

BILL ANALYSIS

Senate Research Center
84R24838 JAM-F

H.B. 3576
By: Alvarado (Menéndez)
Intergovernmental Relations
5/20/2015
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties contend that currently there is a disincentive to owners who want to retain and preserve their affordable housing properties and undue restriction on the ability of nonprofit organizations and governmental agencies to acquire and preserve affordable housing properties. In order to enhance the value and viability of affordable housing properties, H.B. 3576 seeks to amend the applicable law.

H.B. 3576 amends current law relating to restrictions on the use, transfer, and sale of housing developments that have received certain financial assistance administered by the Texas Department of Housing and Community Affairs.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Department of Housing and Community Affairs in SECTION 1 (Section 2306.185, Government Code) and SECTION 5 (Section 2306.6726, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2306.185, Government Code, by adding Subsection (d-1) and amending Subsection (e), as follows:

(d-1) Requires the Texas Department of Housing and Community Affairs (TDHCA) to adopt rules that provide for the amendment of a land use restriction agreement, including rules that give the owner of a development the right to amend any existing restriction on the right of first refusal to conform with Section 2306.6726. Requires that rules adopted under this subsection require reasonable notice to tenants, a public hearing, and the governing board of TDHCA (board) approval for any material amendment to a land use restriction agreement.

(e) Provides that certain subsections, including Subsections (d-1) and Section 2306.269 (Tenant and Manager Selection), apply only to multifamily rental housing developments to which TDHCA is providing one or more certain forms of assistance as set forth.

SECTION 2. Amends Section 2306.6713, Government Code, by amending Subsection (a) and adding Subsection (g), as follows:

(a) Prohibits an applicant from transferring an allocation of housing tax credits and prohibits a development owner from transferring ownership of a development supported with an allocation of housing tax credits to any person other than an affiliate unless the applicant obtains the director's prior, written approval of the transfer. Makes a nonsubstantive change.

(g) Provides that the transfer of ownership of a development supported with an allocation of housing tax credits under this section does not subject the development to a right of first refusal under Section 2306.6726 if the transfer is made to:

(1) a newly formed entity:

(A) that is under common control with the development owner; and

(B) the primary purpose of the formation of which is to facilitate the financing of the rehabilitation of the development using assistance administered through a state financing program; or

(2) a qualified entity, as defined by Section 2306.6726(d)(3).

SECTION 3. Amends Section 2306.6720, Government Code, as follows:

Sec. 2306.6720. ENFORCEABILITY OF APPLICANT REPRESENTATIONS. Provides that each material representation made by an applicant to secure a housing tax credit allocation is enforceable by TDHCA and the tenants of the development supported with the allocation. Provides that, subject to modification and enforcement as provided by this chapter, a land use restriction agreement that is recorded with respect to a development is considered to state the development owner's ongoing obligations with regard to the matters addressed in the agreement.

SECTION 4. Amends Section 2306.6725(b), Government Code, as follows:

(b) Requires TDHCA to provide appropriate incentives as determined through the qualified allocation plan to reward applicants who agree to equip the development that is the basis of the application with energy saving devices that meet the standards established by the state energy conservation office or to provide a right of first refusal to purchase the development in the manner provided by Section 2306.6726. Deletes existing text requiring to provide appropriate incentives as determined through the qualified allocation plan to reward applicants who agree to equip the property that is the basis of the application with energy saving devices that meet the standards established by the state energy conservation office or to provide to a qualified nonprofit organization or tenant organization a right of first refusal to purchase the property at the minimum price provided in, and in accordance with the requirements of, Section 42(i)(7), Internal Revenue Code of 1986 (26 U.S.C. Section 42(i)(7)).

SECTION 5. Amends Section 2306.6726, Government Code, as follows:

Sec. 2306.6726. New heading: SALE OF CERTAIN LOW INCOME HOUSING TAX CREDIT DEVELOPMENTS. (a) Requires an owner of a development subject to a right of first refusal under Section 2306.6725 (Scoring of Applications) who intends to sell the development at any time after the expiration of the compliance period to notify TDHCA of the owner's intent to sell and, if applicable, to specifically identify to TDHCA any qualified entity that is the owner's intended recipient of the right of first refusal in the land use restriction agreement. Deletes existing text requiring a recipient of a low income housing tax credit who agreed to provide a right of first refusal under Section 2306.6725 and who intends to sell the property, not later than two years before the expiration of the compliance period, to notify TDHCA of the recipient's intent to sell. Deletes existing text requiring the recipient to notify qualified nonprofit organizations and tenant organizations of the opportunity to purchase the property.

(a-1) Requires TDHCA, after receiving notice under Subsection (a), to provide to any qualified entity specifically identified under Subsection (a) notice regarding the owner's intent to sell the development at not less than the minimum purchase price.

(a-2) Requires that, in the absence of a specifically identified, qualified entity under Subsection (a-1), or if the specifically identified, qualified entity no longer exists, notice that the development is available for purchase by qualified entities at not less than the minimum purchase price be:

(1) provided to the tenants of the development by the owner of the development; and

(2) posted on TDHCA's Internet website.

(a-3) Requires a qualified entity seeking to purchase a development pursuant to the right of first refusal, not later than the 180th day after the date notice is provided or posted under Subsection (a-1) or (a-2), whichever date is later, to submit to TDHCA the terms of the entity's offer along with evidence of its financial plan to enable the purchase.

(a-4) Requires TDHCA to review for reasonableness the terms of an offer and financial plan submitted under Subsection (a-3).

(b) Authorizes an owner of a development subject to a right of first refusal under Section 2306.6725, beginning on the 181st day after the date the owner provides notice under Subsection (a-2) or TDHCA posts notice under that subsection, whichever date is later, to sell to any purchaser a development to which the right of first refusal applies if:

(1) a qualified entity does not offer to purchase the development for a price that is at least equivalent to the minimum purchase price; or

(2) a qualified entity offers to purchase the development for a price described by Subdivision (1) but does not complete the purchase.

Deletes existing text authorizing the recipient to, during the first six-month period after notifying TDHCA, negotiate or enter into a purchase agreement only with a qualified nonprofit organization that is also a community housing development organization as defined by the federal home investment partnership program, during the second six-month period after notifying TDHCA, negotiate or enter into a purchase agreement with any qualified nonprofit organization or tenant organization, and during the year before the expiration of the compliance period, negotiate or enter into a purchase agreement with TDHCA or any qualified nonprofit organization or tenant organization approved by TDHCA. Deletes existing text authorizing a recipient of a low income housing tax credit, notwithstanding an agreement under Section 2306.6725, to sell property to which the tax credit applies to any purchaser after the expiration of the compliance period if a qualified nonprofit organization or tenant organization does not offer to purchase the property at the minimum price provided by Section 42(i)(7), Internal Revenue Code of 1986 (26 U.S.C. Section 42(i)(7)), and TDHCA declines to purchase the property.

(c) Requires TDHCA to adopt rules and procedures to give effect to the right of first refusal granted by any land use restriction agreement.

(d) Defines "minimum purchase price" and "qualified entity" in this section and makes a nonsubstantive change.

SECTION 6. Provides that Sections 2306.6713, 2306.6725, and 2306.6726, Government Code, as amended by this Act, apply to the transfer or sale of a development supported with an allocation of low income housing tax credits issued before, on, or after the effective date of this Act.

SECTION 7. Effective date: September 1, 2015.