

1-1 By: Ellis S.B. No. 356
1-2 (In the Senate - Filed February 4, 2005; February 15, 2005,
1-3 read first time and referred to Committee on Intergovernmental
1-4 Relations; May 3, 2005, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 5, Nays 0;
1-6 May 3, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 356 By: Wentworth

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to an urban land bank program in certain municipalities.
1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-12 SECTION 1. Subtitle A, Title 12, Local Government Code, is
1-13 amended by adding Chapter 379D to read as follows:

1-14 CHAPTER 379D. URBAN LAND BANK PROGRAM
1-15 IN MUNICIPALITY WITH POPULATION OF 1.9 MILLION OR MORE
1-16 Sec. 379D.001. SHORT TITLE. This chapter may be cited as
1-17 the Urban Land Bank Program Act for a Municipality with a Population
1-18 of 1.9 Million or More.

1-19 Sec. 379D.002. APPLICABILITY. This chapter applies only to
1-20 a municipality with a population of 1.9 million or more.

1-21 Sec. 379D.003. DEFINITIONS. In this chapter:
1-22 (1) "Community housing development organization" or
1-23 "organization" means an organization that:

1-24 (A) meets the definition of a community housing
1-25 development organization in 24 C.F.R. Section 92.2; and

1-26 (B) is certified by the municipality as a
1-27 community housing development organization.

1-28 (2) "Land bank" means an entity established or
1-29 approved by the governing body of a municipality for the purpose of
1-30 acquiring, holding, and transferring real property under this
1-31 chapter.

1-32 (3) "Low income household" means a household with a
1-33 gross income of not greater than 80 percent of the area median
1-34 family income, adjusted for household size, for the metropolitan
1-35 statistical area in which the municipality is located, as
1-36 determined annually by the United States Department of Housing and
1-37 Urban Development.

1-38 (4) "Qualified participating developer" means a
1-39 developer who meets the requirements of Section 379D.005 and
1-40 includes a qualified organization under Section 379D.012.

1-41 (5) "Urban land bank plan" or "plan" means a plan
1-42 adopted by the governing body of a municipality as provided by
1-43 Section 379D.006.

1-44 (6) "Urban land bank program" or "program" means a
1-45 program adopted under Section 379D.004.

1-46 Sec. 379D.004. URBAN LAND BANK PROGRAM. (a) The governing
1-47 body of a municipality may adopt an urban land bank program in which
1-48 the officer charged with selling real property ordered sold
1-49 pursuant to foreclosure of a tax lien may sell certain eligible real
1-50 property by private sale for purposes of affordable housing
1-51 development as provided by this chapter.

1-52 (b) The governing body of a municipality that adopts an
1-53 urban land bank program shall establish or approve a land bank for
1-54 the purpose of acquiring, holding, and transferring real property
1-55 under this chapter.

1-56 Sec. 379D.005. QUALIFIED PARTICIPATING DEVELOPER. To
1-57 qualify to participate in an urban land bank program, a developer
1-58 must:

1-59 (1) have built three or more housing units within the
1-60 three-year period preceding the submission of a proposal to the
1-61 land bank seeking to acquire real property from the land bank;

1-62 (2) have a development plan approved by the
1-63 municipality for the land bank property; and

2-1 (3) meet any other requirements adopted by the
 2-2 municipality in the urban land bank plan.

2-3 Sec. 379D.006. URBAN LAND BANK PLAN. (a) A municipality
 2-4 that adopts an urban land bank program shall operate the program in
 2-5 conformance with an urban land bank plan.

2-6 (b) The governing body of a municipality that adopts an
 2-7 urban land bank program shall adopt a plan annually. The plan may
 2-8 be amended from time to time.

2-9 (c) In developing the plan, the municipality shall consider
 2-10 other housing plans adopted by the municipality, including the
 2-11 comprehensive plan submitted to the United States Department of
 2-12 Housing and Urban Development and all fair housing plans and
 2-13 policies adopted or agreed to by the municipality.

2-14 (d) The plan must include the following:

2-15 (1) a list of community housing development
 2-16 organizations eligible to participate in the right of second
 2-17 refusal provided by Section 379D.012;

2-18 (2) a list of the parcels of real property that may
 2-19 become eligible for sale to the land bank during the upcoming year;

2-20 (3) the municipality's plan for affordable housing
 2-21 development on those parcels of real property; and

2-22 (4) the sources and amounts of funding anticipated to
 2-23 be available from the municipality for subsidies for development of
 2-24 affordable housing in the municipality, including any money
 2-25 specifically available for housing developed under the program, as
 2-26 approved by the governing body of the municipality at the time the
 2-27 plan is adopted.

2-28 Sec. 379D.007. PUBLIC HEARING ON PROPOSED PLAN.

2-29 (a) Before adopting a plan, a municipality shall hold a public
 2-30 hearing on the proposed plan.

2-31 (b) The mayor or the mayor's designee shall provide notice
 2-32 of the hearing to all community housing development organizations
 2-33 and to neighborhood associations identified by the municipality as
 2-34 serving the neighborhoods in which properties anticipated to be
 2-35 available for sale to the land bank under this chapter are located.

2-36 (c) The mayor or the mayor's designee shall make copies of
 2-37 the proposed plan available to the public not later than the 60th
 2-38 day before the date of the public hearing.

2-39 Sec. 379D.008. PRIVATE SALE TO LAND BANK. (a)

2-40 Notwithstanding any other law and except as provided by Subsection
 2-41 (f), property that is ordered sold pursuant to foreclosure of a tax
 2-42 lien may be sold in a private sale to a land bank by the officer
 2-43 charged with the sale of the property without first offering the
 2-44 property for sale as otherwise provided by Section 34.01, Tax Code,
 2-45 if:

2-46 (1) the market value of the property as specified in
 2-47 the judgment of foreclosure is less than the total amount due under
 2-48 the judgment, including all taxes, penalties, and interest, plus
 2-49 the value of nontax liens held by a taxing unit and awarded by the
 2-50 judgment, court costs, and the cost of the sale;

2-51 (2) the property is not improved with a habitable
 2-52 building or buildings, as described by the municipality's health
 2-53 and safety code;

2-54 (3) there are delinquent taxes on the property for
 2-55 each of the preceding six years; and

2-56 (4) the municipality has executed with the other
 2-57 taxing units that are parties to the tax suit an interlocal
 2-58 agreement that enables those units to agree to participate in the
 2-59 program.

2-60 (b) A sale of property for use in connection with the
 2-61 program is a sale for a public purpose.

2-62 (c) If the person being sued in a suit for foreclosure of a
 2-63 tax lien does not contest the market value of the property in the
 2-64 suit, the person waives the right to challenge the amount of the
 2-65 market value determined by the court for purposes of the sale of the
 2-66 property under Section 33.50, Tax Code.

2-67 (d) For any sale of property under this chapter, each person
 2-68 who was a defendant to the judgment, or that person's attorney,
 2-69 shall be given, not later than the 30th day before the date of sale,

3-1 written notice of the proposed method of sale of the property by the
 3-2 officer charged with the sale of the property. Notice shall be
 3-3 given in the manner prescribed by Rule 21a, Texas Rules of Civil
 3-4 Procedure.

3-5 (e) After receipt of the notice required by Subsection (d)
 3-6 and before the date of the proposed sale, the owner of the property
 3-7 subject to sale may file with the officer charged with the sale a
 3-8 written request that the property not be sold in the manner provided
 3-9 by this chapter.

3-10 (f) If the officer charged with the sale receives a written
 3-11 request as provided by Subsection (e), the officer shall sell the
 3-12 property as otherwise provided in Section 34.01, Tax Code.

3-13 (g) The owner of the property subject to sale may not
 3-14 receive any proceeds of a sale under this chapter. However, the
 3-15 owner does not have any personal liability for a deficiency of the
 3-16 judgment as a result of a sale under this chapter.

3-17 (h) Notwithstanding any other law, if consent is given by
 3-18 the taxing units that are a party to the judgment, property may be
 3-19 sold to the land bank for less than the market value of the property
 3-20 as specified in the judgment or less than the total of all taxes,
 3-21 penalties, and interest, plus the value of nontax liens held by a
 3-22 taxing unit and awarded by the judgment, court costs, and the cost
 3-23 of the sale.

3-24 (i) The deed of conveyance of the property sold to a land
 3-25 bank under this section conveys to the land bank the right, title,
 3-26 and interest owned by the defendants included in the foreclosure
 3-27 judgment, including the defendants' right to the use and possession
 3-28 of the property, subject only to the defendant's right of
 3-29 redemption, the terms of a recorded restrictive covenant running
 3-30 with the land that was recorded before January 1 of the year in
 3-31 which the tax lien on the property arose, a recorded lien that arose
 3-32 under that restrictive covenant that was not extinguished in the
 3-33 judgment foreclosing the tax lien, and each valid easement of
 3-34 record as of the date of the sale that was recorded before January 1
 3-35 of the year the tax lien arose.

3-36 Sec. 379D.009. SUBSEQUENT RESALE BY LAND BANK. (a) Each
 3-37 subsequent resale of property acquired by a land bank under this
 3-38 chapter must comply with the conditions of this section.

3-39 (b) Except as provided by Section 379D.011, the land bank
 3-40 must sell a property to a qualified participating developer within
 3-41 the five-year period following the date of acquisition for the
 3-42 purpose of construction of affordable housing for sale or rent to
 3-43 low income households. If after five years a qualified
 3-44 participating developer has not purchased the property, the
 3-45 property shall be transferred from the land bank to the taxing units
 3-46 who were parties to the judgment for disposition as otherwise
 3-47 allowed under the law.

3-48 (c) The number of properties acquired by a qualified
 3-49 participating developer under this section on which development has
 3-50 not been completed may not at any given time exceed three times the
 3-51 annual average residential units produced and completed by the
 3-52 qualified participating developer during the preceding two-year
 3-53 period as determined by the municipality.

3-54 (d) The deed conveying a property sold by the land bank must
 3-55 include a right of reverter so that if the qualified participating
 3-56 developer does not apply for a construction permit and close on any
 3-57 construction financing within the two-year period following the
 3-58 date of the conveyance of the property from the land bank to the
 3-59 qualified participating developer, the property will revert to the
 3-60 land bank for subsequent resale to another qualified participating
 3-61 developer or conveyance to the taxing units who were parties to the
 3-62 judgment for disposition as otherwise allowed under the law.

3-63 Sec. 379D.010. RESTRICTIONS ON OCCUPANCY AND USE OF
 3-64 PROPERTY. (a) The land bank shall impose deed restrictions with
 3-65 appropriate terms and conditions on property sold to qualified
 3-66 participating developers requiring the development and sale or
 3-67 rental of the property to low income households.

3-68 (b) At least 25 percent of the land bank properties sold
 3-69 during any given fiscal year to be developed for sale shall be deed

4-1 restricted for sale to households with gross household incomes not
 4-2 greater than 60 percent of the area median family income, adjusted
 4-3 for household size, for the metropolitan statistical area in which
 4-4 the municipality is located, as determined annually by the United
 4-5 States Department of Housing and Urban Development.

4-6 (c) Housing developed under this chapter may consist of one
 4-7 to four residential units. At least one unit of any structure with
 4-8 two to four units must be owned and occupied as a primary residence
 4-9 by a low income household. The remaining units may be rental units
 4-10 if each tenant household meets the income eligibility requirements
 4-11 of a low income household.

4-12 Sec. 379D.011. RIGHT OF FIRST REFUSAL IN ADJACENT PROPERTY
 4-13 OWNERS. Property acquired by the land bank shall be offered for
 4-14 sale to adjacent property owners under a right of first refusal on
 4-15 terms and conditions developed by the land bank that are consistent
 4-16 with this chapter.

4-17 Sec. 379D.012. RIGHT OF SECOND REFUSAL IN QUALIFIED
 4-18 ORGANIZATIONS. (a) In this section, "qualified organization"
 4-19 means a community housing development organization that:

4-20 (1) contains within its designated geographical
 4-21 boundaries of operation, as set forth in its application for
 4-22 certification filed with and approved by the municipality, a
 4-23 portion of the property that the land bank is offering for sale;

4-24 (2) has built at least three single-family homes or
 4-25 duplexes or one multifamily residential dwelling of four or more
 4-26 units in compliance with all applicable building codes within the
 4-27 preceding two-year period and within the organization's designated
 4-28 geographical boundaries of operation; and

4-29 (3) within the preceding two-year period has built or
 4-30 rehabilitated housing units within a one-half mile radius of the
 4-31 property that the land bank is offering for sale.

4-32 (b) If all adjacent property owners fail to exercise the
 4-33 right of first refusal under Section 379D.011, the land bank shall
 4-34 offer a property for sale to qualified organizations that are
 4-35 eligible to acquire additional properties from the land bank under
 4-36 Section 379D.009(c). If a qualified organization is not eligible
 4-37 to acquire additional properties under that subsection at the time
 4-38 the property first becomes available for sale, the land bank is not
 4-39 required to hold the property from sale until the organization
 4-40 becomes eligible to purchase the property by the right of second
 4-41 refusal described by this section.

4-42 (c) Notice must be provided to the qualified organizations
 4-43 by certified mail, return receipt requested, not later than the
 4-44 60th day before the beginning of the period in which the right of
 4-45 second refusal may be exercised.

4-46 (d) The municipality shall specify in its plan the period
 4-47 during which the right of second refusal provided by this section
 4-48 may be exercised by a qualified organization. That period must be
 4-49 at least 90 days in duration and begin after the period in which the
 4-50 right of first refusal described by Section 379D.011 may be
 4-51 exercised and at least three months but not more than 26 months from
 4-52 the date of the deed of conveyance of the property to the land bank.

4-53 (e) During the period specified for the right of second
 4-54 refusal under Subsection (d), the land bank may not sell the
 4-55 property to a qualified participating developer other than a
 4-56 qualified organization. If all qualified organizations notify the
 4-57 land bank that they are declining to exercise their right of second
 4-58 refusal during the specified period, or if an offer to purchase the
 4-59 property is not received from a qualified organization during that
 4-60 period, the land bank may sell the property to any other qualified
 4-61 participating developer at the same price that the land bank
 4-62 offered the property to the qualified organizations.

4-63 (f) In its plan, the municipality shall establish the amount
 4-64 of additional time, if any, that a property may be held in the land
 4-65 bank once an offer has been received and accepted from a qualified
 4-66 organization or other qualified participating developer.

4-67 (g) If more than one qualified organization expresses an
 4-68 interest in exercising its right of second refusal, the
 4-69 organization that has designated the most geographically compact

5-1 area encompassing a portion of the property shall be given
 5-2 priority.

5-3 (h) In its plan, the municipality may provide for other
 5-4 rights of second refusal for any other nonprofit corporation
 5-5 exempted from federal income tax under Section 501(c)(3), Internal
 5-6 Revenue Code of 1986, provided that the preeminent right of second
 5-7 refusal is provided to qualified organizations as provided by this
 5-8 section.

5-9 (i) The land bank is not required to provide a right of
 5-10 second refusal to qualified organizations under this section if the
 5-11 land bank is selling property that reverted to the land bank under
 5-12 Section 379D.009(d).

5-13 Sec. 379D.013. OPEN RECORDS AND MEETINGS. The land bank
 5-14 shall comply with the requirements of Chapters 551 and 552,
 5-15 Government Code.

5-16 Sec. 379D.014. RECORDS; AUDIT; REPORT. (a) The land bank
 5-17 shall keep accurate minutes of its meetings and shall keep accurate
 5-18 records and books of account that conform with generally accepted
 5-19 principles of accounting and that clearly reflect the income and
 5-20 expenses of the land bank and all transactions in relation to its
 5-21 property.

5-22 (b) The land bank shall file with the municipality not later
 5-23 than the 90th day after the close of the fiscal year annual audited
 5-24 financial statements prepared by a certified public accountant.
 5-25 The financial transactions of the land bank are subject to audit by
 5-26 the municipality.

5-27 (c) For purposes of evaluating the effectiveness of the
 5-28 program, the land bank shall submit an annual performance report to
 5-29 the municipality not later than November 1 of each year in which the
 5-30 land bank acquires or sells property under this chapter. The
 5-31 performance report must include:

5-32 (1) a complete and detailed written accounting of all
 5-33 money and properties received and disbursed by the land bank during
 5-34 the preceding fiscal year;

5-35 (2) for each property acquired by the land bank during
 5-36 the preceding fiscal year:

5-37 (A) the street address of the property;
 5-38 (B) the legal description of the property;
 5-39 (C) the date the land bank took title to the
 5-40 property;

5-41 (D) the name and address of the property owner of
 5-42 record at the time of the foreclosure;

5-43 (E) the amount of taxes and other costs owed at
 5-44 the time of the foreclosure; and

5-45 (F) the assessed value of the property on the tax
 5-46 roll at the time of the foreclosure;

5-47 (3) for each property sold by the land bank during the
 5-48 preceding fiscal year to a qualified participating developer:

5-49 (A) the street address of the property;

5-50 (B) the legal description of the property;

5-51 (C) the name and mailing address of the
 5-52 developer;

5-53 (D) the purchase price paid by the developer;

5-54 (E) the maximum incomes allowed for the
 5-55 households by the terms of the sale; and

5-56 (F) the source and amount of any public subsidy
 5-57 provided by the municipality to facilitate the sale or rental of the
 5-58 property to a household within the targeted income levels;

5-59 (4) for each property sold by a qualified
 5-60 participating developer during the preceding fiscal year, the
 5-61 buyer's household income and a description of all use and sale
 5-62 restrictions; and

5-63 (5) for each property developed for rental housing
 5-64 with an active deed restriction, a copy of the most recent annual
 5-65 report filed by the owner with the land bank.

5-66 (d) The land bank shall maintain in its records for
 5-67 inspection a copy of the sale settlement statement for each
 5-68 property sold by a qualified participating developer and a copy of
 5-69 the first page of the mortgage note with the interest rate and

6-1 indicating the volume and page number of the instrument as filed
6-2 with the county clerk.

6-3 (e) The land bank shall provide copies of the performance
6-4 report to the taxing units who were parties to the judgment of
6-5 foreclosure and shall provide notice of the availability of the
6-6 performance report for review to the organizations and neighborhood
6-7 associations identified by the municipality as serving the
6-8 neighborhoods in which properties sold to the land bank under this
6-9 chapter are located.

6-10 (f) The land bank and the municipality shall maintain copies
6-11 of the performance report available for public review.

6-12 SECTION 2. This Act takes effect September 1, 2005.

6-13 * * * * *