

BILL ANALYSIS

C.S.H.B. 2252
By: Flores
Environmental Regulation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law allows the Texas Commission on Environmental Quality to place a lien against certain landowners without considering an individual's ability to satisfy the lien.

As proposed, CSHB 2252 grants more flexibility to the executive director in determining whether to place a lien on a property and to do so in a way which better benefits the owner of the property. It avoids placing a hardship on certain "innocent homeowners" in situations where TCEQ has the authority to place a lien.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 4, {Section 361.201 (e)}, and SECTION 5 (c) of this bill.

ANALYSIS

SECTION 1. Amends Section 361.181 (c) of the Health and Safety Code to read as follows:

(c) In this subchapter:

(1) defines "Facility."

(2) Provides "Homestead" has the meaning designated by Section 51, Article XVI, Texas Constitution.

SECTION 2. Amends Section 361.194 (b) is amended to read as follows:

Subsection (a) is deleted and replaced with Subsection (b) adding the following language:

Requires the executive director to prepare an affidavit and in determining whether to prepare an affidavit or whether a lien is satisfied, the executive director:

(1) is required to proceed in the manner that the executive director determines will most likely result in the least overall costs to the state after any cost recovery action; and

(2) the executive director is authorized to take into account a landowner's financial ability to satisfy the lien, including the consideration of whether the landowner received financial compensation for the disposal of any substance addressed by the remedial action and whether the real property that is the subject of the lien:

(A) is a homestead and is being occupied as a home by the landowner; and

(B) has a fair market value of \$250,000 or less.

SECTION 3. Amends Section 361.197 of the Health and Safety Code, by adding Subsection (e) as follows:

(e) Prohibits the commission from filing a cost recovery action under this section against an individual if the individual's only significant asset is a homestead that:

- (1) includes the facility subject to or affected by a remedial action;
- (2) is occupied by the individual as a home;
- (3) has a fair market value of \$250,000 or less.

SECTION 4. Amends section 361.201 of the Health and Safety Code, by adding Subsections (d) and (e) as follows:

(d) Requires the commission to determine whether a potentially responsible party is financially capable of conducting any necessary remediation studies or remedial action if the responsible party is an individual whose homestead includes the facility subject to or affected by a remedial action.

(e) Requires the commission by rule to adopt criteria for determining the financial capability of an individual under Subsection (d). Provides that the rules must provide that the value of the individual's homestead may not be included in the total amount of the individual's assets if:

- (1) the individual is occupying the homestead as a home; and
- (2) the fair market value of the homestead is \$250,000 or less.

SECTION 5.

(a) Applies to the change in law amended in Sections 2 and 3 applying to a lien affidavit and a cost recovery action filed under the Health and Safety Code. This subsection recovers money spent by the Texas Commission on Environmental Quality for a hazardous waste remediation project which begins on or after the effective date of this Act.

(b) Applies to the change in law amended in Section 4 which refers to a potential remediation project for which a remedial investigation or feasibility study under Section 361.185 of the Health and Safety Code which is on or after the effective date of this Act.

(c) Requires the Texas Commission on Environmental Quality to adopt rules and implement the changes made by this bill no later than December 1, 2003.

SECTION 6. Effective Date: September 1, 2003.

EFFECTIVE DATE

September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

CSHB 2252 modifies the original version by deleting Subsection (a) in SECTION 2 which deals with all remediation costs for which a person is liable to the state and constitutes a lien in favor of the state on the real property and the rights to the real property that are subject to or affected by a remedial action. Remediation costs for which a person would otherwise be liable to the state under this chapter do not

constitute a lien in favor of the state against an individual's homestead that is the individual's only significant asset if the homestead includes the facility subject to or affected by a remedial action and is occupied by the individual as a home.

CSHB 2252 clarifies the original version by adding Subsection (b) in SECTION 2 which stipulates that a lien imposed by this section arises and is attached to the real property subject to or affected by a remedial action at the time an affidavit is recorded and indexed in accordance with this section in the county in which the real property is located. In order to determine rights for all affected parties, the lien does not relate back to a time before the date on which the affidavit is recorded, which is the beginning date of the lien. By law, the lien continues until the liability for the costs is satisfied or unenforceable. CSHB 2252 requires the executive director of TCEQ to prepare an affidavit and to determine whether the lien is satisfied. The executive director is required to take action in a manner which will most likely result in the least overall costs to the state after any recovery action; and is authorized to take into account a landowner's financial ability to satisfy the lien. The committee substitute provides that the executive director must consider whether the landowner received financial compensation for the disposal of any substance addressed by the remedial action and whether the real property that is the subject of the lien is a homestead and is being occupied as a home by the landowner.