

BILL ANALYSIS

Senate Research Center

H.B. 2833
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Natural Resources
5/14/2005
Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The 74th Legislature, Regular Session, 1995, created Chapter 2007 of the Government Code titled as the "Private Real Property Rights Preservation Act" to afford private property owners more certainty that appropriate compensation would be provided if governmental actions substantially reduce the value of their property. The Act has not afforded the intended protection and certainty for property owners and has been largely ineffective due to exceptions for municipal land use regulations and the lack of a meaningful process to challenge the adequacy of takings impact assessments mandated by the Act.

H.B. 2833 strengthens takings provisions for land owners when certain regulations devalue their property.

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 2007.002, Government Code, by amending Subdivision (5) and adding Subdivision (6), to redefine "taking" and define "impervious cover."

SECTION 2. Amends Section 2007.003, Government Code, as follows:

2007.003. APPLICABILITY. (a) Modifies the list of governmental actions to which this chapter applies.

(b) Modifies the list of governmental actions to which this chapter does not apply.

(c) Provides that this chapter does not apply to certain governmental actions, if the actions do not affect building size, lot size, or impervious cover.

(d) Provides that this chapter does not apply to a municipality's exercise of zoning authority unless the exercise of zoning authority results in taking under Section 2007.002(5)(C) or is undertaken with the owner's consent within the three-year period following the date of the filing of an application pertaining to an owner's private real property under Chapter 242 (Authority of Municipality and County to Regulate Subdivisions in and Outside Municipality's Extraterritorial Jurisdiction) or 245 (Issuance of Local Permits), Local Government Code. Deletes existing text relating to the chapter's applicability to a governmental action after September 1, 1997.

(e) Provides that this chapter does not limit or otherwise affect the authority of certain state entities, does not apply to certain actions undertaken by said entities in connection with the federal Coastal Zone Management Act of 1972 or Subtitle E (Beaches and Dunes), Title 2, Natural Resources Code, or does not limit or otherwise affect the enforcement or implementation of Subchapter B (Access to Public Beaches), Chapter 61, Natural Resources Code.

(f) Provides that this chapter does not apply to an action taken by a political subdivision to ensure compliance with on-site sewage facility regulations promulgated by the Texas Commission on Environmental Quality.

(g) Authorizes a home-rule municipality with a population of more than 1.1 million that relies on a sole source aquifer for more than 50 percent of the municipality's water supply, for the purposes of the definition of "taking" in Section 2007.002(5)(C), to elect, with respect to single family and duplex uses over an aquifer recharge zone within the municipality's corporate and extraterritorial jurisdiction, to define a taking as an action or series of actions by the municipality that has the effect of limiting the overall impervious cover of any development or use of an owner's private real property to not less than 30 percent of the surface area of the property, including any portion of the property that is within the 100-year floodplain as determined by the most recent maps published by the Federal Emergency Management Agency or that slopes more than 35 percent.

SECTION 3. Amends Section 2007.021(b), Government Code, to require a suit under this subchapter to be filed in accordance with a modified timeframe.

SECTION 4. Amends Section 2007.022(b), Government Code, to require a contested case to be filed with the state agency in accordance with a modified timeframe.

SECTION 5. Amends Section 2007.041(a), Government Code, to make a conforming change.

SECTION 6. Amends Section 2007.042, Government Code, to make conforming changes.

SECTION 7. Amends Section 2007.043(a), Government Code, to make a conforming change.

SECTION 8. Amends Section 2007.044, Government Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Provides that a governmental action requiring a takings impact assessment is void if an assessment is not prepared in compliance with the evaluation guidelines developed by the attorney general under Section 2007.041 (Guidelines).

(d) Authorizes a proposed governmental action described by Section 2007.003(a)(1) that requires a takings impact assessment to be stayed if an assessment is not prepared or if the assessment is not in compliance with the evaluation guidelines developed by the attorney general under Section 2007.041. Authorizes a private real property owner affected by the proposed governmental action to bring suit to enforce the preparation of a takings impact assessment in compliance with those guidelines. Requires the court to stay the proposed governmental action if the trier of fact in a suit filed under this subchapter finds that the takings impact assessment is not prepared or is not in compliance with the evaluation guidelines.

SECTION 9. Amends Section 2007.045, Government Code, to make a conforming change.

SECTION 10. (a) Provides that the change in law made by this Act applies only to a governmental action described by Section 2007.003(a)(1) or (2), Government Code, that commences on or after April 1, 2005, or a governmental action described by Section 2007.003(a)(3), Government Code, that commences on or after April 1, 2005, to enforce or implement any ordinance, rule, regulatory requirement, platting requirement, resolution, policy, guideline, or similar measure in effect on or after April 1, 2005.

(b) Prohibits the change in law made by this Act from being construed to create any claim or cause of action for a governmental action described by Section 2007.003(a)(1) or (2), Government Code, that commences before April 1, 2005, or a governmental action described by Section 2007.003(a)(3), Government Code, that commences before April 1, 2005, to enforce or implement any ordinance, rule, regulatory requirement, platting

requirement, resolution, policy, guideline, or similar measure in effect before April 1, 2005.

SECTION 11. Effective date: upon passage or September 1, 2005.