

- SUBJECT:** Conditions for municipal moratorium on certain property development
- COMMITTEE:** Land and Resource Management — committee substitute recommended
- VOTE:** 8 ayes — Mowery, Harper-Brown, Pickett, Blake, R. Cook, Leibowitz, Miller, Orr
- 0 nays
- 1 absent — Escobar
- WITNESSES:** (*On committee substitute:*)
For — Robert Miller, Texas Building Owners and Managers Association
- (*On original bill:*)
For — Dominic Chavez, The Real Estate Council of Austin
(*Registered but did not testify:* Dana Chiodo, International Council of Shopping Centers; Jay Dyer, Texas Association of Builders; Brad Shields, Texas Retailers Association)
- Against — Hector Gonzales, Village of Webberville; (*Registered but did not testify:* Alan Bojorquez; Walter Brown; Frank Turner, City of Plano)
- BACKGROUND:** Until 2001, a municipality was not required to hold a public hearing or provide notice, other than that required under the Open Meetings Act, of a planned moratorium on development. That year, the 77th Legislature enacted HB 2117 by Walker, which restricted the ability of a municipality to impose a moratorium on residential property development.
- Local Government Code, ch. 212, subch. E outlines requirements that a municipality must meet in order to adopt an ordinance placing a moratorium on residential property development. Five days after the municipality publishes notice announcing a public hearing, a temporary moratorium begins that cannot exceed 120 days. In addition to the notice and hearing, the municipality must produce written findings to justify the moratorium, including evidence that current infrastructure capacity and/or essential public facilities cannot meet projected needs. Before adopting the ordinance, it must be given two readings separated by at least four days

before the city council. If the municipality does not adopt the ordinance within the term of the temporary moratorium, it expires.

A moratorium can be waived if a property owner claims a right under a development agreement, a vested right, or a claim that public facilities under consideration as part of the moratorium were provided at the property owner's expense.

DIGEST:

CSHB 3461 would establish a notification process for establishing a moratorium on commercial property development.

The bill would define "commercial property" as property zoned for or otherwise authorized for use other than single-family use, multi-family use, or industrial use. It would amend the definition of "property development" to include commercial property.

A municipality that wished to adopt a moratorium based on a shortage of essential public facilities or a significant need for public facilities would have to meet the public meeting, notice, and evidence requirements that apply to a proposed moratorium on residential development.

A municipality that wished to adopt a moratorium for reasons other than a shortage of essential public facilities would have to provide written findings that summarized:

- evidence that development could harm public safety, health, or welfare if new ordinances or regulations were not adopted;
- the geographical boundaries of the moratorium;
- the types of commercial property to which the moratorium would apply; and
- the objectives and goals of the proposed moratorium.

Such a moratorium would expire after 90 days. A municipality could extend the moratorium for another 90 days if it held a public hearing and adopted additional written findings justifying the extension, including a summary of evidence indicating that the problem would be resolved within the extended period. A municipality could not adopt such a moratorium that lasted more than 180 days, and it would have to wait two years after the expiration of a moratorium to adopt another moratorium in the same area for the same reasons.

CSHB 3461 would not overturn the vested rights of development projects under Local Government Code ch. 245 upon filing a project application. A municipality could not adopt a moratorium that would prohibit a person from filing or processing an application for a project in progress or prohibit or delay the processing or approval of a zoning application filed before the moratorium's effective date.

The bill would take effect on September 1, 2005, and would apply to a moratorium adopted on or after that date. If a moratorium adopted before the bill's effective date remained in effect more than 120 days after the effective date, the municipality would have to comply with the bill to continue the moratorium.

**SUPPORTERS
SAY:**

CSHB 3461 would require procedures for notice and justification for a moratorium on commercial property that are absent in current law. A city now can place a ban on commercial development in a matter of days by placing an action item on its agenda and holding votes in the city council. The bill would protect the right of the public to receive notice and voice their concerns in a democratic manner.

The bill would establish clear, statewide guidelines that are consistent with requirements for a moratorium on residential development. Builders and financial lenders need to know what to expect in making long-term development decisions because an unanticipated moratorium can spell significant financial loss. The bill would provide for an orderly procedure in imposing a moratorium on commercial property.

CSHB 3461 would provide flexible guidelines for imposing a commercial development moratorium. It includes a provision that would allow a municipality to impose a moratorium if it found that development of a certain kind had the potential to harm public welfare. In addition, the bill would provide ample time for cities to rewrite current city ordinances thought to be inadequate and would allow the extension of a moratorium.

The bill would not unreasonably limit a municipality's authority to impose a temporary moratorium. A growth moratorium is a reasonable planning tool utilized by cities to promote the health, safety, and protection of the public. The bill would help cities fairly balance legitimate community concerns with the need for development and would require a city to show a substantial reason before slowing commercial development.

CSHB 3461 would be unlikely to encourage “paper napkin” permit applications, in which developers who received notice of a planned moratorium rushed to file last minute applications before the city imposed the moratorium. The same provisions exist for the imposition of a residential moratorium, but there is no evidence of a planned residential moratorium causing a similar permit rush. It would not encourage negligent commercial permitting because, while Local Government Code 245 vests development rights upon permitting, local governments still could control their own permitting processes and development regulations to prevent skeletal plans from being filed.

OPPONENTS
SAY:

This bill is unnecessary. State and federal law on takings and vested rights effectively govern any moratorium on commercial development. Developers and builders cite anecdotal and sometime hypothetical cases in claiming the harm done by municipalities that place moratoriums on development. If problems exist, they should be addressed at the local level rather than in the Legislature. Most city council members actively promote economic development of their communities and are responsive to the needs of their communities.

Imposing a 180-day limitation on imposing a moratorium to protect the public welfare would create arbitrary deadlines for cities to address community challenges and rewrite ordinances. While some moratoriums are needed for short periods of time, others are needed for several years depending on the problems being addressed and the city’s capacity to address them. This imitation would be even more harsh on smaller cities that do not employ planners, attorneys, and other professional staff.

Smaller communities should not be forced to adhere to policies better suited to larger cities, such as costly requirements to provide notice and hold public hearings. Smaller cities need more flexibility in the moratorium notification procedures.

NOTES:

The substitute modified the original bill by:

- allowing a moratorium to be imposed for reasons other than deficient infrastructure and public facilities;
- imposing a 180-day limit on a moratorium adopted to protect public health, safety, or welfare; and
- prohibiting a city from retroactively deactivating a zoning application before a moratorium's effective date.

The identical companion bill, SB 1406 by Armbrister, has been referred to the Senate Intergovernmental Relations Committee.