

SUBJECT: Allowing non-profits to file actions against owners of unfit housing

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 8 ayes — Deshotel, Elkins, Christian, England, Gattis, Giddings, Quintanilla, S. Turner

0 nays

3 absent — Keffer, S. Miller, Orr

SENATE VOTE: On final passage, April 16 — 31-0, on Local and Uncontested Calendar

WITNESSES: For — (*Registered, but did not testify*, Steven Carriker, Texas Association of Community Development Corporations; Robert Doggett, Texas Low Income Housing Information Service; Matt Hull, Habitat for Humanity of Texas

Against — None

On — Courtney Davis; David Mintz, Texas Apartment Association; Heather Way

BACKGROUND: Local Government Code, ch. 214 grants municipalities regulatory authority over housing and other structures. Municipalities can require the vacation, relocation of occupants, securing, repair, removal, or demolition of unfit buildings that may pose a danger to public health, safety or welfare.

DIGEST: CSSB 1449 would allow an eligible non-profit or home-rule municipality to file an action in a district court against a property owner who was not in compliance with a municipal ordinance preventing substantial risk of injury or an adverse health impact to any individual.

Notice. An action would have to be proceeded by a 30-day notice of violation sent to the property's physical address and the address listed on the most recent municipal tax roll for the property's owner or agent. If a court finding showed an imminent risk of injury to someone occupying a

property, the court would be able to issue a temporary restraining order or injunction.

Eligible non-profit. An eligible non-profit would have to be certified by a home-rule municipality. Certification would be given to an organization that had a record of community involvement and would act in the interest of rehabilitating hazardous properties. A home-rule municipality could intervene in an action filed by a non-profit at any point.

Receivers. CSSB 1449 would prevent non-profit organizations with an interest in a multi-family property from acting as a receiver. The bill would allow receivers to bill the court for ten percent of the expenses involved in repairing or demolishing a structure. A court could appoint a receiver if a property were:

- in violation of an ordinance to prevent substantial risk of injury or an adverse health impact to an individual;
- in a condition that presented a serious and imminent public health or safety hazard; and
- not an owner-occupied single-family residence.

A receiver would be able to:

- take possession and control of the property;
- operate and manage the property;
- establish and collect rent and income on the property;
- lease the property;
- make repairs and improvements to the property;
- pay utilities, taxes, assessments, insurance, and property management agents;
- enter into contracts for operating and maintaining the property; and
- exercise all other authorities of an owner other than selling the property without court approval following a demolition.

Demolition. The bill would authorize the receiver to demolish a single-family structure if:

- it was not economically feasible to bring the structure into compliance with local codes, ordinances, and state laws, and it was:
 - unfit for human habitation or a hazard to public safety;
 - unoccupied and unsecure from unauthorized entry;

- secured but still presented a danger to public health, or
- not adequately secured.

Sale. Upon demolition, the court could authorize the receiver to sell the property to someone who would bring it into productive use. The bill would allow a receiver to ask the court to terminate receivership and allow the sale of a property if the owner failed to repay all outstanding costs within 180 days of notice. The court could order the property to be sold to a land bank or other party or at a public auction. The receiver would be allowed to bid on the property only if they did not initiate the action against the property.

Proceeds from the sale of a property would first be directed to pay court costs, then receiver expenses, and finally other valid liens. Any remaining amount would be paid to the owner. A receiver would have a lien on the property for all unreimbursed costs and any receiver fees.

The bill would take effect September 1, 2009.

**SUPPORTERS
SAY:**

CSSB 1449 would help protect the well-being of low-income residents living in unsuitable conditions. Low-income residents sometimes fear retaliation from landlords or are unable to afford to pursue legal action to improve unsafe living conditions. The bill would allow non-profits to act on behalf of people living in substandard and dangerous living conditions.

The Senate Intergovernmental Relations Committee interim report found that municipalities often lack resources necessary to pursue actions against property owners that have abandoned their responsibilities to rehabilitate dilapidated properties. The report recommended expanding municipal authority to appoint a receiver to include violations of municipal health and safety ordinances. The report also recommended allowing qualified non-governmental entities to serve as receivers. CSSB 1449 would implement these committee recommendations.

**OPPONENTS
SAY:**

This bill could allow self-interested non-profits to force the unnecessary demolition and sale of affordable housing units. Actions against property owners should only be filed by municipalities in worst-case scenarios.

Non-profits do not have the same accountability to the public as do municipalities, and therefore may not always act in the public interest.

NOTES:

The House committee substitute differs from the Senate-passed version in that it would:

- require non-profits to be certified to file actions every year;
- not allow non-profits that file actions to be receivers;
- give notice to a property owner before an action were filed; and
- not allow for the demolition of multi-family properties.