

By: Hamric

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 extremely low-income
4 housing.

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

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

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

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

13 (j) An organization may not receive an exemption under
14 Subsection (b) or (f), as added by Chapter 1191, Acts of the 77th
15 Legislature, Regular Session, 2001, on or after the effective date
16 of this act.

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

19 Sec. 11.1825. ORGANIZATIONS CONSTRUCTING OR REHABILITATING
20 LOW-INCOME OR EXTREMELY LOW-INCOME HOUSING: PROPERTY NOT
21 PREVIOUSLY EXEMPT. (a) Improved and unimproved real property is
22 exempt from taxation as provided by this section if the property:

23 (1) is owned by a community-based housing provider;
24 and

1 (2) is within the geographic service area of the
2 community-based housing provider and is being held for the
3 provision of affordable housing.

4 (b) Tangible personal property is exempt from taxation as
5 provided by this section if the property:

6 (1) is owned by an organization that owns real
7 property that is exempt as provided by this section; and

8 (2) is used in connection with the real property.

9 (c) To qualify as a community-based housing provider for the
10 purposes of this section and Section 11.1826, an organization must:

11 (1) be a nonprofit corporation incorporated in this
12 state under the Texas Non-Profit Corporation Act (Article 1396-1.01
13 et seq., Vernon's Texas Civil Statutes);

14 (2) validly exist and be in good standing under the
15 laws of this state;

16 (3) be authorized to contract for services from any
17 vendor and not be controlled, directly or indirectly, by any other
18 person through any contract, arrangement, understanding,
19 relationship, voting power, affiliation, trust, proxy, power of
20 attorney, pooling arrangement, security, warrant partnership,
21 option, discretionary account, joint venture, or other device;

22 (4) be exempt from federal income taxation under
23 Section 501(c)(3) or (4), Internal Revenue Code of 1986, as
24 amended;

25 (5) have as its principal purpose the provision of
26 decent housing that is affordable to individuals or families of low
27 income;

1 (6) have a defined geographic service area in which
2 its services are provided that is limited to a single county in this
3 state;

4 (7) conform to appropriate standards of financial
5 accountability;

6 (8) have a history of providing affordable housing in
7 its geographic service area that includes developing, owning,
8 managing, or financing at least three units of affordable housing
9 in that service area, whether those units are single-family
10 residences or individual housing units in multifamily properties;

11 (9) be governed exclusively by a board of directors
12 that meets the following requirements:

13 (A) at least five members of the board of
14 directors must be unrelated to one another within the second degree
15 by consanguinity or affinity and must not have any business
16 relationship with one another other than serving on the board of
17 directors of the organization;

18 (B) the board of directors must meet at least
19 three times each year;

20 (C) the members of the board of directors must be
21 residents of this state and must reside within the geographic
22 service area of the organization;

23 (D) if any member of the board of directors is
24 elected or appointed by another entity, that entity must also
25 qualify as a community-based housing provider under this section
26 unless that entity is a political subdivision of this state;

27 (E) another entity may not elect or appoint more

1 than one-third of the members of the board of directors; and

2 (F) at least one-third of the positions on the
3 board of directors must be reserved for and held by:

4 (i) low-income residents of the geographic
5 service area of the organization;

6 (ii) residents of low-income census tracts
7 in the organization's geographic service area; or

8 (iii) representatives appointed by
9 neighborhood organizations located within the organization's
10 geographic service area that represent low-income households; and

11 (10) have a formal policy containing procedures for
12 giving notice to and receiving advice from low-income households
13 regarding the design, siting, development, and management of
14 affordable housing projects.

15 (d) An organization must provide evidence of compliance
16 with Subsection (c)(2) by including with the application for an
17 exemption under this section:

18 (1) a copy of the organization's certificate of
19 incorporation, articles of incorporation, and bylaws; and

20 (2) a certificate of account status provided by the
21 comptroller that is dated not more than 30 days before the date the
22 application under this section or the audit under Section 11.1826,
23 as applicable, is filed.

24 (e) An organization must provide evidence of compliance
25 with Subsection (c)(3) by including with the application for an
26 exemption under this section an affidavit of compliance with that
27 subsection signed by each member of the board of directors of the

1 organization.

2 (f) An organization must provide evidence of compliance
3 with Subsection (c)(4) by including with the application for an
4 exemption under this section an appropriate determination letter
5 issued to the organization by the United States Internal Revenue
6 Service.

7 (g) To comply with Subsection (c)(5), an organization must
8 include in the organization's articles of incorporation or bylaws a
9 statement that the organization's principal purpose is the
10 provision of decent housing that is affordable to individuals or
11 families of low income.

12 (h) To comply with Subsection (c)(6), an organization must
13 identify in the organization's articles of incorporation or bylaws
14 the county in this state in which its services are provided.

15 (i) An organization must provide evidence of compliance
16 with Subsection (c)(7) by including with the application for an
17 exemption under this section a copy of the organization's most
18 recent audited financial statements dated not later than the 180th
19 day after the last day of the organization's most recent fiscal
20 year, conducted in accordance with generally accepted accounting
21 principles.

22 (j) An organization must provide evidence of compliance
23 with Subsection (c)(8), to the extent necessary to prove the
24 history therein prescribed, by including with the application for
25 an exemption under this section copies of one of the following for
26 each unit of affordable housing provided:

27 (1) a warranty deed or other purchase agreement or a

1 development agreement; or

2 (2) a management agreement; or

3 (3) a promissory note or other financing document
4 showing the organization as the provider of the financing; or

5 (4) in the case of a multifamily property, a document
6 reflecting the restrictive covenants imposed on the property to
7 establish its affordability; or

8 (5) in the case of a single-family property, a
9 document reflecting the property's affordability to individuals or
10 families of low or extremely low income.

11 (k) An organization must provide evidence of compliance
12 with Subsection (c)(9) by including with the application for an
13 exemption under this section:

14 (1) a copy of the organization's articles of
15 incorporation or bylaws;

16 (2) an affidavit of compliance with that subsection
17 signed by an authorized officer of the organization; and

18 (3) a current roster of the organization's board of
19 directors, including:

20 (A) each member's name and occupation;

21 (B) each member's home address; and

22 (C) a notation of which members are described by
23 Subsection (c)(9)(G).

24 (l) An organization must provide evidence of compliance
25 with Subsection (c)(10) by including with the application:

26 (1) a copy of the organization's bylaws; or

27 (2) a certificate signed by the secretary of the

1 organization stating that the organization has a policy required by
2 Subsection (c)(10), to which is attached a copy of the policy and a
3 resolution adopted by the board of directors of the organization
4 approving the policy.

5 (m) For purposes of this section:

6 (1) an individual or family is considered to have
7 extremely low income if the income of the individual or family is
8 not more than 30 percent of the greater of:

9 (A) the area median family income for the
10 household's place of residence, as adjusted for family size and as
11 established by the United States Department of Housing and Urban
12 Development; or

13 (B) the statewide area median family income, as
14 adjusted for family size and as established by the United States
15 Department of Housing and Urban Development; and

16 (2) an individual or family is considered to have low
17 income if the income of the individual or family is not more than 50
18 percent of the greater of:

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

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

26 (n) Residential rental property is eligible for exemption
27 under this section only if:

1 (1) the organization establishes a reserve fund for
2 replacements as required by the person providing financing for the
3 property; or

4 (2) the person providing financing for the property
5 does not require the establishment of a reserve fund for
6 replacements and the organization sets aside as a reserve for
7 capital improvements an amount equal to:

8 (A) \$250 per unit per year for units that are not
9 more than five years old; or

10 (B) \$300 per unit per year for units that are more
11 than five years old.

12 (o) Beginning with the 2005 tax year, the amount of the
13 reserve required by Subsection (o)(2) is increased by an annual
14 cost-of-living adjustment determined under Section 1(f)(3),
15 Internal Revenue Code of 1986, as amended, substituting "calendar
16 year 2004" for "calendar year 1992" in Section 1(f)(3)(B) of that
17 code.

18 (p) A reserve must be established under Subsection (n) for
19 each unit in the property, regardless of whether the unit is
20 affordable. The reserve must be maintained on an ongoing basis,
21 with withdrawals permitted only to pay the cost of capital
22 improvements needed for the property to maintain habitability under
23 the Minimum Property Standards of the United States Department of
24 Housing and Urban Development or a local code, whichever is more
25 restrictive. For purposes of this subsection, "capital
26 improvements" means property improvements that have a depreciable
27 life of at least five years under generally accepted accounting

1 principles, excluding typical "make ready" expenses such as
2 expenses for sheetrock repair, interior painting, or floor
3 coverings.

4 (q) If the property is owned for the purpose of building or
5 rehabilitating housing to be sold to an individual or family of low
6 or extremely low income, including a sale as part of a
7 lease-purchase program, the amount of the exemption from taxation
8 under this section is 75 percent of the appraised value of the
9 property for so long as the owner or lessee qualifies under
10 Subsection (m)(2).

11 (r) If the property is owned for the purpose of building or
12 rehabilitating housing to be rented, the amount of the exemption
13 from taxation under this section equals 75 percent of the appraised
14 value of the property multiplied by a fraction the numerator of
15 which is equal to the number of the net rentable square feet of
16 residential units in the property reserved for rental to
17 individuals or families of low or extremely low income and the
18 denominator of which is equal to the number of the net rentable
19 square feet for all residential units in the property.

20 (s) For the purposes of the computation required by
21 Subsection (r), for each unit reserved for rental to an individual
22 or family of extremely low income, a unit of equal size not
23 otherwise reserved for rental to an individual or family of low or
24 extremely low income may be considered exempt in accordance with
25 Subsection (r).

26 (u) Notwithstanding Subsections (q) and (r), the governing
27 body of a taxing unit by official action may provide that the amount

1 of the exemption under this section from taxation by the taxing unit
2 may exceed but not go below 75 percent of the appraised value of
3 property. This subsection applies only to property that qualifies
4 for an exemption under:

5 (1) Subsection (q); or

6 (2) Subsection (r).

7 (v) Property owned by an organization and exempted under
8 Subsection () may not be exempted under this section after the first
9 anniversary of the date the organization acquires the property
10 unless the organization has sold the property to individuals or
11 families of low or extremely low income or is offering to rent or is
12 renting the property to individuals or families of low or extremely
13 low income.

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

18 (b) Property may not be exempted under Section 11.1825 for a
19 tax year unless the community-based housing provider owning the
20 property has an audit prepared by an independent auditor for the
21 community-based housing provider. The audit must be conducted in
22 accordance with generally accepted accounting principles.

23 (c) The audit must include an opinion on whether the
24 financial statements present fairly, in all material respects and
25 in conformity with accounting principles generally accepted in the
26 United States, the financial position, changes in net assets, and
27 cash flows of the community-based housing provider and whether the

1 community-based housing provider complied with specific terms and
2 conditions of the exemption under Sections 11.1825(c), (n), (q),
3 and (r), as applicable.

4 (d) Not later than the 180th day after the last day of the
5 community-based housing provider's most recent fiscal year, the
6 community-based housing provider must deliver a copy of the audit
7 to the department and the chief appraiser of the appraisal district
8 in which the subject property is located.

9 (e) An audit must be conducted under this section and
10 delivered to the department and the chief appraiser of the
11 appraisal district each year.

12 (f) Notwithstanding the other provisions of this section,
13 if the property contains not more than 36 units, the
14 community-based housing provider may deliver to the department and
15 the chief appraiser a detailed report and certification as an
16 alternative to an audit.

17 (g) Property may not be exempted under Section 11.182 for a
18 tax year unless the organization owning the property complies with
19 this section, except that the audit required by this section must
20 address compliance with the requirements of Section 11.182.

21 (h) All information submitted to the department or the chief
22 appraiser under this section is subject to required disclosure, is
23 excepted from required disclosure, or is confidential in accordance
24 with Chapter 552, Government Code, or other law.

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

27 (c) An exemption provided by Section 11.13, 11.17, 11.18,

1 ~~[11.182,]~~ 11.183, 11.19, 11.20, 11.21, 11.22, 11.23(j), 11.29,
2 11.30, or 11.31, once allowed, need not be claimed in subsequent
3 years, and except as otherwise provided by Subsection (e), the
4 exemption applies to the property until it changes ownership or the
5 person's qualification for the exemption changes. However, the
6 chief appraiser may require a person allowed one of the exemptions
7 in a prior year to file a new application to confirm the person's
8 current qualification for the exemption by delivering a written
9 notice that a new application is required, accompanied by an
10 appropriate application form, to the person previously allowed the
11 exemption.

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

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

20 (c) To facilitate the financing associated with the
21 acquisition of a property, an organization, before acquiring the
22 property, may request from the chief appraiser of the appraisal
23 district established for the county in which the property is
24 located a preliminary determination of whether the property would
25 qualify for an exemption under Section 11.1825 ~~[11.182]~~ if acquired
26 by the organization. The request must include the information that
27 would be included in an application for an exemption for the

1 property under Section 11.1825 [~~11.182~~]. Not later than the 21st
2 day after the date a request is submitted under this subsection, the
3 chief appraiser shall issue a written preliminary determination for
4 the property included in the request. A preliminary determination
5 does not affect the granting of an exemption under Section 11.1825
6 [~~11.182~~].

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