

BILL ANALYSIS

C.S.H.B. 2930
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Public nuisances can be a serious threat to public health, safety, and welfare. In some Texas cities abandoned homes in disrepair pose a physical danger, and some have become centers of criminal activity. In certain cases such homes can be declared a public nuisance and be demolished. Legal observers note that Texas courts usually accept administrative findings of nuisance at face value and decline to adjudicate claims for compensation following a city's abatement of a threat to public safety. However, a recent Texas Supreme Court decision has been interpreted to mean that such administrative findings are not preclusive and that property owners have a constitutional right to judicial review of the city's action.

Interested parties assert that as a result of the supreme court's decision, Texas cities expect a substantial increase in claims by property owners for compensation following abatements of public nuisances. C.S.H.B. 2930 seeks to establish a procedure for asserting certain taking claims against governmental entities that will allow a defendant governmental entity to resolve meritorious claims promptly but will also deter specious claims that otherwise would require significant expenditures of public funds to pay for court appearances, discovery, and dispositive motions.

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.B. 2930 amends the Civil Practice and Remedies Code to require an owner with legal or equitable title to private real property that brings a suit against a governmental entity that is an incorporated municipality with a population of more than two million for damages or injunctive relief on the ground that government action resulted in the taking of the owner's property to give written notice to the governmental entity not later than the 60th day before the date on which an owner brings the suit. The bill sets out the required content of the notice and acceptable methods of delivery of the notice. The bill requires the owner's pleadings in such a suit to include a statement that the owner has complied with the notice requirements and to provide specified evidence that the governmental entity received the notice. The bill establishes that receipt by a governmental entity of such notice tolls any applicable statute of limitation until the 75th day after the date the notice is received.

C.S.H.B. 2930 requires a governmental entity, not later than the 45th day after the date the governmental entity receives such notice, to deliver to the owner in a specified manner a reply stating whether the governmental action, if any, was undertaken due to a condition or use of the owner's private real property that constituted a public or private nuisance as defined by background principles of nuisance and Texas property law or whether the governmental action, if any, was undertaken to enforce a law enacted to protect public health and safety and, if so, specifically identifying that law.

C.S.H.B. 2930 requires the owner, if the governmental entity asserts that the governmental action was undertaken due to a condition or use of private real property that constituted a public or private nuisance or to enforce a public health and safety law, to serve on each party or the party's attorney, not later than the 120th day after the date the owner's suit is filed, one or more expert reports, with a curriculum vitae of each expert listed in the report, for each governmental entity against which a taking claim is asserted. The bill authorizes the date for serving the report to be extended by written agreement of the parties. The bill requires each governmental entity whose conduct is implicated in such a report to file and serve any objection to the sufficiency of the report not later than the 21st day after the date the report was served and specifies that all objections are waived if the governmental entity fails to file the objection.

C.S.H.B. 2930 requires the court, if an expert report has not been served within the specified period as to a governmental entity, to enter an order on the motion of the affected governmental entity that awards reasonable attorney's fees and court costs incurred by the governmental entity and that dismisses the claim with respect to the governmental entity. The bill authorizes the court to grant one 30-day extension to the owner in order to cure deficiencies in the elements of an expert report if an expert report has not been served within the specified period because of the deficiencies and establishes when the extension runs if the owner does not timely receive the notice. The bill authorizes an owner to satisfy any of the requirements for serving an expert report by serving reports of separate experts regarding different issues related to the taking claim. The bill requires a court to grant a motion challenging the adequacy of an expert report only if it appears to the court, after a hearing, that the report does not represent a good faith effort to comply with the expert report requirements. The bill sets out required content of the expert report based on the nature of the owner's claim.

C.S.H.B. 2930 establishes that, until an owner has served the required expert report and curriculum vitae, all discovery in a taking claim is stayed except for the acquisition by the owner of information by means of written discovery, depositions on written questions, and discovery from nonparties under the Texas Rules of Civil Procedure. The bill prohibits all owners, collectively, from taking more than two depositions after a taking claim is filed and before the expert report is served.

C.S.H.B. 2930 authorizes a governmental entity to appeal from an interlocutory order of a court that denies a motion for summary judgment filed in good faith by the governmental entity on the ground that the owner has not met the owner's burden of production regarding one or more elements of the taking claim or that an expert report required under the bill's provisions has not been served. The bill specifies that provisions governing alternative dispute resolution apply to a taking claim to which the bill's provisions apply.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2930 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Title 5, Civil Practice and Remedies Code, is amended by adding Chapter 112 to read as follows:

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Title 5, Civil Practice and Remedies Code, is amended by adding Chapter 112 to read as follows:

CHAPTER 112. PROCEDURES FOR TAKING CLAIMS ARISING FROM ENFORCEMENT OF HEALTH AND SAFETY LAWS

Sec. 112.001. DEFINITIONS.

(a) In this chapter:

(1) "Affected parties" means the claimant and the governmental entity who are directly affected by an act or agreement required or permitted by this chapter and does not include other parties to an action who are not directly affected by that particular act or agreement.

(2) "Claimant" means a person, including a decedent's estate, seeking recovery of damages or injunctive relief in a taking claim. All persons claiming to have sustained damages as the result of a taking are considered a single claimant.

(3) "Defendant" means a governmental entity against whom a taking claim is asserted. The term includes a third-party defendant, cross-defendant, or counterdefendant.

(4) "Economic damages" has the same meaning as in Section 41.001.

(5) "Expert" means a person giving opinion testimony who is qualified to do so under the Texas Rules of Evidence.

(6) "Expert report" means a written report by an expert providing a fair summary of the expert's opinion(s) as of the date of the report, which report shall provide:

(A) if the claim alleges that the taking has denied the owner all economically viable use of the property, a statement that the expert has concluded the taking has denied the owner of such use, together with a statement of the facts on which the expert relied in reaching the said conclusion;

(B) if the claim alleges that the taking has made the property unusable for its intended purpose, a statement that the expert has concluded the taking has made the property unusable for its intended purpose, together with a statement of the facts on which the expert relied in reaching the said conclusion;

(C) if the claim alleges that the taking has interfered with the owner's investment-back expectations, a statement that the expert has concluded the taking interfered with such expectations, together with a statement of the facts on which the expert relied in

CHAPTER 112. CERTAIN TAKING CLAIMS AGAINST GOVERNMENTAL ENTITIES

Sec. 112.001. DEFINITIONS. In this chapter:

(1) "Economic damages" has the meaning assigned by Section 41.001.

(2) "Expert" means a person giving opinion testimony who is qualified to do so under the Texas Rules of Evidence.

(3) "Expert report" means a written report by an expert providing a fair summary of the expert's opinion as of the date of the report.

(See Sec 112.005(h) below.)

(See Sec. 112.005(h) below.)

(See Sec. 112.005(h) below.)

reaching the said conclusion; and
(D) if the claim alleges that an owner has sustained economic damages as a result of the taking:

(i) a statement that the expert has concluded the taking has resulted in economic damages sustained by the owner as a result of the taking;

(ii) a good-faith estimate of the amount of the said damages;

(iii) a statement of the facts on which the expert relied in making the good-faith estimate; and

(iv) an explanation of why the said damages are not de minimis when compared to the benefit, if any, to the public resulting from the taking.

(7) "Governmental entity" has the same meaning as in Section 2007.002, Government Code.

(8) "Owner" has the same meaning as in Section 2007.002, Government Code.

(9) "Taking" has the same meaning as in Section 2007.002, Government Code.

(10) "Taking claim" means a cause of action against a governmental entity for a taking.

(b) Any legal term or word of art used in this chapter, not otherwise defined in this chapter, shall have such meaning as is consistent with common law.

Sec. 112.002. NOTICE OF TAKING CLAIM.

(a) Any person or his authorized agent asserting a taking claim shall give written notice of such claim by certified mail, return receipt requested, to the governmental entity against which such claim is being made at least 60 days before the filing of a suit in any court based upon a taking claim.

(b) The notice required by Subsection (a) shall:

(1) State the sender's mailing address;

(2) Describe in reasonable detail the facts

(See Sec. 112.005(i) below.)

(4) "Governmental action" includes an action described by Section 2007.003, Government Code.

(5) "Governmental entity," "owner," and "taking" have the meanings assigned by Section 2007.002, Government Code.

(6) "Taking claim" means a suit by an owner against a governmental entity for damages or injunctive relief on the ground that governmental action resulted in a taking.

Sec. 112.002. APPLICABILITY. This chapter applies to a taking claim filed in this state in which the governmental entity is an incorporated municipality with a population of more than two million.

Sec. 112.003. NOTICE TO GOVERNMENTAL ENTITY.

(a) Not later than the 60th day before the date on which an owner brings a suit to which this chapter applies, the owner must give written notice to the governmental entity. The notice must:

(1) state the owner's mailing address;

(2) describe in reasonable detail the facts

supporting the claim; and

(3) Be delivered in person, by third-party delivery, or by certified mail, return receipt requested, to the person described in Section 101.102(c) to receive service of citation in suits under Chapter 101.

(c) In pleading subsequently filed in any court, each party asserting a taking claim shall state that it has complied fully with the provisions of this section and shall provide such evidence thereof as the judge of the court may require to determine if the provisions of this chapter have been met.

(d) Notice given as provided in this chapter shall toll the applicable statute of limitations to and including a period of 75 days following the giving of the notice, and this tolling shall apply to all parties and potential parties.

Sec. 112.003. RESPONSE TO NOTICE OF TAKING CLAIM.

(a) No fewer than 45 days after receipt of a notice required by Section 112.002(a), the governmental entity shall deliver to the sender in person, by third-party delivery, or by certified mail, return receipt requested, a response stating

whether or not the governmental entity contends in good faith that one or more of the facts described by the claimant in the notice required by Section 112.002(a) were the result of the governmental entity's enforcement of one or more laws enacted for the protection of public health or safety and, if yes, identifying the said law or laws.

(b) If the response required by Subsection (a) does not state that one or more of the facts described in the claimant's notice were the result of the governmental entity's enforcement of one or more laws enacted for the protection of public health or safety, Section 112.004 does apply to the taking claim.

supporting the owner's claim; and

(3) be delivered in person using a third-party delivery service or sent by certified mail, return receipt requested, to the person on whom citation would be served in a suit under Section 101.102(c).

(b) In a suit to which this chapter applies, the owner's pleadings must include a statement that the owner has complied with the notice requirements of this section and provide evidence of a receipt issued by a third-party delivery service or a return receipt, as applicable.

(c) Receipt by a governmental entity of notice under this section tolls any applicable statute of limitation until the 75th day after the date the notice is received.

Sec. 112.004. REPLY BY GOVERNMENTAL ENTITY.

Not later than the 45th day after the date a governmental entity receives notice under Section 112.003, the governmental entity shall deliver to the owner, in person using a third-party delivery service or by certified mail, return receipt requested, a reply stating:

(2) whether the governmental action, if any, was undertaken to enforce a law enacted to protect public health and safety and, if so, specifically identifying that law.

(1) whether the governmental action, if any, was undertaken due to a condition or use of the owner's private real property that constituted a public or private nuisance as defined by background principles of nuisance and property law of this state; or

Sec. 112.004. EXPERT REPORT.

(a) If a pleading of a claimant filed in any court may be fairly construed to make one or more of the allegations described in Section 112.001(a)(6), the claimant shall, not later than the 120th day after the date the original petition is filed, serve on each party or the party's attorney one or more expert reports, with a curriculum vitae of each expert listed in the report, for each governmental entity against which a taking claim is asserted. The date for serving the report may be extended by written agreement of the affected parties. Each defendant whose conduct is implicated in a report must file and serve any objection to the sufficiency of the report not later than the 21st day after the date it was served, failing which all objections are waived.

(b) If, as to a defendant, an expert report has not been served within the period specified by Subsection (a), the court, on the motion of the affected governmental entity, shall, subject to Subsection (c), enter an order that:

(1) awards to the affected governmental entity reasonable attorney's fees and costs of court incurred by the governmental entity; and

(2) dismisses the claim with respect to the governmental entity, with prejudice to the refiling of the claim.

(c) If an expert report has not been served within the period specified by Subsection (a) because elements of the report are found deficient, the court may grant one 30-day extension to the claimant in order to cure the deficiency. If the claimant does not receive notice of the court's ruling granting the extension until after the 120-day deadline has passed, then the 30-day extension shall run from the date the plaintiff first received the notice.

(d) Notwithstanding any other provision of this section, a claimant may satisfy any requirement of this section for serving an

Sec. 112.005. EXPERT REPORT. (a) In a suit on a taking claim in which a governmental entity, in the reply required by Section 112.004, asserts that the governmental action was undertaken due to a condition or use of private real property described by Section 112.004(1) or to enforce a public health and safety law as described by Section 112.004(2), the owner shall, not later than the 120th day after the date the suit is filed, serve on each party or the party's attorney one or more expert reports, with a curriculum vitae of each expert listed in the report, for each governmental entity against which a taking claim is asserted. The date for serving the report may be extended by written agreement of the parties. Each governmental entity whose conduct is implicated in a report must file and serve any objection to the sufficiency of the report not later than the 21st day after the date the report was served. All objections are waived if the governmental entity fails to file the objection.

(b) If, as to a governmental entity, an expert report has not been served within the period specified by Subsection (a), the court, on the motion of the affected governmental entity, shall, subject to Subsection (c), enter an order that:

(1) awards to the affected governmental entity reasonable attorney's fees and costs of court incurred by the governmental entity; and

(2) dismisses the claim with respect to the governmental entity.

(c) If an expert report has not been served within the period specified by Subsection (a) because elements of the report are found deficient, the court may grant one 30-day extension to the owner in order to cure the deficiency. If the owner does not receive notice of the court's ruling granting the extension until after the 120-day deadline has passed, the 30-day extension shall run from the date the owner first received the notice.

(d) Notwithstanding any other provision of this section, an owner may satisfy any requirement of this section for serving an

expert report by serving reports of separate experts regarding different issues related to the taking claim.

(e) A court shall grant a motion challenging the adequacy of an expert report only if it appears to the court, after hearing, that the report does not represent a good faith effort to comply with the definition of an expert report in Section 112.001.

(f) Until a claimant has served the expert report and curriculum vitae as required by Subsection (a), all discovery in a taking claim is stayed except for the acquisition by the claimant of information by means of:

(1) written discovery as defined in Rule 192.7, Texas Rules of Civil Procedure;

(2) depositions on written questions under Rule 200, Texas Rules of Civil Procedure; and

(3) discovery from nonparties under Rule 205, Texas Rules of Civil Procedure.

(g) Notwithstanding any other provision of this section, after a taking claim is filed, all claimants, collectively, may take not more than two depositions before the expert report is served as required by Subsection (a).

(See Sec. 112.001(a)(6)(A)-(C) above.)

(See Sec. 112.001(a)(6)(D) above.)

expert report by serving reports of separate experts regarding different issues related to the taking claim.

(e) A court shall grant a motion challenging the adequacy of an expert report only if it appears to the court, after a hearing, that the report does not represent a good faith effort to comply with the requirements of an expert report under Subsections (h) and (i).

(f) Until an owner has served the expert report and curriculum vitae as required by Subsection (a), all discovery in a taking claim is stayed except for the acquisition by the owner of information by means of:

(1) written discovery as defined in Rule 192.7, Texas Rules of Civil Procedure;

(2) depositions on written questions under Rule 200, Texas Rules of Civil Procedure; and

(3) discovery from nonparties under Rule 205, Texas Rules of Civil Procedure.

(g) Notwithstanding any other provision of this section, after a taking claim is filed, all owners, collectively, may not take more than two depositions before the expert report is served as required by Subsection (a).

(h) At a minimum, an expert report under this section must state the expert's conclusion, together with the facts on which the expert relied in reaching that conclusion, with respect to whether the alleged taking:

(1) has denied the owner all economically viable use of the property, if that is the basis for the owner's claim;

(2) has made the private real property unusable for its intended purpose, if that is the basis for the owner's claim; or

(3) has interfered with the owner's investment-backed expectations, if that is the basis for the owner's claim.

(i) If an owner's taking claim alleges that the owner has sustained economic damages as the result of an alleged taking, the expert report under this section must state the expert's conclusion, together with the facts on which the expert relied in reaching that conclusion, regarding:

(1) whether the alleged taking has resulted in economic damages to the owner as

Sec. 112.005. APPEAL FROM INTERLOCUTORY ORDER.

(a) A governmental entity may appeal from an interlocutory order of a court that:

(1) denies a motion for summary judgment filed in good faith by the government entity on one or more elements of a taking claim;
or

(2) denies a motion filed in good faith by the governmental entity under Section 112.004(b).

(b) An interlocutory appeal under Subsection (a) stays all other proceedings in the trial court pending resolution of that appeal.

Sec. 112.006. ALTERNATIVE DISPUTE RESOLUTION. Chapter 154 applies to a taking claim.

No equivalent provision.

SECTION 2. This Act takes effect September 1, 2013.

alleged;

(2) the amount of economic damages, if any; and

(3) whether the damages are de minimis compared to a public benefit, if any, that resulted from the taking.

Sec. 112.006. INTERLOCUTORY APPEAL.

A governmental entity may appeal from an interlocutory order of a court that

denies a motion for summary judgment filed in good faith by the governmental entity on the ground that:

(1) the owner has not met the owner's burden of production regarding one or more elements of the taking claim; or

(2) an expert report required by this chapter has not been served.

Sec. 112.007. ALTERNATIVE DISPUTE RESOLUTION. Chapter 154 applies to a taking claim.

SECTION 2. The change in law made by this Act applies only to an action on a taking claim with respect to a taking alleged to have occurred on or after the effective date of this Act. An action on a taking claim with respect to a taking alleged to have occurred before the effective date of this Act is governed by the law as it existed immediately before that date, and the former law is continued in effect for that purpose.

SECTION 3. Same as introduced version.