BILL ANALYSIS

H.B. 2980
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Ways & Means
Committee Report (Unamended)

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 credit or state-issued private activity bond, 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 dollars 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 sharply 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 has resulted in the loss of an undetermined number of affordable housing units due to financial failures.

H.B. 2980 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

H.B. 2980 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.

H.B. 2980, in a provision setting the conditions under which improved real property that is financed with certain charitable, tax-exempt private security bonds is eligible for a tax exemption, removes language specifying that the eligible property includes a housing project constructed after December 31, 2001.

H.B. 2980 provides that an exemption for improved or unimproved real property and any building or tangible personal property the organization owns and uses in the administration of its acquisition, building, repair, sale, or rental of property 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.

H.B. 2980, in a provision relating to the appraisal of certain nonexempt property used for low-income or moderate-income housing, revises the provision to make it applicable only to real property:

- that includes a development as defined under the low income housing tax credit program in the Government Code, that rents to low-income or moderate-income individuals or families and that was financed under the law income housing tax credit program;
- that 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 payment to the taxing unit instead of taxes on the property.

H.B. 2980 sets forth the required analysis the chief appraiser must employ in appraising the property to estimate its gross income potential, to estimate its the operation and maintenance expenses, to determine the appropriate capitalization rate under these provisions, and to 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.

H.B. 2980 requires the chief appraiser to appraise the property using a capitalization rate of at least 13.5 percent, unless as a result of a study conducted by the chief appraiser, the chief appraiser determines that a capitalization rate of less than 13.5 percent is more appropriate. The bill authorizes the chief appraiser to conduct a study of sales of comparable development properties that are located in the appraisal district to determine the appropriate capitalization rate to use in appraising the property, and requires the chief appraiser to use that lesser capitalization rate if the chief appraiser determines that a capitalization rate of less than 13.5 percent is more appropriate. The bill requires the appraisal district, not later than January 31 of each year, to give public notice in the manner determined by the district, including by posting on the district's website if applicable, of the capitalization rate to be used in that year to appraise development property if that rate is less than 13.5 percent.

H.B. 2980 provides 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, and sets forth those disbursements. The bill requires the property owner, not later than April 15 of each year, to provide to the chief appraiser an audited statement of the income and expenses for the property for the preceding fiscal year that includes data on rental income and operation and maintenance expenses for which disbursements were made, and requires the chief appraiser to use the audited statement of income and expenses in appraising the property. The bill requires the chief appraiser to appraise the property using the income method of appraisal if the property owner fails to timely provide the audited statement of income and expenses. The bill provides that this audited statement of income and expenses for property is confidential and not available for public inspection. The bill authorizes the chief appraiser to disclose information in the statement only to an employee of the appraisal office who appraises property, but sets forth exceptions to confidentiality.

H.B. 2980 requires that, in connection with an annual study conducted to determine school district property values, the value of a development property that is selected for appraisal be determined in the manner required by these provisions.

EFFECTIVE DATE

January 1, 2010.