

## **BILL ANALYSIS**

C.S.S.B. 723  
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Judiciary & Civil Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Under current law, public sales of real property taken in execution on judgment occur at the courthouse door, which has been interpreted to mean a courthouse where district court is conducted. Interested parties assert that in recent years some counties have seen a growth in the number of sales and sale attendees, resulting in overcrowding and concerns about safety and security during the auction process. Legislation enacted within the last decade allowed certain public sales of property involving delinquent taxes or contract liens to occur at a designated location other than the courthouse door, but no such authority was granted with respect to execution sales. It has been suggested that this inconsistency should be addressed so that all such public property sales can occur in the same location.

Interested parties also have expressed concern about certain ambiguities and inconsistencies regarding the procedures for designating an alternate location for public sales of property with respect to delinquent taxes or contract liens, including a concern that a recent change now requires public sales of property with respect to delinquent taxes to be conducted inside the courthouse.

C.S.S.B. 723 seeks to address the inconsistencies surrounding the location of public property sales by allowing a commissioners court, under certain conditions, to designate a location other than the county courthouse at which public sales of property taken in execution will take place and by setting out uniform language regarding the designation of alternate locations for public sales of property involving judgment execution, contract liens, or tax delinquency.

### **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. 723 amends the Civil Practice and Remedies Code to authorize the commissioners court of a county to designate an area other than an area at the county courthouse where public sales of real property under statutory provisions relating to execution on court judgments will take place that is in a public place within a reasonable proximity of the county courthouse, as determined by the commissioners court, and in a location as accessible to the public as the courthouse door. The bill requires the commissioners court to record that designation in the real property records of the county and requires a sale, except for the public sale of real property required by court order or other law to be made at a place other than the courthouse door, to be held at an area so designated if the sale is held on or after the 90th day after the date the designation is recorded. The bill establishes that such a designation is not a ground for challenging or invalidating any sale. The bill authorizes a commissioners court, by order, to authorize a county official or employee to identify separate locations within the designated area for the conduct of such sales and for the conduct of sales by peace officers under other laws. The bill includes a court order as a means by which the public sale of real property under statutory provisions relating to execution

on court judgments may be required to be made at a place other than the courthouse door.

C.S.S.B. 723 amends the Property Code to clarify that, with regard to the authority of the commissioners court of a county to designate an area other than an area at the county courthouse where certain sales of real property under a contract lien are to take place, such sales are public and the determination of reasonable proximity to the county courthouse is made by the commissioners court. The bill specifies that such sales must be held at an area so designated if the sale is held on or after the 90th day after the date the designation is recorded in the county's real property records and removes a prohibition against holding a sale at an area so designated before that day. The bill establishes that such a designation is not a ground for challenging or invalidating any sale.

C.S.S.B. 723 amends the Tax Code to specify that, with regard to the authority of the commissioners court of a county to designate an area other than an area at the county courthouse where sales of real property seized under a tax warrant or ordered sold pursuant to foreclosure of a tax lien will take place, such an area be in a public place within a reasonable proximity of the county courthouse, as determined by the commissioners court, and in a location as accessible to the public as the courthouse door. The bill requires such a sale to be held at an area so designated if the sale is held on or after the 90th day after the date the designation is recorded in the county's real property records and removes a requirement relating to the location of a sale if the commissioners court does not designate an area. The bill establishes that such a designation is not a ground for challenging or invalidating any sale.

### **EFFECTIVE DATE**

October 1, 2013.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.S.B. 723 may differ from the engrossed version in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

#### SENATE ENGROSSED

SECTION 1. Section 34.041, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 34.041. SALE AT PLACE OTHER THAN COURTHOUSE DOOR. (a) If the public sale of real property [~~land~~] is required by court order or other law to be made at a place other than the courthouse door, sales under this chapter shall be made at the place designated by that court order or other law.

(b) The commissioners court of a county may designate an area other than an area at the county courthouse where public sales of real property under this chapter will take place that is in a public place within a reasonable proximity of the county courthouse and in a location as accessible to the public as the courthouse door.

#### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 34.041, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 34.041. SALE AT PLACE OTHER THAN COURTHOUSE DOOR. (a) If the public sale of real property [~~land~~] is required by court order or other law to be made at a place other than the courthouse door, sales under this chapter shall be made at the place designated by that court order or other law.

(b) The commissioners court of a county may designate an area other than an area at the county courthouse where public sales of real property under this chapter will take place that is in a public place within a reasonable proximity of the county courthouse ~~as determined by the commissioners court~~ and in a location as accessible to the public as the courthouse door.

The commissioners court shall record that designation in the real property records of the county.

Except for a sale under Subsection (a), a sale must be held at an area designated under this subsection ~~and may not be held before~~ the 90th day after the date the designation is recorded.

SECTION 2. Subsection (h), Section 51.002, Property Code, is amended to read as follows:

(h) For the purposes of Subsection (a), the commissioners court of a county may designate an area other than an area at the county courthouse where public sales of real property under this section will take place that is in a public place within a reasonable proximity of the county courthouse and in a location as accessible to the public as the courthouse door. The commissioners court shall record that designation in the real property records of the county.

A sale must ~~[may not]~~ be held at an area designated under this subsection ~~and may not be held before~~ the 90th day after the date the designation is recorded. The posting of the notice required by Subsection (b)(1) of a sale designated under this subsection to take place at an area other than an area of the courthouse remains at the courthouse door of the appropriate county.

SECTION 3. Section 34.01, Tax Code, is amended by amending Subsection (r) and adding Subsection (r-1) to read as follows:

(r) Except as provided by this subsection, a sale of real property under this section must take place at the county courthouse in the county in which the land is located. The commissioners court of the county may

The commissioners court shall record that designation in the real property records of the county. A designation by a commissioners court under this section is not a ground for challenging or invalidating any sale.

Except for a sale under Subsection (a), a sale must be held at an area designated under this subsection ~~if the sale is held on or after~~ the 90th day after the date the designation is recorded. The commissioners court may by order authorize a county official or employee to identify separate locations within the designated area for the conduct of sales under this section and for the conduct of sales by peace officers under other laws.

SECTION 2. Subsection (h), Section 51.002, Property Code, is amended to read as follows:

(h) For the purposes of Subsection (a), the commissioners court of a county may designate an area other than an area at the county courthouse where public sales of real property under this section will take place that is in a public place within a reasonable proximity of the county courthouse ~~as determined by the commissioners court~~ and in a location as accessible to the public as the courthouse door. The commissioners court shall record that designation in the real property records of the county. ~~A designation by a commissioners court under this section is not a ground for challenging or invalidating any sale.~~

A sale must ~~[may not]~~ be held at an area designated under this subsection ~~if the sale is held on or after~~ ~~[before]~~ the 90th day after the date the designation is recorded. The posting of the notice required by Subsection (b)(1) of a sale designated under this subsection to take place at an area other than an area of the courthouse remains at the courthouse door of the appropriate county.

SECTION 3. Subsection (r), Section 34.01, Tax Code, is amended to read as follows:

(r) Except as provided by this subsection, a sale of real property under this section must take place at the county courthouse in the county in which the land is located. The commissioners court of the county may

designate an area other than an area at [in] the county courthouse ~~[or another location in the county]~~ where sales under this section will ~~[must]~~ take place that is in a public place within a reasonable proximity of the county courthouse and in a location as accessible to the public as the courthouse door. The commissioners court ~~[and]~~ shall record that designation [any designated area or other location] in the real property records of the county.

A sale must be held at an area designated under this subsection and may not be held before the 90th day after the date the designation is recorded [If the commissioners court designates an area in the courthouse or another location in the county for sales, a sale must occur in that area or at that location. If the commissioners court does not designate an area in the courthouse or another location in the county for sales, a sale must occur in the same area in the courthouse that is designated by the commissioners court for the sale of real property under Section 51.002, Property Code].

(r-1) If a commissioners court has designated an area where public sales of real property take place under Subsection (r) before September 1, 2013, that will not be in compliance with Subsection (r) after December 31, 2013, the commissioners court shall designate before January 1, 2014, a location for public sales that will comply with Subsection (r), as amended by .B., 83rd Legislature, Regular Session, 2013. This subsection expires September 1, 2014.

SECTION 4. Subsection (r), Section 34.01, Tax Code, as amended by this Act, applies only to a sale of real property in which notice of the sale under that section is provided on or after the effective date of this Act. A sale in which notice of the sale is provided before the effective date of this Act is subject to the law in effect immediately before that date, and that law is continued in effect for that purpose.

designate an area other than an area at [in] the county courthouse ~~[or another location in the county]~~ where sales under this section will ~~[must]~~ take place that is in a public place within a reasonable proximity of the county courthouse as determined by the commissioners court and in a location as accessible to the public as the courthouse door. The commissioners court ~~[and]~~ shall record that designation [any designated area or other location] in the real property records of the county. A designation by a commissioners court under this section is not a ground for challenging or invalidating any sale.

A sale must be held at an area designated under this subsection if the sale is held on or after the 90th day after the date the designation is recorded [If the commissioners court designates an area in the courthouse or another location in the county for sales, a sale must occur in that area or at that location. If the commissioners court does not designate an area in the courthouse or another location in the county for sales, a sale must occur in the same area in the courthouse that is designated by the commissioners court for the sale of real property under Section 51.002, Property Code].

No equivalent provision.

SECTION 5. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2013.

(b) Subsection (r), Section 34.01, Tax Code, as amended by this Act, takes effect January 1, 2014.

SECTION 4. This Act takes effect October 1, 2013.