

By: Villarreal

H.B. No. 1056

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the ad valorem taxation of property used to provide
3 low-income or moderate-income housing and clarifying legislative
4 intent.

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

6 SECTION 1. Section 11.182, Tax Code, is amended to read as
7 follows:

8 Sec. 11.182. COMMUNITY HOUSING DEVELOPMENT ORGANIZATIONS
9 IMPROVING PROPERTY FOR LOW-INCOME AND MODERATE-INCOME HOUSING:
10 PROPERTY PREVIOUSLY EXEMPT. (a) In this section:

11 (1) "Cash flow" means the amount of money generated by
12 a housing project for a fiscal year less the disbursements for that
13 fiscal year for operation and maintenance of the project,
14 including:

- 15 (A) standard property maintenance;
16 (B) debt service;
17 (C) employee compensation;
18 (D) fees required by government agencies;
19 (E) expenses incurred in satisfaction of
20 requirements of lenders, including reserve requirements;
21 (F) insurance; and
22 (G) other justifiable expenses related to the
23 operation and maintenance of the project.

24 (2) "Community [~~housing development organization~~]"

1 Housing Development Organization" has the meaning assigned by [42
2 U.S.C. Section 12704.] 24 CFR 92.2, except for this purpose such
3 organizations are not required to receive HOME funds, may have
4 boards appointed wholly by state and local governments and do not
5 have to comply with the federal standards of accountability to
6 qualify.

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

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

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

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

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

22 (b-1) Notwithstanding Subsection (b), an owner of property
23 that is not an organization described by that subsection is
24 entitled to an exemption from taxation of property under this
25 section if the property otherwise qualifies for the exemption and
26 the legal owner is an entity that is 100% owned by an organization
27 that meets the requirements of Subsection (b).

1 (b-2) Notwithstanding Subsection (b), an owner of property
2 that is not an organization described by that subsection is
3 entitled to an exemption from taxation of property under this
4 section if the property otherwise qualifies for the exemption and:

5 (1) the legal owner of the property is an entity that
6 is controlled by an organization that meets the requirements of
7 Subsection (b); and

8 (2) the organization or the legal owner of the
9 property filed its initial application for the exemption hereunder
10 between January 1, 2002 and December 31, 2003.

11 (b-3) For purposes of Subsection (b-2):

12 (1) "Control" or "controlled" means having the power
13 to manage, direct, superintend, restrict, regulate, govern,
14 administer, or oversee. By way of example, if the entity is a
15 limited partnership, the organization must directly or through a
16 wholly controlled subsidiary, control 100% of the general partner
17 interest, and if the entity is a limited liability company, the
18 organization must be the sole manager or managing member.

19 (2) An initial application is the first application
20 filed by the organization or the legal owner for the property
21 pursuant to Section 11.43 and does not include any subsequent
22 application that is required to be filed.

23 (b-4) A reference in this section to an organization
24 includes an entity described by Subsections (b-1) or (b-2).
25 Section 25.07 does not apply to an entity described in Subsections
26 (b-1) or (b-2).

27 (b-5) "Owns" or "owned" for purposes of this section and

1 Article 8, Section 2 of the Texas Constitution means having legal or
2 equitable title. For example, the organization establishes
3 equitable title if it has a present right to compel legal title to
4 the property to be conveyed to it in accordance with Texas law,
5 which includes an option to acquire the property. It is the
6 legislature's express intent, among others, to exempt qualifying
7 properties owned by a tax credit partnership or limited liability
8 company, when the general partner is or is controlled by a Community
9 Housing Development Organization which holds equitable title to the
10 property pursuant to an option to acquire the property on terms
11 negotiated between the parties.

12 (c) Property owned by the organization may not be exempted
13 under [~~Subsection~~] Subsections (b), (b-1), or (b-2) after the third
14 anniversary of the date the organization acquires the property
15 unless the organization is offering to rent or is renting the
16 property without profit to a low-income or moderate-income
17 individual or family satisfying the organization's eligibility
18 requirements.

19 (d) A multifamily rental property consisting of 36 or more
20 dwelling units owned by the organization that is exempted under
21 [~~Subsection~~] Subsections (b), (b-1), or (b-2) may not be exempted
22 in a subsequent tax year unless in the preceding tax year the
23 organization spent, for eligible persons in the county in which the
24 property is located, an amount equal to at least 40 percent of the
25 total amount of taxes that would have been imposed on the property
26 in that year without the exemption on social, educational, or
27 economic development services, capital improvement projects, or

1 rent reduction. This subsection does not apply to property
2 acquired by the organization using tax-exempt bond financing after
3 January 1, 1997, and before December 31, 2001.

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

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

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

18 [~~(3)~~] (2) submit annually to the [~~Texas Department of~~
19 ~~Housing and Community Affairs and to the governing body of each~~
20 ~~taxing unit for which the project receives an exemption for the~~
21 ~~housing project~~] entity that it would file an exemption application
22 with (the "Reviewing Entity"), evidence demonstrating that the
23 organization spent an amount equal to at least 90 percent of the
24 project's cash flow in the preceding fiscal year as determined by
25 the audit required by Subsection (g), for eligible persons in the
26 county in which the property is located, on social, educational, or
27 economic development services, capital improvement projects, or

1 rent reduction.

2 (f) An organization entitled to an exemption under
3 ~~[Subsection]~~ Subsections (b), (b-1) or (b-2) is also entitled to an
4 exemption from taxation of any building or tangible personal
5 property the organization owns and uses in the administration of
6 its acquisition, building, repair, sale, or rental of property. To
7 qualify for an exemption under this subsection, property must be
8 used exclusively by the organization, except that another person
9 may use the property for activities incidental to the
10 organization's use that benefit the beneficiaries of the
11 organization.

12 (g) To receive an exemption under ~~[Subsection]~~ Subsections
13 (b), (b-1), (b-2) or (f), an organization must annually have an
14 audit prepared by an independent auditor. The audit must include a
15 detailed report on the organization's sources and uses of funds. A
16 copy of the audit must be delivered to the ~~[Texas Department of~~
17 ~~Housing and Community Affairs and to the chief appraiser of the~~
18 ~~appraisal district in which the property subject to the exemption~~
19 ~~is located]~~ Reviewing Entity.

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

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

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

27 (B) restricts the amount of rent the organization

1 may charge for dwelling units on the property; or

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

8 (i) If any property owned by an organization receiving an
9 exemption under this section has been acquired or sold during the
10 preceding year, such organization shall file by March 31 of the
11 following year with the ~~[chief appraiser in the county in which the~~
12 ~~relevant property is located]~~ Reviewing Entity, on a form
13 promulgated by the comptroller of public accounts, a list of such
14 properties acquired or sold during the preceding year.

15 (j) An organization may not receive an exemption under
16 ~~[Subsection]~~ Subsections (b), (b-1), (b-2) or (f) for property for
17 a tax year unless the organization received an exemption under that
18 subsection for the property for any part of the 2003 tax year.

19 (k) Notwithstanding Subsection (j) of this section and
20 Sections 11.43(a) and (c), an exemption under ~~[Subsection]~~
21 Subsections (b), (b-1), (b-2) or (f) does not terminate because of a
22 change in the ownership of the property if the property is sold at a
23 foreclosure sale and, not later than the 30th day after the date of
24 the sale, the owner of the property submits to the ~~[chief appraiser]~~
25 Reviewing Entity evidence that the property is owned by an
26 organization that meets the requirements of Subsections (b)(1),
27 (2), and (4). If the owner of the property submits the evidence

1 required by this subsection, the exemption continues to apply to
2 the property for the remainder of the current tax year and for
3 subsequent tax years until the owner ceases to qualify the property
4 for the exemption. [~~This subsection does not prohibit the chief
5 appraiser from requiring the owner to file a new application to
6 confirm the owner's current qualification for the exemption as
7 provided by Section 11.43(c).~~]

8 (1) If there is a protest outstanding or an exemption has
9 been denied by an appraisal district on or after the effective date
10 of this Section with respect to a multifamily residential rental
11 housing project consisting of more than four units, then the
12 organization will file a new application in accordance with the
13 following provisions:

14 (1) The procedure to apply for and otherwise
15 administer the exemption shall be in accordance with Sections
16 11.42, 11.43, 11.436, 11.44(a) and 11.45, except that the
17 Department shall be substituted for the chief appraiser. Once
18 allowed, an exemption need not be applied for in subsequent years,
19 unless contested by a taxing unit or the Department determines that
20 the organization has failed to comply with another provision of
21 this statute.

22 (2) The Department shall promulgate the application
23 form in accordance with Section 11.43(f) and other applicable
24 provisions of this code.

25 (3) Not later than the 60th day after the date the
26 Department receives a complete application, it will either:

27 (A) certify that the owner and the property meet

1 the requirements for the exemption; or

2 (B) certify that the owner and the property do
3 not meet the requirements for the exemption. An application is
4 complete on the later of the date it is filed or the date on which
5 all additional information requested by the Department has been
6 received by the Department.

7 (4) Not later than the fifth day after making the
8 determination under Subsection (1)(3), the Department shall issue a
9 letter to the organization, stating its determination. The
10 Department shall send a copy of the letter by regular mail to the
11 chief appraiser of each appraisal district that appraises the
12 property. If the exemption is granted, the chief appraiser shall
13 exempt the property. If the exemption is denied, the letter will
14 include the reasons for such denial and a description of the
15 procedure for appealing the determination.

16 (5) The organization and the taxing units shall have
17 the right to appeal the Department's determination to its Board
18 with respect to any exemption determination in accordance with the
19 rules for appeals promulgated by the Department. The organization
20 may be represented in such appeal by an agent in accordance with
21 Section 1.111. The final determination by the Department of any
22 protest in accordance with its rules for appeals shall be
23 equivalent to and in place of an appraisal review board decision
24 under Chapter 41 of this code. A property owner or taxing unit may
25 appeal such determination in accordance with Chapter 42 of this
26 code.

27 (6) The Department shall hire sufficient personnel to

1 process any applications and may charge the organization a
2 reasonable fee not to exceed the lesser of \$2,500 per application or
3 the direct or indirect administrative costs of processing the
4 exemption application and issuing the determination required by
5 this subsection.

6 (7) The Department shall adopt rules to implement its
7 duties hereunder. Rules adopted under this section must:

8 (A) establish procedures for considering
9 predetermination letters and exemption applications;

10 (B) be sufficiently specific to ensure that
11 determinations are equal and uniform; and

12 (C) provide that the Department can conclusively
13 rely upon the conclusions in any audit or legal opinion provided it
14 or any determination letter from the Internal Revenue Service
15 regarding an entity's status under Section 501 of the Internal
16 Revenue Code.

17 (8) Notwithstanding any other provision of this
18 section, Section (1) does not apply to an organization that has been
19 debarred from participation in the Department's programs.

20 SECTION 2. Sections 11.1825, Tax Code, is amended to read as
21 follows:

22 Sec. 11.1825. ORGANIZATIONS CONSTRUCTING OR REHABILITATING
23 LOW-INCOME HOUSING: PROPERTY NOT PREVIOUSLY EXEMPT. (a) An
24 organization is entitled to an exemption from taxation of real
25 property owned by the organization that the organization constructs
26 or rehabilitates and uses to provide housing to individuals or
27 families meeting the income eligibility requirements of this

1 section. "Owns" or "owned" for purposes of this section and Article
2 8, Section 2 of the Texas Constitution means having legal or
3 equitable title. For example, the organization establishes
4 equitable title if it has a present right to compel legal title to
5 the property to be conveyed to it in accordance with Texas law,
6 which includes an option to acquire the property. It is the
7 legislature's express intent, among others, to exempt qualifying
8 properties owned by a tax credit partnership or limited liability
9 company, when the general partner is or is controlled by an entity
10 described in (b) below which holds equitable title to the property
11 pursuant to an option to acquire the property on terms negotiated
12 between the parties.

13 (b) To receive an exemption under this section, an
14 organization must meet the following requirements:

15 (1) for at least the preceding three years, the
16 organization:

17 (A) has been exempt from federal income taxation
18 under Section 501(a), Internal Revenue Code of 1986, as amended, by
19 being listed as an exempt entity under Section 501(c)(3) of that
20 code;

21 (B) has met the requirements of a charitable
22 organization provided by Sections 11.18(e) and (f); and

23 (C) has had as one of its purposes providing
24 low-income housing;

25 (2) a majority of the members of the board of directors
26 of the organization have their principal place of residence in this
27 state;

1 (3) at least two of the positions on the board of
2 directors of the organization must be reserved for and held by:

3 (A) an individual of low income as defined by
4 Section 2306.004, Government Code, whose principal place of
5 residence is located in this state;

6 (B) an individual whose residence is located in
7 an economically disadvantaged census tract as defined by Section
8 783.009(b), Government Code, in this state; or

9 (C) a representative appointed by a neighborhood
10 organization in this state that represents low-income households;
11 and

12 (4) the organization must have a formal policy
13 containing procedures for giving notice to and receiving advice
14 from low-income households residing in the county in which a
15 housing project is located regarding the design, siting,
16 development, and management of affordable housing projects.

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

22 (1) [~~a limited partnership of which~~] an entity that is
23 100% owned by an organization that meets the requirements of
24 Subsection (b) [~~controls 100 percent of the general partner~~
25 ~~interest~~]; or

26 (2) an entity [~~the parent of which is~~] that is
27 controlled by an organization that meets the requirements of

1 Subsection (b).

2 For purposes of this Subsection (c), "control" or
3 "controlled" means having the power to manage, direct, superintend,
4 restrict, regulate, govern, administer, or oversee. By way of
5 example, if the entity is a limited partnership, the organization
6 must directly or through a wholly controlled subsidiary, control
7 100% of the general partner interest, and if the entity is a limited
8 liability company, the organization must be the sole manager or
9 managing member.

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

12 (1) the legal owner must be organized under the laws of
13 this state; [~~and~~]

14 (2) the legal owner must have its principal place of
15 business in this state; and

16 (3) the organization must have equitable title to the
17 property.

18 For purposes of this Subsection (d), the organization
19 establishes equitable title if it has a present right to compel
20 title to the property in accordance with Texas law, which includes
21 an option to acquire the property.

22 (e) A reference in this section to an organization includes
23 an entity described by Subsection (c). Section 25.07 does not apply
24 to an entity described in Subsection (c).

25 (e-1) An organization submitting an application for
26 exemption under Subsection (b) or (c)(1) for a project that is not a
27 multifamily residential rental housing project containing more

1 than four units, may submit its application to the chief appraiser.
2 An organization submitting an application for exemption for a
3 multifamily residential rental housing project containing more
4 than four units, under Subsection (b) or (c)(1) may, and an
5 organization submitting an application under Subsection (c)(2)
6 will, submit its application to the Texas Department of Housing and
7 Community Affairs (the "Department"). In its capacity as the party
8 reviewing an application for exemption, the chief appraiser and the
9 Department will be referred to as the "Reviewing Entity" hereunder.

10 (f) For property to be exempt under this section, the
11 organization must own the property for the purpose of constructing
12 or rehabilitating a housing project on the property and:

13 (1) renting the housing to individuals or families
14 whose median income is not more than 60 percent of the greater of:

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

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

22 (2) selling single-family dwellings to individuals or
23 families whose median income is not more than the greater of:

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

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

4 (g) Property may not receive an exemption under this section
5 unless at least 50 percent of the total square footage of the
6 dwelling units in the housing project is reserved for individuals
7 or families described by Subsection (f).

8 (h) The annual total of the monthly rent charged or to be
9 charged for each dwelling unit in the project reserved for an
10 individual or family described by Subsection (f) may not exceed 30
11 percent of the area median family income for the household's place
12 of residence, as adjusted for family size and as established by the
13 United States Department of Housing and Urban Development.

14 (i) Property owned for the purpose of constructing a housing
15 project on the property is exempt under this section only if:

16 (1) the property is used to provide housing to
17 individuals or families described by Subsection (f); ~~or~~ and

18 (2) the housing project is under active construction
19 or other physical preparation at the time of initial application
20 for an exemption.

21 For purposes of this section, an initial application is the
22 first application filed by the organization for the property
23 pursuant to Section 11.43 and does not include any subsequent
24 application that is required to be filed on an annual basis.

25 (j) For purposes of ~~Subsection~~ Subsections (i)(2) and
26 (1)(2), a housing project is under physical preparation if the
27 organization has engaged in architectural or engineering work, soil

1 testing, land clearing activities, or site improvement work
2 necessary for the construction or rehabilitation of the project or
3 has conducted an environmental or land use study relating to the
4 construction or rehabilitation of the project.

5 (k) An organization may not receive an exemption for
6 property owned for the purpose of constructing a housing project
7 [~~constructed by the organization if the~~] if construction of the
8 project was completed before January 1, 2004.

9 (l) Property owned for the purpose of rehabilitating a
10 housing project on the property is exempt under this Section only
11 if:

12 (1) the property is used to provide housing to
13 individuals or families described by Subsection (f); and

14 (2) the housing project is under active rehabilitation
15 or other physical preparation at the time of initial application
16 for an exemption.

17 [~~(l)~~] (m) If the property is owned for the purpose of
18 rehabilitating a housing project on the property:

19 (1) the original construction of the housing project
20 must have been completed at least 10 years before the date the
21 organization began actual rehabilitation of the project;

22 (2) the person from whom the organization acquired the
23 project must have owned the project for at least five years, if the
24 organization is not the original owner of the project, unless the
25 organization is acquiring the housing project from a person that
26 acquired the housing project by foreclosing upon it (or receiving
27 an instrument in lieu of foreclosure);

1 (3) the organization must provide to the [~~chief~~
2 ~~appraiser~~] Reviewing Entity and, if the project was financed with
3 bonds, the issuer of the bonds a written statement prepared by a
4 certified public accountant stating that the organization has spent
5 on rehabilitation costs at least the greater of \$5,000 or the amount
6 required by the financial lender for each dwelling unit in the
7 project; and

8 (4) the organization must maintain a reserve fund for
9 replacements:

10 (A) in the amount required by the financial
11 lender; or

12 (B) if the financial lender does not require a
13 reserve fund for replacements, in an amount equal to \$300 per unit
14 per year.

15 [~~(m)~~] (n) Beginning with the 2005 tax year, the amount of
16 the reserve required by Subsection [~~(1)~~](o)(4)(B) is increased by
17 an annual cost-of-living adjustment determined in the manner
18 provided by Section 1(f)(3), Internal Revenue Code of 1986, as
19 amended, substituting "calendar year 2004" for the calendar year
20 specified in Section 1(f)(3)(B) of that code.

21 [~~(n)~~] (o) A reserve must be established for each dwelling
22 unit in the property, regardless of whether the unit is reserved for
23 an individual or family described by Subsection (f). The reserve
24 must be maintained on a continuing basis, with withdrawals
25 permitted:

26 (1) only as authorized by the financial lender; or

27 (2) if the financial lender does not require a reserve

1 fund for replacements, only to pay the cost of capital improvements
2 needed for the property to maintain habitability under the Minimum
3 Property Standards of the United States Department of Housing and
4 Urban Development or the code of a municipality or county
5 applicable to the property, whichever is more restrictive.

6 ~~(e)~~ (p) For purposes of Subsection ~~(n)~~ (o)(2), "capital
7 improvement" means a property improvement that has a depreciable
8 life of at least five years under generally accepted accounting
9 principles, excluding typical "make ready" expenses such as
10 expenses for plasterboard repair, interior painting, or floor
11 coverings.

12 ~~(p)~~ (q) If the organization acquires the property for the
13 purpose of constructing or rehabilitating a housing project on the
14 property, the organization must be renting or offering to rent the
15 applicable square footage of dwelling units in the property to
16 individuals or families described by Subsection (f) not later than
17 the third anniversary of the date the organization acquires the
18 property.

19 ~~(q)~~ (r) If property qualifies for an exemption under this
20 section, the chief appraiser shall use the income method of
21 appraisal as provided by ~~Section~~ Sections 23.012 and 21.215 to
22 determine the appraised value of the property. In appraising the
23 property, the chief appraiser shall:

24 (1) consider the restrictions provided by this section
25 on the income of the individuals or families to whom the dwelling
26 units of the housing project may be rented and the amount of rent
27 that may be charged for purposes of computing the actual rental

1 income from the property or projecting future rental income; and

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

4 [~~(r)~~] (s) Not later than January 31 of each year, the
5 appraisal district shall give public notice in the manner
6 determined by the district, including posting on the district's
7 website if applicable, of the capitalization rate to be used in that
8 year to appraise property receiving an exemption under this
9 section.

10 [~~(s)~~] (t) Unless otherwise provided by the governing body
11 of a taxing unit any part of which is located in a county with a
12 population of at least 1.4 million under Subsection [~~(x)~~] (w), for
13 property described by Subsection (f)(1), the amount of the
14 exemption under this section from taxation is 50 percent of the
15 appraised value of the property.

16 [~~(s-1)~~] (t-1) For property described by Subsection (f)(2),
17 the amount of the exemption under this section from taxation is 100
18 percent of the appraised value of the property.

19 [~~(t)~~] (u) Notwithstanding Section 11.43(c), an exemption
20 under this section does not terminate because of a change in
21 ownership of the property if:

22 (1) the property is foreclosed on for any reason and,
23 not later than the 30th day after the date of the foreclosure sale,
24 the owner of the property submits to the [~~chief appraiser~~]
25 Reviewing Entity evidence that the property is owned by:

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

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

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

13 [~~(u)~~] (v) The [~~chief appraiser~~] Reviewing Entity may extend
14 the deadline provided by Subsection (~~u~~)(1) or (2), as applicable,
15 for good cause shown.

16 [~~(v)~~] (w) Notwithstanding any other provision of this
17 section, an organization may not receive an exemption from taxation
18 of property described by Subsection (f)(1) by a taxing unit any part
19 of which is located in a county with a population of at least 1.4
20 million at the time of the initial application unless the exemption
21 is approved by the governing body of the taxing unit in the manner
22 provided by law for official action.

23 [~~(w)~~] (x) To receive an exemption under this section from
24 taxation by a taxing unit for which the approval of the governing
25 body of the taxing unit is required by Subsection [~~(v)~~](w), an
26 organization must submit to the governing body of the taxing unit a
27 written request for approval of the exemption from taxation of the

1 property described in the request.

2 Not later than the 60th day after the date the governing body
3 of the taxing unit receives a written request under Subsection
4 [~~(w)~~](x) for an exemption under this section, the governing body
5 shall:

6 (1) approve the exemption in the amount provided by
7 Subsection [~~(s)~~](u);

8 (2) approve the exemption in a reasonable amount other
9 than the amount provided by Subsection [~~(s)~~](t); or

10 (3) deny the exemption if the governing body
11 determines that:

12 (A) the taxing unit cannot afford the loss of ad
13 valorem tax revenue that would result from approving the exemption;
14 or

15 (B) additional housing for individuals or
16 families meeting the income eligibility requirements of this
17 section is not needed in the territory of the taxing unit.

18 [~~(y)~~](z) Not later than the fifth day after the date the
19 governing body of the taxing unit takes action under Subsection
20 [~~(x)~~](y), the taxing unit shall issue a letter to the organization
21 stating the governing body's action and, if the governing body
22 denied the exemption, stating whether the denial was based on a
23 determination under Subsection [~~(x)~~](y)(3)(A) or (B) and the basis
24 for the determination. The taxing unit shall send a copy of the
25 letter by regular mail to the Reviewing Entity and the chief
26 appraiser of each appraisal district that appraises the property
27 for the taxing unit, if different. The governing body may charge

1 the organization a fee not to exceed the administrative costs of
2 processing the request of the organization, approving or denying
3 the exemption, and issuing the letter required by this subsection.
4 If the [~~chief appraiser~~] Reviewing Entity determines that the
5 property qualifies for an exemption under this section and the
6 governing body of the taxing unit approves the exemption, the chief
7 appraiser shall grant the exemption in the amount approved by the
8 governing body.

9 (aa) When the Department is the Reviewing Entity hereunder,
10 the following provisions apply:

11 (1) The procedure to apply for and otherwise
12 administer, the exemption shall be in accordance with Sections
13 11.42, 11.43, 11.436, 11.44(a) and 11.45, except that the
14 Department shall be substituted for the chief appraiser.

15 (2) The Department shall promulgate the application
16 form in accordance with Section 11.43(f) and other applicable
17 provisions of this code.

18 (3) not later than the 60th day after the date the
19 Department receives a complete application, it will either:

20 (A) certify that the owner and the property meet
21 the requirements for the exemption; or

22 (B) certify that the owner and the property do
23 not meet the requirements for the exemption. An application is
24 complete on the later of the date it is filed or the date on which
25 all additional information requested by the Department has been
26 received by the Department.

27 (4) Not later than the fifth day after making the

1 determination under Subsection (aa) or (3), the Department shall
2 issue a letter to the organization, stating its determination. The
3 Department shall send a copy of the letter by regular mail to the
4 chief appraiser of each appraisal district that appraises the
5 property. If the extension is granted, the chief appraiser shall
6 exempt the property. If the exemption is denied, the letter will
7 include the reasons for such denial and a description of the
8 procedure for appealing the determination.

9 (5) The organization and the taxing units shall have
10 the right to appeal the Department's determination to its Board
11 with respect to any exemption determination in accordance with the
12 rules for appeals promulgated by the Department. The organization
13 may be represented in such appeal by an agent in accordance with
14 Section 1.111. The final determination by the Department of any
15 protest in accordance with its rules for appeals shall be
16 equivalent to and in place of an appraisal review board decision
17 under Chapter 41 of this code. A property owner or taxing unit may
18 appeal such determination in accordance with Chapter 42 of this
19 code.

20 (6) The Department shall hire sufficient personnel to
21 process any applications and may charge the organization a
22 reasonable fee not to exceed the lesser of \$2,500 or the direct or
23 indirect administrative costs of processing the exemption
24 application and issuing the determination required by this
25 subsection.

26 (7) The Department shall adopt rules to implement its
27 duties hereunder. Rules adopted under this section must:

1 (A) establish procedures for considering
2 predetermination letters and exemption applications;

3 (B) be sufficiently specific to ensure that
4 determinations are equal and uniform; and

5 (C) provide that the Department can conclusively
6 rely upon the conclusions in any audit or legal opinion provided it
7 or any determination letter from the Internal Revenue Service
8 regarding an entities' status under Section 501 of the Internal
9 Revenue Code.

10 (8) Notwithstanding any other provision of this
11 section, Section (aa) does not apply to an organization that has
12 been debarred from participation in the Department's programs.

13 SECTION 3. Section 11.1826, Tax Code, is amended by adding
14 Subsection (g) to read as follows:

15 (g) The department and the chief appraiser shall rely
16 exclusively on the auditor's opinion in the audit hereunder in
17 making its determination on the annual renewal of any exemption
18 that must be claimed annually pursuant to Section 11.43.

19 SECTION 4. Section 303.042, Local Government Code, is
20 amended by amending Subsection (c) and adding Subsections (c-1),
21 (c-2), and (f) to read as follows:

22 (c) A corporation and the property it owns is engaged
23 exclusively in the performance of governmental and charitable
24 functions and is exempt from taxation by this state or a
25 municipality or other political subdivision of this state. Bonds
26 issued by a corporation under this chapter, a transfer of the bonds,
27 interest on the bonds, and a profit from the sale or exchange of the

1 bonds are exempt from taxation by this state or a municipality or
2 other political subdivision of this state. "Owns" or "owned" for
3 purposes of this section and Article 8, Section 2 of the Texas
4 Constitution means having legal or equitable title. For example,
5 the organization establishes equitable title if it has a present
6 right to compel legal title to the property to be conveyed to it in
7 accordance with Texas law, which includes an option to acquire the
8 property. It is the legislature's express intent, among others, to
9 exempt qualifying properties owned by a tax credit partnership or
10 limited liability company, when the general partner is or is
11 controlled by a public facility corporation which holds equitable
12 title to the property pursuant to an option to acquire the property
13 on terms negotiated between the parties.

14 (c-1) Notwithstanding Subsection (c), when a corporation
15 created under this chapter is not the legal owner of property, the
16 legal owner is entitled to an exemption from taxation of property
17 under this section if the legal owner is:

18 (1) an entity that is 100% owned by the corporation; or
19 (2) an entity that is exclusively controlled by the
20 corporation.

21 For purposes of this Subsection (c-1), "control" or
22 "controlled" means having the power to manage, direct, superintend,
23 restrict, regulate, govern, administer, or oversee. By way of
24 example, if the entity is a limited partnership, the corporation
25 must directly or through a wholly controlled subsidiary, control
26 100% of the general partner interest, and if the entity is a limited
27 liability company, the corporation must be the sole manager or

1 managing member. Section 25.07 does not apply to an entity
2 described in Subsection (c) or (c-1).

3 (c-2) If the legal owner of the property is an entity
4 described by Subsection (c-1)(2):

5 (1) the legal owner must be organized under the laws of
6 this state;

7 (2) the legal owner must have its principal place of
8 business in this state; and

9 (3) the corporation must have equitable title to the
10 property.

11 For purposes of this Subsection (c-2), the corporation
12 establishes equitable title if it has a present right to compel
13 title to the property in accordance with Texas law, which includes
14 an option to acquire the property.

15 SECTION 5. This Act takes effect September 1, 2011.