

1-1 By: Flores (Senate Sponsor - Hinojosa) H.B. No. 2252
1-2 (In the Senate - Received from the House May 7, 2003;
1-3 May 9, 2003, read first time and referred to Committee on Natural
1-4 Resources; May 23, 2003, reported favorably by the following vote:
1-5 Yeas 9, Nays 0; May 23, 2003, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to exemptions for certain individuals from cost recovery
1-9 actions and liens placed on homesteads by the Texas Commission on
1-10 Environmental Quality.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 361.181(c), Health and Safety Code, is
1-13 amended to read as follows:

1-14 (c) In this subchapter:

1-15 (1) "Facility" [~~,"facility"~~] means any building,
1-16 structure, installation, equipment, pipe, or pipeline (including
1-17 any pipe into a sewer or publicly owned treatment works, well, pit,
1-18 pond, lagoon, impoundment, ditch, landfill, storage container,
1-19 motor vehicle, rolling stock, or aircraft), or any site or area
1-20 where a hazardous substance has been deposited, stored, disposed
1-21 of, or placed or otherwise come to be located. The term does not
1-22 include any consumer product in consumer use or any vessel.

1-23 (2) "Homestead" has the meaning designated by Section
1-24 51, Article XVI, Texas Constitution.

1-25 SECTION 2. Section 361.194(b), Health and Safety Code, is
1-26 amended to read as follows:

1-27 (b) The lien imposed by this section arises and attaches to
1-28 the real property subject to or affected by a remedial action at the
1-29 time an affidavit is recorded and indexed in accordance with this
1-30 section in the county in which the real property is located. [~~The
1-31 executive director shall determine whether to prepare an affidavit.
1-32 In making the determination, the executive director shall proceed
1-33 in the manner that the executive director determines will most
1-34 likely result in the least overall costs to the state after any cost
1-35 recovery action.~~] For the purpose of determining rights of all
1-36 affected parties, the lien does not relate back to a time before the
1-37 date on which the affidavit is recorded, which date is the lien
1-38 inception date. The lien continues until the liability for the
1-39 costs is satisfied or becomes unenforceable through operation of
1-40 law. The executive director shall determine whether to prepare an
1-41 affidavit. In determining whether to prepare an affidavit or
1-42 whether a lien is satisfied, the executive director:

1-43 (1) shall proceed in the manner that the executive
1-44 director determines will most likely result in the least overall
1-45 costs to the state after any cost recovery action; and

1-46 (2) may take into account a landowner's financial
1-47 ability to satisfy the lien, including consideration of whether the
1-48 landowner received financial compensation for the disposal of any
1-49 substance addressed by the remedial action and whether the real
1-50 property that is the subject of the lien;

1-51 (A) is a homestead and is being occupied as a home
1-52 by the landowner; and

1-53 (B) has a fair market value of \$250,000 or less.

1-54 SECTION 3. Section 361.197, Health and Safety Code, is
1-55 amended by adding Subsection (e) to read as follows:

1-56 (e) The commission may not file a cost recovery action under
1-57 this section against an individual if the individual's only
1-58 significant asset is a homestead that:

1-59 (1) includes the facility subject to or affected by a
1-60 remedial action;

1-61 (2) is occupied by the individual as a home; and

1-62 (3) has a fair market value of \$250,000 or less.

1-63 SECTION 4. Section 361.201, Health and Safety Code, is
1-64 amended by adding Subsections (d) and (e) to read as follows:

2-1 (d) The commission shall determine whether a potentially
2-2 responsible party is financially capable of conducting any
2-3 necessary remediation studies or remedial action if the responsible
2-4 party is an individual whose homestead includes the facility
2-5 subject to or affected by a remedial action.

2-6 (e) The commission by rule shall adopt criteria for
2-7 determining the financial capability of an individual under
2-8 Subsection (d). The rules must provide that the value of the
2-9 individual's homestead may not be included in the total amount of
2-10 the individual's assets if:

2-11 (1) the individual is occupying the homestead as a
2-12 home; and

2-13 (2) the fair market value of the homestead is \$250,000
2-14 or less.

2-15 SECTION 5. (a) The change in law made by Sections 2 and 3 of
2-16 this Act applies to a lien affidavit prepared under Section
2-17 361.194, Health and Safety Code, or a cost recovery action filed
2-18 under Section 361.197, Health and Safety Code, by the Texas
2-19 Commission on Environmental Quality to recover money spent by the
2-20 Texas Commission on Environmental Quality for a hazardous waste
2-21 remediation project that is completed under Subchapter F, Chapter
2-22 361, Health and Safety Code, on or after the effective date of this
2-23 Act.

2-24 (b) The change in law made by Section 4 of this Act applies
2-25 to a potential remediation project for which a remedial
2-26 investigation or feasibility study under Section 361.185, Health
2-27 and Safety Code, begins on or after the effective date of this Act.

2-28 (c) Not later than December 1, 2003, the Texas Commission on
2-29 Environmental Quality shall adopt rules to implement the changes in
2-30 law made by Sections 361.181, 361.194, 361.197, and 361.201, Health
2-31 and Safety Code, as amended by this Act.

2-32 SECTION 6. This Act takes effect September 1, 2003.

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