

1-1 By: Estes S.B. No. 917  
1-2 (In the Senate - Filed February 27, 2013; March 5, 2013,  
1-3 read first time and referred to Committee on Agriculture, Rural  
1-4 Affairs, and Homeland Security; March 13, 2013, reported favorably  
1-5 by the following vote: Yeas 5, Nays 0; March 13, 2013, sent to  
1-6 printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			

1-14 A BILL TO BE ENTITLED  
1-15 AN ACT

1-16 relating to the sale by the Brazos River Authority of certain  
1-17 property at Possum Kingdom Lake.

1-18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-19 SECTION 1. Chapter 8502, Special District Local Laws Code,  
1-20 is amended by adding Section 8502.0133 to read as follows:

1-21 Sec. 8502.0133. SALE OF AUTHORITY PROPERTY ON AND  
1-22 ASSOCIATED WITH COSTELLO ISLAND. (a) In this section:

1-23 (1) "Boat landing" means a 0.841 acre tract of land,  
1-24 more or less, located above the 1000' contour line as defined in  
1-25 Subdivision (8), described in authority records as Tract Costello  
1-26 Island, situated in the A. J. Smith Survey, Abstract 393, Palo Pinto  
1-27 County, Texas, and being a part of a tract of land purchased by the  
1-28 Brazos River Conservation and Reclamation District from Mrs. Hugh  
1-29 C. Thomas, as recorded in Volume 182, Page 142, Deed Records of Palo  
1-30 Pinto County. The boat landing is located wholly within the FERC  
1-31 Project Area.

1-32 (2) "Date of decommissioning" means the effective date  
1-33 of the surrender of the FERC License for the Morris Sheppard Dam  
1-34 Project No. 1490-052 under the Order Accepting the Surrender of the  
1-35 License (issued December 23, 2011), 137 FERC 62,252.

1-36 (3) "Costello Island" means a 260 acre tract of land,  
1-37 more or less, located above the 1000' contour line as defined in  
1-38 Subdivision (8), described in authority records as Tract Costello  
1-39 Island, situated in the J.W. Bunton Survey, Abstract 52, Palo Pinto  
1-40 County, Texas, and being a part of that parcel that is located  
1-41 wholly within the boundary of the lake, and being a part of a tract  
1-42 of land acquired by the Brazos River Conservation and Reclamation  
1-43 District from E.P. Costello by Court Judgment dated July 21, 1943.  
1-44 The portions of Costello Island owned by the authority are located  
1-45 wholly within the FERC Project Area.

1-46 (4) "Costello Island Property" means Costello Island  
1-47 and the boat landing, but does not include any portion of Costello  
1-48 Island owned in fee simple by a person other than the authority.

1-49 (5) "Fair market value" means the price that the  
1-50 Costello Island Property would bring in an arms-length transaction  
1-51 when offered for sale by one who wishes, but is not obliged, to sell  
1-52 and when bought by one who is under no necessity of buying it. This  
1-53 value shall be determined as if the Costello Island Property were  
1-54 not subject to the FERC License, were not located within the FERC  
1-55 Project Area, were not subject to any lease agreement, were  
1-56 available for immediate possession and use, and could be used for  
1-57 any reasonable purpose, subject only to the restrictions in  
1-58 Subsection (e).

1-59 (6) "FERC License" means the order of the Federal  
1-60 Energy Regulatory Commission issuing a license to the authority for  
1-61 project number 1490-003-Texas on September 8, 1989, as such license

2-1 has been renewed, extended, or amended and may be further renewed,  
2-2 extended, or amended at any time and from time to time, and also  
2-3 including the amendment to the original FERC License, which  
2-4 amendment was issued on May 15, 1980, to the extent incorporated or  
2-5 referenced in the FERC License.

2-6 (7) "FERC Project Area" means that portion of  
2-7 authority land that is subject to the FERC License before the date  
2-8 of decommissioning, as the land is identified and defined in the  
2-9 FERC License, as may be amended at any time and from time to time,  
2-10 and which FERC Project Area may move or change over time due to  
2-11 natural forces.

2-12 (8) "Lake" means Possum Kingdom Lake located in Young,  
2-13 Palo Pinto, Stephens, and Jack Counties. The boundary of the lake  
2-14 is defined by the 1000' contour line, as that contour may meander  
2-15 and change over time with natural forces, including erosion and  
2-16 accretion. The "1000' contour line" means the line running along  
2-17 the periphery of the lake if the surface of the lake is at an  
2-18 elevation of 1000 feet above mean sea level, as measured from the  
2-19 top of the spillway crest gates of the Morris Sheppard Dam, as such  
2-20 line may move and shift from time to time due to natural forces.

2-21 (9) "Offeree" means the individuals or corporation,  
2-22 other than the authority, owning a portion of Costello Island in fee  
2-23 simple.

2-24 (b) After the date of decommissioning, the authority shall  
2-25 offer for sale to the offeree the Costello Island Property. The  
2-26 sale shall be:

2-27 (1) for not less than the fair market value as  
2-28 determined under Subsection (c); and

2-29 (2) contingent upon the termination of any leases  
2-30 encumbering all or any portion of the Costello Island Property at  
2-31 the time of sale.

2-32 (c)(1) The fair market value of the Costello Island Property  
2-33 shall be determined as described in this subsection.

2-34 (2) Not later than 45 days after the date the authority  
2-35 receives the offeree's completed application of intent to purchase  
2-36 and an acceptable survey as provided by Subsection (d)(1), the  
2-37 authority shall provide the offeree with an appraisal of the fair  
2-38 market value of the Costello Island Property. The authority may use  
2-39 an existing appraisal if it is dated not more than one year before  
2-40 the date the authority receives the application of intent to  
2-41 purchase. The authority's appraiser must be certified under  
2-42 Chapter 1103, Occupations Code. Not later than the 15th day after  
2-43 the date the offeree receives the first appraisal, the offeree  
2-44 shall notify the authority in writing as to whether the offeree  
2-45 agrees with or disputes the fair market value provided in the first  
2-46 appraisal. If the offeree does not dispute the fair market value as  
2-47 determined by the first appraisal before the expiration of the  
2-48 15-day period, the first appraisal is final and binding on all  
2-49 parties and establishes the fair market value for the Costello  
2-50 Island Property.

2-51 (3) If the offeree disputes the fair market value  
2-52 determined by the first appraisal, the offeree may withdraw its  
2-53 application to purchase the Costello Island Property or may employ  
2-54 a disinterested appraiser certified under Chapter 1103,  
2-55 Occupations Code, to conduct a second appraisal of the fair market  
2-56 value of the Costello Island Property. The second appraisal must be  
2-57 completed and sent to the authority not later than the 45th day  
2-58 after the date the offeree notifies the authority that the offeree  
2-59 disputes the first appraisal. If the authority does not receive the  
2-60 second appraisal before the expiration of the 45-day period, the  
2-61 offeree's application of intent to purchase will be deemed  
2-62 withdrawn.

2-63 (4) Not later than the 15th day after the date of  
2-64 receiving the second appraisal, the authority shall notify the  
2-65 offeree in writing as to whether the authority agrees with or  
2-66 disputes the fair market value determined by the second appraisal.  
2-67 If the authority does not dispute the fair market value as  
2-68 determined by the second appraisal before the expiration of the  
2-69 15-day period, the second appraisal is final and binding on all

3-1 parties and establishes the purchase price for the Costello Island  
 3-2 Property. If the authority timely disputes the fair market value  
 3-3 determined by the second appraisal, the two appraisers, or their  
 3-4 designated agents, shall meet and attempt to reach an agreement on  
 3-5 the fair market value of the Costello Island Property. The meeting  
 3-6 shall occur not later than the 30th day after the date the authority  
 3-7 notifies the offeree that the authority disputes the second  
 3-8 appraisal.

3-9 (5) If the two appraisers reach an agreement on the  
 3-10 fair market value, they shall issue a report, not later than the  
 3-11 20th day after the date of their meeting, relating the agreed fair  
 3-12 market value to the authority and to the offeree, and this agreed  
 3-13 fair market value shall be final and binding on all parties and  
 3-14 establishes the purchase price. If the two appraisers fail to reach  
 3-15 an agreement on or before the 20th day after the date of the  
 3-16 meeting, then, not later than the 30th day after the date of the  
 3-17 meeting, the two appraisers shall appoint a disinterested third  
 3-18 appraiser certified under Chapter 1103, Occupations Code, to  
 3-19 reconcile the two previous appraisals in a third appraisal. The  
 3-20 third appraisal must be completed on or before the 30th day after  
 3-21 the date of the third appraiser's appointment, and the fair market  
 3-22 value determined by the third appraisal is final and binding on all  
 3-23 parties and establishes the purchase price; provided, however, that  
 3-24 the final purchase price may not be more than the fair market value  
 3-25 determined by the first appraisal or less than the fair market value  
 3-26 determined by the second appraisal.

3-27 (6) The appraisal costs shall be paid by the person who  
 3-28 requests the appraisal, except that the offeree and the authority  
 3-29 shall each pay one-half of the cost of the third appraisal if a  
 3-30 third appraisal is necessary. If the offeree fails to pay its share  
 3-31 of the third appraisal, the offeree's application of intent to  
 3-32 purchase will be deemed withdrawn.

3-33 (7) The timelines for the appraisal process under this  
 3-34 subsection may be extended upon joint agreement of the authority  
 3-35 and the offeree.

3-36 (d) To purchase the Costello Island Property, the offeree  
 3-37 must:

3-38 (1) provide to the authority a survey of the Costello  
 3-39 Island Property that is:

3-40 (A) prepared by a licensed state land surveyor or  
 3-41 a registered professional land surveyor;

3-42 (B) dated not earlier than one year before the  
 3-43 effective date of the Act enacting this section; and

3-44 (C) acceptable to the authority and any title  
 3-45 company providing title insurance for the offeree; and

3-46 (2) pay all closing costs associated with the sale of  
 3-47 the property.

3-48 (e) For any property sold under this section:

3-49 (1) the authority shall provide a special warranty  
 3-50 deed that encompasses and includes all interests in the Costello  
 3-51 Island Property held by the authority, subject only to:

3-52 (A) the restrictions, covenants, and  
 3-53 prohibitions contained in the deed of conveyance under which the  
 3-54 authority originally acquired title to the property, including  
 3-55 without limitation any releases of the authority for the  
 3-56 inundation, overflowing, or flooding of the lake;

3-57 (B) the restrictions, covenants, and  
 3-58 prohibitions described in Section 8502.020(d);

3-59 (C) all encumbrances and other matters filed of  
 3-60 record in the public records of the county in which the property is  
 3-61 located;

3-62 (D) any other matters or conditions that are  
 3-63 apparent on the ground or that would be reasonably disclosed or  
 3-64 discovered by an inspection of the property; and

3-65 (E) any other rules, regulations, or policies of  
 3-66 the authority in effect as of January 1, 2013, prohibiting or  
 3-67 limiting commercial, private, or other on-water facilities for new  
 3-68 development, and as such rules, regulations, or policies may be  
 3-69 amended, modified, or discontinued from time to time; and

4-1           (2) the offeree shall release and agree to hold the  
4-2 authority harmless from, and the authority may not be held liable  
4-3 for, damages, claims, costs, injuries, or any other harm to any  
4-4 offeree or any other person or the Costello Island Property, or to  
4-5 any improvements on the property, caused by or arising from any  
4-6 temporary flooding of any portion of the Costello Island Property.

4-7           (f) Any sale of the Costello Island Property under this  
4-8 section must allow the authority the right to enter onto the  
4-9 Costello Island Property and the lake and other bodies of water, if  
4-10 any, located within the Costello Island Property with essential  
4-11 equipment for all purposes reasonably necessary for the authority  
4-12 to fulfill its obligations as a river authority and any obligations  
4-13 set forth in the FERC License, state water rights, or other  
4-14 governmental regulations, or for any purpose that the authority  
4-15 considers necessary for public safety, health, and welfare. Any  
4-16 exercise by the authority of rights described by this subsection  
4-17 may be conducted only after written notice is given to the offeree  
4-18 at least 48 hours in advance of entry onto the property, except in  
4-19 the event of an emergency, in which case advance notice is not  
4-20 required, but the authority shall provide written notice as soon as  
4-21 practicable. The authority shall use reasonable efforts to avoid  
4-22 interfering with the offeree's use of the Costello Island Property  
4-23 and shall promptly repair any damage to the property caused by the  
4-24 authority's entrance. Any claim to governmental immunity on behalf  
4-25 of the authority is waived with respect to the recovery of any  
4-26 damage caused by the authority's breach of this subsection.

4-27           (g) Chapters 232 and 272, Local Government Code, Section  
4-28 49.226, Water Code, and Section 8502.013 of this code do not apply  
4-29 to a sale of property under this section.

4-30           (h) The authority may use proceeds from the sale of property  
4-31 under this section for any authority purpose.

4-32           (i) The authority shall reserve its interest in all oil,  
4-33 gas, and other minerals in and under the property to be sold, or any  
4-34 portion thereof, to the extent the authority owns an interest in  
4-35 those minerals.

4-36           (j) If the conveyance described by this section is not  
4-37 completed before the second anniversary of the effective date of  
4-38 this Act, this section shall no longer be effective and expires on  
4-39 the date of the second anniversary.

4-40           (k) To the extent of any conflict with other laws of this  
4-41 state, this section prevails.

4-42           SECTION 2. This Act takes effect September 1, 2013.

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