

SUBJECT: Property tax appraisal process for low- and moderate-income housing

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 10 ayes — Oliveira, Bohac, Hartnett, Hilderbran, C. Howard, P. King, Paxton, Peña, Taylor, Villarreal

0 nays

1 absent — Otto

WITNESSES: For — Cynthia Bast, GG MacDonald Companies, Hettig-Kahn Development; Granger MacDonald; (*Registered, but did not testify*: Jim Brown, Texas Affiliation of Affordable Housing Providers; Jeff Crozier, Rural Rental Housing Association of Texas; Michele Gregg, Texas Apartment Association; Barry Kahn; Blanca Laborde, The Real Estate Council (Dallas); David Starr, Jonathon Starr, American Opportunity for Housing, Inc.; (*On committee substitute*): Debra Guerrero, Dan Markson, The NRP Group)

Against — Matthew Tepper

BACKGROUND: Tax Code, sec. 11.182 provides a tax exemption on real property for community housing development organizations that meet the requirements of a charitable organization and that own and build on or improve property exclusively for the purpose of low- or moderate-income housing.

To receive a tax exemption for a housing development built after December 31, 2001, that was financed with 501(c)(3) bonds, tax-exempt private activity bonds subject to a volume cap, or low-income housing tax credits, an organization must control 100 percent of the interest in the general partner if the housing development is owned by a limited partnership, comply with all Texas Department of Housing and Community Affairs (TDHCA) rules and regulations, and submit to TDHCA and each taxing entity from which the organization receives an exemption annual evidence that the organization spent at least 90 percent of the preceding year's cash flow on social, educational, or economic development services, capital improvement projects, or rent education.

An organization is not eligible for a tax exemption on property unless it received an exemption for any part of the 2003 tax year.

Sec. 11.1825 provides a tax exemption on real property owned by a 501(c)(3) tax exempt organization that constructs on or improves property and uses it to provide low-income housing. An exemption is also provided for property that provides low-income housing and that is owned by a limited partnership of which 100 percent of the general partner interest is owned by a low-income housing organization or an entity the parent of which is a low-income housing organization, and which is organized under the laws of and has its principle place of business in Texas. A property is not eligible for a tax exemption under sec. 11.1825 unless the owner has an audit of the preceding tax year prepared by an independent auditor.

A tax exemption on property as described above does not terminate if the property is sold at a foreclosure sale, provided that within 30 days of the sale, the property owner submits evidence to the chief appraiser that the property is owned by a community housing development organization that meets the criteria listed above. A property that qualifies for a tax exemption listed above is required to be appraised using the income method, which uses rental data, operating expense data, reasonably clear projections of future rent or income, and other factors.

Sec. 23.215 requires that property that was financed under a federal low income housing tax credit program and which is rented to a low- or moderate-income individual or family but which is not eligible for a tax exemption listed above, and the owner of which has not entered into an agreement to pay taxes to any taxing unit instead of taxes on the property, to be appraised using the income method.

**DIGEST:**

CSHB 2828 would amend Tax Code provisions on tax exemptions for property with low- and moderate-income housing to state that an organization that owned such property and that sought a tax exemption need not be exclusively engaged in providing low- and moderate-income housing. It would qualify even if it were not a community housing development organization, provided it was an entity 100 percent owned or controlled by such an organization or a limited partnership of which 100 percent of the general partner was owned or controlled by a community housing development organization.

The bill would eliminate the requirement that to qualify for a tax exemption, the low-income housing development must have been built after December 1, 2001, and been financed with 501(c)(3) bonds, tax-exempt private activity bonds, or low-income housing tax credits. An organization could receive a tax exemption if it applied for one for any part of the 2003 tax year.

CSHB 2828 also would amend existing appraisal requirements for low- and moderate-income housing to require that it be subject to an income method of appraisal that would estimate the gross potential income of the property, include deductions for state and local taxes and fees, and use the capitalization rate determined by the chief appraiser. This would apply to a property of which 50 percent of the total square footage of the dwelling units were rented to individuals or families with a median income of no more than 60 percent of the area median family income or the statewide median family income, whichever was greater, and that was subject to a restrictive covenant.

The capitalization rate would be calculated by adjusting for the income restrictions of the low- and moderate-income residents the units would have to be rented to and the amount of rent that could be charged, the restrictions on the property's transferability, and any regulatory burdens associated with complying with a restrictive covenant. The appraisal district would have to give public notice of each year's capitalization rate no later than January 1, including by posting it on the district's website if one existed.

The bill also would make an audit conducted on a property binding on the appraisal district and make the audit proof of eligibility for a tax exemption.

The bill would apply only to real or personal property taxes imposed for a tax year beginning on or after the bill's effective date, which is January 1, 2010.

**SUPPORTERS  
SAY:**

CSHB 2828 would provide standardized criteria for appraising a low-income housing property's tax rate and make it easier for such property to receive fair value. Housing developments aimed at low- or moderate-income residents face the same construction costs as market-value housing, but are subject to federal rent and utility restrictions that can cause a financial burden on the housing developers.

The current statute referring to the appraisal process for low- and moderate-income housing has led to inconsistency in the appraisal process and an increase in denial of tax exemptions. In some cases, the property values were appraised at a level too high for the owner to meet the resulting taxes, leading to a foreclosure on the property and higher property taxes for residents in the surrounding areas. This bill would standardize the criteria for when low-income housing property could receive a tax exemption and provide greater certainty in the appraisal process.

CSHB 2828 would not expand the eligibility requirements for low-income housing tax exemptions. The exemptions would be limited to the same group of organizations and partnerships that are currently eligible, but the bill would consolidate the references to limited partnerships in one section of the Tax Code. Any existing confusion over how low- and moderate-income properties should be appraised derives from the lack of a uniform standard and an inconsistent application of conditions for tax exemption eligibility.

OPPONENTS  
SAY:

This bill would allow the Texas Legislature to provide tax exemptions to for-profit entities and increase the property tax burden on other residents. The limited partnerships that would qualify for a tax exemption under CSHB 2828 often are controlled by banks or other investment groups that build affordable housing in order to receive low-income housing tax credits from the federal government. The bill also would expand the property eligible for a low-income housing tax exemption to housing built before December 1, 2001, which could remove more property from the tax rolls. Expanding the eligibility for state property tax exemptions to groups that already receive federal tax breaks or to older property could mean that these groups pay little to no property taxes, and other residents of the same taxing entity would have to pay higher property tax rates to make up the difference.

OTHER  
OPPONENTS  
SAY:

Much of the current confusion over property tax appraisal methods stems from the repeated amendment of the Tax Code by the Legislature. Many times the statute that sets the appraisal method is amended, and the property owners engage in a dispute with the appraisal districts over what the rate should be, resulting in more litigation and costs to both groups. By the time the dispute has been resolved, the Legislature changes the appraisal method again, causing another cycle of litigation.

NOTES:

The substitute differs from the bill as filed by removing language requiring that a property have been constructed after December 1, 2001, and financed with certain bonds or tax credits to be eligible for a tax exemption; adding language that a community housing development organization could have applied for a tax exemption in the 2003 tax year to qualify for a tax exemption under the bill; making an entity the parent of which is engaged in building or rehabilitating low-income housing eligible to receive a tax exemption under the bill; requiring the chief appraiser to adjust for, rather than consider, any income restrictions when computing actual rental income or projecting future rental income; making an audit binding and proof of eligibility for a tax exemption under the bill; removing a requirement that the capitalization rate used in an appraisal be at 13.5 percent, specifying that the chief appraiser use the income method of appraisal, and revising other conditions for the appraisal of low- and moderate-income housing; and removing provisions requiring a property owner to provide the chief appraiser with an audited statement of income and expenses from the preceding year and allowing any disbursements made for operation and maintenance to be used to reduce the property's net operating income.

The Legislative Budget Board estimates that any increase in eligibility for low- and moderate-income housing tax exemptions could result in a loss of local revenue, including by school districts, which would mean a cost to the state through the school finance formulas.

A similar bill, HB 2980 by Hilderbran, was placed on the May 14 General State Calendar.