89R2225 JAM-D

By:  Gates H.B. No. 21

A BILL TO BE ENTITLED

AN ACT

relating to housing finance corporations; authorizing a fee.

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

SECTION 1.  Section 394.004, Local Government Code, is amended to read as follows:

Sec. 394.004.  APPLICATION OF CHAPTER TO CERTAIN RESIDENTIAL DEVELOPMENTS. This chapter applies only to a residential development that, in accordance with the requirements of this chapter, [~~at least 90 percent of which~~] is occupied [~~for use~~] by or is intended to be occupied by persons of low and moderate income whose adjusted gross income, together with the adjusted gross income of all persons who intend to reside with those persons in one dwelling unit, did not for the preceding tax year exceed the maximum amount constituting moderate income under the housing finance corporation's rules, resolutions relating to the issuance of bonds, or financing documents relating to the issuance of bonds.

SECTION 2.  Subchapter A, Chapter 394, Local Government Code, is amended by adding Section 394.0045 to read as follows:

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

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

SECTION 3.  The heading to Section 394.031, Local Government Code, is amended to read as follows:

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

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

(c)  Subject to Subsection (d), the area in which a housing finance corporation may exercise its powers is limited to:

(1)  for a housing finance corporation sponsored by a municipality under Section 394.011, 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:

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

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

(d)  A housing finance corporation may 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 governing 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.  Sections 394.032(a) and (e), Local Government Code, are amended to read as follows:

(a)  Subject to the limitations of Sections 394.031(c) and (d), a [~~A~~] housing finance corporation may:

(1)  make contracts and other instruments as necessary or convenient to the exercise of powers under this chapter;

(2)  incur liabilities;

(3)  borrow money at rates determined by the corporation;

(4)  issue notes, bonds, and other obligations; and

(5)  secure any of its obligations by the mortgage or pledge of all or part of the corporation's property, franchises, and income.

(e)  A housing finance corporation may delegate to the Texas Department of Housing and Community Affairs the authority to act on its behalf in the financing, refinancing, acquisition, leasing, ownership, improvement, and disposal of home mortgages or residential developments, within [~~and outside~~] the jurisdiction of the housing finance corporation, including its authority to issue bonds for those purposes.

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

(a-1)  Bonds issued under this chapter for a purpose described by Subsection (a) may 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 finance 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 joint housing finance corporation formed under Section 394.012.

SECTION 7.  Section 394.039, Local Government Code, is amended to read as follows:

Sec. 394.039.  SPECIFIC POWERS RELATING TO FINANCIAL AND PROPERTY TRANSACTIONS. A housing finance corporation may:

(1)  lend money for its corporate purposes, invest and reinvest its funds, and take and hold real or personal property as security for the payment of the loaned or invested funds;

(2)  mortgage, pledge, or grant security interests in any residential development, home mortgage, note, or other property in favor of the holders of bonds issued for those items;

(3)  purchase, receive, lease, or otherwise acquire, own, hold, improve, use, or deal in and with real or personal property or interests in that property, [~~wherever the property is located,~~] as required by the purposes of the corporation or as donated to the corporation; and

(4)  sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or part of its property and assets.

SECTION 8.  Section 394.9025(b), Local Government Code, is amended to read as follows:

(b)  Following a public hearing by the governing body of the applicable local government as described by Section 394.037(a-1), a housing finance corporation may issue bonds to finance a multifamily residential development to be owned by the housing finance corporation in accordance with the requirements of this chapter [~~Section 394.004~~] if the housing finance corporation receives approval of the governing body of that [~~the~~] local government.

SECTION 9.  Subchapter Z, Chapter 394, Local Government Code, is amended by adding Sections 394.9026 and 394.9027 to read as follows:

Sec. 394.9026.  ADDITIONAL CONDITIONS FOR BENEFICIAL PROPERTY-BASED TAX AND FEE TREATMENT RELATING TO CERTAIN MULTIFAMILY RESIDENTIAL DEVELOPMENTS. (a) In this section:

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

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

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

(4)  "Property-based exemption" means an exemption from the taxes and fees imposed with respect to property owned by a housing finance corporation or with respect to income from that property.

(5)  "Rent" means any recurring fee or charge a tenant is required to pay as a condition of occupancy, including a fee or charge for the use of a common area or facility reasonably associated with residential rental property.

(b)  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, Chapter 2306, Government Code.

(c)  Subject to Subsection (g), a property-based exemption under Section 394.905(a) 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:

(A)  10 percent of the units in the multifamily residential development are reserved for occupancy as lower income housing units; and

(B)  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, 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 about the development's:

(A)  compliance with the conditions prescribed by this section; and

(B)  policies regarding tenant participation in the housing choice voucher program;

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

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

(d)  In calculating the income of an individual or family for a lower or moderate income housing unit, the housing finance corporation must 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. 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)  A housing finance corporation may 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)  A tenant may not waive the protections provided by Subsection (c)(9). A housing finance corporation may adopt tenant protections that are more protective of tenants than the tenant protections provided by Subsection (c)(9).

(g)  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) In this section:

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

(2)  "Property-based exemption" has the meaning assigned by Section 394.9026.

(b)  A housing finance corporation that claims a property-based exemption for a multifamily residential development under Section 394.905(a) must annually submit to the department 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)  Not later than the 60th day after the date of receipt of the audit conducted under Subsection (b), the department shall examine the audit report and publish a report summarizing the findings of the audit. The report must:

(1)  be made available on the department'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, 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)  If an audit report submitted under Subsection (b) indicates noncompliance with Section 394.905(a) or 394.9026, a housing finance corporation:

(1)  must be given:

(A)  written notice from the department or 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 the department 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)  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 the department 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)  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)  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)  An independent auditor or compliance expert may not prepare an audit under Subsection (b) for more than three consecutive years for the same housing finance corporation. After the third consecutive audit, the independent auditor or compliance expert may prepare an audit only after the second anniversary of the preparation of the third consecutive audit.

(i)  The department:

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

(2)  may 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)  may adopt rules necessary to implement this section.

(j)  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 may be redacted.

SECTION 10.  Section 394.903, Local Government Code, is amended to read as follows:

Sec. 394.903.  TRANSFER [~~LOCATION~~] OF [~~RESIDENTIAL DEVELOPMENT;~~] RESIDENTIAL DEVELOPMENT SITES. [~~(a) A residential development covered by this chapter must be located within the local government.~~

[~~(b)~~]  A [~~The~~] local government may transfer any residential development site to a housing finance corporation by sale or lease. The governing body of the local government may authorize the transfer by resolution without submitting the issue to the voters and without regard to the requirements, restrictions, limitations, or other provisions contained in any other general, special, or local law. The site location is subject to the requirements of this chapter [~~may be located wholly or partly inside or outside the local government~~].

SECTION 11.  Section 394.905, Local Government Code, is amended to read as follows:

Sec. 394.905.  EXEMPTION FROM TAXES AND FEES [~~TAXATION~~]. (a) Notwithstanding any other law, the [~~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 the Texas Department of Housing and Community Affairs 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)  The corporation is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the corporation is exempted by that chapter.

SECTION 12.  Section 394.005, Local Government Code, is repealed.

SECTION 13.  (a) Sections 394.031(c) and (d), Local Government Code, as added by this Act, apply only to the exercise of power by a housing finance corporation made on or after the effective date of this Act. An exercise of power made before the effective date of this Act is governed by the law in effect on the date the power was exercised, and the former law is continued in effect for that purpose.

(b)  Sections 394.037(a-1) and 394.905(a)(2), Local Government Code, as added by this Act, apply only to bonds issued on or after the effective date of this Act. Bonds issued before the effective date of this Act are governed by the law in effect on the date the bonds were issued, and the former law is continued in effect for that purpose.

(c)  Subject to Subsections (d), (e), and (f) of this section, Sections 394.905(a)(1) and 394.9026, Local Government Code, as added by this Act, apply only to a tax or fee imposed for a tax year or calendar year, respectively, that begins on or after the effective date of this Act.

(d)  Subject to Subsections (e) and (f) of this section, Sections 394.905(a)(1) and 394.9026, Local Government Code, as added by this Act, apply only to a residential development that is acquired by a housing finance corporation on or after the effective date of this Act. A residential development that was acquired by a housing finance corporation before the effective date of this Act is governed by the law in effect on the date the development was acquired by the corporation, and the former law is continued in effect for that purpose.

(e)  Section 394.9026(g), Local Government Code, as added by this Act, applies only to an occupied multifamily residential development that is acquired by a housing finance corporation on or after the effective date of this Act. An occupied multifamily residential development that is acquired by a housing finance corporation before the effective date of this Act is governed by the law in effect on the date the development was acquired by the housing finance corporation, and the former law is continued in effect for that purpose.

(f)  Sections 394.9026(c)(6), (7), (8), and (9) and (f), Local Government Code, as added by this Act, apply to a multifamily residential development owned by a housing finance corporation on or after the effective date of this Act, regardless of the date the development was acquired by the housing finance corporation.

(g)  Notwithstanding Section 394.9027(b) or (f), Local Government Code, as added by this Act, the initial audit report required to be submitted under Section 394.9027(b), 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 must be submitted by the later of:

(1)  the date established by Section 394.9027(f), Local Government Code, as added by this Act; or

(2)  June 1, 2026.

(h)  Not later than January 1, 2026, the Texas Department of Housing and Community Affairs shall adopt rules necessary to implement Section 394.9027(i), Local Government Code, as added by this Act.

SECTION 14.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2025.