

BILL ANALYSIS

C.S.H.B. 352
By: Murr
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties are concerned that state agency determinations of whether a watercourse is considered a navigable stream are completed with little to no input from owners of land adjacent to the watercourse. C.S.H.B. 352 seeks to provide for such input by revising the procedure by which a state agency makes such a determination 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. 352 amends the Water Code to require a state agency to either perform or have performed by a licensed state land surveyor a gradient boundary survey of a watercourse or portion of a watercourse or obtain from the General Land Office (GLO) a written opinion that a gradient boundary survey is not required in order to issue an opinion as to whether a watercourse or portion of a watercourse is a navigable stream before the agency may issue such an opinion on its own or at the request of another governmental entity for 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. The bill also requires the agency, before it may issue the opinion, to provide certain written notice of the opinion to each person who owns land abutting or lying along, across, or partly across the watercourse or portion of the watercourse at issue and to hold a public meeting regarding the opinion. The bill sets out requirements for the written notice and the public meeting.

C.S.H.B. 352 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 and provides for the appeal of an opinion by any party that is aggrieved by the opinion. 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 does not apply to the reissuance by a state agency of an opinion as to whether a watercourse or portion of a watercourse is a navigable stream that was previously issued by the agency or another state agency, including the GLO.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 352 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. 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 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

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 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 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.

(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 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.
(f) This section does not apply to the reissuance by a state agency of an opinion

as to whether a watercourse or portion of a watercourse is a navigable stream that was previously issued by the agency or another state agency, including the General Land Office.

SECTION 2. This Act takes effect September 1, 2017.

SECTION 2. Same as introduced version.