

By: Ellis

S.B. No. 356

A BILL TO BE ENTITLED

AN ACT

relating to an urban land bank demonstration 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 DEMONSTRATION 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 Demonstration Program Act for Municipalities 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 unimproved real property under this chapter.

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

7 (4) "Qualified participating developer" means a
8 developer who meets the requirements of Section 379D.005 and
9 includes a qualified organization under Section 379D.011.

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

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

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

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

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

1 (1) have built three or more housing units within the
2 three-year period preceding the submission of a proposal to the
3 land bank seeking to acquire real property from the land bank;

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

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

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

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

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

20 (d) The plan must include the following:

21 (1) a list of community housing development
22 organizations eligible to participate in the right of first refusal
23 provided by Section 379D.011;

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

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

1 (4) the sources and amounts of funding anticipated to
2 be available from the municipality for subsidies for development
3 of affordable housing in the municipality, including any money
4 specifically available for housing developed under the program, as
5 approved by the governing body of the municipality at the time the
6 plan is adopted.

7 Sec. 379D.007. PUBLIC HEARING ON PROPOSED PLAN. (a) Before
8 adopting a plan, a municipality shall hold a public hearing on the
9 proposed plan.

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

16 (c) The city manager or the city manager's designee shall
17 make copies of the proposed plan available to the public not later
18 than the 60th day before the date of the public hearing.

19 Sec. 379D.008. PRIVATE SALE TO LAND BANK. (a)
20 Notwithstanding any other law and except as provided by Subsection
21 (f), property that is ordered sold pursuant to foreclosure of a tax
22 lien may be sold in a private sale to a land bank by the officer
23 charged with the sale of the property without first offering the
24 property for sale as otherwise provided by Section 34.01, Tax Code,
25 if:

26 (1) the market value of the property as specified in
27 the judgment of foreclosure is less than the total amount due under

1 the judgment, including all taxes, penalties, and interest, plus
2 the value of nontax liens held by a taxing unit and awarded by the
3 judgment, court costs, and the cost of the sale;

4 (2) the property is not improved with a building or
5 buildings;

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

8 (4) the municipality has executed with the other
9 taxing units that are parties to the tax suit an interlocal
10 agreement that enables those units to agree to participate in the
11 program while retaining the right to withhold consent to the sale of
12 specific properties to the land bank.

13 (b) A sale of property for use in connection with the
14 program is a sale for a public purpose.

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

20 (d) For any sale of property under this chapter, each person
21 who was a defendant to the judgment, or that person's attorney,
22 shall be given, not later than the 90th day before the date of sale,
23 written notice of the proposed method of sale of the property by the
24 officer charged with the sale of the property. Notice shall be
25 given in the manner prescribed by Rule 21a, Texas Rules of Civil
26 Procedure.

27 (e) After receipt of the notice required by Subsection (d)

1 and before the date of the proposed sale, the owner of the property
2 subject to sale may file with the officer charged with the sale a
3 written request that the property not be sold in the manner provided
4 by this chapter.

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

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

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

19 (i) The deed of conveyance of the property sold to a land
20 bank under this section conveys to the land bank the right, title,
21 and interest acquired or held by each taxing unit that was a party
22 to the judgment, subject to the right of redemption.

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

26 (b) The land bank must sell a property to a qualified
27 participating developer within the three-year period following the

1 date of acquisition for the purpose of construction of affordable
2 housing for sale or rent to low income households. If after three
3 years a qualified participating developer has not purchased the
4 property, the property shall be transferred from the land bank to
5 the taxing units who were parties to the judgment for disposition as
6 otherwise allowed under the law.

7 (c) Unless the municipality increases the amount in its
8 plan, the number of properties acquired by a qualified
9 participating developer under this section on which development has
10 not been completed may not at any given time exceed three times the
11 annual average residential production completed by the qualified
12 participating developer during the preceding two-year period as
13 determined by the municipality.

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

23 Sec. 379D.010. RESTRICTIONS ON OCCUPANCY AND USE OF
24 PROPERTY. (a) The land bank shall impose deed restrictions on
25 property sold to qualified participating developers requiring the
26 development and sale or rental of the property to low income
27 households.

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

8 (c) If property is developed for rental housing, the deed
9 restrictions must be for a period of not less than 15 years and must
10 require that:

11 (1) 100 percent of the rental units be occupied by
12 households with incomes not greater than 60 percent of area median
13 family income, based on gross household income, adjusted for
14 household size, for the metropolitan statistical area in which the
15 municipality is located, as determined annually by the United
16 States Department of Housing and Urban Development;

17 (2) 40 percent of the units be occupied by households
18 with incomes not greater than 50 percent of area median family
19 income, based on gross household income, adjusted for household
20 size, for the metropolitan statistical area in which the
21 municipality is located, as determined annually by the United
22 States Department of Housing and Urban Development; or

23 (3) 20 percent of the units be occupied by households
24 with incomes not greater than 30 percent of area median family
25 income, based on gross household income, adjusted for household
26 size, for the metropolitan statistical area in which the
27 municipality is located, as determined annually by the United

1 States Department of Housing and Urban Development.

2 (d) The deed restrictions under Subsection (c) must require
3 the owner to file an annual occupancy report with the municipality
4 on a reporting form provided by the municipality. The deed
5 restrictions must also prohibit any exclusion of an individual or
6 family from admission to the development based solely on the
7 participation of the individual or family in the housing choice
8 voucher program under Section 8, United States Housing Act of 1937
9 (42 U.S.C. Section 1437f), as amended.

10 (e) Except as otherwise provided by this section, if the
11 deed restrictions imposed under this section are for a term of
12 years, the deed restrictions shall renew automatically.

13 (f) The land bank or the governing body of the municipality
14 may modify or add to the deed restrictions imposed under this
15 section. Any modifications or additions made by the governing body
16 of the municipality must be adopted by the municipality as part of
17 its plan and must comply with the restrictions set forth in
18 Subsections (b), (c), and (d).

19 Sec. 379D.011. RIGHT OF FIRST REFUSAL. (a) In this
20 section, "qualified organization" means a community housing
21 development organization that:

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

26 (2) has built at least three single-family homes or
27 duplexes or one multifamily residential dwelling of four or more

1 units in compliance with all applicable building codes within the
2 preceding two-year period and within the organization's designated
3 geographical boundaries of operation; and

4 (3) within the preceding two-year period has built or
5 rehabilitated housing units within a one-half mile radius of the
6 property that the land bank is offering for sale.

7 (b) The land bank shall first offer a property for sale to
8 qualified organizations.

9 (c) Notice must be provided to the qualified organizations
10 by certified mail, return receipt requested.

11 (d) The municipality shall specify in its plan the period
12 during which the right of first refusal provided by this section may
13 be exercised by a qualified organization. That period must be at
14 least nine months but not more than 26 months from the date of the
15 deed of conveyance of the property to the land bank.

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

25 (f) In its plan, the municipality shall establish the amount
26 of additional time, if any, that a property may be held in the land
27 bank once an offer has been received and accepted from a qualified

1 organization or other qualified participating developer.

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

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

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

16 Sec. 379D.012. OPEN RECORDS AND MEETINGS. The land bank
17 shall comply with the requirements of Chapters 551 and 552,
18 Government Code.

19 Sec. 379D.013. RECORDS; AUDIT; REPORT. (a) The land bank
20 shall keep accurate minutes of its meetings and shall keep accurate
21 records and books of account that conform with generally accepted
22 principles of accounting and that clearly reflect the income and
23 expenses of the land bank and all transactions in relation to its
24 property.

25 (b) The land bank shall file with the municipality not later
26 than the 90th day after the close of the fiscal year annual audited
27 financial statements prepared by a certified public accountant.

1 The financial transactions of the land bank are subject to audit by
2 the municipality.

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

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

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

13 (A) the street address of the property;

14 (B) the legal description of the property;

15 (C) the date the land bank took title to the
16 property;

17 (D) the name and address of the property owner of
18 record at the time of the foreclosure;

19 (E) the amount of taxes and other costs owed at
20 the time of the foreclosure; and

21 (F) the assessed value of the property on the tax
22 roll at the time of the foreclosure;

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

25 (A) the street address of the property;

26 (B) the legal description of the property;

27 (C) the name and mailing address of the

1 developer;

2 (D) the purchase price paid by the developer;

3 (E) the maximum incomes allowed for the
4 households by the terms of the sale; and

5 (F) the source and amount of any public subsidy
6 provided by the municipality to facilitate the sale or rental of the
7 property to a household within the targeted income levels;

8 (4) for each property sold by a qualified
9 participating developer during the preceding fiscal year, the
10 buyer's household income and a description of all use and sale
11 restrictions; and

12 (5) for each property developed for rental housing
13 with an active deed restriction, a copy of the most recent annual
14 report filed by the owner with the land bank.

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

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

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

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