By: Menendez, Paxton, Hilderbran, Villarreal, Oliveira, et al.

H.B. No. 2828

A BILL TO BE ENTITLED

AN ACT

relating to the ad valorem taxation of property used to provide low-income or moderate-income housing.

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

SECTION 1. Section 11.182, Tax Code, is amended by amending Subsections (b), (e), (h), (j), and (k) and adding Subsections (b-1) and (b-2) to read as follows:

(b) An organization is entitled to an exemption from taxation of improved or unimproved real property it owns if the organization:

(1) is organized as a community housing development organization;

(2) meets the requirements of a charitable organization provided by Sections 11.18(e) and (f);

(3) owns the property for the purpose of building or repairing housing on the property to sell without profit to a low-income or moderate-income individual or family satisfying the organization's eligibility requirements or to rent without profit to such an individual or family; and

(4) engages [~~exclusively~~] in the building, repair, and sale or rental of housing as described by Subdivision (3) and related activities.

<u>(b-1) Notwithstanding Subsections (b)(1) and (2), an owner of improved or unimproved real property that is not an organization</u>

described by those subdivisions is entitled to an exemption from taxation of the property under Subsection (b) if the owner otherwise qualifies for the exemption and the owner is:

(1) a limited partnership of which 100 percent of the interest of the general partner is owned or controlled by an organization described by Subsections (b)(1) and (2); or

(2) an entity 100 percent of the interest in which is owned or controlled by an organization described by Subsections (b)(1) and (2).

(b-2) A reference in this section to an organization includes a limited partnership or other entity described by Subsection (b-1).

(e) In addition to meeting the applicable requirements of Subsections (b) and (c), to receive an exemption under Subsection (b) for improved real property [~~that includes a housing project constructed after December 31, 2001, and financed with qualified 501(c)(3) bonds issued under Section 145 of the Internal Revenue Code of 1986, tax-exempt private activity bonds subject to volume cap, or low-income housing tax credits~~], the organization must:

(1) [~~control 100 percent of the interest in the general partner if the project is owned by a limited partnership;~~

[~~(2)~~] comply with all rules of and laws administered by the Texas Department of Housing and Community Affairs applicable to community housing development organizations; and

(2) [~~(3)~~] submit annually to the Texas Department of Housing and Community Affairs and to the governing body of each taxing unit for which the project receives an exemption for the

housing project evidence demonstrating that the organization spent an amount equal to at least 90 percent of the project's cash flow in the preceding fiscal year as determined by the audit required by Subsection (g), for eligible persons in the county in which the property is located, on social, educational, or economic development services, capital improvement projects, or rent reduction.

(h) Subsections (d) and (e)(2) [~~(e)(3)~~] do not apply to property owned by an organization if:

(1) the entity that provided the financing for the acquisition or construction of the property:

(A) requires the organization to make payments in lieu of taxes to the school district in which the property is located; or

(B) restricts the amount of rent the organization may charge for dwelling units on the property; or

(2) the organization has entered into an agreement with each taxing unit for which the property receives an exemption to spend in each tax year for the purposes provided by Subsection (d) or (e)(2) [~~(e)(3)~~] an amount equal to the total amount of taxes imposed on the property in the tax year preceding the year in which the organization acquired the property.

(j) An organization may not receive an exemption under Subsection (b) or (f) for property for a tax year unless the organization applied for or received an exemption under that subsection for the property for any part of the 2003 tax year.

(k) Notwithstanding Subsection (j) [~~of this section~~] and

Sections 11.43(a) and (c), an exemption under Subsection (b) or (f) 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 an organization that meets the requirements of Subsections (b)(1), (2), and (4) or is owned by a limited partnership described by Subsection (b-1)(1) or an entity described by Subsection (b-1)(2) that meets the requirements of Subsection (b)(4). If the owner of the property submits the evidence required by this subsection, the exemption continues to apply to the property for the remainder of the current tax year and for subsequent tax years until the owner ceases to qualify the property for the exemption. This subsection does not prohibit the chief appraiser from requiring the owner to file a new application to confirm the owner's current qualification for the exemption as provided by Section 11.43(c).

SECTION 2. Sections 11.1825(c), (d), (q), and (t), Tax Code, are amended to read as follows:

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

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

(2) an entity the parent of which is an organization that meets the requirements of Subsection (b); or

(3) an entity the parent of which is controlled by an organization that meets the requirements of Subsection (b).

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

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

[~~(2)~~] have its principal place of business in this state.

(q) If property qualifies for an exemption under this section, the chief appraiser shall use the income method of appraisal as provided by Sections [~~Section~~] 23.012 and 23.215 to determine the appraised value of the property. In appraising the property, the chief appraiser shall:

(1) adjust for [~~consider~~] the restrictions provided by this section on the income of the individuals or families to whom the dwelling units of the 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; and

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

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

(1) the property is foreclosed on for any reason and, not later than the 30th day after the date of the foreclosure sale,

the owner of the property submits to the chief appraiser evidence that the property is owned by:

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

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

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

SECTION 3. Section 11.1826, Tax Code, is amended by adding Subsection (c-1) and amending Subsection (e) to read as follows:

(c-1) The audit is binding on the appraisal district and constitutes proof of eligibility for, including compliance with all statutory requirements necessary for, an exemption under Section 11.1825.

(e) Property may not be exempted under Section 11.182 for a tax year unless the organization owning or controlling the owner of the property complies with this section, except that the audit required by this section must address compliance with the requirements of Section 11.182. Subsection (c-1) applies to an audit that addresses compliance with the requirements of Section 11.182 in the same manner as that subsection applies to an audit that addresses compliance with the requirements of Section 11.1825.

SECTION 4. Section 23.215, Tax Code, is amended to read as follows:

Sec. 23.215. APPRAISAL OF CERTAIN NONEXEMPT PROPERTY USED FOR LOW-INCOME OR MODERATE-INCOME HOUSING. (a) This section applies only to real property and only if:

(1) the property is owned for the purpose of operating a housing project on the property the dwelling units in which are required to be rented to individuals or families whose median income is not more than 60 percent of the greater of:

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

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

(2) at least 50 percent of the total square footage of the dwelling units in the housing project on the property is reserved for individuals or families described by Subdivision (1); and

(3) 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 restrictions described by Subdivisions (1) and (2) [~~by an organization:~~

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

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

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

[~~(4) 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~~].

(b) In appraising the property, the [~~The~~] chief appraiser shall use the income method of appraisal as provided by Section 23.012 and shall:

(1) estimate the net income of the property by:

(A) analyzing data on rental income and expenses 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 described by Subsection (a) during the preceding year; or

(B) basing the potential income and expenses of the property on reasonably clear and appropriate evidence, 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 Paragraph (A) does not apply;

(2) include deductions for required replacement reserves, franchise taxes imposed by this state, and fees imposed by governmental entities;

(3) if Subdivision (1)(B) applies, reduce the stabilized value of the property to account for the income lost during the lease-up and construction period and for the percentage of construction yet to be completed; and

(4) use the capitalization rate determined and published by the chief appraiser [~~appraise the property in the manner provided by Section 11.1825(q)~~].

(c) In determining the capitalization rate, the chief appraiser shall adjust for:

(1) the restrictions on the income of the individuals or families to whom the dwelling units in the project are required to be rented and the amount of rent that may be charged;

(2) the restrictions on transferability of the property and the period for which the property is subject to a restrictive covenant described by Subsection (a)(3); and

(3) the regulatory burdens associated with complying with the restrictive covenant described by Subsection (a)(3) to which the property is subject.

(d) Not later than January 1 of each year, the appraisal district shall 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 property under this section.

(e) In connection with an annual study conducted under

Section 403.302, Government Code, the value of a property described by Subsection (a) that is selected for appraisal must be determined in the manner required by this section.

SECTION 5. This Act applies only to ad valorem taxes imposed for a tax year beginning on or after the effective date of this Act.

SECTION 6. This Act takes effect January 1, 2010.