

BILL ANALYSIS

C.S.H.B. 2828
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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 a combination thereof. Currently, Texas has over 1,800 such properties administered by the Texas Department of Housing and Community Affairs and the Texas State Affordable Housing Corporation. These properties represent over 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. While these operations and partnerships involve a number of programmatic allowances, all are administered under the broad guidelines of federal programs relating to affordable housing provisions of the federal Cranston Gonzalez National Affordable Housing Act.

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 on rent levels, utility allowances, and long-term sustainability requirements, 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 or 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 these 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 service 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. This has led to court challenges that have imperiled the financial status of the affordable housing provider and have resulted in the loss of an undetermined number of affordable housing units due to financial failures.

C.S.H.B. 2828 updates provisions relating to taxation of property used to provide low-income or moderate-income housing.

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

C.S.H.B. 2828 revises Tax Code provisions that entitle a community housing development organization engaged in building or improving low-income and moderate-income housing projects to a property tax exemption under certain conditions. The bill specifies that the organization must be engaged in, rather than exclusively engaged in, the activity. The bill entitles an owner of improved or unimproved real property that is not organized as a community housing development organization, or does not meet the requirements of a charitable organization, to a property tax exemption 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 a community housing development or a charitable organization; or an entity 100 percent of the interest in which is owned or controlled by such an organization. The bill provides that a reference to an organization includes a limited partnership or other entity described by these provisions.

C.S.H.B. 2828 removes the limitation that improved real property be property that includes a housing project constructed after December 31, 2001, and financed with qualified 501(c)(3) bonds issued under the federal Internal Revenue Code of 1986, tax exempt private activity bonds subject to volume cap, or low-income housing tax credits for a community housing development organization to receive a tax exemption under certain other conditions.

C.S.H.B. 2828 clarifies that a community housing organization must have applied for an exemption for certain improved or unimproved real property or for a building or tangible personal property the organization owns for low-income and moderate-income housing for any part of the 2003 tax year to receive such an exemption. The bill provides that either exemption specified 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 a limited partnership of which 100 percent of the interest of the general partner is owned or controlled by a community housing development or a charitable organization or an entity 100 percent of the interest in which is owned or controlled by such an organization that engages in building, repair, and sale or rental of low-income or moderate-income housing and related activities.

C.S.H.B. 2828 adds to the owners of real property that are not an organization constructing or rehabilitating low-income housing, but are qualified to receive the tax exemption to which such an organization is entitled because the property otherwise qualifies for the exemption, an entity the parent of which is controlled by an organization that meets the requirements for the exemption. The bill removes the requirement that if the owner of the property is not an organization but is entitled to the exemption from taxation granted an organization constructing or rehabilitating low-income housing, the entity must be organized under the laws of Texas. The bill requires the chief appraiser, in appraising property qualified for such an exemption, to adjust for, rather than consider, the restrictions provided on the income of the individuals or families to whom the units of a low-income 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. The bill makes related conforming changes.

C.S.H.B. 2828 establishes that the audit required of an organization owning or controlling the owner of property before the property can qualify for low-income and moderate-income housing tax exemptions is binding on the appraisal district and constitutes proof of eligibility including compliance with all statutory requirements necessary for such an exemption. The bill clarifies that the provision making the audit both binding on the appraisal district and proof of eligibility

for the exemption applies to an audit that addresses compliance with requirements relating to community housing development organizations improving property for low-income and moderate-income housing in the same manner the provision applies to an audit that addresses compliance with the requirements relating to organizations constructing or rehabilitating low-income housing.

C.S.H.B. 2828 removes provisions making procedures for the appraisal of certain nonexempt property used for low-income or moderate-income housing applicable only to real property: owned by an organization that on the effective date of those provisions was rented to a low-income or moderate-income individual or family satisfying the organization's income eligibility requirements and continues to be used for that purpose; was financed under the low-income housing tax credit program; does not receive certain tax exemptions for community housing development organizations; 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. The bill instead makes the appraisal provisions applicable to real property and only if: the property is owned for the purpose of operating a housing project on the property with dwelling units required to be rented to individuals or families whose median income is not more than 60 percent of the greater of the area median family income for the household's place of residence, as adjusted for family size and established by the U.S. Department of Housing and Urban Development (HUD), or the statewide area median family income, as adjusted for family size and established by HUD; at least 50 percent of the total square footage of the dwelling units in the housing project on the property is reserved for low-income and moderate-income individuals or families; and 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 income and square footage restrictions specified.

C.S.H.B. 2828 requires the chief appraiser, in appraising such nonexempt property used for low-income or moderate-income housing, to use the income method of appraisal provided by state law and estimate the gross potential income of the property by analyzing data on rental income of the property contained in the statement of income and expenses for the property for the preceding fiscal year and the rent roll for the property for December of the preceding year, if the dwelling units in the project were required to be rented to individuals or families that meet the provision's income requirements during the preceding year, or by analyzing the potential earnings capacity of the property, if the construction of the dwelling units in the project has commenced but has not been completed as of the date of the appraisal or if for any other reason the preceding method does not apply; to include deductions for reasonable replacement reserves, franchise taxes imposed by the state, and fees imposed by governmental entities; and to use the capitalization rate determined by the chief appraiser.

C.S.H.B. 2828 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 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 as described by the bill's provisions; and the regulatory burdens associated with complying with the restrictive covenant to which the property is subject. The bill 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 the property.

C.S.H.B. 2828 requires the value of a development property that is selected for appraisal in connection with an annual study conducted to determine school district property values to be determined in the manner required by the bill's provisions.

EFFECTIVE DATE

January 1, 2010.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2828 differs from the original by removing language that requires improved real property to be eligible for a tax exemption under certain conditions to be property that includes a housing project constructed after December 31, 2001, financed with certain bonds or tax credits, whereas the original removes language that requires the improved real property to be property that includes a housing project constructed after December 31, 2001 and retains language requiring the improved real property to be financed with certain bonds or tax credits. The substitute adds a clarification not included in the original that a community housing organization must have applied for an exemption for certain property for any part of the 2003 tax year to qualify for that exemption. The substitute adds a provision not included in the original to add an entity the parent of which is controlled by an organization constructing or rehabilitating low-income housing to the owners entitled to a property tax exemption under certain conditions. The substitute adds a provision not included in the original requiring a chief appraiser to adjust for, rather than consider, certain income restrictions for the purpose of computing actual or projecting future rental income.

C.S.H.B. 2828 adds provisions not in the original making an audit monitoring compliance with low-income and moderate-income housing exemptions both binding on the appraisal district and proof of eligibility for certain property tax exemptions and making those provisions applicable to an audit addressing compliance with requirements relating to community housing development organizations improving property for low-income and moderate-income housing and organizations constructing or rehabilitating low-income housing.

C.S.H.B. 2828 differs from the original by revising the conditions that determine applicability of provisions establishing the appraisal procedure for nonexempt property used for low-income or moderate-income housing. The substitute adds provisions not included in the original requiring the chief appraiser to use the income method of appraisal as provided by law, whereas the original does not specify the method to be used by the appraiser. The substitute differs from the original by adding to the data required to be analyzed in estimating the gross potential income of the property the rent roll for the property for December of the preceding year. The substitute differs from the original by adding a condition that in part determines if the chief appraiser is required to analyze the potential earnings capacity of the property in estimating the property's gross potential income to require such an analysis if construction of the dwelling units in the project on the property has not been completed as of the date of the appraisal. The substitute differs from the original by requiring the chief appraiser, in appraising the property, to include deductions for reasonable replacement reserves, franchise taxes imposed by the state, and fees imposed by governmental entities and use the capitalization rate determined by the chief appraiser. The substitute differs from the original by omitting the requirements included in the original that the chief appraiser, in appraising the property, estimate the property's operation and maintenance expenses and compute the actual rental income or project the future rental income from the property by considering certain restrictions provided by the low-income housing tax credit program. The substitute differs from the original by establishing adjustments the chief appraiser is required to make in determining the capitalization rate, whereas the original sets the capitalization rate at a minimum 13.5 percent with exceptions.

C.S.H.B. 2828 differs from the original by requiring the appraisal district to give public notice of the capitalization rate to be used in that year not later than January 1 of each year, rather than January 31 as in the original. The substitute omits provisions included in the original establishing that, for purposes of determining the net operating income of the property, the operating income of the property for the preceding fiscal year is reduced by any disbursements made in that fiscal year for the operation and maintenance of the property. The substitute omits provisions included in the original requiring a property owner to provide the chief appraiser with an audited statement of the income and expenses for the property for the preceding fiscal year and establishing the confidentiality of information in the audited statement.

C.S.H.B. 2828 differs from the original by making certain clarifying and conforming changes.