

By: Eckhardt

S.B. No. 2030

A BILL TO BE ENTITLED

1 AN ACT
2 relating to requirements for beneficial tax treatment related to a
3 public facility used to provide affordable housing.

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

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

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

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

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

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

22 (B) the requirements under Section 303.0425 are
23 met;

24 (2) for a development that does not receive financial

1 assistance administered under Chapter 1372, Government Code, or
2 Subchapter DD, Chapter 2306, Government Code, the requirements
3 under Section 303.0425 are met; or

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

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

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

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

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

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

26 (3) "Housing choice voucher program" means the housing
27 choice voucher program under Section 8, United States Housing Act

1 of 1937 (42 U.S.C. Section 1437f).

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

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

8 (b) The requirements prescribed by this section:

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

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

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

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

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

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

27 (c) A sponsor shall identify goals for public facilities

1 used for housing developments and establish selection criteria
2 based on the goals to be used by corporations for scoring proposals
3 from developers to construct housing developments. A corporation
4 must use an open, transparent, and competitive process for
5 selecting a developer for the purpose of constructing a housing
6 development.

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

9 (1) be located:

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

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

15 (C) in a census tract in which:

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

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

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

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

27 (e) A public facility user must reserve at least 20 percent

1 of the affordable housing units in the development for occupancy by
2 individuals or families earning not more than 50 percent of area
3 median income, adjusted for family size. A unit may not be used to
4 satisfy the reservation required under this subsection if every
5 tenant in the unit is:

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

8 (2) under the age of 24; and

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

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

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

18 (1) 30 percent of 80 percent of area median income,
19 adjusted for family size; or

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

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

27 (i) A public facility user may not:

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

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

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

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

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

16 (k) A public facility user shall:

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

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

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

24 (1) submit to the chief appraiser of the appraisal
25 district in which the housing development is located an audit
26 report for a compliance audit conducted by an independent auditor
27 to determine whether the public facility user is in compliance with

1 the requirements of this section; and

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

4 (A) the name of the development;

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

7 (C) the name of the developer;

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

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

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

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

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

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

25 (i) a copy of the ground lease; and

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

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

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

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

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

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

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

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

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

21 (i) disrupt the livability of the property;

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

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

27 (iv) have an adverse financial effect on

1 the project, including the repeated failure of the tenant to pay
2 rent in a timely manner;

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

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

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

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

14 (A) specify the date of the proposed termination;

15 (B) state the grounds for termination;

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

18 (D) advise the tenant that the tenant has a
19 10-day period following the date of service of the notice to discuss
20 the proposed termination of the tenancy with the landlord and cure
21 the alleged lease violation if the lease violation is not based on
22 drug activity, violent criminal activity, or other serious criminal
23 activity.

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

26 (p) A public facility corporation must be given:

27 (1) written notice of an instance of noncompliance

1 with this section; and

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

5 (g) Notwithstanding any other law, an occupied multifamily
6 residential development that is acquired by a public facility
7 corporation is eligible for an exemption under Section
8 303.042(d)(3) for the one-year period following the date of the
9 acquisition regardless of whether the development complies with the
10 other requirements of that section or with this section, as
11 applicable.

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

15 (c) An exemption under this section for a multifamily
16 residential development which is owned by [~~(i) a public facility~~
17 ~~corporation created by a housing authority under Chapter 303, (ii)]
18 a housing development corporation[~~7~~] or [~~(iii)~~] a similar entity
19 created by a housing authority and which does not have at least 20
20 percent of its units reserved for public housing units, applies
21 only if:~~

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

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

1 income.

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

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

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

16 (B) the requirements under Section 303.0425 are
17 met;

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

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

27 (d) For the purposes of Subsections [~~Subsection~~] (c) and

1 (c-1), a "public housing unit" is a dwelling unit for which the
2 owner receives a public housing operating subsidy. It does not
3 include a unit for which payments are made to the landlord under the
4 federal Section 8 Housing Choice Voucher Program.

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

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