

By: Jetton, Harris of Anderson, DeAyala,
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H.B. No. 2071

Substitute the following for H.B. No. 2071:

By: Lozano

C.S.H.B. No. 2071

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 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. 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

1 BY PUBLIC FACILITY CORPORATIONS.

2 SECTION 4. Section 303.0421, Local Government Code, as
3 added by this Act, is amended by adding Subsections (a), (c), and
4 (d) to read as follows:

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

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

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

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

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

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

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

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

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

8 SECTION 5. Sections 303.042(d), (e), and (f), Local
9 Government Code, are transferred to Section 303.0421, Local
10 Government Code, as added by this Act, redesignated as Sections
11 303.0421(b), (e), and (f), Local Government Code, and amended to
12 read as follows:

13 (b) Notwithstanding Section 303.042(c) and subject to
14 Subsections (c) and (d) of this section, an ~~[(d) An]~~ exemption under
15 Section 303.042(c) ~~[this section]~~ for a multifamily residential
16 development to which Subsection (a) applies is available ~~[which is~~
17 owned by a public facility corporation created by a housing
18 authority under this chapter and which does not have at least 20
19 percent of its units reserved for public housing units, applies]
20 only if:

21 (1) the requirements under Section 303.0425 are met
22 ~~[housing authority holds a public hearing, at a regular meeting of~~
23 ~~the authority's governing body, to approve the development]; ~~and~~~~

24 (2) at least 50 percent of the units in the multifamily
25 residential development are reserved for occupancy by individuals
26 and families earning not more ~~[less]~~ than 80 percent of the area
27 median ~~[family]~~ income, adjusted for family size;

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

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

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

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

14 (A) not less than:

15 (i) 15 percent of the total gross cost of
16 the existing development, as shown in the settlement statement, is
17 expended on rehabilitating, renovating, reconstructing, or
18 repairing the development, with initial expenditures and
19 construction activities:

20 (a) beginning not later than the first
21 anniversary of the date of the acquisition; and

22 (b) finishing not later than the third
23 anniversary of the date of the acquisition; and

24 (ii) 20 percent of the units are reserved
25 for occupancy as lower income housing units, as defined under
26 Section 303.0425; or

27 (B) at least 50 percent of the units are reserved

1 for occupancy as lower income housing units, as defined under
2 Section 303.0425.

3 (e) For the purposes of Subsection (a) [~~(d)~~], a "public
4 housing unit" is a residential [~~dwelling~~] unit for which the
5 landlord receives a public housing operating subsidy. It does not
6 include a unit for which payments are made to the landlord under the
7 federal Section 8 Housing Choice Voucher Program.

8 (f) Notwithstanding Sections 303.042(a) and (b)
9 [~~Subsections (a) and (b)~~], during the period [~~of time~~] that a
10 corporation owns a particular public facility that is a multifamily
11 residential development:

12 (1) [~~r~~] a leasehold or other possessory interest in
13 the real property of the public facility granted by the corporation
14 shall be treated in the same manner as a leasehold or other
15 possessory interest in real property granted by an authority under
16 Section 379B.011(b); and

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

22 SECTION 6. Subchapter B, Chapter 303, Local Government
23 Code, is amended by adding Section 303.0425 to read as follows:

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

27 (1) "Developer" means a private entity that constructs

1 a development, including the rehabilitation, renovation,
2 reconstruction, or repair of a development.

3 (2) "Housing choice voucher program" means the housing
4 choice voucher program under Section 8, United States Housing Act
5 of 1937 (42 U.S.C. Section 1437f).

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

11 (4) "Moderate income housing unit" means a residential
12 unit reserved for occupancy by an individual or family earning not
13 more than 80 percent of the area median income, adjusted for family
14 size, as defined by the United States Department of Housing and
15 Urban Development.

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

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

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

24 (2) the development is approved by the governing body
25 of the municipality in which the development is located or, if the
26 development is not located in a municipality, the county in which
27 the development is located.

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

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

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

11 (2) for a moderate income housing unit, 30 percent of
12 80 percent of the area median income, adjusted for family size, as
13 defined by the United States Department of Housing and Urban
14 Development.

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

24 (f) The public facility user may not:

25 (1) refuse to rent a residential unit to an individual
26 or family because the individual or family participates in the
27 housing choice voucher program, if the assistance received by the

1 individual or family through the program is equal to or greater than
2 the amount established as the maximum monthly rent for the
3 applicable unit under Subsection (d); or

4 (2) use a financial or minimum income standard that
5 requires an individual or family participating in the housing
6 choice voucher program to have a monthly income of more than 250
7 percent of the individual's or family's share of the total monthly
8 rent payable for a unit.

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

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

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

17 (h) The public facility user shall:

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

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

24 (i) The public facility user must:

25 (1) not later than June 1 of each year, submit to the
26 chief appraiser of the appraisal district in which the development
27 is located an audit report for a compliance audit, prepared at the

1 expense of the public facility user and conducted by an independent
2 auditor or compliance expert with an established history of
3 providing similar audits on housing compliance matters, to
4 determine whether the public facility user is in compliance with
5 the requirements of this section; and

6 (2) before the initial occupancy of an unoccupied
7 development or not later than the 30th day after the date of
8 acquisition of an occupied development, submit to the Texas
9 Department of Housing and Community Affairs a report that includes,
10 for each development:

11 (A) the name of the development;

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

14 (C) the name of the developer;

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

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

20 (F) the total number of moderate income housing
21 units, reported by number of bedrooms, by level of income
22 restriction, and by initial rent;

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

26 (H) a copy of the ground lease; and

27 (I) a copy of the partnership agreement or other

1 governing agreement executed by the corporation for the public
2 facility, if any.

3 (j) The initial audit report required to be submitted under
4 Subsection (i)(1) by a public facility user to the chief appraiser
5 of the appraisal district is due not later than June 1 of the year
6 following the first anniversary of:

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

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

12 (k) An exemption under Section 303.042(c) does not apply for
13 a tax year in which a multifamily residential development that is
14 owned by a public facility corporation created under this chapter
15 and that is required to submit an audit report under Subsection
16 (i)(1):

17 (1) does not submit the required audit report; or

18 (2) submits an audit report that does not establish
19 that the development is in compliance with the requirements of this
20 section.

21 (l) The reports submitted under Subsection (i) are subject
22 to disclosure under Chapter 552, Government Code, except that
23 information containing tenant names, unit numbers, or other tenant
24 identifying information may be redacted. The Texas Department of
25 Housing and Community Affairs shall post a copy of the report
26 received under Subsection (i)(2) on its Internet website.

27 (m) Each lease agreement for a residential unit in a

1 multifamily residential development subject to this section must
2 provide that:

3 (1) the landlord may not retaliate against the tenant
4 or the tenant's guests by taking an action because the tenant
5 established, attempted to establish, or participated in a tenant
6 organization;

7 (2) the landlord may only choose to not renew the lease
8 if the tenant:

9 (A) is in material noncompliance with the lease,
10 including nonpayment of rent after the required cure period;

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

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

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

17 (i) disrupt the livability of the property;

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

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

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

26 (3) to not renew the lease, the landlord must serve a
27 written notice of proposed nonrenewal on the tenant not later than

1 the 30th day before the effective date of nonrenewal.

2 (n) A tenant may not waive the protections provided by
3 Subsection (m).

4 (o) A public facility user must be given:

5 (1) written notice from the Texas Department of
6 Housing and Community Affairs or appropriate appraisal district of
7 an instance of noncompliance with this section; and

8 (2) 60 days after the day notice is received under
9 Subdivision (1), to cure the matter that is the subject of the
10 notice.

11 (p) Requirements under this subchapter relating to the
12 reservation of income-restricted residential units or income
13 restrictions applicable to tenants of a multifamily residential
14 development subject to this subchapter must be documented in a land
15 use restriction agreement or a similar restrictive instrument that
16 is recorded in the real property records of the county in which the
17 development is located.

18 SECTION 7. Sections 392.005(c) and (d), Local Government
19 Code, are amended to read as follows:

20 (c) An exemption under this section for a multifamily
21 residential development which is owned by [~~(i) a public facility~~
22 ~~corporation created by a housing authority under Chapter 303, (ii)]
23 a housing development corporation[~~7~~] or [~~(iii)~~] a similar entity
24 created by a housing authority, other than a public facility
25 corporation created by a housing authority under Chapter 303, and
26 which does not have at least 20 percent of its residential units
27 reserved for public housing units, applies only if:~~

1 (1) the authority holds a public hearing, at a regular
2 meeting of the authority's governing body, to approve the
3 development; and

4 (2) at least 50 percent of the units in the multifamily
5 residential development are reserved for occupancy by individuals
6 and families earning less than 80 percent of the area median
7 ~~[family]~~ income, adjusted for family size.

8 (d) For the purposes of Subsection (c), a "public housing
9 unit" is a residential ~~[dwelling]~~ unit for which the owner receives
10 a public housing operating subsidy. It does not include a unit for
11 which payments are made to the landlord under the federal Section 8
12 Housing Choice Voucher Program.

13 SECTION 8. (a) Subject to Subsections (b), (c), and (d) of
14 this section, Sections 303.0421 and 303.0425, Local Government
15 Code, as added by this Act, apply only to a tax imposed for a tax
16 year beginning on or after the effective date of this Act.

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

1 for that purpose.

2 (c) Subject to Subsection (d) of this section, Section
3 303.0421(d), Local Government Code, as added by this Act, applies
4 only to an occupied multifamily residential development that is
5 acquired by a public facility corporation on or after the effective
6 date of this Act. An occupied multifamily residential development
7 that is acquired by a public facility corporation before the
8 effective date of this Act is governed by the law in effect on the
9 date the development was acquired by the public facility
10 corporation, and the former law is continued in effect for that
11 purpose.

12 (d) Notwithstanding any other provision of this section:

13 (1) Sections 303.0425(g), (i), (j), (k), and (l),
14 Local Government Code, as added by this Act, apply to all
15 multifamily residential developments owned by a public facility
16 corporation; and

17 (2) the initial audit report required to be submitted
18 under Section 303.0425(i)(1), Local Government Code, as added by
19 this Act, by a public facility user of a multifamily residential
20 development that was approved or acquired by a public facility
21 corporation before the effective date of this Act must be submitted
22 by the later of:

23 (A) the date established by Section 303.0425(j),
24 Local Government Code, as added by this Act; or

25 (B) June 1, 2024.

26 SECTION 9. This Act takes effect immediately if it receives
27 a vote of two-thirds of all the members elected to each house, as

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1 provided by Section 39, Article III, Texas Constitution. If this
2 Act does not receive the vote necessary for immediate effect, this
3 Act takes effect September 1, 2023.