

BILL ANALYSIS

C.S.H.B. 1665
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Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Prospective homeowners looking to purchase property adjoining an impoundment of water may be unaware that the body of water may be subject to fluctuation. An uninformed buyer may not know that certain reservoirs in Texas are not always at a constant level, such as when an entity uses water stored in an impoundment. Additionally, the recent drought has been exacerbating the degree of water level fluctuations, often resulting in reservoirs with dramatically low levels. Interested parties contend that before a purchaser makes the decision to spend a large amount of money on certain waterfront property the purchaser should be aware that the water level is subject to change, as such change could affect future property values. C.S.H.B. 1665 seeks to address this issue.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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. 1665 amends the Property Code to require a seller of residential or commercial real property adjoining an impoundment of water constructed and maintained under certain Water Code provisions governing water rights that has a storage capacity of at least 5,000 acre-feet at the impoundment's normal operating level to give to the purchaser of the property a written notice of water level fluctuations. The bill sets out the language for the notice and requires the notice to be delivered by the seller to the purchaser on or before the effective date of an executory contract binding the purchaser to purchase the property. The bill authorizes the purchaser, if a contract is entered into without the seller providing the notice within that period, to terminate the contract for any reason within seven days after the date the purchaser receives the notice from the seller or receives information described by the notice from any other person. The bill authorizes the purchaser, after the date of the conveyance, to bring an action for misrepresentation against the seller if the seller failed to provide the notice before the date of the conveyance and had actual knowledge that the water level fluctuates for various reasons.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1665 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subchapter A, Chapter 5, Property Code, is amended by adding Section 5.019 to read as follows:

Sec. 5.019. NOTICE OF WATER LEVEL FLUCTUATIONS. (a) This section applies only to the sale of residential or commercial real property adjoining an impoundment of water, including a reservoir or lake, constructed and maintained under Chapter 11, Water Code, that has a storage capacity of at least 5,000 acre-feet at the impoundment's normal operating level.

(b) A seller of real property shall give to the purchaser of the property a written notice in substantially the following form:

NOTICE OF WATER LEVEL FLUCTUATIONS

The water level of the impoundment of water adjoining the property at _____ (street address and city) or described as _____ (legal description) fluctuates for various reasons, including as a result of:

- (1) an entity lawfully exercising its right to use the water stored in the impoundment; or
- (2) drought or flood conditions.

(c) The notice described by Subsection (b) shall be delivered by the seller to the purchaser on or before the effective date of an executory contract binding the purchaser to purchase the property.

If a contract is entered into without the seller providing the notice required by this section, the purchaser may terminate the contract for any reason within seven days after receiving the notice.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter A, Chapter 5, Property Code, is amended by adding Section 5.019 to read as follows:

Sec. 5.019. NOTICE OF WATER LEVEL FLUCTUATIONS. (a) This section applies only to the sale of residential or commercial real property adjoining an impoundment of water, including a reservoir or lake, constructed and maintained under Chapter 11, Water Code, that has a storage capacity of at least 5,000 acre-feet at the impoundment's normal operating level.

(b) A seller of real property shall give to the purchaser of the property a written notice in substantially the following form:

NOTICE OF WATER LEVEL FLUCTUATIONS

The water level of the impoundment of water adjoining the property at _____ (street address and city) or described as _____ (legal description) fluctuates for various reasons, including as a result of:

- (1) an entity lawfully exercising its right to use the water stored in the impoundment; or
- (2) drought or flood conditions.

(c) The notice described by Subsection (b) shall be delivered by the seller to the purchaser on or before the effective date of an executory contract binding the purchaser to purchase the property.

(d) If a contract is entered into without the seller providing the notice within the period required by Subsection (c), the purchaser may terminate the contract for any reason within seven days after the date the purchaser receives:

- (1) the notice described by Subsection (b) from the seller; or
- (2) information described by the notice under Subsection (b) from any other person.

(e) After the date of the conveyance, the purchaser may bring an action for misrepresentation against the seller if the seller:

- (1) failed to provide the notice before the date of the conveyance; and

(2) had actual knowledge that the water level described by Subsection (b) fluctuates for various reasons, including the reasons stated in Subsection (b).

SECTION 2. Section 5.019, Property Code, as added by this Act, applies only to an executory contract entered into on or after the effective date of this Act. An executory contract entered into before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 2. Same as introduced version.

SECTION 3. This Act takes effect September 1, 2015.

SECTION 3. Same as introduced version.