BILL ANALYSIS

C.S.H.B. 2071
By: Jetton
Urban Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

A public facility corporation is sometimes used to incentivize the development of affordable housing. A local taxing entity could authorize an arrangement in which an individual would own, renovate or build, and operate a housing facility that provides a minimum amount of such housing in exchange for paying a reduced amount of property taxes. However, some facility owners and local taxing entities are abusing the program by failing to provide the appropriate housing options, failing to disclose accurate information about rental and occupancy rates, or entering into agreements outside of an authorized jurisdiction. These abuses not only risk preventing the provision of needed housing, but also shift an increased property tax burden onto surrounding homeowners and businesses. C.S.H.B. 2071 seeks to address these issues by imposing conditions for financing, owning or operating a multifamily residential development and revising the requirements that must be met for a multifamily residential development approved by a public facility corporation to get beneficial tax treatment.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2071 amends the Local Government Code to make changes to the Public Facility Corporation Act with respect to multifamily residential developments.

Conditions for Financing, Owning, or Operating a Multifamily Residential Development

C.S.H.B. 2071 authorizes a public facility corporation (PFC) or a PFC's sponsoring municipality, county, school district, housing authority, or special district to finance, own, or operate a multifamily residential development only under the following conditions:

- the PFC or sponsor complies with all applicable provisions of the act; and
- the development is located inside the sponsor's area of operation, if the sponsor is a housing authority, or, if the sponsor is not a housing authority, inside the sponsor's boundaries, without regard to whether the sponsor is authorized to own property or provide services outside those boundaries.

Tax Exemption Requirements

C.S.H.B. 2071 sets out certain additional requirements that must be met for a multifamily housing development to be eligible for the PFC tax exemption. The bill's provisions relating to this tax exemption apply only to a tax imposed for a tax year beginning on or after the bill's effective date and apply only to a development approved on or after that date by a PFC or the sponsor of a PFC, except as otherwise provided.
C.S.H.B. 2071 requires developments to satisfy the following requirements regarding affordability:

- not less than 10 percent of the residential units in a development must be reserved as lower income housing units, for occupancy by an individual or family earning not more than 60 percent of the area median income (AMI), adjusted for family size, as defined by HUD, unless a majority of the members of the board of the PFC are elected officials or the development is approved by the municipal or county governing body, as applicable;
- the percentage of moderate income housing units, for occupancy by an individual or family earning not more than 80 percent of AMI, adjusted for family size, and low 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; and
- the monthly rent charged per unit for a lower income housing unit must be capped at 30 percent of 60 percent of AMI, adjusted for family size, and the monthly rent charged per unit for a moderate income housing unit must be capped at 30 percent of 80 percent of AMI, adjusted for family size.

The bill specifies the definition of annual income that must be used in calculating income by a public facility user, and provides for the application of certain federal law to determine whether a tenant whose income exceeds an applicable limit at the time of lease renewal still qualifies.
C.S.H.B. 2071 prohibits the public facility user from doing the following:

- refusing to rent a residential unit to an individual or family because the individual or family participates in the housing choice voucher program if the assistance received by the individual or family through the program is equal to or greater than the amount established as the maximum monthly rent for the applicable unit; or
- 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.

The bill requires the public facility user to affirmatively market available residential units directly to individuals and families participating in the housing choice voucher program and to notify local housing authorities of the development's acceptance of tenants in that program.
C.S.H.B. 2071 requires a PFC that owns or leases to a public facility user a public facility used as a multifamily residential development to publish on its website information about the development's compliance with the bill's additional tax exemption requirements and policies regarding tenant participation in the housing choice voucher. This requirement applies to all multifamily residential developments owned by a public facility corporation, regardless of the date of approval or acquisition.

C.S.H.B. 2071 sets out the following reporting requirements for the public facility user:

- not later than June 1 of each year, the public facility user must submit to the chief appraiser of the applicable appraisal district an audit report for a compliance audit, prepared at the user's expense and conducted by an independent auditor or compliance expert with an established history of providing similar audits on housing compliance matters, to determine whether the public facility user is in compliance with the bill's additional tax exemption requirements; and
- before the initial occupancy of an unoccupied development or not later than the 30th day after the date of acquisition of an occupied development, the public facility user must

submit to the Texas Department of Housing and Community Affairs (TDHCA) a reportthat includes:

- the name of the development;
- the street address and municipality or county in which the development is located;
- the name of the developer;
- the total number of residential units, reported by number of bedrooms;
- the total number of lower income housing units, reported by number of bedrooms, by level of income restriction, and by initial rent;
- the total number of moderate income housing units, reported by number of bedrooms, by level of income restriction, and by initial rent;
- the number of residential units rented by individuals and families who participate in the housing choice voucher program, reported by number of bedrooms;
- a copy of the ground lease; and
- a copy of the partnership agreement or other governing agreement executed by the corporation for the public facility, if any.

The bill establishes that the submitted reports are subject to disclosure under state public information law, except that tenant identifying information may be redacted, and requires TDHCA to post a copy of the report it receives on its website. The initial audit report is due not later than June 1 of the year following the first anniversary of either the date of acquisition of an occupied development or the date a new development first becomes occupied by one or more tenants, as applicable. The reporting requirements and related provisions apply to all multifamily residential developments owned by a PFC, regardless of the date of approval or acquisition. For a development approved or acquired before the bill's effective date, the deadline for submission of the initial audit report is the later of June 1, 2024, or the deadline otherwise prescribed by the bill. A tax exemption does not apply for a tax year in which a development subject to the audit reporting requirement does not submit the audit report or submits an audit report that does not establish the development's compliance with the applicable requirements.

C.S.H.B. 2071 requires a public facility user to be notified in writing by TDHCA or the appropriate appraisal district of an instance of noncompliance with applicable requirements and given 60 days after the day notice is received to cure the noncompliance. Requirements relating to the reservation of income-restricted residential units or income restrictions applicable to tenants of a multifamily residential development must be documented in a land use restriction agreement or a similar restrictive instrument that is recorded in the real property records of the county in which the development is located.

C.S.H.B. 2071 requires each lease agreement for a residential unit in an applicable development to prohibit landlord retaliation against a tenant or their guests based on the tenant's establishment, attempt to establish, or participation in a tenant organization. Such a lease agreement must require the landlord to give certain notice if the lease is not renewed and must provide that the following are the only circumstances under which the landlord may choose not to renew the lease:

- the tenant is in material noncompliance with the lease;
- the tenant committed one or more substantial violations of the lease;
- the tenant failed to provide required information on the income, composition, or eligibility of the tenant's household; or
- the tenant committed repeated minor violations of the lease that disrupt livability, adversely affect health and safety or the right to quiet enjoyment, interfere with management, or have an adverse financial effect.

The bill prohibits a tenant from waiving the lease protections.

C.S.H.B. 2071 expressly conditions the eligibility of a multifamily residential development owned by a PFC for the tax exemption on all of the aforementioned requirements being met. The

bill also requires, as a condition of tax exemption eligibility, that the PFC deliver 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 of the following:

- the corporation taking action to approve a new multifamily residential development or the acquisition of an occupied multifamily residential development; and
- any public hearing required to be held.

The bill revises the requirement for at least 50 percent of the units in a development owned by a PFC created by a housing authority to be reserved for occupancy by individuals and families earning less than 80 percent of area median family income by making it applicable with respect to any PFC and changing the threshold to 80 percent of AMI, adjusted for family size. The bill retains the requirement for a multifamily residential development that is owned by a PFC created by a housing authority to hold a public hearing, at a meeting of the authority's governing body, to approve the development.

C.S.H.B. 2071 further conditions eligibility for the tax exemption for an occupied multifamily residential development that is acquired by a PFC and not otherwise subject to a housing affordability land use agreement on one of the following conditions being satisfied:

- at least 50 percent of the units are reserved for occupancy as lower income housing units; or
- at least 20 percent of the units are reserved as such and 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 beginning not later than the first anniversary of the date of the acquisition and finishing not later than the third anniversary of such date.

C.S.H.B. 2071 establishes that an occupied multifamily residential development that is acquired by a PFC is eligible for a tax exemption for the one-year period following the date of the acquisition, regardless of whether the development complies with the applicable requirements. For a year following that initial year, the development is eligible only if it comes into compliance with the requirements not later than the first anniversary of the date of the acquisition. This provision applies only to a development that is acquired by a PFC on or after the bill's effective date.

C.S.H.B. 2071 exempts from all sales and use taxes the materials used by a person granted a possessory interest in the real property of a multifamily residential development by the PFC that owns the development because the materials are for the benefit of the PFC.

C.S.H.B. 2071 exempts from the additional tax exemption requirements a multifamily residential development that meets the following criteria:

- has at least 20 percent of its residential units reserved for public housing units;
- participates in the federal Rental Assistance Demonstration program;
- receives financial assistance administered under private activity bonds or receives financial assistance from another type of tax-exempt bond; or
- receives financial assistance administered under the low income housing tax credit program.

Definitions

C.S.H.B. 2071 sets out the following definitions, among others:

- “developer" means a private entity that constructs a development, including the rehabilitation, renovation, reconstruction, or repair of a development;
- "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);

- "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;
- "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; and
- "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.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.

COMPARISON OF ORIGINAL TO SUBSTITUTE

While C.S.H.B. 2071 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute revises the location restrictions for a multifamily residential development financed, owned, or operated by a PFC or its sponsor if the sponsor is not a housing authority. Whereas the introduced required the development to be in the sponsor's jurisdictional boundaries, the substitute requires the development to be in the sponsor's boundaries, without regard to whether the sponsor is authorized to own or provide services outside the boundaries of the sponsor.

Whereas the introduced conditioned the availability of the PFC tax exemption to an occupied multifamily residential development acquired by a PFC on the development's compliance with the applicable requirements not later than the first anniversary of the acquisition date, the substitute provides for a development's eligibility for the exemption for the one-year period following the date of the acquisition, regardless of whether the development complies with the requirements. However, the development must still come into compliance by that first anniversary to be eligible for an exemption in a subsequent year.

The substitute does not include the requirement from the introduced for written notice of a PFC's acquisition of an occupied multifamily residential development that is not otherwise subject to a land use restriction agreement to be given to the mayor of any municipality or county judge of any county for which the sponsor of the corporation was created, as applicable, and the presiding officer of the board of trustees of the school district not later than the 60th day before the acquisition date. The substitute requires instead that a PFC deliver written notice to the presiding officer of each applicable taxing unit's governing body at least 30 days before the date the PFC takes action to approve a new development or the acquisition of an occupied development and the date of any required public hearing.

With respect to tax exemption eligibility of an occupied development acquired by a PFC and not otherwise subject to a land use restriction agreement, the substitute does the following regarding a development that does not satisfy the criterion of having at least 50 percent of its units reserved for occupancy as lower income housing units:

- changes the amount required to be expended on specified actions as an alternative from not less than 15 percent of the total gross cost of the development in its entirety, as in the

introduced, to not less than 15 percent of total gross cost of the development as shown in the settlement statement;

- establishes a deadline not present in the introduced for the completion of the initial expenditures and construction activities, which is not later than the third anniversary of the acquisition date; and
- includes a requirement not present in the introduced for 20 percent of the development's units to be reserved for occupancy as lower income housing units.
-

The introduced and the substitute differ with respect to the additional tax exemption requirements as follows:

- the substitute clarifies that the area median income used to calculate a lower income housing unit is defined by the United States Department of Housing and Urban Development, and also defines moderate income housing unit to mean 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;
- the substitute revises the introduced version's requirement for the percentage of lower income housing units reserved in each category of units in the development, based on the number of bedrooms and bathrooms per unit, to be the same as the percentage of lower income housing units reserved in the development as a whole, by making the requirement also applicable to moderate income housing units and omitting the reference to bathrooms;
- the substitute includes a cap on the monthly rent charged for a moderate income housing unit, whereas the introduced did not;
- the substitute omits a provision of the introduced prohibiting monthly rent for a unit from exceeding an applicable housing choice voucher payment standard;
- the substitute replaces the introduced version's requirement for a public facility user, in calculating income for an applicable unit, to consider the income of each individual who will be living in the unit with a requirement for the public facility user to use a specified federal definition of annual income;
- the substitute includes as a condition on the prohibition against refusing to rent to housing choice voucher program participants that the assistance received by the participants is equal to or greater than the amount established as the maximum monthly rent for the applicable unit, whereas the introduced did not include this condition;
- with respect to the requirement for a public facility user to submit an annual audit report:
    - the substitute changes the submission deadline from April 1 of each year, as in the introduced, to June 1 of each year;
    - the substitute specifies that the report is prepared at the public facility user's expense and requires the person conducting the audit to have an established history of providing similar audits on housing compliance matters, which the introduced did not do;
    - the substitute establishes deadlines not in the introduced for submission of the initial report; and
    - the substitute establishes, in a provision not present in the introduced, that an exemption does not apply for a tax year in which a development does not submit the required audit report or submits an audit report that does not establish the required compliance;
    - the substitute changes the entity to which a public facility user is required to submit a report before the initial occupancy of an unoccupied development or not later than the 30th day after the date of acquisition of an occupied development, and the entity required to post such reports online and, if applicable, give notice of noncompliance, from the comptroller of public accounts, as in the introduced, to TDHCA; and

- whereas the introduced required a PFC to be given notice of noncompliance and 120 days in which to cure the noncompliance, the substitute requires a public facility user to be given the notice and 60 days in which to cure the noncompliance.

The substitute includes a requirement not in the introduced for requirements relating to the reservation of income-restricted units or income restrictions applicable to tenants to be documented in a land use restriction agreement or a similar restrictive instrument that is recorded in the real property records of the county in which the development is located.

The substitute makes certain revisions to the bill's saving provisions. The substitute includes provisions absent from the introduced specifying that the bill's provisions relating to the PFC tax exemption apply only to a multifamily residential development that is approved on or after the bill's effective date by a PFC or the sponsor of a PFC, except for the provisions requiring a PFC that owns or leases a development to a public facility user to post certain information online and requiring public facility users to submit certain reports. The initial audit report required by the bill for a development approved or acquired before the bill's effective date is required to be submitted the later of June 1, 2024, or the deadline otherwise prescribed by the bill.