

BILL ANALYSIS

C.S.H.B. 1791
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Economic & Small Business Development
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties assert that private commercial space companies have made historic strides in recent years, and they cite as an example the American company that recently became the first private space entity to successfully berth with a space station, deliver cargo, and return to Earth. These parties note that, for the first time in more than three decades, American rockets are regaining international market share in the commercial satellite launch sector by winning launches away from major international competitors. According to these parties, Texas may have the opportunity to host those launches from a commercial orbital launch site and help launch the world's most advanced, American-made rockets into Earth's orbit, which would provide high-paying high-tech jobs, infrastructure investments, tourism, and other economic benefits.

While space flight entities in partnership with their local communities and economic development corporations are creating spaceports in Texas, industry observers note that state laws defining space flight activities, regulating private sector spaceport development, and governing the spaceport trust fund need to be modernized to reflect the evolving state of space industry innovation. C.S.H.B. 1791 seeks to promote the development of the commercial space launch industry and a commercial orbital launch site in Texas by modernizing the statutory framework for space flight activities and by clarifying the limitations on liability for space flight entities in Texas.

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. 1791 amends the Civil Practice and Remedies Code to redefine, among other terms defined or redefined, "space flight entity" as a person who conducts space flight activities and who, to the extent required by federal law, has obtained the appropriate Federal Aviation Administration (FAA) license or other authorization. The bill includes among those entities encompassed within that definition a manufacturer or supplier of specified components, services, or vehicles used by the space flight entity and reviewed by the FAA as part of issuing the license or other authorization; an advisor of a space flight entity; an owner or lessor of real property on which space flight activities are conducted, including a municipality, county, political subdivision, or spaceport development corporation in Texas with a contractual relationship with a space flight entity; and a municipality, county, economic development organization, or other political subdivision in the territory or extraterritorial jurisdiction of which space flight activities are conducted.

C.S.H.B. 1791 grants a space flight entity immunity from liability to any person for damages resulting from nuisance arising from testing, launching, reentering, or landing, and exempts such an entity from being subject to any claim for nuisance arising from testing, launching, reentering, or landing. The bill precludes injunctive relief with respect to space flight activities. The bill

establishes that these amended statutory provisions do not limit liability for breach of a contract for use of real property by a space flight entity or preclude an action by a federal or state governmental entity to enforce a valid statute or regulation.

C.S.H.B. 1791 establishes that the signing of the space flight activity waiver agreement by the space flight participant that renders the agreement effective and enforceable is signed by the participant on the participant's behalf and that of any of the participant's heirs, executors, administrators, representatives, attorneys, successors, and assignees.

C.S.H.B. 1791 amends the Local Government Code to redefine "spacecraft" and "spaceport."

C.S.H.B. 1791 amends the Government Code to specify that the following items must be certified by the Texas Economic Development and Tourism Office to the comptroller of public accounts for the expenditure of money in the spaceport trust fund: that a viable business entity has been established that has a business plan that demonstrates that the entity has the expertise and capability necessary to launch and land spacecraft, as an alternative to launching and landing a reusable launch vehicle; that a development corporation for spaceport facilities has established a development plan for the spaceport project and demonstrated the financial ability to fund at least 75 percent of the required funding, rather than such a corporation establishing a development plan and securing at least 90 percent of the required funding; and that the spaceport or launch operator has obtained or applied for the appropriate FAA license or other appropriate authorization, rather than the operator has obtained the appropriate FAA license.

C.S.H.B. 1791 amends the Penal Code to establish that noise arising from space flight activities, if lawfully conducted, does not constitute "unreasonable noise" for purposes of statutory provisions relating to disorderly conduct.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1791 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 100A.001, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 100A.001. DEFINITIONS. In this chapter:

(1) "Launch" means a placement or attempted placement of a launch vehicle [~~or rocket~~] and any spacecraft [~~payload, crew, or space flight participant~~] in a suborbital trajectory, earth orbit, or outer space, including activities involved in the preparation of a launch vehicle or spacecraft [~~payload~~] for launch.

(1-a) "Launch vehicle" means any vehicle and its components designed to operate in, or place spacecraft, if any, in a suborbital

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 100A.001, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 100A.001. DEFINITIONS. In this chapter:

(1) "Launch" means a placement or attempted placement of a launch vehicle [~~or rocket~~] and spacecraft, if any, [~~payload, crew, or space flight participant~~] in a suborbital trajectory, earth orbit, or outer space, including activities involved in the preparation of a launch vehicle or spacecraft [~~payload~~] for launch.

(1-a) "Launch vehicle" means any vehicle and its ~~stages or~~ components designed to operate in or place spacecraft, if any, in a

trajectory, earth orbit, or otherwise in outer space.

(2) "Reentry" means a [~~purposeful~~] return or attempt to return of a reentry vehicle or spacecraft [and the payload, the crew, or a space flight participant] from earth orbit or from outer space to earth.

(2-a) "Spacecraft" has the meaning assigned by Section 507.001, Local Government Code.

(3) "Space flight activities" means activities and training engaged in by a space flight entity in all phases of preparing for and undertaking space flight, including:

(A) the research, development, testing, or manufacture of a launch vehicle, reentry vehicle, or spacecraft or components of a launch vehicle, reentry vehicle, or spacecraft;

(B) the preparation of a launch vehicle, components of a launch vehicle, payload, spacecraft, crew, or space flight participant for launch, space flight, and reentry;

(C) [~~(B)~~] the conduct of the launch;

(D) [~~(C)~~] conduct occurring between the launch and reentry;

(E) [~~(D)~~] the preparation of a reentry vehicle, components of a reentry vehicle, payload, spacecraft, crew, or space flight participant for reentry;

(F) [~~(E)~~] the conduct of reentry and descent;

(G) [~~(F)~~] the conduct of the landing; and

(H) [~~(G)~~] the conduct of postlanding recovery of a reentry vehicle, components of a reentry vehicle, payload, spacecraft, crew, or space flight participant.

(4) "Space flight entity" means a person who conducts space flight activities and who, to the extent required by federal law, has obtained the appropriate Federal Aviation Administration license or other authorization, including safety approval and a payload determination. The term includes:

suborbital trajectory, in earth orbit, or in outer space.

(2) "Reentry" means a [~~purposeful~~] return or attempt to return of a launch vehicle, reentry vehicle, or spacecraft [and the payload, the crew, or a space flight participant] from a suborbital trajectory, from earth orbit, or from outer space to earth, including activities involved in the recovery of a launch vehicle, reentry vehicle, or spacecraft.

(2-a) "Reentry vehicle" means any vehicle, including its stages or components, or spacecraft designed to return from earth orbit or outer space to earth, or a reusable launch vehicle designed to return from earth orbit or outer space to earth, substantially intact.

(2-b) "Spacecraft" has the meaning assigned by Section 507.001, Local Government Code.

(3) "Space flight activities" means activities and training in any phase [all phases] of preparing for and undertaking space flight, including:

(A) the research, development, testing, or manufacture of a launch vehicle, reentry vehicle, or spacecraft;

(B) the preparation of a launch vehicle, reentry vehicle, payload, spacecraft, crew, or space flight participant for launch, space flight, and reentry;

(C) [~~(B)~~] the conduct of the launch;

(D) [~~(C)~~] conduct occurring between the launch and reentry;

(E) [~~(D)~~] the preparation of a launch vehicle, reentry vehicle, payload, spacecraft, crew, or space flight participant for reentry;

(F) [~~(E)~~] the conduct of reentry and descent;

(G) [~~(F)~~] the conduct of the landing; and

(H) [~~(G)~~] the conduct of postlanding recovery of a launch vehicle, reentry vehicle, payload, spacecraft, crew, or space flight participant.

(4) "Space flight entity" means a person who conducts space flight activities and who, to the extent required by federal law, has obtained the appropriate Federal Aviation Administration license or other authorization, including safety approval and a payload determination. The term includes:

(A) a manufacturer or supplier of components, services, or **vehicles** used by the entity and reviewed by the Federal Aviation Administration as part of issuing the license or other authorization; ~~and~~

(B) an employee, officer, director, owner, stockholder, member, manager, advisor, or partner of the entity, manufacturer, or supplier; and

(C) an owner or lessor of real property on which space flight activities are conducted, including a municipality, county, political subdivision, or spaceport development corporation under Section 507.001, Local Government Code, in this state with a contractual relationship with a space flight entity.

(5) "Space flight participant" means an individual, who is not crew, carried aboard a spacecraft, launch vehicle, or reentry vehicle.

(6) "Space flight participant injury" means an injury sustained by a space flight participant, including bodily injury, emotional distress, death, disability, property damage, or any other loss arising from the individual's participation in space flight activities.

(7) "Crew" means a human being who performs activities relating to the launch, reentry, or other operation of or in a spacecraft or launch or reentry vehicle.

SECTION 2. Section 100A.002, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 100A.002. LIMITED LIABILITY. (a) Except as provided by this section [~~Subsection (b)~~], a space flight entity is not liable to any person for **direct or indirect damages resulting from nuisance, or subject to any claim for abatement or other injunctive relief arising from space flight activities.**

(b) Except as provided by this section, a space flight entity is not liable to any person for a space flight participant injury or

(A) a manufacturer or supplier of components, services, **spacecraft, launch vehicles, or reentry vehicles** used by the entity and reviewed by the Federal Aviation Administration as part of issuing the license or other authorization; ~~and~~

(B) an employee, officer, director, owner, stockholder, member, manager, advisor, or partner of the entity, manufacturer, or supplier;

(C) an owner or lessor of real property on which space flight activities are conducted, including a municipality, county, political subdivision, or spaceport development corporation under Section 507.001, Local Government Code, in this state with a contractual relationship with a space flight entity; and

(D) a municipality, county, economic development organization, or other political subdivision in the territory or extraterritorial jurisdiction of which space flight activities are conducted.

(5) "Space flight participant" means an individual, who is not crew, carried aboard a spacecraft, launch vehicle, or reentry vehicle.

(6) "Space flight participant injury" means an injury sustained by a space flight participant, including bodily injury, emotional distress, death, disability, property damage, or any other loss arising from the individual's participation in space flight activities.

(7) "Crew" means a human being who performs activities relating to the launch, reentry, or other operation of or in a spacecraft, launch vehicle, or reentry vehicle.

SECTION 2. Section 100A.002, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 100A.002. LIMITED LIABILITY. (a) Except as provided by this section [~~Subsection (b)~~], a space flight entity is not liable to any person for **damages resulting from nuisance arising from testing, launching, reentering, or landing or subject to any claim for nuisance arising from testing, launching, reentering, or landing.**

(b) Except as provided by this section, a space flight entity is not liable to any person for a space flight participant injury or

damages arising out of ~~[the]~~ space flight activities ~~[participant injury]~~ if the space flight participant has signed the agreement required by Section 100A.003 and given written consent as required by 51 [49] U.S.C. Section 50905 [70105].

~~[(b)]~~ This subsection [section] does not limit liability for a space flight participant [an] injury:

(1) proximately caused by the space flight entity's gross negligence evidencing wilful or wanton disregard for the safety of the space flight participant; or

(2) intentionally caused by the space flight entity.

~~(c) Except as provided by Subsections (a) and (b), this section precludes injunctive relief and limits damages that may be recovered to direct damages with respect to space flight activities.~~

~~(d) This section does not limit liability for:~~

~~(1) breach of a contract for use of real property by a space flight entity; or~~

~~(2) enforcement of a valid statute or regulation.~~

SECTION 3. Section 100A.003(b), Civil Practice and Remedies Code, is amended.

SECTION 4. Sections 507.001(2) and (3), Local Government Code, are amended to read as follows:

(2) "Spacecraft" means any object and its components designed to be launched for operations in a suborbital trajectory, earth orbit, or otherwise in outer space. The term includes a satellite, an object carrying crew or a space flight participant, and any subcomponents of the launch or reentry vehicle specifically designed or adapted for that object [includes a satellite].

(3) "Spaceport" includes:

(A) an area intended to be used for space flight activities, as defined by Section 100A.001, Civil Practice and Remedies Code [to launch or land a spacecraft];

(B) a spaceport building or facility located in [on] an area reasonably proximate [appurtenant] to a spacecraft launching or landing area;

damages arising out of ~~[the]~~ space flight activities ~~[participant injury]~~ if the space flight participant has signed the agreement required by Section 100A.003 and given written consent as required by 51 [49] U.S.C. Section 50905 [70105].

~~[(b)]~~ This subsection [section] does not limit liability for a space flight participant [an] injury:

(1) proximately caused by the space flight entity's gross negligence evidencing wilful or wanton disregard for the safety of the space flight participant; or

(2) intentionally caused by the space flight entity.

~~(c) This section precludes injunctive relief with respect to space flight activities.~~

~~(d) This section does not:~~

~~(1) limit liability for breach of a contract for use of real property by a space flight entity; or~~

~~(2) preclude an action by a federal or state governmental entity to enforce a valid statute or regulation.~~

SECTION 3. Same as introduced version.

SECTION 4. Sections 507.001(2) and (3), Local Government Code, are amended to read as follows:

(2) "Spacecraft" means any object and its components designed to be launched for operations in a suborbital trajectory, in earth orbit, or in outer space. The term includes a satellite, a payload, an object carrying crew or a space flight participant, and any subcomponents of the launch vehicle or reentry vehicle specifically designed or adapted for that object [includes a satellite].

(3) "Spaceport" includes:

(A) an area intended to be used for space flight activities, as defined by Section 100A.001, Civil Practice and Remedies Code [to launch or land a spacecraft];

(B) a spaceport building or facility located in [on] an area reasonably proximate [appurtenant] to a launch vehicle, reentry vehicle, or spacecraft launching or landing area;

(C) an area reasonably proximate [~~appurtenant~~] to a spacecraft launching or landing area that is intended for use for a spaceport building or facility; and

(D) a right-of-way related to a spacecraft launching or landing area, building, facility, or other area that is reasonably proximate [~~appurtenant~~] to a launching or landing area.

SECTION 5. Section 481.0069(d), Government Code, is amended to read as follows:

(d) Money in the spaceport trust fund may not be spent unless the office certifies to the comptroller that:

(1) a viable business entity has been established that:

(A) has a business plan that demonstrates that the entity has available the financial, managerial, and technical expertise and capability necessary to launch and land a reusable launch vehicle; and

(B) has committed to locating its facilities at a spaceport in this state;

(2) a development corporation for spaceport facilities created under Chapter 507, Local Government Code, has established a development plan for the spaceport project and has secured at least 90 percent of the funding required for the project; and

(3) the spaceport or launch operator, if required by federal law, has obtained or applied for the appropriate Federal Aviation Administration license or other appropriate authorization.

SECTION 6. Section 42.01, Penal Code, is amended.

SECTION 7. The changes in law made by this Act apply only to space flight activities that occur on or after the effective date of this Act. Space flight activities that occur before the effective date of this Act are governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

(C) an area reasonably proximate [~~appurtenant~~] to a launch vehicle, reentry vehicle, or spacecraft launching or landing area that is intended for use for a spaceport building or facility; and

(D) a right-of-way related to a launch vehicle, reentry vehicle, or spacecraft launching or landing area, building, facility, or other area that is reasonably proximate [~~appurtenant~~] to a launching or landing area.

SECTION 5. Section 481.0069(d), Government Code, is amended to read as follows:

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(1) a viable business entity has been established that:

(A) has a business plan that demonstrates that the entity has available the financial, managerial, and technical expertise and capability necessary to launch and land a reusable launch vehicle or spacecraft; and

(B) has committed to locating its facilities at a spaceport in this state;

(2) a development corporation for spaceport facilities created under Chapter 507, Local Government Code, has established a development plan for the spaceport project and has demonstrated the financial ability to fund [~~secured~~] at least 75 [~~90~~] percent of the funding required for the project; and

(3) the spaceport or launch operator, if required by federal law, has obtained or applied for the appropriate Federal Aviation Administration license or other appropriate authorization.

SECTION 6. Substantially the same as introduced version.

SECTION 7. Same as introduced version.

SECTION 8. This Act takes effect
September 1, 2013.

SECTION 8. Same as introduced version.