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S.B. No. 986

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 379E to read as follows:

CHAPTER 379E. URBAN LAND BANK PROGRAM

Sec. 379E.001. SHORT TITLE. This chapter may be cited as the Urban Land Bank Program Act.

Sec. 379E.002. APPLICABILITY; CONSTRUCTION WITH OTHER LAW. This chapter applies only to a municipality:

(1) to which Chapter 379C or 379D does not apply; and

(2) that has not ever adopted a homestead land bank program under Subchapter E, Chapter 373A.

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

(1) "Affordable" means that the monthly mortgage payment or contract rent does not exceed 30 percent of the applicable median family income for that unit size, in accordance with the income and rent limit rules adopted by the Texas Department of Housing and Community Affairs.

(2) "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

1 community housing development organization.

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

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

12 (5) "Qualified participating developer" means a  
13 developer who meets the requirements of Section 379E.005 and  
14 includes a qualified organization under Section 379E.011.

15 (6) "Urban land bank plan" or "plan" means a plan  
16 adopted by the governing body of a municipality as provided by  
17 Section 379E.006.

18 (7) "Urban land bank program" or "program" means a  
19 program adopted under Section 379E.004.

20 Sec. 379E.004. URBAN LAND BANK PROGRAM. (a) The  
21 governing body of a municipality may adopt an urban land bank  
22 program in which the officer charged with selling real property  
23 ordered sold pursuant to foreclosure of a tax lien may sell certain  
24 eligible real property by private sale for purposes of affordable  
25 housing development as provided by this chapter.

26 (b) The governing body of a municipality that adopts an  
27 urban land bank program shall establish or approve a land bank for

1 the purpose of acquiring, holding, and transferring unimproved real  
2 property under this chapter.

3 Sec. 379E.005. QUALIFIED PARTICIPATING DEVELOPER. To  
4 qualify to participate in an urban land bank program, a developer  
5 must:

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

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

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

13 Sec. 379E.006. URBAN LAND BANK PLAN. (a) A municipality  
14 that adopts an urban land bank program shall operate the program in  
15 conformance with an urban land bank plan.

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

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

24 (d) The plan must include the following:

25 (1) a list of community housing development  
26 organizations eligible to participate in the right of first refusal  
27 provided by Section 379E.011;

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

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

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

11           Sec. 379E.007. PUBLIC HEARING ON PROPOSED  
12 PLAN. (a) Before adopting a plan, a municipality shall hold a  
13 public hearing on the proposed plan.

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

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

23           Sec. 379E.008. PRIVATE SALE TO LAND  
24 BANK. (a) Notwithstanding any other law and except as provided by  
25 Subsection (f), property that is ordered sold pursuant to  
26 foreclosure of a tax lien may be sold in a private sale to a land  
27 bank by the officer charged with the sale of the property without

1 first offering the property for sale as otherwise provided by  
2 Section 34.01, Tax Code, if:

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

8 (2) the property is not improved with a building or  
9 buildings;

10 (3) there are delinquent taxes on the property for a  
11 total of at least five years; and

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

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

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

24 (d) For any sale of property under this chapter, each person  
25 who was a defendant to the judgment, or that person's attorney,  
26 shall be given, not later than the 90th day before the date of sale,  
27 written notice of the proposed method of sale of the property by the

1 officer charged with the sale of the property. Notice must be given  
2 in the manner prescribed by Rule 21a, Texas Rules of Civil  
3 Procedure.

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

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

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

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

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

27 Sec. 379E.009. SUBSEQUENT RESALE BY LAND BANK. (a) Each

1 subsequent resale of property acquired by a land bank under this  
2 chapter must comply with the conditions of this section.

3 (b) Within the three-year period following the date of  
4 acquisition, the land bank must sell a property to a qualified  
5 participating developer for the purpose of construction of  
6 affordable housing for sale or rent to low income households. If  
7 after three years a qualified participating developer has not  
8 purchased the property, the property shall be transferred from the  
9 land bank to the taxing units who were parties to the judgment for  
10 disposition as otherwise allowed under the law.

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

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

27 Sec. 379E.010. RESTRICTIONS ON OCCUPANCY AND USE OF

1 PROPERTY. (a) The land bank shall impose deed restrictions on  
2 property sold to qualified participating developers requiring the  
3 development and sale or rental of the property to low income  
4 households.

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

12 (c) If property is developed for rental housing, the deed  
13 restrictions must be for a period of not less than 20 years and must  
14 require that:

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

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

27 (3) 20 percent of the units be occupied by and



1 affordable to households with incomes not greater than 30 percent  
2 of area median family income, based on gross household income,  
3 adjusted for household size, for the metropolitan statistical area  
4 in which the municipality is located, as determined annually by the  
5 United States Department of Housing and Urban Development.

6 (d) The deed restrictions under Subsection (c) must require  
7 the owner to file an annual occupancy report with the municipality  
8 on a reporting form provided by the municipality. The deed  
9 restrictions must also prohibit any exclusion of an individual or  
10 family from admission to the development based solely on the  
11 participation of the individual or family in the housing choice  
12 voucher program under Section 8, United States Housing Act of 1937  
13 (42 U.S.C. Section 1437f), as amended.

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

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

23 Sec. 379E.011. RIGHT OF FIRST REFUSAL. (a) In this  
24 section, "qualified organization" means a community housing  
25 development organization that:

26 (1) contains within its designated geographical  
27 boundaries of operation, as set forth in its application for

1 certification filed with and approved by the municipality, a  
2 portion of the property that the land bank is offering for sale;

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

8 (3) within the preceding three-year period has  
9 developed or rehabilitated housing units within a two-mile radius  
10 of the property that the land bank is offering for sale.

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

13 (c) Notice must be provided to the qualified organizations  
14 by certified mail, return receipt requested, not later than the  
15 60th day before the beginning of the period in which a right of  
16 first refusal may be exercised.

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

22 (e) If the land bank conveys the property to a qualified  
23 organization before the expiration of the period specified by the  
24 municipality under Subsection (d), the interlocal agreement  
25 executed under Section 379E.008(a)(4) must provide tax abatement  
26 for the property until the expiration of that period.

27 (f) During the specified period, the land bank may not sell

1 the property to a qualified participating developer other than a  
2 qualified organization. If all qualified organizations notify the  
3 land bank that they are declining to exercise their right of first  
4 refusal during the specified period, or if an offer to purchase the  
5 property is not received from a qualified organization during that  
6 period, the land bank may sell the property to any other qualified  
7 participating developer at the same price that the land bank  
8 offered the property to the qualified organizations.

9 (g) In its plan, the municipality shall establish the amount  
10 of additional time, if any, that a property may be held in the land  
11 bank once an offer has been received and accepted from a qualified  
12 organization or other qualified participating developer.

13 (h) If more than one qualified organization expresses an  
14 interest in exercising its right of first refusal, the organization  
15 that has designated the most geographically compact area  
16 encompassing a portion of the property shall be given priority.

17 (i) In its plan, the municipality may provide for other  
18 rights of first refusal for any other nonprofit corporation  
19 exempted from federal income tax under Section 501(c)(3), Internal  
20 Revenue Code of 1986, as amended, provided that the preeminent  
21 right of first refusal is provided to qualified organizations as  
22 provided by this section.

23 (j) The land bank is not required to provide a right of first  
24 refusal to qualified organizations under this section if the land  
25 bank is selling property that reverted to the land bank under  
26 Section 379E.009(d).

27 Sec. 379E.012. OPEN RECORDS AND MEETINGS. The land bank

1 shall comply with the requirements of Chapters 551 and 552,  
2 Government Code.

3 Sec. 379E.013. RECORDS; AUDIT; REPORT. (a) The land bank  
4 shall keep accurate minutes of its meetings and shall keep accurate  
5 records and books of account that conform with generally accepted  
6 principles of accounting and that clearly reflect the income and  
7 expenses of the land bank and all transactions in relation to its  
8 property.

9 (b) The land bank shall file with the municipality not later  
10 than the 90th day after the close of the fiscal year annual audited  
11 financial statements prepared by a certified public accountant.  
12 The financial transactions of the land bank are subject to audit by  
13 the municipality.

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

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

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

24 (A) the street address of the property;

25 (B) the legal description of the property;

26 (C) the date the land bank took title to the  
27 property;

1           (D) the name and address of the property owner of  
2 record at the time of the foreclosure;

3           (E) the amount of taxes and other costs owed at  
4 the time of the foreclosure; and

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

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

9           (A) the street address of the property;

10          (B) the legal description of the property;

11          (C) the name and mailing address of the  
12 developer;

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

14          (E) the maximum incomes allowed for the  
15 households by the terms of the sale; and

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

19          (4) for each property sold by a qualified  
20 participating developer during the preceding fiscal year, the  
21 buyer's household income and a description of all use and sale  
22 restrictions; and

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

26          (d) The land bank shall maintain in its records for  
27 inspection a copy of the sale settlement statement for each

1 property sold by a qualified participating developer and a copy of  
2 the first page of the mortgage note with the interest rate and  
3 indicating the volume and page number of the instrument as filed  
4 with the county clerk.

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

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

14 SECTION 2. Section 11.18, Tax Code, is amended by amending  
15 Subsection (d) and adding Subsection (o) to read as follows:

16 (d) A charitable organization must be organized exclusively  
17 to perform religious, charitable, scientific, literary, or  
18 educational purposes and, except as permitted by Subsections (h)  
19 and (l), engage exclusively in performing one or more of the  
20 following charitable functions:

21 (1) providing medical care without regard to the  
22 beneficiaries' ability to pay, which in the case of a nonprofit  
23 hospital or hospital system means providing charity care and  
24 community benefits in accordance with Section 11.1801;

25 (2) providing support or relief to orphans,  
26 delinquent, dependent, or handicapped children in need of  
27 residential care, abused or battered spouses or children in need of

1 temporary shelter, the impoverished, or victims of natural disaster  
2 without regard to the beneficiaries' ability to pay;

3 (3) providing support to elderly persons, including  
4 the provision of recreational or social activities and facilities  
5 designed to address the special needs of elderly persons, or to the  
6 handicapped, without regard to the beneficiaries' ability to pay;

7 (4) preserving a historical landmark or site;

8 (5) promoting or operating a museum, zoo, library,  
9 theater of the dramatic or performing arts, or symphony orchestra  
10 or choir;

11 (6) promoting or providing humane treatment of  
12 animals;

13 (7) acquiring, storing, transporting, selling, or  
14 distributing water for public use;

15 (8) answering fire alarms and extinguishing fires with  
16 no compensation or only nominal compensation to the members of the  
17 organization;

18 (9) promoting the athletic development of boys or  
19 girls under the age of 18 years;

20 (10) preserving or conserving wildlife;

21 (11) promoting educational development through loans  
22 or scholarships to students;

23 (12) providing halfway house services pursuant to a  
24 certification as a halfway house by the pardons and paroles  
25 division of the Texas Department of Criminal Justice;

26 (13) providing permanent housing and related social,  
27 health care, and educational facilities for persons who are 62

1 years of age or older without regard to the residents' ability to  
2 pay;

3 (14) promoting or operating an art gallery, museum, or  
4 collection, in a permanent location or on tour, that is open to the  
5 public;

6 (15) providing for the organized solicitation and  
7 collection for distributions through gifts, grants, and agreements  
8 to nonprofit charitable, education, religious, and youth  
9 organizations that provide direct human, health, and welfare  
10 services;

11 (16) performing biomedical or scientific research or  
12 biomedical or scientific education for the benefit of the public;

13 (17) operating a television station that produces or  
14 broadcasts educational, cultural, or other public interest  
15 programming and that receives grants from the Corporation for  
16 Public Broadcasting under 47 U.S.C. Section 396, as amended;

17 (18) providing housing for low-income and  
18 moderate-income families, for unmarried individuals 62 years of age  
19 or older, for handicapped individuals, and for families displaced  
20 by urban renewal, through the use of trust assets that are  
21 irrevocably and, pursuant to a contract entered into before  
22 December 31, 1972, contractually dedicated on the sale or  
23 disposition of the housing to a charitable organization that  
24 performs charitable functions described by Subdivision (9);

25 (19) providing housing and related services to persons  
26 who are 62 years of age or older in a retirement community, if the  
27 retirement community provides independent living services,



1 assisted living services, and nursing services to its residents on  
2 a single campus:

3 (A) without regard to the residents' ability to  
4 pay; or

5 (B) in which at least four percent of the  
6 retirement community's combined net resident revenue is provided in  
7 charitable care to its residents; ~~or~~

8 (20) providing housing on a cooperative basis to  
9 students of an institution of higher education if:

10 (A) the organization is exempt from federal  
11 income taxation under Section 501(a), Internal Revenue Code of  
12 1986, as amended, by being listed as an exempt entity under Section  
13 501(c)(3) of that code;

14 (B) membership in the organization is open to all  
15 students enrolled in the institution and is not limited to those  
16 chosen by current members of the organization;

17 (C) the organization is governed by its members;  
18 and

19 (D) the members of the organization share the  
20 responsibility for managing the housing; or

21 (21) acquiring, holding, and transferring unimproved  
22 real property under an urban land bank program established under  
23 Chapter 379E, Local Government Code, as or on behalf of a land bank.

24 (o) For purposes of Subsection (a)(2), real property  
25 acquired, held, and transferred by an organization that performs  
26 the function described by Subsection (d)(21) is considered to be  
27 used exclusively by the qualified charitable organization to

1 perform that function.

2 SECTION 3. Section 11.18, Tax Code, as amended by this Act,  
3 applies only to an ad valorem tax year that begins on or after the  
4 effective date of this Act.

5 SECTION 4. This Act takes effect September 1, 2007.