

Summary of 2025 Changes to Texas Law – Property Tax Exemptions for Housing Finance Corporations Owning Affordable Housing

An Analysis of House Bill 21

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In its 89th Regular Session (2025), the Texas Legislature approved House Bill 21 (**HB 21**), substantially revising the way housing finance corporations own and operate multifamily rental affordable housing. Gov. Greg Abbott signed HB 21 into law effective May 28, 2025 (**Effective Date**). Some provisions in HB 21 may be subject to interpretation. The summary below reflects our analysis of HB 21 as of the date of this publication. Throughout this summary, we present questions about the portions of HB 21 that may require interpretation and suggestions for how that interpretation may be resolved. The Texas Department of Housing and Community Affairs (**TDHCA**) is charged with creating rules (**HFC Rules**) for monitoring compliance with the new provisions of HB 21.¹ The HFC Rules may establish procedures that differ from our recommendations and conclusions below. Generally, a Texas agency has certain discretion in rulemaking to implement a new law with rules that are reasonable, based on the plain language of the statute. Interested parties are encouraged to participate in the TDHCA rulemaking process in order to have a voice in the implementation of these new requirements.²

¹ Code Section 394.9027.

² Code Sections 394.9027(i) and (j). The rules may include the ability of TDHCA to charge a fee for its services and must include an appeal mechanism for findings of noncompliance. HB 21 also suggests an HFC should be able to appeal the loss of a Property Tax Exemption because of noncompliance. The appeal of a loss of a Property Tax Exemption is not within the legal purview of TDHCA and must be conducted in accordance with the Texas Tax Code. The only appeal TDHCA can administer is for the findings of noncompliance.

Housing Finance Corporations

A housing finance corporation (**HFC**) is a nonprofit corporation that can be created as an instrumentality of a municipality, county or collection of municipalities and counties (each a **Sponsor**) under Chapter 394 of the Texas Local Government Code (**Code**). The Code authorizes an HFC to issue revenue bonds³ and own property⁴ in order to provide persons of low and moderate income with access to decent, safe, sanitary and affordable housing. HFCs are empowered to facilitate residential development for households to rent or own. In the context of property for rent, “affordable” housing is understood to be a property that places limits on a portion of the residential units as to (i) the maximum income of the resident household, based on a percentage of the local area median income, adjusted for household size (**AMI**) (**Income Restriction**), and (ii) the rents that may be charged to those households (**Rent Restriction**). Units encumbered with an Income Restriction and a Rent Restriction will be referred to in this summary as **Restricted Units**. A multifamily housing rental property with Restricted Units will be referred to in this summary as an **Affordable Housing Property**. This summary does not address the implications of HB 21 for activities of an HFC related to home ownership.

Historical Tax Exemption for HFCs

Under the Texas Tax Code⁵ and the Code⁶ prior to HB 21, (i) an HFC, (ii) all property owned by an HFC, and (iii) all income derived from a property owned by an HFC were exempt from taxes imposed by the state or its local political subdivisions. Over the years, HFCs have utilized these exemptions to develop and own Affordable Housing Properties, with ad valorem tax exemption (**Property Tax Exemption**) providing critical financial support for the Affordable Housing Property and its Restricted Units.⁷

Issues with Former Law

³ Code Section 394.051.

⁴ Code Section 394.039.

⁵ Texas Tax Code Section 11.11.

⁶ Code Section 394.905.

⁷ A Property Tax Exemption for an HFC is effective as of the date the HFC acquires the property.

The Code functioned for decades without significant controversy, as HFCs fulfilled their public purpose to provide decent, safe and affordable housing for low- and moderate-income households. However, these factors made the statute vulnerable for misuse:

- Given the breadth of an HFC's activities, including both rental housing and home ownership, the Code was drafted flexibly regarding Restricted Units. Specifically, the Code did not require any Rent Restrictions for properties owned by HFCs. The Code established Income Restrictions for 90% of the units in a property owned by an HFC to be occupied by or intended for occupancy by households with "low or moderate" income.⁸ The Code did not define "low" or "moderate" income by AMI, giving the HFC discretion to create its own policies as to what should constitute low or moderate income in its market.
- While the connection between an HFC and its Sponsor was clear and the Code could be understood to limit an HFC's activities to the jurisdiction of its Sponsor,⁹ some parties believed the Code did not definitively prohibit an HFC from operating outside the boundaries of its Sponsor.

A few HFCs proceeded to acquire or construct rental housing properties pursuing Property Tax Exemptions outside the jurisdictional boundaries of their Sponsors (colloquially referred to as **Traveling HFCs**). Some of the properties acquired by Traveling HFCs may be classified as "naturally occurring affordable housing," meaning that the age, location and physical condition of the property do not generate rents commensurate with a newer rental property. The below-market rents attract lower-income households, making the property affordable without the formality or necessity of Restricted Units. The removal of these properties from the tax rolls, without any significant improvements for the residents or the community, attracted local attention.

⁸ Code Section 394.004.

⁹ Code Section 394.903(a). "A residential development covered by this chapter must be located within the local government."

The Texas Legislature addressed a similar circumstance in the 88th Regular Session (2023) regarding public facility corporations (**PFCs**) organized under Chapter 303 of the Code. At that time, a municipal management district with a limited jurisdiction created a PFC (**Traveling PFC**) that acquired and constructed rental housing properties in other areas of the state. Chapter 303 of the Code did not impose Rent Restrictions, Income Restrictions or any of the standard guardrails associated with the operation of affordable housing. Thus, properties owned by PFCs (including the Traveling PFC) were receiving Property Tax Exemption without creating the public benefits typically associated with Affordable Housing Properties. The Texas Legislature passed House Bill 2071 (**HB 2071**) to reform Chapter 303 of the Code. TDHCA implemented rules for the implementation of its responsibilities under HB 2071 (**PFC Rules**).¹⁰

Facing another scenario with a locally created governmental instrumentality utilizing Property Tax Exemptions in jurisdictions outside the boundaries of its local sponsor, the Legislature utilized HB 2071 as a starting point to create HB 21 and reform Chapter 394. Many of the provisions of HB 21 bear resemblance to HB 2071, but there are significant differences, as noted later in this summary.

Summary of New Requirements Under HB 21

Application of New Law

HB 21 applies only to HFCs and certain properties they own. HB 21 does not apply to PFCs governed by Chapter 303 of the Code, nor does it apply to public housing authorities governed by Chapter 392 of the Code. As discussed below, most, but not all, of the provisions of HB 21 do not apply to properties owned by HFCs that have received low-income housing tax credits (**LIHTCs**) under Chapter 2306 of the Texas Government Code (**TDHCA Statute**).

¹⁰ See Texas Administrative Code, Title 10, Chapter 10, Subchapter I.

Section 394.031: Jurisdictional Restrictions

HB 21 revises Code Section 394.031 to clarify the jurisdiction within which an HFC may finance, own or operate an Affordable Housing Property, subject to certain exclusions. Key changes to Code Section 394.031 are set forth below. **The new jurisdictional restrictions in Code Section 394.031 do apply to an Affordable Housing Property receiving LIHTCs. The new jurisdictional restrictions do not apply to property owned by an HFC for a purpose other than residential development.**¹¹

- An HFC's operations are restricted to occur within the boundaries of its Sponsor(s).¹² For a county, that means the entire county, including any municipal boundaries therein.
- If an HFC wishes to operate outside the boundaries of its Sponsor(s), it must obtain a resolution of approval from (A)(i) the governing body of each municipality that contains any portion of the Affordable Housing Property; or (ii) if any portion of the Affordable Housing Property is located in the unincorporated area of a county, the governing body of such county; and (B) any HFC with jurisdiction including the areas described in (A)(i) or (ii).¹³

Section 394.9026: Conditions for a Property Tax Exemption

New Code Section 394.9026 establishes additional affordability and accountability requirements for an HFC or other "housing finance corporation user"¹⁴ to obtain and retain a Property Tax Exemption for an Affordable Housing Property.¹⁵ A **Housing Finance Corporation User** is an HFC or "a public-private partnership entity or a developer or other person or entity that has an ownership interest or a leasehold or other possessory interest in multifamily residential development financed or supported by a housing finance corporation." While ownership by the HFC is critical to obtaining and retaining a Property

¹¹ Code Section 394.031(e).

¹² Code Section 394.031(c).

¹³ Code Section 394.031(d).

¹⁴ Code Section 394.9026(a)(2).

¹⁵ Code Section 394.9026(a)(7).

Tax Exemption, leases and public-private partnerships may be utilized to bring financing or development expertise to the property.

Many of the ***Conditions for a Property Tax Exemption*** derive from HB 2071 and will be recognized by those who followed that bill in the prior Legislative Session. **The requirements set forth in Code Section 394.9026 do not apply to an Affordable Housing Property that is the recipient of LIHTCs allocated by TDHCA under the TDHCA Statute.**



What does it mean to be the “recipient” of LIHTCs? HB 21 does not define this.



The TDHCA Statute and the rules promulgated thereunder present a well-defined process for a person to apply for LIHTCs for an Affordable Housing Property. When TDHCA determines to award LIHTCs, it enters into a commitment agreement with the owner, and upon completion of development, a land use restriction agreement is executed and filed in the Real Property Records. So long as such agreements are in effect, the owner is considered a “recipient” of the LIHTC funding. The TDHCA Statute supports this interpretation. Section 2306.185(c) states, “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 existing federal government assistance.” This indicates that an owner receiving funding from TDHCA is considered to be a “recipient” for so long as TDHCA maintains regulatory authority over the property. Consistently, when HB 2071 was passed and drafted to exclude LIHTC properties from certain requirements, it excluded properties that “receive” financial assistance under the TDHCA Statute.¹⁶

¹⁶ Texas Local Government Code Sections 303.0421(a)(4) and 392.005(c-1)(2)(D).

For purposes of HB 21, a “recipient” of LIHTCs should refer to an owner that is contractually subjected to regulation by TDHCA in conjunction with its participation in the LIHTC program, for so long as such agreements are in effect.



What happens when an owner’s LIHTC agreements expire? Can an Affordable Housing Property retain its Property Tax Exemption?



Yes, but it would need to comply with all of the requirements of Code Chapter 394 to qualify for the Property Tax Exemption.

a. Income Restrictions. The following Income Restrictions apply to the Restricted Units in an Affordable Housing Property in order to obtain and retain the Property Tax Exemption:

- The Affordable Housing Property must have Restricted Units in one of the two following categories:¹⁷
 - (i) 10% of the residential units are reserved for households earning not more than 60% of AMI (a “lower income housing unit”), and (ii) 40% of the residential units are reserved for households earning not more than 80% of AMI (a “moderate income housing unit”); or
 - (i) 10% of the residential units are reserved for households earning not more than 50% of AMI (a “very low income housing unit”), and (ii) 40% of the residential units are reserved for households earning not more than 100% of AMI (a “middle income housing unit”).

Note, these Income Restrictions are different from those set forth in Code Section 394.004, which requires 90% of the residential units to be occupied by or intended for occupancy by households with “low or moderate income,” a phrase that is undefined. The

¹⁷ Code Section 394.9026(c)(1).

Income Restrictions in Code Section 394.004 apply to all of Chapter 394, while the Income Restrictions in Code Section 394.9026(c)(1) apply only to an Affordable Housing Property seeking a Property Tax Exemption to which Code Section 394.9026 applies.



Is an Affordable Housing Property required to comply with both Code Section 394.004 and Code Section 394.9026(c)(1)?



Rules of statutory construction require provisions to be harmonized to avoid inconsistency. If harmonized, it is possible for an Affordable Housing Property owned by an HFC or a Housing Finance Corporation User to meet both requirements. It could select one of the two Income Restrictions in Code Section 394.9026(c)(1) for 50% of the units and then restrict another 40% of the units for use by households at “low and moderate” income, as described in Code Section 394.004.

An Affordable Housing Property that is occupied when acquired by an HFC is given a grace period and is entitled to the Property Tax Exemption for the two tax years after the date of acquisition, so long as the Income Requirements are met by the end of the second tax year after the date of acquisition.¹⁸



Tax years are based on calendar years. If an Affordable Housing Property is acquired in the middle of a tax year, is the following calendar year the “second” tax year for purposes of this provision? Or is it intended to mean the second full tax year so that the calendar year following the year of acquisition would be the first tax year and the second tax year would be one year after that?

¹⁸ Code Section 394.9026(g).



Absent the use of the word “full” or something similar, a party acquiring a property has ad valorem tax responsibility for that property as of the date of acquisition, which can reasonably be considered the first tax year, making the second tax year the calendar year after acquisition.

- Household income is calculated in accordance with Department of Housing and Urban Development (**HUD**) rules under 24 C.F.R. Section 5.609.¹⁹
- Once a Restricted Unit is rented to a qualified household, it will continue to qualify as such even if the household’s income increases beyond the applicable household limit at the time of lease renewal, in accordance with the provisions of Section 42(g)(2)(D) of the Internal Revenue Code. This effectively adopts the safe harbor used in the LIHTC program that allows a household’s income to increase to up to 140% of AMI without creating an event of non-compliance, so long as the next available unit in the Affordable Housing Property is rented to a qualified household as a Restricted Unit at the applicable income level.²⁰



If an HFC or other Housing Finance Corporation User is relying on this safe harbor to maintain the compliance of its Restricted Units, is it required to charge rent to the over-income household based on the applicable Rent Restriction for the Restricted Unit?



Yes. To continue to qualify as a unit with an Income Restriction, it must maintain the Rent Restriction upon which occupancy was initially granted until the next available unit is leased to a qualified household.

b. Rent Restrictions. The following Rent Restrictions apply to the Restricted Units in an Affordable Housing Property in order to obtain and retain the Property Tax Exemption:

¹⁹ Code Section 394.9026(d).

²⁰ Code Section 394.9026(d).

- “Rent” is defined to include any recurring charge that a resident is required to pay for continued occupancy, which may include charges payable to the landlord for utilities, trash or Internet access.²¹ Rent does not include charges that are optional for the resident, such as fees for covered parking or pet fees.
- Annual rent charged for a Restricted Unit may not exceed 30% of the applicable AMI for the applicable household size, as defined by HUD.²² An Affordable Housing Property that is acquired by an HFC is given a grace period and is entitled to the Property Tax Exemption for the two tax years after the date of acquisition, so long as this requirement is met by the end of the second year after the date of acquisition.²³
- If (i) a household is using a **Housing Choice Voucher**²⁴ to pay its rent, and (ii) the payment standard for the Housing Choice Voucher is less than the amount of rent established for the Restricted Unit above, the HFC or other Housing Finance Corporation User may require the household to pay the difference.²⁵

c. Tenant Protections. HB 21 ensures protections for residents of Restricted Units found in Code Sections 394.9026(c)(6) – (9) and referred to herein as the **Tenant Protections**.

- A Housing Finance Corporation User must publish information on its website about its policies for its Affordable Housing Properties with respect to the Housing Choice Voucher program.²⁶
- A Housing Finance Corporation User may not refuse to lease a Restricted Unit to a household because the household intends to pay its rent using a Housing Choice

²¹ Code Section 394.9026(a)(8).

²² Code Section 394.9026(c)(5).

²³ Code Section 394.9026(g). See discussion of timing under subsection a. with regard to Income Restrictions.

²⁴ Code Section 394.9026(a)(1). Defined as a voucher provided through the Section 8 rental housing subsidy program administered by HUD.

²⁵ Code Section 394.9026(e).

²⁶ Code Section 394.9026(c)(7).

Voucher. Nor may the Housing Finance Corporation User impose a minimum income requirement whereby a household using a Housing Choice Voucher is required to have a monthly income in excess of 250% of the household's monthly rent requirement.²⁷

- Each lease agreement for a Restricted Unit must include the following,²⁸ and these rights may not be waived:²⁹
 - The Housing Finance Corporation User may not retaliate against a resident for participation in a resident organization.
 - Nonrenewal of a resident's lease is permitted only in certain circumstances, including the household's material noncompliance with the lease or failure to provide required eligibility information.
 - A household must be given 30 days' advance notice for any nonrenewal of a lease.
- A Housing Finance Corporation User must affirmatively market each Affordable Housing Property to households with Housing Choice Vouchers and notify local housing authorities of the Affordable Housing Property's acceptance of Housing Choice Vouchers.³⁰ HB 21 does not specify a methodology for affirmatively marketing an Affordable Housing Property or notifying local housing authorities as to the acceptance of Housing Choice Vouchers. The HFC Rules may provide additional guidance.

²⁷ Code Section 394.9026(c)(6).

²⁸ Code Section 394.9026(c)(9). Note, these requirements do not apply to market rate units.

²⁹ Code Section 394.9026(f).

³⁰ Code Section 394.9026(c)(8).

The Texas Apartment Association (TAA) promulgates a form Lease Contract Addendum for Units Participating in Government Regulated Affordable Housing Programs that should include these requisite lease provisions.³¹

In addition, Code Sections 394.9026(c)(3) – (4) state:

The Restricted Units must have the same interior finishes, equipment and access to amenities as the non-Restricted Units (**Quality Requirement**).³² Provided that the Quality Requirement is met by the end of the second year after the date of acquisition, an Affordable Housing Property that is acquired by an HFC is given a grace period and is entitled to the Property Tax Exemption for the two tax years after the date of acquisition.³³ The Quality Requirement presents added complexity for an Affordable Housing Property that is updating units in phases, with some original units and some renovated units coexisting.

The Restricted Units must be dispersed proportionally among the various unit types in the Affordable Housing Property (**Dispersion Requirement**). Specifically, the units reserved in each Income Restriction category of Restricted Units must be the same as the percentage of each category of units with Income Restrictions reserved in the Affordable Housing Property as a whole, based upon the number of bedrooms per unit.³⁴ Note, the number of bathrooms is not considered. Provided the Dispersion Requirement is met by the end of the second year after the date of acquisition, an Affordable Housing Property that is acquired by an HFC is given a grace period and is entitled to the Property Tax Exemption for the two tax years after the date of acquisition.³⁵

d. Public Benefit Test. Perhaps the most impactful new requirement in HB 21 is a measurement standard for the public benefit derived from the Property Tax Exemption.

³¹ See TAA Official Statewide Form 23-V, Revised July 2023, Section 6.4.

³² Code Section 394.9026(c)(3).

³³ Code Section 394.9026(g). See discussion under subsection a. with regard to Income Restrictions.

³⁴ Code Section 394.9026(c)(4). For example, if 10% of the units are reserved for lower-income households, then 10% of the 1-bedroom units must be reserved for lower-income households, 10% of the 2-bedroom units must be reserved for lower-income households and so on.

³⁵ Code Section 394.9026(g). See discussion of timing under subsection a. with regard to Income Restrictions.

This standard calculates the difference between the rents for the Restricted Units and the market rate rents for the equivalent units and is referred to as the **Public Benefit Test**. The Public Benefit Test is conducted annually and will be verified by the Auditor (later defined). To calculate whether an Affordable Housing Property meets the Public Benefit Test, the Housing Finance Corporation User must identify the estimated property taxes the Affordable Housing Property would have paid in the immediately preceding year and multiply that number by 50% (the **Benefit Threshold**).³⁶ Given the annual calendar for valuation of properties by appraisal districts, juxtaposed against the date for submission of an annual 'Audit (later defined)', the Housing Finance Corporation User may have received the actual property tax amount from the appraisal district, which it can use to calculate the Public Benefit Test. See [Appendix 3](#).



Example: In order to be entitled to the Property Tax Exemption in 2026, the Housing Finance Corporation User must show that it met the Public Benefit Test for the calendar year 2025. This measurement would be included in the annual Audit for the Affordable Housing Property, submitted by June 1, 2026. (This example disregards any applicable two-year grace period previously discussed.)

The Benefit Threshold is measured against the rent reduction for the applicable year. Rent reduction is defined as the projected difference between the rent charged for a unit with Income Restrictions and the “maximum market rent” that could be charged for that same unit without the Income Restrictions.³⁷ The Housing Finance Corporation User must calculate the maximum market rent for each unit type with the same or a substantially similar floor plan.³⁸ It will add the annual rent charged for each unit in that unit type that does not have an Income Restriction and average the sum across the number of units of that type (**Annual Unit Type Average**). Then, it will derive the rent reduction across that particular unit type by subtracting the annual rent charged for each unit with an Income

³⁶ Code Section 394.9026(c)(2)(A).

³⁷ Code Section 394.9026(a)(9).

³⁸ Code Section 394.9026(a)(4).

Restriction from the Annual Unit Type Average and computing the aggregate rent reduction across all the residential units of that type. By adding together the cumulative rent reduction for each unit type, the Housing Finance Corporation User will establish the total rent reduction for the Affordable Housing Property in the calendar year. If the total rent reduction is equal to or greater than the Benefit Threshold, the Affordable Housing Property has met the Public Benefit Test. For an example of this calculation, see [Appendix 1](#).

The Public Benefit Test begins to be calculated:

- For an existing Affordable Housing Property acquired by an HFC, for the first tax year³⁹ after the tax year in which Affordable Housing Property was acquired.



Example: If an HFC acquires an Affordable Housing Property in 2025, it must meet the Public Benefit Test for 2026 in order to obtain the Property Tax Exemption in 2027. (This example disregards any applicable two-year grace period, as previously discussed.)

- For a newly constructed Affordable Housing Property acquired by an HFC, for the first tax year after the tax year in which construction commenced.



Example: If an HFC commences construction of an Affordable Housing Property in 2025, it must complete the Public Benefit Test for 2026 in order to obtain the Property Tax Exemption in 2027. This could easily create an odd result, depending on the timing of construction and lease-up.⁴⁰

If an Affordable Housing Property fails to meet the Public Benefit Test for any given tax year, it will not lose the Property Tax Exemption, provided it pays to each taxing authority with power to impose ad valorem tax on the Affordable Housing Property (other than

³⁹ Note that a “tax year” is a calendar year.

⁴⁰ Compare to the discussion under **Audit and Compliance Monitoring**, where the first Audit for a new construction property must be submitted by June 1 of the tax year following the date the property was first occupied by a resident.

MUDs and ESDs, as later described) an amount equal to the taxing authority's pro rata share of the shortfall.⁴¹



Example: If the Public Benefit Test shows the Affordable Housing Property achieved a total rent reduction of 30% instead of 50% in 2026, the Housing Finance Corporation User must pay to each taxing authority 20% of the amount the taxing authority would have imposed on the Affordable Housing Property in 2026 but for the Property Tax Exemption.

The dynamic nature of multifamily rental housing creates numerous practical questions for the implementation of the Public Benefit Test. We have considered some of those questions in [Appendix 2](#).

Section 394.9027: Audit and Compliance Monitoring

HB 21 (i) creates a compliance monitoring function for TDHCA, and (ii) requires TDHCA to adopt rules related to the monitoring function by Jan. 1, 2026. Many of the compliance monitoring requirements derive from HB 2071 and will be recognized by those who followed that bill in the prior Legislative Session. **The *Audit and Compliance Monitoring* requirements set forth in Code Section 394.9027 do not apply to an Affordable Housing Property that is the recipient of LIHTCs allocated by TDHCA under the TDHCA Statute.**⁴²

Specifically, in order for an Affordable Housing Property owned by an HFC to receive a Property Tax Exemption in any given year:

- The Housing Finance Corporation User must obtain and pay for an audit (**Audit**) conducted by an independent auditor or compliance expert with an established history of addressing affordable housing compliance matters (**Auditor**) that (i) determines whether the HFC is in compliance with the applicable requirements of

⁴¹ Code Section 394.9026(c)(2)(B).

⁴² Code Section 394.9027(l). For a discussion of what it means to be a “recipient” of LIHTCs, see the prior section, discussing ***Conditions for a Property Tax Exemption***, Code Section 394.9026.

Code Section 394.9026,⁴³ and (ii) identifies the difference between the rents charged for the Restricted Units and the estimated maximum market rents⁴⁴ that could be charged for such units if they were not restricted (**Rent Differential**).



Is the calculation of the Rent Differential in Code Section 394.9027(b)(2) the same as the calculation for the Public Benefit Test in Code Section 394.9026(c)(2)?



Technically, no.⁴⁵ Code Section 394.9026(c)(2) uses two defined phrases that only apply to Code Section 394.9026 and do not apply to Code Section 394.9027 – (i) “rent reduction” and (ii) “maximum market rent.” Code Section 394.9026(c)(2) requires the calculation of rent reduction based on maximum market rent, which is defined as an average figure. Alternatively, Code Section 394.9027(b)(2) requires the calculation of a differential based on “estimated maximum market rents” that could be charged for the Restricted Units.⁴⁶ An estimated figure is different than the precise average figure calculated by definition in Code Section 394.9026(a)(4). Because the grandfathering provisions in HB 21 allow certain properties to meet the Public Benefit Test starting on a future date, some Affordable Housing Properties may be required to submit an Audit without a Public Benefit Test for a period of time. When that is the case, it is reasonable for TDHCA to monitor the Rent Differential in Code Section 394.9027(b)(2) the same way it monitors the same requirement under HB 2071 for PFC properties. When an HFC is required to comply with the Public Benefit Test and the provisions of Code Section 394.9027(b)(2) simultaneously, it would be reasonable to conclude that

⁴³ Code Section 394.9027(b)(1).

⁴⁴ Code Section 394.9027(b)(2).

⁴⁵ Code Section 394.9027(b)(2) is a holdover from HB 2071, which did not have a Public Benefit Test.

⁴⁶ TDHCA has established a methodology for this calculation for Affordable Housing Properties regulated by Chapter 303 and subject to HB 2071. See Section 10.1104 of the PFC Rules. In that calculation, the estimated market rate rent is the highest rent charged for the same unit type in the property. For an Affordable Housing Property without any market rate units, TDHCA’s rule looks to the Auditor to propose a reasonable methodology to determine market rent.

the information submitted for the Public Benefit Test can satisfy the requirement in Code Section 394.9027(b)(2).

- The first Audit for each Affordable Housing Property must be submitted to TDHCA not later than June 1 of the tax year following (i) the date of the HFC's acquisition of an existing Affordable Housing Property or (ii) the date a newly constructed Affordable Housing Property is first occupied by a resident.⁴⁷ After the filing of the first Audit, an annual Audit must be filed no later than June 1 of each subsequent year.⁴⁸ TDHCA may, in its discretion, extend this deadline for good cause shown.⁴⁹
- An Auditor may not prepare an Audit for the same HFC for more than three consecutive years. An Auditor that has been engaged for three consecutive years may be reengaged after a two-year lapse in which a different Auditor is engaged.⁵⁰
- Audits are subject to disclosure under Texas public information laws, provided that certain resident information may be withheld.⁵¹
- Within 60 days of receipt of the Audit, TDHCA must review it and publish a report with details of any findings of noncompliance with Code Section 394.9026 (**Compliance Report**). The Compliance Report must be available on TDHCA's website and must be delivered to the HFC, the Housing Finance Corporation User and the HFC's Sponsor(s).⁵²
- If the Audit includes findings of noncompliance, TDHCA must provide the HFC, the Housing Finance Corporation User, and the chief appraiser of the applicable appraisal district(s) with written notice of the noncompliance (**Notice of Non-**

⁴⁷ Code Section 394.9027(e). Note that for a new construction property subject to the Public Benefit Test, the first Public Benefit Test must be submitted for the first tax year following the tax year in which construction commenced. This differs from the timeline for the first Audit for a new construction property, which should be submitted by June 1 of the first tax year following the year in which the property was first occupied by a resident. HFCs should be mindful of this distinction.

⁴⁸ Code Section 394.9027(f).

⁴⁹ Code Section 394.9027(g).

⁵⁰ Code Section 394.9027(h).

⁵¹ Code Section 394.9027(k).

⁵² Code Section 394.9027(c).

Compliance) not later than 120 days⁵³ after the date of initial submission of the Audit to TDHCA.⁵⁴ If the Notice of Non-Compliance relates to the items in Code Section 394.9026(c),⁵⁵ the HFC and Housing Finance Corporation User⁵⁶ must be given additional written notice⁵⁷ (**Additional Notice**) that contains at least one option for corrective action to resolve the noncompliance, to be completed within 180 days of the date of the Additional Notice (**Cure Period**). The Additional Notice must advise that failure to resolve the noncompliance will result in loss of the Property Tax Exemption. If an event of noncompliance is not cured to the satisfaction of TDHCA during the Cure Period, Code Section 394.9027(d)(3) requires TDHCA to give the HFC⁵⁸ a second notice⁵⁹ of the loss of the Property Tax Exemption for the Affordable Housing Property.^{60 61}

As noted above, TDHCA will be working to create the HFC Rules for the implementation of its HB 21 responsibilities before the end of this year. While TDHCA may rely, in part, on the PFC Rules and its forms and processes for the implementation of HB 2071, the drafting of HB 21 necessitates some significant modifications in the HFC Rules. In particular, timing should be considered. Code Section 394.905(c) requires an Affordable

⁵³ It is worth noting that the timelines for notice and cure in HB 21 differ from those used in HB 2071.

⁵⁴ Code Section 394.9027(f).

⁵⁵ These are essentially the Income Restrictions, Rent Restrictions, Tenant Protections and Public Benefit Test described in paragraphs a. through d. under the prior section addressing Code Section 394.9026, **Conditions for a Property Tax Exemption**.

⁵⁶ Code Section 394.9027(d)(1). Note, the Additional Notice is not required to be given to the appraisal district.

⁵⁷ It is not clear whether this additional written notice must be a separate document or can be incorporated into the Notice of Non-Compliance.

⁵⁸ Code Section 394.9027(d)(3). Note, the second notice is not required to be delivered to the appraisal district. HB 21 is not precisely clear as to whether the second notice must be delivered to the Housing Finance Corporation User. While the last phrase of Code Section 394.9027(d) refers to both the HFC and the Housing Finance Corporation User before the use of a colon, Code Section 394.9027(d)(3) appears after the colon and refers only to the HFC.

⁵⁹ This reference to a “second” notice, along with the difference in recipient parties, adds to the confusion of whether the Notice of Non-Compliance and the Additional Notice are intended to be two separate documents. If the notice of loss of the Property Tax Exemption is truly a second notice, then the Notice of Non-Compliance and Additional Notice would be combined to be the first notice.

⁶⁰ TDHCA has no legal authority to administer or remove Property Tax Exemptions. A Property Tax Exemption can only be removed pursuant to the Texas Tax Code. In the PFC Rules, TDHCA treats this as a recommendation for the loss of the Property Tax Exemption.

⁶¹ Pursuant to Section 11.43(f) of the Texas Tax Code, a taxpayer is supposed to notify the chief appraiser when a property it owns is no longer eligible for an exemption.

Housing Property to comply with Code Section 394.9026(c) in any given tax year to be eligible for the Property Tax Exemption for that tax year. This compliance is verified by the Audit under Code Section 394.9027. Thus, it is reasonable to create the HFC Rules such that the timeline for TDHCA's monitoring function coincides with the timeline of the appraisal district's taxation activities. See Appendix 3 for an illustration of the annual calendar for the Texas property tax system, integrated with the compliance monitoring system established by HB 21. In the PFC Rules, TDHCA does not require the Audit to be performed as of a certain date. The Audit Workbook form promulgated by TDHCA allows the Auditor to fill in a blank for the "as of" date of the report.⁶² If an Audit were presented for a period that ends on any date other than Dec. 31, the Audit would cross multiple tax years. Given the requirements in HB 21 for an HFC or Housing Finance Corporation User to prove compliance with the Public Benefit Test for the preceding tax year,⁶³ it makes sense for the Audit to be performed as of Dec. 31, so the reporting period and the tax year are consistent.⁶⁴

Section 394.905: Tax Exemption

Prior to HB 21, the Code broadly stated that the HFC, all property owned by the HFC and all income derived from that property were exempt from all taxation at all state and local levels. Under HB 21, this language has been refined to include the following concepts for Affordable Housing Properties owned by an HFC. For any Affordable Housing Property, including one receiving LIHTCs, to receive a Property Tax Exemption or sales tax exemption:

- The Affordable Housing Property must be located in an area where the HFC is permitted to operate in accordance with Code Section 394.031.⁶⁵

⁶² <https://www.tdhca.texas.gov/public-facilities-corporation-compliance-monitoring>.

⁶³ Code Section 394.9026(c)(2).

⁶⁴ See further discussion in Appendix 2.

⁶⁵ Code Section 394.905(b)(1).

- The board of directors of the HFC must adopt a resolution approving the development.⁶⁶
- The exemption does not apply to ad valorem taxes imposed by (i) a conservation and reclamation district that provides water, sewer or drainage services to the Affordable Housing Property (generally referred to as **MUDs**), or (ii) an emergency service district (**ESD**), unless the HFC has entered into an agreement with the applicable MUD or ESD to provide a payment in lieu of taxes.⁶⁷

Any Affordable Housing Property that does not receive LIHTCs also must comply with the following to receive a Property Tax Exemption:

- Before its board of directors approves a transaction for an Affordable Housing Property, the HFC or its Sponsor must obtain an underwriting assessment from a professional entity that has experience with affordable housing and has no financial interest in the transaction. The underwriting assessment must be dated no earlier than 180 days prior to the date of the board's resolution and must allow the board to make a good faith determination that:
 - For an occupied property, the amount of rent reduction⁶⁸ on the Restricted Units will be not less than 50% of the estimated Property Tax Exemption the property is expected to receive in the third, fourth and fifth tax years after the tax year in which the property is acquired.⁶⁹
 - For a newly constructed property, the amount of rent reduction⁷⁰ on the Restricted Units will be not less than 50% of the estimated Property Tax Exemption the property is expected to receive in the first, second and third

⁶⁶ Code Section 394.905(b)(2).

⁶⁷ Code Section 394.905(d).

⁶⁸ As defined in Code Section 394.9026(a).

⁶⁹ Code Section 394.905(b)(3)(B)(i).

⁷⁰ As defined in Code Section 394.9026(a).

tax years after the tax year in which the property achieves 90% occupancy.⁷¹

The underwriting assessment must be published on the website of the HFC or its Sponsor. Note, HB 21 does not appear to specify when the underwriting assessment must be published on the website.

- The HFC must submit a one-time application for the Property Tax Exemption to TDHCA and the chief appraiser of the applicable appraisal district(s) on a form to be promulgated by the Texas Comptroller.⁷² Note, HB 21 provides no timing for submission of this application. The Texas Tax Code generally requires applications for exemptions to be filed between Jan. 1 and April 30 of any given tax year.⁷³ Further, while Code Section 394.905(b) suggests that an application should also be submitted to TDHCA and the chief appraiser of the appraisal district for a sales tax exemption, sales tax is in the purview of the Texas Comptroller, and procedures for obtaining such exemption are already in place.
- The Property Tax Exemption is not available in any given tax year for an Affordable Housing Property that is not in compliance with Code Section 394.9026(c), subject to the compliance monitoring and cure provisions of Code Section 394.9027.

Sections 394.037 and 394.9025: Bond Issuance

As an issuer of revenue bonds to finance Affordable Housing Properties, an HFC is restricted to issuing bonds for properties within the jurisdiction of its Sponsor(s), as described in ***Jurisdictional Restrictions*** above.⁷⁴ Prior to HB 21, Section 394.9025 of

⁷¹ Code Section 394.905(b)(3)(B)(ii).

⁷² Code Section 394.905(b)(4).

⁷³ Texas Tax Code Section 11.43(d). Note that multiple provisions in the Texas Tax Code state that an owner receiving a Property Tax Exemption under Section 11.11 (which applies to HFCs) is not required to file an application.

⁷⁴ Code Section 394.037(a-1).

the Code required certain processes for an HFC to issue bonds for a multifamily rental property it would own. Specifically:

- Subsection (a) required the HFC to conduct a public hearing before issuing the bonds and required an Income Restriction on the property with at least 50% of the residential units to be reserved for households earning less than 80% of AMI; and
- Subsection (b) required the local government to conduct a public hearing and approve the transaction, and it required compliance with Code Section 394.004.⁷⁵

Code Section 394.9025 as revised by HB 21 now provides the following:

- Instead of requiring a public hearing by the HFC, Subsection (a) requires a public hearing by the governing body of the applicable local government. An HFC may not issue bonds without the applicable local approval. See the description of Subsection (b), below.
- The Income Restrictions are expanded to require either:
 - 50% of the residential units to be reserved for households earning less than 80% of AMI;⁷⁶ or
 - (i) 10% of the residential units to be reserved for households earning not more than 60% of AMI, and (ii) 40% of the residential units to be reserved for households earning not more than 80% of AMI; or
 - (i) 10% of the residential units to be reserved for households earning not more than 50% of AMI, and (ii) 40% of the residential units to be reserved for households earning not more than 100% of AMI.

⁷⁵ Code Section 394.004 requires at least 90% of the residential units to be occupied by or intended for occupancy by households with “low or moderate income,” a phrase that is undefined, as noted above in the discussion of Income Restrictions under ***Conditions for a Property Tax Exemption***.

⁷⁶ Given that Code Section 394.9025 anticipates the HFC is going to own the Affordable Housing Property, it cannot utilize this Income Restriction and still comply with Code Section 394.9026(c) to obtain the Property Tax Exemption.

- Subsection (b) continues to require the applicable local government to conduct a public hearing and approve the transaction and requires compliance with Code Section 394.004.⁷⁷ Note, compliance with Code Section 394.004 is not sufficient to satisfy Code Section 394.9026(c)(1) to obtain the Property Tax Exemption.



Prior to HB 21, the Code was clear that two public hearings would be required for an HFC to issue bonds for a multifamily residential property it would own – one public hearing by the HFC (Subsection (a)) and one public hearing by the local government, including requisite approval (Subsection (b)). In addition, the Code imposed two Income Restrictions for any such bond issuance if the HFC intended to own the property – (i) 50% of the residential units would be reserved for households earning less than 80% of AMI pursuant to Code Section 394.9025, and (ii) 90% of the residential units would be intended for occupancy by households earning not more than the standards established by the HFC for “low or moderate income” pursuant to Code Section 394.004.⁷⁸ Using the principles of statutory construction, these requirements could be harmonized if the property reserved (i) 50% of its residential units for households earning less than 80% of AMI, and (ii) an additional 40% of its residential units for households of “low or moderate income,” as defined by the HFC. In this scenario, 90% of the households in the Affordable Housing Property will be required to provide annual income certifications.

The revisions imposed by HB 21 create two subsections with similar but competing standards. Now, both Code Sections 394.9025(a) and (b)

⁷⁷ Code Section 394.004 requires at least 90% of the residential units to be occupied by or intended for occupancy by households with “low or moderate income,” a phrase that is undefined, as noted above in the discussion of Income Restrictions under ***Conditions for a Property Tax Exemption***.

⁷⁸ It is worth noting that “less than” and “not more than” are two different standards. E.g., if the Income Restriction is 80% of AMI, “less than” would exclude a household with an income at exactly 80% of AMI, but “not more than” would include a household with an income at exactly 80% of AMI. Practically, this distinction may have limited impact, but uniformity in drafting avoids unintended consequences.

require a hearing by the “applicable local government.”⁷⁹ Subsection (a) does not require a consent by the local government, while Subsection (b) does require such consent. Subsection (a) requires the HFC to select one of three definitive Income Restrictions without reference to Code Section 394.004. Subsection (b) requires compliance with the Income Restrictions in Code Section 394.004, which allows the HFC to determine its own standard for “low or moderate income.” This begs the question of whether the Legislature intended Subsections (a) and (b) to be different and why they were not combined if a public hearing by the HFC was no longer required and additional Income Restrictions were required.



Returning to the principles of statutory construction, an HFC could comply with Code Section 394.9025 as revised by HB 21 by having the applicable local government conduct the public hearing and provide the approval, adopting one of the Income Restrictions in Subsection (a) and also complying with Code Section 394.004. However, if the HFC is going to own the property and expects to receive a Property Tax Exemption, it would need to choose one of the Income Restrictions that complies with Code Section 394.9026(c)(1).⁸⁰

⁷⁹ The phrase “applicable local government” is not defined but reasonably can be assumed to refer to the municipality in which the Affordable Housing Property is located – or the county if the Affordable Housing Property is located in an unincorporated area. See Code Section 394.031. In the event the Affordable Housing Property is partially located within the boundaries of more than one municipality or within the boundaries of one municipality and an unincorporated area, it would be reasonable to interpret HB 21 to require a public hearing and approval by each local government in which the Affordable Housing Property is located.

⁸⁰ An example would be 10% of the units with Income Restrictions and Rent Restrictions at 60% of AMI; 40% of the units with Income Restrictions and Rent Restrictions at 80% of AMI; 40% of the units with Income Restrictions at “low or moderate incomes,” as defined by the HFC, with no Rent Restrictions required; and 10% of the units without restrictions.

Section 394.0045: Open Records and Open Meetings

HB 21 confirms that Texas laws governing open records and open meetings apply to HFCs.⁸¹ Practically, many HFCs were already following those restrictions.

Effectiveness; Grandfathering

HB 21 has multiple layers with regard to grandfathering for an Affordable Housing Property owned by an HFC on the Effective Date and distinctions between an Affordable Housing Property owned by a Traveling HFC and a property owned by an HFC within its Sponsor's jurisdiction. Based on the plain language, we believe the most accurate and conservative reading of the grandfathering provisions in HB 21 is as follows:

All provisions of HB 21 apply to any Affordable Housing Property acquired by an HFC on or after the Effective Date. For an Affordable Housing Property acquired prior to the Effective Date, the provisions of HB 21 do not apply to tax years prior to the Effective Date, but certain provisions do apply going forward, as discussed below.

▪ *Section 394.031: Jurisdictional Restrictions*

The authority of an HFC to acquire and operate an Affordable Housing Property within any particular jurisdiction prior to the Effective Date remains governed by the law that was in effect prior to HB 21.⁸² However, in order for a Traveling HFC to maintain a Property Tax Exemption after Jan. 1, 2027, for a property it acquired outside the jurisdiction of its Sponsor prior to the Effective Date (including a property that is a recipient of LIHTCs), it must obtain consent from the local government(s) in which the property is located, as required under Code Section 394.031(d).⁸³ This suggests that any property owned by a Traveling HFC may continue to receive the Property Tax Exemption in tax years 2025 and 2026 while it is pursuing the local consents, so long as it complies with any other applicable

⁸¹ Code Section 394.0045.

⁸² HB 21, Section 13(a).

⁸³ HB 21, Section 13(i).

requirements for the Property Tax Exemption, such as the Tenant Protections and Audit requirements.

▪ ***Section 394.9026: Conditions for a Property Tax Exemption***

For an Affordable Housing Property owned by an HFC to continue to be eligible for a Property Tax Exemption in future tax years,⁸⁴ it must comply with all the provisions of Code Section 394.9026, regardless of whether the property was acquired before or after the Effective Date,⁸⁵ except as follows:

- As to the Tenant Protections (Code Sections 394.9026(c)(6) – (9)), compliance must begin by Jan. 1, 2026;⁸⁶ and
- As to the Income Restrictions, Public Benefit Test, Quality Requirement, Dispersion Requirement and Rent Restrictions (Code Sections 394.9026(c)(1) – (5)), compliance must begin on the earliest to occur of:
 - The end of the 10th tax year after the Effective Date;⁸⁷ or
 - The end of the first tax year following a tax year in which existing indebtedness on the property is refinanced, title to the property is transferred or a majority of the beneficial ownership interest of the applicable Housing Finance Corporation User changes.⁸⁸

It should be noted that HB 21 does not define the word “refinance.” This could include the funding of a permanent loan to repay a construction loan or even an extension or modification of the principal amount of a loan, depending on the circumstances.

⁸⁴ HB 21, Section 13(c).

⁸⁵ HB 21, Section 13(d).

⁸⁶ HB 21, Section 13(c)(1).

⁸⁷ HB 21, Section 13(e)(2)(A).

⁸⁸ HB 21, Section 13(e)(2)(B).

- ***Section 394.9027: Audit and Compliance Monitoring***

For an Affordable Housing Property owned by an HFC to continue to be eligible for a Property Tax Exemption, it must comply with all the provisions of Code Section 394.9027,⁸⁹ regardless of whether the property was acquired before or after the Effective Date, except that the first Audit Report for a property acquired prior to the Effective Date must be submitted by the later of the date established in Code Section 394.9027(e) or June 1, 2026.⁹⁰

- ***Section 395.905: Tax Exemption***

- An Affordable Housing Property acquired prior to the Effective Date remains exempt from taxation by the MUDs and ESDs in future tax years.⁹¹
- An Affordable Housing Property acquired prior to the Effective Date must file with TDHCA and the chief appraiser the one-time application referred to in Code Section 394.905(b)(4).⁹²

- ***Sections 394.037 and 394.9025: Bond Issuance***

Bonds issued by an HFC prior to the Effective Date remain governed by the law in effect prior to HB 21. Bonds issued on and after the Effective Date must comply with the revisions made by HB 21.⁹³

Conclusion

We hope this summary will be a helpful resource for the affordable housing industry as it works to implement HB 21.

⁸⁹ HB 21, Section 13(d).

⁹⁰ HB 21, Section 13(f).

⁹¹ HB 21, Section 13(h).

⁹² HB 21, Sections 13(g) and (h).

⁹³ HB 21, Section 13(b).

This paper is intended to summarize the provisions of HB 21 and is not comprehensive. It should not be relied upon as a legal opinion. Consult your counsel for advice on the impact of HB 21 on any particular property.

Appendix 1 **Sample Calculation for Public Benefit Test**

The example below is strictly hypothetical and does not refer to any particular property or submarket. In this example, so long as \$40,155 is at least 50% of the total ad valorem taxes that would be imposed on the property in the calendar year, the property has met the Public Benefit Test. TDHCA may choose a different manner of calculation. This methodology is suggested to be relatively straightforward and streamline the **Audit and Compliance Monitoring** function.

Rent Schedule			
Unit Type	Max Monthly Rent at 60% AMI	Max Monthly Rent at 80% AMI	Monthly Market Rent Range
1 Bed/1 Bath (A)	\$1,000	\$1,150	\$1,200 – \$1,350
2 Bed/2 Bath (B)	\$1,300	\$1,500	\$1,600 – \$1,800
3 Bed/2 Bath (C)	\$1,500	\$1,700	\$1,800 – \$2,000

Market Rate Unit Rent Roll Unit Type A		
Unit Number	Monthly Rent	Annual Rent
101	\$1,200	\$14,400
102	\$1,300	\$15,600
103	\$1,280	\$15,360
104	\$1,300	\$15,600
105	\$1,350	\$16,200
Maximum Market Rent for Unit Type A		\$15,423

Market Rate Unit Rent Roll Unit Type B		
Unit Number	Monthly Rent	Annual Rent
201	\$1,600	\$19,200
202	\$1,675	\$20,100
203	\$1,700	\$20,400
204	\$1,750	\$21,000
205	\$1,800	\$21,600
Maximum Market Rent for Unit Type B		\$20,460

Market Rate Unit Rent Roll Unit Type C		
Unit Number	Monthly Rent	Annual Rent
301	\$1,950	\$23,400
302	\$2,000	\$24,000
303	\$1,920	\$23,040
304	\$1,900	\$22,800
305	\$1,825	\$21,900
Maximum Market Rent for Unit Type C		\$23,028

Restricted Unit Rent Roll						
Unit Number	Unit Type	Income Restriction	Monthly Rent	Annual Rent	Maximum Market Rent	Difference
106	A	60% of AMI	\$1,000	\$12,000	\$15,423	\$3,423
107	A	80% of AMI	\$1,150	\$13,800	\$15,423	\$1,623
108	A	80% of AMI	\$1,150	\$13,800	\$15,423	\$1,623
109	A	80% of AMI	\$1,150	\$13,800	\$15,423	\$1,623
110	A	80% of AMI	\$1,150	\$13,800	\$15,423	\$1,623
206	B	60% of AMI	\$1,300	\$15,600	\$20,460	\$4,860
207	B	80% of AMI	\$1,500	\$18,000	\$20,460	\$2,460
208	B	80% of AMI	\$1,500	\$18,000	\$20,460	\$2,460
209	B	80% of AMI	\$1,500	\$18,000	\$20,460	\$2,460
210	B	80% of AMI	\$1,500	\$18,000	\$20,460	\$2,460
306	C	60% of AMI	\$1,500	\$18,000	\$23,028	\$5,028
307	C	80% of AMI	\$1,700	\$20,400	\$23,028	\$2,628
308	C	80% of AMI	\$1,700	\$20,400	\$23,028	\$2,628
309	C	80% of AMI	\$1,700	\$20,400	\$23,028	\$2,628
310	C	80% of AMI	\$1,700	\$20,400	\$23,028	\$2,628
Total Rent Reduction						\$40,155

Annual Taxes	Benefit Threshold	Rent Reduction	Passed?	Cure
\$100,000	\$50,000	\$40,155	No	Pay \$9,845 to local tax authorities
\$ 80,000	\$40,000	\$40,155	Yes	N/A

Appendix 2

Questions for Public Benefit Test

Below, we provide answers for questions we are being asked about the implementation of the Public Benefit Test. None of these questions are definitively answered in HB 21. These topics may be addressed as TDHCA prepares the HFC Rules. TDHCA may arrive at different conclusions.



Who prepares the Public Benefit Test?



The Auditor should be able to prepare the Public Benefit Test in connection with the annual Audit. It would be helpful for TDHCA to promulgate forms for this calculation to maintain consistency for the process.



An Affordable Housing Property is dynamic throughout the year. HUD maximum rental rates for Restricted Units may change. Residents move in and out, and units may be vacant for a period of time. Residents may be delinquent on payment. Is a Housing Finance Corporation User required to capture all these nuances in the rent reduction calculation?

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Questions for Public Benefit Test



Accounting for all these differences would be almost impossible for a Housing Finance Corporation User and very difficult for TDHCA to monitor. Interpretation of the definition of “rent reduction” will be necessary to establish a consistent system of calculation. Rent reduction is defined as the projected difference between the rent charged for a unit with Income Restrictions and the maximum market rent that could be charged for that same unit without Income Restrictions.

We suggest a reasonable resolution would have the Housing Finance Corporation User look at its rent roll as of Dec. 31 of each year. For each Restricted Unit, it would take the monthly rental charged for the unit for the month of December (whether or not the rent is paid) and calculate an annual rental receipt for the unit based on that number multiplied by 12. To calculate the maximum market rent for each unit type, the Housing Finance Corporation User similarly would look at the amount charged for each market rate unit of that unit type for the month of December and impute an annual rental receipt for each unit based on that number, using the imputed annual rental receipt for the averaging calculation required in the definition of “maximum market rent.”



Unit types are characterized based on the number of bedrooms. Should a 2-bedroom/1-bathroom unit be treated the same for the calculation of “maximum market rent” as a 2-bedroom/2-bathroom unit?

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Questions for Public Benefit Test



The defined terms that dictate the Public Benefit Test calculation (“rent reduction” and “maximum market rent”) refer to a comparison between units having “the same or substantially similar floor plan.” This would allow a 2-bedroom/1-bathroom unit to be classified differently than a 2-bedroom/2-bathroom unit. Note, however, that the Dispersion Requirement in Code Section 394.9026(c)(4) categorizes units based solely on number of bedrooms. The PFC Rules use the number of bedrooms as the means to classify units. It may be simplest for TDHCA to maintain that methodology and conclude that all units with a certain number of bedrooms have “the same or substantially similar floor plan” for purposes of calculating the Public Benefit Test.



What if a unit is vacant on Dec. 31?



For a Restricted Unit, the Housing Finance Corporation User could use the maximum Rent Restriction amount published for that unit type. For a non-Restricted Unit, the Housing Finance Corporation User could similarly use the maximum market rate being charged for that unit type to include in the averaging calculation. Note that for calculation of the Rent Differential for PFCs, TDHCA suggests that vacant units be excluded. This suggestion is not in the PFC Rules, but rather in the Audit Workbook. We would recommend this not be the standard for the Public Benefit Test. Under Chapter 303, the Rent Differential is informational only. Under Chapter 394, the Public Benefit Test is required for retention of the Property Tax Exemption. Compliance with Code Section 394.9026(c)(1) requires that the Affordable Housing Property have a certain number of Restricted Units that are reserved for households with certain incomes. A unit can be reserved to comply with the statute without being occupied. Therefore, there is good cause for an unoccupied unit that is reserved to be a

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Questions for Public Benefit Test

Restricted Unit to be included in the Public Benefit Test at the rental rate recommended above.



What amount should be used for the Public Benefit Test if a unit is occupied by a household with a Housing Choice Voucher?









Housing Choice Vouchers under the Section 8 program use a rent calculation that is different from what is otherwise required for a unit with Rent Restrictions under HB 21. HUD sets the rent, called a “payment standard,” for a Housing Choice Voucher based on fair market rents, as an incentive to encourage owners to lease to very low-income households. This gives a household with a Housing Choice Voucher the economic wherewithal to find housing that its income would not otherwise support. The owner is entitled to receive the “payment standard” for the unit, but the resident household pays far less, based on its actual income. The HUD subsidy makes up the rest. In fact, the household would likely pay less than the rent amount for the Restricted Unit established under HB 21. Making these units available to Housing Choice Voucher holders has a true public benefit. Therefore, for purposes of calculating the Public Benefit Test, we recommend the maximum Rent Restriction amount be used for a household using a Housing Choice Voucher. This makes all the Restricted Units consistent. Further, the Housing Finance Corporation User should not be adversely impacted in the calculation of its Public Benefit Test, because it leases units to these very low-income households.



What if an owner has offered leasing incentives on a Restricted Unit? Is that additional discount included in the Public Benefit Test?






Appendix 2

Questions for Public Benefit Test





-  Code Section 394.9026(a)(9) defines “rent reduction” as the difference between the rent charged for a Restricted Unit versus a non-Restricted Unit. If TDHCA adopts the concept that the Public Benefit Test is calculated based on a rent roll as of Dec. 31 and imputes annual rental from that fixed date, and if the owner has offered free or reduced rent for that month as an incentive, calculating based on that amount for the rent reduction test would derive an amount that is artificially low. Rather, the annual rent reduction for an incentivized unit should consider the reduced rent only for the months with the incentive, using the standard rent amount for all other months.
-  What if an owner has offered incentives on a non-Restricted Unit? Is free rent or reduced rent included in the calculation of “maximum market rent”?
-  This answer requires the same analysis as the immediately preceding question. Code Section 394.9026(a)(4) defines “maximum market rent” to establish an average annual rent charged for a non-Restricted Unit. The annual rent charged for an incentivized unit should consider the reduced rent only for the months with the incentive, using the standard rent amount for all other months.
-  What if a unit converts from a Restricted Unit to a non-Restricted Unit, or vice versa, during the year?
-  For consistency, we recommend the Housing Finance Corporation User calculate based on the status of the unit as of Dec. 31.
-  What if an Affordable Housing Property without LIHTCs makes 100% of its units Restricted Units? How does the Housing Finance Corporation User calculate the maximum market rate if the property has no market rate units?

Appendix 2

Questions for Public Benefit Test

-  While HB 21 does not contemplate this scenario, TDHCA proposed a resolution in the PFC Rules by allowing the Auditor to propose a methodology to establish maximum market rent to calculate the Rent Differential. This could be duplicated for the HFC Rules with respect to the Public Benefit Test.
-  How do we calculate the estimated ad valorem taxes that would have been imposed on the Affordable Housing Property?
-  To implement the Public Benefit Test, it is important to understand the annual process for assessment of ad valorem taxes and how that process integrates with the compliance monitoring requirements of HB 21. See the sample timeline in [Appendix 3](#). If a Public Benefit Test is being calculated for the preceding tax year, and if the result of the Public Benefit Test is due on June 1, the Housing Finance Corporation User should have received the actual tax amount from the appraisal district for the preceding year.
-  What if the Housing Finance Corporation User is protesting the valuation of the Affordable Housing Property at the time the Public Benefit Test is calculated?
-  The nature of the Public Benefit Test calculation is that it will incentivize Housing Finance Corporation Users to protest the valuation of Affordable Housing Properties each year. Lower valuations will make the Public Benefit Test easier to achieve. Code Section 394.9026(c)(2)(A) calls for calculation of the Public Benefit Test using the estimated ad valorem taxes for the applicable year. This would allow TDHCA to accept an estimated amount when a valuation is under protest, using some reasonable parameters.

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Questions for Public Benefit Test

-  If the Housing Finance Corporation User does not meet the Public Benefit Test and needs to make a payment to the local taxing authorities, how does that happen?
-  HB 21 provides no guidance. TDHCA is not a tax collector. A logical result would be for the payment to be made to the local tax collector (which may or may not be the appraisal district) and for the local tax collector to allocate the funds to the taxing authorities on a pro rata basis. If TDHCA is the party reviewing the Public Benefit Test and confirming a payment is due, there should be a notification system between TDHCA and the tax collector. How that process is to be implemented remains to be determined.
-  If the Housing Finance Corporation User does not meet the Public Benefit Test and needs to make a payment to the local taxing authorities, is it required to do so before the Audit is filed to maintain the Property Tax Exemption?
-  HB 21 does not specify timing. Code Section 394.927(b)(1) does require the Audit to confirm whether the Public Benefit Test was met in the preceding year. If the intent of the Audit is to confirm eligibility for the Property Tax Exemption, then requiring evidence of compliance through a receipt for the payment would be helpful. If TDHCA determines that the payment was not calculated correctly, it will lead to additional steps in the process that will need to be cured within the statutory cure periods. If TDHCA does not require evidence of the payment upon submission of the Audit, it likely will issue a Notice of Non-Compliance for the Public Benefit Test, which in turn triggers a right to cure, and the Property Tax Exemption should not be at risk until the cure periods have expired, per Code Section 394.905.(c). As the tax collectors establish their procedures for aiding in this statutory requirement, they should be cognizant of the deadlines and

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cure periods to ensure they do not unwittingly cause a Housing Finance Corporation User to be in default with the statute or HFC Rules.



Does a Housing Finance Corporation User need to file a regulatory agreement in the public records?



No. While Chapter 303, as modified by HB 2071, requires an Affordable Housing Property with a Property Tax Exemption to file a regulatory agreement, neither Chapter 394 nor the revisions made by HB 21 include that requirement.

Appendix 3
Sample Timeline for Property Tax and Compliance Monitoring Functions

Date ¹	Property Tax Activity	TDHCA Compliance Monitoring Activity
Jan. 1, 2026	Date as of which a property's value is appraised ² for the 2026 tax year	
Jan. 1 – April 30, 2026	Appraisal district conducts appraisals	
May 1, 2026	Appraisal district sends notice of appraised value to property owner, with instruction for appeal to appraisal review board ³	
May 15, 2026	Appraisal district sends the appraisal record to the appraisal review board	
May 15 – July 20, 2026	Appraisal review board hears and determines protests; a taxpayer dissatisfied with the result can subsequently file a lawsuit in state district court	
July 1, 2026 HFC Acquires Property		
July 25, 2026	Appraisal districts certify the appraisal roll and distribute it to taxing authorities	
July 25 – Sept. 30, 2026	Taxing units adopt tax rates and calculate taxes	
Oct. 1, 2026	Tax collectors begin sending tax bills to property owners	
Jan. 1, 2027	Same cycle begins for the 2027 tax year	
Jan. 31, 2027	Tax payment for calendar year 2026 is due and would be prorated based on the period of time owned by the HFC in 2026	

¹ The Texas Tax Code provides grace for some deadlines to be met by a date certain or “as soon thereafter as practicable.”

² Texas Tax Code Section 23.01(a).

³ Texas Tax Code Section 25.19.

Appendix 3
Sample Timeline for Property Tax and Compliance Monitoring Functions

June 1, 2027		Audit report for calendar year 2026 is due, including Public Benefit Test, which is required to receive the Property Tax Exemption in 2027. ⁴
Late July 2027		TDHCA must publish the Compliance Report within 60 days of receipt of the Audit. ⁵
Late September 2027		TDHCA must deliver a Notice of Non-Compliance within 120 days of receipt of the Audit. ⁶
Jan. 31, 2028	Property tax for 2027 is due. If the property had a Notice of Non-Compliance and remains in its cure period, the Property Tax Exemption should continue to apply, so no payment is due.	If property has received a Notice of Non-Compliance based on the Audit for 2026, it remains within the cure period.
Late March 2028		Items identified in Notice of Non-Compliance must be cured within 180 days of receipt of Notice of Non-Compliance. ⁷
Subsequent unspecified date		If the Notice of Non-Compliance is not cured to TDHCA's satisfaction, it must notify the HFC of loss of the Property Tax Exemption for 2026. ⁸
Subsequent unspecified date	Chief appraiser can revoke Property Tax Exemption for 2026, and payment becomes due. This triggers a taxpayer's right to protest, found in the Texas Tax Code.	

⁴ Code Section 394.9027(e). Note the two-year grace period for an occupied property to come into compliance with Code Sections 394.9026(1), (3), (4) and (5). This means the initial Audit will need to measure compliance with Code Sections 394.9026(c)(2), (6), (7), (8) and (9).

⁵ Code Section 394.9027(c).

⁶ Code Section 394.9027(d).

⁷ Code Section 394.9027(d)(2).

⁸ Code Section 394.9027(d)(3). Note, also, HB 21 requires TDHCA to provide opportunities to appeal findings of noncompliance, and it is unknown how that process will fit within the general timeline. Note, also, that TDHCA is not required to notify the chief appraiser of the appraisal district(s), which is the authority charged with making such determinations, of the loss of the Property Tax Exemption.

Appendix 3
Sample Timeline for Property Tax and Compliance Monitoring Functions

June 1, 2028		Audit report for calendar year 2027 is due, including Public Benefit Test, which is required to receive the Property Tax Exemption in 2028. ⁹
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⁹ As 2027 is the second tax year following acquisition, the Audit would continue to exclude monitoring for Code Sections 394.9026(1), (3), (4) and (5). This means the 2027 Audit will need to measure compliance with Code Sections 394.9026(c)(2), (6), (7), (8) and (9).