

By: Estes

S.B. No. 360

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, Government Code, is amended by amending Subdivision (5) to read as follows:

(5) "Taking" means:

(A) a governmental action or series of actions within a 10-year period 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 within a 10-year period 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 either

(ii) is the producing cause of a reduction of at least 20 ~~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

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

(iii) is the producing cause of at least a 20 percent reduction of revenue or income from the use or sale of the affected real private property, determined by comparing the revenue or income from the use or sale of the property as if the governmental action is not in effect and the revenue or income from the use or sale of the property determined as if the governmental action is in effect.

SECTION 2. Section 2007.003, Government Code, is amended by amending Subsections (a) and (b) to read as follows:

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

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

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

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

~~[(4)]~~ enforcement of a governmental action listed in Subdivisions (1) and (2) ~~[through (3)]~~, whether the enforcement of 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 (5) ~~[(7)]~~ an action taken based on reasonable evidence  
24 ~~[out of a reasonable good faith belief]~~ that the action is necessary  
25 to prevent a grave and immediate threat to public health or safety,  
26 life, or property and does not impose a greater burden than is  
27 necessary to address the threat;

1           (6) ~~[(8)]~~ a formal exercise of the power of eminent  
2 domain;

3           (7) ~~[(9)]~~ an action taken under a state mandate to  
4 prevent waste of oil and gas, protect correlative rights of owners  
5 of interests in oil or gas, or prevent pollution related to oil and  
6 gas activities;

7           (8) ~~[(10)] a rule or proclamation adopted for the~~  
8 ~~purpose of regulating water safety, hunting, fishing, or control of~~  
9 ~~nonindigenous or exotic aquatic resources;~~

10           ~~[(11)] an action taken by a political subdivision [+~~  
11                   ~~[(A)] to regulate construction in an area~~  
12 ~~designated under law as a floodplain;~~

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

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

17                   ~~[(D)] to prevent subsidence;~~

18           (9) ~~[(12)]~~ the appraisal of property for purposes of  
19 ad valorem taxation; or

20           (10) ~~[(13)] an action that:~~

21                   ~~[(A)] is taken in response to a real and~~  
22 ~~substantial threat to public health and safety;~~

23                   ~~[(B)] is designed to significantly advance the~~  
24 ~~health and safety purpose; and~~

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

27           ~~[(14)]~~ an action or rulemaking undertaken by the

Public Utility Commission of Texas to order or require the location or placement of telecommunications equipment owned by another party on the premises of a certificated local exchange company.

SECTION 3. Section 2007.021, Government Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) A suit under this subchapter must be filed not later than the second anniversary of the later of:

(1) the earliest date on which the ordinance, rule, regulatory requirement, resolution, policy, guideline, or similar measure on which the suit is based is enforced with respect to the owner's private real property; or

(2) the earliest date on which the ordinance, rule, regulatory requirement, resolution, policy, guideline, or similar measure on which the suit is based is applied to the owner's private real property with respect to any permit application affecting the real property ~~[180th day after the date the private real property owner knew or should have known that the governmental action restricted or limited the owner's right in the private real property]~~.

(c) A political subdivision may, in anticipation of or in response to a suit under this chapter, as part of a settlement agreement with a private real property owner or for any other legitimate purpose, issue a waiver of enforcement of a governmental action with regard to any parcel of land.

SECTION 4. Section 2007.022(b), Government Code, is amended to read as follows:

1 (b) A contested case must be filed with the agency not later  
2 than the second anniversary of the later of:

3 (1) the earliest date on which the ordinance, rule,  
4 regulatory requirement, resolution, policy, guideline, or similar  
5 measure on which the case is based is enforced with respect to the  
6 owner's private real property; or

7 (2) the earliest date on which the ordinance, rule,  
8 regulatory requirement, resolution, policy, guideline, or similar  
9 measure on which the case is based is applied to the owner's private  
10 real property with respect to any permit application affecting the  
11 real property [~~the 180th day after the date the private real~~  
12 ~~property owner knew or should have known that the governmental~~  
13 ~~action restricted or limited the owner's right in the private real~~  
14 ~~property~~].

15 SECTION 5. Section 2007.023(b), Government Code, is amended  
16 to read as follows:

17 (b) If the trier of fact in a suit or contested case filed  
18 under this subchapter finds that the governmental action is a  
19 taking under this chapter, the private real property owner is only  
20 entitled to, and the governmental entity is only liable for:

21 (1) [7] invalidation of the governmental action or the  
22 part of the governmental action resulting in the taking; and

23 (2) damages determined under Section 2007.024(b).

24 SECTION 6. Section 2007.024, Government Code, is amended by  
25 amending Subsection (b) and adding Subsection (b-1) to read as  
26 follows:

27 (b) The judgment or final decision or order shall include a

fact finding that determines the monetary damages suffered by the private real property owner as a result of the taking, including, if the governmental action has ceased or has been rescinded, amended, invalidated, or repealed, the temporary or permanent economic loss sustained by the private real property owner while the governmental action was in effect.

(b-1) The amount of damages under Subsection (b) is determined from the date of the taking.

SECTION 7. Section 2007.026(b), Government Code, is amended to read as follows:

(b) The court or the state agency shall award a governmental entity that prevails in a suit or contested case filed under this subchapter reasonable and necessary attorney's fees and court costs only if the court determines that the private real property owner knew that the suit or contested case had no merit at the time the owner filed the suit or contested case.

SECTION 8. Section 2007.041(a), Government Code, is amended to read as follows:

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

SECTION 9. Section 2007.042(a), Government Code, is amended to read as follows:

(a) A political subdivision that proposes to engage in a governmental action described in Section 2007.003(a)(1) or (2) ~~[through (3)]~~ that may result in a taking shall provide at least 30

1 days' notice of its intent to engage in the proposed action by  
2 providing a reasonably specific description of the proposed action  
3 in a notice published in a newspaper of general circulation  
4 published in the county in which affected private real property is  
5 located. If a newspaper of general circulation is not published in  
6 that county, the political subdivision shall publish a notice in a  
7 newspaper of general circulation located in a county adjacent to  
8 the county in which affected private real property is located. The  
9 political subdivision shall, at a minimum, include in the notice a  
10 reasonably specific summary of the takings impact assessment that  
11 was prepared as required by this subchapter and the name of the  
12 official of the political subdivision from whom a copy of the full  
13 assessment may be obtained.

14 SECTION 10. Section 2007.044, Government Code, is amended  
15 by amending Subsection (a) and adding Subsection (d) to read as  
16 follows:

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

24 (d) A proposed governmental action described by Section  
25 2007.003(a)(1) or (2) that requires a takings impact assessment may  
26 be stayed if an assessment is not prepared or if the assessment is  
27 not in compliance with the evaluation guidelines developed by the



1 attorney general under Section 2007.041. A private real property  
2 owner affected by the proposed governmental action may bring suit  
3 to enforce the preparation of a takings impact assessment in  
4 compliance with those guidelines. If the trier of fact in a suit  
5 filed under this subchapter finds that the takings impact  
6 assessment is not prepared or is not in compliance with the  
7 evaluation guidelines, the court shall stay the proposed  
8 governmental action.

9       SECTION 11. The change in law made by this Act applies only  
10 to a governmental action or series of actions that commences on or  
11 after the effective date of this Act. A governmental action or  
12 series of actions that commences before the effective date of this  
13 Act is governed by the law in effect immediately before that date,  
14 and that law is continued in effect for that purpose.

15       SECTION 12. This Act takes effect immediately if it  
16 receives a vote of two-thirds of all the members elected to each  
17 house, as provided by Section 39, Article III, Texas Constitution.  
18 If this Act does not receive the vote necessary for immediate  
19 effect, this Act takes effect September 1, 2015.