

House Bill 3576
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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, 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 ~~or~~ 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.

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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.

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

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(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

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(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

a newly formed entity:

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

(2) 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.

SECTION 3. Same as House version.

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

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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 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

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application with energy saving devices that meet the standards established by the state energy conservation office or ~~[to]~~ provide to a qualified entity, in a land use restriction agreement in accordance with Section 2306.6726, [nonprofit organization or tenant organization] a right of first refusal to purchase the development [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 and the tenants of the development 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) As soon as practicable after receiving notice under Subsection (a), the department [The recipient] shall:

(1) provide to any qualified entity specifically identified under Subsection (a) notice regarding the owner's intent to sell

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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

(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).

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the development; and

(2) post on the department's Internet website the notice described by Subdivision (1) ~~[notify qualified nonprofit organizations and tenant organizations of the opportunity to purchase the property]~~.

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(b) The owner of a development subject to a right of first refusal under Section 2306.6725 ~~[recipient]~~ may:

(1) during the first ~~60-day~~ ~~[six month]~~ period after notice is provided under Subsection (a-1) ~~[notifying the department]~~, negotiate or enter into a purchase agreement only with a qualified entity ~~[nonprofit organization]~~ that is:

(A) ~~[also]~~ a community housing development organization as defined by the federal HOME ~~[home]~~ investment partnership

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(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~~

~~program; or~~

~~(B) controlled by an entity described by Paragraph (A);~~

~~(2) during the second 60-day [six month] period after notice is provided under Subsection (a-1) [notifying the department], negotiate or enter into a purchase agreement with a [any] qualified entity that:~~

~~(A) is described by Section 2306.6706; [FA1(1)]~~

~~(B) is controlled by an entity described by Paragraph (A) [nonprofit organization or tenant organization]; or~~

~~(C) is a tenant organization; and [FA1(2)]~~

~~(3) during the last 60-day period after notice is provided under Subsection (a-1) [year before the expiration of the compliance period], negotiate or enter into a purchase agreement with [the department or] any other qualified entity [nonprofit organization or tenant organization approved by the department].~~

(c) Beginning on the 181st day after the date the department posts notice under Subsection (a-1), an owner of a development subject to a right of first refusal

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~~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

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~~[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~~

~~a qualified entity [~~nonprofit organization or tenant organization~~] does not offer to purchase the development for a price that the department determines to be reasonable [~~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 the department declines to purchase the property~~].~~
[FA1(3)]

~~(c-1) This section applies only to a right of first refusal memorialized in a land use restriction agreement. This section does not authorize a modification of any other agreement between an owner of a development and a qualified entity.~~

~~(c-2) 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)).

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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)).

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.

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(2) "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)).

SECTION 6. Same as House version.

SECTION 7. Same as House version.

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