

BILL ANALYSIS

C.S.H.B. 2892
By: Murr
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties are concerned that determinations of whether a watercourse is considered a navigable stream, and therefore belonging to the people of the state, are completed with little to no input from owners of land adjacent to the watercourse. The parties note, as an example of their concerns, that an individual can travel up a watercourse, regardless of whether water is in the watercourse, and stop to camp beside the watercourse if the watercourse is considered a navigable stream. The parties assert, however, that if it is undetermined whether a watercourse is a navigable stream and a landowner wants to have such an individual removed for trespassing on what the landowner believes is private property, local authorities would be forced to determine if the watercourse is indeed a navigable stream after assistance from state agencies. C.S.H.B. 2892 seeks to address these concerns regarding landowner input and the procedure by which a watercourse is considered navigable for certain purposes.

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. 2892 amends the Water Code to require a state agency, before the agency may issue an opinion on its own or at the request of another governmental entity that a watercourse or a portion of a watercourse is a navigable stream for the purposes of certain statutory provisions relating to water rights, surveys and field notes, validating patents on lands lying across or partly across watercourses or navigable streams, or validating deeds of acquittance on lands lying across or partly across watercourses or navigable streams, to either perform or have performed by a licensed state land surveyor a gradient boundary survey of the watercourse or portion of the watercourse at issue or obtain from the General Land Office a written opinion that a gradient boundary survey is not required in order to issue an opinion as to whether the watercourse or portion of the watercourse at issue is a navigable stream. The bill also requires the agency, before it may issue the opinion, to provide to each person who owns land abutting or lying along, across, or partly across the watercourse or portion of the watercourse at issue written notice that provides the name and address of the state agency considering issuing the opinion on its own or the governmental entity seeking the opinion, as applicable; identifies the geographic location of the watercourse or portion of the watercourse at issue and the common name of the watercourse; specifies the date, time, and location of a public meeting to be held with regard to the opinion; and gives any additional information the agency considers necessary. The bill also requires the agency, before it may issue the opinion, to hold a public meeting at the date, time, and location

stated in the notice in which any person may appear in person or by attorney or enter an appearance in writing; in which any person who appears may present objection to or support for an opinion as to whether the watercourse or portion of the watercourse at issue is a navigable stream; in which the agency receives evidence, orally or by affidavit, in support of or in opposition to the opinion; and in which the agency provides information regarding the date and location at which the agency will issue the opinion.

C.S.H.B. 2892 requires the meeting to be held in a publicly accessible location in a county in which the watercourse or portion of the watercourse at issue is located and on a date that allows a reasonable period after the notice of the meeting is provided but not earlier than the 45th day after the date the notice is provided. The bill requires the agency, after the meeting, to deliver to each party to whom notice of the meeting is required to be given a written opinion as to whether the watercourse or portion of the watercourse at issue is a navigable stream. The bill authorizes the opinion to be issued with respect to all or part of the watercourse or portion of the watercourse at issue.

C.S.H.B. 2892 establishes that an opinion issued by a state agency as to whether a portion of a watercourse is a navigable stream does not affect the authority of that agency or another agency to issue an opinion as to whether another portion of that watercourse is a navigable stream. The bill authorizes any party that is aggrieved by an opinion issued under the bill's provisions to appeal the opinion by filing a petition with the district court of a county in which the watercourse or portion of the watercourse at issue is located not later than the 60th day after the date the opinion is issued. The bill requires the hearing in such an appeal before the district court to be by trial de novo on all issues. The bill requires the petition to be served on the state agency that issued the opinion and on the governmental entity that requested the opinion, if applicable.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2892 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 C, Chapter 11, Water Code, is amended by adding Section 11.098 to read as follows:

Sec. 11.098. DESIGNATION OF NAVIGABILITY; NOTICE AND HEARING. (a) The commission, on its own or at the request of another governmental entity, may designate a watercourse as a navigable stream for the purposes of this chapter, Chapter 21, Natural Resources Code, Chapter 138 (S.B. 150), Acts of the 41st Legislature, Regular Session, 1929 (Article 5414a, Vernon's Texas Civil Statutes), or Chapter 232 (S.B. 269), Acts of the 54th Legislature, Regular Session, 1955 (Article 5414a-1, Vernon's Texas Civil Statutes). Before designating a

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter C, Chapter 11, Water Code, is amended by adding Section 11.098 to read as follows:

Sec. 11.098. OPINION OF NAVIGABILITY; NOTICE AND MEETING. (a) Before a state agency, on its own or at the request of another governmental entity, may issue an opinion that a watercourse or a portion of a watercourse is a navigable stream for the purposes of this chapter, Chapter 21, Natural Resources Code, Chapter 138 (S.B. 150), Acts of the 41st Legislature, Regular Session, 1929 (Article 5414a, Vernon's Texas Civil Statutes), or Chapter 232 (S.B. 269), Acts of the 54th Legislature, Regular Session, 1955 (Article 5414a-1, Vernon's

watercourse as a navigable stream, the commission shall:

(1) perform or have performed by a registered professional land surveyor a gradient boundary survey of the watercourse;

(2) provide to each person who owns land abutting or lying along, across, or partly across the watercourse notice that:

(A) provides the name and address of the governmental entity seeking the designation;

(B) identifies the geographic location and common name of the watercourse;

(C) specifies the time and location where a public hearing with regard to the designation will be held; and

(D) gives any additional information the commission considers necessary; and

(3) at the time and location stated in the notice provided under Subdivision (2), hold a hearing in which:

(A) any person may appear in person or by attorney or enter an appearance in writing;

(B) any person who appears may present objection to or support for the designation; and

(C) the commission may receive evidence, orally or by affidavit, in support of or in opposition to the designation.

(b) After the hearing, the commission shall make a written decision granting or denying the designation of the watercourse as a

Texas Civil Statutes), the agency shall:

(1) either:

(A) perform or have performed by a licensed state land surveyor a gradient boundary survey of the watercourse or portion of the watercourse at issue; or

(B) obtain from the General Land Office a written opinion that a gradient boundary survey is not required in order to issue an opinion as to whether the watercourse or portion of the watercourse at issue is a navigable stream;

(2) provide to each person who owns land abutting or lying along, across, or partly across the watercourse or portion of the watercourse at issue written notice that:

(A) provides the name and address of the state agency considering issuing the opinion on its own or the governmental entity seeking the opinion, as applicable;

(B) identifies the geographic location of the watercourse or portion of the watercourse at issue and the common name of the watercourse;

(C) specifies the date, time, and location of a public meeting to be held with regard to the opinion; and

(D) gives any additional information the agency considers necessary; and

(3) at the date, time, and location stated in the notice provided under Subdivision (2), hold a public meeting in which:

(A) any person may appear in person or by attorney or enter an appearance in writing;

(B) any person who appears may present objection to or support for an opinion as to whether the watercourse or portion of the watercourse at issue is a navigable stream;

(C) the agency receives evidence, orally or by affidavit, in support of or in opposition to the opinion; and

(D) the agency provides information regarding the date and location at which the agency will issue the opinion.

(b) The meeting must be held in a publicly accessible location in a county in which the watercourse or portion of the watercourse at issue is located and on a date that allows a reasonable period after the notice of the meeting is provided but not earlier than the 45th day after the date the notice is provided.

(c) After the meeting, the agency shall deliver to each party to whom notice of the meeting is required to be given a written

navigable stream. The designation may be granted or denied in whole or in part.

opinion as to whether the watercourse or portion of the watercourse at issue is a navigable stream. The opinion may be issued with respect to all or part of the watercourse or portion of the watercourse at issue.

(d) An opinion issued by a state agency as to whether a portion of a watercourse is a navigable stream does not affect the authority of that agency or another agency to issue an opinion as to whether another portion of that watercourse is a navigable stream.

(e) Any party that is aggrieved by an opinion issued under this section may appeal the opinion by filing a petition with the district court of a county in which the watercourse or portion of the watercourse at issue is located not later than the 60th day after the date the opinion is issued. The hearing in such an appeal before the district court shall be by trial de novo on all issues. A petition filed under this subsection must be served on the state agency that issued the opinion and on the governmental entity that requested the opinion, if applicable.

SECTION 2. This Act takes effect September 1, 2015.

SECTION 2. Same as introduced version.