

## **BILL ANALYSIS**

C.S.H.B. 1056  
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Ways & Means  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Affordable housing properties and the regulations governing them are complex. Appraisal districts have struggled to determine whether community housing development organizations and nonprofits seeking property tax exemptions, particularly those partnering with for-profit entities, should be eligible for such exemptions. Despite legislative attempts to clarify exemption eligibility, some exemption requests for affordable housing have wound up in litigation and subsequently been denied.

C.S.H.B. 1056 seeks to clarify certain technical issues with regard to property tax exemptions for affordable multifamily housing properties and their owners. The bill also seeks to place the application process for certain multifamily housing rental properties under the governance of the Texas Department of Housing and Community Affairs.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Department of Housing and Community Affairs in SECTIONS 2 and 3 of this bill.

### **ANALYSIS**

C.S.H.B. 1056 amends the Tax Code to entitle the legal owner of property that is not organized as a community housing development organization (CHDO) and that does not meet certain requirements relating to improving property for low-income or moderate-income housing to a property tax exemption if the property otherwise qualifies for the exemption and the legal owner of the property is an entity 100 percent of the interest in which is owned by a CHDO that does meet those requirements or an entity that is controlled by a CHDO that meets the requirements. The bill extends the prohibitions, requirements, and specifications contained in statutory provisions relating to a CHDO property tax exemption to an entity owned or controlled by a CHDO that meets the requirements.

C.S.H.B. 1056 removes the requirement that a CHDO control 100 percent of the interest in the general partner, if a housing project constructed after December 31, 2001, and financed with qualified 501(c)(3) bonds issued under the federal Internal Revenue Code of 1986, tax-exempt private activity bonds subject to volume cap, or low-income housing tax credits, is owned by a limited partnership, to receive an exemption for improved real property that includes such a housing project. The bill makes the requirement that the CHDO submit annually to the Texas Department of Housing and Community Affairs (TDHCA) evidence demonstrating that the CHDO spent a certain amount in the preceding fiscal year for eligible persons in the county in which the property is located on social, education, or economic development services, capital improvement projects, or rent reduction to receive the exemption contingent on the property being a multifamily rental property consisting of more than four dwelling units and requires the CHDO to submit such evidence to the chief appraiser of the appraisal district in which the property subject to the exemption is located if the property is not a multifamily rental property consisting of more than four dwelling units. The bill removes the requirement that the CHDO, to

receive such an exemption, submit such evidence to the governing body of each taxing unit for which the project receives an exemption.

C.S.H.B. 1056 makes the requirement that a CHDO deliver a copy of an independent audit, in order to receive a property tax exemption, to the TDHCA contingent on the property it owns being a multifamily rental property consisting of more than four dwelling units and makes the same requirement as it applies to delivery of such an audit to the chief appraiser of the appraisal district in which the project subject to the exemption is located contingent on the property not being a multifamily rental property consisting of more than four dwelling units. The bill applies these same conditions to the requirement that a CHDO file a list of any property owned by the CHDO and receiving an exemption that was acquired or sold during the preceding year with the TDHCA and the chief appraiser of the appraisal district, as applicable, in which the relevant property is located and to the requirement relating to a change in property ownership through a foreclosure sale.

C.S.H.B. 1056 prohibits a CHDO from receiving an exemption for property for the 2012 tax year or a subsequent tax year if the CHDO did not claim an exemption for the property for the 2010 tax year or the CHDO claimed an exemption for the property for the 2010 tax year and the CHDO is finally determined to be ineligible for exemption for the property for that tax year.

C.S.H.B. 1056 requires a CHDO that owns a multifamily rental property consisting of more than four dwelling units, if the chief appraiser of the appraisal district in which the property is located cancels the exemption or requires the CHDO to file a new application to confirm the CHDO's current qualification for the exemption, to file a new application for the exemption with the TDHCA. The bill makes statutory provisions relating to an application for a property tax exemption, action on such an application, and the effect of the granting of such an application by a chief appraiser applicable to an application filed with the TDHCA, except as otherwise provided by applicable provisions of the bill. The bill requires the TDHCA to prescribe the contents of the exemption application form and makes statutory provisions relating to the contents of an application for a property tax exemption applicable to an exemption application form prescribed by the TDHCA to the extent those provisions may be made applicable. The bill requires the executive director of the TDHCA, not later than the 60th day after the date a CHDO submits a complete application to the TDHCA, to determine whether the CHDO is entitled to an exemption. The bill authorizes the executive director, in making a determination, to rely on the conclusions in any audit or legal opinion provided to the TDHCA or any determination letter issued by the Internal Revenue Service regarding the CHDO's status under the federal Internal Revenue Code of 1986.

C.S.H.B. 1056 authorizes the executive director to request that a CHDO that files a new application with the TDHCA as described above provide additional information and establishes that, if such a request is made, the application is considered to be complete on the date on which all additional information requested by the executive director has been received by the TDHCA.

C.S.H.B. 1056 requires the executive director, not later than the fifth day after the date the executive director makes a determination, to issue a letter to the applicant CHDO stating the determination. The bill requires the letter, if the executive director determines that the CHDO is not entitled to an exemption, to include reasons for the determination and a description of the appeal procedure. The bill requires the executive director to send a copy of the letter by regular mail to the chief appraiser of each appraisal district that appraises the property. The bill requires the chief appraiser, if the executive director determines that the CHDO is entitled to an exemption, to grant the exemption and, if the executive director determines that the CHDO is not entitled, to deny it.

C.S.H.B. 1056 authorizes the applicant CHDO or a taxing unit in which the property to which the application applies to appeal the executive director's determination to the TDHCA's governing board in the manner provided by TDHCA rule. The bill authorizes the CHDO to be

represented in an appeal by an agent in accordance with Tax Code provisions relating to the representation of a property owner. The bill authorizes the CHDO or the taxing unit to appeal under Tax Code provisions relating to judicial review a final determination by the TDHCA's governing board in the same manner as provided by law for the appeal of a determination by an appraisal review board, except that the petition for review must be brought against the TDHCA rather than the appraisal district.

C.S.H.B. 1056 requires the TDHCA to employ sufficient personnel to process any applications and authorizes the TDHCA to charge a CHDO filing an application a reasonable fee not to exceed the lesser of \$2,500 or the direct and indirect administrative costs of processing the exemption application and issuing the determination.

C.S.H.B. 1056 requires the TDHCA to adopt rules to implement its duties under certain of the bill's provisions and requires such rules to establish procedures for exemption applications and to be sufficiently specific to ensure that determinations are equal and uniform.

C.S.H.B. 1056 entitles a legal owner of real property that is not an organization that meets certain requirements relating to the construction or rehabilitation of low-income housing to an exemption from property taxes if the property otherwise qualifies for the exemption and the legal owner is an entity 100 percent of the interest in which is owned by an organization that does meet the requirements, rather than a limited partnership of which an organization that meets the requirements controls 100 percent of the general partner interest, or an entity controlled by an organization that meets the requirements, rather than an entity the parent of which is an organization that meets the requirements. The bill requires the legal owner of property, if such an entity, to have equitable title to the property, in addition to being organized under state law and having its principal place of business in the state.

C.S.H.B. 1056 authorizes an application for an exemption for a multifamily rental housing project consisting of more than four dwelling units to be filed with the chief appraiser or the TDHCA, except if the legal owner of the property is an entity controlled by an organization that meets certain requirements relating to the construction or rehabilitation of low-income housing, in which case the bill requires the application to be filed with the TDHCA. The bill makes conforming changes to reflect these filing requirements.

C.S.H.B. 1056 specifies that the provision qualifying for a tax exemption property owned for the purpose of constructing or rehabilitating a housing project applies only if the property is used to provide housing to individuals or families meeting certain income requirements and the housing project was under active construction or rehabilitation at the time of initial application for an exemption.

C.S.H.B. 1056 adds an exception to the requirement that the person from whom an organization acquires a housing project for the purpose of rehabilitating the project owned the project for at least five years if the project is acquired from a person that acquired the housing project by foreclosing on it or receiving an instrument in lieu of foreclosure.

C.S.H.B. 1056, in a provision setting the amount of the exemption for property owned for the purpose of constructing and rehabilitating a housing project on the property and renting the housing to individuals or families who meet certain income requirements, raises from 1.4 million to 1.8 million the minimum population of a county in which any part of a taxing unit is located whose governing body may provide for an exemption in a different amount. The bill makes a related conforming change.

C.S.H.B. 1056 makes the bill's provisions relating to the application for and administration of a property tax exemption for a CHDO improving property for low-income and moderate-income housing that is required to file a new exemption application due to a requirement or denial of an exemption by an appraisal district, including provisions requiring the TDHCA to adopt related

rules, applicable to the application for and administration of an exemption for an organization constructing or rehabilitating low-income housing when the application is filed with the TDHCA.

C.S.H.B. 1056 specifies that, with regard to the requirement that an organization receiving an exemption for property used for construction or rehabilitation of low-income housing deliver a copy of an independent audit, the delivery is to be made to the TDHCA or the chief appraiser of the appraisal district in which the property is located based on which entity determines whether the property qualifies in the current tax year for the exemption for which the audit is conducted.

C.S.H.B. 1056 requires the executive director of the TDHCA, if an application for an exemption for a CHDO improving property for low-income and moderate-income housing or an organization constructing or rehabilitating low-income housing has been filed with the TDHCA, to monitor eligibility for the exemption and investigate if the executive director learns of any reason indicating that an exemption previously allowed should be canceled. The bill requires the executive director to notify the chief appraiser if the executive director determines that the property is not eligible and requires the chief appraiser to cancel the exemption and deliver written notice of the cancellation within five days after the date of cancellation. The bill requires the executive director to notify the chief appraiser if the executive director discovers that an exemption has been erroneously allowed by the TDHCA in any one of the five preceding years and requires the chief appraiser to add the erroneously exempted property or appraised value to the appraisal roll as provided by law for other property that escapes taxation. The bill requires the chief appraiser, if an erroneous exemption did not apply to all taxing units in which the property was located, to note on the appraisal records for each prior year the taxing units to which the exemption applied and that are entitled to impose taxes on the property or appraised value that escaped taxation.

C.S.H.B. 1056 redefines "community housing development organization" and defines "control" and "department" with regard to the Tax Code provisions amended by the bill.

C.S.H.B. 1056 amends the Local Government Code to establish that a public facility corporation that owns multifamily rental property used to provide housing for low-income individuals or families is engaged exclusively in the performance of governmental functions and exempts the corporation and the property from taxation by the state or a municipality or other political subdivision of the state. The bill entitles the legal owner of such property, if the legal owner is not a corporation, to a property tax exemption with regard to public facility corporations if the property otherwise qualifies for the exemption and the legal owner is an entity 100 percent of the interest in which is owned by a corporation or an entity controlled by a corporation. The bill requires a legal owner of property that is owned or controlled by a public facility corporation to be organized under the laws of Texas and to have its principal place of business in Texas and requires the corporation with such control to have equitable title to the property. The bill authorizes a corporation or other person claiming a public facility corporation exemption to file an application for the exemption with the chief appraiser of the appraisal district in which the property is located or the TDHCA or its successor agency. The bill makes its provisions regarding an application for and administration of a property tax exemption for a CHDO improving property for low-income and moderate-income housing that is required to file a new exemption application due to a requirement or denial of an exemption by an appraisal district, including provisions requiring the TDHCA to adopt related rules, applicable to an application filed for a public facility corporation exemption to the extent those provisions can be made applicable. The bill defines "control" for purposes of these provisions related to a public facility corporation exemption.

C.S.H.B. 1056 establishes the conditions under which a person is considered to own property for purposes of the exemptions addressed by the bill and constitutional provisions authorizing the legislature by general law to exempt from taxation public property used for public purposes. The bill makes conforming and nonsubstantive changes.

C.S.H.B. 1056 makes its provisions applicable to property taxes imposed on property for a tax year beginning before the bill's effective date if on the bill's effective date the property is the subject of a protest or an appeal under Tax Code provisions relating to local or judicial review, the protest or appeal relates to the exemption of the property addressed by the bill's provisions, the protest or appeal is pending on the bill's effective date, and before the protest or appeal is finally determined the owner of the property notifies the appraisal review board or court in which the protest or appeal is pending that the owner elects to have the bill's provisions apply to the determination of the protest or appeal. The bill establishes that a property owner who elects to have the bill's provisions apply in such a manner and who has paid all or part of the taxes imposed on the property for that tax year is not entitled to a refund of the amount of taxes paid if the property is finally determined to have been eligible for the exemption that tax year.

### **EFFECTIVE DATE**

January 1, 2012.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 1056 contains a provision not included in the original defining "department." The substitute differs from the original by establishing the conditions under which a person is considered to own property for purposes of the exemptions addressed by the bill and constitutional provisions authorizing the legislature by general law to exempt from taxation public property used for public purposes, whereas the original defines "owns" or "owned" for purposes of the bill's provisions and for purposes of constitutional provisions relating to certain tax exemptions. The substitute omits provisions included in the original establishing legislative intent with regard to the exemption of qualifying property from property taxes given certain ownership arrangements.

C.S.H.B. 1056 omits a condition included in the original requiring a community housing development organization (CHDO) or the legal owner of certain property improved for low-income or moderate-income housing, in order for the legal owner to be entitled to a property tax exemption as provided by the bill, to have filed the initial application for the exemption between January 1, 2002, and December 31, 2003. The substitute differs from the original by making related conforming changes.

C.S.H.B. 1056 omits provisions included in the original making statutory provisions relating to a leasehold and other possessory interests in exempt real property inapplicable to the legal owner of property entitled to an exemption under the bill or a public facility corporation.

C.S.H.B. 1056 differs from the original by specifying that certain filing and submission requirements with regard to the exemptions addressed by the bill apply to the Texas Department of Housing and Community Affairs (TDHCA), if the relevant property is a multifamily rental property consisting of more than four dwelling units, or to the chief appraiser of an appraisal district in which the property is located, if the property is not such a property, whereas the original for purposes of those same filing and submission requirements changes references to the TDHCA, the governing body of a taxing unit for which certain housing projects receive an exemption, and the chief appraiser of an appraisal district in which relevant property receiving an exemption is located, to refer instead to the reviewing entity, as applicable.

C.S.H.B. 1056 contains a provision not included in the original prohibiting a CHDO from receiving an exemption for property for the 2012 tax year or a subsequent tax year if the CHDO did not claim and exemption for the property for the 2010 tax year or the CHDO claimed an exemption for the property for the 2010 tax year and the CHDO is finally determined to be ineligible for exemption for the property for that tax year.

C.S.H.B. 1056 differs from the original by setting out exemption application requirements for a CHDO that owns a multifamily rental property consisting of more than four dwelling units that receives an exemption if the chief appraiser of the appraisal district in which the property is located cancels the exemption or requires the CHDO to file a new application to confirm the CHDO's current qualification for the exemption, whereas the original sets out exemption application requirements for a CHDO if there is a protest outstanding or an exemption has been denied by an appraisal district with respect to a multifamily residential rental housing project consisting of more than four units. The substitute differs from the original by requiring the executive director of the TDHCA, not later than the 60th day after the date the CHDO submits a complete application, to certify that the owner and the property meet or do not meet the requirements for the exemption, whereas the original requires the TDHCA, not later than the 60th day after the date the TDHCA receives a complete application, to determine whether the CHDO is entitled to an exemption.

C.S.H.B. 1056 differs from the original by authorizing the executive director, in making a determination relating to an exemption addressed by the bill, to rely on the conclusions in any audit or legal opinion provided to the TDHCA or any determination letter issued by the Internal Revenue Service regarding the CHDO's status under the federal Internal Revenue Code of 1986, whereas the original requires certain rules adopted by the TDHCA to provide that the TDHCA can conclusively rely upon the conclusions in any audit or legal opinion provided it or any determination letter from the Internal Revenue Service regarding an entity's status under the federal Internal Revenue Code.

C.S.H.B. 1056 contains a provision not include in the original authorizing the executive director to request that a CHDO that files a new application with the TDHCA provide additional information.

C.S.H.B. 1056 omits a requirement included in the original requiring rules adopted by the TDHCA to establish procedures for considering predetermination. The substitute omits a provision included in the original making the bill's provisions relating to an application for an exemption based on an outstanding protest or exemption denial inapplicable to an organization that has been debarred from participation in the TDHCA's programs.

C.S.H.B. 1056 omits a provision included in the original specifying that an organization that meets certain requirements relating to the construction or rehabilitation of low-income housing, or an organization that does not meet those requirements but is 100 percent owned or controlled by an organization that does, establishes equitable title if it has a present right to compel title to the property in accordance with Texas law.

C.S.H.B. 1056 contains a specification not included in the original, with regard to a statutory provision setting the amount of the exemption for property owned for the purpose of constructing and rehabilitating a housing project on the property and renting the housing to individuals or families who meet certain income requirements, raising the minimum population of a county in which any part of taxing unit is located whose governing body may provide for a different exemption amount. The substitute contains a specification not included in the original making a related conforming change.

C.S.H.B. 1056 omits a provision included in the original requiring the TDHCA and the chief appraiser to rely exclusively on the auditor's opinion in the audit conducted under statutory provisions relating to compliance monitoring of low-income and moderate-income housing tax exemptions in making its determination on the renewal of any exemption that is required to be claimed annually.

C.S.H.B. 1056 contains a provision not included in the original specifying that, with regard to the requirement that an organization receiving an exemption for property used for construction or rehabilitation of low-income housing deliver a copy of an independent audit to the TDHCA

and the chief appraiser of the appraisal district in which the property is located, the delivery is to be made to the TDHCA or the chief appraiser, based on which entity determines whether the property qualifies in the current tax year for the exemption for which the audit is conducted. The substitute contains provisions not included in the original setting out requirements for the executive director of the TDHCA and the chief appraiser of a relevant appraisal district relating to eligibility monitoring for an exemption for a CHDO improving property for low-income and moderate-income housing or an organization constructing or rehabilitating low-income housing.

C.S.H.B. 1056 differs from the original by entitling the legal owner of multifamily rental property used exclusively to provide housing for low-income individuals or families, if the legal owner is not a corporation, to a property tax exemption with regard to public facility corporations if certain conditions are met, whereas the original entitles the legal owner of property, when a public facility corporation is not the legal owner, to such an exemption if the same conditions are met.

C.S.H.B. 1056 contains provisions not included in the original authorizing a public facility corporation or other person claiming a public facility corporation exemption to file an application for the exemption with the chief appraiser of the appraisal district in which the property is located or the TDHCA or its successor agency and makes the bill's provisions regarding an application for and administration of a property tax exemption for a CHDO improving property for low-income and moderate-income housing that is required to file a new exemption application due to a requirement or denial of an exemption by an appraisal district, including provisions requiring the TDHCA to adopt related rules, applicable to an application filed for a public facility corporation exemption to the extent those provisions can be made applicable.

C.S.H.B. 1056 contains provisions not included in the original making the bill's provisions applicable to property taxes imposed on property for a tax year beginning before the bill's effective date if on the bill's effective date the property is the subject of a certain protest or appeal and before the protest or appeal is finally determined the owner of the property notifies the appraisal review board or court in which the protest or appeal is pending that the owner elects to have the bill's provisions apply to the determination of the protest or appeal and establishing that a property owner who elects to have the bill's provisions apply in such a manner, and who has paid all or part of the taxes imposed on the property for that tax year, is not entitled to a refund of the amount of taxes paid if the property is finally determined to have been eligible for the exemption that tax year.

C.S.H.B. 1056 differs from the original by making the bill's provisions effective January 1, 2012, whereas the original makes the bill's provisions effective September 1, 2011. The substitute differs from the original in nonsubstantive ways reflective of certain bill drafting conventions and contains technical corrections, clarifying changes, and conforming changes not included in the original.