

Amend **HB 2071** (senate committee report) by striking all below the enacting clause (page 1, line 22 through page 9, line 17) and substituting the following:

SECTION 1. Section 303.021, Local Government Code, is amended by adding Subsection (d) to read as follows:

(d) A corporation or a sponsor may finance, own, or operate a multifamily residential development only if:

(1) the corporation or sponsor complies with all applicable provisions of this chapter; and

(2) the development is located:

(A) inside the area of operation of the sponsor, if the sponsor is a housing authority; or

(B) if the sponsor is not a housing authority, inside the boundaries of the sponsor, without regard to whether the sponsor is authorized to own property or provide services outside the boundaries of the sponsor.

SECTION 2. Subchapter B, Chapter 303, Local Government Code, is amended by adding Section 303.0415 to read as follows:

Sec. 303.0415. APPLICABILITY OF LAWS RELATING TO CONFLICT OF INTEREST. A member of the board of a corporation or a member of the governing body of a sponsor of a corporation is subject to the same restrictions as a local public official under Chapter 171.

SECTION 3. The heading to Section 303.042, Local Government Code, is amended to read as follows:

Sec. 303.042. TAXATION; EXEMPTION.

SECTION 4. Subchapter B, Chapter 303, Local Government Code, is amended by adding Section 303.0421, and a heading is added to that section to read as follows:

Sec. 303.0421. MULTIFAMILY RESIDENTIAL DEVELOPMENTS OWNED BY PUBLIC FACILITY CORPORATIONS.

SECTION 5. Section 303.0421, Local Government Code, as added by this Act, is amended by adding Subsections (a), (c), (d), (g), (h), and (i) to read as follows:

(a) This section applies to a multifamily residential development that is owned by a corporation created under this chapter, except that this section does not apply to a multifamily residential development that:

(1) has at least 20 percent of its residential units reserved for public housing units;

(2) participates in the Rental Assistance Demonstration program administered by the United States Department of Housing and Urban Development;

(3) receives financial assistance administered under Chapter 1372, Government Code, or receives financial assistance from another type of tax-exempt bond; or

(4) receives financial assistance administered under Subchapter DD, Chapter 2306, Government Code.

(c) A multifamily residential development that is owned by a corporation created under this chapter by a housing authority and to which Subsection (a) applies must hold a public hearing, at a meeting of the authority's governing body, to approve the development.

(d) Notwithstanding Subsection (b), an occupied multifamily residential development that is acquired by a corporation and to which Subsection (a) applies is eligible for an exemption under Section 303.042(c) for:

(1) the one-year period following the date of the acquisition, regardless of whether the development complies with the requirements of Subsection (b); and

(2) a year following the year described by Subdivision (1) only if the development comes into compliance with the requirements of Subsection (b) not later than the first anniversary of the date of the acquisition.

(g) Subsection (f) does not apply to taxes imposed on a multifamily residential development by a conservation and reclamation district created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, that provides water, sewer, or drainage services to the development, unless the applicable corporation has entered into a written agreement with the district to make a payment to the district in lieu of taxation, in the amount specified in the agreement.

(h) Subject to Subsection (i), an exemption under Section 303.042(c) for a multifamily residential development to which Subsection (a) applies expires:

(1) for an occupied multifamily residential development that is acquired by a corporation, on the 30th anniversary of the date of the acquisition by the corporation; and

(2) for a multifamily residential development not described by Subdivision (1), on the 60th anniversary of the date the development receives, from the corporation or the corporation's sponsor, the final approval under this chapter that is necessary to obtain the exemption.

(i) An exemption under Section 303.042(c) for a multifamily residential development to which Subsection (a) applies may be extended for the same term of years applicable to the length of the development's exemption under Subsection (h) if:

(1) in the five-year period preceding the expiration of the exemption under Subsection (h), the corporation provides notice of the extension to the governing body of the municipality in which the development is located or, if the development is not located in a municipality, the county in which the development is located;

(2) the extension is approved in the same manner as was required for the preceding approval of the exemption; and

(3) the development is in compliance with, and maintains compliance with, this section and Section 303.0425.

SECTION 6. Section 303.042(c), Local Government Code, is amended to read as follows:

(c) Subject to Section 303.0421(h), a [A] corporation is engaged exclusively in performance of charitable functions and is exempt from taxation by this state or a municipality or other political subdivision of this state. Bonds issued by a corporation under this chapter, a transfer of the bonds, interest on the bonds, and a profit from the sale or exchange of the bonds are exempt from taxation by this state or a municipality or other political subdivision of this state.

SECTION 7. Sections 303.042(d), (e), and (f), Local Government Code, are transferred to Section 303.0421, Local Government Code, as added by this Act, redesignated as Sections 303.0421(b), (e), and (f), Local Government Code, and amended to read as follows:

(b) Notwithstanding Section 303.042(c) and subject to Subsections (c) and (d) of this section, an ~~[(d) An]~~ exemption under Section 303.042(c) ~~[this section]~~ for a multifamily residential development to which Subsection (a) applies is available ~~[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 requirements under Section 303.0425 are met ~~[housing authority holds a public hearing, at a regular meeting of the authority's governing body, to approve the development]; [and]~~

(2) at least:

(A) 10 percent of the units in the multifamily residential development are reserved for occupancy as lower income housing units, as defined under Section 303.0425; and

(B) 40 ~~[50]~~ percent of the units in the multifamily residential development are reserved for occupancy as moderate income housing units, as defined under Section 303.0425;

(3) the corporation delivers to the presiding officer of the governing body of each taxing unit in which the development is to be located written notice of the development, at least 30 days before the date:

(A) the corporation takes action to approve a new multifamily residential development or the acquisition of an occupied multifamily residential development; and

(B) of any public hearing required to be held under this section;

(4) if a majority of the members of the board are not elected officials, the development is approved by the governing body of the municipality in which the development is located or, if the development is not located in a municipality, the county in which the development is located;

(5) for an occupied multifamily residential development that is acquired by a corporation and not otherwise subject to a land use restriction agreement under Section 2306.185, Government Code:

(A) not less than 15 percent of the total gross

cost of the existing development, as shown in the settlement statement, is expended on rehabilitating, renovating, reconstructing, or repairing the development, with initial expenditures and construction activities:

(i) beginning not later than the first anniversary of the date of the acquisition; and

(ii) finishing not later than the third anniversary of the date of the acquisition; or

(B) at least 25 percent of the units are reserved for occupancy as lower income housing units, as defined under Section 303.0425, and the development is approved by the governing body of the municipality in which the development is located or, if the development is not located in a municipality, the county in which the development is located; and

(6) not less than 30 days before final approval of the development:

(A) the corporation or corporation's sponsor conducts, or obtains from a professional entity that has experience underwriting affordable multifamily residential developments and does not have a financial interest in the applicable development, developer, or public facility user, an underwriting assessment of the proposed development that allows the corporation to make a good faith determination that:

(i) for an occupied multifamily residential development acquired by a corporation, the total annual amount of rent reduction on the income-restricted units provided at the development will be not less than 60 percent of the estimated amount of the annual ad valorem taxes that would be imposed on the property without an exemption under Section 303.042(c) for the second, third, and fourth years after the date of acquisition by the corporation; and

(ii) for a newly constructed multifamily residential development, the development would not be feasible without the participation of the corporation; and

(B) the corporation publishes on its Internet website a copy of the underwriting assessment described by Paragraph (A) ~~[by individuals and families earning less than 80~~

~~percent of the area median family income].~~

(e) For the purposes of Subsection (a) ~~[(1)]~~, a "public housing unit" is a residential ~~[dwelling]~~ unit for which the landlord 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.

(f) Notwithstanding Sections 303.042(a) and (b) and except as otherwise provided by this section ~~[Subsections (a) and (b)]~~, during the period ~~[of time]~~ that a corporation owns a particular public facility that is a multifamily residential development:

(1) [7] 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 an authority under Section 379B.011(b); and

(2) the materials used by a person granted a possessory interest described by Subdivision (1) to improve the real property of the public facility shall be exempt from all sales and use taxes because the materials are for the benefit of the corporation.

SECTION 8. Subchapter B, Chapter 303, Local Government Code, is amended by adding Sections 303.0425, 303.0426, and 303.0427 to read as follows:

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

(1) "Developer" means a private entity that constructs a development, including the rehabilitation, renovation, reconstruction, or repair of a development.

(2) "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).

(3) "Lower income housing unit" means a residential unit reserved for occupancy by an individual or family earning not more than 60 percent of the area median income, adjusted for family size, as defined by the United States Department of Housing and Urban Development.

(4) "Moderate income 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, as defined by the United States Department of Housing and Urban Development.

(5) "Public facility user" means a public-private partnership entity or a developer or other private entity that has an ownership interest or a leasehold or other possessory interest in a public facility that is a multifamily residential development.

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

(c) The monthly rent charged per unit may not exceed:

(1) for a lower income housing unit, 30 percent of 60 percent of the area median income, adjusted for family size, as defined by the United States Department of Housing and Urban Development; or

(2) for a moderate income housing unit, 30 percent of 80 percent of the area median income, adjusted for family size, as defined by the United States Department of Housing and Urban Development.

(d) In calculating the income of an individual or family for a lower or moderate income housing unit, the public facility user must use the definition of annual income described in 24 C.F.R. Section 5.609, as implemented by the United States Department of Housing and Urban Development. If the income of a tenant exceeds an applicable limit at the time of the renewal of a lease agreement for a residential unit, the provisions of Section 42(g)(2)(D), Internal Revenue Code of 1986, apply in determining whether the unit may still qualify as a lower or moderate income housing unit.

(e) The public facility user may not:

(1) refuse to rent a residential 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 a unit.

(f) A public facility user may require an individual or family participating in the housing choice voucher program to pay the difference between the monthly rent for the applicable unit and the amount of the monthly voucher if the amount of the voucher is less than the rent.

(g) A corporation that owns or leases to a public facility user a public facility used as a multifamily residential development shall publish on its Internet website information about the development's:

(1) compliance with the requirements of this section;  
and

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

(h) The public facility user shall:

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

(2) notify local housing authorities of the multifamily residential development's acceptance of tenants in the housing choice voucher program.

(i) Each lease agreement for a residential unit in a multifamily residential development subject to this section 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 choose to not renew the lease if the tenant:

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

(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 development facilities;

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

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

(3) to not renew the lease, the landlord must serve a written notice of proposed nonrenewal on the tenant not later than the 30th day before the effective date of nonrenewal.

(j) A tenant may not waive the protections provided by Subsection (i).

(k) Requirements under this subchapter relating to the reservation of income-restricted residential units or income restrictions applicable to tenants of a multifamily residential development subject to this subchapter must be documented in a land use restriction agreement or a similar restrictive instrument that:

(1) ensures that the applicable restrictions are in effect for not less than 10 years; and

(2) is recorded in the real property records of the county in which the development is located.

(l) An agreement or instrument recorded under Subsection (k) may be terminated if the development that is the subject of the agreement or instrument:

(1) is the subject of a foreclosure sale; or

(2) becomes ineligible for an exemption under Section 303.042(c) for a reason other than the failure to comply with restrictions recorded in the agreement or instrument.

Sec. 303.0426. AUDIT REQUIREMENTS FOR CERTAIN MULTIFAMILY RESIDENTIAL DEVELOPMENTS. (a) In this section:

(1) "Department" means the Texas Department of Housing

and Community Affairs.

(2) "Developer" has the meaning assigned by Section 303.0425.

(3) "Public facility user" has the meaning assigned by Section 303.0425.

(b) A public facility user of a multifamily residential development claiming an exemption under Section 303.042(c) and to which Section 303.0421 applies must annually submit to the department and the chief appraiser of the appraisal district in which the development is located an audit report for a compliance audit, prepared at the expense of the public facility user and conducted by an independent auditor or compliance expert with an established history of providing similar audits on housing compliance matters, to:

(1) determine whether the public facility user is in compliance with Sections 303.0421 and 303.0425; and

(2) identify the difference in the rent charged for income-restricted residential units and the estimated maximum market rents that could be charged for those units without the rent or income restrictions.

(c) Not later than the 60th day after the date of receipt of the audit conducted under Subsection (b), the department shall examine the audit report and publish a report summarizing the findings of the audit. The report must:

(1) be made available on the department's Internet website;

(2) be issued to a public facility user that has an interest in a development that is the subject of an audit, the comptroller, the applicable corporation, the governing body of the corporation's sponsor, and, if the corporation's sponsor is a housing authority, the elected officials who appointed the housing authority's governing board; and

(3) describe in detail the nature of any failure to comply with the requirements in Sections 303.0421 and 303.0425.

(d) If an audit report submitted under Subsection (b) indicates noncompliance with Sections 303.0421 and 303.0425, a public facility user:

(1) must be given:

(A) written notice from the department or appropriate appraisal district that:

(i) is provided not later than the 45th day after the date a report has been submitted under Subsection (b);

(ii) specifies the reasons for noncompliance;

(iii) contains at least one option for a corrective action to resolve the noncompliance; and

(iv) informs the public facility user that failure to resolve the noncompliance will result in the loss of an exemption under Section 303.042(c);

(B) 60 days after the date notice is received under this subdivision, to resolve the matter that is the subject of the notice; and

(C) if a matter that is the subject of a notice provided under this subdivision is not resolved to the satisfaction of the department and the appropriate appraisal district during the period provided by Paragraph (B), a second notice that informs the public facility user of the loss of the exemption under Section 303.042(c) due to noncompliance with Sections 303.0421 and 303.0425; and

(2) is considered to be in compliance with Sections 303.0421 and 303.0425 if notice under Subdivision (1)(A) is not provided as specified by Subparagraph (i) of that paragraph.

(e) An exemption under Section 303.042(c) does not apply for a tax year in which a multifamily residential development that is owned by a public facility corporation created under this chapter is determined by the department based on an audit conducted under Subsection (b) to not be in compliance with the requirements of Section 303.0421 or 303.0425.

(f) The initial audit report required by Subsection (b) is due not later than June 1 of the year following the first anniversary of:

(1) the date of acquisition for an occupied multifamily residential development that is acquired by a corporation; or

(2) the date a new multifamily residential development first becomes occupied by one or more tenants.

(g) Subsequent audit reports following the issuance of the initial audit report under Subsection (f) are due not later than June 1 of each year.

(h) Not later than June 1 of each year for which an audit is required under Subsection (b), a public facility user of a multifamily residential development claiming an exemption under Section 303.042(c) and to which Section 303.0421 applies shall pay to the department a fee of \$40 per unit contained in the development, as determined by the audit, to reimburse the department for expenses related to the audit.

(i) An independent auditor or compliance expert may not prepare an audit under Subsection (b) for more than three consecutive years for the same public facility user. After the third consecutive audit, the independent auditor or compliance expert may prepare an audit only after the second anniversary of the preparation of the third consecutive audit.

(j) The department shall adopt forms and reporting standards for the auditing process.

(k) An audit conducted under Subsection (b) is subject to disclosure under Chapter 552, Government Code, except that information containing tenant names, unit numbers, or other tenant identifying information may be redacted.

Sec. 303.0427. STUDY OF TAX EXEMPTIONS FOR MULTIFAMILY RESIDENTIAL DEVELOPMENTS OWNED BY PUBLIC FACILITY CORPORATIONS.

(a) In this section, "board" means the Legislative Budget Board.

(b) The board shall conduct a study that assesses the long-term effects on the state's funding and revenue, including funding for public education, of ad valorem tax exemptions and sales and use tax exemptions for multifamily housing developments under Sections 303.042(c) and 303.0421(f).

(c) Not later than December 10, 2024, the board shall submit to the governor, the lieutenant governor, and the speaker of the house of representatives a report on the results of the study. The report must include an estimate of:

(1) the funding or revenue that the state has lost as a

result of the exemptions; and

(2) the potential increase in funding or revenue that would result from the repeal of the exemptions.

(d) The board may delegate any authority granted to the board under this section that the board determines is necessary to conduct the study under this section.

(e) This section expires January 1, 2025.

SECTION 9. 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~~[7]~~ or [~~(iii)~~] a similar entity created by a housing authority, other than a public facility corporation created by a housing authority under Chapter 303, and which does not have at least 20 percent of its residential 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, adjusted for family size.

(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 applies only if:

(1) at least 50 percent of units in the multifamily residential development are reserved for occupancy by individuals and families earning not more than 80 percent of the area median income, adjusted for family size; and

(2) the development:

(A) has at least 20 percent of its residential units reserved for public housing units;

(B) participates in the Rental Assistance

Demonstration program administered by the United States Department of Housing and Urban Development;

(C) receives financial assistance administered under Chapter 1372, Government Code, or receives financial assistance from another type of tax-exempt bond; or

(D) receives financial assistance administered under Subchapter DD, Chapter 2306, Government Code.

(d) For the purposes of Subsections [~~Subsection~~] (c) and (c-1), a "public housing unit" is a residential [~~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 10. (a) Subject to Subsections (b), (c), and (d) of this section, Sections 303.0421 and 303.0425, Local Government Code, as added by this Act, apply only to a tax imposed for a tax year beginning on or after the effective date of this Act.

(b) Subject to Subsections (c) and (d) of this section, Sections 303.0421 and 303.0425, Local Government Code, as added by this Act, apply only to a multifamily residential development that is approved on or after the effective date of this Act by a public facility corporation or the sponsor of a public facility corporation, in accordance with Chapter 303, Local Government Code. A multifamily residential development that was approved by a public facility corporation or the sponsor of a public facility corporation before the effective date of this Act is governed by the law in effect on the date the development was approved by the corporation or sponsor, and the former law is continued in effect for that purpose.

(c) Subject to Subsection (d) of this section, Section 303.0421(d), Local Government Code, as added by this Act, applies only to an occupied multifamily residential development that is acquired by a public facility corporation on or after the effective date of this Act. An occupied multifamily residential development that is acquired by a public facility corporation before the effective date of this Act is governed by the law in effect on the date the development was acquired by the public facility corporation, and the former law is continued in effect for that

purpose.

(d) Notwithstanding any other provision of this section:

(1) Section 303.0426, Local Government Code, as added by this Act, applies to all multifamily residential developments to which Section 303.0421 applies and with respect to which an exemption is sought or claimed under Section 303.042(c); and

(2) the initial audit report required to be submitted under Section 303.0426(b), Local Government Code, as added by this Act, for a multifamily residential development that was approved or acquired by a public facility corporation before the effective date of this Act must be submitted by the later of:

(A) the date established by Section 303.0426(f), Local Government Code, as added by this Act; or

(B) June 1, 2024.

SECTION 11. Not later than January 1, 2024, the Texas Department of Housing and Community Affairs shall adopt rules necessary to implement Section 303.0426, Local Government Code, as added by this Act.

SECTION 12. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2023.