

BILL ANALYSIS

C.S.H.B. 3576
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Urban Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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, C.S.H.B. 3576 seeks to amend the applicable law.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Department of Housing and Community Affairs in SECTIONS 1 and 5 of this bill.

ANALYSIS

C.S.H.B. 3576 amends the Government Code to require the Texas Department of Housing and Community Affairs (TDHCA) to adopt rules that provide for the amendment of a land use restriction agreement for certain multifamily rental housing developments, including rules that give the owner of a development the right to amend any existing restriction on the right of first refusal to purchase the property to conform to statutory provisions regarding a sale of certain low income housing tax credit property. The bill requires these rules to require reasonable notice to tenants, a public hearing, and approval by the governing board of TDHCA for any material amendment to a land use restriction agreement.

C.S.H.B. 3576 specifies that each representation made by an applicant to secure a low income housing tax credit allocation that is enforceable by TDHCA and the tenants of the qualified low income housing project development supported with the allocation be a material representation. The bill establishes that a land use restriction agreement that is recorded with respect to such a development, subject to authorized modification and enforcement, is considered to state the development owner's ongoing obligations with regard to the matters addressed in the agreement.

C.S.H.B. 3576 establishes that the transfer of ownership of a development supported with an allocation of low income housing tax credits does not subject the development to a right of first refusal to purchase the development provided to a qualified nonprofit or tenant organization if the transfer is made to certain qualified entities or to a newly formed entity that is under common control with the development owner and 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.

C.S.H.B. 3576 revises statutory provisions establishing procedures for the sale of certain low income housing tax credit developments to require an owner of a development who agreed to provide to a qualified nonprofit or tenant organization a right of first refusal to purchase the development at the minimum purchase price provided under federal law and 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. The bill requires TDHCA, after receiving the notice, to provide to any specifically identified qualified entity notice regarding the owner's intent to sell the development at not less than the minimum purchase price. The bill requires notice that the development is available for purchase by qualified entities at not less than the minimum purchase price, in the absence of a specifically identified entity or if that entity no longer exists, to be provided to the tenants of the development by the owner of the development and posted on TDHCA's website. The bill 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 such notice is provided or posted, 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. The bill requires TDHCA to review for reasonableness the submitted terms of the offer and financial plan.

C.S.H.B. 3576 authorizes the owner of the development subject to a right of first refusal, beginning on the 181st day after the date the notice regarding a development's availability for purchase by qualified entities at not less than the minimum purchase price is provided or posted, whichever date is later, to sell to any purchaser a development to which the right of first refusal applies if a qualified entity does not offer to purchase the development for a price that is at least equivalent to the minimum purchase price or if a qualified entity offers to purchase the development for such a price but does not complete the purchase. The bill requires TDHCA to adopt rules and procedures to give effect to the right of first refusal granted by any land use restriction agreement. The bill's provisions relating to the transfer of ownership or sale of a development 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 bill's effective date.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3576 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Sections 2306.185(c) and (d), Government Code, are amended to read as follows:

(c) Unless a shorter term is permitted under federal law, the ~~The~~ department shall require that a recipient of funding maintains the affordability of the multifamily housing development for households of extremely low, very low, low, and moderate incomes for the greater of a 30-year period from the date the recipient takes legal possession of the housing or the remaining term of the

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

existing federal government assistance. In addition, the agreement between the department and the recipient shall require the renewal of rental subsidies if available and if the subsidies are sufficient to maintain the economic viability of the multifamily development.

(d) The development restrictions provided by Subsection (a)(1) [~~(a) and Section 2306.269~~] are enforceable by [~~the department, by~~] tenants of the development, and [~~, or by private parties against the initial owner or any subsequent owner. The department shall require a land use restriction agreement providing for enforcement of the restrictions by the department,~~] a tenant seeking enforcement of the restriction may [~~, or a private party that includes the right to~~] recover reasonable attorney's fees if the [~~party seeking~~] enforcement action [~~of the restriction~~] is successful.

No equivalent provision.

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

(d-1) The department shall 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. Rules adopted under this subsection must require reasonable notice to tenants, a public hearing, and board approval for any material amendment to a land use restriction agreement.

(e) Subsections (c), [~~and~~] (d), and (d-1) and Section 2306.269 apply only to multifamily rental housing developments to which the department is providing one or more of the following forms of assistance:

- (1) a loan or grant in an amount greater than 33 percent of the market value of the development on the date the recipient completed the construction of the development;
- (2) a loan guarantee for a loan in an amount greater than 33 percent of the market value of the development on the date the recipient took legal title to the development; or
- (3) a low income housing tax credit.

SECTION 2. Section 2306.6713,

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Government Code, is amended by amending Subsection (a) and adding Subsection (g) to read as follows:

(a) An applicant may not transfer an allocation of housing tax credits and a development owner may not transfer [ø] 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.

(g) The transfer of ownership of a development supported with an allocation of housing tax credits to an affiliate of the development owner under this section does not subject the property to a right of first refusal under Section 2306.6726.

No equivalent provision.

SECTION 3. Section 2306.6725(b), Government Code, is amended to read as follows:

(b) The department shall provide appropriate incentives as determined through the qualified allocation plan to reward applicants who agree to:

(1) equip the property that is the basis of the application with energy saving devices

Government Code, is amended by amending Subsection (a) and adding Subsection (g) to read as follows:

(a) An applicant may not transfer an allocation of housing tax credits and a development owner may not transfer [ø] 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.

(g) 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. Section 2306.6720, Government Code, is amended to read as follows:

Sec. 2306.6720. ENFORCEABILITY OF APPLICANT REPRESENTATIONS. Each material representation made by an applicant to secure a housing tax credit allocation is enforceable by the department and the tenants of the development supported with the allocation. 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. Section 2306.6725(b), Government Code, is amended to read as follows:

(b) The department shall provide appropriate incentives as determined through the qualified allocation plan to reward applicants who agree to:

(1) equip the development [property] that is the basis of the application with energy

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 in the manner provided by Section 2306.6726 [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))]; and

(2) locate the development in a census tract in which there are no other existing developments supported by housing tax credits.

SECTION 4. Section 2306.6726, Government Code, is amended to read as follows:

Sec. 2306.6726. SALE OF CERTAIN LOW INCOME HOUSING TAX CREDIT PROPERTY.

(a) An owner of a property subject to [Not later than two years before the expiration of the compliance period, 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 at any time after the expiration of the compliance period shall notify the department of the owner's [recipient's] intent to sell.

(a-1) After receiving notice under Subsection (a), the department [The recipient] shall post on the department's Internet website a notice that the property is available for [notify qualified nonprofit organizations and tenant organizations of the opportunity to] purchase by qualified entities at not less than the minimum purchase price for a period of 90 days that begins on the date the notice is posted [the property].

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 development in the manner provided by Section 2306.6726 [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))]; and

(2) locate the development in a census tract in which there are no other existing developments supported by housing tax credits.

SECTION 5. Section 2306.6726, Government Code, is amended to read as follows:

Sec. 2306.6726. SALE OF CERTAIN LOW INCOME HOUSING TAX CREDIT DEVELOPMENTS [PROPERTY]. (a) An

owner of a development subject to [Not later than two years before the expiration of the compliance period, 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 development at any time after the expiration of the compliance period [property] shall notify the department of the owner's [recipient's] intent to sell and, if applicable, shall specifically identify to the department any qualified entity that is the owner's intended recipient of the right of first refusal in the land use restriction agreement.

(a-1) After receiving notice under Subsection (a), the department [The recipient] shall 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) 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 [notify qualified nonprofit organizations and tenant organizations of the opportunity to] purchase by qualified entities at not less than the minimum purchase price shall be:

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

(b) Beginning on the 91st day after the date the department posts notice under Subsection (a-1), an owner of a property subject to a right of first refusal [The recipient may:

~~[(1) during the first six month period after notifying the department, 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;~~

~~[(2) during the second six month period after notifying the department, negotiate or enter into a purchase agreement with any qualified nonprofit organization or tenant organization; and~~

~~[(3) during the year before the expiration of the compliance period, negotiate or enter into a purchase agreement with the department or any qualified nonprofit organization or tenant organization approved by the department.~~

~~[(c) Notwithstanding an agreement] under Section 2306.6725[, a recipient of a low income housing tax credit] may sell to any purchaser property to which the right of first refusal [~~tax credit~~] applies [~~to any purchaser after the expiration of the compliance period~~] if a qualified entity [~~nonprofit organization or tenant organization~~] does not offer to purchase the property for a price that is at least equivalent to [at] the minimum purchase price [~~provided by Section 42(i)(7), Internal Revenue Code of 1986 (26 U.S.C. Section 42(i)(7)), and the department declines to purchase the property~~].~~

~~(2) posted on the department's Internet website [the property].~~

~~(a-3) 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, a qualified entity seeking to purchase a development pursuant to the right of first refusal must submit to the department the terms of the entity's offer along with evidence of its financial plan to enable the purchase.~~

~~(a-4) The department shall review for reasonableness the terms of an offer and financial plan submitted under Subsection (a-3).~~

(b) Beginning on the 181st day after the date the owner provides notice under Subsection (a-2) or the department posts notice under that subsection, whichever date is later, an owner of a development subject to a right of first refusal [The recipient may:

~~[(1) during the first six month period after notifying the department, 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;~~

~~[(2) during the second six month period after notifying the department, negotiate or enter into a purchase agreement with any qualified nonprofit organization or tenant organization; and~~

~~[(3) during the year before the expiration of the compliance period, negotiate or enter into a purchase agreement with the department or any qualified nonprofit organization or tenant organization approved by the department.~~

~~[(c) Notwithstanding an agreement] under Section 2306.6725[, a recipient of a low income housing tax credit] may sell to any purchaser a development [property] to which the right of first refusal [~~tax credit~~] applies [~~to any purchaser after the expiration of the compliance period~~] if:~~

~~(1) a qualified entity [~~nonprofit organization or tenant organization~~] does not offer to purchase the development for a price that is at least equivalent to [~~property at~~] 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 [~~provided by Section 42(i)(7);~~~~

~~Internal Revenue Code of 1986 (26 U.S.C. Section 42(i)(7)), and the department declines to purchase the property].~~

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

(d) In this section:

(1) [-] "Compliance [compliance] period" has the meaning assigned by Section 42(i)(1), Internal Revenue Code of 1986 (26 U.S.C. Section 42(i)(1)).

(2) "Minimum purchase price" has the meaning assigned by Section 42(i)(7)(B), Internal Revenue Code of 1986 (26 U.S.C. Section 42(i)(7)(B)).

(3) "Qualified entity" means an entity described by, or an entity controlled by an entity described by, Section 42(i)(7)(A), Internal Revenue Code of 1986 (26 U.S.C. Section 42(i)(7)(A)).

(c) [~~d~~] In this section:

(1) [-] "Compliance [compliance] period" has the meaning assigned by Section 42(i)(1), Internal Revenue Code of 1986 (26 U.S.C. Section 42(i)(1)).

(2) "Minimum purchase price" has the meaning assigned by Section 42(i)(7)(B), Internal Revenue Code of 1986 (26 U.S.C. Section 42(i)(7)(B)).

(3) "Qualified entity" means an entity described by Section 42(i)(7)(A), Internal Revenue Code of 1986 (26 U.S.C. Section 42(i)(7)(A)).

SECTION 5. Section 2306.185, Government Code, as amended by this Act, applies only to an enforcement action commenced on or after the effective date of this Act, regardless of when the underlying violation occurred. An action commenced before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

SECTION 6. 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. This Act takes effect September 1, 2015.

No equivalent provision.

SECTION 6. Same as introduced version.

SECTION 7. Same as introduced version.