

By: Pickett

H.B. No. 1642

A BILL TO BE ENTITLED

AN ACT

relating to the rights, remedies, and liability of certain owners and operators of environmentally contaminated property; authorizing a fee.

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

SECTION 1. Section 16.003(a), Civil Practice and Remedies Code, is amended to read as follows:

(a) Except as provided by Sections 16.010, 16.0031, 16.0032, and 16.0045, a person must bring suit for trespass for injury to the estate or to the property of another, conversion of personal property, taking or detaining the personal property of another, personal injury, forcible entry and detainer, and forcible detainer not later than two years after the day the cause of action accrues.

SECTION 2. Subchapter A, Chapter 16, Civil Practice and Remedies Code, is amended by adding Section 16.0032 to read as follows:

Sec. 16.0032. ENVIRONMENTAL CONTAMINATION OF PROPERTY. (a) In an action for trespass for injury to the estate or to the property of another resulting from environmental contamination, the cause of action accrues for purposes of Section 16.003 on the date that a final assessment report fully delineating and documenting the extent of the contamination in compliance with the requirements of the Texas Commission on Environmental Quality is

1 sent by certified mail to the owner of the affected property.

2 (b) A person must bring suit for damages arising from an  
3 injury to property caused by environmental contamination  
4 originating from a source not located on or at the property not  
5 later than 10 years after the date notice of the contamination is  
6 reported in writing to both the Texas Commission on Environmental  
7 Quality and the owner of the affected property.

8 (c) Subsection (b) is a statute of repose and is independent  
9 of any other limitations period.

10 SECTION 3. Section 361.752, Health and Safety Code, is  
11 amended by adding Subsection (e) to read as follows:

12 (e) On the request of the owner or operator, a court shall  
13 determine the amount of reasonable compensation under Subsection  
14 (c)(2) if the owner or operator and the responsible party are unable  
15 to agree on the compensation to be paid.

16 SECTION 4. Section 361.753, Health and Safety Code, is  
17 amended by adding Subsection (a-1) to read as follows:

18 (a-1) For purposes of Subsection (a), contamination  
19 originating from a pipeline transporting oil, gas, or other  
20 materials across the property does not make an applicant ineligible  
21 for a certificate unless the applicant is also the owner or operator  
22 of the pipeline.

23 SECTION 5. Section 361.754, Health and Safety Code, is  
24 amended to read as follows:

25 Sec. 361.754. RIGHTS OF INNOCENT OWNER OR OPERATOR  
26 REGARDING CONTAMINATION FROM SOURCE NOT LOCATED ON OR AT PROPERTY.

27 (a) An innocent owner or operator may apply to the commission for

1 an order directing the responsible party to promptly remediate the  
2 contamination of the property. The application must be delivered  
3 to the commission by certified mail.

4 (b) The commission may charge an application fee in an  
5 amount not to exceed the cost of reviewing the application. The  
6 commission shall deposit a fee collected under this subsection to  
7 the credit of the hazardous and solid waste remediation fee  
8 account.

9 (c) Not later than the 45th day after the date the  
10 commission receives the application, the commission shall notify  
11 the applicant whether the application is complete.

12 (d) Not later than the 90th day after the date the  
13 commission receives the application, the commission shall:

14 (1) grant or deny the application; or

15 (2) notify the applicant of any additional information  
16 needed to review the application.

17 (e) Not later than the 45th day after the date the  
18 commission receives the additional information requested under  
19 Subsection (d)(2), the commission shall grant or deny the  
20 application.

21 (f) On granting an application under this section, the  
22 commission shall identify the party responsible for the  
23 contamination and require the party responsible for the  
24 contamination to:

25 (1) develop a remediation plan and obtain the approval  
26 of the plan by the commission in writing not later than the third  
27 anniversary of the later of:

1                   (A) the date the responsible party is first  
2 identified by the commission; or

3                   (B) the date the application is granted by the  
4 commission;

5                   (2) promptly begin remediating the contamination of  
6 the property following the approval of the remediation plan  
7 described by Subdivision (1); and

8                   (3) not later than the 15th anniversary of the date the  
9 responsible party is first identified by the commission, complete  
10 remediation of the contamination of the property at a level that  
11 achieves the most protective health standard established under the  
12 commission's risk-based remediation rules.

13                  (g) The remediation standards and deadlines described by  
14 Subsection (f) may be revised by written agreement between the  
15 innocent owner or operator, the responsible party, and the  
16 commission.

17                  (h) If a remediation deadline described by Subsection (f) is  
18 not achieved, each responsible party identified by the commission  
19 shall file in the deed records of the county in which the affected  
20 property is located a notice of the long-term remediation  
21 activities at the site.

22                  (i) The commission shall require each responsible party to  
23 immediately file a notice in the deed records of the county in which  
24 the affected property is located under Subsection (h) if:

25                   (1) an innocent owner or operator of property that has  
26 been contaminated for more than 15 years, as of September 1, 2015,  
27 applies to the commission for remediation under Subsection (a); and

1           (2) remediation of the contamination of the property  
2 to achieve the most protective health standard established under  
3 the commission's risk-based remediation rules is not anticipated to  
4 be completed by the fifth anniversary of the date the application is  
5 submitted.

6           (j) This subchapter does not limit the right of an innocent  
7 owner or operator to pursue any other remedy available at law or in  
8 equity for conditions attributable to the release or migration of  
9 contaminants from a source or sources that are not located on or at  
10 the property.

11           SECTION 6. (a) Section 16.003, Civil Practice and Remedies  
12 Code, as amended by this Act, and Section 16.0032, Civil Practice  
13 and Remedies Code, as added by this Act, apply only to a cause of  
14 action that accrues on or after the effective date of this Act. A  
15 cause of action that accrues before the effective date of this Act  
16 is governed by the law in effect immediately before that date, and  
17 that law is continued in effect for that purpose.

18           (b) Section 361.752, Health and Safety Code, as amended by  
19 this Act, applies only to an agreement for reasonable access  
20 entered into on or after the effective date of this Act. An  
21 agreement for reasonable access entered into before the effective  
22 date of this Act is governed by the law in effect when the agreement  
23 was entered into, and the former law is continued in effect for that  
24 purpose.

25           (c) Section 361.753, Health and Safety Code, as amended by  
26 this Act, applies only to an application to obtain a certificate  
27 confirming that the person is an innocent owner or operator

1 submitted on or after the effective date of this Act. An  
2 application submitted before the effective date of this Act is  
3 governed by the law in effect when the application was submitted,  
4 and the former law is continued in effect for that purpose.

5 (d) Section 361.754, Health and Safety Code, as amended by  
6 this Act, applies to an innocent owner or operator of property that  
7 has been contaminated from a source not located on or at the  
8 property regardless of whether the contamination occurred on,  
9 before, or after the effective date of this Act.

10 SECTION 7. This Act takes effect September 1, 2015.