

By: Ellis

S.B. No. 356

A BILL TO BE ENTITLED

AN ACT

relating to an urban land bank program in certain municipalities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle A, Title 12, Local Government Code, is amended by adding Chapter 379D to read as follows:

CHAPTER 379D. URBAN LAND BANK PROGRAM

IN MUNICIPALITY WITH POPULATION OF 1.9 MILLION OR MORE

Sec. 379D.001. SHORT TITLE. This chapter may be cited as the Urban Land Bank Program Act for a Municipality with a Population of 1.9 Million or More.

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

Sec. 379D.003. DEFINITIONS. In this chapter:

(1) "Community housing development organization" or "organization" means an organization that:

(A) meets the definition of a community housing development organization in 24 C.F.R. Section 92.2; and

(B) is certified by the municipality as a community housing development organization.

(2) "Land bank" means an entity established or approved by the governing body of a municipality for the purpose of acquiring, holding, and transferring real property under this chapter.

(3) "Low income household" means a household with a

1 gross income of not greater than 80 percent of the area median  
2 family income, adjusted for household size, for the metropolitan  
3 statistical area in which the municipality is located, as  
4 determined annually by the United States Department of Housing and  
5 Urban Development.

6 (4) "Qualified participating developer" means a  
7 developer who meets the requirements of Section 379D.005 and  
8 includes a qualified organization under Section 379D.012.

9 (5) "Urban land bank plan" or "plan" means a plan  
10 adopted by the governing body of a municipality as provided by  
11 Section 379D.006.

12 (6) "Urban land bank program" or "program" means a  
13 program adopted under Section 379D.004.

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

20 (b) The governing body of a municipality that adopts an  
21 urban land bank program shall establish or approve a land bank for  
22 the purpose of acquiring, holding, and transferring real property  
23 under this chapter.

24 Sec. 379D.005. QUALIFIED PARTICIPATING DEVELOPER. To  
25 qualify to participate in an urban land bank program, a developer  
26 must:

27 (1) have built three or more housing units within the

1 three-year period preceding the submission of a proposal to the  
2 land bank seeking to acquire real property from the land bank;

3 (2) have a development plan approved by the  
4 municipality for the land bank property; and

5 (3) meet any other requirements adopted by the  
6 municipality in the urban land bank plan.

7 Sec. 379D.006. URBAN LAND BANK PLAN. (a) A municipality  
8 that adopts an urban land bank program shall operate the program in  
9 conformance with an urban land bank plan.

10 (b) The governing body of a municipality that adopts an  
11 urban land bank program shall adopt a plan annually. The plan may  
12 be amended from time to time.

13 (c) In developing the plan, the municipality shall consider  
14 other housing plans adopted by the municipality, including the  
15 comprehensive plan submitted to the United States Department of  
16 Housing and Urban Development and all fair housing plans and  
17 policies adopted or agreed to by the municipality.

18 (d) The plan must include the following:

19 (1) a list of community housing development  
20 organizations eligible to participate in the right of second  
21 refusal provided by Section 379D.012;

22 (2) a list of the parcels of real property that may  
23 become eligible for sale to the land bank during the upcoming year;

24 (3) the municipality's plan for affordable housing  
25 development on those parcels of real property; and

26 (4) the sources and amounts of funding anticipated to  
27 be available from the municipality for subsidies for development of

1 affordable housing in the municipality, including any money  
2 specifically available for housing developed under the program, as  
3 approved by the governing body of the municipality at the time the  
4 plan is adopted.

5 Sec. 379D.007. PUBLIC HEARING ON PROPOSED PLAN.

6 (a) Before adopting a plan, a municipality shall hold a public  
7 hearing on the proposed plan.

8 (b) The mayor or the mayor's designee shall provide notice  
9 of the hearing to all community housing development organizations  
10 and to neighborhood associations identified by the municipality as  
11 serving the neighborhoods in which properties anticipated to be  
12 available for sale to the land bank under this chapter are located.

13 (c) The mayor or the mayor's designee shall make copies of  
14 the proposed plan available to the public not later than the 60th  
15 day before the date of the public hearing.

16 Sec. 379D.008. PRIVATE SALE TO LAND BANK. (a)

17 Notwithstanding any other law and except as provided by Subsections  
18 (b) and (g), property that is ordered sold pursuant to foreclosure  
19 of a tax lien may be sold in a private sale to a land bank by the  
20 officer charged with the sale of the property without first  
21 offering the property for sale as otherwise provided by Section  
22 34.01, Tax Code, if:

23 (1) the market value of the property as specified in  
24 the judgment of foreclosure is less than the total amount due under  
25 the judgment, including all taxes, penalties, and interest, plus  
26 the value of nontax liens held by a taxing unit and awarded by the  
27 judgment, court costs, and the cost of the sale;

1           (2) the property is not improved with a habitable  
2 building or buildings, as described by the municipality's health  
3 and safety code;

4           (3) there are delinquent taxes on the property for  
5 each of the preceding six years; and

6           (4) the municipality has executed with the other  
7 taxing units that are parties to the tax suit an interlocal  
8 agreement that enables those units to agree to participate in the  
9 program.

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

15          (c) A sale of property for use in connection with the  
16 program is a sale for a public purpose.

17          (d) If the person being sued in a suit for foreclosure of a  
18 tax lien does not contest the market value of the property in the  
19 suit, the person waives the right to challenge the amount of the  
20 market value determined by the court for purposes of the sale of the  
21 property under Section 33.50, Tax Code.

22          (e) For any sale of property under this chapter, each person  
23 who was a defendant to the judgment, or that person's attorney,  
24 shall be given, not later than the 30th day before the date of sale,  
25 written notice of the proposed method of sale of the property by the  
26 officer charged with the sale of the property. Notice shall be  
27 given in the manner prescribed by Rule 21a, Texas Rules of Civil

1 Procedure.

2 (f) After receipt of the notice required by Subsection (e)  
3 and before the date of the proposed sale, the owner of the property  
4 subject to sale may file with the officer charged with the sale a  
5 written request that the property not be sold in the manner provided  
6 by this chapter.

7 (g) If the officer charged with the sale receives a written  
8 request as provided by Subsection (f), the officer shall sell the  
9 property as otherwise provided in Section 34.01, Tax Code.

10 (h) The owner of the property subject to sale may not  
11 receive any proceeds of a sale under this chapter. However, the  
12 owner does not have any personal liability for a deficiency of the  
13 judgment as a result of a sale under this chapter.

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

21 (j) The deed of conveyance of the property sold to a land  
22 bank under this section conveys to the land bank the right, title,  
23 and interest owned by the defendants included in the foreclosure  
24 judgment, including the defendants' right to the use and possession  
25 of the property, subject only to the defendants' right of  
26 redemption, the terms of a recorded restrictive covenant running  
27 with the land that was recorded before January 1 of the year in

1 which the tax lien on the property arose, a recorded lien that arose  
2 under that restrictive covenant that was not extinguished in the  
3 judgment foreclosing the tax lien, and each valid easement of  
4 record as of the date of the sale that was recorded before January 1  
5 of the year the tax lien arose.

6 Sec. 379D.009. SUBSEQUENT RESALE BY LAND BANK. (a) Each  
7 subsequent resale of property acquired by a land bank under this  
8 chapter must comply with the conditions of this section.

9 (b) Except as provided by Section 379D.011, the land bank  
10 must sell a property to a qualified participating developer within  
11 the five-year period following the date of acquisition for the  
12 purpose of construction of affordable housing for sale or rent to  
13 low income households. If after five years a qualified  
14 participating developer has not purchased the property, the  
15 property shall be transferred from the land bank to the taxing units  
16 who were parties to the judgment for disposition as otherwise  
17 allowed under the law.

18 (c) The number of properties acquired by a qualified  
19 participating developer under this section on which development has  
20 not been completed may not at any given time exceed three times the  
21 annual average residential units produced and completed by the  
22 qualified participating developer during the preceding two-year  
23 period as determined by the municipality.

24 (d) The deed conveying a property sold by the land bank must  
25 include a right of reverter so that if the qualified participating  
26 developer does not apply for a construction permit and close on any  
27 construction financing within the two-year period following the

1 date of the conveyance of the property from the land bank to the  
2 qualified participating developer, the property will revert to the  
3 land bank for subsequent resale to another qualified participating  
4 developer or conveyance to the taxing units who were parties to the  
5 judgment for disposition as otherwise allowed under the law.

6 Sec. 379D.010. RESTRICTIONS ON OCCUPANCY AND USE OF  
7 PROPERTY. (a) The land bank shall impose deed restrictions with  
8 appropriate terms and conditions on property sold to qualified  
9 participating developers and eligible adjacent property owners  
10 that require the development and sale or rental of the property to  
11 low income households.

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

19 (c) Housing developed under this chapter may consist of one  
20 to four residential units. At least one unit of any structure with  
21 two to four units must be owned and occupied as a primary residence  
22 by a low income household. The remaining units may be rental units  
23 if each tenant household meets the income eligibility requirements  
24 of a low income household.

25 Sec. 379D.011. RIGHT OF FIRST REFUSAL IN ELIGIBLE ADJACENT  
26 PROPERTY OWNERS. (a) Property acquired by the land bank shall be  
27 offered for sale to eligible adjacent property owners under a right



1 of first refusal on terms and conditions developed by the land bank  
2 that are consistent with this chapter.

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

8 Sec. 379D.012. RIGHT OF SECOND REFUSAL IN QUALIFIED  
9 ORGANIZATIONS. (a) In this section, "qualified organization"  
10 means a community housing development organization that:

11 (1) contains within its designated geographical  
12 boundaries of operation, as set forth in its application for  
13 certification filed with and approved by the municipality, a  
14 portion of the property that the land bank is offering for sale;

15 (2) has built at least three single-family homes or  
16 duplexes or one multifamily residential dwelling of four or more  
17 units in compliance with all applicable building codes within the  
18 preceding two-year period and within the organization's designated  
19 geographical boundaries of operation; and

20 (3) within the preceding two-year period has built or  
21 rehabilitated housing units within a two-mile radius of the  
22 property that the land bank is offering for sale.

23 (b) If all eligible adjacent property owners fail to  
24 exercise the right of first refusal under Section 379D.011, the  
25 land bank shall offer a property for sale to qualified  
26 organizations that are eligible to acquire additional properties  
27 from the land bank under Section 379D.009(c). If a qualified

1 organization is not eligible to acquire additional properties under  
2 that subsection at the time the property first becomes available  
3 for sale, the land bank is not required to hold the property from  
4 sale until the organization becomes eligible to purchase the  
5 property by the right of second refusal described by this section.

6 (c) Notice must be provided to the qualified organizations  
7 by certified mail, return receipt requested, not later than the  
8 60th day before the beginning of the period in which the right of  
9 second refusal may be exercised.

10 (d) The municipality shall specify in its plan the period  
11 during which the right of second refusal provided by this section  
12 may be exercised by a qualified organization. That period must be  
13 at least 90 days in duration and begin after the period in which the  
14 right of first refusal described by Section 379D.011 may be  
15 exercised and at least three months but not more than 26 months from  
16 the date of the deed of conveyance of the property to the land bank.

17 (e) During the period specified for the right of second  
18 refusal under Subsection (d), the land bank may not sell the  
19 property to a qualified participating developer other than a  
20 qualified organization. If all qualified organizations notify the  
21 land bank that they are declining to exercise their right of second  
22 refusal during the specified period, or if an offer to purchase the  
23 property is not received from a qualified organization during that  
24 period, the land bank may sell the property to any other qualified  
25 participating developer at the same price that the land bank  
26 offered the property to the qualified organizations.

27 (f) In its plan, the municipality shall establish the amount

1 of additional time, if any, that a property may be held in the land  
2 bank once an offer has been received and accepted from a qualified  
3 organization or other qualified participating developer.

4 (g) If more than one qualified organization expresses an  
5 interest in exercising its right of second refusal, the  
6 organization that has designated the most geographically compact  
7 area encompassing a portion of the property shall be given  
8 priority.

9 (h) In its plan, the municipality may provide for other  
10 rights of second refusal for any other nonprofit corporation  
11 exempted from federal income tax under Section 501(c)(3), Internal  
12 Revenue Code of 1986, provided that the preeminent right of second  
13 refusal is provided to qualified organizations as provided by this  
14 section.

15 (i) The land bank is not required to provide a right of  
16 second refusal to qualified organizations under this section if the  
17 land bank is selling property that reverted to the land bank under  
18 Section 379D.009(d).

19 Sec. 379D.013. OPEN RECORDS AND MEETINGS. The land bank  
20 shall comply with the requirements of Chapters 551 and 552,  
21 Government Code.

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

1       (b) The land bank shall file with the municipality not later  
2 than the 90th day after the close of the fiscal year annual audited  
3 financial statements prepared by a certified public accountant.  
4 The financial transactions of the land bank are subject to audit by  
5 the municipality.

6       (c) For purposes of evaluating the effectiveness of the  
7 program, the land bank shall submit an annual performance report to  
8 the municipality not later than November 1 of each year in which the  
9 land bank acquires or sells property under this chapter. The  
10 performance report must include:

11           (1) a complete and detailed written accounting of all  
12 money and properties received and disbursed by the land bank during  
13 the preceding fiscal year;

14           (2) for each property acquired by the land bank during  
15 the preceding fiscal year:

16                   (A) the street address of the property;

17                   (B) the legal description of the property;

18                   (C) the date the land bank took title to the  
19 property;

20                   (D) the name and address of the property owner of  
21 record at the time of the foreclosure;

22                   (E) the amount of taxes and other costs owed at  
23 the time of the foreclosure; and

24                   (F) the assessed value of the property on the tax  
25 roll at the time of the foreclosure;

26           (3) for each property sold by the land bank during the  
27 preceding fiscal year to a qualified participating developer:

- 1           (A) the street address of the property;  
2           (B) the legal description of the property;  
3           (C) the name and mailing address of the  
4 developer;  
5           (D) the purchase price paid by the developer;  
6           (E) the maximum incomes allowed for the  
7 households by the terms of the sale; and  
8           (F) the source and amount of any public subsidy  
9 provided by the municipality to facilitate the sale or rental of the  
10 property to a household within the targeted income levels;  
11           (4) for each property sold by a qualified  
12 participating developer during the preceding fiscal year, the  
13 buyer's household income and a description of all use and sale  
14 restrictions; and  
15           (5) for each property developed for rental housing  
16 with an active deed restriction, a copy of the most recent annual  
17 report filed by the owner with the land bank.  
18           (d) The land bank shall maintain in its records for  
19 inspection a copy of the sale settlement statement for each  
20 property sold by a qualified participating developer and a copy of  
21 the first page of the mortgage note with the interest rate and  
22 indicating the volume and page number of the instrument as filed  
23 with the county clerk.  
24           (e) The land bank shall provide copies of the performance  
25 report to the taxing units who were parties to the judgment of  
26 foreclosure and shall provide notice of the availability of the  
27 performance report for review to the organizations and neighborhood

1 associations identified by the municipality as serving the  
2 neighborhoods in which properties sold to the land bank under this  
3 chapter are located.

4 (f) The land bank and the municipality shall maintain copies  
5 of the performance report available for public review.

6 SECTION 2. This Act takes effect September 1, 2005.