

By: Miles

H.B. No. 264

A BILL TO BE ENTITLED

AN ACT

relating to procedures for asserting taking claims against certain governmental entities.

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

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

CHAPTER 112. TAKING CLAIMS AGAINST CERTAIN 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.

(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

1 an incorporated municipality with a population of more than two
2 million.

3 Sec. 112.003. NOTICE TO GOVERNMENTAL ENTITY. (a) Not later
4 than the 60th day before the date on which an owner brings a suit to
5 which this chapter applies, the owner must give written notice to
6 the governmental entity. The notice must:

7 (1) state the owner's mailing address;

8 (2) describe in reasonable detail the facts supporting
9 the owner's claim; and

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

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

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

22 Sec. 112.004. REPLY BY GOVERNMENTAL ENTITY. Not later than
23 the 45th day after the date a governmental entity receives notice
24 under Section 112.003, the governmental entity shall deliver to the
25 owner, in person using a third-party delivery service or by
26 certified mail, return receipt requested, a reply stating:

27 (1) whether the governmental action, if any, was

1 undertaken due to a condition or use of the owner's private real
2 property that constituted a public or private nuisance as defined
3 by background principles of nuisance and property law of this
4 state; or

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

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

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

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

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

6 (c) If an expert report has not been served within the
7 period specified by Subsection (a) because elements of the report
8 are found deficient, the court may grant one 30-day extension to the
9 owner in order to cure the deficiency. If the owner does not receive
10 notice of the court's ruling granting the extension until after the
11 120-day deadline has passed, the 30-day extension shall run from
12 the date the owner first received the notice.

13 (d) Notwithstanding any other provision of this section, an
14 owner may satisfy any requirement of this section for serving an
15 expert report by serving reports of separate experts regarding
16 different issues related to the taking claim.

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (3) whether the damages are de minimis compared to a

1 public benefit, if any, that resulted from the taking.

2 Sec. 112.006. INTERLOCUTORY APPEAL. A governmental entity
3 may appeal from an interlocutory order of a court that denies a
4 motion for summary judgment filed in good faith by the governmental
5 entity on the ground that:

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

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

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

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

19 SECTION 3. This Act takes effect September 1, 2015.