

By: Estes

S.B. No. 372

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) "FERC Order" means the order of the Federal Energy
11 Regulatory Commission issuing a license to the authority for
12 project number 1490-003-Texas.

13 (2) "1980 FERC Order" means that modifying order
14 signed in 1980 by FERC that, among other things, removed the
15 leasehold lots from the Project Lands.

16 (2) "Lake" means Possum Kingdom Lake.

17 (3) "Project Lands" means those lands identified and
18 defined in the 1980 FERC Order and do not include the lease lots to
19 be sold to the Residential Leaseholders and Commercial
20 Leaseholders.

21 (4) "Buffer Zone" means that strip of land abutting
22 the lake as identified and defined in the 1980 FERC Order.

23 (3) "Residential Leaseholder" means a person or entity
24 who leases a lot in the immediate vicinity of the lake from the

1 authority for residential purposes.

2 (4) "Commercial Leaseholder" means a person or entity
3 who leases a lot in the immediate vicinity of the lake from the
4 authority to produce income.

5 (b) A leaseholder may purchase the lot as provided by this
6 section.

7 (c) The authority shall make available a form for an
8 application of intent to purchase the lot within ninety days of the
9 effective date of this section. Such application shall be a deemed
10 a contract subject to the provisions set out herein. A leaseholder
11 who desires to purchase a lot must submit a completed application to
12 the authority. Until September 1, 2010, the authority may only
13 accept applications from leaseholders leasing for residential
14 purposes. Until February 1, 2010, the authority shall give
15 preference in processing applications to applicants who receive an
16 ad valorem tax exemption under Section 11.13, Tax Code, for a
17 structure on the applicants' lots. After September 1, 2010, the
18 authority may accept applications from leaseholders leasing for
19 commercial purposes. The authority shall accept and process
20 applications in the order in which they are received.

21 (d) Each lot sold under this section shall be sold for no
22 less than fair market value of the interest being acquired. Within
23 30 days of receiving an application of the intent to purchase, the
24 authority shall select a disinterested appraiser certified under
25 Chapter 1103, Occupations Code, to determine the fair market value
26 of the interest being acquired and such fair market value shall be
27 as of January 1, 2009. Such appraiser shall complete the appraisal

1 within 60 days of his selection and send the completed appraisal to
2 the authority and the prospective purchaser within such 60 day
3 period. If the prospective purchaser disputes the fair market
4 value determined by such appraisal, the prospective purchaser may
5 employ another disinterested appraiser who satisfies the
6 requirements above to conduct a second appraisal which shall be
7 completed and sent to the authority within 60 days of the date the
8 prospective purchaser receives the authority's appraisal. If the
9 authority rejects the value proffered by the second appraiser,
10 within 30 days of the date the authority receives the prospective
11 purchaser's appraisal, the two appraisers shall meet and attempt to
12 reach an agreement on the fair market value of the interest being
13 acquired. If the two appraisers fail to reach agreement within 10
14 days of the meeting, within 10 days of such impasse, the authority
15 shall request that the state comptroller of public accounts appoint
16 a disinterested third appraiser who satisfies the requirements of
17 this subsection to reconcile the two previous appraisals. The
18 determination of the value by the third appraiser may not be less
19 than the lower value or more than the higher value of the two
20 previous appraisals. The third appraiser's report must be
21 completed within 30 days of the date the dispute is submitted to him
22 and the fair market value determined by the third appraiser is final
23 and binding on all parties. Each party shall pay for his, her or its
24 respective appraisal, except that the cost of the third appraisal,
25 if necessary, shall be borne equally by the purchaser and the
26 authority. The appraisal shall not take into account the value of
27 any improvements constructed on the lot or over the water that are

1 the property of the prospective purchaser. The closing of the sale
2 shall take place within 30 days of an agreed appraisal or
3 determination of the value by the third appraiser.

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

5 (1) a survey of the lot dated not more than one year
6 before the effective date of this section and prepared by a licensed
7 state land surveyor or a registered professional land surveyor.
8 However, a survey dated more than one year before the effective date
9 of this section shall be deemed acceptable if accompanied by an
10 affidavit signed by the leaseholder stating facts that indicate no
11 improvements have been made to the property that would change the
12 submitted survey, and that such survey would be acceptable to a
13 title company for purposes of issuing any policy of title
14 insurance;

15 (2) All reasonable, normal, customary, and documented
16 closing costs associated with the sale of the lot; and

17 (3) If applicable, reasonable and necessary costs
18 incurred and documented by the authority for FERC approval of the
19 sale of the lot to be purchased under this section.

20 (f) The lease in effect as of January 1, 2009 or after shall
21 remain in effect until such transaction is completed. A lease of
22 the lot expires on the date the sale of the lot is complete.

23 (g) If an eligible leaseholder is unable or unwilling to
24 purchase the lot, the leaseholder shall submit a purchase
25 application form waiver and indicate on such form that they wish to
26 continue leasing and affirm their understanding that the obligation
27 of a prospective purchaser, transferee, heir or devisee to purchase

1 the lot through conventional financing or otherwise, must be
2 exercised upon transfer of the property to any party not subject to
3 the lease existing on the date of the purchase application form
4 waiver. Such waiver shall be memorialized in a written affirmation
5 signed by all parties to the existing lease, or any subsequent
6 lease, and appended as an amendment thereto. In the event an
7 eligible leaseholder submits a waiver under this subsection, upon
8 sale, the lease valuation date shall be January 1st of the year in
9 which the property is sold or transferred and subsection (f) above
10 shall have no applicability.

11 (h) A lot sold under this section is subject to all existing
12 restrictions, including any applicable easements, placed on the lot
13 by the Federal Energy Regulatory Commission under the FERC order,
14 if any, but does not include the terms of the existing leases unless
15 otherwise mentioned herein.

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

20 (j) If applicable, a commercial leaseholder that purchases
21 a lot and sublets said lot for residential use shall comply with
22 Section 94.204, Property Code.

23 (k) The sale of a lot under this section does not include any
24 shoreline buffer zone that abuts the lot and is part of the project
25 area covered by the FERC order. Subject to approval by the Federal
26 Energy Regulatory Commission, the authority shall grant a person or
27 entity who purchases a lot an exclusive easement for use of the

1 buffer zone that abuts the lot. The authority shall retain
2 ownership of the buffer zone and exercise control over the buffer
3 zone consistent with the FERC order. The easement granted to a
4 purchaser shall be limited to uses permitted under the terms of the
5 FERC order and the authority's shoreline management plan and shall
6 be consistent with the use allowed since the implementation of the
7 Buffer Zone.

8 (1) The owner of a lot sold under this section shall pay the
9 authority any reasonable fees set by the authority for any services
10 the authority provides and the owner desires. However, the owner of
11 a lot is under no obligation to accept or pay for services from the
12 authority that are provided by another public or private entity.

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

17 (n) A purchaser of a lot under this section shall comply
18 with:

19 (1) the authority's "Shoreline Management Plan and
20 Customer Guide," and any amendments to that document to the extent
21 such plan applies to the Buffer Zone and any other land retained by
22 the authority;

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

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

1 (4) other rules and regulations adopted by the
2 authority regarding conduct on and use of the lake or land owned by
3 the authority.

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

7 (1) obtain the written consent of the authority before
8 altering the natural drainage of the terrain within the project
9 area and buffer zone;

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

13 (3) pay the cost of obtaining any Federal Energy
14 Regulatory Commission approvals required for future improvements
15 that are the property of the purchaser and in the project area
16 covered by the FERC order; and

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

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

1 (g) A leaseholder who purchases a lot under this section
2 agrees that the water level in the lake varies and that the
3 authority is not responsible for keeping the lake full.

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

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

20 (t) The authority reserves its interest in all oil, gas, and
21 other minerals in and under the real property sold under this
22 section.

23 (u) The authority may use proceeds from the sale of a lot
24 under this section for any authority purpose.

25 (v) If a declaration of intent to purchase by a leaseholder
26 is made under this section, the purchase must be completed by
27 January 1, 2015.

1 (w) If the owner of a lot sold under this section does not
2 comply with this section, the authority may seek any available
3 legal remedy.

4 (x) The following laws do not apply to sale of a lot under
5 this section:

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

7 (2) Section 49.226, Water Code; and

8 (3) Section 221.013, Water Code.

9 (y) In the event of a dispute arising under this section
10 between the authority and a person who purchases a lot under this
11 section, the prevailing party shall recover court costs and any
12 reasonable attorney's fees and the authority expressly waives any
13 claim to governmental immunity if such a dispute arises.

14 (z) A provision that applies to the purchaser of a lot under
15 this section applies to any subsequent owner of the lot.

16 SECTION 2. If the provisions of this section conflict with
17 any other provisions of this code, then the provisions of this
18 section shall prevail, notwithstanding all such conflicting
19 provisions.

20 SECTION 3. This Act takes effect immediately if it receives
21 a vote of two-thirds of all members elected to each house, as
22 provided by Section 39, Article III, Texas Constitution. If this
23 Act does not receive the vote necessary for immediate effect, this
24 Act takes effect September 1, 2009.