

BILL ANALYSIS

C.S.H.B. 3709
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Land & Resource Management
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In 1959, the Texas Legislature delegated virtually unlimited eminent domain power to certain charitable private nonprofit entities, notably Texas Medical Center, Inc., (TMC, Inc.) in Houston. TMC, Inc., is a private nonprofit corporation with no public oversight or accountability. This private corporation's function is to manage parking garages and to assist in the real estate management of 46 member institutions, including 13 hospitals, two medical schools, and a major private university. TMC, Inc., is now wielding condemnation power to forcibly acquire deed-restricted residences and extinguish deed restrictions. In a city with no zoning, deed restrictions are the only protection that Houston neighborhoods have to remain free of commercial use and to maintain residential quality of life and character.

As a private nonprofit, TMC, Inc., is not required to face the electorate, the main check on public entities or public officials with the power to take private property. Similarly, it is neither subject to open records laws nor required to conduct public meetings or hearings, another check on the use of eminent domain power by public entities. Moreover, unlike private common carriers and public utilities to which the legislature has also delegated eminent domain power, TMC, Inc., is not required to seek approval from a state agency for its decisions to acquire and to use property under threat of eminent domain. Therefore, the eminent domain power of TMC, Inc., is virtually absolute and ripe for abuse.

As a result of this power of eminent domain and the power to abrogate deed restrictions, the many neighborhoods surrounding the Texas Medical Center, all of which existed prior to the founding of TMC, Inc., are threatened with encroachment or extinction. In the process, private property rights and residents' quality of life are denigrated and their property values damaged.

Each of the medical center's 46 members has condemnation available, through TMC, Inc., of any property adjacent to the existing medical center boundaries, which continue to expand outward as the medical center grows. Condemnation on the boundary is not limited to the closest institution; TMC, Inc., could condemn deed-restricted residences adjoining Rice University to build a clinic, hospital annex, parking garage, or support facility.

C.S.H.B. 3709 prohibits a charitable corporation subject to the bill from exercising the power of eminent domain and condemnation to acquire property in a residential neighborhood; otherwise acquire property in a residential neighborhood, directly or through an agent or trustee, for future use; or acquire residential property if the value of the property has been materially diminished by blockbusting activity.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3709 amends Chapter 178 (S.B. 289), Acts of the 56th Legislature, Regular Session, 1959 (Article 31836-1, Vernon's Texas Civil Statutes), to prohibit certain charitable corporations from exercising the power of eminent domain and condemnation to acquire property in any residential neighborhood; otherwise acquire property in a residential neighborhood, directly or through an agent or trustee, for future use; or acquire residential property if the value of the property has been materially diminished by blockbusting activity. The bill requires a medical center condemning entity that, on September 1, 2009, holds any property acquired in a residential neighborhood for future use to sell the property within a reasonable time on or before September 1, 2010. The bill requires the property sold to be made subject to a deed restriction requiring the property to be restored to the property's former status as bona fide single-family dwelling, or, if applicable, reintegrated into its original deed-restricted residential subdivision.

C.S.H.B. 3709 establishes that property is considered to be acquired for future use if the charitable corporation or a member of the corporation does not have a plan for the specific, immediate use of the property. The bill establishes that property acquired on or after September 1, 2009, is considered to be acquired for future use if substantial construction of permanent medical facilities designed to deliver health care for the use and benefit of the public, excluding surface parking not related to the medical facilities, has not commenced on the property before the second anniversary of the property's acquisition or, for property acquired before September 1, 2009, before September 1, 2010.

C.S.H.B. 3709 prohibits a medical center condemning entity or the entity's members from purchasing property, by private contract or otherwise, in a residential neighborhood if the property values in the neighborhood have been substantially diminished by blockbusting activity.

C.S.H.B. 3709 requires a medical center condemning entity to remediate the effects of parking facilities constructed on property owned by the entity that was acquired in a residential neighborhood after January 1, 2004, and that is located within a residential neighborhood or directly adjacent to a residential neighborhood. The bill provides that remediation includes the installation of louvers, screens, panels, or other permanent fixtures that reduce the level of light emitted from the parking garages to the same level of light emitted from the windows of offices or hospital facilities of the entity or its members that were constructed after January 1, 2004; landscaping with large evergreen trees and evergreen plants to mitigate, to the maximum practical extent, the adverse property value impact of the parking facilities on the adjoining residential neighborhood; and sound reduction measures to mitigate, to the maximum practical extent, the noise emitted from the parking facilities, as well as the noise generated by mechanical systems erected in conjunction with the parking facilities, on formerly residential property.

C.S.H.B. 3709 prohibits a medical center condemning entity from challenging the validity of a deed restriction in a condemnation proceeding or in contemplation of condemnation. The bill provides that its provisions do not limit any right expressly granted in a residential deed restriction that authorizes an express waiver, amendment, or variance with respect to the restrictions, as determined by the relevant property owners' association.

C.S.H.B. 3709 requires a court to award litigation costs, including reasonable attorney's fees, witness fees, court costs, and other reasonable related expenses, to a residential litigant who prevails in a suit seeking relief, including money damages or equitable, declaratory, or other relief; brings an action that causes or contributes to, directly or indirectly, a beneficial result to a residential neighborhood or to the public interest, notwithstanding which party may have prevailed on the merits; or is required to defend against claims arising out of actions or communications related to the bill's provisions or purposes. The bill requires a court, periodically during the pendency of the litigation and on the showing of hardship, to award interim costs of litigation to residential litigants who are claimants in the action and provides that an award of interim litigation costs is final and not subject to repayment. The bill prohibits a court from

awarding litigation costs against a residential litigant who asserts a claim relating to or arising under the bill's provisions or engages in actions or communications related to a right created by the bill's provisions.

C.S.H.B. 3709 provides that a residential litigant, in addition to any other defense or immunity conferred by law, is not liable for money damages or subject to injunctive or declaratory relief based on a decision by the residential litigant as an agent or representative of a property owners' association or a special district or a communication by the residential litigant to a governmental agency, a public official, or the public information media relating to a matter reasonably of concern to a governmental agency or public official, any other person, or the public. The bill makes these provisions inapplicable if the claimant establishes by clear and convincing evidence that the decision or communication of the residential litigant was not made in good faith.

C.S.H.B. 3709 requires the provisions of the bill be liberally construed to effect its purposes, which are to prevent the abuse of the power of eminent domain by certain charitable corporations, protect single-family residential neighborhoods, shield advocates of neighborhood integrity from economic coercion, and correct and remediate the effects of the abuse of condemnation authority used by a charitable corporation under state law relating to eminent domain by certain non-profit charitable corporations on or after January 1, 2004.

C.S.H.B. 3709 defines "associated low-density multifamily residential housing," "blockbusting activity," "deed-restricted residential subdivision," "medical center condemning entity," "predominately single-family residential subdivision or generally recognized residential area," "property owners' association," "residential litigant," "residential neighborhood," and "single-family dwelling."

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3709 omits a provision included in the original relating to the eminent domain power of certain charitable corporations. The substitute omits provisions included in the original defining "single-family residential property," "residential area," "future use," and "condemnation." The substitute adds provisions not in the original to define "associated low-density multifamily residential housing," "predominately single-family residential subdivision or generally recognized residential area," "property owners' association," "residential litigant," "residential neighborhood," and "single-family dwelling."

C.S.H.B. 3709 adds a provision not in the original setting forth the conditions under which property is considered to be acquired for future use. The substitute differs from the original by requiring a court to award litigation costs to a residential litigant who brings an action that causes a beneficial result to a residential neighborhood or the public interest, whereas the original authorizes a court to award the costs to a property owners' association or landowners in such a case. The substitute requires a court to award litigation costs to a residential litigant under certain conditions, whereas the original requires a property owners' association or individual landowners to recover the costs. The substitute adds a provision not in the original to require a court to award litigation costs to a residential litigant who prevails in a suit seeking relief under the substitute's provisions or is required to defend against claims related to the substitute's provisions. The substitute omits a provision included in the original establishing which property owners' associations are a proper party to a proceeding under the bill's provisions. The substitute adds provisions not in the original to prohibit a court from awarding litigation costs against a residential litigant who asserts a claim relating to or arising under the substitute's provisions, provide that a residential litigant is not liable for money damages or subject to injunctive or declaratory relief based on certain actions, make the exemption from liability inapplicable if the

claimant establishes by clear and convincing evidence that the decision or communication of the residential litigant was not made in good faith, and require the provisions of the substitute be liberally construed to effect its purposes. The substitute differs from the original in nonsubstantive ways by using language reflective of certain bill drafting conventions.