

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

1 site is to be located, if the proposed site is to be located in an
2 area of a county that is not part of a municipality; or

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

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

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

11 (E) the rent levels of the units;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (A) equip the development that is the basis of
15 the application with energy saving devices that meet the standards
16 established by the state energy conservation office or provide to a
17 qualified entity, in a land use restriction agreement in accordance
18 with Section 2306.6726, a right of first refusal to purchase the
19 development at the minimum price provided in, and in accordance
20 with the requirements of, Section 42(i)(7), Internal Revenue Code
21 of 1986 (26 U.S.C. Section 42(i)(7)); and

22 (B) locate the development in:

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

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

27 (b-1) For each scoring criterion, the department shall use a

1 range of points to evaluate the degree to which a proposed project
2 satisfies the criterion. The department may not award:

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

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

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

14 (1) positive points for positive written statements
15 received;

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

18 (3) zero points for neutral written statements
19 received.

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

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

25 (2) the reasons for any decision that conflicts with
26 the recommendations of department staff under Section [2306.6731](#).

27 (h) For purposes of evaluating applications submitted under

1 this subchapter, the department may adopt only a scoring criterion
2 that is specified in this section.

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

5 (a) An owner of a development subject to a right of first
6 refusal under Section 2306.6710(b)(4) [~~2306.6725~~] who intends to
7 sell the development at any time after the expiration of the
8 compliance period shall notify the department and the tenants of
9 the development of the owner's intent to sell and, if applicable,
10 shall specifically identify to the department any qualified entity
11 that is the owner's intended recipient of the right of first refusal
12 in the land use restriction agreement.

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

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

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

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

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

25 (A) is described by Section 2306.6706;

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

1 (C) is a tenant organization; and

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

5 (c) Beginning on the 181st day after the date the department
6 posts notice under Subsection (a-1), an owner of a development
7 subject to a right of first refusal under Section [2306.6710\(b\)\(4\)](#)
8 [~~2306.6725~~] may sell to any purchaser a development to which the
9 right of first refusal applies if a qualified entity does not offer
10 to purchase the development for a price that the department
11 determines to be reasonable.

12 SECTION 3. Section [2306.6725](#), Government Code, is repealed.

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

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