

SENATE BILL REPORT

SB 5078

As Reported by Senate Committee On:
Government Operations, Tribal Relations & Elections, February 7, 2011

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: Senators Shin, Swecker, Becker, Benton, Honeyford, Schoesler, Stevens, Hewitt, Carrell and Roach; by request of Attorney General.

Brief History:

Committee Activity: Government Operations, Tribal Relations & Elections: 1/20/11, 2/07/11 [DPS].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS

Majority Report: That Substitute Senate Bill No. 5078 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pridemore, Chair; Prentice, Vice Chair; Swecker, Ranking Minority Member; Benton, Chase, Nelson and Roach.

Staff: Karen Epps (786-7424)

Background: Under the Community Renewal Law, municipalities may determine whether areas are blighted, acquire property in blighted areas through purchase or eminent domain, and hold, improve, clear, or prepare blighted areas for redevelopment. A municipality may exercise its powers under the Community Renewal Law for several enumerated purposes, including in the interests of the public health, safety, morals, or welfare of the residents of the municipality, and to prevent the development and spread of blighted areas.

Before a municipality may exercise its authority under the Community Renewal Law, it must adopt an ordinance or resolution that finds that one or more blighted areas exist within the municipality and 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.

The municipality may acquire property for community renewal through eminent domain.

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.

Compensation for the property may not be increased by reason of any increase in the value of the property caused by the actual or proposed assembly, clearance, or reconstruction in the project area. Likewise, no allowance may be made for improvements to the property made after notice of the institution of condemnation proceedings. In a condemnation proceeding, evidence relevant to the unsanitary, unsafe, or substandard condition of the premises, or the unlawful use thereof, is admissible.

Summary of Bill (Recommended Substitute): A municipality has the right to condemn property for a community renewal project, but the municipality must use the real property for a public purpose including, but not limited to, streets, highways, public squares, public parks, city and town halls, jails, and other public buildings. If the real property which is the subject of condemnation poses an identifiable threat to public health, safety, or welfare by reason of the insanitary, unsafe, or substandard condition of the property or the illegal use of the property, the condemnation is declared to be for a public use and the condemned property does not have to be used for a public purpose.

Within 90 days of adoption of a condemnation ordinance, the owner or owners of property subject to condemnation action may initiate formal mediation procedures in an attempt to determine whether the property poses an identifiable threat to public health, safety, or welfare. The cost of the mediation must be paid by the municipality. Within 180 days of the adoption of the condemnation ordinance, the owner of the property may file an appeal in superior court to determine whether the property poses an identifiable threat to public health, safety, or welfare by reason of unsanitary, unsafe, or substandard condition of the premises, or the property has been used unlawfully or to give the owner a reasonable opportunity to address the issues. The municipality has the burden of showing that its findings to condemn the property were supported by substantial evidence at the time the ordinance was adopted. If the court determines that the condition of the property does not constitute a threat to public health, safety, or welfare, the court must enter an order that the property is not subject to condemnation.

Where the municipality meets its evidentiary burden of showing the property poses an identifiable threat to public health, safety, or welfare by reason of unsanitary, unsafe, or substandard condition of the premises, or the property has been used unlawfully, the court must document all the physical conditions of the property which contribute to the threat to public health, safety, or welfare. During the period of time granted by the court for the owner to remove any threat to public health, safety, or welfare, the action by the municipality is stayed. If the owner cannot correct the threat to public health, safety, or welfare within the time provided by the court, the municipality may move forward with the condemnation.

EFFECT OF CHANGES MADE BY GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS COMMITTEE (Recommended Substitute): Provides that a municipality has the right to condemn property for a community renewal project, but the municipality must use the real property for a public purpose, including, but not limited to, streets, highways, bridges, culverts, ditches, public squares, public parks, public markets, city and town halls, jails, and other public buildings. Provides that, if the real property which is the subject of condemnation poses an identifiable threat to public health, safety, or welfare by reason of the insanitary, unsafe, or substandard condition of the property or the illegal use of

the property, the condemnation is declared to be for a public use and condemned property does not have to be used for a public purpose.

Provides that, within 90 days of adoption of a condemnation ordinance, the owner or owners of property subject to condemnation action may initiate formal mediation procedures in an attempt to determine whether the property poses an identifiable threat to public health, safety, or welfare. The cost of the mediation must be paid by the municipality. Changes the appeal period from 120 days of adoption of an ordinance to condemn property to 180 days if the owner wishes to file an appeal in superior court.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: Municipalities have a right to use eminent domain to protect the public from danger or unsafe or unsanitary conditions of property and blight lets them do that. This bill provides that the municipality must use the property for a public project. Municipalities must prove and convince the court that the property is harmful, dangerous, and unsafe in the public interest. There is a public interest to address legitimate blight. Property owners have the right to appeal to court. This protects both the local government's interest in eliminating blight and the private property owner's interest by providing them with the opportunity to go in front of a judge and have the judge determine whether it is blight and to give the owner time to fix the problem. The Community Renewal Law represents the most significant vehicle for eminent domain abuse. This bill closes this loophole, while still preserving the ability of municipalities to use the Community Renewal Law to address blight.

Persons Testifying: PRO: Senator Shin, prime sponsor; Tim Ford, Attorney General's Office; Dan Heid, City of Auburn; John Woodring, Rental Housing Association, Manufactured Housing Communities of Washington; Randy Bannecker, Washington Association of Realtors; William Maurer, Institute of Justice; Craig Johnson, Ken Miller, Denise Gloster, citizens; Pat Muraicami, Many Cultures, One Message; Dan Wood, Washington Farm Bureau.