

BILL ANALYSIS

C.S.S.B. 1449
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

During the interim of the 80th Legislature, the Senate Committee on Intergovernmental Relations was charged with examining the incidence of health and safety violations among multifamily and single-family rental properties and the adequacy of the existing authority conferred by the state upon local governments to address violations of habitability standards. Tragic accidents that occurred at the time the committee was studying the issue magnified the need for additional options for municipalities.

Most municipalities do not have adequate resources or the expertise needed to devote to rehabilitating dilapidated multifamily and single-family properties.

C.S.S.B. 1449 authorizes a home-rule municipality, or an eligible nonprofit housing organization, to bring an action in district court against an owner of property that is not in substantial compliance with one or more municipal ordinances regarding the prevention of substantial risk of injury to any person or property or the prevention of an adverse health impact to any person.

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.S.B. 1449 amends the Local Government Code to authorize a home-rule municipality or an eligible nonprofit housing organization as certified by the municipality, to bring an action in district court against an owner of property that is not in substantial compliance with one or more municipal ordinances regarding the prevention of substantial risk of injury to any person or regarding the prevention of an adverse health impact to any person. The bill authorizes a home-rule municipality annually to certify one or more nonprofit housing organizations to bring such an action on finding that the nonprofit organization has a record of community involvement and that the certification will further the home-rule municipality's goal to rehabilitate hazardous properties. The bill specifies that a municipality that grants authority to an eligible nonprofit housing organization to initiate an action has standing to intervene in the proceedings at any time as a matter of right.

C.S.S.B. 1449 authorizes the court to appoint a receiver if the court finds that the property is in violation of one or more such municipal ordinances, that the condition of the property constitutes a serious and imminent public health or safety hazard, and that the property is not an owner-occupied, single-family residence. The bill makes an entity or individual eligible to serve as a court-appointed receiver if the court determines that the entity or individual has sufficient experience rehabilitating properties and that the entity has sufficient capacity or the individual has sufficient resources. The bill provides, however, that an entity is ineligible to serve as a receiver for a multifamily residential property if the nonprofit housing organization that brought

the action has an ownership interest or a right to income in the entity. The bill defines "multifamily residential property" to mean any residential dwelling complex consisting of four or more units.

C.S.S.B. 1449 requires the home-rule municipality or eligible nonprofit housing organization to send notice by certified mail of any ordinance violation alleged to exist on the property on or before the 30th day before the date an action is filed. The bill requires the notice to be sent to the physical address of the property and the address as indicated on the most recently approved municipal tax roll for the property owner or the property owner's agent.

C.S.S.B. 1449 requires each record owner and each lienholder of record of a noncomplying property that is the subject to an action to be served with notice of the proceedings or, if not available after due diligence, to be served by alternative means, including publication, as prescribed by the Texas Rules of Civil Procedure. The bill specifies that either manner of service constitutes notice to each unrecorded owner or lienholder.

C.S.S.B. 1449 authorizes the court, on a showing of imminent risk of injury to a person occupying the property or present in the community, to issue a mandatory or prohibitory temporary restraining order or temporary injunction as necessary to protect the public health or safety and specifies that, unless inconsistent with applicable law, the rules of equity govern all matters relating to a court action.

C.S.S.B. 1449 grants a court-appointed receiver, subject to control of the court, all powers necessary and customary to the powers of a receiver under the laws of equity. The bill authorizes the receiver, subject to control of the court, to take possession and control of the property, operate and manage the property, establish and collect rents and income on the property, lease the property, make any repairs and improvements necessary to bring the property into compliance with local codes and ordinances and state law, pay expenses, enter into contracts for operating and maintaining the property, exercise all other authority of an owner of the property other than the authority to sell the property unless authorized by the court, and perform other acts regarding the property as authorized by the court. The bill authorizes the receiver to demolish a single-family structure on the property on authorization by the court, but only if the court makes specified findings. The bill requires, for such demolition to occur, the court to find that it is not economically feasible to bring the structure into compliance with local codes and ordinances and state laws. The bill requires the court to find also that the structure is unfit for human habitation or is a hazard to the public health or safety, that the structure regardless of its structural condition is unoccupied by its owners or lessees or other invitees and is unsecured from unauthorized entry to the extent that it could be entered or used by vagrants or other uninvited persons as a place of harborage or could be entered or used by children, or that the structure is boarded, fenced, or otherwise secured but either it constitutes a danger to the public even though secured from entry or the means used to secure the structure are inadequate to prevent unauthorized entry or use or entry by vagrants, children, or uninvited persons. The bill authorizes the court, on demolition of the structure, to allow the receiver to sell the property to an individual or organization that will bring the property into productive use.

C.S.S.B. 1449 requires the receiver, on completing the repairs or demolishing the structure or before petitioning a court for termination of the receivership, to file with the court a full accounting of all costs and expenses incurred in the repairs or demolition, including reasonable costs for labor and supervision, and an accounting of all income received from the property and, at the receiver's discretion, a receivership fee of 10 percent of the costs and expenses. The bill requires any net income to be returned to the owner if the property on demolition of the structure is sold and the revenue exceeds the total of the costs and expenses incurred by the receiver plus any receivership fee. The bill requires the property to be restored to the owner and any net income returned to the owner if the property is not sold and the income produced exceeds the total of the costs and expenses incurred by the receiver plus any receivership fee. The bill authorizes the receiver to maintain control of the property until all rehabilitation and

maintenance costs plus any receivership fee are recovered, or until the receivership is terminated, if the total of the costs and expenses incurred by the receiver plus any receivership fee exceeds the income produced during the receivership.

C.S.S.B. 1449 requires that a receiver have a lien on the property for all of the receiver's unreimbursed costs and expenses, plus any receivership fee. The bill authorizes any lienholder of record, after initiation of an action, to intervene in the action and to request appointment as a receiver if the lienholder demonstrates to the court an ability and willingness to rehabilitate the property. The bill authorizes a receiver, or the home-rule municipality or eligible nonprofit housing organization that filed the action under which the receiver was appointed, to petition the court to terminate the receivership and order the sale of the property if an owner has been served with notice but has failed to repay all of the receiver's outstanding costs and expenses plus any receivership fee on or before the 180th day after the date the notice was served.

C.S.S.B. 1449 authorizes the court to order the sale of the property if the court finds that notice was given to each record owner of the property and each lienholder of record, finds that the receiver has been in control of the property and the owner has failed to repay all the receiver's outstanding costs and expenses of rehabilitation plus any receivership fee within the specified period, and finds that no lienholder of record has intervened in the action and tendered the receiver's costs and expenses, plus any receivership fee, and assumed control of the property. The bill authorizes the court to order the property sold at a public auction or to a land bank or other party as the court may direct, excluding, for multifamily residential properties, an eligible nonprofit housing organization that initiated the action. The bill authorizes the receiver, if eligible, to bid on the property at a public auction and to use the receiver's lien as credit toward the purchase. The bill requires the court to confirm a sale and order a distribution of the proceeds of the sale in the following order: court costs; costs and expenses, plus a receivership fee, and any lien held by the receiver; and other valid liens.

C.S.S.B. 1449 requires any remaining amount to be paid to the owner. The bill requires the court, if the owner cannot be identified or located, to order the remaining amount to be deposited in an interest-bearing account with the district clerk's office in the district court in which the action is pending. The bill requires the district clerk to hold the funds as provided by other law. The bill requires the court to award fee title to the purchaser after the proceeds are distributed. The bill requires the court, if the proceeds of the sale are insufficient to pay all liens, claims, and encumbrances on the property, to extinguish all unpaid liens, claims, and encumbrances on the property and award title to the purchaser free and clear. The bill establishes that its provisions do not foreclose any right or remedy that may be available under other state law or the laws of equity.

C.S.S.B. 1449 also defines "eligible nonprofit housing organization."

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 1449 adds a provision not in the original authorizing a home-rule municipality annually to certify one or more nonprofit housing organizations to bring an action on finding that the organization has a record of community involvement and finding that the certification will further the municipality's goal to rehabilitate hazardous properties. The substitute differs from the original by defining an "eligible nonprofit housing organization" as a nonprofit housing organization that is certified to bring an action, rather than one that is approved by municipal ordinance to initiate an action, as in the original. The substitute also removes the portion of the definition in the original requiring the organization to have a demonstrated record of community involvement and instead requires a finding that a nonprofit housing organization has a record of

community involvement as a requisite for certification.

C.S.S.B. 1449 adds a provision not in the original defining the term "multifamily residential property."

C.S.S.B. 1449 differs from the original by making the court in which an action is brought, rather than the applicable municipality as in the original, responsible for determining whether an entity or individual has sufficient capacity and experience, or whether an individual has sufficient resources and experience in the rehabilitation of properties to serve as a court-appointed receiver.

C.S.S.B. 1449 adds a provision not in the original requiring a home-rule municipality or eligible nonprofit housing organization to send by certified mail notice of any ordinance violation alleged to exist on the property on or before the 30th day before the date an action is filed to the physical address of the property and the address as indicated on the most recently approved municipal tax roll for the property owner or the property owner's agent.

C.S.S.B. 1449 differs from the original, in the provision authorizing a court-appointed receiver to demolish a structure if authorized by the court, by limiting the receiver's demolition authority to a structure that is a single-family structure.

C.S.S.B. 1449 differs from the original, in the provision authorizing a court to order a property sold to a land bank or other party, excluding an eligible nonprofit housing organization, by limiting the exclusion to multifamily residential properties.