BILL ANALYSIS

C.S.H.B. 3546
By: Hamric
Local Government Ways and Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Acts of the 75th and 77th Legislatures created the Community Housing Development Provider (CHDO) exemption whereby a non-profit organization ambiguously organized under an arguably unrelated federal statue could exempt from ad valorem taxes property offered in furtherance of providing affordable housing to low-income and moderate-income individuals and families. With no particular guidelines in place, other than charitable 501(c)(3) standards, significant tax base has been lost to local taxing units with arguably little or no net gain in affordable housing. Moreover, an unintended consequence of the exemption has been a significant non-appropriated appropriation from general revenue due to elements of the state school funding financing formula which require public schools to be reimbursed out of general revenue for diminutions in property tax base. Projected general revenue reimbursements to school districts for CHDO-related transactions is estimated at approximately $48 million for the 2004-2005 Biennium. Furthermore, conservative estimates of total tax base lost due CHDO transactions equal at least one-half billion dollars. Committee Substitute House Bill 3546 aims to eliminate the current CHDO exemption, and limit and modify future exemptions.

CSHB 3546 eliminates and grandfathers the former CHDO exemption and institutes much stricter guidelines for future exemptions.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. Amends the heading of 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. Amends Section 11.182, Tax Code, by adding Subsection (j) as follows:

Section 11.182(j): limits the current CHDO exemption to the current tax year, 2003.

SECTION 3. Amends Subchapter B, Chapter 11, Tax Code by adding Sections 11.1825 and 11.1826 as follows:

Sec. 11.1825. ORGANIZATIONS CONSTRUCTING OR REHABILITATING LOW-INCOME HOUSING: PROPERTY NOT PREVIOUSLY EXEMPT

Section 11.1825(a): exempts from taxation real property owned by an organization and upon which the organization constructs or rehabilitates improvements.

Section 11.1825(b): requires the organization receiving the exemption:

(1) for the preceding three years:

(A) to have been exempt from federal income taxation under I.R.C. § 501(c)(3);

(B) to have been a charitable organization under TEX. TAX CODE §§ 11.18(e), 11.18(f);

(C) to have had as its purpose the provision of low-income housing;

(2) to have its board composed of a majority of Texas residents;

(3) to have a formal policy for inclusion of input from low-income households residing in the county in which the organization has a housing project.

Sections 11.1825(c), (d), and (e): authorize non-profits to partner with for-profit business entities organized under the laws of and having their principal place of business in the State of Texas.

Section 11.1825(f):

(1) qualifies multi-family rental property for the exemption where the individual or family to whom an apartment is rented earns income not more than 60 percent of the greater of *area median income* or *statewide area median income*;

(2) qualifies for the exemption single-family houses built for sale where the individual or family to whom a house is sold earns income not more than 100 percent of the greater of *area median income* or *statewide area median income.*

Section 11.1825(g): requires at least 50 percent of the total square footage of the rental property to be reserved for individuals and families whose income is not more than 60 percent of area or state median income in order to receive the exemption.

Section 11.1825(h): restricts annual total rents to 30 percent of area median income.

Section 11.1825(i): authorizes an organization, where a rental unit is rented to a public school employee, a peace officer, active or retire member of the military, or person 65 years of age or older, to exempt from taxation a unit of equal size not otherwise exempt.

Sections 11.1825(j), (k), and (l): requires new construction to be under active construction in order to receive the exemption.

Section 11.1825(m): requires, in order to receive the exemption, the following of a rehabilitation purchase of housing:

(1) property must be at least 10 years old;

(2) prior owner must have owned the property for at least 5 years;

(3) organization must spend, in rehabilitation costs, at least the greater of $5000 per unit or the amount required by the lender;

(4) organization must maintain a reserve fund for repair and replacement in an amount equal to:

(A) the amount required by the lender; or

(B) $300 per unit per year, regardless of whether the unit is reserved for 60 percent or below median income occupants;

Section 11.1825(n): requires a cost-of-living-adjustment for repair and replacement fund.

Section 11.1825(o): requires repair and replacement fund to apply to each dwelling unit in the project regardless of whether the unit is reserved for 60 percent or below median income occupants and to be maintained

	on a continuing basis with limited withdrawals.
Section 11.1825(p):	defines "capital improvement".
Section 11.1825(q):	requires property acquired for construction or rehabilitation of affordable housing to be rented or offered for rent within 3 years.
Sections 11.1825(r) and (s):	require the chief appraiser to use the income method of appraisal and to post the capitalization rate.
Section 11.1825(t):	establishes exemption for new construction or rehabilitation as follows:

(t)(1): 50 percent exemption from school taxes based on the following formula:

$$50\% \text{ of appraised value of property} \times \frac{\text{net square footage of project reserved for 60\% or below median income occupants}}{\text{total square footage of project}}$$

-AND-

(t)(2)(A): 75 percent exemption from all other taxing units based on the following formula **if at least 75% percent of total square footage is reserved for 60% or below median income occupants**:

$$75\% \text{ of appraised value of property} \times \frac{\text{net square footage of project reserved for 60\% or below median income occupants}}{\text{total square footage of project}}$$

(t)(2)(B): 65 percent exemption from all other taxing units based on the following formula **if less than 75% percent of total square footage is reserved for 60% or below median income occupants**:

$$65\% \text{ of appraised value of property} \times \frac{\text{net square footage of project reserved for 60\% or below median income occupants}}{\text{total square footage of project}}$$

Sections 11.1825(u) and (v): maintain the exemption in the case of a change of ownership of the property if the successive owner is a qualifying CHDO

Section 11.1825(w): establishes an "opt-out" for counties with a population of 1.4 million or more (Dallas, Tarrant, and Harris) whereby each local taxing unit on a **transaction-by-transaction** basis may choose from one of three courses of action:

(1) the taxing unit may choose the statutory 50-75-65 exemption;

(2) the taxing unit may provide a "reasonable" exemption in an amount of its choosing;

(3) the taxing unit may opt out completely from the exemption based on the following criteria:

  (A) the taxing unit cannot afford the loss in tax revenue; or

  (B) the taxing unit determines additional housing for individuals or families at 60 percent or below median income is not needed.

Sections 11.1825(x) and (y): require an organization seeking an exemption in an "opt-out" county to submit a written request to each taxing unit which must be responded to in writing by each taxing unit.

Sec. 11.1826. MONITORING OF COMPLIANCE WITH LOW-INCOME AND MODERATE-INCOME HOUSING EXEMPTIONS.

Section 11.1826(a):	defines "department" as Texas Department of Housing and Community Affairs (TDHCA).
Section 11.1826(b):	requires each organization to conduct a yearly independent audit

	of itself demonstrating compliance with the exemption requirements.
Section 11.1826(c):	requires organization to deliver a copy of audit to TDHCA and the chief appraiser.
Section 11.1826(d):	authorizes properties with 36 or less units to deliver a detailed report and certification rather than an audit.
Section 11.1826(e):	requires organizations previously exempted under the old CHDO statute to conduct the same yearly independent audit in order to retain the old CHDO exemption.
Section 11.1826(f):	establishes information disclosure requirements.

SECTION 4. Amends Sections 11.436(a) and (c), Tax Code, to read as follows:

(a) Waives the May 1st tax exemption deadline for the new CHDO exemption; and, institutes the May 1st tax exemption deadline for the old CHDO exemption.

(c) Makes conforming changes commensurate with Subsection (a); and, extends the chief appraiser preliminary determination deadline to 45 days.

SECTION 5. Amends Subchapter B, Chapter 23, Tax Code, by adding Section 23.215 as follows:

Sec. 23.215. APPRAISAL OF CERTAIN NONEXEMPT PROPERTY USED FOR LOW-INCOME OR MODERATE-INCOME HOUSING

Section 23.215:	establishes appraisal guidelines for property used low-income or moderate-income housing otherwise non exempt.

SECTION 6. Effective Date: immediate effect upon two-thirds vote of all members of both the House and Senate; or, September 1, 2003.

EFFECTIVE DATE

This Act takes immediate effect upon two-thirds vote of all members of both the House and Senate; or, September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

CSHB 3546 makes the following substantive changes to the bill as filed:

- authorizes non-profits to partner with for-profits in order to facilitate project development;
- requires an organization to merely have had as one of its purposes the provision of affordable housing, rather its principal purpose;
- qualifies multi-family rental property for the exemption where the individual or family to whom an apartment is rented earns income not more than 60 percent of the greater of *area median income* or *statewide area median income*;
- qualifies for the exemption single-family houses built for sale where the individual or family to whom a house is sold earns income not more than 100 percent of the greater of *area median income* or *statewide area median income*;
- institutes a 30 percent of area median income rent restriction;
- provides a exemption bonus for units rented to certain professional groups;
- institutes more stringent requirements for rehabilitation projects, including a minimum $5000.00 per unit rehabilitation investment;
- requires the chief appraiser to use the income method of appraisal;
- institutes a 50-75-65 percent statewide exemption scheme; and,
- authorizes an opt-out scheme for counties with populations greater than 1.4 million.