

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

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H.B. No. 2071

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to certain public facilities used to provide affordable  
3 housing.

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

5 SECTION 1. Section 303.021, Local Government Code, is  
6 amended by adding Subsection (d) to read as follows:

7 (d) A corporation or a sponsor may finance, own, or operate  
8 a multifamily residential development only if:

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

11 (2) the development is located:

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

14 (B) if the sponsor is not a housing authority,  
15 inside the boundaries of the sponsor, without regard to whether the  
16 sponsor is authorized to own property or provide services outside  
17 the boundaries of the sponsor.

18 SECTION 2. Subchapter B, Chapter 303, Local Government  
19 Code, is amended by adding Section 303.0415 to read as follows:

20 Sec. 303.0415. APPLICABILITY OF LAWS RELATING TO CONFLICT  
21 OF INTEREST. A member of the board of a corporation or a member of  
22 the governing body of a sponsor of a corporation is subject to the  
23 same restrictions as a local public official under Chapter 171.

24 SECTION 3. The heading to Section 303.042, Local Government

1 Code, is amended to read as follows:

2 Sec. 303.042. TAXATION; EXEMPTION.

3 SECTION 4. Subchapter B, Chapter 303, Local Government  
4 Code, is amended by adding Section 303.0421, and a heading is added  
5 to that section to read as follows:

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

8 SECTION 5. Section 303.0421, Local Government Code, as  
9 added by this Act, is amended by adding Subsections (a), (c), (d),  
10 (f-1), (f-2), (g), and (h) to read as follows:

11 (a) This section applies to a multifamily residential  
12 development that is owned by a corporation created under this  
13 chapter, except that this section does not apply to a multifamily  
14 residential development that:

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

17 (2) participates in the Rental Assistance  
18 Demonstration program administered by the United States Department  
19 of Housing and Urban Development;

20 (3) receives financial assistance administered under  
21 Chapter 1372, Government Code, or receives financial assistance  
22 from another type of tax-exempt bond; or

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

25 (c) A multifamily residential development that is owned by a  
26 corporation created under this chapter by a housing authority and  
27 to which Subsection (a) applies must hold a public hearing, at a

1 meeting of the authority's governing body, to approve the  
2 development.

3 (d) Notwithstanding Subsection (b), an occupied multifamily  
4 residential development that is acquired by a corporation and to  
5 which Subsection (a) applies is eligible for an exemption under  
6 Section 303.042(c) for:

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

10 (2) a year following the year described by Subdivision  
11 (1) only if the development comes into compliance with the  
12 requirements of Subsection (b) not later than the first anniversary  
13 of the date of the acquisition.

14 (f-1) Subsection (f) does not apply to taxes imposed by a  
15 conservation and reclamation district created under Section 52,  
16 Article III, or Section 59, Article XVI, Texas Constitution, that  
17 provides water, sewer, or drainage services to a public facility  
18 if:

19 (1) the district has outstanding bond indebtedness;  
20 and

21 (2) when the facility is combined with other existing  
22 or proposed public facilities in the district, the application of  
23 Subsection (f) would result in the aggregate loss of at least 10  
24 percent of the total assessed value of all property located in the  
25 district.

26 (f-2) Subsection (f-1) does not apply if the corporation has  
27 entered into a written agreement with the district to make a payment

1 to the district in lieu of taxation, in the amount specified in the  
2 agreement.

3 (g) An exemption under Section 303.042(c) for a multifamily  
4 residential development to which Subsection (a) applies expires:

5 (1) for an occupied multifamily residential  
6 development that is acquired by a corporation, on the 10th  
7 anniversary of the date of the acquisition by the corporation; and

8 (2) for a multifamily residential development not  
9 described by Subdivision (1), on the 12th anniversary of the date  
10 the development receives, from the corporation or the corporation's  
11 sponsor, the final approval under this chapter that is necessary to  
12 obtain the exemption.

13 (h) This subsection and Subsection (f) expire December 31,  
14 2025.

15 SECTION 6. Section 303.042(c), Local Government Code, is  
16 amended to read as follows:

17 (c) Subject to Section 303.0421(g), a [A] corporation is  
18 engaged exclusively in performance of charitable functions and is  
19 exempt from taxation by this state or a municipality or other  
20 political subdivision of this state. Bonds issued by a corporation  
21 under this chapter, a transfer of the bonds, interest on the bonds,  
22 and a profit from the sale or exchange of the bonds are exempt from  
23 taxation by this state or a municipality or other political  
24 subdivision of this state.

25 SECTION 7. Sections 303.042(d), (e), and (f), Local  
26 Government Code, are transferred to Section 303.0421, Local  
27 Government Code, as added by this Act, redesignated as Sections

1 303.0421(b), (e), and (f), Local Government Code, and amended to  
2 read as follows:

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

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

14 (2) at least:

15 (A) 12 percent of the units in the multifamily  
16 residential development are reserved for occupancy:

17 (i) as very low income housing units, as  
18 defined under Section 303.0425; or

19 (ii) by participants in the housing choice  
20 voucher program;

21 (B) 12 percent of the units in the multifamily  
22 residential development are reserved for occupancy as lower income  
23 housing units, as defined under Section 303.0425; and

24 (C) 12 ~~[50]~~ percent of the units in the  
25 multifamily residential development are reserved for occupancy as  
26 moderate income housing units, as defined under Section 303.0425;  
27 ~~[by individuals and families earning less than 80 percent of the~~

1 ~~area median family income]~~

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

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

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

11 (4) the multifamily residential development is  
12 approved by the governing body of the municipality, if any, the  
13 county, and the school district in which the development is  
14 located;

15 (5) for an occupied multifamily residential  
16 development that is acquired by a corporation and not otherwise  
17 subject to a land use restriction agreement under Section 2306.185,  
18 Government Code:

19 (A) not less than 15 percent of the total gross  
20 cost of the existing development, as shown in the settlement  
21 statement, is expended on rehabilitating, renovating,  
22 reconstructing, or repairing the development, with initial  
23 expenditures and construction activities:

24 (i) beginning not later than the first  
25 anniversary of the date of the acquisition; and

26 (ii) finishing not later than the third  
27 anniversary of the date of the acquisition; or

1           (B) at least 25 percent of the units are reserved  
2 for occupancy as lower income housing units, as defined under  
3 Section 303.0425, and the development is approved by the governing  
4 body of the municipality in which the development is located or, if  
5 the development is not located in a municipality, the county in  
6 which the development is located; and

7           (6) before final approval of the development:

8           (A) the corporation or corporation's sponsor  
9 conducts, or obtains from a professional entity that has experience  
10 underwriting affordable multifamily residential developments and  
11 does not have financial interests in the applicable development,  
12 public facility user, or developer, an underwriting assessment of  
13 the proposed development to determine the appropriate category of  
14 income-restricted units to require at the development; and

15           (B) based on the assessment conducted under  
16 Paragraph (A), the corporation makes a good faith determination  
17 that the total annual amount of rent reduction on the  
18 income-restricted units provided at the development will be not  
19 less than 60 percent of the estimated amount of the annual ad  
20 valorem taxes that would be imposed on the property without an  
21 exemption under Section 303.042(c), for:

22           (i) the first three years after the rent  
23 stabilization period, for newly constructed developments; and

24           (ii) the second, third, and fourth years  
25 after the date of acquisition by the corporation, for developments  
26 occupied at the time of acquisition.

27           (e) For the purposes of Subsection (a) [~~(d)~~], a "public

1 housing unit" is a residential [~~dwelling~~] unit for which the  
2 landlord receives a public housing operating subsidy. It does not  
3 include a unit for which payments are made to the landlord under the  
4 federal Section 8 Housing Choice Voucher Program.

5 (f) Notwithstanding Sections 303.042(a) and (b) and subject  
6 to Subsection (f-1) [~~Subsections (a) and (b)~~], during the period  
7 [~~of time~~] that a corporation owns a particular public facility that  
8 is a multifamily residential development:

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

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

19 SECTION 8. Subchapter B, Chapter 303, Local Government  
20 Code, is amended by adding Sections 303.0425 and 303.0426 to read as  
21 follows:

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

25 (1) "Department" means the Texas Department of Housing  
26 and Community Affairs.

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



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

3 (3) "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 (4) "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 (5) "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 (6) "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 (7) "Very low income housing unit" means a residential  
21 unit reserved for occupancy by an individual or family earning not  
22 more than 50 percent of the area median income, adjusted for family  
23 size, as defined by the United States Department of Housing and  
24 Urban Development.

25 (b) If a majority of the members of the board of the  
26 corporation are not elected officials, the development must be  
27 approved by the governing body of the municipality in which the

1 development is located or, if the development is not located in a  
2 municipality, the county in which the development is located.

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

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

9 (1) for a very low income housing unit, 30 percent of  
10 50 percent of the area median income, adjusted for family size, as  
11 defined by the United States Department of Housing and Urban  
12 Development;

13 (2) for a lower income housing unit, 30 percent of 60  
14 percent of the area median income, adjusted for family size, as  
15 defined by the United States Department of Housing and Urban  
16 Development; or

17 (3) for a moderate income housing unit, 30 percent of  
18 80 percent of the area median income, adjusted for family size, as  
19 defined by the United States Department of Housing and Urban  
20 Development.

21 (e) In calculating the income of an individual or family for  
22 a very low, lower, or moderate income housing unit, the public  
23 facility user must use the definition of annual income described in  
24 24 C.F.R. Section 5.609, as implemented by the United States  
25 Department of Housing and Urban Development. If the income of a  
26 tenant exceeds an applicable limit at the time of the renewal of a  
27 lease agreement for a residential unit, the provisions of Section

1 42(g)(2)(D), Internal Revenue Code of 1986, apply in determining  
2 whether the unit may still qualify as a very low, lower, or moderate  
3 income housing unit.

4 (f) The public facility user may not:

5 (1) refuse to rent a residential unit to an individual  
6 or family because the individual or family participates in the  
7 housing choice voucher program; or

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

13 (f-1) A public facility user may require an individual or  
14 family participating in the housing choice voucher program to pay  
15 the difference between the monthly rent for the applicable unit and  
16 the amount of the monthly voucher if the amount of the voucher is  
17 less than the rent.

18 (g) A corporation that owns or leases to a public facility  
19 user a public facility used as a multifamily residential  
20 development shall publish on its Internet website information about  
21 the development's:

22 (1) compliance with the requirements of this section;  
23 and

24 (2) policies regarding tenant participation in the  
25 housing choice voucher program.

26 (h) The public facility user shall:

27 (1) affirmatively market available residential units

1 directly to individuals and families participating in the housing  
2 choice voucher program; and

3 (2) notify local housing authorities of the  
4 multifamily residential development's acceptance of tenants in the  
5 housing choice voucher program.

6 (i) The department shall conduct an annual audit of each  
7 public facility user of a multifamily residential development  
8 claiming an exemption under Section 303.042(c) and to which Section  
9 303.0421 applies, to:

10 (1) determine whether the public facility user is in  
11 compliance with this section and Section 303.0421; and

12 (2) identify the difference in the rent charged for  
13 income-restricted residential units and the estimated maximum  
14 market rents that could be charged for those units without the rent  
15 or income restrictions.

16 (i-1) An independent auditor or compliance expert may not  
17 prepare an audit under Subsection (i) for more than three  
18 consecutive years for the same public facility user. After the  
19 third consecutive audit, the independent auditor or compliance  
20 expert may prepare an audit only after the second anniversary of the  
21 preparation of the third consecutive audit.

22 (j) The department shall complete and publish a report  
23 regarding the findings of an audit conducted under Subsection (i).

24 The report must:

25 (1) be made available on the department's Internet  
26 website;

27 (2) be issued to a public facility user that has an

1 interest in a development that is the subject of an audit; and

2 (3) describe in detail the nature of any failure to  
3 comply with the requirements in this section and Section 303.0421.

4 (j-1) The department shall adopt forms and reporting  
5 standards for the auditing process.

6 (k) The initial audit report required by Subsection (j) is  
7 due not later than June 1 of the year following the first  
8 anniversary of:

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

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

14 (k-1) Subsequent audit reports following the issuance of  
15 the initial audit report under Subsection (k) are due not later than  
16 June 1 of each year.

17 (l) Not later than the 60th day after the date of receipt of  
18 the department's audit report under Subsection (j)(2), a public  
19 facility user shall provide a copy of the report to the comptroller,  
20 the appraisal district containing the development that is the  
21 subject of the report, the corporation, the governing body of the  
22 corporation's sponsor, and, if the corporation's sponsor is a  
23 housing authority, the elected officials who appointed the housing  
24 authority's governing board.

25 (l-1) Not later than June 1 of each year for which an audit  
26 is required under Subsection (i), a public facility user to which  
27 Section 303.0421 applies shall pay to the department a fee of \$40

1 per unit contained in the development, as determined by the audit,  
2 to reimburse the department for expenses related to the audit.

3 (1-2) An exemption under Section 303.042(c) does not apply  
4 for a tax year in which a multifamily residential development that  
5 is owned by a public facility corporation created under this  
6 chapter is determined by an audit conducted under Subsection (i) to  
7 not be in compliance with the requirements of this section and  
8 Section 303.0421.

9 (1-3) An audit conducted under Subsection (i) is subject to  
10 disclosure under Chapter 552, Government Code, except that  
11 information containing tenant names, unit numbers, or other tenant  
12 identifying information may be redacted.

13 (m) Each lease agreement for a residential unit in a  
14 multifamily residential development subject to this section must  
15 provide that:

16 (1) the landlord may not retaliate against the tenant  
17 or the tenant's guests by taking an action because the tenant  
18 established, attempted to establish, or participated in a tenant  
19 organization;

20 (2) the landlord may only choose to not renew the lease  
21 if the tenant:

22 (A) is in material noncompliance with the lease,  
23 including nonpayment of rent;

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

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

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

3                    (i) disrupt the livability of the property;

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

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

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

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

15                    (n) A tenant may not waive the protections provided by  
16 Subsection (m).

17                    (o) If an audit report submitted under Subsection (j)  
18 indicates noncompliance with this section, a public facility user:

19                    (1) must be given:

20                    (A) written notice from the Texas Department of  
21 Housing and Community Affairs or appropriate appraisal district  
22 that:

23                    (i) is provided not later than the 45th day  
24 after the date a report has been submitted under Subsection (j);

25                    (ii) specifies the reasons for  
26 noncompliance;

27                    (iii) contains at least one option for a

1 corrective action to resolve the noncompliance; and

2 (iv) informs the public facility user that  
3 failure to resolve the noncompliance will result in the loss of an  
4 exemption under Section 303.042(c);

5 (B) 60 days after the date notice is received  
6 under this subdivision, to resolve the matter that is the subject of  
7 the notice; and

8 (C) if a matter that is the subject of a notice  
9 provided under this subdivision is not resolved to the satisfaction  
10 of the Texas Department of Housing and Community Affairs and the  
11 appropriate appraisal district during the period provided by  
12 Paragraph (B), a second notice that informs the public facility  
13 user of the loss of the exemption under Section 303.042(c) due to  
14 noncompliance with this section;

15 (2) is considered to be in compliance with this  
16 section if notice under Subdivision (1)(A) is not provided as  
17 specified by Subparagraph (i) of that paragraph; and

18 (3) may appeal a determination of noncompliance to a  
19 district court in the county in which the applicable development is  
20 located.

21 (p) Requirements under this subchapter relating to the  
22 reservation of income-restricted residential units or income  
23 restrictions applicable to tenants of a multifamily residential  
24 development subject to this subchapter must be documented in a land  
25 use restriction agreement or a similar restrictive instrument that:

26 (1) ensures that the applicable restrictions are in  
27 effect for not less than 10 years; and



1           (2) is recorded in the real property records of the  
2 county in which the development is located.

3           (g) An agreement or instrument recorded under Subsection  
4 (p) may be terminated if the development that is the subject of the  
5 agreement or instrument:

6                   (1) is the subject of a foreclosure sale; or

7                   (2) becomes ineligible for an exemption under Section  
8 303.042(c) for a reason other than the failure to comply with  
9 restrictions recorded in the agreement or instrument.

10           Sec. 303.0426. STUDY OF TAX EXEMPTIONS FOR MULTIFAMILY  
11 RESIDENTIAL DEVELOPMENTS OWNED BY PUBLIC FACILITY CORPORATIONS.

12           (a) In this section, "board" means the Legislative Budget Board.

13           (b) The board shall conduct a study that assesses the  
14 long-term effects on the state's funding and revenue, including  
15 funding for public education, of ad valorem tax exemptions and  
16 sales and use tax exemptions for multifamily housing developments  
17 under Sections 303.042(c) and 303.0421(f).

18           (c) Not later than December 10, 2024, the board shall submit  
19 to the governor, the lieutenant governor, and the speaker of the  
20 house of representatives a report on the results of the study. The  
21 report must include an estimate of:

22                   (1) the funding or revenue that the state has lost as a  
23 result of the exemptions; and

24                   (2) the potential increase in funding or revenue that  
25 would result from the repeal of the exemptions.

26           (d) The board may delegate any authority granted to the  
27 board under this section that the board determines is necessary to

1 conduct the study under this section.

2 (e) This section expires January 1, 2025.

3 SECTION 9. Sections 392.005(c) and (d), Local Government  
4 Code, are amended to read as follows:

5 (c) An exemption under this section for a multifamily  
6 residential development which is owned by [~~(i) a public facility~~  
7 ~~corporation created by a housing authority under Chapter 303, (ii)]  
8 a housing development corporation~~[,]~~ or [~~(iii)]~~ a similar entity  
9 created by a housing authority, other than a public facility  
10 corporation created by a housing authority under Chapter 303, and  
11 which does not have at least 20 percent of its residential units  
12 reserved for public housing units, applies only if:~~

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

16 (2) at least:

17 (A) 12 percent of the units in the multifamily  
18 residential development are reserved for occupancy:

19 (i) as very low income housing units, as  
20 defined under Section 303.0425; or

21 (ii) by participants in the housing choice  
22 voucher program;

23 (B) 12 percent of the units in the multifamily  
24 residential development are reserved for occupancy as lower income  
25 housing units, as defined under Section 303.0425; and

26 (C) 12 [50] percent of the units in the  
27 multifamily residential development are reserved for occupancy as

1 moderate income housing units, as defined under Section 303.0425  
2 ~~[by individuals and families earning less than 80 percent of the~~  
3 ~~area median family income].~~

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

9 SECTION 10. (a) Subject to Subsections (b), (c), and (d) of  
10 this section, Sections 303.0421 and 303.0425, Local Government  
11 Code, as added by this Act, apply only to a tax imposed for a tax  
12 year beginning on or after the effective date of this Act.

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

25 (c) Subject to Subsection (d) of this section, Section  
26 303.0421(d), Local Government Code, as added by this Act, applies  
27 only to an occupied multifamily residential development that is

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

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

9 (1) Sections 303.0425(g), (i), (j), (k), (l), (l-1),  
10 and (l-2), Local Government Code, as added by this Act, apply to all  
11 multifamily residential developments owned by a public facility  
12 corporation; and

13 (2) the initial audit report required to be submitted  
14 under Section 303.0425(j), Local Government Code, as added by this  
15 Act, for a multifamily residential development that was approved or  
16 acquired by a public facility corporation before the effective date  
17 of this Act must be submitted by the later of:

18 (A) the date established by Section 303.0425(k),  
19 Local Government Code, as added by this Act; or

20 (B) June 1, 2024.

21 (e) Section 303.0421(h), Local Government Code, as added by  
22 this Act, does not affect a tax exemption available to a multifamily  
23 residential development under Section 303.0421(f), Local  
24 Government Code, as amended by this Act, immediately before  
25 December 31, 2025. A tax exemption available to a multifamily  
26 residential development under Section 303.0421(f), Local  
27 Government Code, immediately before that date is covered by the law

1 in effect when the development qualified for the exemption, and  
2 that law is continued in effect for that purpose.

3 SECTION 11. Not later than January 1, 2024, the Texas  
4 Department of Housing and Community Affairs shall adopt rules  
5 necessary to implement Section 303.0425(i), Local Government Code,  
6 as added by this Act.

7 SECTION 12. This Act takes effect September 1, 2023.

ADOPTED

MAY 19 2023

*as amended*  
*Lacey Law*  
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: Paul Bellercont

1 Amended H.B. No. 2071 (senate committee report) by striking all  
2 below the enacting clause (page 1, line 22 through page 9, line 17)  
3 and substituting the following:

4 SECTION 1. Section 303.021, Local Government Code, is  
5 amended by adding Subsection (d) to read as follows:

6 (d) A corporation or a sponsor may finance, own, or operate  
7 a multifamily residential development only if:

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

10 (2) the development is located:

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

13 (B) if the sponsor is not a housing authority,  
14 inside the boundaries of the sponsor, without regard to whether the  
15 sponsor is authorized to own property or provide services outside  
16 the boundaries of the sponsor.

17 SECTION 2. Subchapter B, Chapter 303, Local Government  
18 Code, is amended by adding Section 303.0415 to read as follows:

19 Sec. 303.0415. APPLICABILITY OF LAWS RELATING TO CONFLICT  
20 OF INTEREST. A member of the board of a corporation or a member of  
21 the governing body of a sponsor of a corporation is subject to the  
22 same restrictions as a local public official under Chapter 171.

23 SECTION 3. The heading to Section 303.042, Local Government  
24 Code, is amended to read as follows:

25 Sec. 303.042. TAXATION; EXEMPTION.

26 SECTION 4. Subchapter B, Chapter 303, Local Government  
27 Code, is amended by adding Section 303.0421, and a heading is added  
28 to that section to read as follows:

29 Sec. 303.0421. MULTIFAMILY RESIDENTIAL DEVELOPMENTS OWNED

1 BY PUBLIC FACILITY CORPORATIONS.

2 SECTION 5. Section 303.0421, Local Government Code, as  
3 added by this Act, is amended by adding Subsections (a), (c), (d),  
4 (g), (h), and (i) 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:

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

31 (2) a year following the year described by Subdivision

1 (1) only if the development comes into compliance with the  
2 requirements of Subsection (b) not later than the first anniversary  
3 of the date of the acquisition.

4 (g) Subsection (f) does not apply to taxes imposed on a  
5 multifamily residential development by a conservation and  
6 reclamation district created under Section 52, Article III, or  
7 Section 59, Article XVI, Texas Constitution, that provides water,  
8 sewer, or drainage services to the development, unless the  
9 applicable corporation has entered into a written agreement with  
10 the district to make a payment to the district in lieu of taxation,  
11 in the amount specified in the agreement.

12 (h) Subject to Subsection (i), an exemption under Section  
13 303.042(c) for a multifamily residential development to which  
14 Subsection (a) applies expires:

15 (1) for an occupied multifamily residential  
16 development that is acquired by a corporation, on the 30th  
17 anniversary of the date of the acquisition by the corporation; and

18 (2) for a multifamily residential development not  
19 described by Subdivision (1), on the 60th anniversary of the date  
20 the development receives, from the corporation or the corporation's  
21 sponsor, the final approval under this chapter that is necessary to  
22 obtain the exemption.

23 (i) An exemption under Section 303.042(c) for a multifamily  
24 residential development to which Subsection (a) applies may be  
25 extended for the same term of years applicable to the length of the  
26 development's exemption under Subsection (h) if:

27 (1) in the five-year period preceding the expiration  
28 of the exemption under Subsection (h), the corporation provides  
29 notice of the extension to the governing body of the municipality in  
30 which the development is located or, if the development is not  
31 located in a municipality, the county in which the development is



1 located;

2 (2) the extension is approved in the same manner as was  
3 required for the preceding approval of the exemption; and

4 (3) the development is in compliance with, and  
5 maintains compliance with, this section and Section 303.0425.

6 SECTION 6. Section 303.042(c), Local Government Code, is  
7 amended to read as follows:

8 (c) Subject to Section 303.0421(h), a [A] corporation is  
9 engaged exclusively in performance of charitable functions and is  
10 exempt from taxation by this state or a municipality or other  
11 political subdivision of this state. Bonds issued by a corporation  
12 under this chapter, a transfer of the bonds, interest on the bonds,  
13 and a profit from the sale or exchange of the bonds are exempt from  
14 taxation by this state or a municipality or other political  
15 subdivision of this state.

16 SECTION 7. Sections 303.042(d), (e), and (f), Local  
17 Government Code, are transferred to Section 303.0421, Local  
18 Government Code, as added by this Act, redesignated as Sections  
19 303.0421(b), (e), and (f), Local Government Code, and amended to  
20 read as follows:

21 (b) Notwithstanding Section 303.042(c) and subject to  
22 Subsections (c) and (d) of this section, an [~~(d) An~~] exemption under  
23 Section 303.042(c) [~~this section~~] for a multifamily residential  
24 development to which Subsection (a) applies is available [~~which is~~  
25 owned by a public facility corporation created by a housing  
26 authority under this chapter and which does not have at least 20  
27 percent of its units reserved for public housing units, applies]  
28 only if:

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

1 (2) at least:

2 (A) 10 percent of the units in the multifamily  
3 residential development are reserved for occupancy as lower income  
4 housing units, as defined under Section 303.0425; and

5 (B) 40 [50] percent of the units in the  
6 multifamily residential development are reserved for occupancy as  
7 moderate income housing units, as defined under Section 303.0425;

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

12 (A) the corporation takes action to approve a new  
13 multifamily residential development or the acquisition of an  
14 occupied multifamily residential development; and

15 (B) of any public hearing required to be held  
16 under this section;

17 (4) if a majority of the members of the board are not  
18 elected officials, the development is approved by the governing  
19 body of the municipality in which the development is located or, if  
20 the development is not located in a municipality, the county in  
21 which the development is located;

22 (5) 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) not less than 15 percent of the total gross  
27 cost of the existing development, as shown in the settlement  
28 statement, is expended on rehabilitating, renovating,  
29 reconstructing, or repairing the development, with initial  
30 expenditures and construction activities:

31 (i) beginning not later than the first

1 anniversary of the date of the acquisition; and

2 (ii) finishing not later than the third  
3 anniversary of the date of the acquisition; or

4 (B) at least 25 percent of the units are reserved  
5 for occupancy as lower income housing units, as defined under  
6 Section 303.0425, and the development is approved by the governing  
7 body of the municipality in which the development is located or, if  
8 the development is not located in a municipality, the county in  
9 which the development is located; and

10 (6) not less than 30 days before final approval of the  
11 development:

12 (A) the corporation or corporation's sponsor  
13 conducts, or obtains from a professional entity that has experience  
14 underwriting affordable multifamily residential developments and  
15 does not have a financial interest in the applicable development,  
16 developer, or public facility user, an underwriting assessment of  
17 the proposed development that allows the corporation to make a good  
18 faith determination that:

19 (i) for an occupied multifamily residential  
20 development acquired by a corporation, the total annual amount of  
21 rent reduction on the income-restricted units provided at the  
22 development will be not less than 60 percent of the estimated amount  
23 of the annual ad valorem taxes that would be imposed on the property  
24 without an exemption under Section 303.042(c) for the second,  
25 third, and fourth years after the date of acquisition by the  
26 corporation; and

27 (ii) for a newly constructed multifamily  
28 residential development, the development would not be feasible  
29 without the participation of the corporation; and

30 (B) the corporation publishes on its Internet  
31 website a copy of the underwriting assessment described by

1 Paragraph (A) [~~by individuals and families earning less than 80~~  
2 ~~percent of the area median family income~~].

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) and except  
9 as otherwise provided by this section [~~Subsections (a) and (b)~~],  
10 during the period [~~of time~~] that a corporation owns a particular  
11 public facility that is a multifamily 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 8. Subchapter B, Chapter 303, Local Government  
23 Code, is amended by adding Sections 303.0425, 303.0426, and  
24 303.0427 to read as follows:

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

28 (1) "Developer" means a private entity that constructs  
29 a development, including the rehabilitation, renovation,  
30 reconstruction, or repair of a development.

31 (2) "Housing choice voucher program" means the housing

1 choice voucher program under Section 8, United States Housing Act  
2 of 1937 (42 U.S.C. Section 1437f).

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

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

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

17 (b) The percentage of lower and moderate income housing  
18 units reserved in each category of units in the development, based  
19 on the number of bedrooms per unit, must be the same as the  
20 percentage of each category of housing units reserved in the  
21 development as a whole.

22 (c) The monthly rent charged per unit may not exceed:

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

27 (2) for a moderate income housing unit, 30 percent of  
28 80 percent of the area median income, adjusted for family size, as  
29 defined by the United States Department of Housing and Urban  
30 Development.

31 (d) In calculating the income of an individual or family for

1 a lower or moderate income housing unit, the public facility user  
2 must use the definition of annual income described in 24 C.F.R.  
3 Section 5.609, as implemented by the United States Department of  
4 Housing and Urban Development. If the income of a tenant exceeds an  
5 applicable limit at the time of the renewal of a lease agreement for  
6 a residential unit, the provisions of Section 42(g)(2)(D), Internal  
7 Revenue Code of 1986, apply in determining whether the unit may  
8 still qualify as a lower or moderate income housing unit.

9 (e) The public facility user may not:

10 (1) refuse to rent a residential unit to an individual  
11 or family because the individual or family participates in the  
12 housing choice voucher program; or

13 (2) use a financial or minimum income standard that  
14 requires an individual or family participating in the housing  
15 choice voucher program to have a monthly income of more than 250  
16 percent of the individual's or family's share of the total monthly  
17 rent payable for a unit.

18 (f) A public facility user may require an individual or  
19 family participating in the housing choice voucher program to pay  
20 the difference between the monthly rent for the applicable unit and  
21 the amount of the monthly voucher if the amount of the voucher is  
22 less than the rent.

23 (g) A corporation that owns or leases to a public facility  
24 user a public facility used as a multifamily residential  
25 development shall publish on its Internet website information about  
26 the development's:

27 (1) compliance with the requirements of this section;  
28 and

29 (2) policies regarding tenant participation in the  
30 housing choice voucher program.

31 (h) The public facility user shall:

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

4           (2) notify local housing authorities of the  
5 multifamily residential development's acceptance of tenants in the  
6 housing choice voucher program.

7           (i) Each lease agreement for a residential unit in a  
8 multifamily residential development subject to this section must  
9 provide that:

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

14           (2) the landlord may only choose to not renew the lease  
15 if the tenant:

16                   (A) is in material noncompliance with the lease,  
17 including nonpayment of rent;

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

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

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

24                           (i) disrupt the livability of the property;

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

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

30                           (iv) have an adverse financial effect on  
31 the development, including the failure of the tenant to pay rent in

1 a timely manner; and

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

5 (j) A tenant may not waive the protections provided by  
6 Subsection (i).

7 (k) Requirements under this subchapter relating to the  
8 reservation of income-restricted residential units or income  
9 restrictions applicable to tenants of a multifamily residential  
10 development subject to this subchapter must be documented in a land  
11 use restriction agreement or a similar restrictive instrument that:

12 (1) ensures that the applicable restrictions are in  
13 effect for not less than 10 years; and

14 (2) is recorded in the real property records of the  
15 county in which the development is located.

16 (l) An agreement or instrument recorded under Subsection  
17 (k) may be terminated if the development that is the subject of the  
18 agreement or instrument:

19 (1) is the subject of a foreclosure sale; or

20 (2) becomes ineligible for an exemption under Section  
21 303.042(c) for a reason other than the failure to comply with  
22 restrictions recorded in the agreement or instrument.

23 Sec. 303.0426. AUDIT REQUIREMENTS FOR CERTAIN MULTIFAMILY  
24 RESIDENTIAL DEVELOPMENTS. (a) In this section:

25 (1) "Department" means the Texas Department of Housing  
26 and Community Affairs.

27 (2) "Developer" has the meaning assigned by Section  
28 303.0425.

29 (3) "Public facility user" has the meaning assigned by  
30 Section 303.0425.

31 (b) A public facility user of a multifamily residential



1 development claiming an exemption under Section 303.042(c) and to  
2 which Section 303.0421 applies must annually submit to the  
3 department and the chief appraiser of the appraisal district in  
4 which the development is located an audit report for a compliance  
5 audit, prepared at the expense of the public facility user and  
6 conducted by an independent auditor or compliance expert with an  
7 established history of providing similar audits on housing  
8 compliance matters, to:

9           (1) determine whether the public facility user is in  
10 compliance with Sections 303.0421 and 303.0425; and

11           (2) identify the difference in the rent charged for  
12 income-restricted residential units and the estimated maximum  
13 market rents that could be charged for those units without the rent  
14 or income restrictions.

15           (c) Not later than the 60th day after the date of receipt of  
16 the audit conducted under Subsection (b), the department shall  
17 examine the audit report and publish a report summarizing the  
18 findings of the audit. The report must:

19           (1) be made available on the department's Internet  
20 website;

21           (2) be issued to a public facility user that has an  
22 interest in a development that is the subject of an audit, the  
23 comptroller, the applicable corporation, the governing body of the  
24 corporation's sponsor, and, if the corporation's sponsor is a  
25 housing authority, the elected officials who appointed the housing  
26 authority's governing board; and

27           (3) describe in detail the nature of any failure to  
28 comply with the requirements in Sections 303.0421 and 303.0425.

29           (d) If an audit report submitted under Subsection (b)  
30 indicates noncompliance with Sections 303.0421 and 303.0425, a  
31 public facility user:

1           (1) must be given:

2           (A) written notice from the department or  
3 appropriate appraisal district that:

4           (i) is provided not later than the 45th day  
5 after the date a report has been submitted under Subsection (b);

6           (ii) specifies the reasons for  
7 noncompliance;

8           (iii) contains at least one option for a  
9 corrective action to resolve the noncompliance; and

10           (iv) informs the public facility user that  
11 failure to resolve the noncompliance will result in the loss of an  
12 exemption under Section 303.042(c);

13           (B) 60 days after the date notice is received  
14 under this subdivision, to resolve the matter that is the subject of  
15 the notice; and

16           (C) if a matter that is the subject of a notice  
17 provided under this subdivision is not resolved to the satisfaction  
18 of the department and the appropriate appraisal district during the  
19 period provided by Paragraph (B), a second notice that informs the  
20 public facility user of the loss of the exemption under Section  
21 303.042(c) due to noncompliance with Sections 303.0421 and  
22 303.0425; and

23           (2) is considered to be in compliance with Sections  
24 303.0421 and 303.0425 if notice under Subdivision (1)(A) is not  
25 provided as specified by Subparagraph (i) of that paragraph.

26           (e) An exemption under Section 303.042(c) does not apply for  
27 a tax year in which a multifamily residential development that is  
28 owned by a public facility corporation created under this chapter  
29 is determined by the department based on an audit conducted under  
30 Subsection (b) to not be in compliance with the requirements of  
31 Section 303.0421 or 303.0425.

1       (f) The initial audit report required by Subsection (b) is  
2 due not later than June 1 of the year following the first  
3 anniversary of:

4           (1) the date of acquisition for an occupied  
5 multifamily residential development that is acquired by a  
6 corporation; or

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

9       (g) Subsequent audit reports following the issuance of the  
10 initial audit report under Subsection (f) are due not later than  
11 June 1 of each year.

12       (h) Not later than June 1 of each year for which an audit is  
13 required under Subsection (b), a public facility user of a  
14 multifamily residential development claiming an exemption under  
15 Section 303.042(c) and to which Section 303.0421 applies shall pay  
16 to the department a fee of \$40 per unit contained in the  
17 development, as determined by the audit, to reimburse the  
18 department for expenses related to the audit.

19       (i) An independent auditor or compliance expert may not  
20 prepare an audit under Subsection (b) for more than three  
21 consecutive years for the same public facility user. After the  
22 third consecutive audit, the independent auditor or compliance  
23 expert may prepare an audit only after the second anniversary of the  
24 preparation of the third consecutive audit.

25       (j) The department shall adopt forms and reporting  
26 standards for the auditing process.

27       (k) An audit conducted under Subsection (b) is subject to  
28 disclosure under Chapter 552, Government Code, except that  
29 information containing tenant names, unit numbers, or other tenant  
30 identifying information may be redacted.

31       Sec. 303.0427. STUDY OF TAX EXEMPTIONS FOR MULTIFAMILY

1 RESIDENTIAL DEVELOPMENTS OWNED BY PUBLIC FACILITY CORPORATIONS.

2 (a) In this section, "board" means the Legislative Budget Board.

3 (b) The board shall conduct a study that assesses the  
4 long-term effects on the state's funding and revenue, including  
5 funding for public education, of ad valorem tax exemptions and  
6 sales and use tax exemptions for multifamily housing developments  
7 under Sections 303.042(c) and 303.0421(f).

8 (c) Not later than December 10, 2024, the board shall submit  
9 to the governor, the lieutenant governor, and the speaker of the  
10 house of representatives a report on the results of the study. The  
11 report must include an estimate of:

12 (1) the funding or revenue that the state has lost as a  
13 result of the exemptions; and

14 (2) the potential increase in funding or revenue that  
15 would result from the repeal of the exemptions.

16 (d) The board may delegate any authority granted to the  
17 board under this section that the board determines is necessary to  
18 conduct the study under this section.

19 (e) This section expires January 1, 2025.

20 SECTION 9. Section 392.005, Local Government Code, is  
21 amended by amending Subsections (c) and (d) and adding Subsection  
22 (c-1) to read as follows:

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

31 (1) the authority holds a public hearing, at a regular

1 meeting of the authority's governing body, to approve the  
2 development; and

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

7 (c-1) An exemption under this section for a multifamily  
8 residential development which is owned by a public facility  
9 corporation created by a housing authority under Chapter 303  
10 applies only if:

11 (1) at least 50 percent of units in the multifamily  
12 residential development are reserved for occupancy by individuals  
13 and families earning not more than 80 percent of the area median  
14 income, adjusted for family size; and

15 (2) the development:

16 (A) has at least 20 percent of its residential  
17 units reserved for public housing units;

18 (B) participates in the Rental Assistance  
19 Demonstration program administered by the United States Department  
20 of Housing and Urban Development;

21 (C) receives financial assistance administered  
22 under Chapter 1372, Government Code, or receives financial  
23 assistance from another type of tax-exempt bond; or

24 (D) receives financial assistance administered  
25 under Subchapter DD, Chapter 2306, Government Code.

26 (d) For the purposes of Subsections ~~[Subsection]~~ (c) and  
27 (c-1), a "public housing unit" is a residential ~~[dwelling]~~ unit for  
28 which the owner receives a public housing operating subsidy. It  
29 does not include a unit for which payments are made to the landlord  
30 under the federal Section 8 Housing Choice Voucher Program.

31 SECTION 10. (a) Subject to Subsections (b), (c), and (d) of

1 this section, Sections 303.0421 and 303.0425, Local Government  
2 Code, as added by this Act, apply only to a tax imposed for a tax  
3 year beginning on or after the effective date of this Act.

4 (b) Subject to Subsections (c) and (d) of this section,  
5 Sections 303.0421 and 303.0425, Local Government Code, as added by  
6 this Act, apply only to a multifamily residential development that  
7 is approved on or after the effective date of this Act by a public  
8 facility corporation or the sponsor of a public facility  
9 corporation, in accordance with Chapter 303, Local Government Code.  
10 A multifamily residential development that was approved by a public  
11 facility corporation or the sponsor of a public facility  
12 corporation before the effective date of this Act is governed by the  
13 law in effect on the date the development was approved by the  
14 corporation or sponsor, and the former law is continued in effect  
15 for that purpose.

16 (c) Subject to Subsection (d) of this section, Section  
17 303.0421(d), Local Government Code, as added by this Act, applies  
18 only to an occupied multifamily residential development that is  
19 acquired by a public facility corporation on or after the effective  
20 date of this Act. An occupied multifamily residential development  
21 that is acquired by a public facility corporation before the  
22 effective date of this Act is governed by the law in effect on the  
23 date the development was acquired by the public facility  
24 corporation, and the former law is continued in effect for that  
25 purpose.

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

27 (1) Section 303.0426, Local Government Code, as added  
28 by this Act, applies to all multifamily residential developments to  
29 which Section 303.0421 applies and with respect to which an  
30 exemption is sought or claimed under Section 303.042(c); and

31 (2) the initial audit report required to be submitted

1 under Section 303.0426(b), Local Government Code, as added by this  
2 Act, for a multifamily residential development that was approved or  
3 acquired by a public facility corporation before the effective date  
4 of this Act must be submitted by the later of:

5 (A) the date established by Section 303.0426(f),  
6 Local Government Code, as added by this Act; or

7 (B) June 1, 2024.

8 SECTION 11. Not later than January 1, 2024, the Texas  
9 Department of Housing and Community Affairs shall adopt rules  
10 necessary to implement Section 303.0426, Local Government Code, as  
11 added by this Act.

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

**ADOPTED**

✓✓  
MAY 19 2023

*Latey Law*  
Secretary of the Senate

FLOOR AMENDMENT NO. 2

BY: \_\_\_\_\_

*Paul Bettencourt*

*am. # 1*  
1 Amend the floor ~~substitute~~ to H.B. No. 2071 by Bettencourt  
2 (88R30438) in SECTION 8 of the floor substitute, by striking added  
3 Section 303.0426(h), Local Government Code (page 14, lines 12  
4 through 18), and relettering subsequent subsections and references  
5 to those subsections accordingly.



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION**

**May 21, 2023**

**TO:** Honorable Dade Phelan, Speaker of the House, House of Representatives

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB2071** by Jetton (Relating to certain public facilities used to provide affordable housing.), **As Passed 2nd House**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB2071, As Passed 2nd House : a negative impact of (\$246,794) through the biennium ending August 31, 2025.

According to the Comptroller of Public Accounts (CPA), the new requirements added by the bill could limit the amount of property that would qualify for future property tax exemptions, creating an indeterminate revenue gain to the state through the school funding formula.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five- Year Impact:**

<i>Fiscal Year</i>	<b>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</b>
2024	(\$83,098)
2025	(\$163,696)
2026	(\$161,196)
2027	(\$244,294)
2028	(\$241,794)

**All Funds, Five-Year Impact:**

<i>Fiscal Year</i>	<b>Probable Savings/(Cost) from General Revenue Fund 1</b>	<b>Change in Number of State Employees from FY 2023</b>
2024	(\$83,098)	1.0
2025	(\$163,696)	2.0
2026	(\$161,196)	2.0
2027	(\$244,294)	3.0
2028	(\$241,794)	3.0

**Fiscal Analysis**

The bill would amend Chapters 303 and 392 of the Local Government Code, regarding public facility corporations and housing authorities established by municipalities and counties, respectively.

The bill would specify that the current property tax exemption for leaseholds or other possessory interest in a public facility applies to a public facility used to provide multifamily housing only if the public facility user meets specified low-income housing occupancy requirements.

The bill would exempt from all sales and use taxes materials used by a person receiving a current property tax exemption for leaseholds or other possessory interest in a public facility to improve the real property of the public facility.

The bill would require the Texas Department of Housing and Community Affairs (TDHCA) to conduct annual audits of each public facility user of certain multifamily residential developments claiming such tax exemptions and to complete and publish annual reports regarding the audit findings.

The bill would require the Legislative Budget Board to conduct a study to assess the long-term effects of tax exemptions for certain multifamily developments.

The bill would take effect immediately upon enactment, assuming it received the requisite two-thirds majority votes in both houses of the Legislature. Otherwise, it would take effect September 1, 2023.

### **Methodology**

According to TDCHA, a compliance monitor reviews between 55 to 65 developments annually. In order to monitor an estimated 60 additional public facility corporation (PFC) multifamily developments, the agency anticipates the need for an additional full-time equivalent (FTE) employee at the Auditor II classification in fiscal year 2024 with an additional FTE in fiscal year 2025, which is the first year the agency anticipates monitoring both acquired and new developments, and every two years thereafter due to anticipated growth in the number of PFC multifamily developments that would require monitoring. The FTEs would be compensated at \$60,000, which is the average salary of current Auditor II in TDHCA's Compliance Division, plus benefits, and would require computers, software, and annual office supplies.

According to CPA, the exemption from sales and use taxes of certain materials used for the improvement of the real property of a public facility corporation would not be expected to have significant fiscal implications, as it is assumed most, if not all, public facility corporations would fall under the definition of a sales tax exempt governmental entity or of an exempted 501(c) entity. In that case, there is an existing sales tax exemption for tangible personal property incorporated into the realty of such entities.

### **Technology**

TDHCA anticipates a one-time technology cost of \$2,500 in fiscal year 2024 for a computer and software for one anticipated FTE and an additional one-time cost of \$2,500 in fiscal years 2025 and 2027 for the same purpose for the anticipated FTEs that would be added those years.

### **Local Government Impact**

According to the CPA, the bill could limit the amount of property qualifying for future property tax exemptions, which could create an indeterminate revenue gain to local taxing units through the school funding formula.

**Source Agencies:** 304 Comptroller of Public Accounts, 332 Department of Housing and Community Affairs

**LBB Staff:** JMc, CMA, SD

**LEGISLATIVE BUDGET BOARD**

Austin, Texas

**FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION**

May 2, 2023

**TO:** Honorable Paul Bettencourt, Chair, Senate Committee on Local Government

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB2071** by Jetton (Relating to certain public facilities used to provide affordable housing.), As **Engrossed**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB2071, As Engrossed : a positive impact of \$3,852,902 through the biennium ending August 31, 2025.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

According to the Comptroller of Public Accounts (CPA), the new requirements added by the bill could limit the amount of property that would qualify for future property tax exemptions, creating an indeterminate revenue gain to the state through the school funding formula.

**General Revenue-Related Funds, Five- Year Impact:**

<i>Year</i>	<i>Fiscal Probable Net Positive/(Negative) Impact to General Revenue Related Funds</i>
2024	\$1,764,902
2025	\$2,088,000
2026	\$2,328,000
2027	\$2,568,000
2028	\$2,808,000

**All Funds, Five-Year Impact:**

<i>Fiscal Year</i>	<i>Probable Savings/(Cost) from General Revenue Fund 1</i>	<i>Probable Revenue Gain/(Loss) from General Revenue Fund 1</i>	<i>Probable Savings/(Cost) from Appropriated Receipts 666</i>	<i>Change in Number of State Employees from FY 2023</i>
2024	(\$83,098)	\$1,848,000	\$0	1.0
2025	\$0	\$2,088,000	(\$163,696)	2.0
2026	\$0	\$2,328,000	(\$161,196)	2.0
2027	\$0	\$2,568,000	(\$244,294)	3.0
2028	\$0	\$2,808,000	(\$241,794)	3.0

**Fiscal Analysis**

## **Fiscal Analysis**

The bill would specify that the current property tax exemption for leaseholds or other possessory interest in a public facility applies to a public facility used to provide multifamily housing only if the public facility user meets specified low-income housing occupancy requirements. The bill would exempt materials used by a person receiving a current property tax exemption for leaseholds or other possessory interest in a public facility to improve the real property of the public facility from all sales and use taxes.

The bill would require the Texas Department of Housing and Community Affairs (TDHCA) to conduct annual audits of each public facility user of certain multifamily residential developments claiming such tax exemptions and to complete and publish annual reports regarding the audit findings. The bill would authorize TDHCA to collect a \$40 per housing unit fee from the public facility users who would be audited.

## **Methodology**

TDHCA estimates that approximately 154 public facility corporation (PFC) multifamily developments would require auditing beginning in fiscal year 2024. To accomplish this, TDHCA anticipates the need for one additional full-time employee (FTE), at a cost of \$80,598 per fiscal year. Because the TDHCA fee revenue the bill would authorize would not be realized before the FTE is needed, the FTE cost in fiscal year 2024 would be to General Revenue.

TDHCA estimates 20 additional PFC multifamily developments would require monitoring each fiscal year, and that the average development size is 300 housing units. Due to this anticipated growth, TDHCA anticipates the need for an additional FTE in fiscal year 2025, and in fiscal year 2027 and every two years thereafter. Each FTE would cost an estimated \$80,598 per fiscal year to Appropriated Receipts.

Given TDHCA's above assumptions, the audit fees the bill would authorize would result in a revenue gain to General Revenue of \$1,848,000 in fiscal year 2024; \$2,088,000 in fiscal year 2025; \$2,328,000 in fiscal year 2026; \$2,568,000 in fiscal year 2027; and \$2,808,000 in fiscal year 2028.

According to CPA, the exemption from sales and use taxes of certain materials used for the improvement of the real property of a public facility corporation would not be expected to have significant fiscal implications, as it is assumed most, if not all, public facility corporations would fall under the definition of a sales tax exempt governmental entity or of an exempted 501(c) entity. In that case, there is an existing sales tax exemption for tangible personal property incorporated into the realty of such entities.

## **Technology**

TDHCA estimates technology costs of \$2,500 in each of fiscal years 2024 through 2027, and every two fiscal years thereafter for computers and software for the additional FTEs. The technology costs in fiscal year 2024 would be to General Revenue, while subsequent fiscal year technology costs would be to Appropriated Receipts.

## **Local Government Impact**

According to the CPA, the new requirements added by the bill could limit the amount of property that would qualify for future property tax exemptions, creating an indeterminate revenue gain to local taxing units through the school funding formula.

**Source Agencies:** 304 Comptroller of Public Accounts, 332 Department of Housing and Community Affairs, 352 Bond Review Board

**LBB Staff:** JMc, AF, CMA, DPE



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION**

**April 9, 2023**

**TO:** Honorable J. M. Lozano, Chair, House Committee on Urban Affairs

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB2071** by Jetton (relating to certain public facilities used to provide affordable housing.),  
**Committee Report 1st House, Substituted**

**No significant fiscal implication to the State is anticipated.**

However, the bill could create an indeterminate revenue gain to the State through the school funding formula by limiting the amount of property that would qualify for future property tax exemptions.

The bill would specify that the current property tax exemption for leaseholds or other possessory interest in a public facility applies to a public facility used to provide multifamily housing only if the public facility user meets specified lower income and medium income housing occupancy requirements.

The bill would exempt materials used by a person receiving a current property tax exemption for leaseholds or other possessory interest in a public facility to improve the real property of the public facility from all sales and use taxes.

**Local Government Impact**

The bill could create an indeterminate revenue gain to local taxing units by limiting the amount of property that would qualify for future property tax exemptions.

**Source Agencies:** 304 Comptroller of Public Accounts, 332 Department of Housing and Community Affairs, 352 Bond Review Board

**LBB Staff:** JMc, AF, BC, DPE, CMA

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION**

**March 20, 2023**

**TO:** Honorable J. M. Lozano, Chair, House Committee on Urban Affairs

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB2071** by Jetton (Relating to certain public facilities used to provide affordable housing.), **As Introduced**

**No significant fiscal implication to the State is anticipated.**

However, the bill could create an indeterminate revenue gain to the State through the school funding formula by limiting the amount of property that would qualify for future property tax exemptions.

The bill would specify that the current property tax exemption for leaseholds or other possessory interest in a public facility applies to a public facility used to provide multifamily housing only if the public facility user meets specified low-income housing occupancy requirements.

The bill would exempt materials used by a person receiving a current property tax exemption for leaseholds or other possessory interest in a public facility to improve the real property of the public facility from all sales and use taxes.

It is assumed that related administrative costs to the Comptroller of Public Accounts could be absorbed using existing resources.

**Local Government Impact**

The bill could create an indeterminate revenue gain to local taxing units by limiting the amount of property that would qualify for future property tax exemptions.

**Source Agencies:** 304 Comptroller of Public Accounts, 332 Department of Housing and Community Affairs, 352 Bond Review Board

**LBB Staff:** JMc, AF, DPE, CMA