By:  Bettencourt, et al. S.B. No. 867

(In the Senate - Filed January 22, 2025; February 13, 2025, read first time and referred to Committee on Local Government; May 5, 2025, reported adversely, with favorable Committee Substitute by the following vote: Yeas 6, Nays 0; May 5, 2025, sent to printer.)

COMMITTEE VOTE

                 Yea Nay Absent  PNV

Bettencourt       X

Middleton         X

Cook              X

Gutierrez                   X

Nichols           X

Paxton            X

West              X

COMMITTEE SUBSTITUTE FOR S.B. No. 867 By:  Paxton

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 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.  Section 394.032(d), Local Government Code, is amended to read as follows:

(d)  Subject to Sections 394.9026, 394.903(a), and 394.905(c), a [~~A~~] housing finance corporation may enter into contracts to perform services for any other housing finance corporation or any individual or entity acting on behalf of any other housing finance corporation or, with respect to residential development, any housing authority, nonprofit enterprise, or similar entity.

SECTION 4.  Section 394.037, Local Government Code, is amended by adding Subsection (a-1) to read as follows:

(a-1)  A housing finance corporation may only issue bonds under this chapter for a purpose described by Subsection (a) to finance or support a residential development or home that is located or will be constructed within the boundaries of the local government that formed the corporation under Section 394.011 or 394.012.

SECTION 5.  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)  subject to Sections 394.9026, 394.903(a), and 394.905(c), 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 6.  Section 394.9025, Local Government Code, is amended to read as follows:

Sec. 394.9025.  MULTIFAMILY RESIDENTIAL DEVELOPMENT. (a) Following a public hearing, a housing finance corporation may, subject to the geographic limitations of Section 394.037(a-1), issue bonds to finance a multifamily residential development to be owned, financed, or supported by the housing finance corporation if at least 50 percent of the units in the multifamily residential development are reserved for occupancy by individuals and families earning less than 80 percent of the area median family income.

(b)  Following a public hearing by the governing body of the applicable local government, a housing finance corporation may, subject to the geographic limitations of Section 394.037(a-1), issue bonds to finance a multifamily residential development to be owned, financed, or supported by the housing finance corporation in accordance with Section 394.004 if the housing finance corporation receives approval of the governing body of the local government.

SECTION 7.  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 AD VALOREM TAX 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)  "Housing finance corporation user" means a public-private partnership entity or a developer or other private entity that has an ownership interest or a leasehold or other possessory interest in a multifamily residential development owned, financed, or supported by a housing finance corporation.

(3)  "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.

(4)  "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.

(5)  "Multifamily residential development" means any residential development consisting of four or more residential units intended for occupancy as rentals, regardless of whether the units are attached or detached.

(6)  "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. The term does not include fees and charges for services or amenities that are optional for a tenant, such as pet fees and fees for storage or covered parking.

(b)  This section does not apply to a multifamily residential development that receives financial assistance administered under Subchapter DD, Chapter 2306, Government Code.

(c)  Subject to Subsection (g), an ad valorem tax exemption under Section 394.905 for a multifamily residential development owned, financed, or supported by a housing finance corporation is available only if the other requirements of this chapter are satisfied and if:

(1)  subject to Subdivision (2), at least:

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

(B)  40 percent of the units in the development are reserved for occupancy as moderate income housing units;

(2)  for a development that is acquired by a housing finance corporation and that is occupied at acquisition or was occupied at any time within the two-year period preceding the date of the acquisition:

(A)  at least:

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

(ii)  unless a resolution waiving this requirement is received from the governing body of the local government within the boundaries of which the development is located, 15 percent of the total gross cost of the existing development, as shown in the settlement statement related to the acquisition, is expended on rehabilitating, renovating, reconstructing, or repairing the development, with initial expenditures and construction activities:

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

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

(B)  the development is approved by the governing body of the local government within the boundaries of which the development is located and at least:

(i)  25 percent of the units are reserved for occupancy as lower income housing units; and

(ii)  25 percent of the units are reserved for occupancy as moderate income housing units;

(3)  the income-restricted residential units in the development have the same access to community amenities and programs as residential units that are not income-restricted;

(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, the housing finance corporation user, and the development, including any individual or entity associated with or acting on behalf of the corporation, user, or development, do not:

(A)  refuse to rent a residential unit in the development 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, the housing finance corporation user, or the development causes to be published on the Internet website of the development information about the development's policies regarding tenant participation in the housing choice voucher program;

(8)  any housing finance corporation or housing finance corporation user 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 housing finance corporation, the housing finance corporation user, and the development 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 housing finance corporation, the housing finance corporation user, and the development 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 housing finance corporation, the housing finance corporation user, or the development 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, the housing finance corporation user, or the development must use the definition of annual income described in 24 C.F.R. Section 5.609 for the applicable fair market rent area with an imputed family size of one person per bedroom plus one person, as defined and 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, housing finance corporation user, or development 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, housing finance corporation user, or development may adopt tenant protections that are more protective of tenants than the tenant protections provided by Subsection (c)(9).

(g)  A multifamily residential development that is acquired by a housing finance corporation and is occupied on the date of the acquisition is eligible for an ad valorem exemption under Section 394.905 for the two-year period following the date of the acquisition, regardless of whether the development complies with the conditions prescribed by Subsection (c), if the development comes into compliance with Subsection (c) not later than the second 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)  "Housing finance corporation user" has the meaning assigned by Section 394.9026.

(b)  A housing finance corporation or housing finance corporation user that claims an ad valorem tax exemption for a multifamily residential development under Section 394.905 and to which Section 394.9026 applies must annually submit to the department an audit report for a compliance audit, prepared at the expense of the corporation or user and conducted by an independent auditor or compliance expert with an established history of providing similar audits on housing compliance matters, that:

(1)  states whether the corporation or user is in compliance with the requirements imposed for the exemption by Section 394.9026; and

(2)  identifies 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 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 any housing finance corporation or housing finance corporation user that owns the 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 requirements of Section 394.9026.

(d)  If an audit report submitted under Subsection (b) indicates noncompliance with Section 394.9026, any housing finance corporation or housing finance corporation user that owns the development must be given written notice from the department that is provided not later than the 120th day after the date a report has been submitted under Subsection (b) and specifies the reasons for noncompliance. The notice must:

(1)  for a finding of noncompliance with any provision of Section 394.9026, contain at least one option for a corrective action to resolve each instance of noncompliance;

(2)  give a period of 60 days after the date of receipt of the notice to resolve the matter that is the subject of the notice; and

(3)  inform the housing finance corporation or housing finance corporation user that failure to resolve the noncompliance within the period provided by Subdivision (2) will result in the loss of the ad valorem tax exemption under Section 394.905.

(e)  If a matter that is the subject of a notice provided under Subsection (d) is not resolved to the satisfaction of the department during the period provided by that subsection, the department must give a housing finance corporation or housing finance corporation user a second written notice that informs the chief appraiser of the appraisal district in which the development is located, the housing finance corporation, and the housing finance corporation user of the loss of the ad valorem tax exemption for the development due to noncompliance with Section 394.9026.

(f)  A housing finance corporation or housing finance corporation user is considered to be in compliance with Section 394.9026 if notice under Subsection (d) is not provided before the 121st day after the date the report was submitted under Subsection (b).

(g)  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 existing multifamily residential development that is acquired by a housing finance corporation; or

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

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

(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;

(3)  may extend any deadline imposed under this section for good cause shown, as determined by the department; and

(4)  may adopt rules necessary to implement this section and Section 394.9026.

(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 8.  Section 394.903, Local Government Code, is amended to read as follows:

Sec. 394.903.  LOCATION OF RESIDENTIAL DEVELOPMENTS [~~DEVELOPMENT~~]; TRANSFER OF [~~RESIDENTIAL DEVELOPMENT~~] SITES. (a) A residential development subject to [~~covered by~~] this chapter must be located within the boundaries of the local government that formed the housing finance corporation that owns, finances, or supports the development.

(b)  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 9.  Section 394.905, Local Government Code, is amended to read as follows:

Sec. 394.905.  EXEMPTION FROM TAXES AND FEES [~~TAXATION~~]. (a) Subject to compliance with the requirements of this chapter, a [~~The~~] housing finance corporation and[~~,~~] all property owned, financed, or supported by the corporation [~~it~~], the income from that [~~the~~] property, all bonds issued by the corporation [~~it~~], the income from those [~~the~~] bonds, and the transfer of those [~~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.

(b)  The corporation is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the corporation is exempted by that chapter.

(c)  A residential development is exempt from ad valorem taxes imposed by this state or any political subdivision of this state only if any applicable requirements of Section 394.9026 are met and if:

(1)  the residential development is located within the boundaries of the local government that formed the housing finance corporation;

(2)  the board of directors of the housing finance corporation has adopted a resolution approving the multifamily residential development;

(3)  before approval of the board of directors under Subdivision (2), the housing finance corporation or a sponsoring local government of the corporation:

(A)  conducts, or obtains from a professional entity that has experience underwriting affordable residential developments and does not have a financial interest in the applicable development or any applicable housing finance corporation user, an underwriting assessment of the proposed development that is dated not earlier than the 180th day before the date of the board resolution;

(B)  based on the underwriting assessment, makes a good faith determination that:

(i)  for a development that is acquired by a housing finance corporation and that is occupied at acquisition or was occupied at any time within the two-year period preceding the date of the acquisition, the annual public benefit at the development will be not less than 60 percent of the amount of estimated ad valorem taxes that would be imposed on the property in the same tax year if the applicable property did not receive an exemption from those taxes under Subsection (a) for each of the third, fourth, and fifth tax years after the tax year that the corporation acquires the development; and

(ii)  for a newly constructed development not described by Subparagraph (i), the development would not be feasible if the property did not receive an exemption from ad valorem taxes under Subsection (a); and

(C)  publishes on its Internet website a copy of the underwriting assessment required by this subsection; and

(4)  the housing finance corporation submits to the Texas Department of Housing and Community Affairs and to the chief appraiser for each appraisal district in which the exemption is sought a one-time project information form on a form promulgated by the comptroller.

(d)  For purposes of Subsection (c)(3)(B)(i), not less than 50 percent of the annual public benefit required under that subparagraph must be attributable to rent reduction.

(e)  Notwithstanding Subsections (a)-(c), and subject to Section 394.9027, a multifamily residential development owned by a housing finance corporation or housing finance corporation user is not entitled to an ad valorem tax exemption in any given tax year in which:

(1)  the corporation or user is not in compliance with Section 394.9026 and:

(A)  the notice requirements in Section 394.9027(d) have been fulfilled; and

(B)  the noncompliance is not resolved to the satisfaction of the Texas Department of Housing and Community Affairs within the period provided by Section 394.9027(d)(2); or

(2)  the corporation or user has not timely submitted the audit report required by Section 394.9027.

(f)  Subsection (a) does not apply to ad valorem taxes imposed on a multifamily residential development by:

(1)  a conservation or reclamation district created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, that provides water, sewer, or drainage service to the development, unless the applicable corporation has entered into a written agreement with the district to make a payment to the district in lieu of taxation, in the amount specified in the agreement; or

(2)  an emergency services district created under Chapter 775, Health and Safety Code, unless the applicable corporation has entered into a written agreement with the district to make a payment to the district in lieu of taxation, in the amount specified in the agreement.

(g)  Subsections (c)(3), (c)(4), (d), and (e) do not apply to a multifamily residential development that receives financial assistance administered under Subchapter DD, Chapter 2306, Government Code.

(h)  In this section:

(1)  "Housing finance corporation user" has the meaning assigned by Section 394.9026.

(2)  "Public benefit" means the overall measurable economic benefit delivered by a multifamily residential development, including rent reduction, any monetary payments made in lieu of taxes by the housing finance corporation or housing finance corporation user, and any monetary payments received by the corporation.

(3)  "Rent reduction" means the projected difference between the rent charged for an income-restricted unit and the maximum market rate rent that could be charged for that same unit without the income restrictions.

SECTION 10.  Section 394.005, Local Government Code, is repealed.

SECTION 11.  (a) Section 394.037(a-1), Local Government Code, as added by this Act, applies 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.

(b)  Section 394.9026, Local Government Code, as added by this Act, and Section 394.905, Local Government Code, as amended by this Act, apply only to a tax for a tax year that begins on or after the effective date of this Act.

(c)  Subject to Subsections (d) and (e) of this section, Sections 394.9026 and 394.9027, Local Government Code, as added by this Act, apply to all multifamily residential developments that do not receive financial assistance administered under Subchapter DD, Chapter 2306, Government Code, and are claiming an ad valorem tax exemption under Section 394.905, Local Government Code, as amended by this Act, regardless of when the developments were approved or acquired.

(d)  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.

(e)  Notwithstanding Section 394.9027(b) or (g), 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(g), Local Government Code, as added by this Act; or

(2)  June 1, 2026.

(f)  Subject to Subsections (g) and (h) of this section, Section 394.905, Local Government Code, as amended by this Act, applies to all multifamily residential developments owned, financed, or supported by a housing finance corporation, regardless of when the developments were approved or acquired.

(g)  Section 394.905(c), Local Government Code, as added by this Act, applies only to a multifamily residential development that does not receive financial assistance administered under Subchapter DD, Chapter 2306, Government Code, and that is acquired by a housing finance corporation on or after the effective date of this Act.

(h)  A multifamily residential development that is owned, financed, or supported by a housing finance corporation on September 1, 2025, does not receive financial assistance administered under Subchapter DD, Chapter 2306, Government Code, and is located outside an area in which the corporation is authorized to engage in residential development under Section 394.903, Local Government Code, as amended by this Act, is not eligible for an ad valorem tax exemption under Section 394.905, Local Government Code, as amended by this Act, after January 1, 2027.

(i)  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 12.  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.

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