

BILL ANALYSIS

C.S.H.B. 1642
By: Pickett
Environmental Regulation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that, while it is clear that the party responsible for contamination of land from an off-site source must clean up the contamination, it is less clear how long the responsible party may take to complete the cleanup. The parties continue that if the landowner has to file a lawsuit to force the responsible party to perform a timely cleanup, the landowner may not know the extent of the contamination within the required time frame for filing the lawsuit. In addition, the parties contend that the Texas Commission on Environmental Quality places unfair constraints on the landowner. The parties believe that an innocent landowner should not be the one left "holding the bag" for environmental contamination. C.S.H.B. 1642 seeks to provide relief to an innocent landowner whose property has been impacted by environmental pollution from an off-site source.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1642 amends the Civil Practice and Remedies Code to establish that, in an action for trespass for injury to the estate or to the property of another resulting from environmental contamination, the cause of action accrues for purposes of the two-year statute of limitations on the 365th day after the date that a final remedial action report is approved by the Texas Commission on Environmental Quality (TCEQ) or the U.S. Environmental Protection Agency fully delineating and documenting the planned course of remediation as required under the applicable rule governing cleanup for the release. The bill requires a person to bring suit for damages arising from an injury to property caused by environmental contamination originating from a source not located on or at the property not later than 25 years after the date the party responsible for the contamination is identified. The bill establishes that this 25-year limitations period is a statute of repose and is independent of any other limitations period. The bill limits the applicability of these provisions to property that is less than 10 acres in size and that is located in a county on the international border with a population of 800,000 or more.

C.S.H.B. 1642 amends the Health and Safety Code to require a court, on request of an innocent owner or operator of property that is less than 10 acres in size and is located in a county on the international border with a population of 800,000 or more, to determine the amount of reasonable compensation for access to the property by a TCEQ-designated person for purposes of investigation or remediation if the innocent owner or operator and the designated person are

unable to agree on the compensation to be paid. The bill establishes that, for purposes of an application to TCEQ to obtain a certificate confirming that a person is an innocent owner or operator, contamination originating from a pipeline transporting oil, gas, refined products, or other materials across property that is less than 10 acres in size and that is located in a county on the international border with a population of 800,000 or more does not make an applicant ineligible for a certificate unless the applicant is also the owner or operator of the pipeline or TCEQ determines that both the owner and operator of the pipeline are financially nonviable.

C.S.H.B. 1642 requires the party or parties responsible for the cleanup of property that is less than 10 acres in size, is located in a county on the international border with a population of 800,000 or more, has been contaminated from an off-site source for more than 15 years, and for which cleanup has not been achieved under the governing cleanup requirements for the release to compensate the property owner for the reduced property value, cleanup costs, and any other damages resulting from the contamination, regardless of whether the contamination occurred on, before, or after the bill's effective date.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1642 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 16.003(a), Civil Practice and Remedies Code, is amended.

SECTION 2. Subchapter A, Chapter 16, Civil Practice and Remedies Code, is amended by adding Section 16.0032 to read as follows:

Sec. 16.0032. ENVIRONMENTAL CONTAMINATION OF PROPERTY.

(a) In an action for trespass for injury to the estate or to the property of another resulting from environmental contamination, the cause of action accrues for purposes of Section 16.003 on the date that a final assessment report fully delineating and documenting the extent of the contamination in compliance with the requirements of the Texas Commission on Environmental Quality is sent by certified mail to the owner

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Subchapter A, Chapter 16, Civil Practice and Remedies Code, is amended by adding Section 16.0032 to read as follows:

Sec. 16.0032. ENVIRONMENTAL CONTAMINATION OF PROPERTY IN CERTAIN COUNTIES.

(a) This section applies only to property that is:

- (1) less than 10 acres in size; and
- (2) located in a county on the international border with a population of 800,000 or more.

(b) In an action for trespass for injury to the estate or to the property of another resulting from environmental contamination, the cause of action accrues for purposes of Section 16.003 on the 365th day after the date that a final remedial action report is approved by the Texas Commission on Environmental Quality or United States Environmental Protection Agency fully delineating and documenting the planned

of the affected property.

(b) A person must bring suit for damages arising from an injury to property caused by environmental contamination originating from a source not located on or at the property not later than 10 years after the date notice of the contamination is reported in writing to both the Texas Commission on Environmental Quality and the owner of the affected property.

(c) Subsection (b) is a statute of repose and is independent of any other limitations period.

SECTION 3. Section 361.752, Health and Safety Code, is amended by adding Subsection (e) to read as follows:

(e) On the request of the owner or operator,

a court shall determine the amount of reasonable compensation under Subsection (c)(2) if the owner or operator and the responsible party are unable to agree on the compensation to be paid.

SECTION 4. Section 361.753, Health and Safety Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) For purposes of Subsection (a), contamination originating from a pipeline transporting oil, gas, or other materials across the property does not make an applicant ineligible for a certificate unless the applicant is also the owner or operator of the pipeline.

course of remediation as required under the applicable rule governing cleanup for the release.

(c) A person must bring suit for damages arising from an injury to property caused by environmental contamination originating from a source not located on or at the property not later than 25 years after the date the party responsible for the contamination is identified.

(d) Subsection (c) is a statute of repose and is independent of any other limitations period.

SECTION 3. Section 361.752, Health and Safety Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) On the request of an innocent owner or operator of property described by Subsection (f),

a court shall determine the amount of reasonable compensation under Subsection (c)(2) if the innocent owner or operator and the designated person are unable to agree on the compensation to be paid.

(f) Subsection (e) applies only to property that is:

- (1) less than 10 acres in size; and
- (2) located in a county on the international border with a population of 800,000 or more.

SECTION 4. Section 361.753, Health and Safety Code, is amended by adding Subsections (h) and (i) to read as follows:

(h) This subsection applies only to property described by Subsection (i).

For purposes of Subsection (a), contamination originating from a pipeline transporting oil, gas, refined products, or other materials across the property does not make an applicant ineligible for a certificate unless:

- (1) the applicant is also the owner or operator of the pipeline; or
- (2) the commission determines that both the owner and operator of the pipeline are financially nonviable.

(i) Subsection (h) applies only to property that is:

- (1) less than 10 acres in size; and

(2) located in a county on the international border with a population of 800,000 or more.

No equivalent provision. (*But see SECTION 5 below.*)

SECTION 5. Section 361.754, Health and Safety Code, is amended to read as follows:

Sec. 361.754. RIGHTS OF INNOCENT OWNER OR OPERATOR REGARDING CONTAMINATION FROM SOURCE NOT LOCATED ON OR AT PROPERTY.

(a) An innocent owner or operator may apply to the commission for an order directing the responsible party to promptly remediate the contamination of the property. The application must be delivered to the commission by certified mail.

(b) The commission may charge an application fee in an amount not to exceed the cost of reviewing the application. The commission shall deposit a fee collected under this subsection to the credit of the hazardous and solid waste remediation fee account.

(c) Not later than the 45th day after the date the commission receives the application, the commission shall notify the applicant whether the application is complete.

(d) Not later than the 90th day after the date the commission receives the application, the commission shall:

(1) grant or deny the application; or

(2) notify the applicant of any additional information needed to review the application.

(e) Not later than the 45th day after the date the commission receives the additional information requested under Subsection (d)(2), the commission shall grant or deny the application.

(f) On granting an application under this section, the commission shall identify the party responsible for the contamination and require the party responsible for the contamination to:

(1) develop a remediation plan and obtain the approval of the plan by the commission in writing not later than the third anniversary of the later of:

(A) the date the responsible party is first identified by the commission; or

(B) the date the application is granted by the commission;

(2) promptly begin remediating the contamination of the property following the

approval of the remediation plan described by Subdivision (1); and

(3) not later than the 15th anniversary of the date the responsible party is first identified by the commission, complete remediation of the contamination of the property at a level that achieves the most protective health standard established under the commission's risk-based remediation rules.

(g) The remediation standards and deadlines described by Subsection (f) may be revised by written agreement between the innocent owner or operator, the responsible party, and the commission.

(h) If a remediation deadline described by Subsection (f) is not achieved, each responsible party identified by the commission shall file in the deed records of the county in which the affected property is located a notice of the long-term remediation activities at the site.

(i) The commission shall require each responsible party to immediately file a notice in the deed records of the county in which the affected property is located under Subsection (h) if:

(1) an innocent owner or operator of property that has been contaminated for more than 15 years, as of September 1, 2015, applies to the commission for remediation under Subsection (a); and

(2) remediation of the contamination of the property to achieve the most protective health standard established under the commission's risk-based remediation rules is not anticipated to be completed by the fifth anniversary of the date the application is submitted.

(j) This subchapter does not limit the right of an innocent owner or operator to pursue any other remedy available at law or in equity for conditions attributable to the release or migration of contaminants from a source or sources that are not located on or at the property.

No equivalent provision. *(But see SECTION 5 above.)*

SECTION 5. Subchapter V, Chapter 361, Health and Safety Code, is amended by adding Section 361.755 to read as follows:

Sec. 361.755. RIGHTS OF PROPERTY OWNER REGARDING CONTAMINATION FROM OFF-SITE SOURCE IN CERTAIN COUNTIES. (a) This section applies only to property that is:

(1) less than 10 acres in size; and
(2) located in a county on the international border with a population of 800,000 or more.

(b) If property described by Subsection (a) has been contaminated from an off-site source for more than 15 years and cleanup has not been achieved under the governing cleanup requirements for the release, the party or parties responsible for the cleanup shall compensate the property owner for the reduced property value, cleanup costs, and any other damages resulting from the contamination.

SECTION 6. (a) Section 16.003, Civil Practice and Remedies Code, as amended by this Act, and Section 16.0032, Civil Practice and Remedies Code, as added by this Act, apply only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

(b) Section 361.752, Health and Safety Code, as amended by this Act, applies only to an agreement for reasonable access entered into on or after the effective date of this Act. An agreement for reasonable access entered into before the effective date of this Act is governed by the law in effect when the agreement was entered into, and the former law is continued in effect for that purpose.

(c) Section 361.753, Health and Safety Code, as amended by this Act, applies only to an application to obtain a certificate confirming that the person is an innocent owner or operator submitted on or after the effective date of this Act. An application submitted before the effective date of this Act is governed by the law in effect when the application was submitted, and the former law is continued in effect for that purpose.

(d) Section 361.754, Health and Safety Code, as amended by this Act, applies to an innocent owner or operator of property that has been contaminated from a source not located on or at the property regardless of whether the contamination occurred on, before, or after the effective

SECTION 6. (a) Section 16.003, Civil Practice and Remedies Code, as amended by this Act, and Section 16.0032, Civil Practice and Remedies Code, as added by this Act, apply only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

(b) Section 361.752, Health and Safety Code, as amended by this Act, applies only to an agreement for reasonable access entered into on or after the effective date of this Act. An agreement for reasonable access entered into before the effective date of this Act is governed by the law in effect when the agreement was entered into, and the former law is continued in effect for that purpose.

(c) Section 361.753, Health and Safety Code, as amended by this Act, applies only to an application to obtain a certificate confirming that the person is an innocent owner or operator submitted on or after the effective date of this Act. An application submitted before the effective date of this Act is governed by the law in effect when the application was submitted, and the former law is continued in effect for that purpose.

(d) Section 361.755, Health and Safety Code, as added by this Act, applies to property that has been contaminated from an off-site source

regardless of whether the contamination occurred on, before, or after the effective

date of this Act.

date of this Act.

SECTION 7. This Act takes effect
September 1, 2015.

SECTION 7. Same as introduced version.