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H.B. No. 2236

A BILL TO BE ENTITLED

AN ACT

relating to the authority of certain counties 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

1 the governing body of a county as provided by Section 388.004.

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

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

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

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

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

22 (c) A land bank program established under this chapter may
23 not operate in a municipality that operates a land bank as a local
24 government corporation under Subchapter D, Chapter 431,
25 Transportation Code, or that has adopted an urban land bank program
26 under any other provision of this code.

27 Sec. 388.003. QUALIFIED PARTICIPATING DEVELOPER. To

1 qualify to participate in a land bank program, a developer must:

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

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

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

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

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

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

18 (d) The plan must include the following:

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

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

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

26 (4) the sources and amounts of money anticipated to be
27 available from the county for subsidies for development of

1 affordable housing in the county, including any money specifically
2 available for housing developed under the program, as approved by
3 the governing body of the county at the time the plan is adopted.

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

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

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

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

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

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

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

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

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

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

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

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

1 by this chapter.

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

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

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

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

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

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

1 (c) If after three years a qualified participating
2 developer has not purchased the property, the property shall be
3 transferred from the land bank to the taxing units who were parties
4 to the judgment for disposition as otherwise allowed under the law.

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

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

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

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

1 restricted for sale to households with incomes not greater than 60
2 percent of the area median family income, based on gross household
3 income, adjusted for household size, for the county, as determined
4 annually by the United States Department of Housing and Urban
5 Development.

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

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

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

19 or

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

25 (d) The deed restrictions under Subsection (c) must require
26 the owner to file an annual occupancy report with the county on a
27 reporting form provided by the county. The deed restrictions must

1 also prohibit any exclusion of an individual or family from
2 admission to the development based solely on the participation of
3 the individual or family in the housing choice voucher program
4 under Section 8, United States Housing Act of 1937 (42 U.S.C.
5 Section 1437f).

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

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

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

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

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

27 (3) within the preceding three-year period has

1 developed or rehabilitated housing units within a two-mile radius
2 of the property that the land bank is offering for sale.

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

5 (c) Notice must be provided to the qualified organizations
6 by certified mail, return receipt requested, not later than the
7 60th day before the beginning of the period in which a right of
8 first refusal may be exercised.

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

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

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

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

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

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

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

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

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

27 (b) The land bank shall file with the county not later than

1 the 90th day after the close of the fiscal year annual audited
2 financial statements prepared by a certified public accountant.
3 The financial transactions of the land bank are subject to audit by
4 the county.

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

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

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

15 (A) the street address of the property;

16 (B) the legal description of the property;

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

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

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

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

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

27 (A) the street address of the property;

1 (B) the legal description of the property;
2 (C) the name and mailing address of the
3 purchaser;
4 (D) the price paid by the purchaser;
5 (E) the maximum incomes allowed for the
6 households by the terms of the sale; and
7 (F) the source and amount of any public subsidy
8 provided by the county to facilitate the sale or rental of the
9 property to a household within the targeted income levels;
10 (4) for each property sold by a qualified
11 participating developer during the preceding fiscal year, the
12 buyer's household income and a description of all use and sale
13 restrictions; and
14 (5) for each property developed for rental housing
15 with an active deed restriction, a copy of the most recent annual
16 report filed by the owner with the land bank.
17 (d) The land bank shall maintain in its records for
18 inspection a copy of the sale settlement statement for each
19 property sold by a qualified participating developer and a copy of
20 the first page of the mortgage note with the interest rate and
21 indicating the volume and page number of the instrument as filed
22 with the county clerk.
23 (e) The land bank shall provide copies of the performance
24 report to the taxing units who were parties to the judgment of
25 foreclosure and shall provide notice of the availability of the
26 performance report for review to the organizations and neighborhood
27 associations identified by the county as serving the neighborhoods

1 in which properties sold to the land bank under this chapter are
2 located.

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

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

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

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

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

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

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

27 (B) the handicapped, including training and

1 employment:

2 (i) in the production of commodities; or

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

5 (4) preserving a historical landmark or site;

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

9 (6) promoting or providing humane treatment of
10 animals;

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

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

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

18 (10) preserving or conserving wildlife;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (22-a) acquiring, holding, and transferring
27 unimproved real property under a land bank program established

1 under Chapter 388, Local Government Code, as or on behalf of a land
2 bank;

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

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

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

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

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

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

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

27 SECTION 4. This Act takes effect September 1, 2021.