
Judiciary Committee

HB 1036

Title: An act relating to conditions of threat to public health, safety, or welfare on real property.

Brief Description: Concerning a municipality's right to condemn real property due to a threat to public health, safety, or welfare.

Sponsors: Representatives Goodman, Angel, Springer, Upthegrove, Eddy, Parker, Warnick, Takko, Hinkle, Ross, Shea, Bailey, Nealey, McCune, Short, Fagan, Taylor, Johnson, Hargrove, Smith, Blake, Kagi and Moeller; by request of Attorney General.

Brief Summary of Bill

- Amends the Community Renewal Law to require the condemning municipality to have a public purpose for the condemnation, if the property does not pose an identifiable threat to public health, safety, or welfare.
- Provides a process for a property owner subject to condemnation to file an action in court to determine whether the property poses an identifiable threat to public health, safety, or welfare or to give the owner an opportunity to remove the threat.

Hearing Date: 1/19/11

Staff: Trudes Tango (786-7384).

Background:

The Community Renewal Law (CRL), enacted in 1957, provides a mechanism for municipalities to improve specific areas of the community through redevelopment of blighted areas. Under the CRL, the municipality may determine whether areas are blighted, acquire property in blighted areas through purchase or eminent domain, and hold, improve, clear, and or prepare blighted areas for redevelopment.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

A "blighted area" is an area that: (1) is conducive to ill health, the transmission of disease, infant mortality, juvenile delinquency or crime; (2) substantially impairs or arrests the sound growth of the municipality or its environs or retards the provision of housing accommodations; (3) constitutes an economic or social liability; or (4) is detrimental or constitutes a menace to the public health, safety, welfare, or morals in its present condition and use.

An area may be considered blighted because of numerous reasons listed in the CRL. Some of those reasons include, for example:

- The substantial physical dilapidation, deterioration, defective construction, or age of buildings or inadequate provisions for ventilation, light, proper sanitary facilities, or open spaces;
- Inappropriate uses of land or buildings or overcrowded buildings;
- Defective or inadequate street layout;
- Excessive land coverage;
- Unsanitary or unsafe conditions;
- The existence of hazardous soils, substances, or materials;
- Diversity of ownership;
- Tax or special assessment delinquency exceeding the fair market value of the land;
- Defective or unusual conditions of title;
- Persistent and high levels of unemployment or poverty; or
- Conditions that present a fire hazard.

Before a municipality may take any action under the CRL, the municipality must adopt a resolution or ordinance finding that: (1) one or more blighted areas exist within the municipality; and (2) the rehabilitation or redevelopment of the areas is necessary in the interest of public health, safety, morals, or welfare of the residents of the municipality.

Once the resolution or ordinance has been adopted, the municipality must develop a community renewal plan. Before adopting the plan, the municipality must conduct a public hearing. The plan may be approved if:

- A feasible plan exists for making adequate housing available for displaced residents;
- The plan conforms to the comprehensive plan of the municipality;
- The plan will afford maximum opportunity for the rehabilitation or redevelopment of the community renewal area by private enterprise;
- A sound and adequate financial program exists for the financing of the project; and
- The community renewal project area is a blighted area.

Municipalities may exercise a variety of powers within a community renewal area, including acquiring property through eminent domain. The local governing body must adopt a resolution declaring that acquisition of the property is necessary for the community renewal project. In addition, the municipality must comply with the other statutory procedures applicable to condemnation by the particular municipality. The municipality must file a petition in court, the court must determine whether the condemnation is lawful, and if so, the court or jury must determine the appropriate compensation. Evidence relevant to the insanitary, unsafe, or substandard condition of the premises, or the unlawful use of the premises, is admissible.

Summary of Bill:

Changes are made to the municipality's power of eminent domain under the CRL. The municipality's condemnation of property under the CRL must be for a public purpose, as that term is defined in existing statute, unless the property poses an identifiable threat to public health, safety, or welfare because of the insanitary, unsafe, or substandard condition of the premises or an unlawful use of the premises. The statute defining "public purpose" lists such uses as streets, bridges, sewers, ditches, drains, public squares, jails, or other public buildings, and "any other public use."

If a municipality seeks to condemn property because it poses an identifiable threat to public health, safety, or welfare, the owner of the property may file an appeal in the superior court to: (1) determine whether the property poses an identifiable threat; or (2) give the owner a reasonable opportunity to remove the threat. The owner has 120 days from the adoption of the ordinance or 120 days from the effective date of the bill to file the appeal. The municipality has the burden of showing that its determination that the property poses a threat to public health, safety, or welfare was supported by substantial evidence.

If the court determines that the property does not constitute a threat or that it has been repaired to eliminate the threat, the court must enter an order stating that the property is not subject to condemnation by reason of a threat to public health, safety, or welfare.

If the court determines that the property poses an identifiable threat, the court must make detailed findings of all physical conditions of the property which directly contribute to the threat to public health, safety, or welfare. If the court determines that the property can be reasonably and timely repaired to eliminate the threat and the owner can show the court that he or she can address any immediate health and safety concerns, the court must give the owner a reasonable, identified period of time to cure and correct the conditions that directly contribute to the threat to public health, safety, or welfare.

During the period of time given for the owner to cure the conditions, the municipality's action to condemn the property is stayed. The municipality is not liable for any injuries, losses, or damages resulting from the condition of the property occurring during the stay, or resulting from the delay in or failure to cure, correct, or abate any known or unknown condition on the property. If the owner cannot correct the conditions within the time provided, the municipality may proceed with the condemnation.

Appropriation: None.

Fiscal Note: Requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.