

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION**

**April 16, 2011**

**TO:** Honorable Harvey Hilderbran, Chair, House Committee on Ways & Means

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

**IN RE: HB3552** by Garza (Relating to the exemption from ad valorem taxation of property used to provide low-income or moderate-income housing.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB3552, As Introduced: a negative impact of (\$47,800,000) through the biennium ending August 31, 2013.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2012	\$0
2013	(\$47,800,000)
2014	(\$24,571,000)
2015	(\$19,641,000)
2016	(\$20,480,000)

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Savings/ (Cost) from <i>Foundation School Fund 193</i>	Probable Revenue Gain/(Loss) from <i>School Districts - Net Impact</i>	Probable Revenue Gain/(Loss) from <i>Counties</i>	Probable Revenue Gain/(Loss) from <i>Cities</i>
2012	\$0	\$0	\$0	\$0
2013	(\$47,800,000)	(\$18,983,000)	(\$18,623,000)	(\$27,772,000)
2014	(\$24,571,000)	\$2,459,000	(\$6,351,000)	(\$9,434,000)
2015	(\$19,641,000)	(\$3,355,000)	(\$6,576,000)	(\$9,751,000)
2016	(\$20,480,000)	(\$3,665,000)	(\$6,874,000)	(\$10,176,000)

**Fiscal Analysis**

The bill would amend Section 11.182 and 11.1825 of the Tax Code to extend the existing low income housing exemption to organizations that do not qualify under current law and to retroactively grant exemptions that were denied in 2002 and 2003. Under current law, Section 11.182 applies to a Community Housing Development Organization (CHDO) as defined in that section, and Section 11.1825 applies to an organization that, for at least the preceding three years has been listed as exempt under Section 501(c)(3) of the U.S. Internal Revenue Code, has met the Tax Code requirements of a charitable organization, and has had as one of its purposes providing low-income housing.

The bill would define "owned" for the purpose of Sections 11.182 and 11.1825 and Section 2, Article

VIII of the Texas Constitution (authorizing exemptions for property owned by institutions engaging primarily in charitable functions) as having legal or equitable title. The bill would define "control" as having the power to manage, direct, superintend, restrict, regulate, govern, or oversee. Property that is controlled by a CHDO or Section 11.1825 organization would be considered owned by the organization for purposes of exemption eligibility under Section 11.182 or 11.1825. These provisions would preempt the exemption qualification requirements in current law. Under the bill, the organization would no longer be required to engage exclusively in the building, repair, and sale or rental of low or moderate income housing to qualify for an exemption.

The bill would extend the CHDO exemption under Section 11.182 to those organizations who do not qualify under current law, but are controlled by an organization that does qualify, and the organization or the legal owner of the property filed its initial application for the exemption between January 1, 2002 and December 31, 2003.

The bill would remove the restriction prohibiting the exemption of Section 11.1825 housing projects that were completed before January 1, 2004 and would require approval of the Section 11.1825 exemption only for the tax year the exemption application is initially filed rather than annually.

The bill would provide that Section 11.1825 property owned for rehabilitating a housing project does not have to fulfill the five year ownership requirement if the organization acquired the housing project from a person that foreclosed on the property or received a deed or other instrument in lieu of foreclosure. The bill would also add eleven months to the time period in which a Section 11.1825 property may be exempt after the date the organization acquires the property without having to rent or offer to rent the property to low or moderate income persons or families and would include housing project rehabilitation as an acceptable activity to qualify for the exemption.

The bill would specify that the opinions in an audit of a CHDO or an 11.1825 organization prepared by a licensed certified public accountant would be prima facie evidence regarding determinations of exemption qualification.

The bill would take effect September 1, 2011.

## **Methodology**

The bill's provision that would retroactively allow property owned by organizations that filed an initial application between January 1, 2002 and December 31, 2003 to become exempt under Section 11.182 of the Tax Code would cause several years of property tax refunds from the affected taxing units and ongoing costs from the additional exempt property. The Comptroller would be required to perform audits under Section 403.302(h) of the Tax Code to update the property value study to reduce property values in the affected school districts, increasing state funding to offset the value losses and creating a cost to the state.

The bill would also increase the amount of property that is eligible for exemption under Section 11.1825 of the Tax Code by broadening the definition of property ownership for the purposes of the exemptions, removing the restriction prohibiting the exemption of Section 11.1825 housing projects that were completed before January 1, 2004, and making other changes in the treatment of potentially exempt low-income housing. The bill's provisions that would define "owned" as controlled by a Section 11.1825 organization and that would define "control" as having the power to manage, direct, superintend, restrict, regulate, govern, or oversee would equate a regulatory or oversight role with ownership. These provisions, along with the provision changing the definition of ownership in the Texas Constitution could mean that virtually any organization for which a CHDO or Section 11.1825 organization has some oversight role would be eligible for the exemption.

The value of the property tax refunds and the additional low-income housing that would be exempt under the bill was estimated based on information from appraisal districts and the Texas Department of Housing and Community Affairs. Projected tax rates were applied to estimate the levy loss to cities and counties, and to estimate the initial school district loss. Because of the operation of the hold harmless provisions of HB 1, 79th Legislature (2006), the school district cost related to the compressed rate is transferred to the state. The enrichment cost and a portion of the school district

debt (facilities) cost are transferred to the state after a one-year lag because of the operation of the enrichment and facilities funding formulas. All costs were estimated over the five year projection period.

### **Local Government Impact**

The estimated fiscal implication to units of local government is reflected in the table above.

**Source Agencies:** 304 Comptroller of Public Accounts

**LBB Staff:** JOB, KK, SD, SJS