

## **BILL ANALYSIS**

C.S.H.B. 2044  
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State Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Section 403.0195, Government Code, authorizes the comptroller of public accounts to contract with a person for the receipt of information about a possible claim that the state may be entitled to pursue for the recovery of revenue or other property.

C.S.H.B. 2044 allows a person who is a party to such a contract to bring a private cause of action related to the subject of the contract should the state fail to collect, or file suit to recover, the revenue or property within five years of the date of the contract, and if the contract involves royalties or other proceeds of production attributable to state-owned lands or mineral interests. The bill requires that the suit be brought on behalf of the person and the state. The bill prohibits the person bringing an action from recovering an amount greater than five percent of the amount of the revenue or the value of the other property that the state recovers as a result. The bill provides that the state would retain the remainder of the recovery.

### **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. 2044 amends the Government Code to add temporary provisions set to expire January 1, 2015, authorizing a person who has contracted with the comptroller of public accounts to supply information about a possible claim that the state may be entitled to pursue for the recovery of revenue or other property to file a civil action on the claim that is the subject of the contract in certain circumstances if the claim is not pursued by the state. The bill authorizes filing if the contract is executed on or before September 1, 2009, involves royalties or other proceeds of production attributable to state-owned lands or mineral interests, and does not result in the state filing suit or taking other action to recover on the claim before the expiration of five years after the date of the contract's execution. The bill provides that an action brought by the contracting person is on behalf of both that person and the state and must be brought in the name of the person and the state. The bill requires a person bringing such an action to serve a copy of the petition and a written disclosure of substantially all material evidence and information the person possesses on the attorney general in compliance with the Texas Rules of Civil Procedure. The bill requires the petition to be filed in camera and, with certain exceptions, to remain under seal until at least the 180th day after the date the petition is filed or the date on which the state elects to intervene, whichever is earlier. The bill prohibits the petition from being served on the defendant until the court orders service on the defendant.

C.S.H.B. 2044 authorizes the state to elect to intervene and proceed with the action not later than the 180th day after the date the attorney general receives the petition and the material evidence and information. The bill authorizes the attorney general, at the time the state elects to intervene, to file a motion with the court requesting that the petition remain under seal for an extended period. The bill allows the state, for good cause shown, to move the court to extend the 180-day sealing deadline or the 180-day deadline for intervening and proceeding with the action. The bill

provides that a motion to extend may be supported by affidavits or other submissions in camera. The bill allows an action to be dismissed before the end of the period during which the petition remains under seal only if the court and the attorney general consent in writing to the dismissal and state their reasons for consenting. The bill establishes that the defendant is not required to file an answer to a petition in accordance with the Texas Rules of Civil Procedure until the petition is unsealed and served on the defendant.

C.S.H.B. 2044 requires the state, not later than the last day of the 180 days it has to intervene and proceed, or the last day of the extension of that period, to proceed with the action or notify the court that the state declines to take over the action. The bill authorizes the person bringing the action to proceed without the state's participation if the state declines to take over the action. The bill entitles the state, on its request, to be served with copies of all pleadings filed in the action and to be provided at the state's expense with copies of all deposition transcripts. The bill provides that if the person bringing the action proceeds without the state's participation, the court, without limiting the status and right of that person, may permit the state to intervene at a later date on a showing of good cause. The bill provides that if the state proceeds with the action, the state has the primary responsibility for prosecuting the action and is not bound by an act of the person bringing the action. The bill establishes that the person bringing the action has the right to continue as a party to the action.

C.S.H.B. 2044 authorizes the state to dismiss the action, notwithstanding the objections of the person bringing the action, if the attorney general notifies the person that the state has filed a motion to dismiss and the court provides the person with an opportunity for a hearing on the motion. The bill authorizes the state to settle the action with the defendant notwithstanding the objections of the person bringing the action if the court after a hearing determines that the proposed settlement is fair, adequate, and reasonable under all the circumstances. The bill authorizes the hearing, on a showing of good cause, to be held in camera.

C.S.H.B. 2044 authorizes the court, on a showing by the state that unrestricted participation during the course of the litigation by the person bringing the action would interfere with or unduly delay the state's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, to impose limitations on the person's participation. The bill for such purposes authorizes limiting the number of witnesses the person may call, limiting the length of testimony of witnesses called by the person, limiting the person's cross-examination of witnesses, or otherwise limiting the person's participation. The bill authorizes the court to limit the participation by the person, as well, on a showing by the defendant that unrestricted participation by the person during the course of the litigation would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense.

C.S.H.B. 2044 provides that a person bringing an action may recover an amount not greater than five percent of the revenue or the value of the other property that the state recovers as a result of the person bringing the action.

C.S.H.B. 2044 requires that recovery by a person be from the proceeds of the action, including the proceeds of any settlement. The bill requires that the court determine necessary expenses, fees, and costs to be awarded to the person only after the defendant has been found liable in the action. The bill entitles a person receiving a payment to receive from the defendant an amount for reasonable expenses, reasonable attorney's fees, and costs that the court finds to have been necessarily incurred.

C.S.H.B. 2044 exempts from the provisions of the bill a claim against a governmental unit as defined by the Texas Tort Claims Act.

C.S.H.B. 2044 establishes that an action commenced under the bill's temporary provisions on or before December 31, 2014, is governed by those provisions, and they are continued in effect for that purpose, notwithstanding the expiration of such provisions.

## **EFFECTIVE DATE**

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

## **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 2044 adds a provision not in the original limiting the applicability of its provisions to a contract, executed on or before September 1, 2009, that involves royalties or other proceeds of production attributable to state-owned lands or mineral interests and meets the other criteria specified in both the original and the substitute. The substitute removes a provision in the original specifying that an action brought under the bill's provisions is a qui tam action.

C.S.H.B. 2044 adds provisions not in the original requiring the recovery by a person be from the proceeds of the action, requiring the court to determine necessary expenses, fees, and costs to be awarded only after the defendant has been found liable in the action, and entitling a person receiving payment to receive from the defendant an amount for certain reasonable expenses and fees and necessary costs.

C.S.H.B. 2044 adds a provision not in the original making the provisions of the bill inapplicable to a claim against a governmental unit under the Texas Tort Claims Act. The substitute removes a provision included in the original making the bill's provisions inapplicable to an unlawful act relating to Medicaid fraud.

C.S.H.B. 2044 removes a provision included in the original providing that the change in law made by the bill applies to a contract for information about property recoverable by the state regardless of whether the contract was executed before, on, or after the effective date.

C.S.H.B. 2044 adds a provision not in the original making the bill's provisions temporary, with an expiration date of January 1, 2015. The substitute adds a related savings provision establishing that an action commenced under the bill on or before December 31, 2014, is governed by the bill's provisions, which continue in effect for that purpose.

C.S.H.B. 2044 makes a nonsubstantive clarifying change to the language of the original.