

BILL ANALYSIS

Senate Research Center

H.B. 2071
By: Jetton et al. (Bettencourt)
Local Government
5/1/2023
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 2071 amends current law relating to certain public facilities used to provide affordable housing.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Department of Housing and Community Affairs in SECTION 11 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 303.021, Local Government Code, by adding Subsection (d), as follows:

(d) Authorizes a public facility corporation (corporation) or a sponsor to finance, own, or operate a multifamily residential development only if:

(1) the corporation or sponsor complies with all applicable provisions of Chapter 303 (Public Facility Corporations); 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. Amends Subchapter B, Chapter 303, Local Government Code, by adding Section 303.0415, as follows:

Sec. 303.0415. APPLICABILITY OF LAWS RELATING TO CONFLICT OF INTEREST. Provides that 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 (Regulation of Conflicts of Interest of Officers of Municipalities, Counties, and Certain Other Local Governments).

SECTION 3. Amends the heading to Section 303.042, Local Government Code, to read as follows:

Sec. 303.042. TAXATION; EXEMPTION.

SECTION 4. Amends Subchapter B, Chapter 303, Local Government Code, by adding Section 303.0421, and adding a heading, to read as follows:

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

SECTION 5. Amends Section 303.0421, Local Government Code, as added by this Act, by adding Subsections (a), (c), (d), (f-1), (f-2), (g), and (h), as follows:

(a) Provides that 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 (Private Activity Bonds and Certain Other Bonds), Government Code, or receives financial assistance from another type of tax-exempt bond; or

(4) receives financial assistance administered under Subchapter DD (Low Income Housing Tax Credit Program), Chapter 2306, Government Code.

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

(d) Provides that an occupied multifamily residential development that is acquired by a corporation and to which Subsection (a) applies, notwithstanding Subsection (b), is eligible for an exemption under Section 303.042(c) (relating to engaging a public facility corporation exclusively in performance for charitable functions and exempting the corporation from taxation by this state or a municipality or other political subdivision of this state) 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.

(f-1) Provides that Subsection (f) does not apply to taxes imposed by a conservation and reclamation district created under Section 52 (Restrictions on Lending Credit or Making Grants by Political Corporations or Political Subdivisions; Authorized Bonds; Investments of Funds), Article III (Legislative Department), or Section 59 (Workers' Compensation Insurance for State Employees), Article XVI (General Provisions), Texas Constitution, that provides water, sewer, or drainage services to a public facility if:

(1) the district has outstanding bond indebtedness; and

(2) when the facility is combined with other existing or proposed public facilities in the district, the application of Subsection (f) would result in the aggregate loss of at least 10 percent of the total assessed value of all property located in the district.

(f-2) Provides that Subsection (f-1) does not apply if the 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.

(g) Provides that 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 10th anniversary of the date of the acquisition by the corporation; and

(2) for a multifamily residential development not described by Subdivision (1), on the 12th 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.

(h) Provides that this subsection and Subsection (f) expire December 31, 2025.

SECTION 6. Makes Section 303.042(c), Local Government Code, subject to Subsection 303.0421(g).

SECTION 7. Transfers Sections 303.042(d), (e), and (f), Local Government Code, to Section 303.0421, as added by this Act, redesignates them as Sections 303.0421(b), (e), and (f), Local Government Code, and amends them, as follows:

(b) Provides that an exemption under Section 303.042(c) for a multifamily residential development to which Subsection (a) applies, notwithstanding Section 303.042(c) and subject to Subsections (c) and (d) of this section, rather than 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, is available only if:

(1) the requirements under Section 303.0425 are met, rather than the housing authority holds a public hearing, at a regular meeting of the authority's governing body, to approve the development;

(2) at least:

(A) 12 percent of the units in the multifamily residential development are reserved for occupancy:

(i) as very low income housing units, as defined under Section 303.0425; or

(ii) by participants in the housing choice voucher program;

(B) 12 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

(C) 12 percent, rather than 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, rather than by individuals and families earning less than 80 percent of the area median family income;

(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) the multifamily residential development is approved by the governing body of the municipality, if any, the county, and the school district 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 (Long-Term Affordability and Safety of Multifamily Rental Housing Developments), 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) 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 financial interests in the applicable development, public facility user, or developer, an underwriting assessment of the proposed development to determine the appropriate category of income-restricted units to require at the development; and

(B) based on the assessment conducted under Paragraph (A), the corporation makes a good faith determination that 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:

(i) the first three years after the rent stabilization period, for newly constructed developments; and

(ii) the second, third, and fourth years after the date of acquisition by the corporation, for developments occupied at the time of acquisition.

Makes nonsubstantive changes.

(e) Makes nonsubstantive and conforming changes to this subsection.

(f) Provides that, notwithstanding Sections 303.042(a) (relating to providing that a public facility, including a leasehold estate in a public facility, that is owned by a corporation and that, except for the purposes and nonprofit nature of the corporation, would be taxable to the corporation and is required to be assessed to the user of the public facility to the same extent and subject to the same exemptions from taxation as if the user owned the public facility) and (b) (relating to considering the user of a public facility as the

owner of the facility for certain purposes) and subject to Subsection (f-1), during the period that a corporation owns a particular public facility that is a multifamily residential development the materials used by a person granted a possessory interest described by Subdivision (1) (relating to using sales and taxes for certain constructions of the public facility) to improve the real property of the public facility is required to be exempt from all sales and use taxes because the materials are for the benefit of the corporation. Makes nonsubstantive and conforming changes.

SECTION 8. Amends Subchapter B, Chapter 303, Local Government Code, by adding Sections 303.0425 and 303.0426, as follows:

Sec. 303.0425. ADDITIONAL REQUIREMENTS FOR BENEFICIAL TAX TREATMENT RELATING TO CERTAIN PUBLIC FACILITIES. (a) Defines "department," "developer," "housing choice voucher program," "lower income housing unit," "moderate income housing unit," "public facility user," and "very low income housing unit."

(b) Requires that the development, if a majority of the members of the board of the corporation are not elected officials, be 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.

(c) Requires that the percentage of very low, lower, and moderate income housing units reserved in each category of units in the development, based on the number of bedrooms per unit, be the same as the percentage of each category of housing units reserved in the development as a whole.

(d) Prohibits the monthly rent charged per unit from exceeding:

(1) for a very low income housing unit, 30 percent of 50 percent of the area median income, adjusted for family size, as defined by the United States Department of Housing and Urban Development;

(2) 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

(3) 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.

(e) Requires the public facility user, in calculating the income of an individual or family for a very low, lower, or moderate income housing unit, to 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. Provides that the provisions of Section 42(g)(2)(D), Internal Revenue Code of 1986, if the income of a tenant exceeds an applicable limit at the time of the renewal of a lease agreement for a residential unit, apply in determining whether the unit is authorized to still qualify as a very low, lower, or moderate income housing unit.

(f) Prohibits the public facility user from:

(1) refusing to rent a residential unit to an individual or family because the individual or family participates in the housing choice voucher program; or

(2) using 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-1) Authorizes a public facility user to 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) Requires a corporation that owns or leases to a public facility user a public facility used as a multifamily residential development to 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) Requires the public facility user to:

(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) Requires the Texas Department of Housing and Community Affairs (TDHCA) to conduct an annual audit of each public facility user of a multifamily residential development claiming an exemption under Section 303.042(c) and to which Section 303.0421 applies, to:

(1) determine whether the public facility user is in compliance with this section and Section 303.0421; 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.

(i-1) Prohibits an independent auditor or compliance expert from preparing an audit under Subsection (i) for more than three consecutive years for the same public facility user. Authorizes the independent auditor or compliance expert, after the third consecutive audit, to prepare an audit only after the second anniversary of the preparation of the third consecutive audit.

(j) Requires TDHCA to complete and publish a report regarding the findings of an audit conducted under Subsection (i). Requires that the report:

(1) be made available on TDHCA'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; and

(3) describe in detail the nature of any failure to comply with the requirements in this section and Section 303.0421.

(j-1) Requires TDHCA to adopt forms and reporting standards for the auditing process.

(k) Provides that the initial audit report required by Subsection (j) 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.

(k-1) Provides that subsequent audit reports following the issuance of the initial audit report under Subsection (k) are due not later than June 1 of each year.

(l) Requires a public facility user, not later than the 60th day after the date of receipt of TDHCA's audit report under Subsection (j)(2), to provide a copy of the report to the Comptroller of Public Accounts of the State of Texas, the appraisal district containing the development that is the subject of the report, the 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.

(l-1) Requires a public facility user to which Section 303.0421 applies, not later than June 1 of each year for which an audit is required under Subsection (i), to pay to TDHCA a fee of \$40 per unit contained in the development, as determined by the audit, to reimburse TDHCA for expenses related to the audit.

(l-2) Provides that 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 an audit conducted under Subsection (i) to not be in compliance with the requirements of this section and Section 303.0421.

(l-3) Provides that an audit conducted under Subsection (i) is subject to disclosure under Chapter 552 (Public Information), Government Code, except that information containing tenant names, unit numbers, or other tenant identifying information is authorized to be redacted.

(m) Requires that each lease agreement for a residential unit in a multifamily residential development subject to this section provide that:

(1) the landlord is prohibited from retaliating 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 is authorized only to 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 is required to serve a written notice of proposed nonrenewal on the tenant not later than the 30th day before the effective date of nonrenewal.

(n) Prohibits a tenant from waiving the protections provided by Subsection (m).

(o) Provides that a public facility user, if an audit report submitted under Subsection (j) indicates noncompliance with this section:

(1) is required to be given:

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

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

(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 TDHCA 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 this section;

(2) is considered to be in compliance with this section if notice under Subdivision (1)(A) is not provided as specified by Subparagraph (i) of that paragraph; and

(3) is authorized to appeal a determination of noncompliance to a district court in the county in which the applicable development is located.

(p) Requires that the requirements under Subchapter B (Creation and Operation of Public Facility Cooperation) relating to the reservation of income-restricted residential units or income restrictions applicable to tenants of a multifamily residential development subject to this subchapter 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.

(q) Authorizes an agreement or instrument recorded under Subsection (p) to 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. STUDY OF TAX EXEMPTIONS FOR MULTIFAMILY RESIDENTIAL DEVELOPMENTS OWNED BY PUBLIC FACILITY CORPORATIONS. (a) Defines "board."

(b) Requires the Legislative Budget Board (LBB) to 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) Requires the LBB, not later than December 10, 2024, to submit to the governor, the lieutenant governor, and the speaker of the house of representatives a report on the results of the study. Requires that the report 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) Authorizes the LBB to delegate any authority granted to the LBB under this section that the LBB determines is necessary to conduct the study under this section.

(e) Provides that this section expires January 1, 2025.

SECTION 9. Amends Sections 392.005(c) and (d), Local Government Code, as follows:

(c) Provides that an exemption under Section 392.005 (Tax Exemption) for a multifamily residential development which is owned by a housing development corporation or 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 certain requirements are met, including at least 12 percent of the units in the multifamily residential development are reserved for occupancy as very low income housing units, as defined under Section 303.0425, or by participants in the housing choice voucher program; 12 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 12 percent of the units in the multifamily residential development are reserved for occupancy as moderate income housing units, as defined under Section 303.0425.

Deletes existing text providing that 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, a housing development corporation, or 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 if 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.

(d) Makes a conforming change to this subsection.

SECTION 10. (a)-(c) Makes application of Sections 303.0421, 303.0421(d), and 303.0425, 303.0425, Local Government Code, as added by this Act, prospective.

(d) Provides that, notwithstanding any other provisions of this section, sections 303.0425(g), (i), (j), (k), (l), (l-1), and (l-2), Local Government Code, apply to all multifamily residential developments owned by a public facility corporation, and the initial audit report required to be submitted under Section 303.0425(j), 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 is required to be submitted by a certain date.

(e) Provides that Section 303.0421(h), Local Government Code, as added by this Act, does not affect a tax exemption available to a multifamily residential development under Section 303.0421(f), Local Government Code, as amended by this Act, immediately before December 31, 2025. Provides that a tax exemption available to a multifamily residential development under Section 303.0421(f), Local Government Code, immediately before that date is covered by the law in effect when the development qualified for the exemption, and that law is continued in effect for that purpose.

SECTION 11. Requires TDHCA, not later than January 1, 2024, to adopt rules necessary to implement Section 303.0425(i), Local Government Code, as added by this Act.

SECTION 12. Effective date: September 1, 2023.