

BILL ANALYSIS

Senate Research Center

H.B. 2828
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Finance
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The largest source of safe, quality affordable housing for low-income working families and individuals, as well as for senior citizens and persons with disabilities, is financed multifamily rental properties that are provided by either tax credits or state-issued private activity bonds, or as a combination thereof. Currently, Texas has more than 1,800 such properties administered by the Texas Department of Housing and Community Affairs and the Texas State Affordable Housing Corporation. These properties represent more than 260,000 individual housing units worth more than \$3.4 billion of combined investments by the state, and are developed, owned, and operated by a combination of nonprofit, for-profit, and faith-based providers and local housing authorities.

Such properties, while financially underwritten by the government at the time of construction, reconstruction, or rehabilitation as an affordable housing property, are operated and maintained without further subsidization throughout the financial underwriting cycle, usually a 15-year period. Due to federally imposed restrictions, the properties are operated on a very strictly defined financial basis. As with the operation of any commercially financed property, these units have associated obligations to lenders and mortgage holders in addition to the tenant services and other financial considerations that must be satisfied annually. Unlike market rate or unrestricted mixed-use income properties, it is not permissible for owners and managers of low-income multifamily properties to raise rent or impose new or higher utility services costs on tenants. Due to these restrictions and as a result of participation in national affordable housing programs, the properties typically qualify for property tax exemptions at the local level. Without those annual exemptions, it would be difficult if not impossible for the majority to meet the debt service and other financial obligations they incur. Forfeiture or foreclosure resulting from inability to pay taxes or debt services places state investments at risk and reduces the already insufficient quantities of affordable housing available for eligible citizens.

The Texas Constitution, Tax Code, and Local Government Code all provide for property tax exemptions for affordable housing properties. Each property must, as a condition of exemption, establish and maintain the elements necessary to qualify for continuation of the exemptions, whether partial or full value is used, and are subject to penalties if qualifying standards are not maintained. Recently, as property taxes have assumed an ever larger role in the generation of state or local revenue, tax exempt status for affordable housing properties has become increasingly problematic and subject to challenge at the individual county appraiser level.

H.B. 2828 updates provisions relating to the ad valorem taxation of property used to provide low-income or moderate-income housing.

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 11.182, Tax Code, by amending Subsections (b), (e), (h), (j), and (k) and adding Subsections (b-1) and (b-2) as follows:

(b) Entitles a community housing development organization (organization) to an exemption from taxation of improved or unimproved real property it owns if the organization:

(1) is organized as an organization;

(2) meets the requirements of a charitable organization provided by Sections 11.18(e) (relating to the way a charitable organization is required to be operated) and (f) (relating to the requirements of a charitable organization);

(3) owns the property for the purpose of building or repairing housing on the property to sell without profit to a low-income or moderate-income individual or family satisfying the organization's eligibility requirements or to rent without profit to such an individual or family; and

(4) engages, rather than engages exclusively, in the building, repair, and sale or rental of housing as described by Subdivision (3) and related activities.

(b-1) Entitles an owner of improved or unimproved real property that is not an organization described by Subsections (b)(1) and (2), notwithstanding those subdivisions, to an exemption from taxation of the property under Subsection (b) if the owner otherwise qualifies for the exemption and the owner is a limited partnership of which 100 percent of the interest of the general partner is owned or controlled by an organization described by Subsections (b)(1) and (2), or an entity 100 percent of the interest in which is owned or controlled by an organization described by Subsections (b)(1) and (2).

(b-2) Provides that a reference in this section to an organization includes a limited partnership or other entity described by Subsection (b-1).

(e) Deletes existing text requiring the organization, in addition to meeting the applicable requirements of Subsections (b) and (c), to receive an exemption under Subsection (b) for improved real property that includes a housing project constructed after December 31, 2001, and financed with qualified 501(c)(3) bonds issued under Section 145 of the Internal Revenue Code of 1986, tax-exempt private activity bonds subject to volume cap, or low-income housing tax credits, to control 100 percent of the interest in the general partner if the project is owned by a limited partnership. Makes substantive changes.

(h) Makes conforming changes.

(j) Prohibits an organization from receiving an exemption under Subsection (b) or (f) for property for a tax year unless the organization applied for or received an exemption under that subsection for the property for any part of the 2003 tax year.

(k) Provides that an exemption under Subsection (b) or (f), notwithstanding Subsection (j) and Sections 11.43(a) (relating to the requirements of a person claiming an exemption) and (c) (relating to certain exemptions, once allowed, not needing to be claimed in subsequent years), does not terminate because of a change in the ownership of the property if the property is sold at a foreclosure sale and, not later than the 30th day after the date of the sale, the owner of the property submits to the chief appraiser evidence that the property is owned by an organization that meets the requirements of Subsections (b)(1), (2), and (4) or is owned by a limited partnership described by Subsection (b-1)(1) or an entity described by Subsection (b-1)(2) that meets the requirements of Subsection (b)(4).

SECTION 2. Amends Sections 11.1825(c), (d), (q), and (t), Tax Code, as follows:

(c) Entitles an owner of real property that is not an organization described by Subsection (b) (relating to the requirements an organization must meet to receive an exemption), notwithstanding that subsection, to an exemption from taxation of property under this section if the property otherwise qualifies for the exemption and the owner meets certain requirements, including that the owner is an entity the parent of which is controlled by an

organization that meets the requirements of Subsection (b). Makes nonsubstantive changes.

(d) Deletes existing text requiring the entity, if the owner of the property is an entity described by Subsection (c), to be organized under the laws of this state. Makes nonsubstantive changes.

(q) Requires the chief appraiser, if property qualifies for an exemption under this section, to use the income method of appraisal as provided by Sections 23.012 (Income Method of Appraisal) and 23.215 to determine the appraised value of the property. Requires the chief appraiser, in appraising the property, to take certain actions, including adjusting for, rather than considering, the restrictions provided by this section on the income of the individuals or families to whom the dwelling units of the housing project may be rented and the amount of rent that may be charged for purposes of computing the actual rental income from the property or projecting future rental income and use the same capitalization rate that the chief appraiser uses to appraise other rent-restricted properties. Makes a nonsubstantive change.

(t) Provides that an exemption under this section, notwithstanding Section 11.43(c), does not terminate because of a change in ownership of property if the property is foreclosed on for any reason and, not later than the 30th day after the date of the foreclosure sale, the owner of the property submits to the chief appraiser evidence that the property is owned by certain persons or in the case of property owned by an entity described by Subsections (c) and (d), the organization meeting the requirements of Subsection (b) that controls the general partner interest of, is the parent of, or controls the parent of the entity as described by Subsection (c) ceases to serve in that capacity and, not later than the 30th day after the date of the cessation occurs, the owner of the property submits evidence to the chief appraiser that the organization has been succeeded in that capacity by another organization that meets the requirements of Subsection (b). Makes a nonsubstantive change.

SECTION 3. Amends Section 11.1826, Tax Code, by adding Subsection (c-1) and amending Subsection (e), as follows:

(c-1) Provides that the audit is binding on the appraisal district and constitutes proof of eligibility for, including compliance with all statutory requirements necessary for, an exemption under Section 11.1825 (Organizations Constructing or Rehabilitating Low-Income Housing: Property Not Previously Exempt).

(e) Provides that Subsection (c-1) applies to an audit that addresses compliance with the requirements of Section 11.182 in the same manner as that subsection applies to an audit that addresses compliance with the requirements of Section 11.1825.

SECTION 4. Amends Section 23.215, Tax Code, as follows:

Sec. 23.215. APPRAISAL OF CERTAIN NONEXEMPT PROPERTY USED FOR LOW-INCOME OR MODERATE-INCOME HOUSING. (a) Provides that this section applies only to real property and only if:

(1) the property is owned for the purpose of operating a housing project on the property the dwelling units in which are required to be rented to individuals or families whose median income is not more than 60 percent of the greater of a certain income;

(2) at least 50 percent of the total square footage of the dwelling units in the housing project on the property is reserved for individuals or families described by Subdivision (1); and

(3) the property is subject to a restrictive covenant recorded in the real property records of the county in which the property is located evidencing the restrictions described by Subdivisions (1) and (2).

Deletes existing text providing that this section applies only to real property owned by an organization that on the effective date of this section was rented to a low-income or moderate-income individual or family satisfying the organization's income eligibility requirements and that continues to be used for that purpose; that was financed under the low-income housing tax credit program under Subchapter DD (Low Income Housing Tax Credit Program), Chapter 2306 (Texas Department of Housing and Community Affairs), Government Code; that does not receive an exemption under Section 11.182 or 11.1825; and the owner of which has not entered into an agreement with any taxing unit to make payments to the taxing unit instead of taxes on the property.

(b) Requires the chief appraiser, in appraising the property, to use the income method of appraisal as provided by Section 23.012 and to estimate the net income of the property by a certain method; include deductions for required replacement reserves, franchise taxes imposed by this state, and fees imposed by governmental entities; if Subdivision (1)(B) (relating to the method the chief appraiser is required to use in appraising the property) applies, reduce the stabilized value of the property to account for the income lost during the lease-up and construction period and for the percentage of construction yet to be completed; and use the capitalization rate determined by the chief appraiser. Deletes existing text requiring the chief appraiser to appraise the property in the manner provided by Section 11.1825(q).

(c) Requires the chief appraiser, in determining the capitalization rate, to adjust for the restrictions on the income of the individuals or families to whom the dwelling units in the project are required to be rented and the amount of rent that may be charged, the restrictions on transferability of the property and the period for which the property is subject to a restrictive covenant described by Subsection (a)(3), and the regulatory burdens associated with complying with the restrictive covenant described by Subsection (a)(3) to which the property is subject.

(d) Requires the appraisal district, not later than January 1 of each year, to give public notice in the manner determined by the district, including by posting on the district's Internet website if applicable, of the capitalization rate to be used in that year to appraise property under this section.

(e) Requires that the value of a property described by Subsection (a) that is selected for appraisal, in connection with an annual study conducted under Section 403.302 (Determination of School District Property Values), Government Code, be determined in the manner required by this section.

SECTION 5. Makes application of this Act prospective.

SECTION 6. Effective date: January 1, 2010.