

By: Cook of Colorado, Cook of Navarro

H.B. No. 2833

Substitute the following for H.B. No. 2833:

By: Mowery

C.S.H.B. No. 2833

A BILL TO BE ENTITLED

AN ACT

relating to the protection of private real property from regulatory takings.

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

SECTION 1. Section 2007.002, Government Code, is amended by amending Subdivision (5) and adding Subdivision (6) to read as follows:

(5) "Taking" means:

(A) a governmental action or series of actions that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; ~~or~~

(B) a governmental action or series of actions that:

(i) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and

(ii) is the producing cause of a reduction of at least 25 percent in the market value of the affected private

1 real property, determined by comparing the market value of the
2 property as if the governmental action is not in effect and the
3 market value of the property determined as if the governmental
4 action is in effect; or

5 (C) a governmental action or series of actions
6 that has the effect of limiting the overall impervious cover of any
7 development or use of an owner's private real property to less than
8 45 percent of the surface area of the property, excluding any
9 portion of the property that is within the 100-year floodplain as
10 determined by the most recent maps published by the Federal
11 Emergency Management Agency or that slopes more than 35 percent.

12 (6) "Impervious cover" means impermeable surfaces,
13 such as pavement or rooftops, that prevent the infiltration of
14 water into the soil. The term does not include a rainwater
15 collections system for a domestic water supply.

16 SECTION 2. Section 2007.003, Government Code, is amended to
17 read as follows:

18 Sec. 2007.003. APPLICABILITY. (a) This chapter applies
19 only to the following governmental actions:

20 (1) the adoption or issuance of an ordinance, rule,
21 regulatory requirement, resolution, policy, guideline, or similar
22 measure;

23 (2) an action that imposes a physical invasion or
24 requires a dedication or exaction of private real property; and

25 ~~(3) [an action by a municipality that has effect in the~~
26 ~~extraterritorial jurisdiction of the municipality, excluding~~
27 ~~annexation, and that enacts or enforces an ordinance, rule,~~

1 ~~regulation, or plan that does not impose identical requirements or~~
2 ~~restrictions in the entire extraterritorial jurisdiction of the~~
3 ~~municipality, and~~

4 ~~[(4)]~~ enforcement of a governmental action listed in
5 Subdivisions (1) and (2) ~~[through (3)]~~, whether the enforcement of
6 the governmental action is accomplished through the use of
7 permitting, citations, orders, judicial or quasi-judicial
8 proceedings, or other similar means.

9 (b) This chapter does not apply to the following
10 governmental actions:

11 (1) ~~[an action by a municipality except as provided by~~
12 ~~Subsection (a)(3),~~

13 ~~[(2)]~~ a lawful forfeiture or seizure of contraband as
14 defined by Article 59.01, Code of Criminal Procedure;

15 (2) ~~[(3)]~~ a lawful seizure of property as evidence of
16 a crime or violation of law;

17 (3) ~~[(4) an action, including an action of a political~~
18 ~~subdivision, that is reasonably taken to fulfill an obligation~~
19 ~~mandated by federal law or an action of a political subdivision that~~
20 ~~is reasonably taken to fulfill an obligation mandated by state law,~~

21 ~~[(5)]~~ the discontinuance or modification of a program
22 or regulation that provides a unilateral expectation that does not
23 rise to the level of a recognized interest in private real property;

24 (4) ~~[(6) an action taken to prohibit or restrict a~~
25 ~~condition or use of private real property if the governmental~~
26 ~~entity proves that the condition or use constitutes a public or~~
27 ~~private nuisance as defined by background principles of nuisance~~

1 ~~and property law of this state;~~

2 ~~[(7) an action taken out of a reasonable good faith~~
3 ~~belief that the action is necessary to prevent a grave and immediate~~
4 ~~threat to life or property;~~

5 ~~[(8)]~~ a formal exercise of the power of eminent
6 domain;

7 (5) ~~[(9)]~~ an action taken under a state mandate to
8 prevent waste of oil and gas, protect correlative rights of owners
9 of interests in oil or gas, or prevent pollution related to oil and
10 gas activities;

11 (6) ~~[(10)]~~ a rule or proclamation adopted for the
12 purpose of regulating water safety, hunting, fishing, or control of
13 nonindigenous or exotic aquatic resources;

14 (7) ~~[(11)]~~ an action taken by a political
15 subdivision~~+~~

16 ~~[(A) to regulate construction in an area~~
17 ~~designated under law as a floodplain;~~

18 ~~[(B) to regulate on-site sewage facilities;~~

19 ~~[(C) under the political subdivisions's~~
20 ~~statutory authority to prevent waste or protect rights of owners of~~
21 ~~interest in groundwater; or~~

22 ~~[(D)]~~ to prevent subsidence;

23 (8) ~~[(12)]~~ the appraisal of property for purposes of
24 ad valorem taxation; or

25 (9) ~~[(13) an action that:~~

26 ~~[(A) is taken in response to a real and~~
27 ~~substantial threat to public health and safety;~~

1 ~~[(B) is designed to significantly advance the~~
2 ~~health and safety purpose; and~~

3 ~~[(C) does not impose a greater burden than is~~
4 ~~necessary to achieve the health and safety purpose; or~~

5 ~~[(14)]~~ an action or rulemaking undertaken by the
6 Public Utility Commission of Texas to order or require the location
7 or placement of telecommunications equipment owned by another party
8 on the premises of a certificated local exchange company.

9 (c) This chapter does not apply to the following
10 governmental actions, if the actions do not affect building size,
11 lot size, or impervious cover:

12 (1) an action that is reasonably taken to fulfill an
13 obligation mandated by federal or state law;

14 (2) an action taken to prohibit or restrict a
15 condition or use of private real property if the governmental
16 entity proves that the condition or use constitutes a public or
17 private nuisance as defined by background principles of nuisance
18 and property law of this state as they existed on September 1, 2005;

19 (3) an action taken based on reasonable evidence that
20 the action is necessary to prevent a grave and immediate threat to
21 life or property;

22 (4) an action taken by a political subdivision to
23 regulate construction in an area designated under law as a
24 floodplain;

25 (5) an action that:
26 (A) is taken in response to a threat to public
27 health and safety;

1 (B) is designed to significantly advance the
2 health and safety purpose; and

3 (C) does not impose a greater burden than is
4 necessary to achieve the health and safety purpose; or

5 (6) an action taken to prevent waste or protect rights
6 of owners of an interest in groundwater. [~~Sections 2007.021 and~~
7 ~~2007.022 do not apply to the enforcement or implementation of a~~
8 ~~statute, ordinance, order, rule, regulation, requirement,~~
9 ~~resolution, policy, guideline, or similar measure that was in~~
10 ~~effect September 1, 1995, and that prevents the pollution of a~~
11 ~~reservoir or an aquifer designated as a sole source aquifer under~~
12 ~~the federal Safe Drinking Water Act (42 U.S.C. Section~~
13 ~~300h-3(e)).]~~

14 (d) This chapter does not apply to a municipality's exercise
15 of zoning authority unless the exercise of zoning authority:

16 (1) results in a taking under Section 2007.002(5)(C);
17 or

18 (2) is undertaken without the owner's consent within
19 the three-year period following the date of the filing of an
20 application pertaining to an owner's private real property under
21 Chapter 242 or 245, Local Government Code [~~applies to a~~
22 ~~governmental action taken by a county only if the action is taken on~~
23 ~~or after September 1, 1997].~~

24 (e) This chapter does not:

25 (1) limit or otherwise affect the authority of a
26 municipality, a county, another political subdivision, the state,
27 or an agency of the state, with respect to the implementation or

1 enforcement of an ordinance, a rule, or a statutory standard of a
2 program, plan, or ordinance that was adopted under:

3 (A) the federal Coastal Zone Management Act of
4 1972 (16 U.S.C. Section 1451 et seq.); or

5 (B) Subtitle E, Title 2, Natural Resources Code;
6 (2) apply to a permit, order, rule, regulation, or
7 other action issued, adopted, or undertaken by a municipality, a
8 county, another political subdivision, the state, or an agency of
9 the state in connection with:

10 (A) the federal Coastal Zone Management Act of
11 1972 (16 U.S.C. Section 1451 et seq.); or

12 (B) Subtitle E, Title 2, Natural Resources Code;
13 or

14 (3) limit or otherwise affect ~~[apply to]~~ the
15 enforcement or implementation of Subchapter B, Chapter 61, Natural
16 Resources Code, as it existed on September 1, 1995, or to the
17 enforcement or implementation of any rule or similar measure that
18 was adopted under that subchapter and was in existence on September
19 1, 1995.

20 (f) This chapter does not apply to an action taken by a
21 political subdivision to ensure compliance with on-site sewage
22 facility regulations promulgated by the Texas Commission on
23 Environmental Quality.

24 SECTION 3. Section 2007.021(b), Government Code, is amended
25 to read as follows:

26 (b) A suit under this subchapter must be filed not later
27 than the second anniversary of the later of:

1 (1) the earliest date on which the ordinance, rule,
2 regulatory requirement, resolution, policy, guideline, or similar
3 measure on which the suit is based is enforced with respect to the
4 owner's private real property;

5 (2) the earliest date on which the ordinance, rule,
6 regulatory requirement, resolution, policy, guideline, or similar
7 measure on which the suit is based is applied to the owner's private
8 real property with respect to any permit application affecting the
9 real property; or

10 (3) September 1, 2005 ~~[180th day after the date the~~
11 ~~private real property owner knew or should have known that the~~
12 ~~governmental action restricted or limited the owner's right in the~~
13 ~~private real property].~~

14 SECTION 4. Section 2007.022(b), Government Code, is amended
15 to read as follows:

16 (b) A contested case must be filed with the agency not later
17 than the second anniversary of the later of:

18 (1) the earliest date on which the ordinance, rule,
19 regulatory requirement, resolution, policy, guideline, or similar
20 measure on which the case is based is enforced with respect to the
21 owner's private real property;

22 (2) the earliest date on which the ordinance, rule,
23 regulatory requirement, resolution, policy, guideline, or similar
24 measure on which the case is based is applied to the owner's private
25 real property with respect to any permit application affecting the
26 real property; or

27 (3) September 1, 2005 ~~[the 180th day after the date the~~

1 ~~private real property owner knew or should have known that the~~
2 ~~governmental action restricted or limited the owner's right in the~~
3 ~~private real property]~~.

4 SECTION 5. Section 2007.041(a), Government Code, is amended
5 to read as follows:

6 (a) The attorney general shall prepare guidelines to assist
7 governmental entities in identifying and evaluating those
8 governmental actions described in Section 2007.003(a)(1) and (2)
9 ~~[through (3)]~~ that may result in a taking.

10 SECTION 6. Section 2007.042(a), Government Code, is amended
11 to read as follows:

12 (a) A political subdivision that proposes to engage in a
13 governmental action described in Section 2007.003(a)(1) or (2)
14 ~~[through (3)]~~ that may result in a taking shall provide at least 30
15 days' notice of its intent to engage in the proposed action by
16 providing a reasonably specific description of the proposed action
17 in a notice published in a newspaper of general circulation
18 published in the county in which affected private real property is
19 located. If a newspaper of general circulation is not published in
20 that county, the political subdivision shall publish a notice in a
21 newspaper of general circulation located in a county adjacent to
22 the county in which affected private real property is located. The
23 political subdivision shall, at a minimum, include in the notice a
24 reasonably specific summary of the takings impact assessment that
25 was prepared as required by this subchapter and the name of the
26 official of the political subdivision from whom a copy of the full
27 assessment may be obtained.

1 SECTION 7. Section 2007.044, Government Code, is amended by
2 amending Subsection (a) and adding Subsection (d) to read as
3 follows:

4 (a) A governmental action requiring a takings impact
5 assessment is void if an assessment is not prepared in compliance
6 with the evaluation guidelines developed by the attorney general
7 under Section 2007.041. A private real property owner affected by a
8 governmental action taken without the preparation of a takings
9 impact assessment as required by this subchapter may bring suit for
10 a declaration of the invalidity of the governmental action.

11 (d) A proposed governmental action described by Section
12 2007.003(a)(1) or (2) that requires a takings impact assessment may
13 be stayed if an assessment is not prepared or if the assessment is
14 not in compliance with the evaluation guidelines developed by the
15 attorney general under Section 2007.041. A private real property
16 owner affected by the proposed governmental action may bring suit
17 to enforce the preparation of a takings impact assessment in
18 compliance with those guidelines. If the trier of fact in a suit
19 filed under this subchapter finds that the takings impact
20 assessment is not prepared or is not in compliance with the
21 evaluation guidelines, the court shall stay the proposed
22 governmental action.

23 SECTION 8. This Act takes effect immediately if it receives
24 a vote of two-thirds of all the members elected to each house, as
25 provided by Section 39, Article III, Texas Constitution. If this
26 Act does not receive the vote necessary for immediate effect, this
27 Act takes effect September 1, 2005.