

## **BILL ANALYSIS**

C.S.H.B. 2833  
By: Cook, Robby  
Land & Resource Management  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

In 1995, the legislature created Chapter 2007 of the Government Code titled as the “Private Real Property Rights Preservation Act” to afford private property owners more certainty that appropriate compensation would be provided if governmental actions substantially reduce the value of the property. The Act has not afforded the intended protection and certainty for property owners and has been largely ineffective due to exceptions for municipal land use regulations and the lack of a meaningful process to challenge the adequacy of takings impact assessments mandated by the Act.

The purpose of C.S.H.B 2833 is to generally strengthen takings provisions for land owners when certain regulations devalue their property.

### **RULEMAKING AUTHORITY**

It is the opinion of the committee that this bill does not expressly grant any additional rulemaking authority to a state office, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 2833 amends Chapter 2007, Government Code, to specify that a taking could result not just from a governmental action but from a series of governmental actions. Governmental actions resulting in a taking would include those that limited impervious cover – surfaces that prevent the infiltration of water into the soil – to less than 45 percent of a property's surface area, excluding land within the 100-year floodplain and lands sloping 35 percent or more.

The bill would remove the exemption for municipal actions, including actions that imposed regulations on a city's ETJ but not on the city itself. It would retain exemptions for certain actions when the actions do not affect building size, lot size, or impervious cover.

An action taken out of a reasonable good faith belief that the action was necessary to prevent a grave and immediate threat to life or property now would have to be an action based on "reasonable evidence."

States that the chapter does not apply to a municipality's zoning authority unless the authority results in a taking defined in 2007.002(5)(C) or is undertaken without the owner's consent within the 3 year period following the date of the filing of an application pertaining to an owner's private real property under Chapter 242 or 245, Local Government Code.

States that the chapter does not limit or affect the ability of certain governmental entities to implement or enforce provisions regarding the federal Coastal Zone Management Act or Subtitle E, Title 2, Natural Resources Code.

States that the chapter does not apply to a permit, order, rule, regulation, or other action issued, adopted, or undertaken by certain political entities in connection with the federal Coastal Zone Management Act or Subtitle E, Title 2, Natural Resources Code.

Requires that a suit must be filed not later than the second anniversary of the earliest date on which the measure, on which the case is based, is enforced **or** the earliest date on which the measure, on which the case is based, is applied with respect to a permit application **or** September 1, 2005.

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Expands recourses of private real property owners if a regulating authority fails to prepare a takings impact assessment in compliance with Attorney General guidelines prior to enactment of a regulation affecting private real property.

### **EFFECTIVE DATE**

Effective date is September 1, 2005, or immediately if approved by two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The Substitute includes language regarding a slope of "35 percent" instead of "35 degrees" and adds a definition of "impervious cover".

The Substitute replaces the exemptions in current law for subsidence that was deleted in the Original.

The Substitute removes "or the timing of the development or improvement of private real property" as a condition for certain exemptions.

The Substitute adds conditions for certain exemptions for certain actions related to the protection of groundwater rights taken by political subdivisions that were previously unconditional.

The Substitute adds language stating that the chapter does not apply to a municipality's zoning authority unless it is undertaken without the owner's consent within the 3 year period following the date of the filing of an application pertaining to an owner's private real property under Chapter 242 or 245, Local Government Code.

The Substitute adds language regarding certain political subdivisions' ability or actions regarding the federal Coastal Zone Management Act or Subtitle E, Title 2, Natural Resources Code.

The Substitute includes new language regarding filing of suits.

The Substitute includes new language regarding contested cases.

The Substitute reformats certain provision without substantive changes.