SUBJECT: Revising municipal authority to condemn blighted properties

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 7 ayes — Mowery, Orr, Zerwas, Callegari, R. Cook, Geren, Pickett

0 nays

2 absent — Y. Davis, Ritter

WITNESSES: For — Jimmy Gaines, Texas Landowners Council, Inc.; (*Registered, but did not testify:* Brent Connett, Texas Conservative Coalition)

Against — Shanna Igo, Texas Municipal League

On — Pat Carlson, Texas Eagle Forum

BACKGROUND: In its second called session in 2005, the 79th Legislature enacted SB 7 by Janek, which prohibits governmental or private entities from using eminent domain to take private property if the taking:

- confers a private benefit on a particular private party through the use of the property;
- is for a public use that merely is a pretext to confer a private benefit on a particular private party; or
- is for economic development purposes, unless economic development is a secondary purpose that results from municipal community development or municipal urban renewal activities to eliminate an existing affirmative harm on society from slum or blighted areas.

Local Government Code, chs. 373 and 374 govern community development and urban renewal policies available to municipalities. Ch. 373 empowers municipalities to engage in community development activities in areas that are identified as slums, blighted areas, or federally assisted new communities.

Ch. 374 is the Texas Urban Renewal Law. Sec. 374.003 defines a "blighted area" as an area that is not a slum but is characterized by deteriorating infrastructure and hazardous conditions that:

- adversely affect the public health, safety, morals, or welfare of the municipality and its residents;
- substantially impair the provision of a sound and healthy housing environment; or
- result in an economic or social liability to the municipality.

Sec. 374.015 gives municipalities a range of powers they may exercise for the purposes of urban renewal. Among these powers are the ability to conduct projects, execute contracts, contract for repair, acquire property, invest urban funds held in reserve, borrow money, close and replat streets, and accept federal grants for the purposes of redevelopment in designated blighted areas. To be designated as a blighted area, the governing body of the municipality has to adopt a resolution that finds that a slum area or blighted area exists and that the renewal of the area is necessary for the public health, safety, morals, or welfare of residents, and the resolution must be adopted by majority vote.

Under sec. 374.016, municipalities may use condemnation to acquire property in slum clearance areas if the municipality determines that at least 50 percent of the structures in the area are dilapidated beyond the point of feasible rehabilitation or otherwise are unfit for rehabilitation, and that other characteristics of blight exist, such as overcrowding of structures on the land, mixed uses of structures, deficient streets, or deficiencies in public utilities or recreational and community facilities.

DIGEST:

CSHB 3057 would strike references to "slums" from Local Government Code, chs. 373 and 374. The bill would redefine "blighted area" to mean a single property that was conducive to ill health, transmission of disease, infant mortality, or crime, and met two or more of the following conditions:

- the property contained uninhabitable, unsafe, or abandoned structures;
- the property had inadequate provisions for sanitation;
- there existed on the property an imminent harm to life or other property caused by fire, flood, hurricane, tornado, earthquake, storm, or other officially designated natural catastrophe;

- the property had been identified by the Environmental Protection Agency as a superfund site or as environmentally contaminated to an extent that the property required remedial investigation or a feasibility study; or
- the property had been the location of repeated illegal activity of which the property owner should have been aware.

For the area to be considered blighted, such properties would have to meet these conditions for at least one year after the date on which a municipality provided initial notice to the owner.

A municipality could not exercise powers granted under the Texas Urban Renewal Law unless its governing body determined that each unit of property in an area met the definition of blight and the municipality provided a statement to this end as necessary. Prior to designating a blighted area, a municipality would have to give written notice to the property owner at his or her last known address, as well as the subject property's address, and would have to post notice on the property if the owner's address was unavailable. A property could be designated as blighted only if the owner took no reasonable measures to remedy the conditions, and if the determination was not solely for aesthetic reasons.

A blight designation would be valid for two years and would have to be redesignated as such at the end of that period. Contiguous properties that shared an owner could be jointly designated.

The bill also would repeal sections authorizing a municipality to acquire and clear all buildings, structures, and other improvements for redevelopment and reuse in accordance with the urban renewal plan.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

SUPPORTERS SAY:

CSHB 3057 would deal with an important vulnerability with regard to eminent domain power left unaddressed by SB 7 — exceptions for areas designated as blighted or as slums. Under current statutory provisions, municipalities may take property for economic development purposes if the taking is a secondary purpose resulting from community development or urban renewal activities to eliminate existing harm on society from slums or blighted areas. Municipalities may use the blight exception to

condemn and clear whole neighborhoods at a time so long as 50 percent of the affected properties are determined to be blighted.

This omission in current statutory provisions allows municipalities to seize the properties of honest, hardworking residents and businesspeople due to hazards that may exist in their neighborhood, effectively subverting individual property rights for an ill-defined notion of a common good. Existing statutory definitions of slum and blight are vague at best, leaving it to the judgment of municipal officials to decipher what constitutes hazardous conditions, greater welfare, and social and economic liabilities. The current statutory definition of blight would allow a taking in cases where a property's defect was minor — such as deteriorating improvements, or not caused by the property owner — such as inadequate infrastructure. A lack of safeguards for property owners in potentially blighted areas has given rise to a number of abusive and reckless eminent domain practices.

CSHB 3057 would balance legitimate municipal interests in using eminent domain to mitigate public safety hazards with the rights of property owners who live in areas that possess the characteristics of blight. The bill would clarify definitions and procedures related to community development and urban renewal programs. The definition of blight would be clarified and modified from referring to an area or neighborhood to a single property. References to the word slum would be stricken, since this term is ill-defined and not sufficiently distinguished from blight to salvage its usefulness. Property owners no longer would be subjected to condemnation due to the overall neighborhood conditions because each parcel would be reviewed and determined to be blighted independently. A one-year advance notice would give owners of potentially blighted properties ample time to take corrective action. The renewal clause in the bill would prevent an area from remaining classified as blighted indefinitely, irrespective of changing area conditions.

The bill would not prohibit a municipality from declaring a blighted area, exercising the power of eminent domain on properties within it, or taking other steps to adopt and support an urban renewal plan. Protecting property rights of established owners that have been able to maintain their properties in distressed areas would allow those owners to actively partake in the revitalization of their own communities.

OPPONENTS SAY:

In recognition of the importance of economic development activities, including the potential use of eminent domain, SB 7 made an explicit exception for condemnations intended to address public safety hazards associated with slum and blight. Urban renewal is a long accepted government function and critical to the long-term health of municipalities. Municipal governments use their powers of eminent domain to clear blighted areas for urban renewal as an absolute last resort. Such actions require expensive and long-term relocations, court proceedings, demolitions, and planning efforts. Municipalities seldom attempt to use their powers under the blight provisions unless they are left with no other options to correct rampant health and safety concerns that affect the quality of life of everyone living in the neighborhood.

CSHB 3057 effectively would eliminate a municipality's ability to designate a blighted area and use its eminent domain authority to promote urban renewal. The bill would increase the time and resources required to achieve designation as a blighted area to such an extent as to render such a task near impossible. Municipalities would have to make a blight determination on each property individually. The bill would add a one-year delay at the outset of the designation process by requiring that owners receive notice and receive one year to take corrective action. Blighted areas often are poorly platted, unsurveyed, and comprise unconventionally shaped lots without proper documentation. Property owners in blighted areas can be extremely difficult to locate and the bill would make no account for owners who have vacated, abandoned, or otherwise neglected property for long durations. The bill would curtail a municipality's ability to address structural safety hazards, inadequate infrastructure, and limited commercial opportunities. Removing an important and longstanding tool available to cities would diminish their ability to improve the quality of life of residents who need the most assistance.

OTHER OPPONENTS SAY:

CSHB 3057 would have a profoundly detrimental impact on the Texas Urban Renewal Law. In order to exercise any of the urban renewal powers available under the law, municipalities must designate blighted areas, which become subject to various forms of assistance and special powers designed to promote economic development and urban revitalization. Requiring municipalities to designate each property in an area as blighted and affirm this designation as part of a public resolution would make this task effectively impossible. A municipality would have to renew the designation for each property every two years, and a single property would be sufficient to prevent an entire area from being designated as blighted.

Because none of the urban renewal powers are available in the absence of a designation of blight, the bill would make these powers essentially unavailable for the purpose of municipal restoration.

NOTES:

The committee substitute modified the definition of "blighted area" to refer to a single blighted property and provided that the governing body of the municipality would have to determine that each unit of real property included in a resolution has the characteristics of blight.

Three other measures related to the use of eminent domain authority have been set today for second reading in the House. HB 2006 by Woolley would modify the processes governing eminent domain proceedings, obligations placed upon condemning entities, the rights of previous owners to repurchase taken property, and standards of evidence that could be considered by a court in the course of making decisions regarding damages. HB 1495 by Callegari would require condemning authorities to provide a bill of rights statement written by the attorney general for the person listed as the most recent owner prior to negotiations for the acquisition of that person's property. HJR 30 by Jackson would amend the Constitution to allow governmental entities to sell property acquired through eminent domain back to the previous owners at the price the entities paid to acquire the property.