

By: Davis of Dallas

H.B. No. 1389

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

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

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

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

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

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

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

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

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

(8) reduction of the isolation of income groups in

1 communities and geographical areas, promotion of increased
2 diversity and vitality of neighborhoods through spatial
3 deconcentration of housing opportunities for persons of low and
4 moderate income, and revitalization of deteriorating or
5 deteriorated neighborhoods to attract persons of higher income; and

6 (9) alleviation of physical and economic distress
7 through the stimulation of private investment and community
8 revitalization in [~~slum or~~] blighted areas.

9 SECTION 2. Section 373.004, Local Government Code, is
10 amended to read as follows:

11 Sec. 373.004. GOALS OF PROGRAM. Through a community
12 development program, a municipality may conduct work or activities
13 designed to:

14 (1) improve the living and economic conditions of
15 persons of low and moderate income;

16 (2) benefit low or moderate income neighborhoods;

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

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

20 (5) meet other urgent community development needs,
21 including an activity or function specified for a community
22 development program that incorporates a federally assisted new
23 community.

24 SECTION 3. Section 373.006, Local Government Code, is
25 amended to read as follows:

26 Sec. 373.006. REQUIRED PROCEDURES BEFORE ADOPTION OF
27 COMMUNITY DEVELOPMENT PROGRAM. Before exercising powers under

1 Section 373.005, the governing body of the municipality must:

2 (1) identify areas of the municipality in which
3 predominantly low and moderate income persons reside and each unit
4 of real property in the municipality~~[7]~~ that has the
5 characteristics of blight ~~[are blighted or slum areas]~~ or that is a
6 [are] federally assisted new community in the municipality
7 ~~[communities]~~;

8 (2) establish community development program areas in
9 which community development activities, building rehabilitation,
10 or the acquisition of privately owned buildings or land is
11 proposed;

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

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

18 (5) adopt the community development program by
19 resolution or ordinance.

20 SECTION 4. Sections 374.002(a) and (b), Local Government
21 Code, are amended to read as follows:

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

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

27 (2) contribute substantially and increasingly to the

1 spread of disease and crime, requiring excessive and
2 disproportionate expenditures of public funds for the preservation
3 of the public health and safety, and for crime prevention,
4 correctional facilities, prosecution and punishment, treatment of
5 juvenile delinquency, and the maintenance of adequate police, fire,
6 and accident protection and other public services and facilities;
7 and

8 (3) constitute an economic and social liability,
9 substantially impair the sound growth of affected municipalities,
10 and retard the provision of housing accommodations.

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

25 SECTION 5. Sections 374.003(3), (18), (25), (26), and (28),
26 Local Government Code, are amended to read as follows:

27 (3) "Blighted area" means a tract or unit of property

1 ~~[an area]~~ that presents four or more of the following conditions for
2 at least one year after the date on which notice of the conditions
3 is provided to the property owner as required by Section
4 374.018(a)(1) or (b):

5 (A) the property contains uninhabitable, unsafe,
6 or abandoned structures;

7 (B) the property has inadequate provisions for
8 sanitation;

9 (C) there exists on the property an imminent
10 danger to life or other property caused by fire, flood, hurricane,
11 tornado, earthquake, storm, or other natural catastrophe declared
12 to be a disaster under Section 418.014, Government Code, or
13 certified as a disaster for federal assistance under Section
14 418.021, Government Code;

15 (D) the property has been identified by the
16 United States Environmental Protection Agency as a superfund site
17 under the federal Comprehensive Environmental Response,
18 Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601 et
19 seq.) or as environmentally contaminated to an extent that the
20 property requires remedial investigation or a feasibility study;

21 (E) the property has been the location of
22 substantiated and repeated illegal activity of which the property
23 owner knew or should have known;

24 (F) the maintenance of the property is below
25 county or municipal standards;

26 (G) the property is abandoned and contains a
27 structure that is not fit for its intended use because the

1 utilities, sewerage, plumbing, or heating or a similar service or
2 facility of the structure has been disconnected, destroyed,
3 removed, or rendered ineffective; or

4 (H) the property presents an economic liability
5 to the immediate area because of deteriorating structures or
6 hazardous conditions [~~is not a slum area, but that, because of~~
7 ~~deteriorating buildings, structures, or other improvements,~~
8 ~~defective or inadequate streets, street layout, or accessibility,~~
9 ~~unsanitary conditions; or other hazardous conditions, adversely~~
10 ~~affects the public health, safety, morals, or welfare of the~~
11 ~~municipality and its residents, substantially retards the~~
12 ~~provision of a sound and healthful housing environment, or results~~
13 ~~in an economic or social liability to the municipality. The term~~
14 ~~includes an area certified as a disaster area as provided by Section~~
15 ~~374.903].~~

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

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

23 (A) the acquisition of all or part of a [~~slum area~~
24 ~~or~~] blighted area or the acquisition of land that is predominantly
25 open and that, because of obsolete platting, diversity of
26 ownership, deterioration of structures or site improvements, or for
27 other reasons, substantially impairs or arrests the sound growth of

1 the community;

2 (B) the demolition and removal of buildings and
3 improvements;

4 (C) the installation, construction, or
5 reconstruction of streets, utilities, parks, playgrounds, and
6 other improvements necessary to fulfill urban renewal objectives in
7 accordance with an urban renewal plan;

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

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

15 (F) the acquisition of real property in an urban
16 renewal area as necessary to remove or prevent the spread of blight
17 or deterioration or to provide land for needed public facilities.

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

22 (28) "Urban renewal project" includes any of the
23 following activities undertaken in accordance with an urban renewal
24 plan:

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

1 (B) [~~slum clearance and redevelopment in an urban~~
2 ~~renewal area;~~

3 [~~(C)~~] rehabilitation or conservation in an urban
4 renewal area;

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

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

11 SECTION 6. Section 374.011, Local Government Code, is
12 amended by amending Subsection (a) and adding Subsection (d) to
13 read as follows:

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

16 (1) the governing body of the municipality adopts a
17 resolution that finds that a [~~slum area or~~] blighted area exists in
18 the municipality and that the rehabilitation, the conservation, or
19 the [~~slum clearance and~~] redevelopment of the area is necessary for
20 the public health, safety, morals, or welfare of the residents of
21 the municipality; and

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

25 (d) The governing body of the municipality must determine
26 that each unit of real property included in a resolution under
27 Subsection (a) has the characteristics of blight.

1 SECTION 7. Section 374.012(c), Local Government Code, is
2 amended to read as follows:

3 (c) The resolution ordering the election and the notice of
4 the election must contain:

5 (1) a complete legal description of each unit of
6 property [~~the area~~] included in the proposed project;

7 (2) a statement of the nature of the proposed project;
8 [~~and~~]

9 (3) a statement of the total amount of local funds to
10 be spent on the proposed project; and

11 (4) a statement that each unit of property has the
12 characteristics of blight.

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

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

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

26 (2) rehabilitation or conservation of [~~slum and~~]
27 blighted areas as far as practicable to areas that are free from

1 blight through replanning, removing congestion, providing parks,
2 playgrounds, and other public improvements, and encouraging
3 voluntary rehabilitation and requiring the repair and
4 rehabilitation of deteriorated or deteriorating structures~~[, and~~
5 ~~the clearance and redevelopment of slum areas]~~.

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

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

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

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

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

24 (2) conduct urban renewal projects within its area of
25 operation;

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

1 (4) provide, arrange, or contract for the furnishing
2 or repair by any person of services, privileges, works, streets,
3 roads, public utilities, or other facilities in connection with an
4 urban renewal project, including installation, construction, and
5 reconstruction of streets, utilities, parks, playgrounds, and
6 other public improvements necessary to carry out an urban renewal
7 project;

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

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

24 (7) borrow money and apply for and accept advances,
25 loans, grants, contributions, and other forms of financial
26 assistance from the federal, state, or county government, other
27 public body, or other public or private sources for the purposes of

1 this chapter, give any required security, and make and carry out any
2 contracts in connection with the financial assistance;

3 (8) make plans necessary to carry out this chapter in
4 its area of operation, contract with any person in making and
5 carrying out the plans, and adopt, approve, modify or amend the
6 plans;

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

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

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

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

27 (13) organize, coordinate, and direct the

1 administration of this chapter within the area of operation as
2 those provisions apply to the municipality to most effectively
3 promote and achieve the purposes of this chapter and establish new
4 municipal offices or reorganize existing offices as necessary to
5 most effectively implement those purposes; and

6 (14) issue tax increment bonds.

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

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

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

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

23 (2) any restrictions on and any covenants, conditions,
24 and obligations assumed by the purchaser, lessee, or municipality
25 in retaining the property;

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

1 (4) any other matters that the municipality specifies
2 as appropriate.

3 SECTION 12. Subchapter B, Chapter 374, Local Government
4 Code, is amended by adding Sections 374.018 and 374.019 to read as
5 follows:

6 Sec. 374.018. LIMITATIONS ON CHARACTERIZATIONS OF BLIGHT.

7 (a) Notwithstanding any other law, an area may not be considered a
8 blighted area based on a condition described by Section 374.003
9 unless:

10 (1) the municipality has given notice in writing to
11 the property owner by first class mail regarding the condition to
12 the:

13 (A) last known address of the property owner; and

14 (B) physical address of the property; and

15 (2) the property owner fails to take reasonable
16 measures to remedy the condition.

17 (b) If a mailing address for the property owner cannot be
18 determined, the municipality shall post notice in writing regarding
19 the condition in a conspicuous place on the property.

20 (c) An area may not be considered a blighted area solely for
21 an aesthetic reason.

22 (d) A determination by a municipality that a unit of real
23 property has the characteristics of blight is valid for two years.

24 (e) After the two-year period prescribed by Subsection (d),
25 a municipality may make a new determination that the unit of real
26 property has the characteristics of blight and redesignate the unit
27 of real property as a blighted area for another two-year period.

1 (f) A municipality may remove a determination of blight
2 under this chapter if the municipality finds that the property
3 owner has remedied the condition that was the basis for the
4 determination.

5 Sec. 374.019. COMMON OWNER PROPERTY. For the purposes of
6 this chapter and Chapter 21, Property Code, if a municipality
7 determines that two or more contiguous units of real property that
8 are owned by the same person have the characteristics of blight, the
9 municipality may treat those units of property as one unit of
10 property.

11 SECTION 13. Section 374.021(b), Local Government Code, is
12 amended to read as follows:

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

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

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

22 (3) establish a general plan for the locality as a
23 whole;

24 (4) establish a workable program under Section
25 374.013;

26 (5) make determinations and findings under Section
27 374.011(a), 374.013(b), or 374.014(d);

1 (6) issue general obligation bonds; and
2 (7) appropriate funds, levy taxes and assessments, and
3 exercise other functions under Subdivisions (11) and (12) of
4 Section 374.015(a).

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

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

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

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

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

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

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

22 SECTION 15. Section 21.041, Property Code, is amended to
23 read as follows:

24 Sec. 21.041. EVIDENCE. As the basis for assessing actual
25 damages to a property owner from a condemnation, the special
26 commissioners shall admit evidence on:

27 (1) the value of the property being condemned;

1 (2) the injury to the property owner, including, if
2 the condemnation makes relocation of a homestead or farm necessary,
3 the financial damages associated with the cost of relocating from
4 the condemned property to another property that allows the property
5 owner, without the necessity of incurring an amount of debt, debt
6 service, or total projected interest obligation that is higher than
7 the property owner was subject to immediately before the
8 condemnation, to:

9 (A) have a standard of living comparable to the
10 property owner's standard of living immediately before the
11 condemnation, if the condemned property is a homestead that is
12 habitable; or

13 (B) operate a comparable farm, if the condemned
14 property is a farm;

15 (3) the benefit to the property owner's remaining
16 property; and

17 (4) the use of the property for the purpose of the
18 condemnation.

19 SECTION 16. Section 21.042(d), Property Code, is amended to
20 read as follows:

21 (d) In estimating injury or benefit under Subsection (c),
22 the special commissioners shall consider an injury or benefit that
23 is peculiar to the property owner, including the property owner's
24 financial damages described by Section 21.041(2), and that relates
25 to the property owner's ownership, use, or enjoyment of the
26 particular parcel of real property, but they may not consider an
27 injury or benefit that the property owner experiences in common

1 with the general community.

2 SECTION 17. Sections 21.046(a) and (b), Property Code, are
3 amended to read as follows:

4 (a) A department, agency, instrumentality, or political
5 subdivision of this state shall [~~may~~] provide a relocation advisory
6 service for an individual, a family, a business concern, a farming
7 or ranching operation, or a nonprofit organization that [~~if the~~
8 ~~service~~] is compatible with the federal [~~Federal~~] Uniform
9 Relocation Assistance and Real Property Acquisition Policies Act of
10 1970 (42 U.S.C. Section 4601 et seq.) [~~Advisory Program, 23~~
11 ~~U.S.C.A. 501, et seq.~~].

12 (b) This state or a political subdivision of this state
13 shall [~~may~~], as a cost of acquiring real property, pay moving
14 expenses and rental supplements, make relocation payments, provide
15 financial assistance to acquire replacement housing, and
16 compensate for expenses incidental to the transfer of the property
17 if an individual, a family, the personal property of a business, a
18 farming or ranching operation, or a nonprofit organization is
19 displaced in connection with the acquisition.

20 SECTION 18. The following provisions of the Local
21 Government Code are repealed:

22 (1) Section 374.003(19); and

23 (2) Section 374.016.

24 SECTION 19. The changes in law made by this Act to Sections
25 21.041 and 21.042, Property Code, apply only to a condemnation
26 proceeding in which the petition is filed on or after the effective
27 date of this Act. A condemnation proceeding in which the petition

1 is filed before the effective date of this Act is governed by the
2 law in effect immediately before the effective date of this Act, and
3 that law is continued in effect for that purpose.

4 SECTION 20. This Act takes effect immediately if it
5 receives a vote of two-thirds of all the members elected to each
6 house, as provided by Section 39, Article III, Texas Constitution.
7 If this Act does not receive the vote necessary for immediate
8 effect, this Act takes effect September 1, 2009.