipt of the Second Appraisal, the Authority shall notify the Prospective Purchaser in writing as to whether the Authority agrees with or disputes the fair market value determined by the Second Appraisal.

If the Authority does not dispute the fair market value as determined by the Second Appraisal within this 15-day time period, then the Second Appraisal shall be final and binding on all parties to establish the purchase price for the Captive Property To Be Sold. If the Authority timely disputes the fair market value determined by the Second Appraisal, the two appraisers (or their designated agents) shall meet and attempt to reach an agreement on the fair market value of the Captive Property To Be Sold, such meeting to occur not later than the 30th day after the date the Authority notifies the Offeree that the Authority disputes the Second Appraisal.

(D) If the two appraisers reach agreement on the fair market value, within 20 days after their meeting they shall issue a report of the agreed fair market value to the Authority and to the Offeree, and this agreed fair market value shall be final and binding on all parties to establish the purchase price. If the two appraisers fail to reach agreement on or before the 20th day after the date of the meeting, then not later than the 30th day after the date of the meeting the two appraisers shall appoint a disinterested third appraiser certified under Chapter 1103, Occupations Code, to reconcile the two previous appraisals (the "Third Appraisal"). The Third Appraisal must be completed on or before the 30th day after the date of the third appraiser's appointment, and the fair market value determined by the Third Appraisal is final and binding on all parties to establish the purchase price; provided, however, the final purchase price may not be more than the fair market value determined by the First Appraisal or less than the fair market value determined by the Second Appraisal.

(E) The appraisal costs must be paid by the person who requests the appraisal, except that the Offeree and the Authority shall each pay one-half of the cost of the Third Appraisal if a Third Appraisal is necessary. If the Offeree fails to pay its share of the Third Appraisal, then the Offeree's Application Of Intent To Purchase will be deemed withdrawn.

(F) The timelines established in the appraisal process set forth in this subdivision may be extended on joint agreement of Authority and Offeree.

(c) If the Authority seeks to exempt any Captive Property To Be Sold from sale under this section as necessary for the continued operation of services at the Lake by the Authority, the Authority must designate as exempt each parcel it seeks to have exempted and provide actual notice of the exemption to any Offeree who otherwise would have been eligible to purchase that property. Any such Offeree shall have the right, but not the obligation, to challenge the exemption designation by the Authority in accordance with Subsection (e).

(d) For each parcel that an Offeree elects to purchase pursuant to this section, the Offeree shall:

(1) provide to the Authority a survey of the property that is:

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

(B) dated not earlier than the date one year before the effective date of the Act enacting this section; and

(C) acceptable to the Authority and any title company providing title insurance for the Offeree; and

(2) pay all reasonable, normal, customary, and documented closing costs associated with the sale of the property.

(e) A person who disputes the Authority's decision to exempt a specific parcel from sale under this section may file a declaratory judgment action in the district court of Travis County. If a person files such an action:

(1) any claim to governmental immunity is hereby waived for the determination of the dispute;

(2) the court shall determine all issues presented by de novo review; and

(3) the Authority shall bear the burden to establish by a preponderance of the evidence that the parcel it seeks to have

exempted from sale is necessary for the specifically authorized operation of services at the Lake.

(f) For any property sold under this section:

(1) the Authority shall provide a Special Warranty Deed that encompasses and includes all interests in the property held by the Authority, subject only to:

(A) those restrictions, covenants, and prohibitions contained in the deed of conveyance under which the Authority originally acquired title to the property, including without limitation any releases of the Authority for the inundation, overflowing, or flooding of the Lake;

(B) all encumbrances and other matters filed of record in the public records of the county in which the property is located; and

(C) any other matters or conditions that are apparent on the ground or that would be reasonably disclosed or discovered by an inspection of the property; and

(2) the Offeree shall release and agree to hold the Authority harmless from, and the Authority may not be held liable for damages, claims, costs, injuries, or any other harm to any Offeree or any other person or the Captive Property To Be Sold or any improvements on the property, caused by or arising from any temporary flooding of any portion of the Captive Property To Be Sold.

(g) Any sale of Captive Property To Be Sold pursuant to this section must allow the Authority the right to enter on the Captive Property To Be Sold and the Lake and other bodies of water, if any, located within the Captive Property To Be Sold and to cross the Adjacent Land on roads with essential equipment for all purposes reasonably necessary for the Authority to fulfill its obligations as a river authority and any obligations set forth in the FERC License, state water rights, or other governmental regulations, or that the Authority considers necessary for public safety, health, and welfare purposes. Any exercise of those rights by the Authority may be conducted only after written notice is given at least 48 hours in advance of such entry to the Offeree (except in the event of an emergency, in which case advance notice is not required, but the Authority shall provide such written notice as soon as practicable thereafter). The Authority shall use reasonable efforts to avoid interfering with the Offeree's use of the Captive Property To Be Sold and Adjacent Land and shall promptly repair any damage to the Captive Property To Be Sold and Adjacent Land caused by the Authority's entrance. Any claim to governmental immunity on behalf of the Authority is hereby waived for the recovery of any damage caused by the Authority's breach of this subsection.

(h) Any sale of a parcel of Captive Property To Be Sold pursuant to this section the total size of which is greater than 100 acres must include as a condition of sale an agreement that the purchaser of such parcel will place a conservation easement that complies with state and federal tax requirements on the property conveyed within three (3) years of the closing date for the sale of the property.

(i) Chapters 232 and 272, Local Government Code, do not apply to a sale of property under this section.

(j) The Authority may use proceeds from the sale of property under this section for any Authority purpose.

(k) The Authority shall reserve its interest in all oil, gas, and other minerals in and under the Captive Property To Be Sold (or any portion thereof) to the extent the Authority owns an interest in those minerals.

(l) To the extent of any conflict with other laws of this state, this section prevails.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

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