

By: Bettencourt

S.B. No. 867

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

1 Code, is amended to read as follows:

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

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

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

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

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

13 (3) for a housing finance corporation sponsored by
14 more than one local government under Section 394.012:

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

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

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

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

26 (2) if proposing to operate in the unincorporated area
27 of a county, each county that contains any part of the outside area

1 in which the corporation proposes to operate.

2 SECTION 5. Sections 394.032(a) and (e), Local Government
3 Code, are amended to read as follows:

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

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

8 (2) incur liabilities;

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

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

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

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

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

24 (a-1) Bonds issued under this chapter for a purpose
25 described by Subsection (a) may be issued only to finance or support
26 residential developments or homes that are located:

27 (1) inside the boundaries of the sponsoring local

1 government, if the bonds are issued by a housing finance
2 corporation formed under Section 394.011; or

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

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

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

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

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

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

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

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

26 (b) Following a public hearing by the governing body of the
27 applicable local government as described by Section 394.037(a-1), a

1 housing finance corporation may issue bonds to finance a
2 multifamily residential development to be owned by the housing
3 finance corporation in accordance with the requirements of this
4 chapter [~~Section 394.004~~] if the housing finance corporation
5 receives approval of the governing body of that [~~the~~] local
6 government.

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

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

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

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

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

26 (4) "Property-based exemption" means an exemption
27 from the taxes and fees imposed with respect to property owned by a

1 housing finance corporation or with respect to income from that
2 property.

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

7 (b) This section does not apply to a multifamily residential
8 development that is the recipient of a low income housing tax credit
9 allocated under Subchapter DD, Chapter 2306, Government Code.

10 (c) Subject to Subsection (g), a property-based exemption
11 under Section 394.905(a) for a multifamily residential development
12 is available only if the multifamily residential development
13 satisfies the other requirements of this chapter and if:

14 (1) at least:

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

18 (B) 40 percent of the units in the multifamily
19 residential development are reserved for occupancy as moderate
20 income housing units;

21 (2) for a multifamily residential development that is
22 acquired by a housing finance corporation, the development is
23 occupied or was occupied within the two-year period preceding the
24 date of the acquisition and is not otherwise subject to a land use
25 restriction agreement under Section 2306.185, Government Code,
26 and:

27 (A) not less than 15 percent of the total gross

1 cost of the existing development, as shown in the settlement
2 statement, is expended on rehabilitating, renovating,
3 reconstructing, or repairing the development, with initial
4 expenditures and construction activities:

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

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

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

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

16 (A) the housing finance corporation or a
17 sponsoring local government of the corporation conducts, or obtains
18 from a professional entity that has experience underwriting
19 affordable multifamily residential developments and does not have a
20 financial interest in the applicable development, developer, or
21 housing finance corporation, an underwriting assessment of the
22 proposed development that allows the housing finance corporation to
23 make a good faith determination that, for an occupied multifamily
24 residential development acquired by a housing finance corporation
25 or for a newly constructed multifamily residential development
26 owned by a housing finance corporation, the total annual amount of
27 rent reduction on the income-restricted residential units provided

1 at the development will be not less than 60 percent of the estimated
2 amount of the annual ad valorem taxes that would be imposed on the
3 property without an exemption from those taxes under Section
4 394.905(a) for the second, third, and fourth years after the date of
5 acquisition by the housing finance corporation or the date the
6 certificate of occupancy is issued for the development, as
7 applicable; and

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

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

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

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

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

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

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

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

9 (7) the housing finance corporation publishes on its
10 Internet website information about the development's:

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

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

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

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

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

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

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

1 organization;

2 (B) the landlord may only choose to not renew the
3 lease if the tenant:

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

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

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

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

19 (d) In calculating the income of an individual or family for
20 a lower or moderate income housing unit, the housing finance
21 corporation must use the definition of annual income described in
22 24 C.F.R. Section 5.609, as implemented by the United States
23 Department of Housing and Urban Development. If the income of a
24 tenant exceeds an applicable limit at the time of the renewal of a
25 lease agreement for a residential unit, the provisions of Section
26 42(g)(2)(D), Internal Revenue Code of 1986, apply in determining
27 whether the unit may still qualify as a lower or moderate income

1 housing unit.

2 (e) A housing finance corporation may require an individual
3 or family participating in the housing choice voucher program to
4 pay the difference between the monthly rent for the applicable unit
5 and the amount of the monthly voucher if the amount of the voucher
6 is less than the rent.

7 (f) A tenant may not waive the protections provided by
8 Subsection (c)(9). A housing finance corporation may adopt tenant
9 protections that are more protective of tenants than the tenant
10 protections provided by Subsection (c)(9).

11 (g) Notwithstanding Subsection (c) and Section
12 394.905(a)(1), a multifamily residential development that is
13 acquired by a housing finance corporation, that is occupied or was
14 occupied within the two-year period preceding the date of the
15 acquisition, and that is not otherwise subject to a land use
16 restriction agreement under Section 2306.185, Government Code, is
17 eligible for a property-based exemption under Section 394.905(a)
18 for:

19 (1) the one-year period following the date of the
20 acquisition, regardless of whether the development complies with
21 the conditions prescribed by Subsection (c) and Section
22 394.905(a)(1); and

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

27 Sec. 394.9027. AUDIT REQUIREMENTS FOR CERTAIN MULTIFAMILY

1 RESIDENTIAL DEVELOPMENTS. (a) In this section:

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

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

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

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

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

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

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

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

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

8 (d) If an audit report submitted under Subsection (b)
9 indicates noncompliance with Section 394.905(a) or 394.9026, a
10 housing finance corporation:

11 (1) must be given:

12 (A) written notice from the department or
13 appropriate appraisal district that:

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

16 (ii) specifies the reasons for
17 noncompliance;

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

20 (iv) informs the housing finance
21 corporation that failure to resolve the noncompliance will result
22 in the loss of the property-based exemption under Section
23 394.905(a);

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

27 (C) if a matter that is the subject of a notice

1 provided under this subdivision is not resolved to the satisfaction
2 of the department and appropriate taxing authority during the
3 period provided by Paragraph (B), a second notice that informs the
4 housing finance corporation of the loss of the property-based
5 exemption due to noncompliance with Section 394.905(a) or 394.9026,
6 as applicable; and

7 (2) is considered to be in compliance with Sections
8 394.905(a) and 394.9026 if notice under Subdivision (1)(A) is not
9 provided as specified by Subparagraph (i) of that paragraph.

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

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

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

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

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

1 (h) An independent auditor or compliance expert may not
2 prepare an audit under Subsection (b) for more than three
3 consecutive years for the same housing finance corporation. After
4 the third consecutive audit, the independent auditor or compliance
5 expert may prepare an audit only after the second anniversary of the
6 preparation of the third consecutive audit.

7 (i) The department:

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

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

13 (3) may adopt rules necessary to implement this
14 section.

15 (j) An audit conducted under Subsection (b) is subject to
16 disclosure under Chapter 552, Government Code, except that
17 information containing tenant names, unit numbers, or other tenant
18 identifying information may be redacted.

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

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

25 [~~(b)~~] A [~~The~~] local government may transfer any residential
26 development site to a housing finance corporation by sale or lease.
27 The governing body of the local government may authorize the

1 transfer by resolution without submitting the issue to the voters
2 and without regard to the requirements, restrictions, limitations,
3 or other provisions contained in any other general, special, or
4 local law. The site location is subject to the requirements of this
5 chapter [~~may be located wholly or partly inside or outside the local~~
6 ~~government~~].

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

9 Sec. 394.905. EXEMPTION FROM TAXES AND FEES [~~TAXATION~~].

10 (a) Notwithstanding any other law, the [~~The~~] housing finance
11 corporation, all property owned by it, the income from the
12 property, all bonds issued by it, the income from the bonds, and the
13 transfer of the bonds are exempt, as public property used for public
14 purposes, from license fees, recording fees, and all other taxes
15 imposed by this state or any political subdivision of this state
16 only if:

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

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

23 (B) the property is located in an area in which
24 the housing finance corporation is authorized to exercise its
25 powers as described by Section 394.031(c) or the exemption is
26 approved by each applicable governing body described by Section
27 394.031(d); and

1 (C) if an exemption from ad valorem taxation is
2 claimed, the housing finance corporation submits to the Texas
3 Department of Housing and Community Affairs and to the county tax
4 assessor-collector for each appraisal district in which the
5 exemption is sought a one-time exemption application on a form
6 promulgated by the comptroller; or

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

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

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

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

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

1 effect for that purpose.

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

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

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

25 (f) Sections 394.9026(c)(6), (7), (8), and (9) and (f),
26 Local Government Code, as added by this Act, apply to a multifamily
27 residential development owned by a housing finance corporation on

1 or after the effective date of this Act, regardless of the date the
2 development was acquired by the housing finance corporation.

3 (g) Notwithstanding Section 394.9027(b) or (f), Local
4 Government Code, as added by this Act, the initial audit report
5 required to be submitted under Section 394.9027(b), Local
6 Government Code, as added by this Act, for a multifamily
7 residential development that was acquired by a housing finance
8 corporation before the effective date of this Act must be submitted
9 by the later of:

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

12 (2) June 1, 2026.

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

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