

LAND USE CONFERENCE

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

The University of Texas at Austin
School of Law

UT LAW | CLE



Moderator:
Skye Masson
City of Georgetown
Georgetown, TX



Cynthia L. Bast
Locke Lord LLP
Austin, TX



Heather K. Way
The University Of Texas
School Of Law
Austin, TX

0

Locke
Lord

PFCs for Affordable Housing – How We Got Here

Cynthia L. Bast

Section Head, Affordable Housing and Community Development
Locke Lord LLP
cbast@lockelord.com
(512) 305-4707

© 2023 Locke Lord LLP
www.lockelord.com

1

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)*]

2

2

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.

3

3

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)]*

4

4

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.

5

5

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

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

Also available as part of the eCourse

[Affordable Housing: Land Use Regulations and Partnerships with Public Facility Corporations](#)

First appeared as part of the conference materials for the 27th Annual Land Use Conference session

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