

By: Callegari

H.B. No. 3057

A BILL TO BE ENTITLED

AN ACT

relating to the acquisition of real property for public use.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 21, Property Code, is amended by adding Section 21.010 to read as follows:

Sec. 21.010. DEFINITION OF PUBLIC USE. (a) In this chapter, "public use" means:

(1) the exclusive possession, occupation, or use of property by the general public, this state, or a political subdivision of this state;

(2) the operations of a public utility;

(3) transportation projects, including public roads and highways;

(4) the construction and maintenance of public defenses;

(5) the acquisition of property that has a cloud on the title due to an inability to identify or locate all owners of the property;

(6) the acquisition of property from each identified person with a legal claim to the property where those persons unanimously consent to the acquisition; or

(7) the elimination of blight.

(b) Public use does not include the public benefit of economic development.

1 SECTION 2. Section 373.002(b), Local Government Code, is
2 amended to read as follows:

3 (b) Activities conducted under this chapter are directed
4 toward the following purposes:

5 (1) elimination of [~~slums and~~] areas affected by
6 blight;

7 (2) prevention of blighting influences and of the
8 deterioration of property and neighborhood and community
9 facilities important to the welfare of the community;

10 (3) elimination of conditions detrimental to the
11 public health, safety, and welfare;

12 (4) expansion and improvement of the quantity and
13 quality of community services essential for the development of
14 viable urban communities;

15 (5) more rational use of land and other natural
16 resources;

17 (6) improved arrangement of residential, commercial,
18 industrial, recreational, and other necessary activity centers;

19 (7) restoration and preservation of properties of
20 special value for historic, architectural, or aesthetic reasons;

21 (8) reduction of the isolation of income groups in
22 communities and geographical areas, promotion of increased
23 diversity and vitality of neighborhoods through spatial
24 deconcentration of housing opportunities for persons of low and
25 moderate income, and revitalization of deteriorating or
26 deteriorated neighborhoods to attract persons of higher income; and

27 (9) alleviation of physical and economic distress

1 through the stimulation of private investment and community
2 revitalization in [~~slum or~~] blighted areas.

3 SECTION 3. Section 373.004, Local Government Code, is
4 amended to read as follows:

5 Sec. 373.004. GOALS OF PROGRAM. Through a community
6 development program, a municipality may conduct work or activities
7 designed to:

8 (1) improve the living and economic conditions of
9 persons of low and moderate income;

10 (2) benefit low or moderate income neighborhoods;

11 (3) aid in the prevention or elimination of [~~slums~~
12 ~~and~~] blighted areas;

13 (4) aid a federally assisted new community; or

14 (5) meet other urgent community development needs,
15 including an activity or function specified for a community
16 development program that incorporates a federally assisted new
17 community.

18 SECTION 4. Section 373.006, Local Government Code, is
19 amended to read as follows:

20 Sec. 373.006. REQUIRED PROCEDURES BEFORE ADOPTION OF
21 COMMUNITY DEVELOPMENT PROGRAM. Before exercising powers under
22 Section 373.005, the governing body of the municipality must:

23 (1) identify areas of the municipality in which
24 predominantly low and moderate income persons reside, that are
25 blighted [~~or slum areas~~], or that are federally assisted new
26 communities;

27 (2) establish community development program areas in

1 which community development activities, building rehabilitation,
2 or the acquisition of privately owned buildings or land is
3 proposed;

4 (3) adopt, by resolution or ordinance, a plan under
5 which citizens may publicly comment on the proposed community
6 development program;

7 (4) conduct public hearings on the proposed program
8 before the 15th day before the date of its final adoption by the
9 governing body; and

10 (5) adopt the community development program by
11 resolution or ordinance.

12 SECTION 5. Sections 374.002(a) and (b), Local Government
13 Code, are amended to read as follows:

14 (a) The legislature finds that [~~slum and~~] blighted areas
15 exist in municipalities in this state and that those areas:

16 (1) are a serious and growing menace that is injurious
17 and inimical to the public health, safety, morals, and welfare of
18 the residents of this state;

19 (2) contribute substantially and increasingly to the
20 spread of disease and crime, requiring excessive and
21 disproportionate expenditures of public funds for the preservation
22 of the public health and safety, and for crime prevention,
23 correctional facilities, prosecution and punishment, treatment of
24 juvenile delinquency, and the maintenance of adequate police, fire,
25 and accident protection and other public services and facilities;
26 and

27 (3) constitute an economic and social liability,

1 substantially impair the sound growth of affected municipalities,
2 and retard the provision of housing accommodations.

3 (b) For these reasons, prevention and elimination of [~~slum~~
4 ~~and~~] blighted areas are matters of state policy and concern that may
5 be best addressed by the combined action of private enterprise,
6 municipal regulation, and other public action through approved
7 urban renewal plans. The legislature further finds that the repair
8 and rehabilitation of buildings and other improvements in affected
9 areas, public acquisition of real property, demolition of buildings
10 and other improvements as necessary to eliminate [~~slum or~~] blight
11 conditions or to prevent the spread of those conditions, the
12 disposition of property acquired in affected areas and incidental
13 to the purposes stated by this subsection, and other public
14 assistance to eliminate those conditions are public purposes for
15 which public money may be spent and the power of eminent domain
16 exercised.

17 SECTION 6. Sections 374.003(3), (18), (25), (26), and (28),
18 Local Government Code, are amended to read as follows:

19 (3) "Blighted area" means an area that:
20 (A) presents two or more of the following
21 conditions:
22 (i) the area contains uninhabitable,
23 unsafe, or abandoned structures;
24 (ii) the area has inadequate provisions for
25 ventilation, light, air, or sanitation;
26 (iii) there exists at the area an imminent
27 harm to life or other property caused by fire, flood, hurricane,

1 tornado, earthquake, storm, or other natural catastrophe declared
2 to be a disaster under Section 418.014, Government Code, or
3 certified as a disaster for federal assistance under Section
4 418.021, Government Code;

5 (iv) the area has been identified by the
6 federal Environmental Protection Agency as a superfund site under
7 the federal Comprehensive Environmental Response, Compensation,
8 and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.) or as
9 environmentally contaminated to an extent that the property
10 requires remedial investigation or a feasibility study;

11 (v) the area has been the location of
12 repeated illegal activity of which the property owner knew or
13 should have known; or

14 (vi) the maintenance of the area is below
15 state, county, or municipal standards for at least one year after
16 the date of notice of the violation; and

17 (B) is conducive to ill health, transmission of
18 disease, infant mortality, or crime in the immediate proximity of
19 the property [~~is not a slum area, but that, because of deteriorating~~
20 ~~buildings, structures, or other improvements; defective or~~
21 ~~inadequate streets, street layout, or accessibility; unsanitary~~
22 ~~conditions; or other hazardous conditions, adversely affects the~~
23 ~~public health, safety, morals, or welfare of the municipality and~~
24 ~~its residents, substantially retards the provision of a sound and~~
25 ~~healthful housing environment, or results in an economic or social~~
26 ~~liability to the municipality. The term includes an area certified~~
27 ~~as a disaster area as provided by Section 374.903].~~

1 (18) "Rehabilitation" means the restoration of
2 buildings or other structures to prevent deterioration of an area
3 that is tending to become a blighted area [~~or a slum area~~].

4 (25) "Urban renewal activities" includes [~~slum~~
5 ~~clearance,~~] redevelopment, rehabilitation, and conservation
6 activities to prevent further deterioration of an area that is
7 tending to become a blighted [~~or slum~~] area. The term includes:

8 (A) the acquisition of all or part of a [~~slum area~~
9 ~~or~~] blighted area or the acquisition of land that is predominantly
10 open and that, because of obsolete platting, diversity of
11 ownership, deterioration of structures or site improvements, or for
12 other reasons, substantially impairs or arrests the sound growth of
13 the community;

14 (B) the demolition and removal of buildings and
15 improvements;

16 (C) the installation, construction, or
17 reconstruction of streets, utilities, parks, playgrounds, and
18 other improvements necessary to fulfill urban renewal objectives in
19 accordance with an urban renewal plan;

20 (D) the disposition by the municipality of
21 property acquired in an urban renewal area for use in accordance
22 with an urban renewal plan, including the sale or initial lease of
23 the property at its fair value or the retention of the property;

24 (E) the implementation of plans for a program of
25 voluntary repair and rehabilitation of buildings or improvements in
26 accordance with an urban renewal plan; and

27 (F) the acquisition of real property in an urban

1 renewal area as necessary to remove or prevent the spread of blight
2 or deterioration or to provide land for needed public facilities.

3 (26) "Urban renewal area" means a [~~slum area,~~
4 blighted area[, or a combination of those areas]] that the governing
5 body of a municipality designates as appropriate for an urban
6 renewal project.

7 (28) "Urban renewal project" includes any of the
8 following activities undertaken in accordance with an urban renewal
9 plan:

10 (A) municipal activities in an urban renewal area
11 that are designed to eliminate or to prevent the development or
12 spread of [~~slums and~~] blighted areas;

13 (B) [~~slum clearance and redevelopment in an urban~~
14 ~~renewal area,~~

15 [~~(C)~~] rehabilitation or conservation in an urban
16 renewal area;

17 (C) [~~(D)~~] development of open land that, because
18 of location or situation, is necessary for sound community growth
19 and that is to be developed, by replatting and planning, for
20 predominantly residential uses; or

21 (D) [~~(E)~~] any combination or part of the
22 activities described by Paragraphs (A)-(C) [~~(D)~~].

23 SECTION 7. Section 374.011(a), Local Government Code, is
24 amended to read as follows:

25 (a) Except as provided by Section 374.012, a municipality
26 may not exercise a power granted under this chapter unless:

27 (1) the governing body of the municipality adopts a

1 resolution that finds that a [~~slum area or~~] blighted area exists in
2 the municipality and that the rehabilitation, the conservation, or
3 the [~~slum clearance and~~] redevelopment of the area is necessary for
4 the public health, safety, morals, or welfare of the residents of
5 the municipality; and

6 (2) a majority of the municipality's voters voting in
7 an election held as provided by Subsection (b) favor adoption of the
8 resolution.

9 SECTION 8. Section 374.013(a), Local Government Code, is
10 amended to read as follows:

11 (a) To further the urban renewal objectives of this chapter,
12 a municipality may formulate a workable program to use appropriate
13 private and public resources, including the resources specified by
14 Subsection (b), to encourage urban rehabilitation, to provide for
15 the redevelopment of [~~slum and~~] blighted areas, or to undertake
16 those activities or other feasible municipal activities as may be
17 suitably employed to achieve the objective of the program. The
18 program must specifically include provisions relating to:

19 (1) prevention, through diligent enforcement of
20 housing and occupancy controls and standards, of the expansion of
21 blight into areas of the municipality that are free from blight; and

22 (2) rehabilitation or conservation of [~~slum and~~]
23 blighted areas as far as practicable to areas that are free from
24 blight through replanning, removing congestion, providing parks,
25 playgrounds, and other public improvements, encouraging voluntary
26 rehabilitation and requiring the repair and rehabilitation of
27 deteriorated or deteriorating structures[~~, and the clearance and~~

1 ~~redevelopment of slum areas~~].

2 SECTION 9. Section 374.014(a), Local Government Code, is
3 amended to read as follows:

4 (a) A municipality may not prepare an urban renewal plan for
5 an area unless the governing body of the municipality has, by
6 resolution, declared the area to be a [~~slum area, a~~] blighted area[~~7~~
7 ~~or both,~~] and has designated the area as appropriate for an urban
8 renewal project. The governing body may not approve an urban
9 renewal plan until a general plan has been prepared for the
10 municipality. A municipality may not acquire real property for an
11 urban renewal project until the governing body has approved the
12 urban renewal plan as provided by Subsection (d).

13 SECTION 10. Sections 374.015(a) and (d), Local Government
14 Code, are amended to read as follows:

15 (a) A municipality may exercise all powers necessary or
16 convenient to carry out the purposes of this chapter, including the
17 power to:

18 (1) conduct preliminary surveys to determine if
19 undertaking an urban renewal project is feasible;

20 (2) conduct urban renewal projects within its area of
21 operation;

22 (3) execute contracts and other instruments necessary
23 or convenient to the exercise of its powers under this chapter;

24 (4) provide, arrange, or contract for the furnishing
25 or repair by any person of services, privileges, works, streets,
26 roads, public utilities, or other facilities in connection with an
27 urban renewal project, including installation, construction, and

1 reconstruction of streets, utilities, parks, playgrounds, and
2 other public improvements necessary to carry out an urban renewal
3 project;

4 (5) acquire any real property, including
5 improvements, and any personal property necessary for
6 administrative purposes, that is necessary or incidental to an
7 urban renewal project, hold, improve, clear, or prepare the
8 property for redevelopment, mortgage or otherwise encumber or
9 dispose of the real property, insure or provide for the insurance of
10 real or personal property or municipal operations against any risk
11 or hazard and to pay premiums on that insurance, and enter any
12 necessary contracts;

13 (6) invest urban renewal project funds held in
14 reserves or sinking funds, or not required for immediate
15 disbursement, in property or securities in which banks may legally
16 invest funds subject to their control, redeem bonds issued under
17 Section 374.026 at the redemption price established in the bond, or
18 purchase those bonds at less than the redemption price, and cancel
19 the bonds redeemed or purchased;

20 (7) borrow money and apply for and accept advances,
21 loans, grants, contributions, and other forms of financial
22 assistance from the federal, state, or county government, other
23 public body, or other public or private sources for the purposes of
24 this chapter, give any required security, and make and carry out any
25 contracts in connection with the financial assistance;

26 (8) make plans necessary to carry out this chapter in
27 its area of operation, contract with any person in making and

1 carrying out the plans, and adopt, approve, modify or amend the
2 plans;

3 (9) develop, test, and report methods and techniques
4 for the prevention of [~~slums and~~] urban blight, conduct
5 demonstrations and other activities in connection with those
6 methods and techniques, and apply for, accept, and use federal
7 grants made for those purposes;

8 (10) prepare plans and provide reasonable assistance
9 for the relocation of persons displaced from an urban renewal
10 project area, including families, business concerns, and others, as
11 necessary to acquire possession and to clear the area in order to
12 conduct the urban renewal project;

13 (11) appropriate funds and make expenditures as
14 necessary to implement this chapter and, subject to Subsection (c),
15 levy taxes and assessments for that purpose;

16 (12) close, vacate, plan, or replan streets, roads,
17 sidewalks, ways, or other places, plan, replan, zone, or rezone any
18 part of the municipality and make exceptions from building
19 regulations, and enter agreements with an urban renewal agency
20 vested with urban renewal powers under Subchapter C, which may
21 extend over any period, restricting action to be taken by the
22 municipality under any of the powers granted under this chapter;

23 (13) organize, coordinate, and direct the
24 administration of this chapter within the area of operation as
25 those provisions apply to the municipality to most effectively
26 promote and achieve the purposes of this chapter and establish new
27 municipal offices or reorganize existing offices as necessary to

1 most effectively implement those purposes; and

2 (14) issue tax increment bonds.

3 (d) A [~~Except as provided by Section 374.016, a~~]
4 municipality may acquire by condemnation any interest in real
5 property, including a fee simple interest, that the municipality
6 considers necessary for or in connection with an urban renewal
7 project. Property dedicated to a public use may be acquired in that
8 manner, except that property belonging to the state or to a
9 political subdivision of the state may not be acquired without the
10 consent of the state or political subdivision.

11 SECTION 11. Section 374.017(d), Local Government Code, is
12 amended to read as follows:

13 (d) Real property or an interest in real property subject to
14 this section may only be sold, leased, or otherwise transferred or
15 retained at not less than the fair value of the property for uses in
16 accordance with the urban renewal plan. In determining the fair
17 value, the municipality shall consider:

18 (1) the uses provided in the urban renewal plan;

19 (2) any restrictions on and any covenants, conditions,
20 and obligations assumed by the purchaser, lessee, or municipality
21 in retaining the property;

22 (3) the objectives of the plan for the prevention of
23 the recurrence of [~~slums or~~] blighted areas; and

24 (4) any other matters that the municipality specifies
25 as appropriate.

26 SECTION 12. Section 374.021(b), Local Government Code, is
27 amended to read as follows:

1 (b) In this section, "urban renewal project powers"
2 includes the rights, powers, functions, and duties of a
3 municipality under this chapter. The term does not include the
4 power to:

5 (1) determine an area as a [~~slum area~~] blighted
6 area[~~, or both~~] and to designate that area as appropriate for an
7 urban renewal project;

8 (2) approve and amend urban renewal plans and hold
9 public hearings relating to those plans;

10 (3) establish a general plan for the locality as a
11 whole;

12 (4) establish a workable program under Section
13 374.013;

14 (5) make determinations and findings under Section
15 374.011(a), 374.013(b), or 374.014(d);

16 (6) issue general obligation bonds; and

17 (7) appropriate funds, levy taxes and assessments, and
18 exercise other functions under Subdivisions (11) and (12) of
19 Section 374.015(a).

20 SECTION 13. Subchapter B, Chapter 374, Local Government
21 Code, is amended by adding Section 374.018 to read as follows:

22 Sec. 374.018. LIMITATIONS ON CHARACTERIZATIONS OF BLIGHT.

23 (a) Notwithstanding any other law, an area may not be considered a
24 blighted area on the basis of a condition described by Section
25 374.003(3)(A)(iii) unless:

26 (1) the municipality has given notice in writing to
27 the property owner regarding the imminent harm to life or other

1 property caused by the condition of the property; and

2 (2) the property owner fails to take reasonable
3 measures to remedy the harm caused by the property.

4 (b) An area may not be considered a blighted area solely for
5 an aesthetic reason.

6 SECTION 14. Section 2206.001(b), Government Code, is
7 amended to read as follows:

8 (b) A governmental or private entity may not take private
9 property through the use of eminent domain if the taking:

10 (1) confers a private benefit on a particular private
11 party through the use of the property;

12 (2) is for a public use that is merely a pretext to
13 confer a private benefit on a particular private party; or

14 (3) is for economic development purposes, unless the
15 economic development results [~~is a secondary purpose resulting~~]
16 from municipal community development or municipal urban renewal
17 activities to eliminate an existing affirmative harm on society
18 from [~~slum or~~] blighted areas under:

19 (A) Chapter 373 or 374, Local Government Code,
20 other than an activity described by Section 373.002(b)(5), Local
21 Government Code; or

22 (B) Section 311.005(a)(1)(I), Tax Code.

23 SECTION 15. The following provisions of the Local
24 Government Code are repealed:

25 (1) Section 374.003(19);

26 (2) Section 374.016; and

27 (3) Chapter 251.

1 SECTION 16. This Act takes effect immediately if it
2 receives a vote of two-thirds of all the members elected to each
3 house, as provided by Section 39, Article III, Texas Constitution.
4 If this Act does not receive the vote necessary for immediate
5 effect, this Act takes effect September 1, 2007.