

BILL ANALYSIS

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S.B. 1117
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

During the 85th Legislative Interim, the Senate Committee on Intergovernmental Relations (IGR) was charged with studying housing affordability and to evaluate the cost of purchasing a single-family residence. Among its findings, IGR reported that as the State of Texas continued to be amongst the leaders in the nation in economic prosperity and population growth, unfortunately the supply of housing has not kept up with the demand of the growing population. The strong housing demand and the lack of available housing supply resulted in a highly competitive housing market that considerably drives up housing prices and limits affordable housing options.

During its interim hearings, IGR was informed how political subdivisions could play a critical role in determining housing affordability in their communities through strategic public-private partnerships. Examples were given of how some cities entered into innovative partnerships with key supporting players (e.g., developers, banks, and non-profits) to develop tailored solutions to their local affordable housing needs, such as through land banking of stagnant, tax-foreclosed properties.

Since their inception, Texas' land banking statutes have been geared toward the needs of bigger political subdivisions (urban municipalities)—such as the City of Dallas (Subchapter C, Chapter 379, Local Government Code), the City of Houston (Subchapter D, Chapter 379, Local Government Code), and for Urban Land Banks (Subchapter E, Chapter 379, Local Government Code). As filed, S.B. 1117 strives to update the land banking statutes for municipalities which do not have an existing, dedicated land banking authority with the goal of making this affordable housing tool more readily available while maximizing a municipality's ability to address its local affordable housing needs.

As proposed, S.B. 1117 amends current law relating to the authority of a municipality to adopt a land bank program.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 379E.002, Local Government Code, to include a municipality that does not operate a land bank under Chapter 379F among the municipalities to which this chapter applies and to make nonsubstantive changes.

SECTION 2. Amends Subtitle A, Title 12, Local Government Code, by adding Chapter 379F, as follows:

CHAPTER 379F. MUNICIPAL LAND BANK PROGRAM

Sec. 379F.001. **APPLICABILITY; CONSTRUCTION WITH OTHER LAW.** Provides that this chapter applies only to a municipality to which Chapters 379C (Urban Land Bank Demonstration Program) or 379D (Urban Land Bank Program in Municipality

With Population of 1.9 Million or More) does not apply, that does not operate a land bank under Chapter 379E (Urban Land Bank Program), and that has not ever adopted a homestead land bank program under Subchapter E (Homestead Land Bank Program), Chapter 373A (Homestead Preservation Districts and Reinvestment Zones).

Sec. 379F.002. DEFINITIONS. Defines "affordable," "community housing development organization," "land bank," "land bank plan" or "plan," "land bank program" or "program," "low income household," "moderate income household," and "qualified participating developer" for purposes of this chapter.

Sec. 379F.003. LAND BANK PROGRAM. (a) Authorizes the governing body of a municipality to adopt a land bank program in which the officer charged with selling real property ordered sold pursuant to foreclosure of a tax lien is authorized to sell certain eligible real property by private sale for purposes of affordable housing development as provided by this chapter.

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

Sec. 379F.004. QUALIFIED PARTICIPATING DEVELOPER. Requires a developer other than the land bank to meet certain requirements to qualify to participate in a land bank program.

Sec. 379F.005. LAND BANK PLAN. (a) Requires a municipality that adopts a land bank program to operate the program in conformance with a land bank plan.

(b) Requires the governing body of a municipality that adopts a land bank program to adopt a plan annually. Authorizes the plan to be amended from time to time.

(c) Requires the municipality, in developing the plan, to consider any other housing plans and policies adopted by the municipality, including any fair housing plans and policies adopted or agreed to by the municipality.

(d) Requires the plan to include certain information.

Sec. 379F.006. PUBLIC HEARING ON PROPOSED PLAN. (a) Requires a municipality, before adopting a plan, to hold a public hearing on the proposed plan.

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

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

Sec. 379F.007. PRIVATE SALE TO LAND BANK. (a) Authorizes property that is ordered sold pursuant to foreclosure of a tax lien, notwithstanding any other law and except as provided by Subsection (f), to 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 (Sale of Property), Tax Code, in certain circumstances.

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

(c) Establishes that, if a 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 (Adjudged Value), Tax Code.

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

(e) Authorizes the owner of the property, after receipt of the notice required by Subsection (d) and before the date of the proposed sale, to 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) Requires the officer, if the officer charged with the sale receives a written request as provided by Subsection (e), to sell the property as otherwise provided in Section 34.01, Tax Code.

(g) Prohibits the owner of the property subject to sale from receiving any proceeds of a sale under this chapter. Establishes that the owner does not have any personal liability for a deficiency of the judgment as a result of a sale under this chapter.

(h) Authorizes property, notwithstanding any other law, if consent is given by the taxing units that are a party to the judgment, to 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) Establishes that 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. 379F.008. SUBSEQUENT RESALE OR DEVELOPMENT BY LAND BANK. (a) Requires a land bank, within the five-year period following the date of acquisition of a property by the land bank, to:

(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) Requires the property, if after five years a qualified participating developer has not purchased the property or the land bank has not developed the property, to 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) Prohibits the number of properties acquired by a qualified participating developer under this section on which development has not been completed, unless the municipality increases the amount in its plan, from exceeding at any given time three times the annual average residential production completed by the qualified participating developer during the preceding three-year period as determined by the municipality.

(d) Requires the deed conveying a property sold by the land bank to 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 for the judgment for disposition as otherwise allowed under the law.

(e) Requires 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 to comply with the conditions of this section.

Sec.379F.009. RESTRICTIONS ON OCCUPANCY AND USE OF PROPERTY. (a) Requires the land bank to 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) Requires the deed restrictions, for land bank properties developed by the land bank for sale, and for land bank properties sold to a qualifying participating developer for the development for sale, to require that certain amounts of units be sold to families with certain household incomes in any given fiscal year.

(c) Requires the deed restrictions, if the property is developed and used for rental housing, to be for a period of not less than 20 years and to require that at least 80 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 metropolitan statistical area in which the units are located, as determined annually by the United States Department of Housing and Urban Development, and also to require that a certain amount of units are occupied by and affordable to households with certain incomes.

(d) Requires the deed restrictions under Subsection (c) to require the owner to file an annual occupancy report with the municipality on a reporting form provided by or acceptable to the municipality. Requires the deed restrictions to 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) Requires the deed restrictions, except as otherwise provided by this section, if the deed restrictions imposed under this section are for a term of years, to renew automatically.

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

Sec. 379F.010. RIGHT OF FIRST REFUSAL. (a) Defines "qualified organization" for purposes of this section.

(b) Requires the land bank to first offer a property for sale to qualified organizations.

(c) Requires notice to 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 is authorized to be exercised.

(d) Requires the municipality to specify in its plan the period during which the right of first refusal provided by this section is authorized to be exercised by a qualified organization. Requires that period to be at least nine months but not more than 26 months from the date of the deed conveyance of the property to the land bank.

(e) Requires the interlocal agreement executed under Section 379F.007(a), if the land bank conveys the property to a qualified organization before the expiration of the period specified by the municipality under Subsection (d), to provide tax abatement for the property until the expiration of that period.

(f) Prohibits the land bank, during the specified period, from selling the property to a qualified participating developer other than a qualified organization. Authorizes the land bank to sell the property to any other qualified participating developer at the same price the land bank offered the property to the qualified organizations 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.

(g) Requires the municipality, in its plan, to establish the amount of additional time, if any, that a property is authorized to be held in the land bank once an offer has been received and accepted from a qualified organization or other qualified participating developer.

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

(i) Authorizes the municipality, in its plan, to 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) Establishes that 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 379F.008(d).

Sec. 379F.011. OPEN RECORDS AND MEETINGS. Requires the land bank to comply with the requirements of Chapter 551 (Open Meetings) and 552 (Public Information), Government Code.

Sec. 379F.012. RECORDS; AUDITS; REPORT. (a) Requires the land bank to keep accurate minutes of its meetings and 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) Requires the land bank to file with the municipality not later than the 90th day after the close of the fiscal year annual audited financial statements prepared by a certified public accountant. Provides that the financial transactions of the land bank are subject to audit by the municipality.

(c) Requires the land bank, for purposes of evaluating the effectiveness of the program, to submit an annual performance report to the municipality not later than November 1 of each year in which the land bank acquires, develops, or sells property under this chapter. Requires the performance report to include certain information.

(d) Requires the land bank to 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) Requires the land bank to provide copies of the performance report to the taxing units who were parties to the judgment of foreclosure and to provide notice of the availability of the performance report for review to the organizations and neighborhood associations identified by the municipality as serving the neighborhoods in which properties sold to the land bank under this chapter are located.

(f) Requires the land bank and the municipality to maintain copies of the performance report available for public review.

SECTION 3. Amends Sections 11.18(d) and (o), Tax Code, as follows:

(d) Includes acquiring, holding, developing, and transferring real property under a land bank program established under Chapter 379F, Local Government Code, as or on behalf of a land bank, among the charitable functions a charitable organization is required to be engaged exclusively performing.

(o) Establishes that, for purposes of Subsection (a)(2) (relating to exemption from certain taxes for an organization that qualifies as a charitable organization), real property acquired, held, and transferred by an organization that performs the function described by Subsection (d)(21), (22), or (22-a), rather than Subsection (d)(21) or (22), is considered to be used exclusively by the qualified charitable organization to perform that function.

SECTION 4. Makes application of Section 11.18, Tax Code, as amended by this Act, prospective.

SECTION 5. Effective date: September 1, 2019.