

# Texas Takings Law

## Texas Gov't Code

### § 2007.001. Short Title

This chapter may be cited as the Private Real Property Rights Preservation Act.

### § 2007.002. Definitions

In this chapter:

(1) "Governmental entity" means:

(A) a board, commission, council, department, or other agency in the executive branch of state government that is created by constitution or statute, including an institution of higher education as defined by Section 61.003, Education Code; or

(B) a political subdivision of this state.

(2) "Owner" means a person with legal or equitable title to affected private real property at the time a taking occurs.

(3) "Market value" means the price a willing buyer would pay a willing seller after considering all factors in the marketplace that influence the price of private real property.

(4) "Private real property" means an interest in real property recognized by common law, including a groundwater or surface water right of any kind, that is not owned by the federal government, this state, or a political subdivision of this state.

(5) "Taking" means:

(A) a governmental action that affects private real property, in

whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or

(B) a governmental action that:

(i) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or

permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and

(ii) is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property,

determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

§ 2007.003. Applicability

(a) This chapter applies only to the following governmental actions:

(1) the adoption or issuance of an ordinance, rule, regulatory requirement, resolution, policy, guideline, or similar measure;

(2) an action that imposes a physical invasion or requires a dedication or exaction of private real property;

(3) an action by a municipality that has effect in the extraterritorial jurisdiction of the municipality, excluding annexation, and that enacts or enforces an ordinance, rule, regulation, or plan that does not impose identical requirements or restrictions in the entire extraterritorial jurisdiction of the municipality; and

(4) enforcement of a governmental action listed in Subdivisions (1) through (3), whether the enforcement of the governmental action is accomplished through the use of permitting, citations, orders, judicial or quasi-judicial proceedings, or other similar means.

(b) This chapter does not apply to the following governmental actions:

(1) an action by a municipality except as provided by Subsection (a)(3);

(2) a lawful forfeiture or seizure of contraband as defined by Article 59.01, Code of Criminal Procedure;

(3) a lawful seizure of property as evidence of a crime or violation of law;

(4) an action, including an action of a political subdivision, that is reasonably taken to fulfill an obligation mandated by federal law or an action of a political subdivision that is reasonably taken to fulfill an obligation mandated by state law;

(5) the discontinuance or modification of a program or regulation that provides a unilateral expectation that does not rise to the level of a recognized interest in private real property;

(6) an action taken to prohibit or restrict a condition or use of private real property if the governmental entity proves that the condition or use constitutes a public or private nuisance as defined by background principles of nuisance and property law of this state;

(7) an action taken out of a reasonable good faith belief that the action is necessary to prevent a grave and immediate threat to life or property;

(8) a formal exercise of the power of eminent domain;

(9) an action taken under a state mandate to prevent waste of oil and gas, protect correlative rights of owners of interests in oil or gas, or prevent pollution related to oil and gas activities;

(10) a rule or proclamation adopted for the purpose of regulating water safety, hunting, fishing, or control of nonindigenous or exotic aquatic resources;

(11) an action taken by a political subdivision:

(A) to regulate construction in an area designated under law as a floodplain;

(B) to regulate on-site sewage facilities;

(C) under the political subdivisions's statutory authority to prevent waste or protect rights of owners of interest in groundwater; or

(D) to prevent subsidence;

(12) the appraisal of property for purposes of ad valorem taxation;

(13) an action that:

(A) is taken in response to a real and substantial threat to public health and safety;

(B) is designed to significantly advance the health and safety purpose; and

(C) does not impose a greater burden than is necessary to achieve the health and safety purpose; or

(14) an action or rulemaking undertaken by the Public Utility Commission of Texas to order or require the location or placement of telecommunications equipment owned by another party on the premises of a certificated local exchange company.

(c) Sections 2007.021 and 2007.022 do not apply to the enforcement or implementation of a statute, ordinance, order, rule, regulation, requirement, resolution, policy, guideline, or similar measure that was in effect September 1, 1995, and that prevents the pollution of a reservoir or an aquifer designated as a sole source aquifer under the federal Safe Drinking Water Act (42 U.S.C. Section 300h-3(e)).

(d) This chapter applies to a governmental action taken by a county only if the action is taken on or after September 1, 1997.

(e) This chapter does not apply to the enforcement or implementation of Subchapter B, Chapter 61, Natural Resources Code, as it existed on September 1, 1995, or to the enforcement or

implementation of any rule or similar measure that was adopted under that subchapter and was in existence on September 1, 1995.

§ 2007.004. Waiver of Governmental Immunity; Permission to Sue

(a) Sovereign immunity to suit and liability is waived and abolished to the extent of liability created by this chapter.

(b) This section does not authorize a person to execute a judgment against property of the state or a governmental entity.

§ 2007.005. Alternative Dispute Resolution

Chapter 154, Civil Practice and Remedies Code, applies to a suit filed under this chapter.

§ 2007.006. Cumulative Remedies

(a) The provisions of this chapter are not exclusive. The remedies provided by this chapter are in addition to other procedures or remedies provided by law.

(b) A person may not recover under this chapter and also recover under another law or in an action at common law for the same economic loss.

§ 2007.021. Suit Against Political Subdivision

(a) A private real property owner may bring suit under this subchapter to determine whether the governmental action of a political subdivision results in a taking under this chapter. A suit under this subchapter must be filed in a district court in the county in which the private real property owner's affected property is located. If the affected private real property is located in more than

one county, the private real property owner may file suit in any county in which the affected property is located.

(b) A suit under this subchapter must be filed not later than the 180th day after the date the private real property owner knew or should have known that the governmental action restricted or limited the owner's right in the private real property.

#### § 2007.022. Administrative Proceeding Against State Agency

(a) A private real property owner may file a contested case with a state agency to determine whether a governmental action of the state agency results in a taking under this chapter.

(b) A contested case must be filed with the agency not later than the 180th day after the date the private real property owner knew or should have known that the governmental action restricted or limited the owner's right in the private real property.

(c) A contested case filed under this section is subject to Chapter 2001 except to the extent of a conflict with this subchapter.

#### § 2007.023. Entitlement to Invalidation of Governmental Action

(a) Whether a governmental action results in a taking is a question of fact.

(b) If the trier of fact in a suit or contested case filed under this subchapter finds that the governmental action is a taking under this chapter, the private real property owner is only entitled to, and the governmental entity is only liable for, invalidation of the governmental action or the part of the governmental action resulting in the taking.

#### § 2007.024. Judgment or Final Decision or Order

(a) The court's judgment in favor of a private real property owner under Section 2007.021 or a final decision or order issued under Section 2007.022 that determines that a taking has occurred shall order the governmental entity to rescind the governmental action, or the part of the governmental action resulting in the taking, as applied to the private real property owner not later than the 30th day after the date the judgment is rendered or the decision or order is issued.

(b) The judgment or final decision or order shall include a fact finding that determines the monetary damages suffered by the private real property owner as a result of the taking. The amount of damages is determined from the date of the taking.

(c) A governmental entity may elect to pay the damages as compensation to the private real property owner who prevails in a suit or contested case filed under this subchapter. Sovereign immunity to liability is waived to the extent the governmental entity elects to pay compensation under this subsection.

(d) If a governmental entity elects to pay compensation to the private real property owner:

(1) the court that rendered the judgment in the suit or the state agency that issued the final order or decision in the case shall withdraw the part of the judgment or final decision or order rescinding the governmental action; and

(2) the governmental entity shall pay to the owner the damages as determined in the judgment or final order not later than the 30th day after the date the judgment is rendered or the final decision or order is issued.

(e) If the governmental entity does not pay compensation to the private real property owner as provided by Subsection (d), the court or the state agency shall reinstate the part of the judgment or final decision or order previously withdrawn.

(f) A state agency that elects to pay compensation to the private real property owner shall pay the compensation from funds appropriated to the agency.

§ 2007.025. Appeal

(a) A person aggrieved by a judgment rendered in a suit filed under Section 2007.021 may appeal as provided by law.

(b) A person who has exhausted all administrative remedies available within the state agency and is aggrieved by a final decision or order in a contested case filed under Section 2007.022 is entitled to judicial review under Chapter 2001. Review by a court under this subsection is by trial de novo.

(c) If a private real property owner prevails in a suit or contested case filed under this subchapter and the governmental entity appeals, the court or the state agency shall enjoin the governmental entity from invoking the governmental action or the part of the governmental action resulting in the taking, pending the appeal of the suit or contested case.

#### § 2007.026. Fees and Costs

(a) The court or the state agency shall award a private real property owner who prevails in a suit or contested case filed under this subchapter reasonable and necessary attorney's fees and court costs.

(b) The court or the state agency shall award a governmental entity that prevails in a suit or contested case filed under this subchapter reasonable and necessary attorney's fees and court costs.

#### § 2007.041. Guidelines

(a) The attorney general shall prepare guidelines to assist governmental entities in identifying and evaluating those governmental actions described in Section 2007.003(a)(1) through (3) that may result in a taking.

(b) The attorney general shall file the guidelines with the secretary of state for publication in the Texas Register in the manner prescribed by Chapter 2002.



(c) The attorney general shall review the guidelines at least annually and revise the guidelines as necessary to ensure consistency with the actions of the legislature and the decisions of the United States Supreme Court and the supreme court of this state.

(d) A person may make comments or suggestions or provide information to the attorney general concerning the guidelines. The attorney general shall consider the comments, suggestions, and information in the annual review process required by this section.

(e) Material provided to the attorney general under Subsection (d) is public information.

#### § 2007.042. Public Notice

(a) A political subdivision that proposes to engage in a governmental action described in Section 2007.003(a)(1) through (3) that may result in a taking shall provide at least 30 days' notice of its intent to engage in the proposed action by providing a reasonably specific description of the proposed action in a notice published in a newspaper of general circulation published in the county in which affected private real property is located. If a newspaper of general circulation is not published in that county, the political subdivision shall publish a notice in a newspaper of general circulation located in a county adjacent to the county in which affected private real property is located. The political subdivision shall, at a minimum, include in the notice a reasonably specific summary of the takings impact assessment that was prepared as required by this subchapter and the name of the official of the political subdivision from whom a copy of the full assessment may be obtained.

(b) A state agency that proposes to engage in a governmental action described in Section 2007.003(a)(1) or (2) that may result in a taking shall:

(1) provide notice in the manner prescribed by Section 2001.023; and

(2) file with the secretary of state for publication in the Texas Register in the manner prescribed by Chapter 2002 a reasonably specific summary of the takings impact assessment that was prepared by the agency as required by this subchapter.

§ 2007.043. Takings Impact Assessment

(a) A governmental entity shall prepare a written takings impact assessment of a proposed governmental action described in Section 2007.003(a)(1) through (3) that complies with the evaluation guidelines developed by the attorney general under Section 2007.041 before the governmental entity provides the public notice required under Section 2007.042.

(b) The takings impact assessment must:

(1) describe the specific purpose of the proposed action and identify:

(A) whether and how the proposed action substantially advances its stated purpose; and

(B) the burdens imposed on private real property and the benefits to society resulting from the proposed use of private real property;

(2) determine whether engaging in the proposed governmental action will constitute a taking; and

(3) describe reasonable alternative actions that could accomplish the specified purpose and compare, evaluate, and explain:

(A) how an alternative action would further the specified purpose; and

(B) whether an alternative action would constitute a taking.

(c) A takings impact assessment prepared under this section is public information.

§ 2007.044. Suit to Invalidate Governmental Action

(a) A governmental action requiring a takings impact assessment is void if an assessment is not prepared. A private real property owner affected by a governmental action taken without the preparation of a takings impact assessment as required by this subchapter may bring suit for a declaration of the invalidity of the governmental action.

(b) A suit under this section must be filed in a district court in the county in which the private real property owner's affected property is located. If the affected property is located in more than one county, the private real property owner may file suit in any county in which the affected property is located.

(c) The court shall award a private real property owner who prevails in a suit under this section reasonable and necessary attorney's fees and court costs.

§ 2007.045. Updating of Certain Assessments Required

A state agency that proposes to adopt a governmental action described in Section 2007.003(a)(1) or (2) that may result in a taking as indicated by the takings impact assessment shall update the assessment if the action is not adopted before the 180th day after the date the notice is given as required by Section 2001.023.