

BILL ANALYSIS

Senate Research Center

S.B. 917
By: Estes
Agriculture, Rural Affairs & Homeland Security
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Possum Kingdom Lake is a reservoir maintained by the Brazos River Authority (authority) that was created through impoundment by Morris Sheppard Dam in 1941. The lake is primarily in Palo Pinto County with 310 miles of shoreline. The authority exists to develop, manage, and protect the water resources of the Brazos River Basin to meet the needs of Texas. However, because of historical circumstances the authority, in addition to its main function as a wholesale water supplier, became responsible for residential and commercial land management at Possum Kingdom Lake.

H.B. 3031 of the 81st Legislature, Regular Session, 2009, authorized the authority to seek bids for the purchase of the residential and some commercial leased land at Possum Kingdom Lake in a single bulk sale. At that time, approximately 1,500 residential lease sites were managed by the authority. This sale process was successful and nearly all of those previously leasing land from the authority were able to purchase their lot through this third-party sale process. However, due to restrictions placed on some leased lands by the Federal Energy Regulatory Commission (FERC) in accordance with the authority's license to operate a hydroelectric power plant at the dam, not all of the lease sites were able to be included in the bulk sale.

Now that FERC is in the process of decommissioning the hydroelectric power plant, these leased lands that were previously excluded will be available for sale. Costello Island is a 260 acre tract of land. The only access to this property is by water and the portions of Costello Island owned by the authority are located wholly within the FERC Project Area. This bill seeks to sell the remaining land at Costello Island to the individuals who previously held a ground lease for the property described in the bill.

As proposed, S.B. 917 amends current law relating to the sale by the Brazos River Authority of certain property at Possum Kingdom Lake.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 8502, Special District Local Laws Code, by adding Section 8502.0133, as follows:

Sec. 8502.0133. SALE OF AUTHORITY PROPERTY ON AND ASSOCIATED WITH COSTELLO ISLAND. (a) Defines "boat landing," "date of decommissioning," "Costello Island," "Costello Island Property," "fair market value," "FERC License," "FERC Project Area," "lake," and "offeree" in this section.

(b) Requires the Brazos River Authority (authority), after the date of decommissioning, to offer for sale to the individuals or corporation, other than the authority, owning a portion of Costello Island in fee simple (offeree) the Costello Island Property. Requires that the sale be for not less than the fair market value as determined under Subsection (c), and contingent upon the termination of any

leases encumbering all or any portion of the Costello Island Property at the time of sale.

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

(2) Requires the authority, not later than 45 days after the date the authority receives the offeree's completed application of intent to purchase and an acceptable survey as provided by Subsection (d)(1), to provide the offeree with an appraisal of the fair market value of the Costello Island Property. Authorizes the authority to use an existing appraisal if it is dated not more than one year before the date the authority receives the application of intent to purchase. Requires the authority's appraiser to be certified under Chapter 1103 (Real Estate Appraisers), Occupations Code. Requires the offeree, not later than the 15th day after the date the offeree receives the first appraisal, to notify the authority in writing as to whether the offeree agrees with or disputes the fair market value provided in the first appraisal. Provides that the first appraisal, if the offeree does not dispute the fair market value as determined by the first appraisal before the expiration of the 15-day period, is final and binding on all parties and establishes the fair market value for the Costello Island Property.

(3) Authorizes the offeree, if the offeree disputes the fair market value determined by the first appraisal, to withdraw its application to purchase the Costello Island Property or to employ a disinterested appraiser certified under Chapter 1103, Occupations Code, to conduct a second appraisal of the fair market value of the Costello Island Property. Requires that the second appraisal 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. Provides that the offeree's application of intent to purchase, if the authority does not receive the second appraisal before the expiration of the 45-day period, will be deemed withdrawn.

(4) Requires the authority, not later than the 15th day after the date of receiving the second appraisal, to notify the offeree in writing as to whether the authority agrees with or disputes the fair market value determined by the second appraisal. Provides that the second appraisal, if the authority does not dispute the fair market value as determined by the second appraisal before the expiration of the 15-day period, is final and binding on all parties and establishes the purchase price for the Costello Island Property. Requires the two appraisers, or their designated agents, if the authority timely disputes the fair market value determined by the second appraisal, to meet and attempt to reach an agreement on the fair market value of the Costello Island Property. Requires that the meeting occur not later than the 30th day after the date the authority notifies the offeree that the authority disputes the second appraisal.

(5) Requires the two appraisers, if they reach an agreement on the fair market value, to issue a report, not later than the 20th day after the date of their meeting, relating the agreed fair market value to the authority and to the offeree, and this agreed fair market value is required to be final and binding on all parties and establishes the purchase price. Requires the two appraisers, if the two appraisers fail to reach an 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, to appoint a disinterested third appraiser certified under Chapter 1103, Occupations Code, to reconcile the two previous appraisals in a third appraisal. Requires that the third appraisal 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 and establishes the purchase price; provided, however, that the final purchase price is prohibited from being more than the fair market value determined by the first appraisal or less than the fair market value determined by the second appraisal.

(6) Requires that the appraisal costs be paid by the person who requests the appraisal, except that the offeree and the authority are required to each pay one-half of the cost of the third appraisal if a third appraisal is necessary. Provides that the offeree's application of intent to purchase, if the offeree fails to pay its share of the third appraisal, will be deemed withdrawn.

(7) Authorizes the timelines for the appraisal process under this subsection to be extended upon joint agreement of the authority and the offeree.

(d) Requires the offeree, to purchase the Costello Island Property, to:

(1) provide to the authority a survey of the Costello Island Property that is prepared by a licensed state land surveyor or a registered professional land surveyor, dated not earlier than one year before the effective date of the Act enacting this section, and acceptable to the authority and any title company providing title insurance for the offeree; and

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

(e) Requires, for any property sold under this section:

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

(A) the 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 Possum Kingdom Lake (lake);

(B) the restrictions, covenants, and prohibitions described in Section 8502.020(d) (relating to certain restrictions on leased tracts);

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

(D) 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

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

(2) the offeree to release and agree to hold the authority harmless from, and the authority is prohibited from being held liable for, damages, claims, costs, injuries, or any other harm to any offeree or any other person or the Costello Island Property, or to any improvements on the property, caused

by or arising from any temporary flooding of any portion of the Costello Island Property.

(f) Requires that any sale of the Costello Island Property under this section allow the authority the right to enter onto the Costello Island Property and the lake and other bodies of water, if any, located within the Costello Island Property 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 for any purpose that the authority considers necessary for public safety, health, and welfare. Authorizes any exercise by the authority of rights described by this subsection to be conducted only after written notice is given to the offeree at least 48 hours in advance of entry onto the property, except in the event of an emergency, in which case advance notice is not required, but the authority is required to provide written notice as soon as practicable. Requires the authority to use reasonable efforts to avoid interfering with the offeree's use of the Costello Island Property and is required to promptly repair any damage to the property caused by the authority's entrance. Provides that any claim to governmental immunity on behalf of the authority is waived with respect to the recovery of any damage caused by the authority's breach of this subsection.

(g) Provides that Chapters 232 (County Regulation of Subdivisions) and 272 (Sale or Lease of Property by Municipalities, Counties, and Certain Other Local Governments), Local Government Code, Section 49.226 (Sale or Exchange of Real or Personal Property), Water Code, and Section 8502.013 (Disposition of Property) of this code do not apply to a sale of property under this section.

(h) Authorizes the authority to use proceeds from the sale of property under this section for any authority purpose.

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

(j) Requires that this section, if the conveyance described by this section is not completed before the second anniversary of the effective date of this Act, is longer effective and expires on the date of the second anniversary.

(k) Provides that, to the extent of any conflict with other laws of this state, this section prevails.

SECTION 2. Effective date: September 1, 2013.