

BILL ANALYSIS

Senate Research Center
80R13372 SGA-D

C.S.S.B. 1326
By: Estes
Natural Resources
4/24/2007
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Possum Kingdom Lake is a reservoir maintained by the Brazos River Authority and was created by the Morris Sheppard Dam, which was completed in 1941. Possum Kingdom Lake is primarily in Palo Pinto County with 310 miles of shoreline. There are approximately 1,575 residential lease sites and approximately 66 commercial lease sites, also managed by the Brazos River Authority on the property surrounding the Lake. Lease rates, provisions in lease language, services provided and related issues have generated confusion and controversy recently.

C.S.S.B. 1326 requires the Brazos River Authority to offer leaseholders the opportunity to purchase the land they are currently leasing at fair market values.

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 221, Water Code, by adding Section 221.020, as follows:

Sec. 221.020. SALE OF LOTS SUBJECT TO RESIDENTIAL AND COMMERCIAL LEASES. (a) Defines "1980 FERC Order Amending License," "buffer zone," "commercial leaseholder," "FERC order," "lake," "project land," and "residential leaseholder."

(b) Authorizes a leaseholder to purchase the lot as provided by this section.

(c) Requires the Brazos River Authority (authority) to provide to residential and commercial leaseholders a form for an application of intent to purchase the lot subject to the leaseholder's lease, not later than the 30th day after the effective date of the Act enacting this section. Sets forth certain requirements relating to certain dates relating to the processing and acceptance of applications.

(d) Sets forth certain requirements relating to the purchase of lots at fair market value. Sets forth certain required actions and procedures related to appraisals and reports that must be conducted in a certain manner and within certain timeframes to determine fair market value.

(e) Sets forth certain responsibilities of a prospective purchaser of a lot.

(f) Provides that a lease in effect on the date an application of intent to purchase a lot is submitted under Subsection (c) remains in effect until such transaction is completed or terminated. Provides that a lease of the lot expires on the date the sale of the lot is completed.

(g) Sets forth certain requirements of an eligible leaseholder relating to waivers and a lease valuation if an eligible leaseholder decides not to purchase a lot.

(h) Provides that a lot sold under this section is subject to all existing restrictions, including any applicable easements, placed on the lot by the Federal Energy

Regulatory Commission under the FERC order, if any, but does not include the terms of the existing leases except as provided by this section.

(i) Authorizes a residential lot sold under this section to be used only for a single-family residential structure and related facilities and only for normal residential, noncommercial, recreational use and enjoyment.

(j) Requires a commercial leaseholder that purchases a lot and sublets said lot for residential use to comply with Section 94.204 (Conditions for Retention of Security Deposit or Rent Repayment), Property Code, if applicable. Requires a lot subject to a commercial lease that is purchased under this section to continue to be used for the purpose in effect at the time of the purchase unless the lot is subdivided for single-family residential use.

(k) Sets forth certain requirements and provisions relating to a buffer zone.

(l) Requires the owner of a lot sold under this section to pay the authority any reasonable fees set by the authority for any services the authority provides, except as provided by this subsection. Requires the board to set the fees annually when it adopts the operating budget for the authority. Provides that the owner of a lot is not obligated to accept or pay for services from the authority that are provided by another public or private entity.

(m) Prohibits the authority from denying a person access to a road, if the road on land owned by the authority connects a county road to a lot sold under this section. Provides that the authority does not have a duty to maintain any road.

(n) Requires the purchaser of a lot under this section to comply with certain rules, regulations, orders, and management plans of the authority and FERC.

(o) Provides that a person who purchases a lot under this section agrees to perform certain obligations to maintain the quality of the lake's water and of the environment in the lake's vicinity.

(p) Sets forth certain requirements and prohibitions relating to historical items located on a lot purchased under this section.

(q) Provides that a leaseholder who purchases a lot under this section agrees that the water level in the lake varies and that the authority is not responsible for keeping the lake full.

(r) Provides that the authority reserves the right to modify Morris Sheppard (Possum Kingdom) Dam so that the water surface elevation of the lake is raised from 1,000 feet above mean sea level to 1,015 feet above mean sea level. Exempts that authority from responsibility or liability for any personal injury or damage to a lot or improvements on the lot caused by the resultant increase in the water level or caused by natural flooding.

(s) Provides that the authority reserves the right to ingress and egress for a person authorized by the authority, including an authority agent or employee, over and across a lot purchased under this section for all reasonable purposes of the authority, including construction of any roads, drainage facilities, and power, water, gas, and other utility mains and lines that the authority considers necessary. Provides that the authority agrees to repair, or compensate the lot owner for, any damage caused by the authority under this subsection and to compensate the lot owner for any property it takes under this subsection.

(t) Provides that the authority reserves its interest in all oil, gas, and other minerals in and under the real property sold under this section.

(u) Authorizes the authority to use proceeds from the sale of a lot under this section for any authority purpose.

(v) Requires all purchases of lots under this section to be completed by January 1, 2015.

(w) Authorizes the authority to seek any available legal remedy if the owner of a lot sold under this section does not comply with this section.

(x) 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 221.013 (Disposition of Property), Water Code, do not apply to the sale of a lot under this section.

(y) Entitles a prevailing party to recover court costs and any reasonable attorney's fees in the event of a dispute arising under this section between the authority and a person who purchases a lot under this section.

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

SECTION 2. Provides that Section 221.020, Water Code, as added by this Act, prevails to the extent that it conflicts with any other state law.

SECTION 3. Effective date: upon passage or September 1, 2007.