

By: Keffer

H.B. No. 2044

Substitute the following for H.B. No. 2044:

By: Gallego

C.S.H.B. No. 2044

A BILL TO BE ENTITLED

AN ACT

relating to an action on certain contracts for information about property recoverable by the state.

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

SECTION 1. Subchapter B, Chapter 403, Government Code, is amended by adding Section 403.0197 to read as follows:

Sec. 403.0197. ACTION ON CONTRACT. (a) If a contract executed under Section 403.0195 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 that is the subject of the contract before the expiration of five years after the date on which the contract is executed, the contracting person may file a civil action on the claim that is the subject of the contract. An action brought under this section is on behalf of both the contracting person and the state and must be brought in the name of the person and the state.

(b) A person bringing an action under this section shall 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.

(c) The petition shall be filed in camera and, except as provided by Subsection (e) or (f), shall remain under seal until at

1 least the 180th day after the date the petition is filed or the date
2 on which the state elects to intervene, whichever is earlier. The
3 petition may not be served on the defendant until the court orders
4 service on the defendant.

5 (d) The state may elect to intervene and proceed with the
6 action not later than the 180th day after the date the attorney
7 general receives the petition and the material evidence and
8 information.

9 (e) At the time the state elects to intervene, the attorney
10 general may file a motion with the court requesting that the
11 petition remain under seal for an extended period.

12 (f) The state may, for good cause shown, move the court to
13 extend the 180-day deadline under Subsection (c) or (d). A motion
14 under this subsection may be supported by affidavits or other
15 submissions in camera.

16 (g) An action under this section may be dismissed before the
17 end of the period during which the petition remains under seal only
18 if the court and the attorney general consent in writing to the
19 dismissal and state their reasons for consenting.

20 (h) A defendant is not required to file in accordance with
21 the Texas Rules of Civil Procedure an answer to a petition filed
22 under this section until the petition is unsealed and served on the
23 defendant.

24 (i) Not later than the last day of the period prescribed by
25 Subsection (d) or an extension of that period as provided by
26 Subsection (e) or (f), the state shall:

27 (1) proceed with the action; or

1 (2) notify the court that the state declines to take
2 over the action.

3 (j) If the state declines to take over the action, the
4 person bringing the action may proceed without the state's
5 participation. On request by the state, the state is entitled to be
6 served with copies of all pleadings filed in the action and be
7 provided at the state's expense with copies of all deposition
8 transcripts. If the person bringing the action proceeds without
9 the state's participation, the court, without limiting the status
10 and right of that person, may permit the state to intervene at a
11 later date on a showing of good cause.

12 (k) If the state proceeds with the action, the state has the
13 primary responsibility for prosecuting the action and is not bound
14 by an act of the person bringing the action. The person bringing
15 the action has the right to continue as a party to the action,
16 subject to the limitations in this section.

17 (l) The state may dismiss the action notwithstanding the
18 objections of the person bringing the action if:

19 (1) the attorney general notifies the person that the
20 state has filed a motion to dismiss; and

21 (2) the court provides the person with an opportunity
22 for a hearing on the motion.

23 (m) The state may settle the action with the defendant
24 notwithstanding the objections of the person bringing the action if
25 the court determines, after a hearing, that the proposed settlement
26 is fair, adequate, and reasonable under all the circumstances. On a
27 showing of good cause, the hearing may be held in camera.

1 (n) On a showing by the state that unrestricted
2 participation during the course of the litigation by the person
3 bringing the action would interfere with or unduly delay the
4 state's prosecution of the case, or would be repetitious,
5 irrelevant, or for purposes of harassment, the court may impose
6 limitations on the person's participation, including:

7 (1) limiting the number of witnesses the person may
8 call;

9 (2) limiting the length of the testimony of witnesses
10 called by the person;

11 (3) limiting the person's cross-examination of
12 witnesses; or

13 (4) otherwise limiting the participation by the person
14 in the litigation.

15 (o) On a showing by the defendant that unrestricted
16 participation during the course of the litigation by the person
17 bringing the action would be for purposes of harassment or would
18 cause the defendant undue burden or unnecessary expense, the court
19 may limit the participation by the person in the litigation.

20 (p) A person bringing an action under this section may
21 recover an amount not greater than five percent of the amount of the
22 revenue or the value of the other property that the state recovers
23 as a result of the person bringing the action.

24 (q) Recovery by a person under this section shall be from
25 the proceeds of the action, including the proceeds of any
26 settlement. The court shall determine necessary expenses, fees,
27 and costs to be awarded under this subsection only after the

1 defendant has been found liable in the action. A person who
2 receives a payment under this section is entitled to receive from
3 the defendant an amount for:

- 4 (1) reasonable expenses;
5 (2) reasonable attorney's fees; and
6 (3) costs that the court finds to have been
7 necessarily incurred.

8 (r) This section does not apply to a claim against a
9 governmental unit, as defined by Section 101.001, Civil Practice
10 and Remedies Code.

11 (s) This section expires January 1, 2015.

12 SECTION 2. Notwithstanding the expiration of Section
13 403.0197, Government Code, as added by this Act, an action that is
14 commenced under that section on or before December 31, 2014, is
15 governed by that section, and that section is continued in effect
16 for that purpose.

17 SECTION 3. This Act takes effect immediately if it receives
18 a vote of two-thirds of all the members elected to each house, as
19 provided by Section 39, Article III, Texas Constitution. If this
20 Act does not receive the vote necessary for immediate effect, this
21 Act takes effect September 1, 2009.