

BILL ANALYSIS

Senate Research Center

H.B. 3031
By: Keffer et al. (Estes)
Agriculture & Rural Affairs
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Possum Kingdom Lake (lake) is a reservoir maintained by the Brazos River Authority (authority) that was created by the 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 became responsible for residential land management within its boundaries. Approximately 1,500 residential lease sites are managed by the authority on the property surrounding the lake.

H.B. 3031 authorizes the authority to seek bids for the purchase of the residential leased land in a single bulk sale. The bill requires a purchaser to offer individual lots for sale to a leaseholder for a specified amount. The bill authorizes the leaseholder, if declining to purchase, to continue to lease under specified terms. The bill requires the authority to offer to sell the property directly to the leaseholder for a period of at least two years if the authority does not sell the property to a bulk purchaser by the end of 2010.

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 8502.020, as follows:

Sec. 8502.020. SALE OF AUTHORITY PROPERTY. (a) Definitions. Defines, in this section, "authority land," "buffer zone," "close" or "closing," "commercial leased land," "consumer price index," "contract," "driveways," "environmental laws," "FERC license," "FERC project area," "ground lease," "hazardous materials," "lake," "leased tract" or "tract," "leaseholder," "lienholder," "owner," "property," "purchaser," "ranch," "ranch agreement," "ranch declarations," "residential leased land," "restrictions," "roads," "shoreline management plan," and "undeveloped strips."

(b) Sale to Purchaser. Authorizes the Brazos River Authority (authority), prior to January 1, 2011, to sell the 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 leased tract to a purchaser under this subsection be subject to the following:

(1) Requires each leaseholder to have the opportunity to buy such leaseholder's individual leased tract from the purchaser or to continue leasing the applicable leased tract from the purchaser in accordance with certain purchase or lease options;

(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) (relating to requiring the purchaser to permit the leaseholder to purchase such leaseholder's individual leased tract in cash or through lender financing) or (B) (relating to requiring the

purchaser to permit the leaseholder to purchase for a certain percent of assessed value such leaseholder's individual leased tract via seller financing) concurrently with the purchaser's closing to exercise certain desired options; and

(3) Requires that closing occur no later than December 31, 2010. Requires the authority to post on its website no later than thirty days after entering into a contract for sale with purchaser the effective date of such contract and the anticipated date of closing, which date is required to be at least six (6) months from the effective date of the contract. Requires that any changes to the anticipated date of closing also be posted on the authority's website. Requires that these dates be used to establish the time periods provided in Subdivision (2).

(c) Sale to Leaseholders. Requires that this subsection only apply to, and be effective for, those portions of the leased tract, if any, for which closing has not occurred on or before December 31, 2010, pursuant to Subsection (b), in which case requires that the effective date of this subsection be 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 initiate a tract by tract sale of the 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 leased tracts directly from the authority. Requires leaseholders to have until the expiration of such two-year period to submit a completed application of intent to purchase their individual leased tracts as provided by Subdivision (4);

(2) Requires the authority to determine if, and how, any undeveloped strips will be divided between adjacent leaseholders and incorporated into any individual leased tract, provided, however, that leaseholders are prohibited from being required to accept any such undeveloped strips;

(3) Requires the authority, on or before the effective date of this subsection, to make available to the leaseholders a form for an application of intent to purchase the leaseholder's individual leased tract. Requires that such application be deemed a contract subject to the provisions set out herein. Requires that the application of intent provide the leaseholder a 30-day feasibility period beginning on the date such application is submitted in which the leaseholder can determine the feasibility of purchasing the applicable individual leased tract, including the ability of such leaseholder to obtain financing for such purchase;

(4) Requires a leaseholder who desires to purchase such leaseholder's individual leased tract to submit a completed application to the authority on or before December 31, 2012. Provides that an application will be deemed "complete" upon certain conditions;

(5) Provides that completed applications that are timely delivered will be accepted and processed by the authority in the order in which they are received, except that the authority is required to give preference in processing applications to leaseholders who receive an ad valorem tax exemption under Section 11.13 (Residence Homestead), Tax Code, for a structure on the leaseholder's leased tract;

(6) Requires that a leased tract sold under this subsection be sold for 90 percent 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 2008, whichever is greater;

(7) Sets forth the responsibilities for the leaseholder purchasing such leaseholder's leased tract;

(8) Requires that the purchase be completed no later than June 30, 2013, for those completed applications of intent to purchase timely delivered to the authority under this subsection. Requires that the application be deemed terminated for any individual leased tracts for which closing has not occurred by such date. Prohibits the authority from accepting any applications of intent to purchase 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 leased tracts are responsible for ensuring that such application is deemed "complete" on or before December 31, 2012;

(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 leased tract and to complete such transaction no later than June 30, 2013;

(10) Requires the owner of a tract sold under this subsection to pay the authority any reasonable fees set by the authority for any services the owner accepts from the authority, however, the owner of a tract is under no obligation to accept services from the authority;

(11) Requires that any tract subject to the ranch agreement be only subject to sale under this subsection if the authority is released from its obligations under the ranch agreement relating to such tract;

(12) Provides that the following laws do not apply to sale of an individual leased tract under this subsection: Chapter 272 (Sale of 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;

(13) Provides that a provision that applies to the leaseholder of a leased tract under this section applies to any subsequent owner of the leased tract;

(14) Requires the leaseholder, at closing on the individual leased tract, to pay any indebtedness secured by a lien on the leaseholder's leasehold estate, 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 leased tract permitting the leaseholder to grant a purchase money lien on the fee simple estate in the leased tract;

(15) Provides that the authority will deliver a special warranty deed at the closing of the applicable leased tract; and

(16) Requires the board of directors of the authority (board), for any portion of the leased tract that has not been sold pursuant to this subsection on or before June 30, 2013, to sell any such remaining portion of the leased tract pursuant to terms and conditions determined by such board.

(d) **Restrictions on Leased Tract.** Requires 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 certain restrictions and recorded by the authority, as declarant, in the applicable county records prior to any sale pursuant to Subsection (b) or (c).

(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 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 Federal Energy Regulatory Commission (FERC) project area, include that portion of the buffer zone so removed, provided, however, requires the purchaser and/or owner, as applicable, 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) Requires 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 certain conditions;

(3) Requires that residual interest, notwithstanding the foregoing, if such residual interest has not vested on or before August 31, 2040, be terminated and of no further force and effect. Requires that this conveyance, upon satisfaction of either of the foregoing conditions prior to August 31, 2040, be automatically effective without necessity of further documentation. Requires that the buffer zone, from and after the date such conveyance becomes effective, be considered to be a part of the leased tract conveyed under Subsection (b) or (c) and requires the purchaser or then current owner of the applicable 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 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 authority. Requires that such residual interest immediately vest in the purchaser or then-current owner of such adjacent leased tract without the necessity of any additional written conveyance.

(4) Provides that 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 requires that such buffer zone 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, requires that no rent be due the authority under such ground lease for the buffer zone. Authorizes the authority, at such time as the applicable ground lease expires or is otherwise terminated, subject to approval of FERC, grant the purchaser or the then-current owner of the adjacent tract, as determined pursuant to the method set forth in Subdivision (2)(B) (relating to the FERC license expiring or otherwise terminating and thus the buffer zone is no longer subject to regulation by FERC), an easement for use of such portion of the buffer zone, which easement is subject to the FERC License. Requires the Authority to retain ownership of such portion of the buffer zone and exercise control over such portion of the buffer zone consistent with the FERC License and this subsection. Requires that the easement granted to such owner be limited to uses permitted under the terms of the FERC License and the authority's shoreline management plan, and any other authority rules and regulations as may be adopted from time to time.

(f) Purchase Price. Requires that the land only assessed value without any exemptions for the applicable portion of the leased tract, for purposes of determining the purchase price and/or lease rate pursuant to the options set forth in Subsection (b)(1) or the purchase price in Subsection (c), in the event the appraisal district does not provide an assessed value for the applicable portion of the leased tract for the applicable year, be calculated based on the assessed value per square foot of comparable lots with similar physical characteristics in the applicable county or adjoining counties, as determined by the authority.

(g) Roads. Requires the authority or purchaser, whichever is applicable, to transfer its interest in the roads to the applicable county in which the roads, or any portion thereof, are situated in a certain manner.

(h) Platting. Prohibits a sale of the leased tract under this section from being subject to Chapter 232 (County Regulation of Subdivisions), Local Government Code, or any other platting requirement.

(i) Mineral Interests. Requires the authority to reserve its interest in all oil, gas, and other minerals in and under the leased tract, or any portion thereof, sold under this section.

SECTION 2. Requires that all provisions of Section 8502.020, Special District Local Laws Code, as added by this Act, notwithstanding all conflicting provisions, prevail if the provisions conflict with any other provisions of Chapter 8502 (Brazos River Authority) of that code.

SECTION 3. Effective date: upon passage or September 1, 2009.