88R3102 JAM-F

By:  Bettencourt S.B. No. 1278

A BILL TO BE ENTITLED

AN ACT

relating to certain public facilities used to provide affordable housing.

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

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 if:

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

(2)  the development is located:

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

(B)  in the jurisdictional boundaries of the sponsor, if the sponsor is not a housing authority.

SECTION 2.  The heading to Section 303.042, Local Government Code, is amended to read as follows:

 Sec. 303.042.  TAXATION; EXEMPTION.

SECTION 3.  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 4.  Section 303.0421, Local Government Code, as added by this Act, is amended by adding Subsections (a), (c), and (d) 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 exemption under Section 303.042(c) for an occupied multifamily residential development that is acquired by a corporation and to which Subsection (a) applies 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.  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), 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 50 percent of the units in the multifamily residential development are reserved for occupancy by individuals and families earning not more [~~less~~] than 80 percent of the area median [~~family~~] income, adjusted for family size; 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, 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.

(e)  For the purposes of Subsection (a) [~~(d)~~], 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) [~~Subsections (a) and (b)~~], during the  period [~~of time~~] that a corporation owns a particular public  facility that is a multifamily residential development:

(1)  [~~,~~] 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 6.  Subchapter B, Chapter 303, Local Government Code, is amended by adding Section 303.0425 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.

(4)  "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)  Not less than 10 percent of the residential units in a development must be reserved as lower income housing units unless:

(1)  a majority of the members of the board of the corporation are elected officials; or

(2)  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)  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, must be the same as the percentage of lower income housing units reserved in the development as a whole.

(d)  The monthly rent charged for a lower income housing unit may not exceed:

(1)  30 percent of 60 percent of the area median income, adjusted for family size; or

(2)  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)  In calculating the income of an individual or family for a lower income housing unit, the public facility user must consider the income of each individual who will be living in the unit. If the income of a tenant exceeds an applicable limit, 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 income housing unit.

(f)  A 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.

(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)  A 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)  A public facility user of a multifamily residential development must:

(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 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)  The reports submitted under Subsection (i) are public information and subject to disclosure under Chapter 552, Government Code, except that information containing tenant names, unit numbers, or other tenant identifying information may be redacted. The comptroller shall post a copy of the report received under Subsection (i)(2) on its Internet website.

(k)  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 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)  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.

(l)  A tenant may not waive the protections provided by Subsection (k).

(m)  A public facility corporation must 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.  Sections 392.005(c) and (d), Local Government Code, are amended 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[~~,~~] 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.

(d)  For the purposes of Subsection (c), 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 8.  (a) 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)  Section 303.0421(c), Local Government Code, as added by this Act, applies only to a multifamily residential development that is approved by a housing authority on or after the effective date of this Act. A multifamily residential development that is approved by a housing authority before the effective date of this Act is governed by the law in effect on the date the development was approved by the housing authority, and the former law is continued in effect for that purpose.

(c)  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.

SECTION 9.  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.