

## **BILL ANALYSIS**

Senate Research Center

H.B. 3032  
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Engrossed

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

In 1928, the Brazos River Authority (authority), originally the Brazos River Conservation and Reclamation District, was created by the State of Texas to conserve, control, and utilize to beneficial service the storm and flood waters of the Brazos River and its tributary streams. Due, in large part, to major flooding in the area, a dam on the Brazos River in northwest Palo Pinto County was proposed in the 1930s and construction began in 1938. Morris Sheppard Dam was completed in 1941, and Possum Kingdom Lake, primarily located in Palo Pinto County with more than 310 miles of shoreline, was created.

The SET Ranch, located in Palo Pinto and Stephens counties, has been a working cattle ranch since the original Texas land grants of 1854, and was named in 1881 under the assemblage and ownership of three families—Small, Ewen, and Taylor. It continues today as a working cattle ranch, and has wildlife and land management and soil and water conservation programs in consultation with specialists and state agencies. During the acquisition of the property for the construction of the dam, the authority acquired more than 4,298 acres of SET Ranch land for the reservoir. In 1944, a 576-acre parcel of the purchase was sold by the authority and has since been acquired and rejoined with the SET Ranch. Approximately 880 acres of the original land acquired by the authority from the SET Ranch is located above the 1,000-foot contour line and is surrounded by and contiguous and adjacent to the ranch. This land has no public ground access. Approximately 130 acres of the 880 acres are leased by the authority to individuals as residential sites and the remaining approximate 750 acres will be offered for sale.

H.B. 3032 relates to the sale of certain property at Possum Kingdom Lake by the authority.

### **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 8502.0132, as follows:

Sec. 8502.0132. SALE OF CAPTIVE PROPERTY AT POSSUM KINGDOM LAKE.

(a) Defines "adjacent land," "captive property to be sold," "FERC license," "lake," "offeree," and "project land" in this section.

(b) Provides that the Brazos River Authority (authority), notwithstanding any other provision of this chapter, is directed to sell all captive property to be sold in accordance with the directives of this section, including the following:

(1) Requires the authority, within 90 days of the effective date of the Act enacting this section, to publish a list of the parcels at the lake that qualify as captive property to be sold and an "Application Of Intent To Purchase" form for use by the offerees as provided by this section.

(2) Requires that each listed parcel of captive property to be sold be offered for sale at its fair market value to the offeree who owns any adjacent land that is adjacent to that specific parcel of captive property to

be sold, and provides that each adjacent land owner has the right, but not the obligation, to purchase the parcel in equal proportion among those wishing to acquire same.

(3) Requires any offeree who desires to purchase captive property to be sold, within 180 days of the inclusion of that property on the published list of captive property to be sold under Subdivision (1), to submit a completed application of intent to purchase form to the authority.

(4) Requires the offeree, if the authority does not receive an application of intent to purchase from an offeree within the required time, to be deemed to have waived any right to purchase the subject property under this section and requires the authority to have the right to retain or sell such property as directed by the board.

(5) Requires the authority to accept and process all application of intent to purchase forms in the order in which they are received.

(6) Requires that any sale of property under this section be handled as if it were a private sale for fair market value under Section 49.226(a) (relating to authorizing any personal property valued at more than \$300 or any land or interest in land owned by the district which is found by the board to be surplus and is not needed by the district to be sold), Water Code.

(7) Sets forth the required manner to determine the fair market value of the captive property to be sold.

(c) Requires the authority, if the authority seeks to exempt any captive property to be sold from sale under this section as necessary for the continued operation of services at the lake by the authority, to designate as exempt each parcel it seeks to have exempted and provide actual notice of the exemption to any offeree who otherwise would have been eligible to purchase that property. Requires any such offeree to have the right, but not the obligation, to challenge the exemption designation by the authority in accordance with Subsection (e).

(d) Requires the offeree, for each parcel that an offeree elects to purchase pursuant to this section, to provide to the authority a certain survey of the property and pay all reasonable, normal, customary, and documented closing costs associated with the sale of the property.

(e) Authorizes a person who disputes the authority's decision to exempt a specific parcel from sale under this section to file a declaratory judgment action in the district court of Travis County. Provides that if a person files such an action any claim to governmental immunity is hereby waived for the determination of the dispute, requires the court to determine all issues presented by de novo review, and requires the authority to bear the burden to establish by a preponderance of the evidence that the parcel it seeks to have exempted from sale is necessary for the specifically authorized operation of services at the lake.

(f) Provides that any property sold under this section:

(1) requires the authority to provide a special warranty deed that encompasses and includes all interests in the property held by the authority, subject only to certain matters; and

(2) requires the offeree to release and agree to hold the authority harmless from, and prohibits the authority from being held liable for damages, claims, costs, injuries, or any other harm to any offeree or any other person or the captive property to be sold or any improvements on the property, caused by or arising from any temporary flooding of any portion of the captive property to be sold.

(g) Requires that any sale of captive property to be sold pursuant to this section allow the authority the right to enter on the captive property to be sold and the lake and other bodies of water, if any, located within the captive property to be sold and to cross the adjacent land on roads 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 that the authority considers necessary for public safety, health, and welfare purposes. Authorizes any exercise of those rights by the authority to be conducted only after written notice is given at least 48 hours in advance of such entry to the offeree, except in the event of an emergency, in which case advance notice is not required, but requires the authority to provide such written notice as soon as practicable thereafter. Requires the authority to use reasonable efforts to avoid interfering with the offeree's use of the captive property to be sold and adjacent land and promptly repair any damage to the captive property to be sold and adjacent land caused by the authority's entrance. Provides that any claim to governmental immunity on behalf of the authority is hereby waived for the recovery of any damage caused by the authority's breach of this subsection.

(h) Requires that any sale of a parcel of captive property to be sold pursuant to this section the total size of which is greater than 100 acres include as a condition of sale an agreement that the purchaser of such parcel will place a conservation easement that complies with state and federal tax requirements on the property conveyed within three years of the closing date for the sale of the property.

(i) 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, do not apply to a sale of property under this section.

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

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

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

SECTION 2. Effective date: upon passage or September 1, 2009.