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# Texas bill to curb abuses of affordable housing tax breaks moves a step from becoming law

## But critics contend it's likely to jeopardize legitimate affordable housing projects



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### Story Highlights

- HB 21 is heading to the governor's desk.
- Bill targets controversial method to obtain tax breaks.
- Honest players fear they'll be swept up in the crackdown.

A measure that would put major new constraints – some say too many – on a program aimed at incentivizing affordable multifamily housing across Texas has won overwhelming approval from the state House and Senate, and it will take effect immediately if Gov. Greg Abbott signs it.

House Bill 21 would sound a death knell for so-called “traveling” housing finance corporations – a term for entities located hundreds of miles away that, in exchange for large fees from developers and investors, use their legal status to remove properties from the tax rolls of local jurisdictions by buying them and then designating them affordable housing, often without making them any more affordable.

"This solves the biggest part of the problem, and it probably sends a message to (bad actors in the industry) not to look for any more loopholes" in the state's affordable housing regulations, said state Rep. Gary Gates, R-Richmond, who [spearheaded the measure](#).

But critics of HB 21 are likening it to a sledgehammer when a scalpel is needed, saying it risks severely hampering legitimate affordable housing projects statewide if it becomes law. That's because it contains retroactive provisions and would not only apply to traveling HFCs but also to those operating within the jurisdictions – and with the blessing of – the cities and counties that formed them.

"I don't see how these new regulations create an environment where people are going to be able to do business in this segment of affordable housing," said Todd Kercheval, executive director of the Texas Association of Local Housing Finance Agencies, a trade group.

Kercheval's group and others, such as the Texas Affiliation of Affordable Housing Providers, have described traveling HFCs as a scourge on their industry and have backed legislative efforts, albeit more targeted, to stamp them out. But with HB 21 already to Abbott – and having received the two-thirds majorities in the House and Senate needed to take effect immediately if he signs it – the clock is ticking.

HB 21 would basically stamp out traveling HFCs by, among other things, giving them until Jan. 1, 2027, to obtain approvals from the far-flung jurisdictions in which they operate or lose the tax-exempt status of their properties.

That would resolve recent controversies in which HFCs based hundreds of miles away have attempted to remove apartment complexes from the tax rolls of Williamson and Hays counties by designating them as affordable housing. Williamson County [sued an HFC from Cameron County](#), which is about 350 miles away, while Hays County [sued HFCs from Pecos and Pleasanton](#), located 400 and 100 miles away, respectively.

Williamson and Hays counties aren't unique. Statewide, billions of dollars worth of property is thought to have been removed from the tax rolls in such a manner over the past couple of years.

Backers of legitimate affordable housing efforts are adamant they'd like to see traveling HFCs eliminated as much as anyone but don't want the entire affordable housing industry – and the benefits it brings to working Texans – derailed in the process.

Elements in HB 21 that they contend risk doing so include a provision that 50% of tax savings must be applied to rent reduction, as well as a new requirement for an annual "audit" to ensure rents meet various tiered benchmarks for affordability every year. Existing multifamily properties owned by HFCs operating within the jurisdictions and with the approvals of the cities or counties that created them would have to be brought into compliance within 10 years, or when they're refinanced or sold.

The annual audit will have "a chilling impact on capital markets" in terms of lending for projects, said Nick Walsh, vice president of development at affordable housing developer The NRP Group and a board member of the Texas Affiliation of Affordable Housing Providers. "A bank is not going to take on the risk and not going to underwrite a loan ... if there is this floating test out there"

that jeopardizes tax breaks without accounting for short-term changes in market conditions, which can impact rents.

Kercheval agreed, saying the annual audit will result in “the greatest crippling effects of this bill” because “no lending institution is going to lend if the tax abatement is going to be in jeopardy from year to year.”

Both he and Walsh also noted that the mandate for 50% of tax savings to be used for rent reduction doesn't take into consideration other public benefits legitimate HFCs often help provide, such as new parks in an area, in addition to just cheaper housing units.

Gates characterized critics of HB 21 as “people crying wolf,” saying lenders can account for the extra risk associated with the annual audit simply by requiring that more money be held in escrow. Gates owns apartment complexes in the Houston area.

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