

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 918
By: Estes
Agriculture, Rural Affairs & Homeland Security
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Possum Kingdom Lake (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, 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 provided for under H.B. 3031.

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. This bill seeks to apply the same legislatively authorized divestiture process to the remaining 89 commercial and residential authority properties as was created under H.B. 3031.

C.S.S.B. 918 amends current law relating to the sale by the Brazos River Authority and regulation of certain real property in the immediate vicinity of 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 offeree the Costello Island Property. Requires that the sale be:

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

(2) 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 requires this agreed fair market value to be final and binding on all parties and to establish the purchase price. Requires the two appraisers, if they 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

provides that 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:

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

(A) prepared by a licensed state land surveyor or a registered professional land surveyor;

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

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

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

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

(1) the authority is required 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);

(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 may be amended, modified, or discontinued from time to time; and

(2) the offeree is required to release and agree to hold the authority harmless from, and the authority may not be 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 Federal Energy Regulatory Commission (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 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) Provides that this section, if the conveyance described by this section is not completed before the second anniversary of the effective date of this Act, shall no longer be effective and expires on the date of the second anniversary.

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

SECTION 2. Amends Section 8502.020, Special District Local Laws, as follows:

Sec. 8502.020. SALE OF AUTHORITY PROPERTY. (a) Redefines "Commercial Leased Land," "Contract," "FERC Project Area," "Leased Tract" or "Tract," "Residential Leased Land," "Restrictions," "Undeveloped Strips" and defines "Amendments to the Restrictions," "Date of Decommissioning," "Initial Commercial Leased Land," "Initial Leased Tract," "Initial Residential Leased Land," "Initial Undeveloped Strips," "Remaining Commercial Leased Land," "Remaining Leased Tract," "Remaining Residential Leased Land," and "Remaining Undeveloped Strips" in this section.

(b) Sale to Purchaser. Authorizes the Brazos River Authority (Authority) to sell the Initial Leased Tract in whole or in part, prior to January 1, 2011, to a Purchaser in accordance with applicable law, this subsection, and Subsections (d), (e), (f), (g), (h), and (i). Authorizes the Authority, for a period of two years after

the Date of Decommissioning, to sell the Remaining Leased Tract in whole or in part, to a Purchaser in accordance with applicable law, this subsection, and Subsections (d), (e), (f), (g), (h), and (i). Requires that any sale of the Initial Leased Tract or the Remaining Leased Tract to a Purchaser under this subsection be subject to the following:

(1) Requires that each Leaseholder have the opportunity to buy such Leaseholder's individual portion of the Leased Tract from the Purchaser or to continue leasing the applicable portion of the Leased Tract from the Purchaser in accordance with the following purchase or lease options. Requires the Purchaser to:

(A) Permit the Leaseholder to purchase such Leaseholder's individual Leased Tract in cash or through lender financing for 90% of land only assessed value without any exemptions (as determined by the appraisal district) for the year 2008 if the tract is part of the Initial Leased Tract, or for the year 2012 if the tract is part of the Remaining Leased Tract, such options to be available at Closing as set forth in Subdivision (2) and for a period of at least one year from Closing.

(B) Permit the Leaseholder to purchase for the percent of assessed value only as set forth in Paragraph (A) such Leaseholder's individual portion of the Leased Tract via seller financing, with a down payment of ten percent (10%) and an interest rate of six percent (6%), with a 30-year amortization, such seller financing option to be available at Closing as set forth in Subdivision (2) and for a period of at least one year from Closing to the Leaseholder of any portion of the Commercial Leased Tract and to the Leaseholder of any portion of the Residential Leased Tract to the extent the Leaseholder of any portion of the Residential Leased Tract qualifies for financing under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. No. 111-203) and any related regulations. Changes a reference to leaseholder to Leaseholder and to purchaser to Purchaser.

(C) Offer a new 99-year lease at a rental rate of 6% of the land only assessed value without any exemptions (as determined by the appraisal district) for the year 2008 if the tract is part of the Initial Leased Tract, or the 2012 land only assessed value without any exemptions if the tract is part of the Remaining Leased Tract, with annual Consumer Price Index increases or decreases, such options to be available for a period of at least one year from Closing. Provides that the 99-year lease will include an option for the Leaseholder to purchase the applicable portion of the Leased Tract at the land only assessed value without any exemptions (as determined by the appraisal district) at the time of purchase (but not less than the 2008 land only assessed value without any exemptions if the tract is part of the Initial Leased Tract, or the 2012 land only assessed value without any exemptions if the tract is part of the Remaining Leased Tract).

(D) Requires the Leaseholder to have received the ad valorem tax exemption for a structure on the Leaseholder's individual Leased Tract by January 1, 2009, if the tract is part of the Initial Leased Tract or January 1, 2013, if the tract is part of the Remaining Leased Tract. Provides that the 20-year lease will include an option for the Leaseholder to purchase the applicable portion of the Leased Tract at the land only assessed value without any exemptions (as determined by the appraisal district) at the time of

purchase (but not less than the 2008 land only assessed value without any exemptions if the tract is part of the Initial Leased Tract or the 2012 land only assessed value without any exemptions if the tract is part of the Remaining Leased Tract).

(E) Ratify the existing Ground Lease of any Leaseholder who does not timely exercise one of the foregoing options, such ratification to include:

(i) Makes no changes to this subdivision;

(ii) an option permitting the Leaseholder to purchase such Leaseholder's individual portion of the Leased Tract for the land only assessed value without any exemptions (as determined by the appraisal district) at the time of purchase, or for the year 2008 if the tract is part of the Initial Leased Tract, or for the year 2012 if the tract is part of the Remaining Leased Tract, whichever is greater, for a period of 8 years from Closing; and

(iii) an agreement to extend Ground Leases as necessary to allow for this full 8-year purchase option period. Requires that nothing in this subsection preclude the Purchaser from offering additional purchase or lease options to the Leaseholders, provided any additional options are made available to all similarly situated Leaseholders on an equal basis.

(2) Requires a Leaseholder who desires to buy such Leaseholder's individual Leased Tract from the Purchaser pursuant to the option set forth in either Subdivision (1)(A) or (B) concurrently with the Purchaser's Closing to exercise the desired option as follows:

(A)-(B) Makes no changes to these paragraphs;

(C) Requires that an accurate survey of the individual Leased Tract (including any Undeveloped Strips being included in such Leased Tract), be acceptable to the Authority and Purchaser, include all improvements on the Leased Tract and indicate any encroachments across the applicable boundary lines, rather than across applicable boundary lines or into FERC Project Area or Buffer Zone; requires the Leaseholder to provide evidence that any such encroachments across boundary lines, including encroachments onto Authority Land, rather than across boundary lines or into the FERC Project Area or Buffer Zone, have been cured by the Leaseholder (by certain actions) prior to the survey being deemed acceptable. Makes nonsubstantive and conforming changes; and

(D)-(F) Makes no changes to these paragraphs.

(3) Requires that closing occur no later than December 31, 2010, for the Initial Leased Tract and not later than two years after the Date of Decommissioning for the Remaining Leased Tract.

(c) Sale to Leaseholders. Requires that this subsection only apply to, and be effective for, those portions of the Remaining Leased Tract (if any) for which Closing has not occurred on or before the second anniversary of the Date of Decommissioning, rather than on or before December 31, 2010, pursuant to Subsection (b), in which case the effective date of this subsection is required to be

the second anniversary of the Date of Decommissioning, rather than January 1, 2011. Requires the Authority, upon the effective date of this subsection, to suspend any applicable sale efforts under Subsection (b) for a period of two years beginning on the effective date of this subsection and to initiate a tract by tract sale of the Remaining Leased Tract to the then-current Leaseholders as follows:

(1) Requires the Authority, for a period of two years beginning on the effective date of this subsection and in accordance with the procedures set forth in this subsection, and subject to Subsections (d), (e), (f), (g), (h), and (i), to provide Leaseholders the opportunity to purchase their individual portion of the Remaining Leased Tract, rather than their individual Leased Tracts, directly from the Authority. Makes a conforming change.

(2) Changes references to Undeveloped Strips to Remaining Undeveloped Strips. Changes references to Leased Tract to Remaining Leased Tract.

(3) Changes references to Leased Tract to Remaining Leased Tract.

(4) Requires a Leaseholder who desires to purchase such Leaseholder's individual Remaining Leased Tract to submit a completed application to the Authority on or before the second anniversary of the effective date of this subsection, rather than on or before December 31, 2012. Provides that an application will be deemed "complete" if certain criteria are met. Makes conforming and nonsubstantive changes.

(5) Changes a reference to Leased Track to Remaining Leased Track.

(6) Requires that an individual Remaining Leased Tract sold under this subsection be sold for 90% of the land only assessed value without any exemptions, as determined by the appraisal district, for the year in which the Leaseholder's application of intent to purchase is submitted to the Authority, or for the year 2012, rather than for the year 2008.

(7) Provides that the Leaseholder purchasing such Leaseholder's Remaining Leased Tract, rather than Leased Track, is responsible for certain obligations as set forth. Makes conforming changes.

(8) Requires that the purchase, for those completed applications of intent to purchase timely delivered to the Authority under this subsection, be completed no later than the expiration of 30 months after the effective date of this subsection, rather than no later than June 30, 2013. Requires that the application, for any individual Remaining Leased Tract for which closing has not occurred by such date, be deemed terminated. Prohibits the Authority from accepting any applications of intent to purchase after the second anniversary of the effective date of this subsection, rather than after December 31, 2012; and requires that any applications of intent to purchase that are delivered to the Authority prior to such date but that are not "complete" as of such date in accordance with Subdivision (4) be rejected by the Authority. Provides that Leaseholders submitting an application of intent to purchase their individual Remaining Leased Tracts are responsible for ensuring that such application is deemed "complete" on or before the second anniversary of the effective date of this subsection, rather than on or before December 31, 2012. Makes conforming and nonsubstantive changes.

(9) Requires that any Ground Lease that would otherwise expire be automatically extended as necessary for one year terms to permit such Leaseholder the full two-year period to deliver such application of intent to purchase such Leaseholder's individual Remaining Leased Tract and to

complete such transaction no later than the expiration of 30 months after the effective date of this subsection, rather than no later than June 30, 2013.

(10)-(12) Changes references to Leased Tract to Remaining Leased Tract.

(13) Changes references to Leased Tract to individual Leased Tract.

(14) Requires the Leaseholder, at closing on the individual Remaining Leased Tract, to pay any indebtedness secured by a lien on the Leaseholder's leasehold estate (including the applicable portion of the Buffer Zone that is part of the leasehold estate, rather than including the Buffer Zone, whether or not included as part of the Leased Tract pursuant to Subsection (e)) or deliver the express written consent of the Lienholder on the leasehold estate in the Remaining Leased Tract permitting the Leaseholder to grant a purchase money lien on the fee simple estate in the Remaining Leased Tract.

(15) Makes a conforming change.

(16) Requires the board of directors of the Authority (Board), for any portion of the Remaining Leased Tract that has not been sold pursuant to this subsection on or before the expiration of 30 months after the effective date of this subsection, rather than on or before June 30, 2013, to sell any such remaining portion of the Remaining Leased Tract pursuant to terms and conditions determined by such Board.

(d) New heading: Restrictions on Property. Provides that the Property is subject to the Restrictions recorded in Palo Pinto, Stephens, Young, and Jack Counties, as amended from time to time. Deletes existing text requiring that the Leased Tract (or any portion thereof) sold in accordance with Subsection (b) or (c) be subject to certain Restrictions, which are required to be included, in substance, in a Declaration of Restrictive Covenants, Easements, and Conditions to be prepared by the Authority substantively in accordance with the certain Restrictions and recorded by the Authority, as declarant, in the applicable county records prior to any sale pursuant to Subsection (b) or (c). Requires the Authority, after the Date of Decommissioning and before the date the Remaining Leased Tract is conveyed under Subsection (b) or (c), without requiring the consent of any Owner, to further amend the Restrictions and record the Amendments to the Restrictions in the records of each applicable county, which amendments are required to (i) add the Remaining Commercial Leased Land as part of the Commercial Leased Land in the Restrictions; (ii) add the Remaining Residential Leased Land as part of the Residential Leased Land in the Restrictions; (iii) add the Remaining Undeveloped Strips as part of the Undeveloped Strips in the Restrictions; (iv) add the Remaining Leased Tract as part of the Leased Tract; and (v) otherwise amend the Restrictions to be substantively in accordance with the following:

(1) Deletes existing text prohibiting an Owner, Purchaser, or Leaseholder, subject to Subdivision (10), from forbidding, restricting, or taking any action which effectively forbids or restricts the public from using the FERC Project Area and the adjacent areas of Possum Kingdom Lake (Lake) in accordance with the terms of the FERC License.

(2)-(3) Makes no changes to these subdivisions.

(4) Requires that all grants and dedications of easements, rights-of-way, restrictions, and related rights affecting the Leased Tract, made prior to the Leased Tract becoming subject to the Restrictions and any Amendments to the Restrictions that are of record, or visible or apparent, be incorporated

into such Restrictions by reference and made a part of the Restrictions for all purposes as if fully set forth therein and are required to be construed as being adopted in each and every contract, deed, or conveyance executed or to be executed by or on behalf of the Authority conveying any part of the Leased Tract.

(5) Deletes existing text requiring the Authority to reserve for itself and its successors, assigns, and designees the nonexclusive right and easement, but not the obligation, to enter upon the Property, the Lake and other bodies of water, if any, located within the Property to fulfill any obligations set forth in the FERC License.

(6)-(7) Makes no changes to these subdivisions.

(8) Prohibits the Restrictions from being modified in any respect whatsoever or terminated, in whole or in part, except with the consent of certain Owners or Purchasers, and the Authority, for so long as the Authority has any interest in the Property, whether as an Owner or otherwise, rather than whether as an Owner or holder of the FERC license or otherwise.

(9) Requires that no improvements (except as specifically set forth in Subdivision (11)) be constructed or located in a certain area. Deletes existing text providing, however, that this restriction is prohibited from including improvements inside this setback that are existing at the time the Restrictions are filed, if such improvements are located within the FERC Project Area, have been approved by FERC (and to the extent not already approved by FERC, the Authority intends to file an application to obtain permission for the existing encroachments into the FERC Project Area to remain in place). Makes nonsubstantive changes.

(10) Deletes existing text prohibiting an Owner, Purchaser, or Leaseholder from having any rights to construct any improvements or fencing that block or restrict access to the FERC Project Area, except with the written consent of the Authority, to be granted or withheld in its sole discretion, and except in compliance with the FERC License, and providing that this limitation does not apply to fences located within the Leased Tract and outside the FERC Project Area.

(11) Prohibits erosion control improvements (such as retaining walls, rip rap, etc.) and landscape planting from being constructed or located at or below the 1000' contour line, rather than within the FERC Project Area or at or below the 1000' contour line, without the prior written approval of the Authority. Requires that such improvements be subject to the terms and conditions set forth in the Restrictions and in the Authority's regulations, including without limitation, the Shoreline Management Plan, rather than the terms and conditions set forth in the Restrictions, in the FERC License, in any other FERC rules and regulations, and in the Authority's regulations, including without limitation, the Shoreline Management Plan.

(12) Prohibits an Owner, Purchaser, or Leaseholder from having the right to place, or permit to be placed, any advertisements, private notices, signs, or billboards on the Residential Leased Land, rather than on the Leased Tract, except that temporary signage customarily found on residential property may be placed on the Residential Leased Land at the reasonable discretion of the Owner, Purchaser, and/or Leaseholder of that portion of the Residential Leased Land.

(13)-(14) Makes no changes to these subdivisions.

(15) Prohibits an Owner or Purchaser from conducting, or permitting to be conducted, any activity on the Leased Tract that is improper, immoral, noxious, annoying, creates a nuisance, or is otherwise objectionable to other Owners or Purchasers or incompatible with the recreational use of the Lake and the Authority Land, rather than the Lake and the FERC Project Area.

(16)-(17) Makes no changes to these subdivisions.

(18) Authorizes Commercial Leased Land (and any Undeveloped Strips that are conveyed to an Owner or Purchaser as part of the Commercial Leased Land pursuant to Subsection (b) or (c)), except as may be otherwise provided in the Restrictions and any Amendments to the Restrictions, to be improved and used for any lawful commercial purpose, including without limitation, nonprofit organizations or governmental or quasi-governmental agencies.

(19)-(20) Makes no changes to these subdivisions.

(21) Deletes a reference to the FERC Project Area as an area in which certain buildings or improvements are required to be rebuilt or restored.

(22)-(23) Makes no changes to these subdivisions.

(24) Deletes existing Subdivision (24)(i) authorizing an Owner, Purchaser, or Leaseholder, subject to approval by FERC, to repair, alter, or rebuild improvements located within the FERC Project Area, which improvements were previously approved in accordance with Subdivision (9); provided, however, such repairs, alterations, and/or rebuilding are required to not extend beyond the footprint of the existing or previously existing improvement. Redesignates existing subdivision (24)(ii) as subdivision (24). Authorizes an Owner, Purchaser, or Leaseholder to repair, alter, or rebuild improvements located above the 1000' contour line, rather than outside the FERC Project Area, but within a certain area.

(25) Makes no change to this subdivision.

(26) Prohibits any land located at or below the 1000' contour line from being improved, used, or occupied, except in such manner as is required to have been approved by the Authority. Deletes existing text prohibiting any land within the FERC Project Area from being improved, used, or occupied, except in such manner as is required to have been approved by the Authority and, to the extent required, by FERC. Deletes further references in this subdivision to FERC Project Area or FERC License.

(27) Deletes references to FERC and FERC License.

(28) Deletes references to FERC.

(29)-(30) Makes no changes to these subdivisions.

(31) Requires Owners, Purchasers, and Leaseholders to take all reasonable precautions to ensure that all use of and activities on the Leased Tract, including without limitation, the construction, operation, and maintenance of any improvements on the Leased Tract occur in a manner that will protect the scenic, recreational, and environmental values of the Lake. Provides that the Authority has specific approval authority on any proposed construction that impacts the lakebed, and Owner, Purchaser, and Leaseholder are required to comply with the approval

process as may be established by the Authority from time to time. Deletes existing text requiring Owners, Purchasers, and Leaseholders to take all reasonable precautions to ensure that all use of and activities on the Leased Tract and the FERC Project Area, including without limitation, the construction, operation, and maintenance of any improvements on the Leased Tract, and/or FERC Project Area occur in a manner that is in compliance with the FERC License and that will protect the scenic, recreational, and environmental values of the Lake. Deletes existing text providing that the Authority, as a licensee of the FERC, has specific approval authority on any proposed construction that impacts the FERC Project Area or lakebed, and Owner, Purchaser, and Leaseholder are required to comply with the approval process as may be established by the Authority and/or the FERC from time to time.

(32) Deletes existing text requiring that structures in place within the FERC Project Area be subject to the FERC License, as the same may be amended and/or renewed from time to time; authorizing any structures erected in the FERC Project Area after May 15, 1980 (the date of the amendment to the previous FERC License) to be required to be removed at the expense of the owner of the improvement, unless such improvements are approved in writing by the Authority in accordance with the FERC License; and requiring that this subdivision, in no event, grants any authorization for a violation of any rules or regulations of the Authority, the FERC License, or any state, federal, or local law.

(33) Requires the Owner, Purchaser, and Leaseholder of any portion of the Property to comply with all of the following rules and regulations, as applicable: the Authority's "Regulations for Governance for Brazos River Authority Lakes and Associated Lands," as published on the Authority's Internet website and as those regulations may be amended from time to time; and other rules and regulations adopted by the Authority regarding conduct on and use of the Lake, rather than the Lake or the Property. Deletes existing text requiring the Owner, Purchaser, and Leaseholder of any portion of the Leased Tract to comply with certain rules and regulations, including the Shoreline Management Plan and any amendments or revisions to that document to the extent such Shoreline Management Plan applies to the Owner's, Purchaser's, and/or Leaseholder's portion of the Leased Tract; and the applicable rules, regulations, and order of the Federal Energy Regulatory Commission including, without limitation the FERC License. Makes nonsubstantive changes.

(34) Deletes a reference to the FERC Project Area relating to certain regulations.

(35) Requires Owners, Purchasers, and Leaseholders of a portion of the Leased Tract that is part of any other subdivision to comply with the terms and conditions of the covenants and restrictions governing the subdivision that apply to that portion of the Leased Tract. Provides that any portion of the Property that is part of the subdivision is governed by the restrictions and covenants governing the subdivision which shall control in the event of a conflict between the covenants, restrictions, and conditions governing the subdivision and the Restrictions and Amendments to the Restrictions.

(36)-(38) Makes no changes to these subdivisions.

(39) Requires the Authority to reserve the right of ingress and egress for the Authority and any person authorized by the Authority, including an agent of the Authority or employees, over and across the Leased Tract and any and all on-water facilities whether located within the Leased Tract or

Authority Land, rather than within the Leased Tract or FERC Project Area, for all reasonable purposes of the Authority, including, without limitation, the construction, maintenance, repair, and/or replacements of any roads, drainage facilities, and power, water, wastewater, and other utility mains and lines that the Authority considers necessary or beneficial and for public safety, health, and welfare purposes

(40)-(41) Makes no changes to these subdivisions.

(42) Changes references to owner to person.

(43)-(46) Makes no changes to these subdivision.

(47) Requires that each of the Restrictions on the Leased Tract be a burden on each portion of the Leased Tract, be appurtenant to and for the benefit of the other portions of the Property, other portions of the Leased Tract, and each part thereof, and run with the land.

(48) Makes no changes to this subdivision.

(49) Requires that the term of the Restrictions, notwithstanding the foregoing, upon the expiration of such period, automatically renew for successive periods of five years each unless, at least ninety (90) days prior to the date of expiration of any period in effect, (i) the Owners or Purchasers of at least sixty percent (60%) of the individual lots that comprise the Residential Leased Land and the Commercial Leased Land, (ii) the Owners or Purchasers of at least sixty percent (60%) of the land area of the Authority Land, and (iii) the Authority, for so long as the Authority has any interest in the Property, whether as an Owner or otherwise, rather than as an Owner or holder of the FERC License or otherwise, duly execute, acknowledge and record in the office of the recorder of the counties in which the Property is located a written termination notice, in which event, the Restrictions are required to automatically expire at the end of the period then in effect.

(50) Provides that any subdivision by an Owner of the Owner's portion of the Leased Tract is subject to all applicable laws, rules, regulations, codes, and ordinances, including any applicable platting requirements, and any rules and restrictions relating to on-site sewage facilities.

(e) Buffer Zone. Requires that a sale under Subsection (b) or (c), notwithstanding any provision in this subsection to the contrary, be subject to the following:

(1) Requires that the remaining Leased Tract being conveyed under Subsection (b) or (c) include the applicable portion of the Buffer Zone; provided, however, the Purchaser and/or Owner, as applicable, is required to grant the Authority access to the Buffer Zone and Lake to allow the Authority to fulfill its obligations as a River Authority and any obligations set forth in state water rights or other governmental regulations. Deletes existing text requiring that the Leased Tract being conveyed, if at the time Closing occurs under Subsection (b) or if at the time a Leaseholder completes the purchase of the applicable Leased Tract from the Authority pursuant to Subsection (c), as applicable, the Buffer Zone, or any portion thereof, has been removed from the FERC Project Area, include that portion of the Buffer Zone so removed; provided, however, the Purchaser and/or Owner, as applicable, is required to grant the Authority access to the FERC Project Area and Lake to allow 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.

(2) Provides that at the time of Closing on the Initial Leased Tract under Subsection (b), a portion of the Initial Leased Tract is located within the Buffer Zone and is a part of the FERC Project Area, and therefore the Authority is required to provide such Purchaser and/or Owner, as applicable, a residual interest in that portion of the Buffer Zone adjacent to the Initial Leased Tract and covered by the applicable residential Ground Lease, such residual interest to automatically vest upon satisfaction of one of the conditions as set forth, including the occurrence of the Date of Decommissioning. Deletes existing text requiring the Authority, if at the time Closing occurs under Subsection (b), or if at the time a Leaseholder closes on the purchase of the applicable Leased Tract from the Authority pursuant to Subsection (c), as applicable, the Buffer Zone, or any portion thereof, has not been removed from the FERC Project Area and a portion of the Leased Tract is located within the Buffer Zone, to provide such Purchaser and/or Owner, as applicable, a residual interest in that portion of the Buffer Zone adjacent to the Leased Tract and covered by the applicable residential Ground Lease, such residual interest to automatically vest upon satisfaction of either of the conditions as set forth.

(3) Requires that the Buffer Zone, from and after the date such conveyance becomes effective, be considered to be a part of the Initial Leased Tract conveyed under Subsection (b), rather than Subsection (b) or (c), and requires the Purchaser or then current Owner of the applicable Initial Leased Tract to be the beneficiary of the residual interest created herein, but only as to the portion of the Buffer Zone located adjacent to the Purchaser's or Owner's property and all right, title, and interest in such adjacent portion of the Buffer Zone as measured by extending the boundary lines on both sides of the applicable portion of the Initial Leased Tract in a straight line across the Buffer Zone to the then current 1000' contour line of the Lake, or, if such portion cannot reasonably be measured as set forth above, then as otherwise determined by the Purchaser and approved by the Authority. Makes a nonsubstantive change.

(4) Requires that the Buffer Zone, until the residual interest in such Buffer Zone vests in the Purchaser or then-current Owner of the adjacent portion of the Initial Leased Tract as set forth in Subdivision (3), remain subject to the terms and conditions of the residential Ground Lease in effect between the Leaseholder and the Authority at the time Closing occurs under Subsection (b); provided, however, no rent is required to be due the Authority under such Ground Lease for the Buffer Zone. Deletes existing text requiring that the Buffer Zone, in the event a sale under Subsection (b) or (c) does not include the Buffer Zone or any portion thereof, or only includes a residual interest in the Buffer Zone or any portion thereof, then remain subject to the terms and conditions of the residential Ground Lease in effect between the Leaseholder and the Authority at the time Closing occurs under Subsection (b) or at the time the Leaseholder purchases the applicable Leased Tract under Subsection (c); provided, however, no rent is required to be due the Authority under such Ground Lease for the Buffer Zone.

(f)-(i) Makes no changes to these subsections.

(j) Expiration of Requirement to Sell. Provides that the requirement that the Authority conduct a sale of the Remaining Leased Tract under Subsection (b) or (c) expires on December 31, 2016, if the FERC License is not terminated by decommissioning or otherwise.

SECTION 3. Provides that if the provisions of Section 8502.0133, Special District Local Laws, as added by this Act, or Section 8502.020, Special District Local Laws Code, as amended by this Act, conflict with any other provision of Chapter 8502 (Brazos River Authority) of that code, then the provisions of Section 8502.0133 or 8502.020, as applicable, prevail, notwithstanding all such conflicting provisions.

SECTION 4. Effective date: upon passage or September 1, 2013.