By: Paxton H.B. No. 3104

Substitute the following for H.B. No. 3104:

By: Oliveira C.S.H.B. No. 3104

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), and (k) and adding Subsections (b-1), (b-2), and (l) 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 Subsections (b)(1) and (2) 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 is [~~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.

(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:

(1) the property is:

(A) sold at a foreclosure sale; or

(B) 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

(2) [~~,~~] not later than the 30th day after the date of the sale or conveyance, 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 Subsections (b)(1), (2), and (4); or

(B) 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).

(l) If the owner of [~~the~~] property described by Subsection (k) submits the evidence required by Subdivision (2) of that [~~this~~] subsection, the exemption under Subsection (b) or (f) 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. Section 11.1826, Tax Code, is amended by amending Subsections (b) and (e) and adding Subsection (c-1) to read as follows:

(b) Property may not be exempted under Section 11.1825 for a tax year unless the organization owning or controlling the owner of the property has an audit prepared by an independent auditor, licensed by this state as a certified public accountant, covering the organization's most recent fiscal year. The audit must be conducted in accordance with generally accepted accounting principles. The audit must include an unqualified opinion that [~~on whether~~]:

(1) the financial statements of the organization present fairly, in all material respects and in conformity with generally accepted accounting principles, the financial position, changes in net assets, and cash flows of the organization; and

(2) the organization has complied with all of the terms and conditions of the exemption under Section 11.1825.

(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 3. Section 11.43(c), Tax Code, is amended to read as follows:

(c) An exemption provided by Section 11.13, 11.17, 11.18, 11.182, 11.1825, 11.183, 11.19, 11.20, 11.21, 11.22, 11.23(h), (j), or (j-1), 11.29, 11.30, or 11.31, once allowed, need not be claimed in subsequent years, and except as otherwise provided by Subsection (e), the exemption applies to the property until it changes ownership or the person's qualification for the exemption changes. However, the chief appraiser may require a person allowed one of the exemptions in a prior year to file a new application to confirm the person's current qualification for the exemption by delivering a written notice that a new application is required, accompanied by an appropriate application form, to the person previously allowed the exemption.

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 [~~owned by an organization~~]:

(1) that includes a development, as defined by Section 2306.6702, Government Code:

(A) the dwelling units in which on the effective date of this section were [~~was~~] rented or offered for rent to [~~a~~] low-income or moderate-income individuals [~~individual~~] or families [~~family~~] satisfying the [~~organization's~~] income eligibility requirements of Subchapter DD, Chapter 2306, Government Code, and that continue [~~continues~~] to be used for that purpose; and

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

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

(3) [~~(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:

(1) estimate the gross income potential of the property by:

(A) analyzing data on rental income of the property for the preceding fiscal year contained in the audited statement of income and expenses for the property provided under Subsection (g) to the chief appraiser if the dwelling units in the development were rented or offered for rent to individuals or families described by Subsection (a)(1)(A) for the entire fiscal year;

(B) analyzing the potential earnings capacity of the property if the dwelling units in the development were not rented or offered for rent to individuals or families described by Subsection (a)(1)(A) during the preceding fiscal year; or

(C) if the dwelling units in the development were rented or offered for rent to individuals or families described by Subsection (a)(1)(A) for only part of the preceding fiscal year, using the method prescribed by Paragraph (A) for the part of the fiscal year in which the dwelling units were rented or offered for rent and using the method prescribed by Paragraph (B) for the part of the fiscal year in which the dwelling units were not rented or offered for rent;

(2) estimate the operation and maintenance expenses of the property by:

(A) analyzing data on operation and maintenance expenses of the property for the preceding fiscal year contained in the audited statement of income and expenses for the property provided under Subsection (g) to the chief appraiser if the dwelling units in the development were rented or offered for rent to individuals or families described by Subsection (a)(1)(A) for the entire fiscal year;

(B) analyzing data on operation and maintenance expenses of comparable properties available to the chief appraiser if the dwelling units in the development were not rented or offered for rent to individuals or families described by Subsection (a)(1)(A) during the preceding fiscal year; or

(C) if the dwelling units in the development were rented or offered for rent to individuals or families described by Subsection (a)(1)(A) for only part of the preceding fiscal year, using the method prescribed by Paragraph (A) for the part of the fiscal year in which the dwelling units were rented or offered for rent and using the method prescribed by Paragraph (B) for the part of the fiscal year in which the dwelling units were not rented or offered for rent;

(3) determine the appropriate capitalization rate as provided by Subsections (c) and (d); and

(4) compute the actual rental income from the property or project the future rental income from the property by

considering the restrictions provided by Subchapter DD, Chapter 2306, Government Code, on:

(A) the income of the individuals or families to whom the property may be rented; and

(B) the amount of rent that may be charged for the property [~~appraise the property in the manner provided by Section 11.1825(q)~~].

(c) The chief appraiser shall appraise the property using a capitalization rate of at least 13.5 percent, except as provided by Subsection (d).

(d) The chief appraiser may conduct a study of sales of comparable properties described by Subsection (a) that are located in the appraisal district to determine the appropriate capitalization rate to use in appraising the property. If as a result of the study the chief appraiser determines that a capitalization rate of less than 13.5 percent is more appropriate for that purpose, the chief appraiser shall use that lesser rate.

(e) Not later than January 31 of each year, the appraisal district shall 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 property described by Subsection (a) if that rate is a rate of less than 13.5 percent.

(f) 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, including disbursements for:

(1) standard property maintenance;

(2) debt service;

(3) ad valorem and franchise taxes;

(4) employee compensation;

(5) fees required by government agencies;

(6) expenses incurred in satisfaction of the requirements of lenders, including reserve requirements;

(7) insurance; and

(8) any other justifiable expense related to the operation and maintenance of the property.

(g) Not later than April 15 of each year, the property owner must 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 described by Subsection (f) were made. The chief appraiser shall use the audited statement of income and expenses in appraising the property under this section. If the property owner fails to timely provide the audited statement of income and expenses, the chief appraiser shall appraise the property in the manner provided by Section 23.012.

(h) An audited statement of income and expenses for property provided to the chief appraiser under Subsection (g) is confidential and not available for public inspection. The chief appraiser may disclose information in the statement only to an employee of the appraisal office who appraises property, except as authorized by Subsection (i).

(i) Information made confidential by Subsection (h) may be disclosed:

(1) in a criminal proceeding;

(2) in a hearing conducted by the appraisal review board;

(3) on a judicial determination of good cause; or

(4) to a governmental agency, political subdivision, or regulatory body if the disclosure is necessary or proper for the enforcement of the laws of this or another state or of the United States.

(j) 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.