87R10936 JAM-F

By:  Eckhardt S.B. No. 2030

A BILL TO BE ENTITLED

AN ACT

relating to requirements for beneficial tax treatment related to a public facility used to provide affordable housing.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Sections 303.042(d) and (f), Local Government Code, are amended to read as follows:

(d)  An exemption under this section for a multifamily residential development which is owned by a public facility corporation created [~~by a housing authority~~] under this chapter and which does not have at least 20 percent of its units reserved for public housing units, applies only if[~~:~~

[~~(1)~~]  the corporation's sponsor [~~housing authority~~] holds a public hearing, at a regular meeting of the sponsor's [~~authority's~~] governing body, to approve the development[~~;~~] and:

(1)  for a development that receives financial assistance administered under Chapter 1372, Government Code, or Subchapter DD, Chapter 2306, Government Code:

(A) [~~(2)~~]  at least 50 percent of the units in the multifamily residential development are reserved for occupancy by individuals and families earning less than 80 percent of the area median family income; or

(B)  the requirements under Section 303.0425 are met;

(2)  for a development that does not receive financial assistance administered under Chapter 1372, Government Code, or Subchapter DD, Chapter 2306, Government Code, the requirements under Section 303.0425 are met; or

(3)  for an occupied multifamily residential development that is acquired by the public facility corporation, the development comes into compliance with the requirements of this section or Section 303.0425, as applicable, not later than the first anniversary of the date of the acquisition.

(f)  Notwithstanding Subsections (a) and (b), during the period [~~of time~~] that a corporation owns a particular public facility that provides multifamily housing, a leasehold or other possessory interest in the real property of the public facility granted by the corporation shall be treated in the same manner as a leasehold or other possessory interest in real property granted by a housing [~~an~~] authority under Section 379B.011(b) only if the requirements under Subsection (d) are met.

SECTION 2.  Subchapter B, Chapter 303, Local Government Code, is amended by adding Section 303.0425 to read as follows:

Sec. 303.0425.  REQUIREMENTS FOR BENEFICIAL TAX TREATMENT RELATING TO CERTAIN PUBLIC FACILITIES. (a) In this section:

(1)  "Affordable housing unit" means a residential unit reserved for occupancy by an individual or family earning not more than 80 percent of the area median income, adjusted for family size.

(2)  "Developer" means a private entity that constructs a development.

(3)  "Housing choice voucher program" means the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437f).

(4)  "Housing development" means a development providing multifamily housing that includes affordable housing units.

(5)  "Public facility user" means a developer or other private entity that has a leasehold or other possessory interest in a public facility used to provide multifamily housing.

(b)  The requirements prescribed by this section:

(1)  must be recorded as a deed restriction, the term of which must be for a period of at least 10 years, the length of the term of which must be stated in the instrument, and which may be terminated only if:

(A)  a foreclosure occurs with respect to the housing development that is the subject of the deed restriction; or

(B)  beneficial tax treatment is no longer authorized under Section 303.042; and

(2)  do not apply to a multifamily residential development owned by a corporation:

(A)  in which at least 20 percent of the units are reserved for public housing units; or

(B)  that receives financial assistance administered under Chapter 1372, Government Code, or Subchapter DD, Chapter 2306, Government Code, and in which at least 50 percent of the units in the development are reserved for occupancy by individuals and families earning less than 80 percent of the area median family income.

(c)  A sponsor shall identify goals for public facilities used for housing developments and establish selection criteria based on the goals to be used by corporations for scoring proposals from developers to construct housing developments. A corporation must use an open, transparent, and competitive process for selecting a developer for the purpose of constructing a housing development.

(d)  Selection criteria established under Subsection (c) may consider whether the development will:

(1)  be located:

(A)  in the attendance zone of an elementary school that has passed accountability standards adopted by the Texas Education Agency for the most recent school year available;

(B)  in the attendance zone of a high school with a graduation rate of at least 85 percent; and

(C)  in a census tract in which:

(i)  fewer than 10 percent of the households have a household income equal to or less than the federal poverty line; and

(ii)  the median household income is equal to or greater than 80 percent of area median income;

(2)  serve residents most in need of affordable housing, including families with children or elderly individuals with disabilities; and

(3)  provide affordable housing beyond the minimum period of affordability required by this section to receive the tax exemption described by Section 303.042.

(e)  A public facility user must reserve at least 20 percent of the affordable housing units in the development for occupancy by individuals or families earning not more than 50 percent of area median income, adjusted for family size. A unit may not be used to satisfy the reservation required under this subsection if every tenant in the unit is:

(1)  a part-time or full-time student at an institution of higher education;

(2)  under the age of 24; and

(3)  ineligible for housing assistance under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437f).

(f)  The percentage of affordable housing units reserved in each category of units in the housing development, based on the number of bedrooms and bathrooms per unit, must be the same as the percentage of affordable housing units reserved in the housing development as a whole.

(g)  The monthly rent charged by a public facility user for an affordable housing unit may not exceed:

(1)  30 percent of 80 percent of area median income, adjusted for family size; or

(2)  if the unit is occupied by a participant in the housing choice voucher program, the payment standard for that unit used by the housing authority that administers the voucher for the unit.

(h)  In calculating the income of an individual or family for an affordable housing unit, the public facility user must consider the income of every individual who will be living in the unit.

(i)  A public facility user may not:

(1)  refuse to rent an affordable housing unit to an individual or family because the individual or family participates in the housing choice voucher program; or

(2)  use a financial or minimum income standard that requires an individual or family participating in the housing choice voucher program to have a monthly income of more than 250 percent of the individual's or family's share of the total monthly rent payable for an affordable housing unit.

(j)  The sponsor of a corporation that leases a public facility used as a housing development to a public facility user shall publish on its Internet website information about:

(1)  the affordable housing units in the housing development; and

(2)  the development's policies regarding tenant participation in the housing choice voucher program.

(k)  A public facility user shall:

(1)  affirmatively market available units directly to individuals and families participating in the housing choice voucher program; and

(2)  notify local housing authorities of any available units in the development.

(l)  Not later than April 1 of each year, a public facility user of a housing development must:

(1)  submit to the chief appraiser of the appraisal district in which the housing development is located an audit report for a compliance audit conducted by an independent auditor to determine whether the public facility user is in compliance with the requirements of this section; and

(2)  submit to the comptroller a report that includes, for each housing development:

(A)  the name of the development;

(B)  the street address and municipality or county in which the development is located;

(C)  the name of the developer;

(D)  the total number of market rate units, reported by bedroom size and rent;

(E)  the total number of units with income restrictions, reported by bedroom size, level of income restriction, and rent;

(F)  the total number of units, reported by bedroom size, that are designed for individuals who are physically challenged or who have special needs, and the number of those individuals served annually by those units;

(G)  the number of units rented by individuals and families who participate in the housing choice voucher program, as reported by bedroom size;

(H)  the race, ethnicity, and age of all occupants; and

(I)  if it has not been previously submitted in a report to the comptroller, or if it has been amended since the previous submission:

(i)  a copy of the ground lease; and

(ii)  a copy of the partnership agreement for the public facility.

(m)  The reports submitted under Subsection (l) are public information and subject to disclosure under Chapter 552, Government Code. The comptroller shall post a copy of the report received under Subsection (l)(1) on its Internet website.

(n)  Each lease agreement for a unit in a housing development must provide that:

(1)  the landlord may not retaliate against the tenant or the tenant's guests by taking an action because the tenant established, attempted to establish, or participated in a tenant organization;

(2)  the landlord may only terminate or choose to not renew the lease because the tenant:

(A)  is in material noncompliance with the lease, including nonpayment of rent after the required cure period;

(B)  committed one or more substantial violations of the lease;

(C)  failed to provide required information on the income, composition, or eligibility of the tenant's household; or

(D)  committed repeated minor violations of the lease that:

(i)  disrupt the livability of the property;

(ii)  adversely affect the health and safety of any person or the right to quiet enjoyment of the leased premises and related project facilities;

(iii)  interfere with the management of the project; or

(iv)  have an adverse financial effect on the project, including the repeated failure of the tenant to pay rent in a timely manner;

(3)  except in the case of termination for lease violations based on criminal activity that pose a threat to the safety of staff and other residents, to terminate or not renew the lease the landlord must serve a written notice of proposed termination on the tenant:

(A)  at least 30 days before the effective date of the termination or nonrenewal; and

(B)  before issuing a notice to vacate under Section 24.005, Property Code; and

(4)  the notice of a proposed termination provided under Subdivision (3) must:

(A)  specify the date of the proposed termination;

(B)  state the grounds for termination;

(C)  advise the tenant of the tenant's right to defend the action in court; and

(D)  advise the tenant that the tenant has a 10-day period following the date of service of the notice to discuss the proposed termination of the tenancy with the landlord and cure the alleged lease violation if the lease violation is not based on drug activity, violent criminal activity, or other serious criminal activity.

(o)  A tenant may not waive the protections provided by Subsection (n).

(p)  A public facility corporation must be given:

(1)  written notice of an instance of noncompliance with this section; and

(2)  90 days after the day notice is received under Subdivision (1) to cure the matter that is the subject of the notice.

(q)  Notwithstanding any other law, an occupied multifamily residential development that is acquired by a public facility corporation is eligible for an exemption under Section 303.042(d)(3) for the one-year period following the date of the acquisition regardless of whether the development complies with the other requirements of that section or with this section, as applicable.

SECTION 3.  Section 392.005, Local Government Code, is amended by amending Subsections (c) and (d) and adding Subsection (c-1) to read as follows:

(c)  An exemption under this section for a multifamily residential development which is owned by [~~(i) a public facility corporation created by a housing authority under Chapter 303, (ii)~~] a housing development corporation[~~,~~] or [~~(iii)~~] a similar entity created by a housing authority and which does not have at least 20 percent of its units reserved for public housing units, applies only if:

(1)  the authority holds a public hearing, at a regular meeting of the authority's governing body, to approve the development; and

(2)  at least 50 percent of the units in the multifamily residential development are reserved for occupancy by individuals and families earning less than 80 percent of the area median family income.

(c-1)  An exemption under this section for a multifamily residential development which is owned by a public facility corporation created by a housing authority under Chapter 303 and which does not have at least 20 percent of its units reserved for public housing units, applies only if the authority holds a public hearing, at a regular meeting of the authority's governing body, to approve the development and:

(1)  for a development that receives financial assistance administered under Chapter 1372, Government Code, or Subchapter DD, Chapter 2306, Government Code:

(A)  at least 50 percent of the units in the multifamily residential development are reserved for occupancy by individuals and families earning less than 80 percent of the area median family income; or

(B)  the requirements under Section 303.0425 are met;

(2)  for a development that does not receive financial assistance administered under Chapter 1372, Government Code, or Subchapter DD, Chapter 2306, Government Code, the requirements under Section 303.0425 are met; or

(3)  for an occupied multifamily residential development that is acquired by the public facility corporation, the development comes into compliance with the requirements of this section or Section 303.0425, as applicable, not later than the first anniversary of the date of the acquisition.

(d)  For the purposes of Subsections [~~Subsection~~] (c) and (c-1), a "public housing unit" is a dwelling unit for which the owner receives a public housing operating subsidy. It does not include a unit for which payments are made to the landlord under the federal Section 8 Housing Choice Voucher Program.

SECTION 4.  The changes in law made by this Act apply only to an ownership interest obtained by a public facility corporation or a leasehold or other possessory interest in a public facility granted by a public facility corporation to a public facility user, as defined by Section 303.0425, Local Government Code, as added by this Act, on or after the effective date of this Act.

SECTION 5.  This Act takes effect September 1, 2021.