

By: Jetton

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 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

1 added by this Act, is amended by adding Subsections (a), (c), and  
2 (d) to read as follows:

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

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

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

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

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

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

22 (d) Notwithstanding Subsection (b), an exemption under  
23 Section 303.042(c) for an occupied multifamily residential  
24 development that is acquired by a corporation and to which  
25 Subsection (a) applies is available only if the development comes  
26 into compliance with the requirements of Subsection (b), as  
27 applicable, not later than the first anniversary of the date of the

1 acquisition.

2 SECTION 5. Sections 303.042(d), (e), and (f), Local  
3 Government Code, are transferred to Section 303.0421, Local  
4 Government Code, as added by this Act, redesignated as Sections  
5 303.0421(b), (e), and (f), Local Government Code, and amended to  
6 read as follows:

7 (b) Notwithstanding Section 303.042(c) and subject to  
8 Subsections (c) and (d), an [(d) An] exemption under Section  
9 303.042(c) [this section] for a multifamily residential  
10 development to which Subsection (a) applies is available [which is  
11 owned by a public facility corporation created by a housing  
12 authority under this chapter and which does not have at least 20  
13 percent of its units reserved for public housing units, applies]  
14 only if:

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

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

22 (3) for an occupied multifamily residential  
23 development that is acquired by a corporation and not otherwise  
24 subject to a land use restriction agreement under Section 2306.185,  
25 Government Code:

26 (A) the mayor of any municipality or county judge  
27 of any county for which the sponsor of the corporation was created,

1 as applicable, and the presiding officer of the board of trustees of  
2 the school district in which the development is located are given  
3 written notice not later than the 60th day before the date of the  
4 acquisition of the property; and

5 (B) either:

6 (i) not less than 15 percent of the total  
7 gross cost of the existing development in its entirety is expended  
8 on rehabilitating, renovating, reconstructing, or repairing the  
9 development, with initial expenditures and construction activities  
10 beginning not later than the first anniversary of the date of the  
11 acquisition and diligently continued until completed; or

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

15 (e) For the purposes of Subsection (a) [~~(a)~~], a "public  
16 housing unit" is a residential [~~dwelling~~] unit for which the  
17 landlord receives a public housing operating subsidy. It does not  
18 include a unit for which payments are made to the landlord under the  
19 federal Section 8 Housing Choice Voucher Program.

20 (f) Notwithstanding Sections 303.042(a) and (b)  
21 [~~Subsections (a) and (b)~~], during the period [~~of time~~] that a  
22 corporation owns a particular public facility that is a  
23 multifamily residential development:

24 (1) [~~7~~] a leasehold or other possessory interest in  
25 the real property of the public facility granted by the corporation  
26 shall be treated in the same manner as a leasehold or other  
27 possessory interest in real property granted by an authority under

1 Section 379B.011(b); and

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

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

9 Sec. 303.0425. ADDITIONAL REQUIREMENTS FOR BENEFICIAL TAX  
10 TREATMENT RELATING TO CERTAIN PUBLIC FACILITIES. (a) In this  
11 section:

12 (1) "Developer" means a private entity that constructs  
13 a development, including the rehabilitation, renovation,  
14 reconstruction, or repair of a development.

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

18 (3) "Lower income housing unit" means a residential  
19 unit reserved for occupancy by an individual or family earning not  
20 more than 60 percent of the area median income, adjusted for family  
21 size.

22 (4) "Public facility user" means a public-private  
23 partnership entity or a developer or other private entity that has  
24 an ownership interest or a leasehold or other possessory interest  
25 in a public facility that is a multifamily residential development.

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

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

3           (2) the development is approved by the governing body  
4 of the municipality in which the development is located or, if the  
5 development is not located in a municipality, the county in which  
6 the development is located.

7           (c) The percentage of lower income housing units reserved in  
8 each category of units in the development, based on the number of  
9 bedrooms and bathrooms per unit, must be the same as the percentage  
10 of lower income housing units reserved in the development as a  
11 whole.

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

14           (1) 30 percent of 60 percent of the area median income,  
15 adjusted for family size; or

16           (2) if the unit is occupied by a participant in the  
17 housing choice voucher program, the payment standard used by the  
18 housing authority that administers the voucher for the unit.

19           (e) In calculating the income of an individual or family for  
20 a lower income housing unit, the public facility user must consider  
21 the income of each individual who will be living in the unit. If the  
22 income of a tenant exceeds an applicable limit, the provisions of  
23 Section 42(g)(2)(D), Internal Revenue Code of 1986, apply in  
24 determining whether the unit may still qualify as a lower income  
25 housing unit.

26           (f) A public facility user may not:

27           (1) refuse to rent a residential unit to an individual

1 or family because the individual or family participates in the  
2 housing choice voucher program; or

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

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

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

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

16 (h) A public facility user shall:

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

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

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

25 (1) not later than April 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 conducted by an

1 independent auditor or compliance expert to determine whether the  
2 public facility user is in compliance with the requirements of this  
3 section; and

4 (2) before the initial occupancy of an unoccupied  
5 development or not later than the 30th day after the date of  
6 acquisition of an occupied development, submit to the comptroller a  
7 report that includes, for each development:

8 (A) the name of the development;

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

11 (C) the name of the developer;

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

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

17 (F) the total number of residential units that  
18 are not lower income housing units but that are reserved for  
19 occupancy by an individual or family earning not more than 80  
20 percent of the area median income, adjusted for family size,  
21 reported by number of bedrooms, by level of income restriction, and  
22 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 reports submitted under Subsection (i) are public  
4 information and subject to disclosure under Chapter 552, Government  
5 Code, except that information containing tenant names, unit  
6 numbers, or other tenant identifying information may be redacted.  
7 The comptroller shall post a copy of the report received under  
8 Subsection (i)(2) on its Internet website.

9 (k) Each lease agreement for a residential unit in a  
10 multifamily residential development subject to this section must  
11 provide that:

12 (1) the landlord may not retaliate against the tenant  
13 or the tenant's guests by taking an action because the tenant  
14 established, attempted to establish, or participated in a tenant  
15 organization;

16 (2) the landlord may only choose to not renew the lease  
17 if the tenant:

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

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

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

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

26 (i) disrupt the livability of the property;

27 (ii) adversely affect the health and safety

1 of any person or the right to quiet enjoyment of the leased premises  
2 and related development facilities;

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

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

8 (3) to not renew the lease, the landlord must serve a  
9 written notice of proposed nonrenewal on the tenant not later than  
10 the 30th day before the effective date of nonrenewal.

11 (1) A tenant may not waive the protections provided by  
12 Subsection (k).

13 (m) A public facility corporation must be given:

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

17 (2) 120 days after the day notice is received under  
18 Subdivision (1) to cure the matter that is the subject of the  
19 notice.

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

22 (c) An exemption under this section for a multifamily  
23 residential development which is owned by [~~(i) a public facility~~  
24 ~~corporation created by a housing authority under Chapter 303, (ii)]  
25 a housing development corporation[~~7~~] or [~~(iii)~~] a similar entity  
26 created by a housing authority, other than a public facility  
27 corporation created by a housing authority under Chapter 303, and~~

1 which does not have at least 20 percent of its residential units  
2 reserved for public housing units, applies only if:

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

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

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

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

19 (b) Section 303.0421(c), Local Government Code, as added by  
20 this Act, applies only to a multifamily residential development  
21 that is approved by a housing authority on or after the effective  
22 date of this Act. A multifamily residential development that is  
23 approved by a housing authority before the effective date of this  
24 Act is governed by the law in effect on the date the development was  
25 approved by the housing authority, and the former law is continued  
26 in effect for that purpose.

27 (c) Section 303.0421(d), Local Government Code, as added by

1 this Act, applies only to an occupied multifamily residential  
2 development that is acquired by a public facility corporation on or  
3 after the effective date of this Act. An occupied multifamily  
4 residential development that is acquired by a public facility  
5 corporation before the effective date of this Act is governed by the  
6 law in effect on the date the development was acquired by the public  
7 facility corporation, and the former law is continued in effect for  
8 that purpose.

9       SECTION 9. This Act takes effect immediately if it receives  
10 a vote of two-thirds of all the members elected to each house, as  
11 provided by Section 39, Article III, Texas Constitution. If this  
12 Act does not receive the vote necessary for immediate effect, this  
13 Act takes effect September 1, 2023.