

By: Estes

S.B. No. 917

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. Chapter 8502, Special District Local Laws Code, is amended by adding Section 8502.0133 to read as follows:

Sec. 8502.0133. SALE OF AUTHORITY PROPERTY ON AND ASSOCIATED WITH COSTELLO ISLAND. (a) In this section:

(1) "Boat landing" means a 0.841 acre tract of land, more or less, located above the 1000' contour line as defined in Subdivision (8), described in authority records as Tract Costello Island, situated in the A. J. Smith Survey, Abstract 393, Palo Pinto County, Texas, and being a part of a tract of land purchased by the Brazos River Conservation and Reclamation District from Mrs. Hugh C. Thomas, as recorded in Volume 182, Page 142, Deed Records of Palo Pinto County. The boat landing is located wholly within the FERC Project Area.

(2) "Date of decommissioning" means the effective date of the surrender of the FERC License for the Morris Sheppard Dam Project No. 1490-052 under the Order Accepting the Surrender of the License (issued December 23, 2011), 137 FERC 62,252.

(3) "Costello Island" means a 260 acre tract of land, more or less, located above the 1000' contour line as defined in Subdivision (8), described in authority records as Tract Costello

1 Island, situated in the J.W. Bunton Survey, Abstract 52, Palo Pinto  
2 County, Texas, and being a part of that parcel that is located  
3 wholly within the boundary of the lake, and being a part of a tract  
4 of land acquired by the Brazos River Conservation and Reclamation  
5 District from E.P. Costello by Court Judgment dated July 21, 1943.  
6 The portions of Costello Island owned by the authority are located  
7 wholly within the FERC Project Area.

8           (4) "Costello Island Property" means Costello Island  
9 and the boat landing, but does not include any portion of Costello  
10 Island owned in fee simple by a person other than the authority.

11           (5) "Fair market value" means the price that the  
12 Costello Island Property would bring in an arms-length transaction  
13 when offered for sale by one who wishes, but is not obliged, to sell  
14 and when bought by one who is under no necessity of buying it. This  
15 value shall be determined as if the Costello Island Property were  
16 not subject to the FERC License, were not located within the FERC  
17 Project Area, were not subject to any lease agreement, were  
18 available for immediate possession and use, and could be used for  
19 any reasonable purpose, subject only to the restrictions in  
20 Subsection (e).

21           (6) "FERC License" means the order of the Federal  
22 Energy Regulatory Commission issuing a license to the authority for  
23 project number 1490-003-Texas on September 8, 1989, as such license  
24 has been renewed, extended, or amended and may be further renewed,  
25 extended, or amended at any time and from time to time, and also  
26 including the amendment to the original FERC License, which  
27 amendment was issued on May 15, 1980, to the extent incorporated or

1 referenced in the FERC License.

2 (7) "FERC Project Area" means that portion of  
3 authority land that is subject to the FERC License before the date  
4 of decommissioning, as the land is identified and defined in the  
5 FERC License, as may be amended at any time and from time to time,  
6 and which FERC Project Area may move or change over time due to  
7 natural forces.

8 (8) "Lake" means Possum Kingdom Lake located in Young,  
9 Palo Pinto, Stephens, and Jack Counties. The boundary of the lake  
10 is defined by the 1000' contour line, as that contour may meander  
11 and change over time with natural forces, including erosion and  
12 accretion. The "1000' contour line" means the line running along  
13 the periphery of the lake if the surface of the lake is at an  
14 elevation of 1000 feet above mean sea level, as measured from the  
15 top of the spillway crest gates of the Morris Sheppard Dam, as such  
16 line may move and shift from time to time due to natural forces.

17 (9) "Offeree" means the individuals or corporation,  
18 other than the authority, owning a portion of Costello Island in fee  
19 simple.

20 (b) After the date of decommissioning, the authority shall  
21 offer for sale to the offeree the Costello Island Property. The  
22 sale shall be:

23 (1) for not less than the fair market value as  
24 determined under Subsection (c); and

25 (2) contingent upon the termination of any leases  
26 encumbering all or any portion of the Costello Island Property at  
27 the time of sale.

1       (c)(1) The fair market value of the Costello Island Property  
2 shall be determined as described in this subsection.

3       (2) Not later than 45 days after the date the authority  
4 receives the offeree's completed application of intent to purchase  
5 and an acceptable survey as provided by Subsection (d)(1), the  
6 authority shall provide the offeree with an appraisal of the fair  
7 market value of the Costello Island Property. The authority may use  
8 an existing appraisal if it is dated not more than one year before  
9 the date the authority receives the application of intent to  
10 purchase. The authority's appraiser must be certified under  
11 Chapter 1103, Occupations Code. Not later than the 15th day after  
12 the date the offeree receives the first appraisal, the offeree  
13 shall notify the authority in writing as to whether the offeree  
14 agrees with or disputes the fair market value provided in the first  
15 appraisal. If the offeree does not dispute the fair market value as  
16 determined by the first appraisal before the expiration of the  
17 15-day period, the first appraisal is final and binding on all  
18 parties and establishes the fair market value for the Costello  
19 Island Property.

20       (3) If the offeree disputes the fair market value  
21 determined by the first appraisal, the offeree may withdraw its  
22 application to purchase the Costello Island Property or may employ  
23 a disinterested appraiser certified under Chapter 1103,  
24 Occupations Code, to conduct a second appraisal of the fair market  
25 value of the Costello Island Property. The second appraisal must be  
26 completed and sent to the authority not later than the 45th day  
27 after the date the offeree notifies the authority that the offeree

1 disputes the first appraisal. If the authority does not receive the  
2 second appraisal before the expiration of the 45-day period, the  
3 offeree's application of intent to purchase will be deemed  
4 withdrawn.

5 (4) Not later than the 15th day after the date of  
6 receiving the second appraisal, the authority shall notify the  
7 offeree in writing as to whether the authority agrees with or  
8 disputes the fair market value determined by the second appraisal.  
9 If the authority does not dispute the fair market value as  
10 determined by the second appraisal before the expiration of the  
11 15-day period, the second appraisal is final and binding on all  
12 parties and establishes the purchase price for the Costello Island  
13 Property. If the authority timely disputes the fair market value  
14 determined by the second appraisal, the two appraisers, or their  
15 designated agents, shall meet and attempt to reach an agreement on  
16 the fair market value of the Costello Island Property. The meeting  
17 shall occur not later than the 30th day after the date the authority  
18 notifies the offeree that the authority disputes the second  
19 appraisal.

20 (5) If the two appraisers reach an agreement on the  
21 fair market value, they shall issue a report, not later than the  
22 20th day after the date of their meeting, relating the agreed fair  
23 market value to the authority and to the offeree, and this agreed  
24 fair market value shall be final and binding on all parties and  
25 establishes the purchase price. If the two appraisers fail to reach  
26 an agreement on or before the 20th day after the date of the  
27 meeting, then, not later than the 30th day after the date of the

1 meeting, the two appraisers shall appoint a disinterested third  
2 appraiser certified under Chapter 1103, Occupations Code, to  
3 reconcile the two previous appraisals in a third appraisal. The  
4 third appraisal must be completed on or before the 30th day after  
5 the date of the third appraiser's appointment, and the fair market  
6 value determined by the third appraisal is final and binding on all  
7 parties and establishes the purchase price; provided, however, that  
8 the final purchase price may not be more than the fair market value  
9 determined by the first appraisal or less than the fair market value  
10 determined by the second appraisal.

11 (6) The appraisal costs shall be paid by the person who  
12 requests the appraisal, except that the offeree and the authority  
13 shall each pay one-half of the cost of the third appraisal if a  
14 third appraisal is necessary. If the offeree fails to pay its share  
15 of the third appraisal, the offeree's application of intent to  
16 purchase will be deemed withdrawn.

17 (7) The timelines for the appraisal process under this  
18 subsection may be extended upon joint agreement of the authority  
19 and the offeree.

20 (d) To purchase the Costello Island Property, the offeree  
21 must:

22 (1) provide to the authority a survey of the Costello  
23 Island Property that is:

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

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

1           (C) acceptable to the authority and any title  
2 company providing title insurance for the offeree; and

3           (2) pay all closing costs associated with the sale of  
4 the property.

5           (e) For any property sold under this section:

6           (1) the authority shall provide a special warranty  
7 deed that encompasses and includes all interests in the Costello  
8 Island Property held by the authority, subject only to:

9           (A) the restrictions, covenants, and  
10 prohibitions contained in the deed of conveyance under which the  
11 authority originally acquired title to the property, including  
12 without limitation any releases of the authority for the  
13 inundation, overflowing, or flooding of the lake;

14           (B) the restrictions, covenants, and  
15 prohibitions described in Section 8502.020(d);

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

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

22           (E) any other rules, regulations, or policies of  
23 the authority in effect as of January 1, 2013, prohibiting or  
24 limiting commercial, private, or other on-water facilities for new  
25 development, and as such rules, regulations, or policies may be  
26 amended, modified, or discontinued from time to time; and

27           (2) the offeree shall release and agree to hold the

1 authority harmless from, and the authority may not be held liable  
2 for, damages, claims, costs, injuries, or any other harm to any  
3 offeree or any other person or the Costello Island Property, or to  
4 any improvements on the property, caused by or arising from any  
5 temporary flooding of any portion of the Costello Island Property.

6 (f) Any sale of the Costello Island Property under this  
7 section must allow the authority the right to enter onto the  
8 Costello Island Property and the lake and other bodies of water, if  
9 any, located within the Costello Island Property with essential  
10 equipment for all purposes reasonably necessary for the authority  
11 to fulfill its obligations as a river authority and any obligations  
12 set forth in the FERC License, state water rights, or other  
13 governmental regulations, or for any purpose that the authority  
14 considers necessary for public safety, health, and welfare. Any  
15 exercise by the authority of rights described by this subsection  
16 may be conducted only after written notice is given to the offeree  
17 at least 48 hours in advance of entry onto the property, except in  
18 the event of an emergency, in which case advance notice is not  
19 required, but the authority shall provide written notice as soon as  
20 practicable. The authority shall use reasonable efforts to avoid  
21 interfering with the offeree's use of the Costello Island Property  
22 and shall promptly repair any damage to the property caused by the  
23 authority's entrance. Any claim to governmental immunity on behalf  
24 of the authority is waived with respect to the recovery of any  
25 damage caused by the authority's breach of this subsection.

26 (g) Chapters 232 and 272, Local Government Code, Section  
27 49.226, Water Code, and Section 8502.013 of this code do not apply



1 to a sale of property under this section.

2 (h) The authority may use proceeds from the sale of property  
3 under this section for any authority purpose.

4 (i) The authority shall reserve its interest in all oil,  
5 gas, and other minerals in and under the property to be sold, or any  
6 portion thereof, to the extent the authority owns an interest in  
7 those minerals.

8 (j) If the conveyance described by this section is not  
9 completed before the second anniversary of the effective date of  
10 this Act, this section shall no longer be effective and expires on  
11 the date of the second anniversary.

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

14 SECTION 2. This Act takes effect September 1, 2013.