

By: Hernandez

H.B. No. 834

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 for the purpose of acquiring, holding, and transferring unimproved 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.

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

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

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

11           Sec. 388.002. LAND BANK PROGRAM. (a) The governing body of  
12 a county may adopt a land bank program in which the officer charged  
13 with selling real property ordered sold pursuant to foreclosure of  
14 a tax lien may sell certain eligible real property by private sale  
15 for purposes of affordable housing development as provided by this  
16 chapter.

17           (b) The governing body of a county that adopts a land bank  
18 program shall establish or approve a land bank for the purpose of  
19 acquiring, holding, and transferring unimproved real property  
20 under this chapter.

21           (c) A land bank program established under this chapter may  
22 not operate in a municipality that has adopted an urban land bank  
23 program under Chapter 373A, 379C, 379D, or 379E.

24           Sec. 388.003. QUALIFIED PARTICIPATING DEVELOPER. To  
25 qualify to participate in a land bank program, a developer must:

26           (1) have developed three or more housing units within  
27 the three-year period preceding the submission of a proposal to the

- 1 land bank seeking to acquire real property from the land bank;  
2 (2) have a development plan approved by the county for  
3 the land bank property; and  
4 (3) meet any other requirements adopted by the county  
5 in the land bank plan.

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

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

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

15 (d) The plan must include the following:

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

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

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

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

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

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

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

13       Sec. 388.006. PRIVATE SALE TO LAND BANK. (a)  
14 Notwithstanding any other law and except as provided by Subsection  
15 (f), property that is ordered sold pursuant to foreclosure of a tax  
16 lien may be sold in a private sale to a land bank by the officer  
17 charged with the sale of the property without first offering the  
18 property for sale as otherwise provided by Section 34.01, Tax Code,  
19 if:

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

25               (2) the property is not improved with a building or  
26 buildings;

27               (3) there are delinquent taxes on the property for a

1 total of at least five years; and

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

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

9 (c) If the person being sued in a suit for foreclosure of a  
10 tax lien does not contest the market value of the property in the  
11 suit, the person waives the right to challenge the amount of the  
12 market value determined by the court for purposes of the sale of the  
13 property under Section 33.50, Tax Code.

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

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

26 (f) If the officer charged with the sale receives a written  
27 request as provided by Subsection (e), the officer shall sell the

1 property as otherwise provided in Section 34.01, Tax Code.

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

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

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

17 Sec. 388.007. SUBSEQUENT RESALE BY LAND BANK. (a) Each  
18 subsequent resale by a land bank of property acquired by the land  
19 bank under this chapter must comply with the conditions of this  
20 section.

21 (b) Within the three-year period following the date of  
22 acquisition, the land bank must sell a property to a qualified  
23 participating developer for the purpose of construction of  
24 affordable housing for sale or rent to low income households.

25 (c) If after three years a qualified participating  
26 developer has not purchased the property, the property shall be  
27 transferred from the land bank to the taxing units who were parties

1 to the judgment for disposition as otherwise allowed under the law.

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

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

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

23 (b) At least 25 percent of the land bank properties sold  
24 during any given fiscal year to be developed for sale shall be deed  
25 restricted for sale to households with incomes not greater than 60  
26 percent of the area median family income, based on gross household  
27 income, adjusted for household size, for the county, as determined

1 annually by the United States Department of Housing and Urban  
2 Development.

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

6 (1) 100 percent of the rental units be occupied by and  
7 affordable to households with incomes not greater than 60 percent  
8 of area median family income, based on gross household income,  
9 adjusted for household size, for the county, as determined annually  
10 by the United States Department of Housing and Urban Development;

11 (2) 40 percent of the units be occupied by and  
12 affordable to households with incomes not greater than 50 percent  
13 of area median family income, based on gross household income,  
14 adjusted for household size, for the county, as determined annually  
15 by the United States Department of Housing and Urban Development;  
16 or

17 (3) 20 percent of the units be occupied by and  
18 affordable to households with incomes not greater than 30 percent  
19 of area median family income, based on gross household income,  
20 adjusted for household size, for the county, as determined annually  
21 by the United States Department of Housing and Urban Development.

22 (d) The deed restrictions under Subsection (c) must require  
23 the owner to file an annual occupancy report with the county on a  
24 reporting form provided by the county. The deed restrictions must  
25 also prohibit any exclusion of an individual or family from  
26 admission to the development based solely on the participation of  
27 the individual or family in the housing choice voucher program



1 under Section 8, United States Housing Act of 1937 (42 U.S.C.  
2 Section 1437f).

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

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

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

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

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

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

27 (b) The land bank shall first offer a property for sale to

1 qualified organizations.

2 (c) Notice must be provided to the qualified organizations  
3 by certified mail, return receipt requested, not later than the  
4 60th day before the beginning of the period in which a right of  
5 first refusal may be exercised.

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

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

16 (f) 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 (g) In its plan, the county shall establish the amount of  
26 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 (h) 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 (i) In its plan, the county may provide for other rights of  
7 first refusal for any other nonprofit corporation exempted from  
8 federal income tax under Section 501(c)(3), Internal Revenue Code  
9 of 1986, provided that the preeminent right of first refusal is  
10 provided to qualified organizations as provided by this section.

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

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

18 Sec. 388.011. RECORDS; AUDIT; REPORT. (a) The land bank  
19 shall keep accurate minutes of its meetings and shall keep accurate  
20 records and books of account that conform with generally accepted  
21 principles of accounting and that clearly reflect the income and  
22 expenses of the land bank and all transactions in relation to its  
23 property.

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

1 the county.

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

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

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

12 (A) the street address of the property;

13 (B) the legal description of the property;

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

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

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

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

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

24 (A) the street address of the property;

25 (B) the legal description of the property;

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

1           (D) the price paid by the purchaser;

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

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

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

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

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

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

27           (f) The land bank and the county shall maintain copies of

1 the performance report available for public review.

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

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

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

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

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

20 (A) elderly persons, including the provision of:  
21 (i) recreational or social activities; and  
22 (ii) facilities designed to address the  
23 special needs of elderly persons; or

24 (B) the handicapped, including training and  
25 employment:

26 (i) in the production of commodities; or  
27 (ii) in the provision of services under 41

1 U.S.C. Sections 8501-8506;

2 (4) preserving a historical landmark or site;

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

6 (6) promoting or providing humane treatment of  
7 animals;

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

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

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

15 (10) preserving or conserving wildlife;

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

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

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

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

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

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

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

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

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

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

27                   (B) in which at least four percent of the



1 retirement community's combined net resident revenue is provided in  
2 charitable care to its residents;

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

5 (A) the organization is exempt from federal  
6 income taxation under Section 501(a), Internal Revenue Code of  
7 1986, as amended, by being listed as an exempt entity under Section  
8 501(c)(3) of that code;

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

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

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

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

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

23 (22-a) acquiring, holding, and transferring  
24 unimproved real property under a land bank program established  
25 under Chapter 388, Local Government Code, as or on behalf of a land  
26 bank;

27 (23) providing housing and related services to

1 individuals who:

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

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

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

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

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

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

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