**BILL ANALYSIS**

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| Senate Research Center | S.B. 867 |
| 89R2225 JAM-D | By: Bettencourt |
|  | Local Government |
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|  | As Filed |

**AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 867 addresses Local Government Code, Chapter 394 which relates to the creation and operation of housing finance corporations (HFCs).  HFCs can partner with a multifamily or contemplate the building of a multifamily complex to exempt property taxes. In return for receiving this exemption, under current law, the property is to set aside a number of units to rent to tenants who are at or below 80 percent of the average median income (AMI). HFCs are currently providing the property tax exemption to properties within their territorial jurisdiction and non-territorial jurisdiction. Some HFCs, such as Cameron County HFC, Pecos HFC, and Pleasanton HFC, have exempted property taxes on properties around Texas. Currently, as the law stands, if the market rents of the subject property are already below the targeted rents based on 80 percent AMI, the property may suffer no loss to the rental income but yet still receive 100 percent tax exemption.

S.B. 867 provides geographic limitations on where HFCs can operate and certain restrictions that must be met for favorable tax treatment under the Local Government Code, such as reducing rent to qualified residents and complying with audit requirements. When an HFC participates in the purchasing of an existing complex, 15 percent of the acquisition cost must be put into the property to rehabilitate it.

S.B. 867 would mandate units for low- and moderate-income families to be designated, obtain the local municipality's approval if the property is located in the municipality and the county's approval in which the property is located, and require that the total amount of rent reduction that is below the prevailing market rate for the subject property to total at least 60 percent of the actual tax savings. Protections are also added for renters benefitting from the program by requiring each HFC to conduct a compliance audit through an independent auditor or compliance expert for certain multifamily residential developments and submit them to the Texas Department of Housing and Community Affairs and the chief appraiser of the local appraisal district. The audit requirements would apply to all pre-existing and future HFCs. Within three years, existing properties would be required to come into compliance with the new standards established in S.B. 867.

As proposed, S.B. 867 amends current law relating to housing finance corporations and authorizes a fee.

**RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Department of Housing and Community Affairs in SECTION 9 (Section 394.9027, Local Government Code) of this bill.

**SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 394.004, Local Government Code, as follows:

Sec. 394.004. APPLICATION OF CHAPTER TO CERTAIN RESIDENTIAL DEVELOPMENTS. Provides that Chapter 394 (Housing Finance Corporations in Municipalities and Counties) applies only to a residential development that, in accordance with the requirements of this chapter, is occupied by, rather than a residential development at least 90 percent of which is for use by, or is intended to be occupied by persons of low and moderate income whose adjusted gross income meets certain requirements.

SECTION 2. Amends Subchapter A, Chapter 394, Local Government Code, by adding Section 394.0045, as follows:

Sec. 394.0045. APPLICABILITY OF OPEN MEETINGS AND OPEN RECORD LAWS. (a) Provides that Chapter 551 (Open Meetings), Government Code, applies to actions and proceedings under this chapter.

(b) Provides that Chapter 552 (Public Information), Government Code, applies to all records of a housing finance corporation.

SECTION 3. Amends the heading to Section 394.031, Local Government Code, to read as follows:

Sec. 394.031. EXERCISE OF POWERS; AREA OF OPERATION.

SECTION 4. Amends Section 394.031, Local Government Code, by adding Subsections (c) and (d), as follows:

(c) Provides that, subject to Subsection (d), the area in which a housing finance corporation is authorized to exercise its powers is limited to:

(1) for a housing finance corporation sponsored by a municipality under Section 394.011 (Application for Incorporation), the jurisdictional boundaries of the municipality that sponsored the corporation;

(2) for a housing finance corporation sponsored by a county under Section 394.011, the unincorporated areas of the county that sponsored the corporation; or

(3) for a housing finance corporation sponsored by more than one local government under Section 394.012 (Application for Incorporation of, and Other Special Provisions for, Joint Corporation):

(A) the jurisdictional boundaries of each municipal sponsor of the corporation; and

(B) the unincorporated areas of each county sponsor of the corporation.

(d) Authorizes a housing finance corporation to exercise its powers outside an area described by Subsection (c) only if a resolution or order, as applicable, approving that exercise of power in the outside area is adopted by the governing body of each sponsoring local government and by the bodies of:

(1) each municipality that contains any part of the outside area in which the corporation proposes to operate; and

(2) if proposing to operate in the unincorporated area of a county, each county that contains any part of the outside area in which the corporation proposes to operate.

SECTION 5. Amends Sections 394.032(a) and (e), Local Government Code, as follows:

(a) Authorizes a housing finance corporation, subjection to the limitations of Section 394.031 (c) and (d), to perform certain actions. Makes a nonsubstantive change.

(e) Authorizes a housing finance corporation to delegate to the Texas Department of Housing and Community Affairs (TDHCA) the authority to act on its behalf in certain matters within, rather than within and outside, the jurisdiction of the housing finance corporation.

SECTION 6. Amends Section 394.037, Local Government Code, by adding Subsection (a-1), as follows:

(a-1) Authorizes bonds issued under this chapter for a purpose described by Subsection (a) (relating to authorizing a housing finance corporation to issue defray bonds to certain costs) to be issued only to finance or support residential developments or homes that are located:

(1) inside the boundaries of the sponsoring local government, if the bonds are issued by a housing corporation formed under Section 394.011; or

(2) inside the boundaries of at least one sponsoring local government, if the bonds are issued by a housing finance corporation formed under Section 394.012.

SECTION 7. Amends Section 394.039, Local Government Code, as follows:

Sec. 394.039. SPECIFIC POWERS RELATING TO FINANCIAL AND PROPERTY TRANSACTIONS. Deletes existing text authorizing a housing finance corporation to to perform certain actions with regard to real or personal property or interests in that property, wherever the property is located.

SECTION 8. Amends Section 394.9025(b), Local Government Code, as follows:

(b) Authorizes a housing finance corporation, following a public hearing by the governing body of the applicable local government as described by Section 394.037 (a-1), to issue bonds to finance a multifamily residential development to be owned by the housing finance corporation in accordance with the requirements of this chapter, rather than Section 394.004, if the housing finance corporation receives approval of the governing body of that local government. Makes a nonsubstantive change.

SECTION 9. Amends Subchapter Z, Local Government Code, by adding Section 394.9026 and 394.9027, as follows:

Sec. 394.9026. ADDITIONAL CONDITIONS FOR BENEFICIAL PROPERTY-BASED TAX AND FEE TREATMENT RELATING TO CERTAIN MULTIFAMILY RESIDENTIAL DEVELOPMENTS. (a) Defines "housing choice voucher program," "lower income housing unit," "moderate income housing unit," "property-based exemption," and "rent."

(b) Provides that this section does not apply to a multifamily residential development that is the recipient of a low income housing tax credit allocated under Subchapter DD (Low Income Housing Tax Credit Program), Chapter 2306 (Texas Department of Housing and Community Affairs), Government Code.

(c) Provides that, subject to Subsection (g), a property-based exemption under Section 394.905(a) (relating to exemptions from taxation for a housing finance corporation) for a multifamily residential development is available only if the multifamily residential development satisfies the other requirements of this chapter and if:

(1) at least 10 percent of the units in the multifamily residential development are reserved for occupancy as lower income housing units and 40 percent of the units in the multifamily residential development are reserved for occupancy as moderate income housing units;

(2) for a multifamily residential development that is acquired by a housing finance corporation, the development is occupied or was occupied within the two-year period preceding the date of the acquisition and is not otherwise subject to a land use restriction agreement under Section 2306.185 (Long-term Affordability and Safety of Multifamily Rental Housing Developments), Government Code, and:

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

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

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

(B) at least 25 percent of the units are reserved for occupancy as lower income housing units and the development is approved by the governing body of the municipality in which the development is located or, if the development is not located in a municipality, the county in which the development is located;

(3) not less than 30 days before the date of final approval of the development:

(A) the housing finance corporation or a sponsoring local government of the corporation conducts, or obtains from a professional entity that has experience underwriting affordable multifamily residential developments and does not have a financial interest in the applicable development, developer, or housing finance corporation, an underwriting assessment of the proposed development that allows the housing finance corporation to make a good faith determination that, for an occupied multifamily residential development acquired by a housing finance corporation or for a newly constructed multifamily residential development owned by a housing finance corporation, the total annual amount of rent reduction on the income-restricted residential units provided at the development will be not less than 60 percent of the estimated amount of the annual ad valorem taxes that would be imposed on the property without an exemption from those taxes under Section 394.905(a) for the second, third, and fourth years after the date of acquisition by the housing finance corporation or the date the certificate of occupancy is issued for the development, as applicable; and

(B) the housing finance corporation publishes on its Internet website a copy of the underwriting assessment described by Paragraph (A);

(4) the percentage of lower and moderate income housing units reserved in each category of income-restricted residential units in the development, based on the number of bedrooms per unit, is the same as the percentage of each category of income-restricted residential units reserved in the development as a whole;

(5) the monthly rent charged per unit does not exceed:

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

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

(6) the housing finance corporation that owns the development does not:

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

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

(7) the housing finance corporation publishes on its Internet website information certain information about the development:

(8) the housing finance corporation that owns the development:

(A) affirmatively markets available residential units directly to individuals and families participating in the housing choice voucher program; and

(B) notifies local housing authorities of the development's acceptance of tenants in the housing choice voucher program; and

(9) each lease agreement for a residential unit in the development provides that:

(A) prohibits the landlord from retaliating against the tenant or the tenant's guests by taking an action because the tenant established, attempted to establish, or participated in a tenant organization;

(B) authorizes the landlord to only choose to not renew the lease if the tenant:

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

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

(iii) committed repeated minor violations of the lease that disrupt the livability of the property, adversely affect the health and safety of any person or the right to quiet enjoyment of the leased premises and related development facilities, interfere with the management of the development, or have an adverse financial effect on the development, including the failure of the tenant to pay rent in a timely manner; and

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

(d) Requires the housing finance corporation, in calculating the income of an individual or family for a lower or moderate income housing unit, to use the definition of annual income described in 24 C.F.R. Section 5.609, as implemented by the United States Department of Housing and Urban Development. Provides that, if the income of a tenant exceeds an applicable limit at the time of the renewal of a lease agreement for a residential unit, the provisions of Section 42(g)(2)(D), Internal Revenue Code of 1986, apply in determining whether the unit may still qualify as a lower or moderate income housing unit.

(e) Authorizes a housing finance corporation to require an individual or family participating in the housing choice voucher program to pay the difference between the monthly rent for the applicable unit and the amount of the monthly voucher if the amount of the voucher is less than the rent.

(f) Prohibits a tenant from waiving the protections provided by Subsection (c)(9). Authorizes a housing finance corporation to adopt tenant protections that are more protective of tenants than the tenant protections provided by Subsection (c)(9).

(g) Provides that, notwithstanding Subsection (c) and Section 394.905(a)(1), a multifamily residential development that is acquired by a housing finance corporation, that is occupied or was occupied within the two-year period preceding the date of the acquisition, and that is not otherwise subject to a land use restriction agreement under Section 2306.185, Government Code, is eligible for a property-based exemption under Section 394.905(a) for:

(1) the one-year period following the date of the acquisition, regardless of whether the development complies with the conditions prescribed by Subsection (c) and Section 394.905(a)(1); and

(2) a year following the year described by Subdivision (1) only if the development comes into compliance with the conditions prescribed by Subsection (c) and Section 394.905(a)(1) not later than the first anniversary of the date of the acquisition.

Sec. 394.9027. AUDIT REQUIREMENTS FOR CERTAIN MULTIFAMILY RESIDENTIAL DEVELOPMENTS. (a) Defines "department" and "property-based exemption."

(b) Requires a housing finance corporation that claims a property-based exemption for a multifamily residential development under Section 394.905(a) to annually submit to TDHCA and the chief appraiser of the appraisal district in which the development is located an audit report for a compliance audit, prepared at the expense of the housing finance corporation and conducted by an independent auditor or compliance expert with an established history of providing similar audits on housing compliance matters, to:

(1) determine whether the housing finance corporation is in compliance with the conditions imposed for the exemption by Sections 394.905(a) and 394.9026; and

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

(c) Requires TDHCA, not later than the 60th day after the date of receipt of the audit conducted under Subsection (b), to examine the audit report and publish a report summarizing the findings of the audit. Requires that the report:

(1) be made available on the TDHCA's Internet website;

(2) be issued to a housing finance corporation that has an interest in a development that is the subject of an audit, the comptroller of public accounts of the State of Texas, and the governing body of the housing finance corporation's sponsoring local government or governments; and

(3) describe in detail the nature of any failure to comply with the conditions imposed for the property-based exemption by Section 394.905(a) or 394.9026.

(d) Provides that, if an audit report submitted under Subsection (b) indicates noncompliance with Section 394.905(a) or 394.9026, a housing finance corporation is:

(1) required to be given:

(A) written notice from TDHCA or the appropriate appraisal district that:

(i) is provided not later than the 90th day after the date a report has been submitted under Subsection (b);

(ii) specifies the reasons for noncompliance;

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

(iv) informs the housing finance corporation that failure to resolve the noncompliance will result in the loss of the property-based exemption under Section 394.905(a);

(B) a period of 60 days after the date notice is received under this subdivision to resolve the matter that is the subject of the notice; and

(C) if a matter that is the subject of a notice provided under this subdivision is not resolved to the satisfaction of TDHCA and appropriate taxing authority during the period provided by Paragraph (B), a second notice that informs the housing finance corporation of the loss of the property-based exemption due to noncompliance with Section 394.905(a) or 394.9026, as applicable; and

(2) is considered to be in compliance with Sections 394.905(a) and 394.9026 if notice under Subdivision (1)(A) is not provided as specified by Subparagraph (i) of that paragraph.

(e) Provides that, except as provided by Section 394.9026(g), a property-based exemption under Section 394.905(a) does not apply for a tax year in which a multifamily residential development that is owned by a housing finance corporation created under this chapter is determined by TDHCA based on an audit conducted under Subsection (b) to not be in compliance with the conditions imposed for that exemption by Sections 394.905(a) and 394.9026.

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

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

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

(g) Provides that subsequent audit reports following the issuance of the initial audit report under Subsection (f) are due not later than June 1 of each year.

(h) Prohibits an independent auditor or compliance expert from preparing an audit under Subsection(b) for more than three consecutive years for the same housing finance corporation. Provides that the independent auditor or compliance expert, after the third consecutive audit, is authorized to prepare an audit only after the second anniversary of the preparation of the third consecutive audit.

(i) Provides that TDHCA is:

(1) required to adopt forms and reporting standards for the auditing process;

(2) authorized to charge a fee for the submission of an audit report under this section in a reasonable amount necessary to cover the expenses of administering this section; and

(3) authorized to adopt rules necessary to implement this section.

(j) Provides that an audit conducted under Subsection (b) is subject to disclosure under Chapter 552, Government Code, except that information containing tenant names, unit numbers, or other tenant identifying information is authorized to be redacted.

SECTION 10. Amends Section 394.903, Local Government Code, as follows:

Sec. 394.903. New heading: TRANSFER OF RESIDENTIAL DEVELOPMENT SITES. Provides that the site location is subject to the requirements of this chapter, rather than authorizing the site to be located wholly or partly inside or outside the local government. Deletes existing text of Subsection (a) requiring that a residential development covered by this chapter be located within the local government. Makes nonsubstantive changes.

SECTION 11. Amends Section 394.905, Local Government Code, as follows:

Sec. 394.905. New heading: EXEMPTION FROM TAXES AND FEES. (a) Creates this subsection from existing text. Provides that, notwithstanding any other law, the housing finance corporation, all property owned by it, the income from the property, all bonds issued by it, the income from the bonds, and the transfer of the bonds are exempt, as public property used for public purposes, from license fees, recording fees, and all other taxes imposed by this state or any political subdivision of this state only if:

(1) for an exemption from taxes and fees imposed with respect to property owned by the housing finance corporation:

(A) any applicable audit report requirements provided by Section 394.9027 are satisfied, other than those imposed on a multifamily residential development under the circumstances described by Section 394.9026(g);

(B) the property is located in an area in which the housing finance corporation is authorized to exercise its powers as described by Section 394.031(c) or the exemption is approved by each applicable governing body described by Section 394.031(d); and

(C) if an exemption from ad valorem taxation is claimed, the housing finance corporation submits to TDHCA and to the county tax assessor-collector for each appraisal district in which the exemption is sought a one-time exemption application on a form promulgated by the comptroller; or

(2) the requirements provided by Section 394.037(a-1) are satisfied, for an exemption from taxes and fees imposed with respect to bonds issued by the housing finance corporation, the income from those bonds, and the transfer of those bonds.

(b) Creates this subsection from existing text and makes no further changes.

SECTION 12. Repealer: Section 394.005 (Application of Chapter to Property in Certain Municipalities), Local Government Code.

SECTION 13. (a) Makes application of Sections 394.031(c) and (d), Local Government Code, as added by this Act, prospective.

(b) Makes application of Sections 394.037(a-1) and 394.905(a)(2), Local Government Code, as added by this Act, prospective.

(c) Makes application of Sections 394.905(a)(1) and 394.9026, Local Government Code, subject to Subsections (d), (e), and (f) of this section, as added by this Act, prospective.

(d) Makes application of Sections 394.905(a)(1) and 394.9026, Local Government Code, subject to Subsections (e) and (f), as added by this Act, prospective.

(e) Makes application of Section 394.9026(g), Local Government Code, as added by this Act, prospective.

(f) Makes application of Sections 394.9026(c)(6), (7), (8), and (9) and (f), Local Government Code, prospective.

(g) Requires that the initial audit report required to be submitted under Section 394.9027(b), Local Government Code, as added by this Act, notwithstanding Section 394.9027(b) or (f), Local Government Code, as added by this Act, for a multifamily residential development that was acquired by a housing finance corporation before the effective date of this Act be submitted by the later of the date established by Section 394.9027(f), Local Government Code, as added by this Act, or June 1, 2026.

(h) Requires TDHCA, not later than January 1, 2026, to adopt rules necessary to implement Section 394.9027(i), Local Government Code, as added by this Act.

SECTION 14. Effective date: upon passage or September 1, 2025.