

By: Davis of Dallas

H. B. No. 1389

A BILL TO BE ENTITLED

# 1 AN ACT

2 relating to the acquisition of real property for public use.

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

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

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

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

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

18 (5) more rational use of land and other natural  
19 resources:

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

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

24 (8) reduction of the isolation of income groups in

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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[~~–~~] 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~~];

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

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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

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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):

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;

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

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;

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

3 [CC] rehabilitation or conservation in an urban  
4 renewal area;

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:

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;

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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;

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 ~~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

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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:

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:

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);

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

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:

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;

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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

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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.