

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1544
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Intergovernmental Relations
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Committee Report (Substituted)

DIGEST AND PURPOSE

Currently, a property owner who is unidentified or whose whereabouts is unknown can create a significant impediment to a municipality's ability to enforce municipal health and safety statutes and ordinances. C.S.S.B. 1544 increases the effectiveness of local enforcement by: expanding the authority of a municipal officer to access certain records if the information is to be used to identify a property owner; allowing a city to utilize personal delivery as a means of delivering a notice; and setting forth specific requirements for due diligence in determining the identity and address of property owners. It also provides for an alternative procedure for an administrative hearing for persons charged with violating an ordinance.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 552.115(a), Government Code, to provide that a birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official is excepted from the requirements of Section 552.021, except that a birth or death record is available to the chief executive officer of a home-rule municipality or the officer's designee if the record is used only to identify a property owner or other person to whom the municipality is required to give notice when enforcing a state statute or an ordinance, the municipality has exercised due diligence in the manner described by Section 54.035(e) (Notice), Local Government Code, to identify the person, and the officer or designee signs a confidentiality agreement that meets certain requirements.

SECTION 2. Amends Section 342.006, Health and Safety Code, to require the notice to be given, if personal service cannot be obtained, by posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates. Authorizes a municipality to inform the owner by personally delivering the notice. Deletes text stipulating that notice by stake be made only if the property contains no buildings.

SECTION 3. Amends Section 54.033(b), Local Government Code, to require a commission appointed for the purpose of hearing cases under this subchapter to consist of one or more panels, each composed of at least five members, rather than one or more five-member panels.

SECTION 4. Amends Chapter 54A, Local Government Code, by adding Section 54.006, as follows:

Sec. 54.006. NONSEVERABILITY OF CERTAIN CONSOLIDATED OFFENSES.
Provides that Section 3.04(a) (Severance), Penal Code, does not apply to two or more offenses consolidated or joined for trial under Section 3.02 (Consolidation and Joinder of Prosecutions), Penal Code, if each of the offenses is for the violation of an ordinance described by Section 54.012, punishable by fine only, and tried in a municipal court, regardless of whether the court is a municipal court of record.

SECTION 5. Amends Section 54.034, Local Government Code, to require a majority of the members of a panel, rather than at least four members of a panel, to hear a case.

SECTION 6. Amends Section 54.035, Local Government Code, by amending Subsections (a) and (b) and adding Subsections (d), (e), and (f), as follows:

- (a) Makes a conforming change.
- (b) Makes a conforming change.
- (d) Requires a municipality to exercise due diligence to determine the identity and address of a property owner or lienholder to whom the municipality is required to give notice.
- (e) Provides that a municipality exercises due diligence in determining the identity and address of a property owner or lienholder when it searches certain records.
- (f) Provides that when a municipality mails a notice in accordance with this section to a property owner or lienholder and the United States Postal Service returns the notice as “refused” or “unclaimed,” the validity of the notice is not affected, and the notice is considered delivered.

SECTION 7. Amends Section 54.038, Local Government Code, to provide that a majority vote of the members voting on a matter is necessary to take any action under this subchapter and any ordinance adopted by the municipality in accordance with this subchapter. Deletes text regarding four members of a commission panel.

SECTION 8. Amends Section 54.039(a), Local Government Code, to make conforming changes.

SECTION 9. Amends Chapter 54C, Local Government Code, by adding Section 54.044, as follows:

Sec. 54.044. ALTERNATIVE PROCEDURES FOR ADMINISTRATIVE HEARING. (a) Authorizes a municipality, as an alternative to the enforcement processes described by this subchapter, to by ordinance adopt a procedure for an administrative adjudication hearing under which an administrative penalty may be imposed for the enforcement of an ordinance described by Section 54.032 or adopted under Section 214.001(a)(1).

- (b) Requires a procedure adopted under this section to entitle the person charged with violating an ordinance to a hearing and to provide for: the period during which a hearing shall be held, the appointment of a hearing officer with authority to administer oaths and issue orders compelling the attendance of witnesses and the production of documents, and the amount and disposition of administrative penalties, costs, and fees.
- (c) Authorizes a municipal court to enforce an order of a hearing officer compelling the attendance of a witness or the production of a document.
- (d) Requires a citation or summons issued as part of a procedure adopted under this section to fulfill certain conditions.
- (e) Requires the original or a copy of the summons or citation to be kept as a record in the ordinary course of business of the municipality and provides that it is rebuttable proof of the facts it states.
- (f) Provides that the person who issued the citation or summons is not required to attend a hearing under this section.

(g) Provides that a person charged with violating an ordinance who fails to appear at a hearing authorized under this section is considered to admit liability for the violation charged.

(h) Requires the hearing officer at a hearing under this section to issue an order stating whether the person charged with violating an ordinance is liable for the violation and the amount of the penalty, cost, or fee assessed against the person.

(i) Authorizes an order issued under this section to be filed with the clerk or secretary of the municipality. Requires the clerk or secretary to keep the order in a separate index and file. Authorizes the order to be recorded using microfilm, microfiche, or data processing techniques.

(j) Authorizes an order issued under this section against a person charged with an ordinance violation to be enforced by filing a civil suit for the collection of a penalty assessed against the person, and obtaining an injunction that prohibits specific conduct that violates the ordinance or requires specific conduct necessary for compliance with the ordinance.

(k) Authorizes a person who is found by a hearing officer to have violated an ordinance to appeal the determination by filing a petition in municipal court before the 31st day after the date the hearing officer's determination is filed. Provides that an appeal does not stay enforcement and collection of the judgment unless the person, before filing the appeal, posts a bond with an agency designated for that purpose by the municipality.

SECTION 10. Amends Section 214.001, Local Government Code, to delete text regarding a refused or unclaimed mailed notice. Makes conforming changes.

SECTION 11. Amends Chapter 214A, Local Government Code, by adding Section 214.005, as follows:

Sec. 214.005. PROPERTY BID OFF TO MUNICIPALITY. Authorizes a municipality to adopt an ordinance under Section 214.001(a) that applies to property that has been bid off to the municipality under Section 34.01(j) (Sale of Property), Tax Code.

SECTION 12. Amends Section 214.0012(a), Local Government Code, to make a conforming change.

SECTION 13. Amends Section 683.075, Transportation Code, to make conforming changes.

SECTION 14. Amends Chapter 683E, Transportation Code, by adding Section 683.0765, as follows:

Sec. 683.0765. ALTERNATIVE PROCEDURE FOR ADMINISTRATIVE HEARING. Authorizes a municipality by ordinance to provide for an administrative adjudication process under which an administrative penalty may be imposed for the enforcement of an ordinance adopted under this subchapter. Requires a municipality, if it provides for an administrative adjudication process under this section, to use the procedure described by Section 54.044, Local Government Code.

SECTION 15. Amends Section 683.077(a), Transportation Code, to provide that procedures adopted under Section 683.0765 may not apply to certain vehicles or vehicle parts.

SECTION 16. Makes application of this Act prospective.

SECTION 17. Effective date: September 1, 2001.

Makes application of Section 54.006, Local Government Code, as added by this Act, prospective.

SUMMARY OF COMMITTEE CHANGES

Differs from the original as follows:

- Adds the stipulation to proposed Section 552.115(a)(5) that the municipality have exercised due diligence.
- Adds the provision proposed in SECTION 4 and redesignates subsequent SECTIONS 4-16 as SECTIONS 5-17.
- Adds the prospective clause in SECTION 17.