

BILL ANALYSIS

Senate Research Center
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H.B. 2930
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Public nuisances can be a serious threat to public health, safety, and welfare. In some Texas cities abandoned homes in disrepair pose a physical danger, and some have become centers of criminal activity. In certain cases such homes can be declared a public nuisance and be demolished. Legal observers note that Texas courts usually accept administrative findings of nuisance at face value and decline to adjudicate claims for compensation following a city's abatement of a threat to public safety. However, a recent Texas Supreme Court decision has been interpreted to mean that such administrative findings are not preclusive and that property owners have a constitutional right to judicial review of the city's action.

Interested parties assert that as a result of the supreme court's decision, Texas cities expect a substantial increase in claims by property owners for compensation following abatements of public nuisances. H.B. 2930 seeks to establish a procedure for asserting certain taking claims against governmental entities that will allow a defendant governmental entity to resolve meritorious claims promptly but will also deter specious claims that otherwise would require significant expenditures of public funds to pay for court appearances, discovery, and dispositive motions.

The bill specifies that its provisions only apply to a taking claim in which the governmental entity is an incorporated municipality with a population of more than two million.

H.B. 2930 amends current law relating to procedures for asserting taking claims against certain governmental entities.

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 Title 5, Civil Practice and Remedies Code, by adding Chapter 112, as follows:

CHAPTER 112. CERTAIN TAKING CLAIMS AGAINST GOVERNMENTAL ENTITIES

Sec. 112.001. DEFINITIONS. Defines "economic damages," "expert," "expert report," "governmental action," "governmental entity," "owner," and "taking," and "taking claim" in this chapter.

Sec. 112.002. APPLICABILITY. Provides that this chapter applies to a taking claim filed in this state in which the governmental entity is an incorporated municipality with a population of more than two million.

Sec. 112.003. NOTICE TO GOVERNMENTAL ENTITY. (a) Requires the owner, not later than the 60th day before the date on which an owner brings a suit to which this chapter applies, to give written notice to the governmental entity. Requires that the notice:

- (1) state the owner's mailing address;
- (2) describe in reasonable detail the facts supporting the owner's claim; and
- (3) be delivered in person using a third-party delivery service or sent by certified mail, return receipt requested, to the person on whom citation would be served in a suit under Section 101.102(c) (relating to requiring that a citation, in a suit against the state, be served on the secretary of state).

(b) Requires that the owner's pleading, in a suit to which this chapter applies, include a statement that the owner has complied with the notice requirements of this section and provide evidence of a receipt issued by a third-party delivery service or a return receipt, as applicable.

(c) Provides that the receipt by a governmental entity of notice under this section tolls any applicable statute of limitation until the 75th day after the date the notice is received.

Sec. 112.004. REPLY BY GOVERNMENTAL ENTITY. Requires the governmental entity, not later than the 45th day after the date a governmental entity receives notice under Section 112.003, to deliver to the owner, in person using a third-party delivery service or by certified mail, return receipt requested, a reply stating:

- (1) whether the governmental action, if any, was undertaken due to a condition or use of the owner's private real property that constituted a public or private nuisance as defined by background principles of nuisance and property law of this state; or
- (2) whether the governmental action, if any, was undertaken to enforce a law enacted to protect public health and safety and, if so, specifically identifying that law.

Sec. 112.005. EXPERT REPORT. (a) Requires the owner, in a suit on a taking claim in which a governmental entity, in the reply required by Section 112.004, asserts that the governmental action was undertaken due to a condition or use of private real property described by Section 112.004(1) or to enforce a public health and safety law as described by Section 112.004(2), to, not later than the 120th day after the date the suit is filed, serve on each party or the party's attorney one or more expert reports, with a curriculum vitae of each expert listed in the report, for each governmental entity against which a taking claim is asserted. Authorizes the date for serving the report to be extended by written agreement of the parties. Requires each governmental entity whose conduct is implicated in a report to file and serve any objection to the sufficiency of the report not later than the 21st day after the date the report was served. Provides that all objections are waived if the governmental entity fails to file the objection.

(b) Requires the court, on the motion of the affected governmental entity, if, as to a governmental entity, an expert report has not been served within the period specified by Subsection (a), to, subject to Subsection (c), enter an order that:

- (1) awards to the affected governmental entity reasonable attorney's fees and costs of court incurred by the governmental entity; and
- (2) dismisses the claim with respect to the governmental entity.

(c) Authorizes the court, if an expert report has not been served within the period specified by Subsection (a) because elements of the report are found deficient, to grant one 30-day extension to the owner in order to cure the deficiency. Requires

that the 30-day extension, if the owner does not receive notice of the court's ruling granting the extension until after the 120-day deadline has passed, run from the date the owner first received the notice.

(d) Authorizes an owner, notwithstanding any other provision of this section, to satisfy any requirement of this section for serving an expert report by serving reports of separate experts regarding different issues related to the taking claim.

(e) Requires a court to grant a motion challenging the adequacy of an expert report only if it appears to the court, after a hearing, that the report does not represent a good faith effort to comply with the requirements of an expert report under Subsections (h) and (i).

(f) Provides that, until an owner has served the expert report and curriculum vitae as required by Subsection (a), all discovery in a taking claim is stayed except for the acquisition by the owner of information by means of:

(1) written discovery as defined in Rule 192.7, Texas Rules of Civil Procedure;

(2) depositions on written questions under Rule 200, Texas Rules of Civil Procedure; and

(3) discovery from nonparties under Rule 205, Texas Rules of Civil Procedure.

(g) Prohibits all owners, collectively, notwithstanding any other provision of this section, after a taking claim is filed, from taking more than two depositions before the expert report is served as required by Subsection (a).

(h) Requires that an expert report under this section, at a minimum, state the expert's conclusion, together with the facts on which the expert relied in reaching that conclusion, with respect to whether the alleged taking:

(1) has denied the owner all economically viable use of the property, if that is the basis for the owner's claim;

(2) has made the private real property unusable for its intended purpose, if that is the basis for the owner's claim; or

(3) has interfered with the owner's investment-backed expectations, if that is the basis for the owner's claim.

(i) Requires that the expert report under this section, if an owner's taking claim alleges that the owner has sustained economic damages as the result of an alleged taking, state the expert's conclusion, together with the facts on which the expert relied in reaching that conclusion, regarding:

(1) whether the alleged taking has resulted in economic damages to the owner as alleged;

(2) the amount of economic damages, if any; and

(3) whether the damages are de minimis compared to a public benefit, if any, that resulted from the taking.

Sec. 112.006. INTERLOCUTORY APPEAL. Authorizes a governmental entity to appeal from an interlocutory order of a court that denies a motion for summary judgment filed in good faith by the governmental entity on the ground that:

(1) the owner has not met the owner's burden of production regarding one or more elements of the taking claim; or

(2) an expert report required by this chapter has not been served.

Sec. 112.007. ALTERNATIVE DISPUTE RESOLUTION. Provides that Chapter 154 (Alternative Dispute Resolution Procedures) applies to a taking claim.

SECTION 2. Provides that the change in law made by this Act applies only to an action on a taking claim with respect to a taking alleged to have occurred on or after the effective date of this Act. Provides that an action on a taking claim with respect to a taking alleged to have occurred before the effective date of this Act is governed by the law as it existed immediately before that date, and the former law is continued in effect for that purpose.

SECTION 3. Effective date: September 1, 2013.