

- SUBJECT:** Liability protections, other changes related to spaceflight activities
- COMMITTEE:** Economic and Small Business Development — committee substitute recommended
- VOTE:** 9 ayes — J. Davis, Vo, Bell, Y. Davis, Isaac, Murphy, Perez, E. Rodriguez, Workman
0 nays
- WITNESSES:** For — Lauren Dreyer, SpaceX; Ken Hampton, Greater Waco Chamber of Commerce; Gilberto Salinas, Brownsville Economic Development Council; Caryn Schenewerk, SpaceX; (*Registered, but did not testify:* Jim Allison, County Judges and Commissioners Association of Texas; Jason Hilts, Brownsville Economic Development Council; Carlton Schwab, Texas Economic Development Council)

Against — None

On — Brad Parker, TTLA
- BACKGROUND:** In 2011, the 82nd Legislature passed SB 115, which established limited liability for spaceflight entities. Civil Practices and Remedies Code, sec. 100A, defines a spaceflight entity to include a manufacturer or supplier of components, services, or vehicles used in spaceflight activities licensed by the Federal Aviation Administration (FAA). The definition of spaceflight entity also includes employees, stockholders, and advisors to the entity.

A spaceflight entity is not liable to any person for a spaceflight participant injury if the participant consented to all risk of injury. The consent agreement must be signed by the spaceflight participant.

Under Government Code, sec. 481.0069 the Texas Economic Development and Tourism Office operates a spaceport trust fund. Among the requirements for spending money from the fund is that a spaceport development corporation have secured at least 90 percent of the funding required for a spaceport project and the spaceport operator have obtained the appropriate FAA license.

Penal Code, sec. 42.01(a)(5), creates a disorderly conduct offense for a person who intentionally or knowingly makes unreasonable noise in a public place.

DIGEST: CSHB 1791 would amend definitions related to spaceflight activities, limit a spaceflight entity's liability for nuisance claims, amend the informed consent requirements for spaceflight participants, and alter the requirements for spending spaceport trust fund money.

Definitions. The bill would amend the definition of a spaceflight entity under Civil Practice and Remedies Code, sec. 100A to include the owner of the real property, such as a city, that is contracting with the spaceflight entity. Local government entities that hosted spaceflight activities, such as a county, also would be included. The bill would amend other existing definitions and would define additional terms, such as "reentry vehicle."

Limited liability. CSHB 1791 would limit a spaceflight entity's liability for damages resulting from nuisance related to spacecraft testing, launch, reentry, or landing. A person could not seek injunctive relief to stop spaceflight activities. The bill would not prevent breach of contract claims for the use of real property or government actions to enforce valid laws and regulations. The bill also would amend Penal Code, sec. 42 to prevent lawfully conducted spaceflight activities from qualifying as an unreasonable noise leading to a disorderly conduct criminal charge.

The spaceflight participant's signed agreement consenting to risk of injury would be binding on the participant and any of his or her heirs, executors, or representatives.

Spaceport trust fund. The bill would amend Government Code, sec. 481.0069 so a spaceport development corporation had to demonstrate the ability to fund at least 75 percent of a project and have applied for or obtained the appropriate license if required by federal law in order for money to be spent from the spaceport trust fund. The bill also expand the definitions of spacecraft and spaceport in Local Government Code, sec. 507, which deals with spaceport development corporations.

The bill would take effect on September 1, 2013, and would apply only to spaceflight activities that occurred on or after that date.

SUPPORTERS CSHB 1791 would help recruit the space industry to create a spaceport in

SAY: Texas, where commercial companies may launch spacecraft with payloads such as satellites, supplies for the International Space Station, and civilian astronauts. Texas is a leading candidate for a Space Exploration Technologies (SpaceX) commercial spaceport that would be located near Brownsville, by Boca Chica Beach.

A commercial spaceport would result in significant economic development for the South Texas region in the form of jobs and tourism. In addition, if the launch site were built, SpaceX could invest in related projects, such as manufacturing its rocket engines in South Texas to shorten transport distance.

The bill promotes the development of the commercial space launch industry and a commercial, orbital launch site in Texas by modernizing the statutory framework for spaceflight activities and by clarifying the limitations on liability for spaceflight entities in Texas. Liability protections would be provided for spaceflight entities undertaking spaceflight activities in accordance with Federal Aviation Administration licenses and permits, where required. These spaceflight entities would be protected from a single person obtaining an injunction to stop what would be an extremely capital-intensive activity to build and operate.

The proposal to build a launch site in South Texas has received overwhelming support from area residents, as well as from local and statewide elected officials. Most believe any negative impacts of the project are greatly outweighed by the positive benefits to the region and to Texas. Boca Chica Village, which would be most affected by any noise, has a small, mostly transient population. With launches limited to 12 per year, the bill should not have a major impact on the quality of life for nearby residents.

OPPONENTS SAY: HB 1791 would limit the ability of individuals to file a nuisance claim for damages resulting from certain activities related to space flight. However, the proposed launch site would result in significant noise, especially for nearby residents in Boca Chica Village. As a matter of policy precedent, allowing commercial space entities to be protected from nuisance liability could make it harder for the Legislature to refuse to do the same for other companies in other industries in the future.

NOTES: The committee substitute differs from the bill as filed by:

- adding local government entities that host spaceflight activities, such as counties, to the definition of a spaceflight entity;
- removing limitations on liability from abatements or other injunctive relief and the exceptions to the provision precluding injunctive relief;
- specifying that the limitation on liability from a nuisance applies to the testing, launching, reentering, or landing of a spacecraft;
- changing the requirement for spaceport trust fund money to be used from a requirement for a spaceport development corporation to have secured at least 90 percent of the required funding to the development corporation having demonstrated the ability to fund at least 75 percent of the project.

The companion bill, SB 1636 by Deuell, was passed by the Senate by a vote of 30-0 on April 25.

A related bill, HB 2623 by Oliveira, was passed by the House on April 25. It would restrict access to Boca Chica Beach during spacecraft launches. Another related bill, HB 545 by J. Davis, et al., which would allow a single municipality to create a spaceport development corporation, is on the General State Calendar for April 30.