

BILL ANALYSIS

C.S.H.C.R. 132
By: Luna
Civil Practices
Committee Report (Substituted)

BACKGROUND AND PURPOSE

For decades the John G. and Marie Stella Kenedy Memorial Foundation has disputed ownership of certain real property in Kenedy County with the State of Texas and the Texas General Land Office. The dispute culminated in a lawsuit between the State and Kenedy where Kenedy raised several claims against the State, including allegations that Kenedy owned certain real property and that the State had taken that property in violation of the Texas and United States Constitutions. The constitutional takings claims were severed from the title dispute, and only the title issue was tried. On April 23, 2003, at the direction of the Texas Supreme Court on appeal, the 200th District Court of Travis County, Texas entered judgment that the John G and Marie Stella Kenedy Memorial Foundation is the owner in fee simple of the disputed property.

Before the judgment, the Texas General Land Office and the School Land Board leased the surface and subsurface estate of the property and enjoyed the benefits of ownership, including the receipt of payments for leasing the property, meanwhile depleting the subsurface minerals and devaluing the surface and subsurface estate. Kenedy has never received any compensation from the State for the State's various uses of the Foundation's property or the State's conduct causing the property value to diminish.

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.C.R. 132 grants the John G. and Marie Stella Kenedy Memorial Foundation permission to sue the State of Texas, the General Land office, the School Land Board, and Jerry Patterson (currently the commissioner of the General Land Office and chair of the School Land Board), for the recovery of damages arising from the use, appropriation, invasion, taking, and interference with enjoyment and use of the foundation's property.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.C.R. 132 removes previous paragraph 4, which asserted the conduct of the School Land Board and the General Land Office amounts to an unconstitutional taking of the property without just and adequate compensation. Previous paragraph 5 is paragraph 4 in C.S.H.C.R. Further, "for the recovery of damages arising from the use, appropriation, invasion, taking, and interference with enjoyment and use of the Foundation's property" has been inserted into the second to last paragraph (the paragraph containing the resolution). This language clarifies that the permission to sue relates to any damages claim the Foundation brings based upon the State's conduct with respect to the property.