

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 4, 2015

TO: Honorable Geanie Morrison, Chair, House Committee on Environmental Regulation

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1642 by Pickett (Relating to the rights, remedies, and liability of certain owners and operators of environmentally contaminated property; authorizing a fee.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1642, As Introduced: an impact of \$0 through the biennium ending August 31, 2017.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2016	\$0
2017	\$0
2018	\$0
2019	\$0
2020	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from Hazardous/Waste Remed Acc 550	Probable Revenue Gain from Hazardous/Waste Remed Acc 550	Change in Number of State Employees from FY 2015
2016	(\$1,798,294)	\$277,294	3.0
2017	(\$1,785,694)	\$264,694	3.0
2018	(\$1,785,694)	\$264,694	3.0
2019	(\$1,785,694)	\$264,694	3.0
2020	(\$1,785,694)	\$264,694	3.0

Fiscal Analysis

The bill would allow innocent owners/operators of environmentally contaminated property to request a court to determine the amount of reasonable compensation for responsible parties to access their property for purposes of assessment and remediation if they are unable to agree upon the compensation. The bill would change the liability protections afforded by the Innocent Owner/Operator Program operated by the Texas Commission on Environmental Quality (TCEQ) by allowing owners/operators of property with a pipeline across it to be considered innocent owners/operators regarding contamination originating from the pipeline as long as the owners/operators of the property do not own or operate the pipeline.

The bill would create an application process for the TCEQ to issue an order identifying and directing a responsible party to promptly remediate the contamination on the property of the innocent owner. There are specific time frames for reviewing the application, requesting additional information, granting or denying the application, developing and obtaining approval of a plan for remediation, achieving complete remediation, and filing a deed notice if a remediation deadline is not achieved.

The bill would authorize the collection of an application fee not to exceed the cost of reviewing the application. The fee would be deposited to the credit of the General Revenue-Dedicated Hazardous and Solid Waste Remediation Fee Account No. 550. The amount of the fee would be dependent upon the cost of review of the application, the components of which are not specified in the bill.

The bill would take effect September 1, 2015.

Methodology

According to the TCEQ, the bill would require the agency to identify and order identified responsible parties to take remedial action for properties the responsible parties do not own. Since current innocent owner/operator program applications do not necessarily include technical information to identify and enforce upon a responsible party, the agency would need to collect this additional information. The additional information collected may include gathering historical site information, performing environmental investigations, obtaining access agreements, and potential litigation.

The TCEQ reports that since its inception, the Innocent Owner/Operator Program has issued over 870 Innocent Owner/Operator Program certificates. Over the last 4 fiscal years, an average of 39 certificates have been issued per year. The TCEQ expects that most certificate holders would be interested in applying for the order proposed under this bill to compel cleanup of their property. Based on this assumption, a minimum of 39 applications per fiscal year would need to be reviewed for issuance of an order.

The TCEQ reports that it would need 3.0 additional FTEs to implement the bill: 2.0 Corrective Action Specialists would oversee contractors who are gathering historical research, performing environmental investigations, issuing work orders, obtaining access agreements, and ensuring compliance with the order; and 1.0 Geoscientist would perform more complex geologic environmental assessments. FTE-related costs would total \$277,294 in fiscal year 2016 and \$264,694 in future years and would be paid out of the General Revenue-Dedicated Hazardous Waste Remediation Account No. 550. This estimate assumes that fees would be collected from applicants in amounts necessary to fund the program and would be deposited to the same account.

The bill does not authorize fees to cover environmental assessment costs. This estimate assumes that TCEQ would need to identify and order the responsible party to remediate the off-site property and conduct environmental assessments to support this determination. TCEQ anticipates the identification of initial potential source assessments performed by state contractors to range from \$28,000 to \$50,000 for an investigation. The actual cost would vary based on site conditions such as lithology/hydrogeology, distance of the potentially responsible party property from the innocent owner/operator property, the number of potential sources/responsible parties identified, the type and number of analyses. Assuming 39 applications per year are processed, the cost could range from \$1,092,000 to \$1,950,000 for one fiscal year. This estimate assumes an average cost of \$1,521,000 per fiscal year in contract costs for environmental assessments and such costs would be paid out of the Hazardous Waste Remediation Account No. 550, as shown in the table above. It should be noted that the agency could receive applications related to petroleum storage tank sites and be required to pay for assessments out of the Petroleum Storage Tank Administration Account No. 655; however, costs from that account are not included in this estimate.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts, 582 Commission on Environmental Quality
LBB Staff: UP, SZ, MW, TL