

BILL ANALYSIS

C.S.H.B. 1044
By: Riddle
Local Government Ways and Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current law, properties owned by community housing development organizations (organizations) are exempt from ad valorem taxation. There are concerns that many organizations providing either new construction or rehabilitated housing projects abuse the tax exemption. CSHB 1044 provides that a property may not receive an exemption under this section unless at least 50 percent of the dwelling units in the housing project are reserved for individuals or families as determined by the Texas Department of Housing and Community Affairs. It requires the organization must give preference to public school teachers and administrators, peace officers of counties or municipalities, Veterans, and persons serving on active duty as members of the armed forces of the United States.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas State Affordable Housing Corporation in SECTION 3 via Section 11.1826 (c) of this bill.

ANALYSIS

SECTION 1. Amends the heading to Section 11.182, Tax Code as follows:

Sec. 11.182. Community Housing Development Organizations Improving Property For Low-Income And Moderate Income Housing: Property Previously Exempt.

SECTION 2. Section 11.182, Tax Code, is amended by adding Subsections (j)-(k) to read as follows:

(j) Provides that an organization may not receive an exemption under Subsection (b) or (f), as added by Chapter 1191, Acts of the 77th Legislature, Regular Session, 2001, for property for a tax year beginning on or after January 1, 2004, unless the organization received an exemption under that subsection for that property for the 2003 tax year.

(k) Provides that an organization that receives an exemption under this section for property the organization owns may apply for an exemption under Section 11.1825 for the property. The organization must submit only the evidence required to meet any requirements for an exemption under that section that are not imposed under this section, except that the chief appraiser may require the organization to submit additional information to establish the organization's eligibility for the exemption under Section 11.1825 if the chief appraiser learns of any reason the organization is no longer eligible for an exemption under this section. The chief appraiser shall approve or deny the application not later than the 30th day after the date the application is received. If the chief appraiser approves the application, the organization may not receive an exemption under this section and Section 11.1825 for the property in the same tax year.

SECTION 3. Subchapter B, Chapter 11, Tax Code, is amended by adding Sections 11.1825 and 11.1826 to read as follows:

Sec. 11.1825. Organizations Constructing Or Rehabilitating Low-Income Housing: Property Not Previously Exempt.

- (a) Defines “department” and “uniform service region.”
- (b) Provides that an organization is entitled to an exemption from taxation of real property owned by the organization that the organization constructs or rehabilitates to provide housing to individuals or families meeting the income eligibility requirements of this section.
- (c) Requires that to receive an exemption under this section, an organization must meet the following requirements that for at least the proceedings three years, the organization has been exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as amended, by being listed as an exempt entity under Section 501 (c)(3) of that code; has met the requirements of a charitable organization provided by Sections 11.18 (e) and (f); and has had as its primary purpose or one of its primary purposes providing low - income housing. Requires that at least a majority of the members of the board of directors of the organization have their principal place of residence in this state.
- (d) Sets forth that notwithstanding Subsection (c), an owner of real property that is not an organization described by that subsection is entitled to an exemption from a taxation of property under this section if the property otherwise qualifies for the exemption and the owner is a general partnership or limited partnership and each general partner is an organization that meets the requirements of Subsection (c); a limited partnership and 100 percent of the interest in each general partner is controlled by an organization that meets the requirements of Subsection (c), and each general partner is allocated at least 10 percent of the cash flow of the limited partnership; or an entity the parent of which is an organization that meets the requirements of Subsection (c).
- (e) Provides that if the owner of the property is an entity described by Subsection (d), the entity must be organized under the laws of this state; and have its principal place of business in this state.
- (f) Provides that a reference in this section to an organization includes an entity described by Subsection (d).
- (g) Provides that for property to be exempt under this section, the organization must own the property for the purpose of constructing or rehabilitating a housing project on the property and renting the housing to individuals or families whose median income is not more than 60 percent of the median income of the individuals or families in the applicable uniform service region as determined by the department.
- (h) Sets forth that a property may not receive an exemption under this section unless at least 50 percent of the dwelling units in the housing project are reserved for individuals or families described by Subsection (g), if the project is located in a county in which the median income of individuals or families in the applicable uniform service region as determined by the department; or at least 60 percent of the dwelling units in the project are reserved for individuals or families described by Subsection (g), if the project is located in a county not covered by Subdivision (l).
- (i) Requires that the monthly rent charged or to be charged for each dwelling unit in the project may not exceed 30 percent of the adjusted income of the individual or family whose income equals 60 percent of the median income for the area, as determined by the United States Department of Housing and Urban Development, based on the number of bedrooms, and requires the department to annually determine the rent limits under this subsection.
- (j) Requires that the organization must give preference to public school teachers and administrators, peace officers of counties or municipalities, persons serving on active duty as

members of the armed forces of the United States, and honorably discharged veterans of the armed forces of the United States in renting at least three percent of the dwelling units in the housing projects. The rent charged for those units must be at least 10 percent less than the rent charged for other comparable units in the project.

(k) Requires that if the property is owned for the purpose of constructing a housing project on the property, the property must be used to provide housing to qualifying individuals or families; or the housing project must be under active construction or other physical preparation.

(l) Sets forth for purposes of Subsection (k)(2), a housing project is under physical preparation if the organization has engaged in architectural or engineering work, soil testing, land clearing activities, or site improvement work necessary for the construction of the project or has conducted an environmental or land use study relating to construction of the project.

(m) Provides that an organization may not receive an exemption for a housing project constructed by the organization if the construction of the project was completed before the effective date of this section.

(n) Requires that if the property is owned for the purpose of rehabilitating a housing project on the property, the original construction of the housing project must have been completed at least 15 years before the date the organization began actual rehabilitation of the project. The person from whom the organization acquired the project must have owned the project for at least five years. Requires that if the organization is not the original owner of the project, the organization must provide the chief appraiser and, if the project was financed with bonds, the issuer of the bonds, with a certificate prepared by a certified public accountant stating that the organization has spent at least \$10,000 or the amount required by the entity that provided the financing for the project, whichever is less, for each dwelling unit in the project on rehabilitation costs.

(o) Requires that if the organization acquires the property for the purpose of constructing or rehabilitating a housing project on the property, the organization must rent or offer to rent the property to individuals or families who meet the income eligibility requirements of this section not later than the third anniversary of the date the organization acquires the property.

(p) Provides that if property qualifies for an exemption under this section, the chief appraiser shall use the income method of appraisal as provided by Section 23.012 to determine the appraised value of the property. Requires that if in appraising the property, the chief appraiser shall consider 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 rent income from the property or projecting future rental income. The appraiser must use the same capitalization rate used for other rent-restricted properties.

(q) Requires the appraisal district to give public notice of the capitalization rate to be used in that year to appraise property receiving an exemption under this subsection in a manner determined by the district, including but not limited to posting on the district's website, by or before January 31 of each year.

(r) Provides that the amount of the exemption under this section from taxation: is for a school district, 50 percent of the appraised value of the property; and for a taxing unit other than a school district: 75 percent of the appraised value of the property, if at least 75 percent of the dwelling units in the housing project are reserved for individuals or families described by Subsection (g); and that 65 percent of the appraised value of the property if Paragraph (A) does not apply.

(s) Sets forth that notwithstanding Section 11.43(c), an exemption under this section does not terminate if the property is foreclosed on for any reason, that not later than the 60th day after the date of foreclosure sale the owner of the property submits evidence to the chief appraiser that the

property is owned by an organization that meets the requirements of Subsection (c); or an entity that meets the requirements of Subsection (d) and (e). Requires that in the case of property owned by an entity described by Subsection (d) and (e), the organization meeting the requirements of Subsection (c) that is or controls the general partner of or is the parent of the entity as described by Subsection (d) ceases to serve in that capacity and, not later than the 60th day after date 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 requirements of Subsection (c).

(t) Provides that the chief appraiser may extend the deadline provided by Subsection (s)(1) or (2), as applicable, for good cause shown.

(u) Notwithstanding the other provisions of this section, provides that the governing body of a taxing unit located in the consolidated metropolitan statistical area of counties with a population of 1.4 million by official action adopt with at least a two-thirds majority vote not later than 90 days after the effective date of this section taxation of property exempted under this section unless qualified under criteria adopted by the governing body; or, provide for an exemption under this section in an amount other than provided by Subsection (r).

(v) Subsection (u)(1) does not authorize a taxing unit to waive the requirements of Subsections (c)(1)(A) and (B).

(w) If a taxing unit provides under Subsection (u)(1) for taxation of property exempted under this section, the exemption only applies to property that qualifies under the criteria adopted by the governing body of the taxing unit.

(x) To receive the exemption under Subsection (u)(1), an organization must submit a written request including all pertinent information to the taxing unit for a determination of whether the property qualifies for an exemption under the criteria adopted by the governing body of the taxing unit.

(y) Following submission of a written request, the taxing unit shall determine property's qualifications for exemption and notify the organization by letter of the taxing unit's determination. A copy of the written letter shall be sent to the chief appraiser of the district that appraises the property for the taxing unit. The taxing unit may charge an administrative fee not to exceed the taxing unit's administrative costs for processing the information, making the determination, and issuing the letter as required by this subsection.

(z) If an organization qualifies for a property exemption according to the governing body of the taxing unit, the organization shall provide a copy of the letter from the taxing unit to the chief appraiser who shall accept the letter as conclusive evidence that the property qualifies for an exemption under the criteria adopted by the governing body.

Sec. 11.1826. Monitoring Of Compliance With Low-Income And Moderate-Income Housing Exemptions.

(a) Defines "corporation" and "department."

(b) Provides that not later than July 25 of each year, the chief appraiser shall submit to the corporation a list of housing projects, including projects under construction or rehabilitation or to be constructed or rehabilitated, in the appraisal district receiving an exemption under Section 11.182 or 11.1825 in that year.

(c) Provides that not later than the second anniversary of the date the corporation receives a list from the chief appraiser, the corporation shall conduct an audit of each listed housing project, other

than a project that the department is required to audit under a program administered by the department, to determine whether the project is in material compliance with the requirements of the low income housing tax credit program under Subsection DD, Chapter 2306, Government Code. The corporation by rule shall adopt guidelines for conducting compliance audits under this subsection. An organization that owns, or that is or controls the general partner of or is the parent of the entity that owns, a project that is the subject of an audit shall pay the corporation a fee to cover the cost of the audit to the extent the department does not already impose a compliance audit fee in connection with the low income housing tax credit program. The amount of the fee is computed by multiplying \$25 by the number of dwelling units in the project.

(d) Sets forth that on the determination that a housing project of an organization is in material noncompliance with the requirements of the low income housing tax credit program, the corporation shall notify the organization of the results of the audit and order the organization to bring the project into material compliance with the program. If the organization does not comply with the order of the corporation before the 90th day after the date of the order, the corporation shall assess an administrative penalty on the organization in the manner provided for an administrative penalty under Section 2306.6023, Government Code. The amount of the penalty is computed by multiplying \$200 by the number of dwelling units in the project. The corporation shall impose a separate penalty for each day the project fails to comply with the order of the department. A penalty imposed by the corporation is payable to the assessor-collector for the county for which the appraisal district is established. The assessor-collector shall distribute to each taxing unit from which the project received an exemption in the year in which the list was submitted an amount equal to the amount of the penalty multiplied by a fraction, the numerator of which is the total dollar amount of taxes the taxing unit would have imposed on the project in that year if the project had been subject to taxation by that taxing unit in that year and the denominator of which is the total dollar amount of taxes all of the taxing units from which the project received an exemption in that year would have imposed on the project in that year if the project had been subject to taxation by those taxing units in that year.

(e) Provides that if the housing projects remain in material noncompliance with the requirements of the program, the corporation shall consider the noncompliance for purposes of scoring any pending or subsequent application submitted by the organization under any program administered by the department.

SECTION 4. Section 11.43(c), Tax Code, is amended to read as follows:

(c) Authorizes that an exemption provided by Section 11.13, 11.17, 11.18, 11.182, 11.1825, 11.183, 11.19, 11.20, 11.21, 11.22, 11.23(j), 11.29, 11.30, or 11.31, once allowed, need not be claimed in subsequent years, and except as otherwise provided by Subsection (e), the exemption applies to the property until it changes ownership of the person's qualification for the exemption changes. However, the chief appraiser may require a person allowed one of the exemption in a prior year to file a new application to confirm the person's current qualification for the exemption by delivering a written notice that a new application is required, accompanied by an appropriate application form, to the person previously allowed the exemption.

SECTION 5. Sections 11.436(a) and (c), Tax Code, are amended to read as follows:

(a) Provides that an organization that acquires property that qualifies for an exemption under Section 11.181 (a) or 11.1825 [~~11.182(a)~~] may apply for the exemption for the year of acquisition not later than the 30th day after the date the organization acquires the property, and the deadline provided by Section 11.43 (d) does not apply to the application for that year.

(c) Provides that to facilitate the financing associated with the acquisition of a property, an organization before acquiring the property, may request from the chief appraiser of the appraisal district established for the county in which the property is located a preliminary determination of

whether the property would qualify for an exemption under Section 11.1825 ~~{11.182}~~ if acquired by the organization. The request must include the information that would be included in an application for an exemption for the property under Section 11.1825 ~~{11.182}~~. Not later than the 15th ~~{21st}~~ day after the date a request is submitted under this subsection, the chief appraiser shall issue a written preliminary determination for the property included in the request. A preliminary determination does not affect the granting of an exemption under Section 11.1825 ~~{11.182}~~.

SECTION 6. Subchapter B, Chapter 23, Tax Code, is amending by adding Section 23.215 to read as follows:

Sec. 23.215. Appraisal Of Certain Nonexempt Property Used For Low-Income Or Moderate-Income Housing.

(a) Sets forth that this section applies only to real property owned by an organization that 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, Chapter 2306, 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) Provides that the chief appraiser shall appraise the property in the manner provided by Section 11.1825(p) except that the capitalization rate used in the appraisal may not be less than 12.5 percent.

SECTION 7. Provides that this Act take immediate effect if it receives a vote of two-thirds of all members elected to each house. If this Act does not receive the necessary vote for immediate effect, this Act takes effect September 1, 2003.

EFFECTIVE DATE

The Act takes immediate effect with a two-thirds majority vote of all members elected to each house; otherwise this Act takes effect on September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute amends the original by removing the grandfathering expiration. It defines "uniform service region" and adds the requirements of a charitable organization provided by Sections 11.18 (e) and (f) for exemption requirements, states that the organization has as its primary purpose or one of its primary purposes providing low-income housing. It replaces "one-third" with "a majority" for the board of directors and also requires them to have their principal place of residence in Texas instead of just reside in Texas for clarification purposes. Requires each general partner be allocated at least 10 percent of the cash flow of the limited partnership. All references to the median income are changed from the median income of the state or from a specific number to the median income of the applicable uniform service region. The percentage requirements for dwelling units are corrected. Changes the rent restriction to 30 percent of the adjusted income of an individual or family whose income equals 60 percent of the median income for the area, as determined by the United States Department of Housing and Urban Development, based on the number of bedrooms in the unit and requires the department to annually determine the rent limits. Adds honorably discharged military veterans to the list of preferred tenants. Changes the original construction date for housing projects needing rehabilitation from 10 years to 15 years. The \$6,000 requirement per unit for rehabilitation is changed to \$10,000 or the amount required by the financing agent, whichever is less. Changes the capitalization rate from 11.25 percent to whatever the current capitalization rate is used for rent-restricted properties. Adds section (q) to require the appraisal district to give public

notice of the capitalization rate used for each year not later than January 31 of each year and re-numbers accordingly. Changes the dates which an organization must give notice of a foreclosure or a partnership change from 30 days to 60 days. Adds sections (u), (v), (w), (x), (y) and (z) to allow the consolidated metropolitan statistical areas of counties with populations greater than 1.4 million to exempt out and allows the governing body of each taxing unit to create their own exemption system, while creating a system for notification to the organizations and to the chief appraiser in the effected appraisal districts. Adds the definition fo “corporation” under Sec. 11.1826. Replaces the Texas Department of Housing and Community Affairs with the Texas State Affordable Housing Corporation as the one responsible for monitoring non-compliance issues except for those projects that are required to be audited by the department under a program administered by the department. States the corporation shall notify the department of any material noncompliance and that the department shall consider non-compliance when evaluating “any pending or subsequent applications” for exemption. All references to a specific effective date are removed and replaced with “the effective date of the section.” Removes the words “without profit” when relating to rent for low-income to moderate-income individuals or families. Finally, changes the effective date from January 1, 2004 to an immediate effect with the appropriate vote or September 1, 2003 without the necessary two-thirds vote.

