TEXAS HOUSE of REPRESENTATIVES

Gary Gates

State Representative, District 28

March 17, 2026

Texas Department of Housing and Community Affairs
Attn: Ms. Wendy Quackenbush
P.O. Box 13941
Austin, Texas 78711-3941

TRANSMITTED VIA EMAIL TO: Wendy.Quackenbush@tdhca.texas.gov

Dear Ms. Quackenbush:

Thank you for the Texas Department of Housing and Community Affairs's (TDHCA) willingness to correct the issues identified in my March 5, 2026, letter regarding 10 TAC §§10.1203(1)(D) and 10.1204(3)(L)(i)(I). However, a more significant defect remains in adopted §10.1204(3)(L)(ii)(II). That provision conflicts with H.B. 21 by replacing the Legislature's rent-reduction formula with an agency-created methodology that the statute does not authorize.

H.B. 21 establishes the governing calculation. TDHCA's responsibility is to administer that calculation as enacted, not to alter the inputs or substitute a different standard through rulemaking. Because the adopted rule departs from the statute's text and changes the substance of the compliance test, it exceeds the agency's delegated authority and creates a substantial legal risk for TDHCA and affected parties alike.

For that reason, TDHCA should immediately suspend enforcement of the challenged provision and initiate rulemaking to conform the rule to H.B. 21. Unless corrected, the rule will produce compliance determinations based on an unauthorized methodology and invite immediate challenge.

The Adopted Rule Has No Statutory Basis

Under Texas law, an agency rule must be consistent with and authorized by the statute it purports to implement. A rule that contradicts its enabling statute, or that creates requirements or exceptions not found in the statute, is invalid. *See* Texas Gov't Code § 2001.038; *Railroad Comm'n of Texas v. Texas Citizens for a Safe Future & Clean Water*, 336 S.W.3d 619, 625 (Tex. 2011). TDHCA has no authority to adopt a rule that rewrites the rent reduction calculation in a manner that the Legislature expressly did not authorize. Yet that is precisely what §10.1204(3)(L)(ii)(II) does.

H.B. 21, Section 394.9026(c)(2), requires that the "rent reduction" at a development equal not less than 50 percent of the estimated ad valorem taxes that would have been imposed on the property.

The statute defines “rent reduction” as “the projected difference between the rent charged for an income-restricted unit and the maximum market rent that could be charged for that same unit without the income restrictions.”

The statute says “rent charged.” It does not say “tenant-paid portion of rent.” It does not say “rent charged, excluding federal rental assistance.” It does not authorize TDHCA to fragment the rent into components and discard the portions it finds inconvenient. The rent charged for a unit occupied by a voucher holder is the full rent charged for that unit, the tenant-paid portion plus the rental assistance payment. There is no ambiguity here, and TDHCA has no discretion to invent one.

When an agency adopts a rule that has no basis in its enabling statute, or worse, that directly contradicts it, the agency is not exercising delegated authority. It is usurping the legislative function. H.B. 21 was passed by the Texas Legislature, signed by the Governor, and became the law of this State. TDHCA’s role is to faithfully implement that law, not to substitute its own policy preferences for the will of the Legislature and the Governor.

The Rule Produces Absurd and Unauthorized Results

The consequences of the adopted rule are not subtle. Consider a unit with a maximum market rent of $1,500 and a voucher holder whose tenant-paid portion is $300 with $1,200 in rental assistance.

Under H.B. 21, the rent reduction for that unit is zero ($0), the difference between $1,500 market rent and $1,500 in rent actually charged. There is no property tax savings being applied to lower the rent, which is exactly what the statute requires.

Under the adopted rule, the calculated rent reduction magically becomes $1,200, the difference between $1,500 and the $300 tenant-paid portion. The development receives credit for a $1,200 rent reduction when nothing is actually being directed toward affordability. The Housing Finance Corporation (HFC) User did nothing to earn that credit, yet the rule hands it to them.

The result is that HFC Users can satisfy their statutory obligations under H.B. 21 not by providing the affordability the Legislature required, but by free-riding on federal Housing Choice Voucher subsidies. The property tax exemption, which comes at the direct expense of local school districts, counties, cities, and special districts, continues to benefit the User, while the federal government picks up the tab for the affordability that the User was supposed to deliver. This is precisely the kind of manipulation that H.B. 21 was enacted to stop.

TDHCA’s Stated Rationale Is Demonstrably Wrong

In its response to public comments in the March 6, 2026, Board Book, TDHCA staff asserted that excluding the rental assistance amount and using only the tenant-paid portion “results in a deeper rent saving for households.” This statement is not merely misleading, it is factually incorrect, and the agency has been specifically and repeatedly told why.

Excluding the rental assistance payment from the “rent charged” side of the calculation does not exclude it from the rent reduction. It does the opposite: it captures the full amount of rental assistance within the calculated difference between market rent and tenant payment, thereby inflating the rent reduction credit. The rule gives developments credit for affordability funded by the federal government, not by the property tax exemption. This was explained in detail in correspondence to TDHCA staff on March 5, 2026. It was explained again with a numerical illustration. The math is not complicated. TDHCA's response, that it would "gather data on this over time," is not a substantive rebuttal. It is an admission that the agency adopted a rule it knows to be problematic and intends to do nothing about it.

Delay Is Not an Option

TDHCA's indication that it will "evaluate this issue in the next rulemaking" is wholly inadequate. Every audit conducted under the current rule will produce inflated and unreliable rent reduction figures. Compliance data generated under this methodology will be useless for determining whether HFC users are meeting their statutory obligations. The very first round of audits under H.B. 21 will be built on a flawed foundation, and any enforcement actions, or decisions not to take enforcement action, will be based on fictitious numbers.

Moreover, the longer this rule remains in effect, the more entrenched the flawed methodology becomes, and the harder it will be to correct. HFC Users will structure their operations around the inflated calculations, and any future correction will be met with claims of reliance and requests for grandfather provisions. The time to fix this is now, before the first audit cycle is complete.

Demand for Immediate Action

Rules adopted without statutory authority are invalid. Rules that contradict the express terms of their enabling statute are invalid. Rules that produce results directly contrary to the Legislature's stated purpose are invalid. A state agency does not have the power to override the will of the Legislature and the Governor by adopting rules that rewrite the law. That is not rulemaking, it is legislating, and it is not within TDHCA's authority.

H.B. 21 was enacted to make sure that HFC property tax exemptions deliver real, measurable benefits to Texas renters and taxpayers, not to provide a vehicle for HFC Users to claim credit for affordability funded by someone else.

Unless TDHCA promptly withdraws or suspends enforcement of the challenged rule language, affected parties will have strong grounds to contend the rule is invalid because it contravenes H.B. 21, imposes extra-statutory burdens, and exceeds the agency's delegated authority. Therefore, I demand that TDHCA immediately initiate rulemaking to amend Section 10.1204(3)(L)(ii)(II) so that the rent reduction calculation for units occupied by Housing Choice Voucher holders uses the full rent charged for the unit, the tenant-paid portion plus the rental assistance payment, as required by the plain text of H.B. 21.

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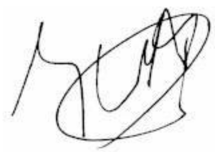
Sincerely,



Gary Gates
State Representative, House District 28
Chair, House Committee on Land and Resource Management

Paul Bettencourt
State Senator, Senate District 7
Chair, Senate Committee on Local Government

cc: Mr. Bobby Wilkinson, Executive Director, TDHCA
Mr. Michael Lyttle, Director of External Affairs, TDHCA
The Honorable Dustin Burrows, Speaker of the Texas House of Representatives
The Honorable Dan Patrick, Lt. Governor of Texas
Mr. Robert Black, Chief of Staff, Texas Office of the Governor
Ms. Tabatha Vasquez, Policy Director, Texas Office of the Governor
Mr. Darrell Davila, Chief of Staff, Office of Lt. Governor Dan Patrick
Mr. Zak Covar, Chief of Staff, Office of Speaker Dustin Burrows
Mr. Victor Alcorta, General Counsel, Office of Speaker Dustin Burrows
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