

BILL ANALYSIS

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S.B. 1115
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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 among 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.

Testimony was heard during IGR's interim hearings of how political subdivisions can play a critical role in determining housing affordability in their communities through strategic public-private partnerships. Examples were given of how political subdivisions 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.

Representatives from the County Judges & Commissioners Association of Texas informed IGR that counties could have a critical role in encouraging housing affordability and identifying affordable opportunities. In so doing, counties could benefit from being given the permissive statutory authority to engage in a county land banking program with the goal of putting tax-foreclosed properties back on the tax rolls and developing those properties into affordable housing units.

As proposed, S.B. 1115 amends current law by relating to the authority of a county 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 Subtitle B, Title 12, Local Government Code, by adding Chapter 388, as follows:

CHAPTER 388. LAND BANK PROGRAM

Sec. 338.001. 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."

Sec. 338.002. LAND BANK PROGRAM. Authorizes the governing body of a county 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 county 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. 338.003. QUALIFIED PARTICIPATING DEVELOPER. Requires a developer other than the land bank, to qualify to participate in a land bank program, to 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, have a development plan approved for the land bank property by the land bank or the county, and meet any other requirements adopted by the county in the land bank plan.

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

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

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

(d) Requires the plan to 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 are authorized to 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) Requires a county, before adopting a plan, to hold a public hearing on the proposed plan.

(b) Requires the county clerk or the county clerk's designee to 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) Requires the county clerk or the county clerk'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. 338.006. 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, 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) there are delinquent taxes on the property for a total of at least five years; and

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

(c) Provides that, 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 (Adjudged Value), Tax Code.

(d) Requires, for any sale of property under this chapter, each person who was a defendant to the judgment, or that person's attorney, to 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. Requires 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 subject to sale, after receipt of the notice required by Subsection (d), 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 charged with the sale, if the officer receives a written request as provided by Subsection (e), to sell the property as otherwise provided by 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. Provides that, however, the owner does not have an 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) Provides 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. 338.007. SUBSEQUENT RESALE OR DEVELOPMENT BY LAND BANK. (a) Requires the land bank, within the five-year period following the date of acquisition of a property by a 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 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 county increases the number in its plan, from at any given time exceeding 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) Requires the deed conveying the 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 qualified participating developer, or conveyance to the taxing units who were parties to 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. 338.008. 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 qualified participating developer for development for sale, to require that, in any given fiscal year:

(1) at least 50 percent of the units are required to be sold to families 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 units are located; and

(2) the remaining units are required to be sold to families 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 units are located.

(c) Requires the deed restrictions, if 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 county, as determined annually by the United States Department of Housing and Urban Development (HUD), and to also require that:

(1) at least 40 percent of the rental units 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 HUD; or

(2) at least 20 percent of the units 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 HUD.

(d) Requires the deed restrictions under Subsection (c) to require the owner to file an annual occupancy report with the county on a reporting form provided by or acceptable to the county. Requires the deed restrictions to also prohibit any exclusion of an individual or family from admission to the development based solely on 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 board of the county to modify or add to the deed restrictions imposed under this section. Requires any modifications or additions made by the governing body of the county to be adopted by the county as part of its plan and to comply with the restrictions set forth in Subsections (b), (c), and (d).

Sec. 338.009. RIGHT OF FIRST REFUSAL. (a) Defines "qualified organization."

(b) Requires a 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 county 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 of conveyance of the property to the land bank.

(e) Requires the interlocal agreement executed under Section 338.006(a)(3), if the land bank conveys a property to a qualified organization before the expiration of the period specified by the county 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, 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 the period, to 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) Requires the county, in its plan, to establish the amount of additional time, if any, that the 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 the property, if more than one qualified organization expresses an interest in exercising its right of first refusal, to be given priority.

(i) Authorizes the county, 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) Provides 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 388.007(d).

Sec. 338.010. OPEN RECORDS AND MEETINGS. Requires the land bank to comply with the requirements of Chapters 551 (Open Meetings) and 552 (Public Information), Government Code.

Sec. 338.011. RECORDS; AUDIT; REPORT. (a) Requires the land bank to keep accurate minutes of its meetings and to keep accurate records and books of accounts 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 county 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 county.

(c) Requires the land bank, for purposes of evaluating the effectiveness of the program, to 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. Requires the performance report to 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 bank;

(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) Requires the land bank to maintain in the 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 county as serving the neighborhoods in which properties sold to the land bank under this chapter are located.

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

SECTION 2. Amends Sections 11.18(d) and (o), Tax Code, as follows:

(d) Requires a charitable organization to be organized exclusively to perform certain charitable functions, including 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.

(o) Makes a conforming change.

SECTION 3. Makes application of Section 11.18 (Charitable Organizations), Tax Code, as amended by this Act, prospective.

SECTION 4. Effective date: September 1, 2019.