

BILL ANALYSIS

Senate Research Center
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S.B. 1278
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Local Government
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Affordable housing projects in Texas are intended to utilize public-private partnerships whereby property and sales taxes are reduced or entirely waived for private developers, who, in turn, provide the public benefit of housing at rental rates affordable to Texans who are most economically disadvantaged. While these are laudable goals, the need for improvement has been recognized by a 2020 study by The University of Texas School of Law Entrepreneurship and Community Development Clinic.

Under current law, public facility corporations (PFCs) too often make the sole decision to grant tax breaks to developers to develop affordable housing, leaving all other affected taxing entities without a say in removing taxable properties from their tax rolls. This shifts the remainder of the tax burden to other property owners, residents, and businesses.

S.B. 1278 seeks to improve the PFC tool by increasing affordability requirements for PFC-owned properties and increasing reporting and transparency requirements for PFC-owned properties. S.B. 1278 also seeks to require that a PFC-owned property be located in the PFC sponsor's boundary, or have the consent of the taxing units who have the right to tax the property, if the property is located outside of the sponsor's boundaries.

As proposed, S.B. 1278 amends current law relating to certain public facilities used to provide affordable housing.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

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

(d) Authorizes a corporation or a sponsor to finance, own, or operate a multifamily residential development if the corporation or sponsor complies with all applicable provisions of Chapter 303 (Public Facility Corporations) and the development is located in the area of operation of the sponsor, if the sponsor is a housing authority, or in the jurisdictional boundaries of the sponsor, if the sponsor is not a housing authority.

SECTION 2. Amends the heading to Section 303.042, Local Government Code, to read as follows:

Sec. 303.042. TAXATION; EXEMPTION.

SECTION 3. Amends Subchapter B, Chapter 303, Local Government Code, by adding Section 303.0421 and adding a heading to that section, to read as follows:

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

SECTION 4. Amends Section 303.0421, Local Government Code, as added by this Act, by adding Subsections (a), (c), and (d), 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 exemption under Section 303.042(c) (relating to providing that a corporation is engaged exclusively in performance of charitable functions and is exempt from taxation) for an occupied multifamily residential development that is acquired by a corporation and to which Subsection (a) applies, notwithstanding Subsection (b), is available only if the development comes into compliance with the requirements of Subsection (b), as applicable, not later than the first anniversary of the date of the acquisition.

SECTION 5. Transfers Sections 303.042(d), (e), and (f), Local Government Code, to Section 303.0421, Local Government Code, 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), 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 50 percent of the 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, rather than less than 80 percent of the area median family income; and
- (3) 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) 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 in which the development is located are given written notice not later than the 60th day before the date of the acquisition of the property; and

(B) either:

(i) not less than 15 percent of the total gross cost of the existing development in its entirety 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 diligently continued until completed; or

(ii) at least 50 percent of the units are reserved for occupancy as lower income housing units, as defined under Section 303.0425.

Deletes existing text providing that an exemption under this section for a municipality residential development which is owned by a public facility corporation created by a housing authority under this chapter and which does not have at least 20 percent of its units reserved for public housing units, applies only in certain circumstances.

(e) Redefines "public housing unit." Makes a conforming change.

(f) Requires, during the period, rather than the period of time, that a corporation owns a particular public facility that is a multifamily residential development, notwithstanding certain statutes:

(1) creates this subdivision from existing text; and

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

Makes conforming changes.

SECTION 6. Amends Subchapter B, Chapter 303, Local Government Code, by adding Section 303.0425, as follows:

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

(b) Requires that not less than 10 percent of the residential units in a development be reserved as lower income housing units unless a majority of the members of the board of the corporation are elected officials or 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.

(c) Requires that 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, be the same as the percentage of lower income housing units reserved in the development as a whole.

(d) Prohibits the monthly rent charged for a lower income housing unit from exceeding 30 percent of 60 percent of the area median income, adjusted for family size, or if the unit is occupied by a participant in the housing choice voucher program, the payment standard used by the housing authority that administers the voucher for the unit.

(e) Requires the public facility user, in calculating the income of an individual or family for a lower income housing unit, to consider the income of each individual

who will be living in the unit. 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, apply in determining whether the unit is authorized to still qualify as a lower income housing unit.

(f) Prohibits a public facility user from refusing to rent a residential unit to an individual or family because the individual or family participates in the housing choice voucher program or from 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.

(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 compliance with the requirements of this section and policies regarding tenant participation in the housing choice voucher program.

(h) Requires a 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 multifamily residential development's acceptance of tenants in the housing choice voucher program.

(i) Requires a public facility user of a multifamily residential development to:

(1) not later than April 1 of each year, submit to the chief appraiser of the appraisal district in which the development is located an audit report for a compliance audit conducted by an independent auditor or compliance expert to determine whether the public facility user is in compliance with the requirements of this section; and

(2) before the initial occupancy of an unoccupied development or not later than the 30th day after the date of acquisition of an occupied development, submit to the Comptroller of Public Accounts of the State of Texas (comptroller) a report that includes, for each development:

(A) the name of the development;

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

(C) the name of the developer;

(D) the total number of residential units, reported by number of bedrooms;

(E) the total number of lower income housing units, reported by number of bedrooms, by level of income restriction, and by initial rent;

(F) the total number of residential units that are not lower income housing units but that are reserved for occupancy by an individual or family earning not more than 80 percent of the area median income, adjusted for family size, reported by number of bedrooms, by level of income restriction, and by initial rent;

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

(H) a copy of the ground lease; and

(I) a copy of the partnership agreement or other governing agreement executed by the corporation for the public facility, if any.

(j) Provides that the reports submitted under Subsection (i) are public information and 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. Requires the comptroller to post a copy of the report received under Subsection (i)(2) on its Internet website.

(k) 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 after the required cure period;

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

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

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

(i) disrupt the livability of the property;

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

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

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

(3) the landlord, to not renew the lease, 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.

(l) Prohibits a tenant from waiving the protections provided by Subsection (k).

(m) Requires that a public facility corporation be given:

(1) written notice from the comptroller or appropriate appraisal district of an instance of noncompliance with this section; and

(2) 120 days after the day notice is received under Subdivision (1) to cure the matter that is the subject of the notice.

SECTION 7. 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:

(1) makes no changes to this subdivision; 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 income, adjusted for family size, rather than 80 percent of the area median family income.

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, and which does not have at least 20 percent of its units reserved for public housing units, applies only in certain circumstances. Makes nonsubstantive changes.

(d) Redefines "public housing unit."

SECTION 8. (a) Provides that, subject to Subsections (b) and (c) of this section, Section 303.0421, Local Government Code, as added by this Act, applies only to a tax imposed for a tax year beginning on or after the effective date of this Act.

(b) Makes application of Section 303.0421(c), Local Government Code, as added by this Act, prospective.

(c) Makes application of Section 303.0421(d), Local Government Code, as added by this Act, prospective.

SECTION 9. Effective date: upon passage or September 1, 2023.