LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 14, 2009

TO: Honorable Rene Oliveira, Chair, House Committee on Ways & Means

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 Introduced**

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 and broadening the type of entity that may qualify for the exemption would create a cost to the state through the operation of the school finance formulas.

To the extent that appraisal districts use the 13.5 percent capitalization rate proposed in the bill and that rate exceeded the market capitalization rate in a given year, the bill would create a cost to the state through the operation of the school finance formulas.

The bill would amend Section 11.182 of the Tax Code 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 make conforming amendments.

The bill would amend Section 23.215 of the Tax Code, relating to the appraisal of certain property used to provide low- or moderate-income housing.

The bill would require appraisal districts to use an income method with a capitalization rate of at least 13.5 percent when appraising nonexempt, low- and moderate-income housing meeting certain requirements, unless the appraisal district conducted and published a study of sales of comparable properties in the appraisal district to determine a lower market capitalization rate.

The bill would provide that in determining the net operating income of the property, certain expenses for the operation and maintenance be included. The Comptroller would have to use the methods provided in the bill if appraising low- or moderate-income housing in the annual Property Value Study.

The bill would require the owner, no later than April 15 of each year, to provide the chief appraiser an audited statement of the income and expenses for the property for the preceding year that included data on rental income and operation and maintenance expenses. The information in the statement would be confidential except for disclosure: 1) in a criminal proceeding; 2) an appraisal review board hearing; 3) on a judicial determination of good cause; or 4) to a governmental agency, political subdivision, or regulatory body if necessary for the enforcement of state and federal law.

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 and broadening the type of entity that may qualify for the exemption would create a cost to taxing units and to the state through the operation of the school finance formulas. Information about the exclusivity of organization's nonprofit building operations and the types of entities engaged in nonprofit building operations is unavailable. The fiscal impact, therefore, cannot be determined.

The bill would allow an appraisal district to use a capitalization rate less than 13.5 percent only if the appraisal district conducted a study based on sales of comparable properties proving the lower rate. Capitalization rates used in an income appraisal express the relationship between income and market value. The higher the capitalization rate, the lower the market value, and vice-versa. Market capitalization rates vary from year to year, depending on changes in interest rates, supply, demand, and other variables. Depending on the volume of sales of rent-restricted, low and moderate-income housing, it could be difficult for all appraisal districts to conduct such a study. To the extent that appraisal districts use the 13.5 percent capitalization rate proposed in the bill, and that rate exceeded the market capitalization rate in a given year, the bill would impose a cost on local taxing units and the state.

Because future market capitalization rates, the availability of future comparable sales, and the extent to which appraisal districts would be able to conduct market capitalization rate studies cannot be predicted, the fiscal impact on local taxing units cannot be determined.

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 and broadening the type of entity that may qualify for the exemption would create a cost to local taxing units.

To the extent that appraisal districts use the 13.5 percent capitalization rate proposed in the bill, and that rate exceeded the market capitalization rate in a given year, the bill would create a cost to local taxing units.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: JOB, MN, SD, SJS