

## **BILL ANALYSIS**

Senate Research Center  
81R4669 PAM-F

S.B. 1449  
By: West, Royce  
Intergovernmental Relations  
3/31/2009  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

During the interim of the 80th Legislature, the Senate Committee on Intergovernmental Relations was charged with examining the incidence of health and safety violations among multi-family and single-family rental properties and the adequacy of the existing authority conferred by the state upon local governments to address violations of habitability standards. Tragic accidents that occurred at the time the committee was studying the issue magnified the need for additional options for municipalities.

Most municipalities do not have adequate resources or the expertise needed to devote to rehabilitating dilapidated single-family and multi-family properties.

As proposed, S.B. 1449 authorizes a home-rule municipality, or certain nonprofit housing organization, to bring an action under Section 214.0031 (Additional Authority to Appoint Receiver for Hazardous Properties), Local Government Code, in district court against an owner of property that is not in substantial compliance with one or more municipal ordinances regarding the prevention of substantial risk of injury to any person or property or the prevention of an adverse health impact to any person.

### **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 Subchapter A, Chapter 214, Local Government Code, by adding Section 214.0031, as follows:

Sec. 214.0031. **ADDITIONAL AUTHORITY TO APPOINT RECEIVER FOR HAZARDOUS PROPERTIES.** (a) Authorizes a home-rule municipality, or a nonprofit housing organization approved by a home-rule municipality by ordinance to initiate an action under this section, to bring an action under this section in district court against an owner of property that is not in substantial compliance with one or more municipal ordinances regarding the prevention of substantial risk of injury to any person or property or the prevention of an adverse health impact to any person.

(b) Provides that a municipality that grants authority to a nonprofit housing organization to initiate an action under this section has standing to intervene in the proceedings at any time as a matter of right.

(c) Authorizes the court to appoint a receiver if the court finds that the property is in violation of one or more ordinances of the municipality described by Subsection (a), the condition of the property constitutes a serious and imminent public health or safety hazard, and the property is not an owner-occupied, single-family residence.

(d) Provides that the following are eligible to serve as court-appointed receivers: a nonprofit housing organization with, as determined by the municipality, sufficient resources and experience rehabilitating properties; and an individual

with, as determined by the municipality, sufficient resources and experience rehabilitating properties.

(e) Requires each record owner and each lienholder of a record of the property, in an action under this section, to be served with notice of the proceedings or, if not available after due diligence, is authorized to be served by alternative means, including publication, as prescribed by the Texas Rules of Civil Procedure. Provides that actual service or service by publication on a record owner or lienholder constitutes notice to each unrecorded owner or lienholder.

(f) Authorizes the court, on a showing of imminent risk of injury to a person occupying the property or present in the community, to issue a mandatory or prohibitory temporary restraining order or temporary injunction as necessary to protect the public health or safety.

(g) Provides that unless inconsistent with this section or other law, the rules of equity govern all matters relating to a court action under this section.

(h) Provides that subject to control of the court, a court-appointed receiver has all powers necessary and customary to the powers of a receiver under the laws of equity and is authorized to take possession and control of the property; operate and manage the property; establish and collect rents and income on the property; lease the property; make any repairs and improvements necessary to bring the property into compliance with local codes and ordinances and state laws, including performing and entering into contracts for the performance of work and the furnishing of materials for repairs and improvements, and entering into loan and grant agreements for repairs and improvements to the property; pay expenses, including paying for utilities and paying taxes and assessments, insurance premiums, and reasonable compensation to a property management agent; enter into contracts for operating and maintaining the property; exercise all other authority of an owner of the property other than the authority to sell the property unless authorized by the court under Subsection (j); and perform other acts regarding the property as authorized by the court.

(i) Authorizes a court-appointed receiver to demolish a structure on the property as authorized by the court and only if the court finds: it is not economically feasible to bring the structure into compliance with local codes and ordinances and state laws; or the structure is unfit for human habitation or is a hazard to the public health or safety, regardless of its structural condition unoccupied by its owners or lessees or other invitees, and unsecured from unauthorized entry to the extent that it could be entered or used by vagrants or other uninvited persons as a place of harborage or could be entered or used by children; or boarded, fenced, or otherwise secured, but the structure constitutes a danger to the public even though secured from entry, or the means used to secure the structure are inadequate to prevent unauthorized entry or use of the structure in the manner described by Paragraph (B)(ii).

(j) Authorizes the court, on demolition of the structure, to authorize the receiver to sell the property to an individual or organization that will bring the property into productive use.

(k) Requires the receiver, on completing the repairs or demolishing the structure or before petitioning a court for termination of the receivership, to file with the court a full accounting of all costs and expenses incurred in the repairs or demolition, including reasonable costs for labor and supervision, all income received from the property, and, at the receiver's discretion, a receivership fee of 10 percent of those costs and expenses. Requires that any net income, if the property was sold under Subsection (j) and the revenue exceeds the total of the costs and expenses incurred by the receiver plus any receivership fee, be returned to the owner. Requires that the rehabilitated property, if the property is not sold and the income produced exceeds the total of the costs and expenses incurred by

the receiver plus any receivership fee, be restored to the owner and any net income be returned to the owner. Authorizes the receiver, if the total of the costs and expenses incurred by the receiver plus any receivership fee exceeds the income produced during the receivership, to maintain control of the property until all rehabilitation and maintenance costs plus any receivership fee are recovered or until the receivership is terminated.

(l) Requires a receiver to have a lien on the property superior to all other liens on the property, excluding a tax lien, for all of the receiver's unreimbursed costs and expenses, plus any receivership fee.

(m) Authorizes any record lienholder, after initiation of an action under this section, to intervene in the action and request appointment as a receiver under this section if the lienholder demonstrates to the court an ability and willingness to rehabilitate the property.

(n) Authorizes a receiver appointed under this section or the home-rule municipality or nonprofit housing organization that filed the action under which the receiver was appointed to petition the court to terminate the receivership and order the sale of the property if an owner has been served with notice but has failed to repay all of the receiver's outstanding costs and expenses plus any receivership fee on or before the 180th day after the date the notice was served.

(o) Authorizes the court to order the sale of the property if the court finds that notice was given to each record owner of the property and each lienholder of record; the receiver has been in control of the property and the owner has failed to repay all the receiver's outstanding costs and expenses of rehabilitation plus any receivership fee within the period prescribed by Subsection (n); and no lienholder of record has intervened in the action and tendered the receiver's costs and expenses, plus any receivership fee and assumed control of the property.

(p) Authorizes the court to order the property sold to a land bank or other party as the court is authorized to direct or at public auction.

(q) Authorizes the receiver, if a nonprofit housing organization, to bid on the property at the sale described by Subsection (p)(2) and use a lien granted under Subsection (1) as credit toward the purchase.

(r) Requires the court to confirm a sale under this section and order a distribution of the proceeds of the sale in the following order: court costs; costs and expenses, plus a receivership fee, and any lien held by the receiver; and other valid liens.

(s) Requires that any remaining amount be paid to the owner. Requires the court, if the owner cannot be identified or located, to order the remaining amount to be deposited in an interest-bearing account with the district clerk's office in the district court in which the action is pending. Requires the district court to hold the funds as provided by other law.

(t) Requires the court, after the proceeds are distributed, to award fee title to the purchaser. Requires the court, if the proceeds of the sale are insufficient to pay all liens, claims, and encumbrances on the property, to extinguish all unpaid liens, claims, and encumbrances on the property and award title to the purchaser fee and clear.

(u) Provides that this section does not foreclose any right or remedy that may be available under Section 214.003 (Receiver), other state law, or the laws of equity.

## SECTION 2. Effective date: September 1, 2009.