

**BILL ANALYSIS**

Senate Research Center  
80R13333 SMH-D

S.B. 2001  
By: Averitt  
Natural Resources  
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As Filed

**AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently, landowners are eligible to receive fair market value for their land once reservoir construction is scheduled to begin. However, more compensation may need to be provided to the landowner to balance the potential impact of the designation for future reservoir construction on the landowner and the utilization of the land.

As proposed, S.B. 2001 provides that the holder of a permit to impound surface water in a reservoir is required to pay a royalty fee to the landowner. This bill authorizes compensation of the landowner through encumbrance payments and provides for lease-back options.

**RULEMAKING AUTHORITY**

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

**SECTION BY SECTION ANALYSIS**

[While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

SECTION 1. Amends Chapter 11, Water Code, by adding Subchapter L, as follows:

SUBCHAPTER L. ROYALTY FEE ON SALE OR LEASE OF IMPOUNDED SURFACE  
WATER

Sec. 11.601. ACQUISITION OF PROPERTY IN RESERVOIR SITE IN EXCHANGE FOR ROYALTY FEE. Authorizes the holder of a permit to impound surface water in a reservoir (permit holder), with the agreement of the owner of real property in the site of the reservoir, to acquire the property in exchange for a royalty fee as provided by this subchapter (agreement).

Sec. 11.602. PROVISION OF INFORMATION AND PAYMENT OF ROYALTY FEE TO COMMISSION. Requires a permit holder to notify TNRCC of the name and address of each person whose property the permit holder acquired to construct the reservoir under Section 11.601, Water Code, and the number of acres of real property acquired from the person under the agreement, and to pay TNRCC a royalty fee equal to 10 percent of the total revenue received by the permit holder for the wholesale, retail sale, or lease of the impounded water multiplied by a fraction, the content of which is the ratio of acres of real property acquired under an agreement to the total number of acres of real property in the reservoir site.

Sec. 11.603. ALLOCATION OF ROYALTY FEE BY COMMISSION. Requires TNRCC to allocate the fee to each person included in the notification under Section 11.602(1), Water Code, in proportion to the number of acres of real property acquired from said person under an agreement to the total number of acres of real property acquired under agreements, not later than the 90th day after the date the royalty fee is submitted.

Sec. 11.604. ASSESSMENT OF FEE ON PERMIT HOLDER. Authorizes TNRCC to assess a permit holder an amount necessary to administer this subchapter.

SECTION 2. Amends Section 16.051, Water Code, by adding Subsections (i) and (j), as follows:

(i) Prohibits a person from bringing a cause of action under Subsection (h) (regarding causes of actions brought to prevent the building of a reservoir in an area of unique ecological value for certain reasons) for a violation of Subsection (g) (regarding the prohibition on a state agency or political subdivision to impose a fee title or easement to prevent the construction of a reservoir) if the political subdivision that violated that subsection acquired the fee title or easement for the purpose of providing certain services to property in the reservoir site or to allow an owner to improve or develop the owner's property.

(j) Authorizes a political subdivision affected by an action described by Subsection (i) to bring a cause of action for a violation of Subsection (g) if the political subdivision has complied with Section 16.143(a), Water Code.

SECTION 3. Amends Subchapter E, Chapter 16, Water Code, by adding Sections 16.143 through 16.146, as follows:

Sec. 16.143. INTENT TO CONSTRUCT RESERVOIR; ENCUMBRANCE PAYMENT. (a) Requires a political subdivision to file a letter of intent to construct a reservoir on the site affected by the violation of Section 16.051(g) with TNRCC and to offer to pay each property owner an encumbrance payment, before bringing a cause of action under Section 16.051(h).

(b) Authorizes a property owner to reject an encumbrance payment.

(c) Requires an encumbrance payment to be paid annually to a property owner who has accepted the offer until the property is acquired for the reservoir or until the property is no longer in the reservoir site.

(d) Requires an encumbrance payment to be in an amount not less than 2.5 times the total amount of ad valorem taxes imposed in the tax year that precedes the year in which the payment is made on the property.

Sec. 16.144. OPTION TO LEASE. (a) Entitles a former owner whose property was acquired for a reservoir, voluntarily or through eminent domain, to lease the property from the person who acquired the property under terms that allows the former owner to continue to use the property for its existing use until physical construction of the reservoir begins.

(b) Entitles a former owner of real property used for agricultural purposes to lease the property for not more than the property's agricultural rental value.

Sec. 16.145. ENVIRONMENTAL MITIGATION. (a) Requires a person who is required to mitigate adverse environmental effects arising from the construction or operation of the reservoir or related facilities, to attempt to mitigate those effects by offering to contract with and pay an amount of money to an owner to take certain actions with the property instead of acquiring or maintaining property for that purpose, if authorized by the applicable regulatory authority.

(b) Authorizes an owner to reject an offer made under Subsection (a).

Sec. 16.146. ELIGIBILITY TO PARTICIPATE IN GOVERNMENT PROGRAMS. Provides that property located in the site of a reservoir designated under Section 16.501 (State Water Plan: Drought, Conservation, Development, and Management; Effect of Plan), Water Code, continues to be eligible for any public program for which it was eligible before the designation. Prohibits a state agency or political subdivision from

considering the fact that the property is included in a site that has been designated as being of unique value for the construction of a reservoir when determining the property's eligibility to participate in a public program whose term is not longer than the period before physical construction of the reservoir will begin.

SECTION 4. Effective date: upon passage or September 1, 2007.