

## **BILL ANALYSIS**

C.S.H.B. 138  
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Land & Resource Management  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

State law provides that certain governmental entities may exercise their right of eminent domain to cure problems of urban slum and blight. Interested parties contend that the statutory definitions for "slum" and "blighted area" are inappropriately broad and imprecise and are conducive to subjective interpretations whereby any material defect on a property may render it eligible for condemnation. Furthermore, interested parties contend that condemning entities are under no obligation to provide relocation assistance or to ensure that affected property owners are made whole. These parties are concerned that an owner of condemned property may be forced to shoulder the relocation costs when displaced and may receive fair market compensation that fails to ensure the maintenance of the owner's standard of living before the property was surrendered.

C.S.H.B. 138, seeks to address these issues by, among other things, repealing the definition of "slum area" and redefining "blighted area" under the Texas Urban Renewal Law so that a property must meet certain specific conditions before it may be considered eligible for condemnation. In addition, the bill seeks to establish provisions that allow an owner of condemned property to receive compensation for relocation to a property that is comparable to the person's standard of living before the condemnation.

### **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. 138 amends the Local Government Code to remove occurrences of the term slum from the Texas Community Development Act of 1975 and the Texas Urban Renewal Law. The bill requires the governing body of a municipality, before exercising powers under certain provisions relating to a community development program, to identify areas of the municipality in which predominantly low and moderate income persons reside and each unit of real property in the municipality that has the characteristics of blight or that is a federally assisted new community in the municipality, rather than identifying areas of the municipality in which predominantly low and moderate income persons reside that are blighted or slum areas or that are federally assisted new communities.

C.S.H.B. 138 redefines "blighted area" under the Texas Urban Renewal Law to mean a tract or unit of real property that presents, for at least one year after the date on which notice of the conditions is provided to the property owner as required by certain provisions of the bill, four or more of the following conditions:

- the property contains uninhabitable, unsafe, or abandoned structures;
- the property has inadequate provisions for sanitation;
- there exists on the property an imminent harm to life or other property caused by fire,

flood, hurricane, tornado, earthquake, storm, or other natural catastrophe declared to have brought about a state of disaster, or that brought about a disaster for which a request for federal assistance is made;

- the property has been identified by the U.S. Environmental Protection Agency as a superfund site under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or as environmentally contaminated to an extent that the property requires remedial investigation or a feasibility study;
- the property has been the location of substantiated and repeated illegal activity of which the property owner knew or should have known;
- the maintenance of the property is below county or municipal standards;
- the property is abandoned and contains a structure that is not fit for its intended use because the utilities, sewerage, plumbing, or heating or a similar service or facility of the structure has been disconnected, destroyed, removed, or rendered ineffective; or
- the property presents an economic liability to the immediate area because of deteriorating structures or hazardous conditions.

C.S.H.B. 138 requires the governing body of a municipality to determine that each unit of real property included in a resolution that finds that a blighted area exists in the municipality and finds that the rehabilitation, the conservation, or the redevelopment of the area is necessary for the public health, safety, morals, or welfare of the residents of the municipality has the characteristics of blight. The bill requires a resolution ordering an election for the approval of the exercise of urban renewal powers for a specific urban renewal project by a municipality that did not approve the exercise of such powers before April 27, 1973, and the notice of the election to contain a complete legal description of each unit of real property, rather than a complete legal description of the area, included in the proposed project. The bill requires the resolution and the notice of the election to contain, among other things, a statement that each unit of real property has the characteristics of blight.

C.S.H.B. 138 prohibits an area from being considered a blighted area on the basis of a condition described by the bill unless a municipality has given notice in writing to the property owner by first class mail regarding the condition to the last known address of the property owner and physical address of the property and the property owner fails to take reasonable measures to remedy the condition. The bill requires the municipality to post notice in writing regarding the condition in a conspicuous place on the property if a mailing address for the property owner cannot be determined. The bill prohibits an area from being considered a blighted area solely for an aesthetic reason. The bill establishes that a determination by a municipality that a unit of real property has the characteristics of blight is valid for two years. The bill authorizes a municipality, after the two-year period, to make a new determination that the unit of real property has the characteristics of blight and to redesignate the unit of real property as a blighted area for another two-year period. The bill requires a municipality to remove a determination of blight under the Texas Urban Renewal Law if the municipality finds that the property owner has remedied the condition that was the basis for the determination. The bill authorizes a municipality that determines that two or more contiguous units of real property that are owned by the same person have the characteristics of blight to treat those units of real property as one unit of real property for purposes of the Texas Urban Renewal Law and Property Code provisions relating to eminent domain.

C.S.H.B. 138 amends the Government Code to specify that the exemption to the prohibition on a governmental or private entity from taking private property through the use of eminent domain for economic development purposes is contingent on whether the economic development results from, rather than on whether the economic development is a secondary purpose resulting from, municipal community development or municipal urban renewal activities to eliminate an existing affirmative harm on society from blighted areas under certain Local Government Code or Tax Code provisions.

C.S.H.B. 138 amends the Property Code to require, rather than authorize, a department, agency, instrumentality, or political subdivision of this state to provide a relocation advisory service for an individual, a family, a business concern, a farming or ranching operation, or a nonprofit organization that is compatible with the Federal Uniform Relocation Assistance Advisory Program under 42 U.S.C. Section 4601 et seq., rather than 23 U.S.C.A. 501, et seq. The bill requires, rather than authorizes, this state or a political subdivision of this state, as a cost of acquiring real property, to pay moving expenses and rental supplements, make relocation payments, provide financial assistance to acquire replacement housing, and compensate for expenses incidental to the transfer of the property if an individual, a family, the personal property of a business, a farming or ranching operation, or a nonprofit organization is displaced in connection with the acquisition.

C.S.H.B. 138 amends the Tax Code to amend language specifying powers included under the authorization of a municipality or county to exercise any power necessary and convenient to carry out the Tax Increment Financing Act as follows: removing the acquisition of real property by condemnation or other means, excluding by purchase, to implement project plans and sell that property on the terms and conditions and in the manner the municipality or county considers advisable; removing the acquisition of blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed real property or other property in a blighted area or in a federally assisted new community in a reinvestment zone for the preservation or restoration of historic sites, beautification or conservation, the provision of public works or public facilities, or other public purposes, consistent with the project plan for the zone; adding the acquisition of real property or other property in an undeveloped area for such purposes, consistent with the project plan for the zone; and adding the acquisition by condemnation of any interest, including a fee simple interest, in real property that is a blighted area and necessary for the reinvestment zone, consistent with the project plan for the zone. The bill authorizes a municipality or county to acquire by condemnation an interest in real property only if the taking is in accordance with provisions relating to the limitations on the use of eminent domain. The bill removes a provision providing that the implementation of a project plan to alleviate certain conditions required of an area to be designated as a reinvestment zone and to promote development or redevelopment of such a zone in accordance with the Tax Increment Financing Act serves a public purpose.

C.S.H.B. 138 provides for the meaning of "blighted area" under the Tax Increment Financing Act by reference to the Local Government Code, as redefined by the bill's provisions.

C.S.H.B. 138 repeals the definition of "slum area" under the Texas Urban Renewal Law and the prohibition on a municipality from using condemnation to acquire property if an urban renewal project includes a slum clearance and redevelopment section that the municipality proposes to use for other than public use, unless the municipality determines by resolution that the rehabilitation of that property without clearance would be impractical and ineffective. The bill repeals the specification that the powers of a municipality or county in carrying out the Tax Increment Financing Act to acquire real property by purchase, condemnation, or other means to implement project plans and sell that property on the terms and conditions and in the manner it considers advisable prevail over any law or municipal charter to the contrary.

C.S.H.B. 138 makes nonsubstantive and conforming changes, including the redefinition of "rehabilitation," "urban renewal activities," "urban renewal area," and "urban renewal project" under the Texas Urban Renewal Law and "urban renewal project powers" under that law in provisions relating to the exercise of urban renewal project powers.

C.S.H.B. 138 repeals the following provisions:

- Section 374.003(19), Local Government Code
- Section 374.016, Local Government Code
- Section 311.008(c), Tax Code

**EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

**COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 138 differs from the original by requiring a municipality to remove a determination of blight under the Texas Urban Renewal Law if the municipality finds that the property owner has remedied the condition that was the basis for the determination, whereas the original authorizes a municipality to remove a determination of blight on such a finding.

C.S.H.B. 138 omits a provision included in the original including among the evidence that special commissioners are required to admit as part of the basis for assessing actual damages to a property owner from an eminent domain condemnation the financial damages associated with the cost of relocating from the condemned property, if the property was habitable, to another property that allows the property owner to have a standard of living comparable to the property owner's standard of living before the condemnation of the property. The substitute omits a provision included in the original including such financial damages in the special commissioners' consideration of an injury or benefit that is peculiar to a property owner of a condemned portion of a tract or parcel of real property.