

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 1833
By: Giddings (West, Royce)
Intergovernmental Relations
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Committee Report (Substituted)

DIGEST AND PURPOSE

A municipality sometimes faces difficulties in enforcing certain property health and safety ordinances because the property owners are unknown or the municipality is unable to successfully deliver notice of violations or hearings by mail or certified mail, as required by law. Property owners do not always file the required ownership documents, and owners have been known to refuse certified mail because they suspect the mail contains notice of a violation or hearing. C.S.H. B. 1833 sets forth provisions regarding the enforcement of certain health and safety ordinances, including a municipality's access to property owner information and the methods by which a municipality may deliver notice to a property owner who has violated certain health and safety ordinances.

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 552.115(a), Government Code, to provide that a birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official is excepted from the requirements of Section 552.021, except under certain conditions.

SECTION 2. Amends Sections 342.006(b) and (d), Health and Safety Code, as follows:

(b) Deletes text regarding the property lacking buildings.

(d) Authorizes a municipality, in a notice provided under this section, to inform the owner by personally delivering the notice that if the owner commits another violation of the same kind or nature that poses a danger to the public health and safety on or before the first anniversary of the date of the notice, the municipality without further notice may correct the violation at the owner's expense and assess the expense against the property.

SECTION 3. Amends Section 54.033(b), Local Government Code, to require a commission appointed for the purpose of hearing cases under this subchapter to consist of one or more panels, each composed of at least five members (rather than five-member panels), to be appointed for terms of two years.

SECTION 4. Amends Chapter 54A, Local Government Code, by adding Section 54.006, as follows:

Sec. 54.006. NONSEVERABILITY OF CERTAIN CONSOLIDATED OFFENSES.
Provides that Section 3.04(a) (regarding Severance), Penal Code, does not apply to two or more offenses consolidated or joined for trial under Section 3.02 (Consolidation and Joinder of Prosecutions), Penal Code, under certain conditions.

SECTION 5. Amends Section 54.034(a), Local Government Code, to require a majority (rather than at least four) of the members of a panel to hear a case.

SECTION 6. Amends Section 54.035, Local Government Code, by amending Subsections (a) and (b) and adding Subsections (d), (e), and (f), as follows:

- (a) Makes a conforming change.
- (b) Requires the notice to be posted and either personally delivered or mailed on or before a certain date and requires the notice to state the date, time, and place of the hearing.
- (d) Requires a municipality to exercise due diligence to determine the identity and address of a property owner or lienholder to whom the municipality is required to give notice.
- (e) Provides that a municipality exercises due diligence in determining the identity and address of a property owner or lienholder when it searches certain records.
- (f) Provides that, when a municipality mails a notice in accordance with this section to a property owner or lienholder and the United States Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected, and the notice is considered delivered.

SECTION 7. Amends Section 54.038, Local Government Code, as follows:

Sec. 54.038. VOTE. Provides that a majority vote of the members voting on a matter (rather than the concurring vote of the four members of a commission panel) is necessary to take any action under this subchapter and any ordinance adopted by the municipality in accordance with this subchapter.

SECTION 8. Amends Section 54.039(a), Local Government Code, to make conforming changes.

SECTION 9. Amends Chapter 54C, Local Government Code, by adding Section 54.044, as follows:

Sec. 54.044. ALTERNATIVE PROCEDURE FOR ADMINISTRATIVE HEARING. (a) Authorizes a municipality, as an alternative to the enforcement processes described by this subchapter, by ordinance to adopt a procedure for an administrative adjudication hearing under which an administrative penalty may be imposed for the enforcement of an ordinance described by Section 54.032 or adopted under Section 214.001(a)(1).

- (b) Requires a procedure adopted under this section to entitle the person charged with violating an ordinance to a hearing and to make certain provisions.
- (c) Authorizes a municipal court to enforce an order of a hearing officer compelling the attendance of a witness or the production of a document.
- (d) Requires a citation or summons issued as part of a procedure adopted under this section to perform certain functions.
- (e) Requires the original or a copy of the summons or citation to be kept as a record in the ordinary course of business of the municipality and provides that it is rebuttable proof of the facts it states.

- (f) Provides that the person who issued the citation or summons is not required to attend a hearing under this section.
- (g) Provides that a person charged with violating an ordinance who fails to appear at a hearing authorized under this section is considered to admit liability for the violation charged.
- (h) Requires the hearing officer, at a hearing under this section, to issue a certain order.
- (i) Authorizes an order issued under this section to be filed with the clerk or secretary of the municipality. Requires the clerk or secretary to keep the order in a separate index and file. Authorizes the order to be recorded using microfilm, microfiche, or data processing techniques.
- (j) Authorizes an order issued under this section against a person charged with an ordinance violation to be enforced by way of certain methods.
- (k) Authorizes a person who is found by a hearing officer to have violated an ordinance to appeal the determination by filing a petition in municipal court before a certain date. Provides that an appeal does not stay enforcement and collection of the judgment unless the person, before filing the appeal, posts a bond with an agency designated for that purpose by the municipality.

SECTION 10. Amends Section 214.001, Local Government Code, by amending Subsections (d) and (g) and adding Subsection (r), as follows:

- (d) Requires the municipality to personally deliver or send by certified mail, return receipt requested, to each identified mortgagee and lienholder a notice containing certain items.
- (g) Makes conforming changes.
- (r) Provides that when a municipality mails a notice in accordance with this section to a property owner, lienholder, or mortgagee and the United States Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected, and the notice is considered delivered.

SECTION 11. Amends Chapter 214A, Local Government Code, by adding Section 214.005, as follows:

Sec. 214.005. **PROPERTY BID OFF TO MUNICIPALITY.** Authorizes a municipality to adopt an ordinance under Section 214.001(a) that applies to property that has been bid off to the municipality under Section 34.01(j), Tax Code.

SECTION 12. Amends Section 214.0012(a), Local Government Code, to make a conforming change.

SECTION 13. Amends Section 683.075, Transportation Code, to make conforming changes.

SECTION 14. Amends Chapter 683E, Transportation Code, by adding Section 683.0765, as follows:

Sec. 683.0765. **ALTERNATIVE PROCEDURE FOR ADMINISTRATIVE HEARING.** Authorizes a municipality by ordinance to provide for an administrative adjudication process under which an administrative penalty may be imposed for the enforcement of an ordinance

adopted under this subchapter. Requires the municipality, if it provides for an administrative adjudication process under this section, to use the procedure described by Section 54.044, Local Government Code.

SECTION 15. Amends Section 683.077(a), Transportation Code, to prohibit procedures adopted under Section 683.074 or 683.0765 from applying to certain vehicles or vehicle parts.

SECTION 16. Makes application of this Act prospective regarding notices given before the effective date of this Act.

SECTION 17. Effective date: September 1, 2001. Makes application of the change in law made by this Act by the addition of Section 54.006, Local Government Code, prospective regarding an offense committed. Provides that, for the purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

SUMMARY OF COMMITTEE CHANGES

Amends As Filed H.B. 1833 as follows:

SECTION 1. Modifies the exceptions to conditions under which a birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official is excepted from the requirements of Section 552.021.

SECTION 2. No changes in text.

SECTION 3. No changes in text.

Adds a new SECTION 4.

Redesignates original SECTIONS 4 - 15 as SECTIONS 5 - 16.

Redesignates original SECTION 16 as SECTION 17 and amends text to make application prospective.