

BILL ANALYSIS

C.S.H.B. 3104
By: Paxton
Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

A joint hearing of the House Local Ways and Means Committee and the House Urban Affairs Committee of the 80th Legislature was conducted on low-income housing. One of the problems cited that affects the affordability of low-income housing is the lack of clearly defined legislation that establishes consistent guidelines for property valuations, tax exemption qualifications, and the uniform application of qualification compliance measures.

C.S.H.B. 3104 entitles a nonprofit organization that focuses on providing low-income housing allowances to refinance loans without losing the organization's tax preferred status. The bill also entitles a sister nonprofit organization to consolidate with similar organizations without losing tax preferred status.

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. 3104 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 as provided by current law, the building, repair, and sale or rental of such housing. 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 those provisions. The bill includes related technical and conforming changes concerning qualification for an exemption.

C.S.H.B. 3104 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 or is conveyed to a related entity, including a subsidiary or otherwise wholly owned or controlled entity, as part of a partial or complete refinancing of indebtedness secured by the property, and, not later than the 30th day after the date of the sale or conveyance, the owner of the property submits to the chief appraiser specified evidence relating to the property's ownership.

C.S.H.B. 3104 amends provisions requiring that an independent auditor prepare an annual audit in order for an organization owning or controlling the owner of property to receive a low-income or moderate-income housing property improvement tax exemption, to require additionally that the auditor be licensed in Texas as a certified public accountant. The bill specifies that the opinion included in the audit be an unqualified opinion that the financial statement and organization meet certain qualifications. The bill adds a provision establishing that the audit is binding on the appraisal district and constitutes proof of eligibility for the exemption. The bill provides that the added provision applies to an audit that addresses compliance with the requirements of improving low-income or moderate-income housing property in the same manner as the provision applies to an audit that addresses compliance with the requirements for a tax exemption for constructing or rehabilitating low-income housing.

C.S.H.B. 3104 provides that an exemption for a 501(c)(3) tax-exempt organization that constructs or rehabilitates low-income housing, applicable to a construction project completed during or after 2004, need not be claimed in a subsequent year once allowed, and applies to a property until it changes or the person's qualification for the exemption changes. The bill, however, authorizes a chief appraiser to require a person allowed such an exemption in a prior year to file a new application to confirm current qualification for the exemption.

C.S.H.B. 3104, 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 low income housing tax credit program;
- that does not receive a tax exemption 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.

C.S.H.B. 3104 requires the chief appraiser, in appraising such property, to estimate its gross income potential, estimate its operation and maintenance expenses, determine the appropriate capitalization rate, 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 bill 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 of sales of comparable properties in the appraisal district, conducted by the chief appraiser as authorized by the bill, the chief appraiser determines that a capitalization rate of less than 13.5 percent is more appropriate, in which case the chief appraiser is required to use that lesser capitalization rate. 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.

C.S.H.B. 3104 provides that for purposes of determining the net operating income of the property, the operating income for the preceding fiscal year is reduced by any disbursements made in that fiscal year for the operation and maintenance of the property. The bill specifies the types of 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 an audited statement of income and expenses for property is confidential and is 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 that confidentiality.

C.S.H.B. 3104 requires, in connection with the annual study of school property values conducted by the comptroller of public accounts, that 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.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3104 adds a provision not in the original establishing that an exemption does not terminate because of a change in the ownership of the property if the property is conveyed to a related entity, including a subsidiary or otherwise wholly owned or controlled entity, as part of a partial or complete refinancing of indebtedness secured, and appropriate evidence is submitted to the chief appraiser. The substitute makes other technical and conforming changes.