

LAND USE CONFERENCE

Partnerships with Public Facility Corporations: A Good Tool for Affordable Housing?

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UT LAW CLE



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PFCs for Affordable Housing – How We Got Here

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Basics of PFCs

- For many decades, Texas law has permitted governmental entities to create public facility corporations.
- The Texas Public Facility Corporation Act (the “Act”) was codified in 1999 in Chapter 303 of the Texas Local Government Code.
- The Act says that a public facility corporation is a non-profit corporation, created to support the public purpose of the governmental sponsor. *[Tex. Loc. Gov’t Code § 303.021]*
- Governmental sponsors can include cities, counties, school districts, housing authorities, and special districts. *[Tex. Loc. Gov’t Code § 303.003(11)]*

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Basics of PFCs

- A public facility corporation should have the broadest possible powers to finance or to provide for the acquisition, construction, and rehabilitation of public facilities in an orderly, planned manner and at the lowest possible borrowing costs. *[Tex. Loc. Gov’t Code § 303.002]*
- Utilizing public facility corporations, governmental entities have had access to bonds and private capital that otherwise would not have been available.
- Public facility corporations have been used for construction for schools, prisons, and affordable housing, among other things.

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Tax Exemption for PFCs

- A PFC is a public instrumentality.
- Property owned by a political subdivision of the State is exempt from taxation if the property is used for a public purpose. *[Tex. Tax Code §11.11(a)]*
- The provision of affordable housing is a public purpose. *[Hous. Auth. of Dallas v. Higginbotham, 143 S.W.2d 79, 83-85 (Tex. 1940)]*

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Tax Exemption for PFCs

- However, there have been numerous circumstances across the State in which a governmental entity has worked with a private entity to construct or operate a public facility. Public private partnerships allow a governmental entity to access expertise or capital that it might not otherwise have available.
- In particular, it is commonplace for a governmental entity to lease the facility to a private entity for operation. Texas law says that, when a governmental entity owns property and leases it to a private entity, the property is taxable to the private entity, unless an exception applies.

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