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H.B. No. 3546

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the exemption from ad valorem taxation of certain  
3 property used to provide low-income or moderate-income housing.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. The heading to Section 11.182, Tax Code, is  
6 amended to read as follows:

7 Sec. 11.182. COMMUNITY HOUSING DEVELOPMENT ORGANIZATIONS  
8 IMPROVING PROPERTY FOR LOW-INCOME AND MODERATE-INCOME HOUSING:  
9 PROPERTY PREVIOUSLY EXEMPT.

10 SECTION 2. Section 11.182, Tax Code, is amended by adding  
11 Subsection (j) to read as follows:

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

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

20 Sec. 11.1825. ORGANIZATIONS CONSTRUCTING OR REHABILITATING  
21 LOW-INCOME HOUSING: PROPERTY NOT PREVIOUSLY EXEMPT. (a) An  
22 organization is entitled to an exemption from taxation of real  
23 property owned by the organization that the organization constructs  
24 or rehabilitates and uses to provide housing to individuals or

1 families meeting the income eligibility requirements of this  
2 section.

3 (b) To receive an exemption under this section, an  
4 organization must meet the following requirements:

5 (1) for at least the preceding three years, the  
6 organization:

7 (A) has been exempt from federal income taxation  
8 under Section 501(a), Internal Revenue Code of 1986, as amended, by  
9 being listed as an exempt entity under Section 501(c)(3) of that  
10 code;

11 (B) has met the requirements of a charitable  
12 organization provided by Sections 11.18(e) and (f); and

13 (C) has had as one of its purposes providing  
14 low-income housing;

15 (2) a majority of the members of the board of directors  
16 of the organization have their principal place of residence in this  
17 state; and

18 (3) the organization must have a formal policy  
19 containing procedures for giving notice to and receiving advice  
20 from low-income households residing in the county in which a  
21 housing project is located regarding the design, siting,  
22 development, and management of affordable housing projects.

23 (c) Notwithstanding Subsection (b), an owner of real  
24 property that is not an organization described by that subsection  
25 is entitled to an exemption from taxation of property under this  
26 section if the property otherwise qualifies for the exemption and  
27 the owner is:

1           (1) a limited partnership of which an organization  
2 that meets the requirements of Subsection (b) controls 100 percent  
3 of the general partner interest; or

4           (2) an entity the parent of which is an organization  
5 that meets the requirements of Subsection (b).

6           (d) If the owner of the property is an entity described by  
7 Subsection (c), the entity must:

8                   (1) be organized under the laws of this state; and

9                   (2) have its principal place of business in this  
10 state.

11           (e) A reference in this section to an organization includes  
12 an entity described by Subsection (c).

13           (f) For property to be exempt under this section, the  
14 organization must own the property for the purpose of constructing  
15 or rehabilitating a housing project on the property and:

16                   (1) renting the housing to individuals or families  
17 whose median income is not more than 60 percent of the greater of:

18                           (A) the area median family income for the  
19 household's place of residence, as adjusted for family size and as  
20 established by the United States Department of Housing and Urban  
21 Development; or

22                           (B) the statewide area median family income, as  
23 adjusted for family size and as established by the United States  
24 Department of Housing and Urban Development; or

25                   (2) selling single-family dwellings to individuals or  
26 families whose median income is not more than the greater of:

27                           (A) the area median family income for the

1 household's place of residence, as adjusted for family size and as  
2 established by the United States Department of Housing and Urban  
3 Development; or

4 (B) the statewide area median family income, as  
5 adjusted for family size and as established by the United States  
6 Department of Housing and Urban Development.

7 (g) Property may not receive an exemption under this section  
8 unless at least 50 percent of the total square footage of the  
9 dwelling units in the housing project is reserved for individuals  
10 or families described by Subsection (f).

11 (h) The annual total of the monthly rent charged or to be  
12 charged for each dwelling unit in the project reserved for an  
13 individual or family described by Subsection (f) may not exceed 30  
14 percent of the area median family income for the household's place  
15 of residence, as adjusted for family size and as established by the  
16 United States Department of Housing and Urban Development.

17 (i) For each dwelling unit rented to a public school  
18 employee, a peace officer of a county or municipality, a person  
19 serving on active duty as a member of the armed forces of the United  
20 States, an honorably discharged veteran of the armed forces of the  
21 United States, or a person 65 years of age or older, a dwelling unit  
22 of equal square footage is considered to have been reserved for an  
23 individual or family described by Subsection (f) for purposes of  
24 determining:

25 (1) the qualification of the property for an exemption  
26 under this section; and

27 (2) the amount of the exemption.

1       (j) Property owned for the purpose of constructing a housing  
2 project on the property is exempt under this section only if:

3           (1) the property is used to provide housing to  
4 individuals or families described by Subsection (f); or

5           (2) the housing project is under active construction  
6 or other physical preparation.

7       (k) For purposes of Subsection (j)(2), a housing project is  
8 under physical preparation if the organization has engaged in  
9 architectural or engineering work, soil testing, land clearing  
10 activities, or site improvement work necessary for the construction  
11 of the project or has conducted an environmental or land use study  
12 relating to the construction of the project.

13       (l) An organization may not receive an exemption for a  
14 housing project constructed by the organization if the construction  
15 of the project was completed before the effective date of this  
16 section.

17       (m) If the property is owned for the purpose of  
18 rehabilitating a housing project on the property:

19           (1) the original construction of the housing project  
20 must have been completed at least 10 years before the date the  
21 organization began actual rehabilitation of the project;

22           (2) the person from whom the organization acquired the  
23 project must have owned the project for at least five years, if the  
24 organization is not the original owner of the project;

25           (3) the organization must provide to the chief  
26 appraiser and, if the project was financed with bonds, the issuer of  
27 the bonds a written statement prepared by a certified public

1 accountant stating that the organization has spent on  
2 rehabilitation costs at least the greater of \$5,000 or the amount  
3 required by the financial lender for each dwelling unit in the  
4 project; and

5 (4) the organization must maintain a reserve fund for  
6 replacements:

7 (A) in the amount required by the financial  
8 lender; or

9 (B) if the financial lender does not require a  
10 reserve fund for replacements, in an amount equal to \$300 per unit  
11 per year.

12 (n) Beginning with the 2005 tax year, the amount of the  
13 reserve required by Subsection (m)(4)(B) is increased by an annual  
14 cost-of-living adjustment determined in the manner provided by  
15 Section 1(f)(3), Internal Revenue Code of 1986, as amended,  
16 substituting "calendar year 2004" for the calendar year specified  
17 in Section 1(f)(3)(B) of that code.

18 (o) A reserve must be established for each dwelling unit in  
19 the property, regardless of whether the unit is reserved for an  
20 individual or family described by Subsection (f). The reserve must  
21 be maintained on a continuing basis, with withdrawals permitted:

22 (1) only as authorized by the financial lender; or

23 (2) if the financial lender does not require a reserve  
24 fund for replacements, only to pay the cost of capital improvements  
25 needed for the property to maintain habitability under the Minimum  
26 Property Standards of the United States Department of Housing and  
27 Urban Development or the code of a municipality or county

1 applicable to the property, whichever is more restrictive.

2 (p) For purposes of Subsection (o)(2), "capital  
3 improvement" means a property improvement that has a depreciable  
4 life of at least five years under generally accepted accounting  
5 principles, excluding typical "make ready" expenses such as  
6 expenses for plasterboard repair, interior painting, or floor  
7 coverings.

8 (q) If the organization acquires the property for the  
9 purpose of constructing or rehabilitating a housing project on the  
10 property, the organization must be renting or offering to rent the  
11 applicable square footage of dwelling units in the property to  
12 individuals or families described by Subsection (f) not later than  
13 the third anniversary of the date the organization acquires the  
14 property.

15 (r) If property qualifies for an exemption under this  
16 section, the chief appraiser shall use the income method of  
17 appraisal as provided by Section 23.012 to determine the appraised  
18 value of the property. In appraising the property, the chief  
19 appraiser shall:

20 (1) consider the restrictions provided by this section  
21 on the income of the individuals or families to whom the dwelling  
22 units of the housing project may be rented and the amount of rent  
23 that may be charged for purposes of computing the actual rental  
24 income from the property or projecting future rental income; and

25 (2) use the same capitalization rate that the chief  
26 appraiser uses to appraise other rent-restricted properties.

27 (s) Not later than January 31 of each year, the appraisal

1 district shall give public notice in the manner determined by the  
2 district, including posting on the district's website if  
3 applicable, of the capitalization rate to be used in that year to  
4 appraise property receiving an exemption under this section.

5 (t) The amount of the exemption under this section from  
6 taxation is:

7 (1) for a school district, 50 percent of the appraised  
8 value of the property multiplied by a fraction the numerator of  
9 which is the square footage of the dwelling units in the housing  
10 project that are reserved for individuals or families described by  
11 Subsection (f) and the denominator of which is the total square  
12 footage of the dwelling units in the project; and

13 (2) for a taxing unit other than a school district:

14 (A) 75 percent of the appraised value of the  
15 property multiplied by a fraction the numerator of which is the  
16 square footage of the dwelling units in the housing project that are  
17 reserved for individuals or families described by Subsection (f)  
18 and the denominator of which is the total square footage of the  
19 dwelling units in the project, if at least 75 percent of the total  
20 square footage of the dwelling units in the project is reserved for  
21 individuals or families described by Subsection (f); and

22 (B) 65 percent of the appraised value of the  
23 property multiplied by a fraction the numerator of which is the  
24 square footage of the dwelling units in the housing project that are  
25 reserved for individuals or families described by Subsection (f)  
26 and the denominator of which is the total square footage of the  
27 dwelling units in the project, if Paragraph (A) does not apply.



1       (u) Notwithstanding Section 11.43(c), an exemption under  
2 this section does not terminate because of a change in ownership of  
3 the property if:

4           (1) the property is foreclosed on for any reason and,  
5 not later than the 30th day after the date of the foreclosure sale,  
6 the owner of the property submits to the chief appraiser evidence  
7 that the property is owned by:

8                   (A) an organization that meets the requirements  
9 of Subsection (b); or

10                   (B) an entity that meets the requirements of  
11 Subsections (c) and (d); or

12           (2) in the case of property owned by an entity  
13 described by Subsections (c) and (d), the organization meeting the  
14 requirements of Subsection (b) that controls the general partner  
15 interest of or is the parent of the entity as described by  
16 Subsection (c) ceases to serve in that capacity and, not later than  
17 the 30th day after the date the cessation occurs, the owner of the  
18 property submits evidence to the chief appraiser that the  
19 organization has been succeeded in that capacity by another  
20 organization that meets the requirements of Subsection (b).

21           (v) The chief appraiser may extend the deadline provided by  
22 Subsection (u)(1) or (2), as applicable, for good cause shown.

23           (w) Notwithstanding any other provision of this section,  
24 the governing body of a taxing unit any part of which is located in a  
25 county with a population of at least 1.4 million, by official action  
26 of the governing body adopted with the approval of at least  
27 two-thirds of its members in the manner required by law, may require

1 an organization to obtain the approval of the governing body to  
2 receive an exemption under this section from taxation by the taxing  
3 unit. The governing body of a taxing unit that takes action under  
4 this subsection may:

5 (1) approve an exemption in the amount provided by  
6 Subsection (t);

7 (2) approve an exemption in a reasonable amount other  
8 than the amount provided by Subsection (t); or

9 (3) deny an exemption if the governing body determines  
10 that:

11 (A) the taxing unit cannot afford the loss in  
12 revenue that would result from approving the exemption; or

13 (B) additional housing for individuals or  
14 families meeting the income eligibility requirements of this  
15 section is not needed in the territory of the taxing unit.

16 (x) To receive an exemption under this section from taxation  
17 by a taxing unit for which the approval of the governing body of the  
18 taxing unit is required under Subsection (w), an organization must  
19 submit to the taxing unit a written request for approval by the  
20 governing body of the exemption from taxation of the property  
21 described in the request.

22 (y) Following submission of a written request under  
23 Subsection (x), the governing body of the taxing unit shall  
24 determine whether to approve the exemption of the property from  
25 taxation and the amount of the exemption. The governing body shall  
26 issue a letter to the organization stating the governing body's  
27 determination and shall send a copy of the letter by regular mail to

1 the chief appraiser of each appraisal district that appraises the  
2 property for the taxing unit. The governing body may charge the  
3 organization a fee not to exceed the administrative costs of  
4 processing the request of the organization, making the  
5 determination, and issuing the letter required by this subsection.  
6 If the chief appraiser determines that the property qualifies for  
7 an exemption under this section and the governing body of the taxing  
8 unit approves the exemption, the chief appraiser shall grant the  
9 exemption in the amount approved by the governing body.

10 Sec. 11.1826. MONITORING OF COMPLIANCE WITH LOW-INCOME AND  
11 MODERATE-INCOME HOUSING EXEMPTIONS. (a) In this section,  
12 "department" means the Texas Department of Housing and Community  
13 Affairs.

14 (b) Property may not be exempted under Section 11.1825 for a  
15 tax year unless the organization owning or controlling the owner of  
16 the property has an audit prepared by an independent auditor  
17 covering the organization's most recent fiscal year. The audit  
18 must be conducted in accordance with generally accepted accounting  
19 principles. The audit must include an opinion on whether:

20 (1) the financial statements of the organization  
21 present fairly, in all material respects and in conformity with  
22 generally accepted accounting principles, the financial position,  
23 changes in net assets, and cash flows of the organization; and

24 (2) the organization has complied with all of the  
25 terms and conditions of the exemption under Section 11.1825.

26 (c) Not later than the 180th day after the last day of the  
27 organization's most recent fiscal year, the organization must

1 deliver a copy of the audit to the department and the chief  
2 appraiser of the appraisal district in which the property is  
3 located.

4 (d) Notwithstanding any other provision of this section, if  
5 the property contains not more than 36 dwelling units, the  
6 organization may deliver to the department and the chief appraiser  
7 a detailed report and certification as an alternative to an audit.

8 (e) Property may not be exempted under Section 11.182 for a  
9 tax year unless the organization owning or controlling the owner of  
10 the property complies with this section, except that the audit  
11 required by this section must address compliance with the  
12 requirements of Section 11.182.

13 (f) All information submitted to the department or the chief  
14 appraiser under this section is subject to required disclosure, is  
15 excepted from required disclosure, or is confidential in accordance  
16 with Chapter 552, Government Code, or other law.

17 SECTION 4. Sections 11.436(a) and (c), Tax Code, are  
18 amended to read as follows:

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

25 (c) To facilitate the financing associated with the  
26 acquisition of a property, an organization, before acquiring the  
27 property, may request from the chief appraiser of the appraisal

1 district established for the county in which the property is  
2 located a preliminary determination of whether the property would  
3 qualify for an exemption under Section 11.1825 [~~11.182~~] if acquired  
4 by the organization. The request must include the information that  
5 would be included in an application for an exemption for the  
6 property under Section 11.1825 [~~11.182~~]. Not later than the 45th  
7 [~~21st~~] day after the date a request is submitted under this  
8 subsection, the chief appraiser shall issue a written preliminary  
9 determination for the property included in the request. A  
10 preliminary determination does not affect the granting of an  
11 exemption under Section 11.1825 [~~11.182~~].

12 SECTION 5. Subchapter B, Chapter 23, Tax Code, is amended by  
13 adding Section 23.215 to read as follows:

14 Sec. 23.215. APPRAISAL OF CERTAIN NONEXEMPT PROPERTY USED  
15 FOR LOW-INCOME OR MODERATE-INCOME HOUSING. (a) This section  
16 applies only to real property owned by an organization:

17 (1) that on the effective date of this section was  
18 rented to a low-income or moderate-income individual or family  
19 satisfying the organization's income eligibility requirements and  
20 that continues to be used for that purpose;

21 (2) that was financed under the low income housing tax  
22 credit program under Subchapter DD, Chapter 2306, Government Code;

23 (3) that does not receive an exemption under Section  
24 11.182 or 11.1825; and

25 (4) the owner of which has not entered into an  
26 agreement with any taxing unit to make payments to the taxing unit  
27 instead of taxes on the property.

1           (b) The chief appraiser shall appraise the property in the  
2 manner provided by Section 11.1825(r).

3           SECTION 6. This Act takes effect immediately if it receives  
4 a vote of two-thirds of all the members elected to each house, as  
5 provided by Section 39, Article III, Texas Constitution. If this  
6 Act does not receive the vote necessary for immediate effect, this  
7 Act takes effect September 1, 2003.