By:  Lucio S.B. No. 1115

(In the Senate - Filed February 26, 2019; March 7, 2019, read first time and referred to Committee on Intergovernmental Relations; April 15, 2019, reported adversely, with favorable Committee Substitute by the following vote: Yeas 6, Nays 1; April 15, 2019, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Lucio                X

Schwertner               X

Alvarado             X

Campbell             X

Fallon               X

Menéndez             X

Nichols              X

COMMITTEE SUBSTITUTE FOR S.B. No. 1115 By:  Lucio

A BILL TO BE ENTITLED

AN ACT

relating to the authority of a county to adopt a land bank program.

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

SECTION 1.  Subtitle B, Title 12, Local Government Code, is amended by adding Chapter 388 to read as follows:

CHAPTER 388. LAND BANK PROGRAM

Sec. 388.001.  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 county as a community housing development organization.

(3)  "Land bank" means an entity established or approved by the governing body of a county to exercise the powers of acquiring, holding, developing, and transferring real property under this chapter.

(4)  "Land bank plan" or "plan" means a plan adopted by the governing body of a county as provided by Section 388.004.

(5)  "Land bank program" or "program" means a program adopted under Section 388.002.

(6)  "Low income household" means a household with an income of not greater than 80 percent of the area median family income, based on gross household income, adjusted for household size, for the county, as determined annually by the United States Department of Housing and Urban Development.

(7)  "Moderate income household" means a household that:

(A)  requires assistance in securing sanitary, decent, and safe housing, considering:

(i)  the amount of the total income available for housing needs of the individuals or families who are members of the household;

(ii)  the size of the household;

(iii)  the cost and condition of available housing facilities;

(iv)  the ability of the individuals or families who are members of the household to compete successfully in the private housing market and to pay the amounts required by that market for sanitary, decent, and safe housing; and

(v)  standards that are established for the purpose of federal programs and that use income to determine eligibility for the programs; and

(B)  does not qualify as a low income household.

(8)  "Qualified participating developer" means a developer who meets the requirements of Section 388.003 and includes a qualified organization under Section 388.009.

Sec. 388.002.  LAND BANK PROGRAM. (a)  The governing body of a county may adopt a 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 as provided by this chapter.

(b)  The governing body of a county that adopts a land bank program shall establish or approve a land bank to exercise the powers of acquiring, holding, developing, and transferring real property under this chapter.

Sec. 388.003.  QUALIFIED PARTICIPATING DEVELOPER. To qualify to participate in a land bank program, a developer other than the land bank must:

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

(2)  have a development plan approved for the land bank property by the land bank or the county; and

(3)  meet any other requirements adopted by the county in the land bank plan.

Sec. 388.004.   LAND BANK PLAN. (a)  A county that adopts a land bank program shall operate the program in conformance with a land bank plan.

(b)  The governing body of a county that adopts a land bank program shall adopt a plan annually. The plan may be amended from time to time.

(c)  In developing the plan, the county shall consider any other housing plans adopted by the county, including any fair housing plans and policies adopted or agreed to by the county.

(d)  The plan must include the following:

(1)  a list of community housing development organizations eligible to participate in the right of first refusal provided by Section 388.009;

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

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

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

Sec. 388.005.  PUBLIC HEARING ON PROPOSED PLAN. (a)  Before adopting a plan, a county shall hold a public hearing on the proposed plan.

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

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

Sec. 388.006.  PRIVATE SALE TO LAND BANK. (a)  Notwithstanding any other law and except as provided by Subsection (f), property that is ordered sold pursuant to foreclosure of a tax lien may 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, Tax Code, if:

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

(2)  the property is not improved with a habitable building or buildings or an uninhabitable building or buildings that are occupied as a residence by an owner or tenant who is legally entitled to occupy the building or buildings;

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

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

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

(c)  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 purposes of the sale of the property under Section 33.50, Tax Code.

(d)  For any sale of property under this chapter, each person who was a defendant to the judgment, or that person's attorney, shall be given, not later than the 90th 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. Notice shall be given in the manner prescribed by Rule 21a, Texas Rules of Civil Procedure.

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

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

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

(h)  Notwithstanding any other law, if consent is given by the taxing units that are a party to the judgment, property may 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.

(i)  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 acquired or held by each taxing unit that was a party to the judgment, subject to the right of redemption.

Sec. 388.007.  SUBSEQUENT RESALE OR DEVELOPMENT BY LAND BANK. (a)  Within the five-year period following the date of acquisition of a property by a land bank, the land bank must:

(1)  sell the property to a qualified participating developer for the purpose of construction or rehabilitation of affordable housing for sale or rent to low or moderate income households; or

(2)  develop the property for the purposes described by Subdivision (1).

(b)  If after five years a qualified participating developer has not purchased the property or the land bank has not developed the property, the property shall be transferred from the land bank to the taxing units who were parties to the judgment for disposition as otherwise allowed under the law.

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

(d)  The deed conveying a property sold by the land bank must 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 three-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 development by the land bank, subsequent resale to another qualifying participating developer, or conveyance to the taxing units who were parties to the judgment for disposition as otherwise allowed under the law.

(e)  Each subsequent resale that a land bank makes to a qualified participating developer with respect to a property acquired by the land bank under this chapter must comply with the conditions of this section.

Sec. 388.008.  RESTRICTIONS ON OCCUPANCY AND USE OF PROPERTY. (a)  The land bank shall impose deed restrictions on property developed by the land bank or sold to qualified participating developers requiring the development and subsequent sale or rental of the property to low or moderate income households.

(b)  For land bank properties developed by the land bank for sale, and for land bank properties sold to a qualifying participating developer for development for sale, in any given fiscal year:

(1)  at least 45 percent of the properties must be deed restricted for sale to households with a household income of not more than 80 percent of the area median family income, based on gross household income and adjusted for household size, for the county in which the properties are located;

(2)  at least 25 percent of the properties must be deed restricted for sale to households with a household income of not more than 60 percent of the area median family income, based on gross household income and adjusted for household size, for the county in which the properties are located; and

(3)  the remaining properties must be deed restricted for sale to households with a household income of not more than 120 percent of the area median family income, based on gross household income and adjusted for household size, for the county in which the properties are located.

(c)  If property is developed and used for rental housing, the deed restrictions must be for a period of not less than 30 years and must require that 100 percent of the units are occupied by and affordable to households with incomes not greater than 80 percent of area median family income, based on gross household income, adjusted for household size, for the county, as determined annually by the United States Department of Housing and Urban Development, and must also require that, of those units:

(1)  at least 40 percent are occupied by and affordable to households with incomes not greater than 60 percent of area median family income, based on gross household income, adjusted for household size, for the county, as determined annually by the United States Department of Housing and Urban Development; and

(2)  at least 20 percent are occupied by and affordable to households with incomes not greater than 50 percent of area median family income, based on gross household income, adjusted for household size, for the county, as determined annually by the United States Department of Housing and Urban Development.

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

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

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

Sec. 388.009.  RIGHT OF FIRST REFUSAL. (a)  In this section, "qualified organization" means a community housing development organization that:

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

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

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

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

(c)  Notice must 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 a right of first refusal may be exercised.

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

(e)  If the land bank conveys the property to a qualified organization before the expiration of the period specified by the county under Subsection (d), the interlocal agreement executed under Section 388.006(a)(4) must provide tax abatement for the property until the expiration of that period.

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

(g)  In its plan, the county shall 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.

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

(i)  In its plan, the county may provide for other rights of first 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 first refusal is provided to qualified organizations as provided by this section.

(j)  The land bank is not required to provide a right of first refusal to qualified organizations under this section if the land bank is selling property that reverted to the land bank under Section 388.007(d).

Sec. 388.010.  OPEN RECORDS AND MEETINGS. The land bank shall comply with the requirements of Chapters 551 and 552, Government Code.

Sec. 388.011.  RECORDS; AUDIT; REPORT. (a)  The land bank shall keep accurate minutes of its meetings and shall 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)  The land bank shall file with the county not later than the 90th day after the close of the fiscal year annual audited financial statements prepared by a certified public accountant. The financial transactions of the land bank are subject to audit by the county.

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

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

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

(A)  the street address of the property;

(B)  the legal description of the property;

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

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

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

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

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

(A)  the street address of the property;

(B)  the legal description of the property;

(C)  the name and mailing address of the purchaser;

(D)  the price paid by the purchaser;

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

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

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

(5)  for each property developed for rental housing with an active deed restriction, a copy of the most recent annual report for the property.

(d)  The land bank shall maintain in its records for inspection a copy of the sale settlement statement for each property sold by the land bank or 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)  The land bank shall provide copies of the performance report to the taxing units who were parties to the judgment of foreclosure and shall provide notice of the availability of the performance report for review to the organizations and neighborhood associations identified by the county as serving the neighborhoods in which properties sold to the land bank under this chapter are located.

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

SECTION 2.  Sections 11.18(d) and (o), Tax Code, are amended to read as follows:

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

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

(2)  providing support or relief to orphans, delinquent, dependent, or handicapped children in need of residential care, abused or battered spouses or children in need of temporary shelter, the impoverished, or victims of natural disaster without regard to the beneficiaries' ability to pay;

(3)  providing support without regard to the beneficiaries' ability to pay to:

(A)  elderly persons, including the provision of:

(i)  recreational or social activities; and

(ii)  facilities designed to address the special needs of elderly persons; or

(B)  the handicapped, including training and employment:

(i)  in the production of commodities; or

(ii)  in the provision of services under 41 U.S.C. Sections 8501-8506;

(4)  preserving a historical landmark or site;

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

(6)  promoting or providing humane treatment of animals;

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

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

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

(10)  preserving or conserving wildlife;

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

(12)  providing halfway house services pursuant to a certification as a halfway house by the parole division of the Texas Department of Criminal Justice;

(13)  providing permanent housing and related social, health care, and educational facilities for persons who are 62 years of age or older without regard to the residents' ability to pay;

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

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

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

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

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

(19)  providing housing and related services to persons who are 62 years of age or older in a retirement community, if the retirement community provides independent living services, assisted living services, and nursing services to its residents on a single campus:

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

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

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

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

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

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

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

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

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

(22-a)  acquiring, holding, developing, and transferring real property under a land bank program established under Chapter 388, Local Government Code, as or on behalf of a land bank;

(23)  providing housing and related services to individuals who:

(A)  are unaccompanied and homeless and have a disabling condition; and

(B)  have been continuously homeless for a year or more or have had at least four episodes of homelessness in the preceding three years;

(24)  operating a radio station that broadcasts educational, cultural, or other public interest programming, including classical music, and that in the preceding five years has received or been selected to receive one or more grants from the Corporation for Public Broadcasting under 47 U.S.C. Section 396, as amended; or

(25)  providing, without regard to the beneficiaries' ability to pay, tax return preparation services and assistance with other financial matters.

(o)  For purposes of Subsection (a)(2), real property acquired, held, and transferred by an organization that performs the function described by Subsection (d)(21), [~~or~~] (22), or (22-a) is considered to be used exclusively by the qualified charitable organization to perform that function.

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

SECTION 4.  This Act takes effect September 1, 2019.

\* \* \* \* \*