

BILL ANALYSIS

Senate Research Center
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S.B. 1647
By: Staples
Natural Resources
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As Filed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

In 1995, the legislature created Chapter 2007, Government Code, titled 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 certain 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.

In 2004, the Texas Supreme Court, in Sheffield Development Company, Inc. v. City of Glenn Heights, 140 S.W. 3rd 660, held that a reduction in value of 50 percent as a result of a down-zoning of a tract of land while "unquestionably severe...did not approach a taking" under federal constitutional law. The Texas Supreme Court, in Quick v. City of Austin, 7 S.W.3rd 109, 1999, had previously upheld regulations limiting impervious cover to 15 percent of the land as valid water quality regulations even though the regulations reduced property values by as much as 90 percent.

Determining when a taking requires compensation under the United States and Texas constitutions is a very complicated, time-consuming, and expensive process. The United States Supreme Court has called the process "among the most litigated and perplexing in current law." The Texas Supreme Court has referred to regulatory takings jurisprudence as a "sophistic Miltonian Serbonian Bog." The Act currently requires that a takings impact assessment be made prior to a governmental action so as to minimize actions that will result in a taking of private property. While a private action may be brought under the Act if a takings impact assessment is not prepared, the Act does not currently provide a process for Texas citizens to challenge whether the takings impact assessment mandated by the Act has been completed in accordance with the guidelines established by the Texas attorney general under Section 2007.041 of the Act.

As proposed, S.B. 1647 eliminates the municipal government exception and establishes impervious cover baseline protections for all privately-owned land in Texas. It also provides a private cause of action to determine whether the takings impact assessment complies with the attorney general's guidelines.

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(5), Government Code, to redefine "taking."

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

Sec. 2007.003. APPLICABILITY. (a) Deletes Subdivision (3) regarding an exception for a governmental action by a municipality that has effect in the extraterritorial jurisdiction of the municipality. Makes conforming changes.

(b) Deletes existing text regarding exceptions for this chapter for specific governmental actions.

(c) Provides that this chapter does not apply to specific governmental actions, if the actions do not affect building size, lot size, impervious cover, or the timing of the development or improvement of private real property. Deletes existing text referring to exemptions in Sections 2007.021 and 2007.022 for the enforcement or implementation of specific measures.

(d) Provides that this chapter does not apply to a municipality's exercise of zoning authority unless the exercise of zoning authority results in a taking under Section 2007.002(5)(C).

(e) Makes no change to this subsection.

(f) Provides that subsection (d) does not apply to a governmental action affecting the zoning classification of an owner's private real property that is undertaken without 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 Chapter 245 (Issuance of Local Permits), Local Government Code.

SECTION 3. Amends Section 2007.041(a), Government Code, to make a conforming change.

SECTION 4. Amends Section 2007.042(a), Government Code, to make a conforming change.

SECTION 5. 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.

(d) Authorizes a proposed governmental action described by Section 2007.003(a)(1) or (2) 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 6. Makes application of this Act prospective.

SECTION 7. Effective date: upon passage or September 1, 2005.