86R14092 JAM-D

By:  Swanson H.B. No. 4162

A BILL TO BE ENTITLED

AN ACT

relating to the system by which an application for a low income housing tax credit is scored.

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

SECTION 1.  Section 2306.6710, Government Code, is amended by amending Subsections (b) and (f) and adding Subsections (b-1), (g), and (h) to read as follows:

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

(1)  prioritizes in descending order criteria regarding:

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

(B)  quantifiable community participation with respect to the development, evaluated on the basis of a resolution concerning the development that is voted on and adopted by the following, as applicable:

(i)  the governing body of a municipality in which the proposed development site is to be located;

(ii)  subject to Subparagraph (iii), the commissioners court of a county in which the proposed development site is to be located, if the proposed site is to be located in an area of a county that is not part of a municipality; or

(iii)  the commissioners court of a county in which the proposed development site is to be located and the governing body of the applicable municipality, if the proposed site is to be located in the extraterritorial jurisdiction of a municipality;

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

(D)  the size and quality of the units;

(E)  the rent levels of the units;

(F)  the level of community support for the application, evaluated on the basis of a written statement from the state representative who represents the district containing the proposed development site;

(G)  the cost of the development by square foot;

(H) [~~(G)~~]  the services to be provided to tenants of the development, including quality social services;

[~~(H)  whether, at the time the complete application is submitted or at any time within the two-year period preceding the date of submission, the proposed development site is located in an area declared to be a disaster under Section 418.014;~~]

(I)  quantifiable community participation with respect to the development, evaluated on the basis of written statements from any neighborhood organizations on record with the state or county in which the development is to be located and whose boundaries contain the proposed development site; [~~and~~]

(J)  demonstrated community and neighborhood support other than that described by Paragraphs (B), (F), and (I);

(K)  whether the proposed project is consistent with sound underwriting practices and when economically feasible, serves individuals and families of extremely low income by leveraging private and state and federal resources, including federal HOPE VI grants received through the United States Department of Housing and Urban Development;

(L)  whether the proposed project serves traditionally underserved populations;

(M)  demonstrated support from local political subdivisions based on the subdivisions' commitment of development funding;

(N)  whether the proposed project rehabilitates or performs an adaptive reuse of a certified historic structure, as defined by Section 171.901(1), Tax Code, as part of the development;

(O)  whether the proposed project remains affordable to qualified tenants for an extended, economically feasible period; and

(P)  whether the proposed project complies with the accessibility standards that are required under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), and specified under 24 C.F.R. Part 8, Subpart C [~~the level of community support for the application, evaluated on the basis of a written statement from the state representative who represents the district containing the proposed development site~~];

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

(3)  encourages applicants to provide free notary public service to the residents of the developments for which the allocation of housing tax credits is requested; and

(4)  provides appropriate incentives to reward applicants who agree to:

(A)  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 provide to a qualified entity, in a land use restriction agreement in accordance with Section 2306.6726, a right of first refusal to purchase the development 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

(B)  locate the development in:

(i)  a census tract in which there are no other existing developments supported by housing tax credits; or

(ii)  an area that will serve residents of the development without displacing established communities.

(b-1)  For each scoring criterion, the department shall use a range of points to evaluate the degree to which a proposed project satisfies the criterion.  The department may not award:

(1)  a number of points for a scoring criterion that is disproportionate to the degree to which a proposed project complies with that criterion; or

(2)  to a proposed project for the general population a number of points for a scoring criterion that is different than the number of points awarded for that criterion to a proposed project reserved for elderly persons if the proposed project complies with the criterion to the same degree.

(f)  In evaluating the level of community support for an application under Subsection (b)(1)(F) [~~(b)(1)(J)~~], the department shall award:

(1)  positive points for positive written statements received;

(2)  negative points for negative written statements received; and

(3)  zero points for neutral written statements received.

(g)  On awarding housing tax credit allocations, the board shall document the reasons for each project's selection, including an explanation of:

(1)  all discretionary factors used in making its determination; and

(2)  the reasons for any decision that conflicts with the recommendations of department staff under Section 2306.6731.

(h)  For purposes of evaluating applications submitted under this subchapter, the department may adopt only a scoring criterion that is specified in this section.

SECTION 2.  Sections 2306.6726(a), (b), and (c), Government Code, are amended to read as follows:

(a)  An owner of a development subject to a right of first refusal under Section 2306.6710(b)(4) [~~2306.6725~~] who intends to sell the development at any time after the expiration of the compliance period shall notify the department and the tenants of the development of the owner'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.

(b)  The owner of a development subject to a right of first refusal under Section 2306.6710(b)(4) [~~2306.6725~~] may:

(1)  during the first 60-day period after notice is provided under Subsection (a-1), negotiate or enter into a purchase agreement only with a qualified entity that is:

(A)  a community housing development organization as defined by the federal HOME investment partnership program; or

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

(2)  during the second 60-day period after notice is provided under Subsection (a-1), negotiate or enter into a purchase agreement with a qualified entity that:

(A)  is described by Section 2306.6706;

(B)  is controlled by an entity described by Paragraph (A); or

(C)  is a tenant organization; and

(3)  during the last 60-day period after notice is provided under Subsection (a-1), negotiate or enter into a purchase agreement with any other qualified entity.

(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 under Section 2306.6710(b)(4) [~~2306.6725~~] may 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 the department determines to be reasonable.

SECTION 3.  Section 2306.6725, Government Code, is repealed.

SECTION 4.  The change in law made by this Act applies only to an application for low income housing tax credits that is submitted to the Texas Department of Housing and Community Affairs during an application cycle that is based on the 2020 qualified allocation plan or a subsequent plan adopted by the governing board of the department under Section 2306.67022, Government Code. An application that is submitted during an application cycle that is based on an earlier qualified allocation plan is governed by the law in effect on the date the application cycle began, and the former law is continued in effect for that purpose.

SECTION 5.  This Act takes effect September 1, 2019.