

AN ACT

relating to the exemption from ad valorem taxation of certain property used to provide low-income or moderate-income housing.

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

SECTION 1. The heading to Section 11.182, Tax Code, is amended to read as follows:

Sec. 11.182. COMMUNITY HOUSING DEVELOPMENT ORGANIZATIONS IMPROVING PROPERTY FOR LOW-INCOME AND MODERATE-INCOME HOUSING: PROPERTY PREVIOUSLY EXEMPT.

SECTION 2. Section 11.182, Tax Code, is amended by adding Subsection (j) to read as follows:

(j) An organization may not receive an exemption under Subsection (b) or under Subsection (f), as added by Chapter 1191, Acts of the 77th Legislature, Regular Session, 2001, for property for a tax year beginning on or after January 1, 2004, unless the organization received an exemption under that subsection for that property for any part of the 2003 tax year.

SECTION 3. Subchapter B, Chapter 11, Tax Code, is amended by adding Sections 11.1825 and 11.1826 to read as follows:

Sec. 11.1825. ORGANIZATIONS CONSTRUCTING OR REHABILITATING LOW-INCOME HOUSING: PROPERTY NOT PREVIOUSLY EXEMPT. (a) An organization is entitled to an exemption from taxation of real property owned by the organization that the organization constructs or rehabilitates and uses to provide housing to individuals or

1 families meeting the income eligibility requirements of this
2 section.

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

5 (1) for at least the preceding three years, the
6 organization:

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

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

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

15 (2) a majority of the members of the board of directors
16 of the organization have their principal place of residence in this
17 state;

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

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

23 (B) an individual whose residence is located in
24 an economically disadvantaged census tract as defined by Section
25 783.009(b), Government Code, in this state; or

26 (C) a representative appointed by a neighborhood
27 organization in this state that represents low-income households;

1 and

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

7 (c) Notwithstanding Subsection (b), an owner of real
8 property that is not an organization described by that subsection
9 is entitled to an exemption from taxation of property under this
10 section if the property otherwise qualifies for the exemption and
11 the owner is:

12 (1) a limited partnership of which an organization
13 that meets the requirements of Subsection (b) controls 100 percent
14 of the general partner interest; or

15 (2) an entity the parent of which is an organization
16 that meets the requirements of Subsection (b).

17 (d) If the owner of the property is an entity described by
18 Subsection (c), the entity must:

19 (1) be organized under the laws of this state; and

20 (2) have its principal place of business in this
21 state.

22 (e) A reference in this section to an organization includes
23 an entity described by Subsection (c).

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

27 (1) renting the housing to individuals or families

1 whose median income is not more than 60 percent of the greater of:

2 (A) the area median family income for the
3 household's place of residence, as adjusted for family size and as
4 established by the United States Department of Housing and Urban
5 Development; or

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

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

11 (A) the area median family income for the
12 household's place of residence, as adjusted for family size and as
13 established by the United States Department of Housing and Urban
14 Development; or

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

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

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

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

3 (1) the property is used to provide housing to
4 individuals or families described by Subsection (f); or

5 (2) the housing project is under active construction
6 or other physical preparation.

7 (j) For purposes of Subsection (i)(2), a housing project is
8 under physical preparation if the organization has engaged in
9 architectural or engineering work, soil testing, land clearing
10 activities, or site improvement work necessary for the construction
11 of the project or has conducted an environmental or land use study
12 relating to the construction of the project.

13 (k) An organization may not receive an exemption for a
14 housing project constructed by the organization if the construction
15 of the project was completed before January 1, 2004.

16 (l) If the property is owned for the purpose of
17 rehabilitating a housing project on the property:

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

21 (2) the person from whom the organization acquired the
22 project must have owned the project for at least five years, if the
23 organization is not the original owner of the project;

24 (3) the organization must provide to the chief
25 appraiser and, if the project was financed with bonds, the issuer of
26 the bonds a written statement prepared by a certified public
27 accountant stating that the organization has spent on

1 rehabilitation costs at least the greater of \$5,000 or the amount
2 required by the financial lender for each dwelling unit in the
3 project; and

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

6 (A) in the amount required by the financial
7 lender; or

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

11 (m) Beginning with the 2005 tax year, the amount of the
12 reserve required by Subsection (1)(4)(B) is increased by an annual
13 cost-of-living adjustment determined in the manner provided by
14 Section 1(f)(3), Internal Revenue Code of 1986, as amended,
15 substituting "calendar year 2004" for the calendar year specified
16 in Section 1(f)(3)(B) of that code.

17 (n) A reserve must be established for each dwelling unit in
18 the property, regardless of whether the unit is reserved for an
19 individual or family described by Subsection (f). The reserve must
20 be maintained on a continuing basis, with withdrawals permitted:

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

22 (2) if the financial lender does not require a reserve
23 fund for replacements, only to pay the cost of capital improvements
24 needed for the property to maintain habitability under the Minimum
25 Property Standards of the United States Department of Housing and
26 Urban Development or the code of a municipality or county
27 applicable to the property, whichever is more restrictive.

1 (o) For purposes of Subsection (n)(2), "capital
2 improvement" means a property improvement that has a depreciable
3 life of at least five years under generally accepted accounting
4 principles, excluding typical "make ready" expenses such as
5 expenses for plasterboard repair, interior painting, or floor
6 coverings.

7 (p) If the organization acquires the property for the
8 purpose of constructing or rehabilitating a housing project on the
9 property, the organization must be renting or offering to rent the
10 applicable square footage of dwelling units in the property to
11 individuals or families described by Subsection (f) not later than
12 the third anniversary of the date the organization acquires the
13 property.

14 (q) If property qualifies for an exemption under this
15 section, the chief appraiser shall use the income method of
16 appraisal as provided by Section 23.012 to determine the appraised
17 value of the property. In appraising the property, the chief
18 appraiser shall:

19 (1) consider the restrictions provided by this section
20 on the income of the individuals or families to whom the dwelling
21 units of the housing project may be rented and the amount of rent
22 that may be charged for purposes of computing the actual rental
23 income from the property or projecting future rental income; and

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

26 (r) Not later than January 31 of each year, the appraisal
27 district shall give public notice in the manner determined by the

1 district, including posting on the district's website if
2 applicable, of the capitalization rate to be used in that year to
3 appraise property receiving an exemption under this section.

4 (s) Unless otherwise provided by the governing body of a
5 taxing unit any part of which is located in a county with a
6 population of at least 1.4 million under Subsection (x), the amount
7 of the exemption under this section from taxation is 50 percent of
8 the appraised value of the property.

9 (t) Notwithstanding Section 11.43(c), an exemption under
10 this section does not terminate because of a change in ownership of
11 the property if:

12 (1) the property is foreclosed on for any reason and,
13 not later than the 30th day after the date of the foreclosure sale,
14 the owner of the property submits to the chief appraiser evidence
15 that the property is owned by:

16 (A) an organization that meets the requirements
17 of Subsection (b); or

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

20 (2) in the case of property owned by an entity
21 described by Subsections (c) and (d), the organization meeting the
22 requirements of Subsection (b) that controls the general partner
23 interest of or is the parent of the entity as described by
24 Subsection (c) ceases to serve in that capacity and, not later than
25 the 30th day after the date the cessation occurs, the owner of the
26 property submits evidence to the chief appraiser that the
27 organization has been succeeded in that capacity by another

1 organization that meets the requirements of Subsection (b).

2 (u) The chief appraiser may extend the deadline provided by
3 Subsection (t)(1) or (2), as applicable, for good cause shown.

4 (v) Notwithstanding any other provision of this section, an
5 organization may not receive an exemption from taxation by a taxing
6 unit any part of which is located in a county with a population of at
7 least 1.4 million unless the exemption is approved by the governing
8 body of the taxing unit in the manner provided by law for official
9 action.

10 (w) To receive an exemption under this section from taxation
11 by a taxing unit for which the approval of the governing body of the
12 taxing unit is required by Subsection (v), an organization must
13 submit to the governing body of the taxing unit a written request
14 for approval of the exemption from taxation of the property
15 described in the request.

16 (x) Not later than the 60th day after the date the governing
17 body of the taxing unit receives a written request under Subsection
18 (w) for an exemption under this section, the governing body shall:

19 (1) approve the exemption in the amount provided by
20 Subsection (s);

21 (2) approve the exemption in a reasonable amount other
22 than the amount provided by Subsection (s); or

23 (3) deny the exemption if the governing body
24 determines that:

25 (A) the taxing unit cannot afford the loss of ad
26 valorem tax revenue that would result from approving the exemption;
27 or

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

4 (y) Not later than the fifth day after the date the
5 governing body of the taxing unit takes action under Subsection
6 (x), the taxing unit shall issue a letter to the organization
7 stating the governing body's action and, if the governing body
8 denied the exemption, stating whether the denial was based on a
9 determination under Subsection (x)(3)(A) or (B) and the basis for
10 the determination. The taxing unit shall send a copy of the letter
11 by regular mail to the chief appraiser of each appraisal district
12 that appraises the property for the taxing unit. The governing body
13 may charge the organization a fee not to exceed the administrative
14 costs of processing the request of the organization, approving or
15 denying the exemption, and issuing the letter required by this
16 subsection. If the chief appraiser determines that the property
17 qualifies for an exemption under this section and the governing
18 body of the taxing unit approves the exemption, the chief appraiser
19 shall grant the exemption in the amount approved by the governing
20 body.

21 Sec. 11.1826. MONITORING OF COMPLIANCE WITH LOW-INCOME AND
22 MODERATE-INCOME HOUSING EXEMPTIONS. (a) In this section,
23 "department" means the Texas Department of Housing and Community
24 Affairs.

25 (b) Property may not be exempted under Section 11.1825 for a
26 tax year unless the organization owning or controlling the owner of
27 the property has an audit prepared by an independent auditor

1 covering the organization's most recent fiscal year. The audit
2 must be conducted in accordance with generally accepted accounting
3 principles. The audit must include an opinion on whether:

4 (1) the financial statements of the organization
5 present fairly, in all material respects and in conformity with
6 generally accepted accounting principles, the financial position,
7 changes in net assets, and cash flows of the organization; and

8 (2) the organization has complied with all of the
9 terms and conditions of the exemption under Section 11.1825.

10 (c) Not later than the 180th day after the last day of the
11 organization's most recent fiscal year, the organization must
12 deliver a copy of the audit to the department and the chief
13 appraiser of the appraisal district in which the property is
14 located.

15 (d) Notwithstanding any other provision of this section, if
16 the property contains not more than 36 dwelling units, the
17 organization may deliver to the department and the chief appraiser
18 a detailed report and certification as an alternative to an audit.

19 (e) Property may not be exempted under Section 11.182 for a
20 tax year unless the organization owning or controlling the owner of
21 the property complies with this section, except that the audit
22 required by this section must address compliance with the
23 requirements of Section 11.182.

24 (f) All information submitted to the department or the chief
25 appraiser under this section is subject to required disclosure, is
26 excepted from required disclosure, or is confidential in accordance
27 with Chapter 552, Government Code, or other law.

1 SECTION 4. Sections 11.436(a) and (c), Tax Code, are
2 amended to read as follows:

3 (a) An organization that acquires property that qualifies
4 for an exemption under Section 11.181(a) or 11.1825 [~~11.182(a)~~] may
5 apply for the exemption for the year of acquisition not later than
6 the 30th day after the date the organization acquires the property,
7 and the deadline provided by Section 11.43(d) does not apply to the
8 application for that year.

9 (c) To facilitate the financing associated with the
10 acquisition of a property, an organization, before acquiring the
11 property, may request from the chief appraiser of the appraisal
12 district established for the county in which the property is
13 located a preliminary determination of whether the property would
14 qualify for an exemption under Section 11.1825 [~~11.182~~] if acquired
15 by the organization. The request must include the information that
16 would be included in an application for an exemption for the
17 property under Section 11.1825 [~~11.182~~]. Not later than the 45th
18 [~~21st~~] day after the date a request is submitted under this
19 subsection, the chief appraiser shall issue a written preliminary
20 determination for the property included in the request. A
21 preliminary determination does not affect the granting of an
22 exemption under Section 11.1825 [~~11.182~~].

23 SECTION 5. Subchapter B, Chapter 23, Tax Code, is amended by
24 adding Section 23.215 to read as follows:

25 Sec. 23.215. APPRAISAL OF CERTAIN NONEXEMPT PROPERTY USED
26 FOR LOW-INCOME OR MODERATE-INCOME HOUSING. (a) This section
27 applies only to real property owned by an organization:

1 (1) that on the effective date of this section was
2 rented to a low-income or moderate-income individual or family
3 satisfying the organization's income eligibility requirements and
4 that continues to be used for that purpose;

5 (2) that was financed under the low income housing tax
6 credit program under Subchapter DD, Chapter 2306, Government Code;

7 (3) that does not receive an exemption under Section
8 11.182 or 11.1825; and

9 (4) the owner of which has not entered into an
10 agreement with any taxing unit to make payments to the taxing unit
11 instead of taxes on the property.

12 (b) The chief appraiser shall appraise the property in the
13 manner provided by Section 11.1825(g).

14 SECTION 6. This Act takes effect January 1, 2004.

David Newkirk

President of the Senate

Jim Cusick

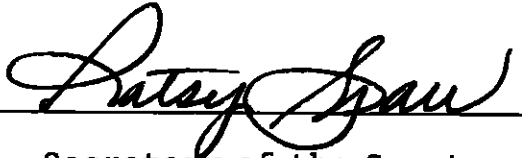
Speaker of the House

I certify that H.B. No. 3546 was passed by the House on May 10, 2003, by the following vote: Yeas 131, Nays 0, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 3546 on May 29, 2003, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 3546 on June 1, 2003, by a non-record vote.

Robert Haney

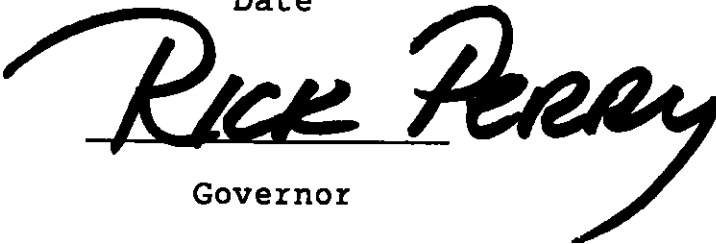
Chief Clerk of the House

I certify that H.B. No. 3546 was passed by the Senate, with amendments, on May 28, 2003, by a viva-voce vote; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 3546 on June 1, 2003, by a viva-voce vote.

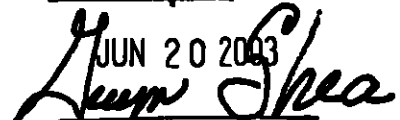

Secretary of the Senate

APPROVED: **20 JUN 03**

Date


Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
8:30 p.m. O'CLOCK

JUN 20 2003

Secretary of State