LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 23, 2009

TO: Honorable Steve Ogden, Chair, Senate Committee on Finance

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB2828** by Menendez (Relating to the ad valorem taxation of property used to provide low-income or moderate-income housing.), **As Engrossed**

The bill's provisions striking the requirement that a community housing development organization engage exclusively in nonprofit building, repair, sale or rental of low-or moderate-income housing to qualify for a property tax exemption, broadening the type of entity that may qualify for the exemption and extending eligibility to entities that applied for the exemption in 2003 would create a cost to the state through the operation of the school finance formulas.

In addition, the bill's appraisal restrictions on certain nonexempt entities would create a cost to the state through the operation of the school funding formulas.

The bill would amend Chapter 11 of the Tax Code, regarding an exemption for property that was exempt under the section in 2003 to strike the requirement that a community housing development organization engage exclusively in nonprofit building, repair, sale or rental of low-or moderate-income housing to qualify for a property tax exemption.

The bill would also extend the exemption to limited partnerships and other entities that are 100 percent owned or controlled by a community housing development organization that meets the requirements of a charitable organization, if such partnerships and other entities are otherwise qualified. The bill would further extend the exemption to organizations that applied for an exemption for the 2003 tax year (current law limits the exemption to organizations that received the exemption in 2003). The bill would make conforming amendments.

The bill would make the audit required under current law binding on an appraisal district in making an eligibility determination.

The bill would amend Chapter 23 of the Tax Code, relating to the appraisal of certain property used to provide low-or moderate-income housing. For certain nonexempt entities, the bill would require an appraisal district to use an income method in appraising the property. In the income appraisal method, the bill would require the appraisal district to adjust for rent restrictions, use the same capitalization rate used for other rent-restricted properties, estimate gross income using property specific rent-roll information from the previous year, and deduct certain expenses including the franchise tax. In determining the capitalization rate used in the appraisal, the bill would require the chief appraiser to adjust for tenant income restrictions, property rent restrictions, property transfer restrictions, and regulatory burdens. An appraisal district would be required to give public notice of the capitalization rate to be used in that year.

The Comptroller would be required to use the methods provided in the bill if appraising low-or moderate-income housing in the annual Property Value Study.

The bill's provisions striking the requirement that a community housing development organization engage exclusively in nonprofit building, repair, sale or rental of low-or moderate-income housing to qualify for a property tax exemption, broadening the type of entity that may qualify for the exemption and extending eligibility to entities that applied for the exemption in 2003 would create a cost to taxing units and to the state through the operation of the school finance formulas. Information about the exclusivity of organizations' nonprofit building operations, the types of entities engaged in nonprofit building operations and whether such entities applied for the exemption in 2003 is unavailable. The fiscal impact of these provisions, therefore, cannot be determined.

The bill's appraisal restrictions on certain nonexempt entities would create a cost for local taxing units and the state through the operation of the school funding formulas. The requirement that both the income and the capitalization rate be adjusted for rent restrictions would result in appraisals that are below market value by reducing the appraised value twice for these restrictions. Also, the requirement that an appraisal district reduce the income by the amount of the franchise tax would result in appraisals that are below market value by making a deduction for an owner-specific expense. Only property expenses should be deducted in an income appraisal. Because information about the number and value of the nonexempt entities that would be eligible for restricted appraisal is unavailable, the fiscal impact cannot be estimated.

The bill would take effect January 1, 2010.

Local Government Impact

The bill's provisions striking the requirement that a community housing development organization engage exclusively in nonprofit building, repair, sale or rental of low-or moderate-income housing to qualify for a property tax exemption, broadening the type of entity that may qualify for the exemption and extending eligibility to entities that applied for the exemption in 2003 would create a cost to local taxing units.

In addition, the bill's appraisal restrictions on certain nonexempt entities would create a cost to local taxing units.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: JOB, MN, SD, SJS