

By: Flores

H.B. No. 2252

A BILL TO BE ENTITLED

AN ACT

1
2 relating to exemptions for certain individuals from cost recovery
3 actions and liens placed on homesteads by the Texas Commission on
4 Environmental Quality.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 361.181(c), Health and Safety Code, is
7 amended to read as follows:

8 (c) In this subchapter:

9 (1) "Facility" [~~,"facility"~~] means any building,
10 structure, installation, equipment, pipe, or pipeline (including
11 any pipe into a sewer or publicly owned treatment works, well, pit,
12 pond, lagoon, impoundment, ditch, landfill, storage container,
13 motor vehicle, rolling stock, or aircraft), or any site or area
14 where a hazardous substance has been deposited, stored, disposed
15 of, or placed or otherwise come to be located. The term does not
16 include any consumer product in consumer use or any vessel.

17 (2) "Homestead" has the meaning designated by Section
18 51, Article XVI, Texas Constitution.

19 SECTION 2. Section 361.194(b), Health and Safety Code, is
20 amended to read as follows:

21 (b) The lien imposed by this section arises and attaches to
22 the real property subject to or affected by a remedial action at the
23 time an affidavit is recorded and indexed in accordance with this
24 section in the county in which the real property is located. [~~The~~

~~1 executive director shall determine whether to prepare an affidavit.
2 In making the determination, the executive director shall proceed
3 in the manner that the executive director determines will most
4 likely result in the least overall costs to the state after any cost
5 recovery action.]~~ For the purpose of determining rights of all

6 affected parties, the lien does not relate back to a time before the
7 date on which the affidavit is recorded, which date is the lien
8 inception date. The lien continues until the liability for the
9 costs is satisfied or becomes unenforceable through operation of
10 law. The executive director shall determine whether to prepare an
11 affidavit. In determining whether to prepare an affidavit or
12 whether a lien is satisfied, the executive director:

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

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

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

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

24 SECTION 3. Section 361.197, Health and Safety Code, is
25 amended by adding Subsection (e) to read as follows:

26 (e) The commission may not file a cost recovery action under
27 this section against an individual if the individual's only

1 significant asset is a homestead that:

2 (1) includes the facility subject to or affected by a
3 remedial action;

4 (2) is occupied by the individual as a home; and

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

6 SECTION 4. Section 361.201, Health and Safety Code, is
7 amended by adding Subsections (d) and (e) to read as follows:

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

13 (e) The commission by rule shall adopt criteria for
14 determining the financial capability of an individual under
15 Subsection (d). The rules must provide that the value of the
16 individual's homestead may not be included in the total amount of
17 the individual's assets if:

18 (1) the individual is occupying the homestead as a
19 home; and

20 (2) the fair market value of the homestead is \$250,000
21 or less.

22 SECTION 5. (a) The change in law made by Sections 2 and 3 of
23 this Act applies to a lien affidavit prepared under Section
24 361.194, Health and Safety Code, or a cost recovery action filed
25 under Section 361.197, Health and Safety Code, by the Texas
26 Commission on Environmental Quality to recover money spent by the
27 Texas Commission on Environmental Quality for a hazardous waste

1 remediation project that is completed under Subchapter F, Chapter
2 361, Health and Safety Code, on or after the effective date of this
3 Act.

4 (b) The change in law made by Section 4 of this Act applies
5 to a potential remediation project for which a remedial
6 investigation or feasibility study under Section 361.185, Health
7 and Safety Code, begins on or after the effective date of this Act.

8 (c) Not later than December 1, 2003, the Texas Commission on
9 Environmental Quality shall adopt rules to implement the changes in
10 law made by Sections 361.181, 361.194, 361.197, and 361.201, Health
11 and Safety Code, as amended by this Act.

12 SECTION 6. This Act takes effect September 1, 2003.