

SUBJECT: Relieving Houston of Tort Claims Act liability for foreclosed property

COMMITTEE: Urban Affairs — committee substitute recommended

VOTE: 8 ayes — Hill, Bailey, Davila, Ehrhardt, Staples, Thompson, Tillery,
Woolley

0 nays

1 absent — Conley

WITNESSES: For — Dan Doherty, City of Houston

Against — None

DIGEST: CSHB 741 would relieve the City of Houston from liability under the Texas Tort Claims Act during the time when the city acquires land for foreclosure sale until the land is conveyed to another party. During this period, the city could not be held liable for actions arising from a condition of the land, a premises defect on the land or an act committed by any person, other than an agent or employee of the city, on the land. Land, under this bill, would include any building or improvement on the land.

This bill would take immediate effect if approved by two-thirds of the membership of each house and would apply to any action filed after the effective date of the act.

SUPPORTERS SAY: The City of Houston is holding over 200 properties that it has foreclosed on because of delinquent taxes. Many of these properties are unmarketable as residential properties, making it very difficult for the city to sell them for enough to pay the taxes.

The city would like to sell these properties to charitable organizations that construct low-income housing. Once adequate housing is built and a family moves in, the new homeowner would start paying the taxes. The problem is that under the Texas Tort Claims Act the city is responsible for the property from the time it forecloses on the property until the time the property is sold. Therefore, the city must spend money to insure itself

against actions on the property and take the steps necessary to clear up any defects or dangerous conditions on the land. It is expensive for the city to repair every defect or dangerous condition on land awaiting foreclosure sale, This burden places a drain on the city and making the sale of this property even more difficult.

The sole reason that the city is holding these foreclosed properties is to sell them for as much as possible to contribute for taxes owed. Holding property in this manner is a public purpose, and anything that can be done to help the city achieve that purpose benefits the public. Additionally, not only does the city benefit from these foreclosure sales, but the proceeds from the sales are also distributed to the county, school district and other taxing units for unpaid taxes.

OPPONENTS
SAY:

This legislation would relieve the City of Houston from any liability arising from land that it has foreclosed upon until that land is sold. If this legislation were designed only to allow the city to more easily transfer property to charitable organizations, there might be a more of a reason to limit liability to cut down on the city's costs. However, the bill would allow the city to completely ignore any responsibilities it might have on any foreclosed property that might present a clear danger to the public. For instance, the city could foreclose on an abandoned and dangerous house located next to an elementary school without any requirement that it put up a fence or a sign warning that the house might collapse at any time.

The effective date language would mean that if a person were injured before the bill took effect and had not yet filed suit, that person would have no claim. Additionally, there is no lead-time for people with claims against a city to get those claims filed after the law is enacted but before it takes effect. Other tort reform legislation being considered during this session uses effective date language referring to the time when the cause of action accrues, not when the actual case is filed.

NOTES:

The committee substitute would relieve the city of liability only for conditions on the land, premises defects or actions caused by persons, other than agents or employees of the city, on the land. It also provides that any claim filed after the effective date of this act would be subject to the provisions of the bill.

On April 28 the Senate adopted an amendment to HB 383 by Junell, which would limit the liability of public servants, incorporating the provisions, including the effective date, of CSHB 741.

CSHB 740 by Farrar, also on today's calendar, would allow the City of Houston to establish an alternate manner for the sale of foreclosed property when that property is being sold to a organization that would improve the property for low-income housing. Another related bill, CSHB 742 by Farrar, would exclude property by a taxing unit from notice requirements for sale of property by a municipality under the Local Government Code and would apply statewide. CSHB 742 was reported favorably by the Urban Affairs Committee on April 10 and was recommended for the Local and Consent Calendar.