

By: Cook of Colorado

H.B. No. 2833

A BILL TO BE ENTITLED

AN ACT

relating to regulatory takings.

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

SECTION 1. Section 2007.002(5), Government Code, is amended 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 real property, determined by comparing the market value of the property as if the governmental action is not in effect and the

1 market value of the property determined as if the governmental
2 action is in effect; or

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

10 SECTION 2. Section 2007.003, Government Code, is amended to
11 read as follows:

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

14 (1) the adoption or issuance of an ordinance, rule,
15 regulatory requirement, resolution, policy, guideline, or similar
16 measure;

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

19 ~~(3) [an action by a municipality that has effect in the~~
20 ~~extraterritorial jurisdiction of the municipality, excluding~~
21 ~~annexation, and that enacts or enforces an ordinance, rule,~~
22 ~~regulation, or plan that does not impose identical requirements or~~
23 ~~restrictions in the entire extraterritorial jurisdiction of the~~
24 ~~municipality; and~~

25 ~~[(4)]~~ enforcement of a governmental action listed in
26 Subdivisions (1) and (2) ~~[through (3)]~~, whether the enforcement of
27 the governmental action is accomplished through the use of

1 permitting, citations, orders, judicial or quasi-judicial
2 proceedings, or other similar means.

3 (b) This chapter does not apply to the following
4 governmental actions:

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

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

9 (2) ~~[(3)]~~ a lawful seizure of property as evidence of
10 a crime or violation of law;

11 (3) ~~[(4) an action, including an action of a political~~
12 ~~subdivision, that is reasonably taken to fulfill an obligation~~
13 ~~mandated by federal law or an action of a political subdivision that~~
14 ~~is reasonably taken to fulfill an obligation mandated by state law,~~

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

18 (4) ~~[(6) an action taken to prohibit or restrict a~~
19 ~~condition or use of private real property if the governmental~~
20 ~~entity proves that the condition or use constitutes a public or~~
21 ~~private nuisance as defined by background principles of nuisance~~
22 ~~and property law of this state,~~

23 ~~[(7) an action taken out of a reasonable good faith~~
24 ~~belief that the action is necessary to prevent a grave and immediate~~
25 ~~threat to life or property,~~

26 ~~[(8)]~~ a formal exercise of the power of eminent
27 domain;

1 (5) ~~[(9)]~~ an action taken under a state mandate to
2 prevent waste of oil and gas, protect correlative rights of owners
3 of interests in oil or gas, or prevent pollution related to oil and
4 gas activities;

5 (6) ~~[(10)]~~ a rule or proclamation adopted for the
6 purpose of regulating water safety, hunting, fishing, or control of
7 nonindigenous or exotic aquatic resources;

8 (7) ~~[(11) an action taken by a political subdivision:~~
9 ~~[(A) to regulate construction in an area~~
10 ~~designated under law as a floodplain;~~

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

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

15 ~~[(D) to prevent subsidence;~~

16 ~~[(12)]~~ the appraisal of property for purposes of ad
17 valorem taxation; or

18 (8) ~~[(13) an action that:~~

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

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

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

25 ~~[(14)]~~ an action or rulemaking undertaken by the
26 Public Utility Commission of Texas to order or require the location
27 or placement of telecommunications equipment owned by another party

1 on the premises of a certificated local exchange company.

2 (c) This chapter does not apply to the following
3 governmental actions, if the actions do not affect building size,
4 lot size, impervious cover, or the timing of the development or
5 improvement of private real property:

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

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

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

16 (4) an action taken by a political subdivision:

17 (A) to regulate construction in an area
18 designated under law as a flood plain;

19 (B) to regulate on-site sewage facilities;

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

23 (D) to prevent subsidence; or

24 (5) an action that:

25 (A) is taken in response to a threat to public
26 health and safety;

27 (B) is designed to significantly advance the

1 health and safety purpose; and

2 (C) does not impose a greater burden than is
3 necessary to achieve the health and safety purpose. [~~Sections~~
4 ~~2007.021 and 2007.022 do not apply to the enforcement or~~
5 ~~implementation of a statute, ordinance, order, rule, regulation,~~
6 ~~requirement, resolution, policy, guideline, or similar measure~~
7 ~~that was in effect September 1, 1995, and that prevents the~~
8 ~~pollution of a reservoir or an aquifer designated as a sole source~~
9 ~~aquifer under the federal Safe Drinking Water Act (42 U.S.C.~~
10 ~~Section 300h-3(e)).]~~

11 (d) This chapter does not apply to a municipality's exercise
12 of zoning authority unless the exercise of zoning authority results
13 in a taking under Section 2007.002(5)(C) [~~applies to a governmental~~
14 ~~action taken by a county only if the action is taken on or after~~
15 ~~September 1, 1997].~~

16 (e) This chapter does not apply to the enforcement or
17 implementation of Subchapter B, Chapter 61, Natural Resources Code,
18 as it existed on September 1, 1995, or to the enforcement or
19 implementation of any rule or similar measure that was adopted
20 under that subchapter and was in existence on September 1, 1995.

21 (f) Subsection (d) does not apply to a governmental action
22 affecting the zoning classification of an owner's private real
23 property that is undertaken without the owner's consent within the
24 three-year period following the date of the filing of an
25 application pertaining to an owner's private real property under
26 Chapter 242 or 245, Local Government Code.

27 SECTION 3. Section 2007.041(a), Government Code, is amended

1 to read as follows:

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

6 SECTION 4. Section 2007.042(a), Government Code, is amended
7 to read as follows:

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

24 SECTION 5. Section 2007.044, Government Code, is amended by
25 amending Subsection (a) and adding Subsection (d) to read as
26 follows:

27 (a) A governmental action requiring a takings impact

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

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

SECTION 6. The change in law made by this Act applies only to a governmental action or series of actions that commences on or after the effective date of this Act. A governmental action or series of actions that commences before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

SECTION 7. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this

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- 1 Act does not receive the vote necessary for immediate effect, this
- 2 Act takes effect September 1, 2005.