

BILL ANALYSIS

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S.B. 1275
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The low-income housing tax credit program (LIHTC) administered by the Texas Department of Housing and Community Affairs provides a federal income tax credit that generates private equity investment for the construction of affordable housing developments. In addition to the equity provided by the tax credit subsidy, housing developers typically borrow funds to pay for the construction. That debt, and the costs associated with maintaining and operating an LIHTC development, are paid by the rents charged to tenants. Federal law limits those rents so that households do not pay more than 30 percent of their income for rent and utilities. Over the past 10 years allowable rents for LIHTC developments have increased, on average, by one percent annually while expenses (e.g., utilities, insurance, and maintenance) have increased substantially.

Because LIHTC developments have a limited rental income stream, appraisal districts appraise them on the basis of that revenue. This requirement ensures that an LIHTC development's property tax burden does not outpace federally imposed rent restrictions. Interested parties observe that despite the requirement to appraise developments on the basis of their income, appraisal districts have varied in their application of this appraisal method. In some cases, appraisal districts unilaterally increased all appraisal values by 10 percent, including those for LIHTC developments. In other instances, appraisal districts increased developments' appraised value as the actual rental income for those properties declined. These significant appraisal increases have prompted the owners of LIHTC properties to protest and litigate their valuations, a costly and time-consuming exercise.

Interested parties observe that the property tax appraisal process for LIHTC developments requires greater clarity, certainty, and guidance. S.B. 1275 provides clarity and specificity for appraisal districts' evaluation of LIHTC developments. The bill establishes a procedure for appraising developments that links the annual change in a property's valuation to the annual change in income. Further, S.B. 1275 ensures that LIHTC developments under construction, and not producing rental income, receive appraisals on the basis of their anticipated income and expenses for the first year of operation. These changes provide clearer, specific direction for appraisal districts' valuation of LIHTC developments, better ensuring appropriate appraisals that reflect a given project's income.

As proposed, S.B. 1275 amends current law relating to the appraisal for ad valorem tax purposes of certain nonexempt property used for low-income or moderate-income housing.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1.07(d), Tax Code, to include a notice required by Section 23.215(g) in the list of notices required to be sent by certified mail.

SECTION 2. Amends Section 23.215, Tax Code, as follows:

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

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

(2) that was financed under Subchapter DD (Low Income Housing Tax Credit Program), Chapter 2306 (Texas Department of Housing and Community Affairs), Government Code, and is subject to a land use restriction agreement under that subchapter that has not expired or been terminated, rather than that was financed under Subchapter DD, Chapter 2306, Government Code;

(3) and (4) makes no changes to these subdivision.

(b) Requires the chief appraiser, in appraising property that is under active construction or lease up on January 1 of the tax year in which the property is appraised, to determine the appraised value of the property in the manner provided by Section 11.1825(a), (relating to requiring the chief appraiser to use the income method of appraisal), provided that the chief appraiser is required to estimate the property's gross income potential and operating expenses based on the property's projected income and expenses for the first full year of operation as contained in the underwriting report pertaining to the property prepared by the Texas Department of Housing and Community Affairs under Subchapter DD, Chapter 2306, Government Code, as adjusted to reflect certain percentages, rather than requires the chief appraiser to appraise the property in the manner provided by Section 11.1825(q).

(c) Requires the chief appraiser, in appraising property for the first tax year following the completion of active construction and stabilization of the property, to determine the appraised value of the property in the manner provided by Section 11.1825(q).

(d) Requires the chief appraiser, in appraising property for any subsequent tax year after the first year following completion of active construction and stabilization of the property, to determine the appraised value of the property by making certain adjustments to the appraised values of the property for the preceding tax year.

(d-1) Requires the chief appraiser, notwithstanding Subsection (d), for the 2018 tax year, in appraising property that was not under active construction in 2017, to determine the appraised value of the property by making certain adjustments to the average appraised value of the property for the preceding three-year period. Provides that this subsection expires January 1, 2019.

(e) Provides that, if property appraised under this section is sold and is no longer subject to a land use restriction agreement described by Subsection (a)(2) after the sale, the property is no longer eligible for appraisal under this section and an additional tax is imposed on the property. Provides that the additional tax due is an amount reached by a certain formula. Provides that a tax lien attaches to the property on the date the property is sold to secure payment of the additional tax imposed by this subsection. Provides that the lien exists in favor of all taxing units for which the additional tax is imposed. Provides that the additional tax imposed by this subsection does not apply to a year for which the tax has already been paid off of the sale price.

(f) Provides that a determination that property is no longer eligible for appraisal under this section is made by the chief appraiser. Requires the chief appraiser to deliver a notice to the property owner as soon as possible after making the determination and to include in the notice an explanation of the owner's right to protest the determination. Requires the assessor for each taxing unit, if the owner does not file a timely protest or if the final determination of the protest is that the additional taxes are due, to prepare and deliver a bill for the additional taxes as soon as practicable. Provides that the taxes are due and become delinquent and incur penalties and interest as provided by law for ad valorem taxes imposed by the unit if not paid before a certain day.

(g) Prohibits a property owner from, notwithstanding any other law, bringing a protest under Section 41.43(b)(3) (relating to defining the appraised value of the property) for any tax year in which the appraised value of the property is determined by a certain adjustment.

(g-1) Prohibits a property appraised under this section from being utilized as a comparable property for any property that is not appraised under this section, notwithstanding any other law.

(h) Requires the chief appraiser, for purposes of this section, to determine the percentage change in the net income of property using generally accepted appraisal standards for expenses, based on certain information.

(i) Requires an owner to deliver to the chief appraiser the audit or annual owner's compliance report for the preceding year not later than May 1 of each year. Authorizes the chief appraiser to extend the deadline for good cause shown.

SECTION 3. Makes application of this Act prospective to January 1, 2018.

SECTION 4. Effective date: January 1, 2018.