

By: Johnson

H.B. No. 2802

A BILL TO BE ENTITLED

AN ACT

relating to the allocation of low income housing tax credits by the Texas Department of Housing and Community Affairs.

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

SECTION 1. Section 2306.67021, Government Code, is amended to read as follows:

Sec. 2306.67021. APPLICABILITY OF SUBCHAPTER. To the extent permitted by federal law, this ~~[Except as provided by Section 2306.6703, this]~~ subchapter applies ~~[does not apply]~~ to the allocation of housing tax credits to developments financed through the private activity bond program in the same way this subchapter applies to the allocation of housing tax credits to developments not financed through the private activity bond program.

SECTION 2. Section 2306.6703(a), Government Code, is amended to read as follows:

(a) An application is ineligible for consideration under the low income housing tax credit program if:

(1) at the time of application or at any time during the two-year period preceding the date the application round begins, the applicant or a related party is or has been:

(A) a member of the board; or

(B) the director, a deputy director, the director of housing programs, the director of compliance, the director of underwriting, or the low income housing tax credit program manager

1 employed by the department;

2 (2) the applicant proposes to replace in less than 15
3 years any private activity bond financing of the development
4 described by the application, unless:

5 (A) at least one-third of all the units in the
6 development are public housing units or Section 8 project-based
7 units and the applicant proposes to maintain for a period of 30
8 years or more 100 percent of the units supported by housing tax
9 credits as rent-restricted and exclusively for occupancy by
10 individuals and families earning not more than 50 percent of the
11 area median income, adjusted for family size;

12 (B) the applicable private activity bonds will be
13 redeemed only in an amount consistent with their proportionate
14 amortization; or

15 (C) if the redemption of the applicable private
16 activity bonds will occur in the first five years of the operation
17 of the development and complies with Section 42(h)(4), Internal
18 Revenue Code of 1986:

19 (i) on the date the certificate of
20 reservation is issued, the Bond Review Board determines that there
21 is not a waiting list for private activity bonds in the same
22 priority level established under Section 1372.0321 or, if
23 applicable, in the same uniform state service region, as referenced
24 in Section 1372.0231, that is served by the proposed development;
25 and

26 (ii) the applicable private activity bonds
27 will be redeemed according to underwriting criteria, if any,

1 established by the department;

2 (3) the applicant proposes to construct a new
3 development that is located one linear mile or less from a
4 development that:

5 (A) serves the same type of household as the new
6 development, regardless of whether the developments serve
7 families, elderly individuals, or another type of household;

8 (B) is subject to deed restrictions regarding the
9 income of residents [~~has received an allocation of housing tax~~
10 ~~credits for new construction at any time during the three-year~~
11 ~~period preceding the date the application round begins~~]; and

12 (C) participates in and has not been withdrawn or
13 terminated from the low income housing tax credit program; or

14 (4) the development is located in a municipality or,
15 if located outside a municipality, a county that has more than twice
16 the state average of units per capita supported by housing tax
17 credits or private activity bonds, unless the applicant:

18 (A) has obtained prior approval of the
19 development from the governing body of the appropriate municipality
20 or county containing the development; and

21 (B) has included in the application a written
22 statement of support from that governing body referencing this
23 section and authorizing an allocation of housing tax credits for
24 the development.

25 SECTION 3. Section 2306.6710, Government Code, is amended
26 by amending Subsections (b) and (e) and adding Subsections (g) and
27 (h) to read as follows:

1 (b) If an application satisfies the threshold criteria, the
2 department shall score and rank the application using a point
3 system that:

4 (1) prioritizes in descending order criteria
5 regarding:

6 (A) financial feasibility of the development
7 based on the supporting financial data required in the application
8 that will include a project underwriting pro forma from the
9 permanent or construction lender;

10 (B) quantifiable community participation with
11 respect to the development, evaluated on the basis of written
12 statements from any neighborhood organizations on record with the
13 state or county in which the development is to be located and whose
14 boundaries contain the proposed development site;

15 (C) the income levels of tenants of the
16 development;

17 (D) the size and quality of the units;

18 (E) the commitment of development funding by
19 local political subdivisions;

20 (F) the level of community support for the
21 application, evaluated on the basis of written statements from the
22 state representative or the state senator that represents the
23 district containing the proposed development site;

24 (G) the rent levels of the units;

25 (H) the cost of the development by square foot;

26 (I) the services to be provided to tenants of the
27 development; ~~and~~

1 (J) whether, at the time the complete application
2 is submitted or at any time within the two-year period preceding the
3 date of submission, the proposed development site is located in an
4 area declared to be a disaster under Section 418.014; and

5 (K) the source of the revenue stream of the
6 development;

7 (2) uses criteria imposing penalties on applicants or
8 affiliates who have requested extensions of department deadlines
9 relating to developments supported by housing tax credit
10 allocations made in the application round preceding the current
11 round or a developer or principal of the applicant that has been
12 removed by the lender, equity provider, or limited partners for its
13 failure to perform its obligations under the loan documents or
14 limited partnership agreement; and

15 (3) encourages applicants to provide free notary
16 public service to the residents of the developments for which the
17 allocation of housing tax credits is requested.

18 (e) In scoring applications for purposes of housing tax
19 credit allocations, the department shall award, consistent with
20 Section 42, Internal Revenue Code of 1986 (26 U.S.C. Section 42),
21 preference points to a development that will:

22 (1) when practicable and feasible based on documented,
23 committed, and available third-party funding sources, serve the
24 lowest income tenants per housing tax credit, if the development is
25 to be located outside a qualified census tract; and

26 (2) subject to Subsection (h), produce for the longest
27 economically feasible period the greatest number of high quality

1 units committed to remaining affordable to any tenants who are
2 income-eligible under the low income housing tax credit program.

3 (g) In evaluating the source of the revenue stream for an
4 application under Subsection (b)(1)(K), the department shall award
5 positive points for a development that is not entirely dependent on
6 revenue derived from deed-restricted reduced rent.

7 (h) The department may not award preference points to a
8 development based on a deed restriction that is stricter than any
9 federal requirement under the program.

10 SECTION 4. The change in law made by this Act applies only
11 to an application for low income housing tax credits that is
12 submitted to the Texas Department of Housing and Community Affairs
13 during an application cycle that begins on or after the effective
14 date of this Act. An application that is submitted during an
15 application cycle that began before the effective date of this Act
16 is governed by the law in effect at the time the application cycle
17 began, and the former law is continued in effect for that purpose.

18 SECTION 5. This Act takes effect September 1, 2013.