

BILL ANALYSIS

Senate Research Center

S.B. 356
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Intergovernmental Relations
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Enrolled

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The Urban Land Bank Demonstration Act will provide an opportunity for municipalities with a population of 1.9 million or more to address the dual needs of insufficient affordable housing and older neighborhoods at risk.

S.B. 356 allows the governing body of a municipality to adopt an urban land bank demonstration program in which the officer charged with selling real property ordered sold pursuant to foreclosure of a tax lien may sell certain eligible real property by private sale for purposes of affordable housing development.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle A, Title 12, Local Government Code, by adding Chapter 379D, as follows:

CHAPTER 379D. URBAN LAND BANK PROGRAM IN MUNICIPALITY WITH POPULATION OF 1.9 MILLION OR MORE

Sec. 379D.001. SHORT TITLE. Authorizes this chapter to be cited as the Urban Land Bank Program Act for Municipalities with a Population of 1.9 Million or More.

Sec. 379D.002. APPLICABILITY. Provides that this chapter applies only to a municipality with a population of 1.9 million or more.

Sec. 379D.003. DEFINITIONS. Defines "community housing development organization," "land bank," "low income household," "qualified participating developer," "urban land bank plan" or "plan," and "urban land bank program" or "program."

Sec. 379D.004. URBAN LAND BANK PROGRAM. (a) Authorizes the governing body of a municipality to adopt an urban land bank program in which the officer charged with selling real property ordered sold pursuant to foreclosure of a tax lien may sell certain eligible real property by private sale for purposes of affordable housing development.

(b) Requires the governing body of a municipality that adopts an urban land bank program to establish or approve a land bank for the purpose of acquiring, holding, and transferring real property.

Sec. 379D.005. QUALIFIED PARTICIPATING DEVELOPER. Requires a developer, to qualify to participate in an urban land bank program, to meet certain requirements.

Sec. 379D.006. URBAN LAND BANK PLAN. (a) Requires a municipality that adopts an urban land bank program to operate the program in conformance with an urban land bank plan.

(b) Requires the governing body of a municipality that adopts an urban land bank program to adopt a plan annually. Authorizes the plan to be amended from time to time.

(c) Requires the municipality, in the developing plan, to consider other housing plans adopted by the municipality, including the comprehensive plan submitted to the United States Department of Housing and Urban Development and all fair housing plans and policies adopted or agreed to by the municipality.

(d) Requires the plan to include certain information.

Sec. 379D.007. PUBLIC HEARING ON PROPOSED PLAN. (a) Requires a municipality, before adopting a plan, to hold a public hearing on the proposed plan.

(b) Requires the mayor or the mayor's designee to provide notice of the hearing to all community housing development organizations and to neighborhood associations identified by the municipality as serving the neighborhoods in which properties anticipated to be available for sale to the land bank are located.

(c) Requires the mayor or the mayor's designee to make copies of the proposed plan available to the public no later than the 60th day before the date of the public hearing.

Sec. 379D.008. PRIVATE SALE TO LAND BANK. (a) Authorizes property that is ordered sold pursuant to foreclosure of a tax lien to be sold in a private sale to a land bank by the officer charged with the sale of the property without first offering the property for sale as otherwise provided by Section 34.01 (Sale of Property), Tax Code, if certain procedures are followed, notwithstanding any other law and except as provided by Subsection (f).

(b) Prohibits a property that is not improved with a habitable building or buildings, as described by the municipality's health and safety code, from being sold to a land bank under this section if the property is currently occupied by a person who has resided on the property for at least a year.

(c) Provides that a sale of property for use in connection with the program is a sale for a public purpose.

(d) Provides that if the person being sued in a suit for foreclosure of a tax lien does not contest the market value of the property in the suit, the person waives the right to challenge the amount of the market value determined by the court for the purposes of the sale of the property under Section 33.50 (Adjudged Value), Tax Code.

(e) Requires each person who was a defendant to the judgment, or that person's attorney, for any sale of property under this chapter, to be given, no later than the 30th day before the date of sale, written notice of the proposed method of sale of the property by the officer charged with the sale of the property. Requires the notice to be given in the manner prescribed by Rule 21a, Texas Rules of Civil Procedure.

(f) Authorizes the owner of the property subject to sale, after receipt of the notice by Subsection (d) and before the date of the proposed sale, to file with the officer charged with the sale a written request that the property not be sold in the manner provided by this chapter.

(g) Requires the officer, if the officer charged with the sale receives written request as provided by Subsection (e), to sell the property as otherwise provided in Section 34.01 (Sale of Property), Tax Code.

(h) Prohibits the owner of the property subject to sale from receiving any proceeds of a sale. Provides that the owner does not have any personal liability for a deficiency of the judgment as a result of a sale.

(i) Authorizes property, if consent is given by the taxing units that are a party to the judgment, notwithstanding any other law, to be sold to the land bank for less than the market value of the property as specified in the judgment or less than the total of all taxes, penalties, and interest, plus the value of nontax liens held by a taxing unit and awarded by the judgment, court costs, and the cost of the sale.

(j) Provides that the deed of conveyance of the property sold to a land bank under this section conveys to the land bank the right, title, and interest owned by the defendants included in the foreclosure judgment, including the defendants' right to the use and possession of the property, subject only to the defendants' right of redemption, the terms of a recorded restrictive covenant running with the land that was recorded before January 1 of the year in which the tax lien on the property arose, a recorded lien that arose under that restrictive covenant that was not extinguished in the judgment foreclosing the tax lien, and each valid easement of record as of the date of the sale that was recorded before January 1 of the year the tax lien arose.

Sec. 379D.009. SUBSEQUENT RESALE BY LAND BANK. (a) Requires each subsequent resale of property acquired by a land bank to comply with the conditions of this section.

(b) Requires the land bank, except as provided by Section 379D.011, to sell a property to a qualified participating developer within the five-year period following the date of acquisition for the purpose of construction of affordable housing for sale or rent to low income households. Requires that the property to be transferred from the land bank to the taxing units who were parties to the judgment for disposition as otherwise allowed under the law, if after five years a qualified participating developer has not purchased the property.

(c) Prohibits the number of properties acquired by a qualified participating developer on which development has not been completed, at any given time, from exceeding three times the annual average residential units produced and completed by the qualified participating developer during the preceding two-year period as determined by the municipality.

(d) Requires the deed conveying a property sold by the land bank to include a right of reverter so that if the qualified participating developer does not apply for a construction permit and close on any construction financing within the two-year period following the date of the conveyance of the property from the land bank to the qualified participating developer, the property will revert to the land bank for subsequent resale to another qualified participating developer or conveyance to the taxing units who were parties to the judgment for disposition as otherwise allowed under the law.

Sec. 379D.010. RESTRICTIONS ON OCCUPANCY AND USE OF PROPERTY. (a) Requires the land bank to impose deed restrictions with appropriate terms and conditions on property sold to qualified participating developers requiring the development and sale or rental of the property to low income households.

(b) Requires at least 25 percent of the land bank properties sold during any given fiscal year to be developed for sale to be deed restricted for sale to households with gross household incomes not greater than 60 percent of the area median family income, adjusted for household size, for the metropolitan statistical area in which the municipality is located, as determined annually by the United States Department of Housing and Urban Development.

(c) Authorizes the housing developed under this chapter to consist of one to four residential units. Requires at least one unit of any structure with two to four units to be owned and occupied as a primary residence by a low income household. Authorizes the remaining units to be rental units if each tenant household meets the income eligibility requirements of a low income household.

(d) Authorizes housing developed under this chapter, notwithstanding Subsection (c), to consist of one to eight residential units, all of which may be rental units, if certain conditions are satisfied.

Sec. 379D.011. RIGHT OF FIRST REFUSAL IN ELIGIBLE ADJACENT PROPERTY OWNERS. (a) Requires property acquired by the land bank to be offered for sale to adjacent property owners under a right of first refusal on terms and conditions developed by the land bank that are consistent with this chapter.

(b) Requires an owner of property adjacent to property acquired by the land bank, to be eligible to exercise a right of first refusal under this section, to have owned and continuously occupied that property for at least the five preceding years as that person's principal residence.

Sec. 379D.012. RIGHT OF SECOND REFUSAL IN QUALIFIED ORGANIZATIONS. (a) Defines "qualified organization."

(b) Requires the land bank, if all adjacent property owners fail to exercise the right of first refusal under Section 379D.011, to offer a property for a sale to qualified organizations that are eligible to acquire additional properties from the land bank under Section 379D.009(c). Provides that if a qualified organization is not eligible to acquire additional properties under that subsection at the time the property first becomes available for sale, the land bank is not required to hold the property from sale until the organization becomes eligible to purchase the property by the right of second refusal described by this section.

(c) Requires the notice to be provided to the qualified organizations by certified mail, return receipt requested, not later than the 60th day before the beginning of the period in which the right of second refusal may be exercised.

(d) Requires the municipality to specify in its plan the period during which the right of second refusal provided by this section may be exercised by a qualified organization. Requires the period to be at least 90 days in duration and begin after the period in which the right of first refusal described by Section 379D.011 may be exercised and at least three months but no more than 26 months from the date of the deed of conveyance of the property to the land bank.

(e) Prohibits the land bank, during the period specified for the right of second refusal under Subsection (d), from selling the property to a qualified participating developer other than a qualified organization. Authorizes the land bank to sell the property to any other qualified participating developer at the same price that the land bank offered the property to the qualified organizations, if all qualified organizations notify the land bank that they are declining to exercise their right of second refusal during the specified period, or if an offer to purchase the property is not received from a qualified organization during that period.

(f) Requires the municipality, in its plan, to establish the amount of additional time, if any, that a property may be held in the land bank once an offer has been received and accepted from a qualified organization or other qualified participating developer.

(g) Requires the organization that has designated the most geographically compact area encompassing a portion of the property to be given priority, if more than one qualified organization expresses an interest in exercising its right of second refusal.

(h) Authorizes the municipality, in its plan, to provide for other rights of second refusal for any other nonprofit corporation exempted from federal income tax under Section 501(c)(3), Internal Revenue Code of 1986, as amended, provided that the preeminent right of second refusal is provided to qualified organizations.

(i) Provides that the land bank is not required to provide a right of second refusal to qualified organizations if the land bank is selling property that reverted to the land bank under Section 379D.009(d).

Sec. 379D.013. OPEN RECORDS AND MEETINGS. Requires the land bank to comply with the requirements of Chapters 551 (Open Meetings) and 552 (Public Information), Government Code.

Sec. 379D.014. RECORDS; AUDIT; REPORT. (a) Requires the land bank to keep accurate minutes of its meetings and to keep accurate records and books of account that conform with generally accepted principles of accounting and that clearly reflect the income and expenses of the land bank and all transactions in relation to its property.

(b) Requires the land bank to file with the municipality no later than the 90th day after the close of the fiscal year annual audited financial statements prepared by a certified public accountant. Provides that the financial transactions of the land bank are subject to audit by the municipality.

(c) Requires the land bank, for the purposes of evaluating the effectiveness of the program, to submit an annual performance report to the municipality no later than November 1 of each year in which the land bank acquires or sells property under this chapter. Requires the report to include certain information.

(d) Requires the land bank to maintain in its records for inspection a copy of the sale settlement statement for each property sold by a qualified participating developer and a copy of the first page of the mortgage note with the interest rate and indicating the volume and page number of the instrument as filed with the county clerk.

(e) Requires the land bank to provide copies of the performance report to the taxing units who were parties to the judgment of foreclosure and to provide notice of the availability of the performance report for the review to the organizations and neighborhood associations identified by the municipality as serving the neighborhoods in which properties sold to the land bank under this chapter are located.

(f) Requires the land bank and the municipality to maintain copies of the performance report available for public review.

SECTION 2. Effective date: September 1, 2005.