

**SUBJECT:** Enforcement of building health and safety ordinances by occupants

**COMMITTEE:** Business and Industry — favorable without amendment

**VOTE:** 6 ayes — Giddings, Elkins, Darby, Bohac, Solomons, Zedler  
0 nays  
3 absent — Bailey, Castro, Martinez

**SENATE VOTE:** On final passage, May 1 — 31-0, on Local and Uncontested Calendar

**WITNESSES:** No public hearing

**BACKGROUND:** Property Code, ch. 92 establishes a residential tenant's repair and deduct remedies. The tenant may have certain conditions repaired or remedied and deduct the cost from a subsequent rent payment. The tenant's deduction for the cost of the repair or remedy may not exceed the amount of one month's rent under the lease or \$500, whichever is greater. Repairs and deduction may be made as often as necessary so long as the total repairs and deductions in any one month do not exceed the amounts stated above. The tenant must delay contracting for repairs if the landlord delivers to the tenant an affidavit summarizing the reasons for the delay and the diligent efforts made by the landlord to have the repairs completed. A tenant has civil remedies with the justice, county, and district courts having concurrent jurisdiction of an action, except that a justice court may not order repairs.

Local Government Code, ch. 54 authorizes a municipality to bring a civil action in district or county court at law on behalf of an occupant for the enforcement of an ordinance related to rental property and provides civil penalties.

**DIGEST:** SB 1437 would amend the Local Government Code, ch. 54 to permit an occupant to bring a civil action against an owner or the owner's representative for the enforcement of a municipal ordinance relating to a condition that materially affects the health or safety of the occupant if the

occupant:

- was current on all rental payments under the lease agreement;
- had provided written notice to the owner or owner's representative describing the condition; and
- had provided the owner a reasonable time to repair or remedy the condition considering the severity of the condition and the reasonable availability of materials, labor, and utilities.

The bill would allow an occupant of a structure to join a civil action related to that structure. An occupant could not join an action originally brought by a municipality unless the municipality consented.

Jurisdiction and venue of an action would be in district court or the county court at law where the occupant was located. In addition, jurisdiction and venue for an action brought by an occupant would be in the justice court in the precinct where the structure was located. An appeal by the owner or the owner's representative of an order of the justice court would stay the effect of any order issued by that court.

Upon a showing of substantial danger of injury or an adverse health impact to any person or to the property of any person other than the defendant, the municipality or an occupant of a structure could obtain an injunction against the owner or owner's representative. In determining the specific conduct required for compliance with the ordinance, a court would consider the severity and nature of the violation and the reasonable availability of materials, labor, and utilities.

A municipality or an occupant of a structure could bring an action to compel the repair of the structure. A municipality also could bring an action to compel the demolition of a structure or to obtain approval to remove the structure and recover removal costs.

The bill would not affect any duties or other obligations or responsibilities an occupant had to an owner or the owner's representative, including an obligation to pay rent or other obligations in a lease agreement.

The bill would take effect January 1, 2008.

**SUPPORTERS  
SAY:**

SB 1437 would establish an accessible legal remedy for occupants of substandard structures — both residential and commercial — for

conditions that affect the occupants' health and safety. The bill would allow an occupant who was current on rents and who provided the owner with written notice to take a violation directly to justice court in the precinct where the structure was located and seek an injunction. The bill would offer legal redress for emergency conditions and would be a practical solution, particularly for low-income occupants, short of hiring an attorney and enduring a lengthy court process.

Current law often forces occupants to withstand a long process to address violations of municipal codes related to tenant health and safety. Property Code, ch. 92 authorizes a residential occupant to "repair and deduct" in such circumstances, causing the tenant to deal with habitability issues for weeks or months while certifying multiple notices to the owner or property manager. SB 1437 would create a new right of action for any occupant of a substandard, leased structure, the condition of which threatened health and safety. The bill would establish no new standard of habitability but would authorize relief from non-responsive or absentee owners who conduct business with relative indifference to the condition of their property.

**OPPONENTS  
SAY:**

By granting justices of the peace injunctive authority, SB 1437 could establish bad precedent since injunctive relief issues usually involve detailed legal and factual analysis along with interpretation of existing case law, and JPs frequently are not attorneys.