

## **BILL ANALYSIS**

S.B. 591  
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Urban Affairs  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Affordable housing projects in Texas are intended to utilize public-private partnerships whereby property and sales taxes are reduced or entirely waived for private developers who, in turn, provide the public benefit of housing at rental rates affordable to Texans who are most economically disadvantaged. While these are laudable goals, the need for improvement has been recognized by a 2020 study by The University of Texas School of Law Entrepreneurship and Community Development Clinic.

Under current law, public facility corporations too often make the sole decision to grant tax breaks to developers to develop affordable housing, leaving all other affected taxing entities without a say in removing taxable properties from their tax rolls. This shifts the remainder of the tax burden to other property owners, residents, and businesses. Additionally, current minimum requirements for these tax exemptions fall short of achieving the true public benefit of affordability the state intends to gain in proportion to such generous tax breaks. Finally, refusal to accept federal housing vouchers is also permissible under current law for these tax-exempt affordable housing developments, which allows those most in need of quality, affordable housing to be turned away from developments that should serve this population. S.B. 591 seeks to address these issues and improve the processes for and regulations around providing affordable housing in Texas.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

S.B. 591 amends the Local Government Code to set out and revise provisions relating to certain public facilities used to provide affordable housing.

#### **The Public Facility Corporation Act**

##### **Creation Authority**

S.B. 591 authorizes a public facility corporation or the sponsor of such a corporation to finance, own, or operate a multifamily residential development if the corporation or sponsor complies with all applicable provisions of the act.

## Tax Exemptions

S.B. 591 includes the following among the conditions that must be satisfied for the tax exemption for certain public facilities to apply to a multifamily residential development which is owned by a public facility corporation created by a housing authority and which does not have at least 20 percent of its units reserved for public housing units:

- the corporation not participating in the federal Rental Assistance Demonstration (RAD) program administered by HUD or receiving financial assistance through the state's low income housing tax credit program or through private activity bonds or certain other bonds;
- for an occupied multifamily residential development that is acquired by the corporation:
  - a resolution of "no objection" for the development being approved by the governing body of each municipality or county for which the corporation's sponsor was created; and
  - a sum of not less than 50 percent of the total gross cost of the existing project in its entirety being expended on rehabilitating, renovating, reconstructing, or repairing the project; and
- all other applicable additional requirements set out by the bill being satisfied.

The bill revises the existing requirement to reserve at least 50 percent of the development's units for occupancy by individuals and families earning less than 80 percent of the area median family income to change the income measurement to area median income (AMI). The bill removes the specification that the public hearing to approve the development be at a regular meeting of the authority's governing body.

S.B. 591 conditions the eligibility of a multifamily residential development that is owned by a public facility corporation created by a sponsor other than a housing authority and that does not have at least 20 percent of its units reserved for public housing units to receive the tax exemption on the following:

- the corporation not participating in the federal RAD program or receiving financial assistance through the state's low income housing tax credit program or through private activity bonds or certain other bonds;
- at least 50 percent of the development's units being reserved for occupancy by individuals and families earning less than 80 percent of the AMI; and
- all other applicable additional requirements set out by the bill being satisfied.

S.B. 591 provides that, with respect to a multifamily residential development that is owned by a corporation created by any sponsor under the act, the tax exemption for an occupied multifamily residential development that is acquired by the corporation applies only if the development comes into compliance with the applicable requirements not later than the first anniversary of the date of acquisition. However, an occupied multifamily residential development that is so acquired is eligible for an exemption for the one-year period following the date of acquisition regardless of whether the development is compliant with the applicable requirements.

S.B. 591 revises the provision establishing that, during the period that a corporation owns a particular public facility, a leasehold or other possessory interest in the real property of the public facility granted by the corporation is tax-exempt to limit the applicability of the exemption to a corporation that owns a particular public facility that provides multifamily housing. The bill also provides that during that period the materials used by a person granted such a possessory interest to improve the real property is exempt from all sales and use taxes because the materials are for the benefit of the corporation.

Additional Requirements for Beneficial Tax Treatment Relating to Certain Public Facilities Owned by Corporations Created by Housing Authorities

S.B. 591 requires the following:

- the corporation must use an open, transparent, and competitive process for selecting a developer for the purpose of constructing a housing development;
- at least 10 percent of the units in the development must be reserved as lower income housing units; and
- the percentage of lower income housing units reserved in each category of units in the housing development, based on the number of bedrooms and bathrooms per unit, must be the same as the percentage of lower income housing units reserved in the housing development as a whole.

The bill provides that a unit may not be used to satisfy the reservation requirement if every tenant in the unit is a part-time or full-time student at an institution of higher education, under the age of 24, and ineligible for federal Section 8 housing assistance. The bill defines "developer" as a private entity that constructs a development. The bill defines "lower income housing unit" as a residential unit reserved for occupancy by an individual or family earning not more than 60 percent of the AMI, adjusted for family size.

S.B. 591 caps the monthly rent charged for a lower income housing unit at 30 percent of 60 percent of the AMI, adjusted for family size, or, if the unit is occupied by a participant in the federal Section 8 housing choice voucher program, as defined by the bill, the payment standard used by the housing authority that administers the voucher for the unit. In calculating the income of an individual or family for a lower income housing unit, the public facility user must consider the income of every individual who will be living in the unit. The bill defines "public facility user" as 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 public facility used to provide multifamily housing.

The requirements prescribed by these provisions of the bill do not apply to a multifamily residential development that is:

- owned by a corporation that was not created by a housing authority; or
- owned by a corporation created by a housing authority and:
  - in which at least 20 percent of the units are reserved for public housing units;
  - that participates in the RAD program; or
  - that receives financial assistance through the state's low income housing tax credit program or through private activity bonds or certain other bonds.

Additional Requirements for Beneficial Tax Treatment Relating to Certain Public Facilities Owned by Corporations Created by Any Sponsor

S.B. 591 prohibits a public facility user from refusing to rent a residential unit to an individual or family because the individual or family participates in the Section 8 housing choice voucher program or using a financial or minimum income standard that requires an individual or family participating in that 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.

S.B. 591 requires a corporation that owns or leases to a public facility user a public facility used as a multifamily residential development to publish on its website information about the development's compliance with applicable requirements prescribed by the bill and policies regarding tenant participation in the Section 8 housing choice voucher program. The bill requires a public facility user to affirmatively market available residential units directly to individuals and families participating in that program and notify local housing authorities of any available units in the development.

S.B. 591 requires a public facility user of a multifamily residential development to do the following not later than April 1 of each year:

- submit to the chief appraiser of the appraisal district in which the development is located an audit report for a compliance audit conducted by an independent auditor or compliance expert to determine whether the public facility user is in compliance with the applicable requirements prescribed by the bill; and
- submit to the comptroller of public accounts a report that includes, for each housing development:
  - the name of the development and the developer;
  - the street address and municipality or county in which the development is located;
  - the total number of residential units, reported by bedroom size;
  - the total number of lower income housing units, reported by bedroom size, level of income restriction, and rent;
  - the total number of residential units, reported by bedroom size, level of income restriction, and rent, that are not lower income housing units but that are reserved for occupancy by an individual or family earning less than 80 percent of AMI;
  - the number of residential units rented by individuals and families who participate in the Section 8 housing choice voucher program, reported by bedroom size;
  - the race, ethnicity, and age of all occupants, if available; and
  - if not previously submitted in a report to the comptroller, or if amended since the previous submission, a copy of the ground lease and the partnership agreement for the public facility.

These reports are public information and subject to disclosure under state public information law, except that information containing tenant names, unit numbers, or other identifying information may be redacted. The comptroller must post a copy of the reports received on its website.

S.B. 591 requires each lease agreement for a unit in an applicable multifamily residential development to provide the following:

- that 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;
- that the landlord may only choose to not renew the lease if the tenant:
  - is in material noncompliance with the lease, including nonpayment of rent after the required cure period;
  - committed one or more substantial violations of the lease;
  - failed to provide required information on the income, composition, or eligibility of the tenant's household; or
  - committed certain repeated minor violations of the lease;
- that to not renew the lease, the landlord must serve a written notice of proposed nonrenewal on the tenant at least 30 days before the effective date of nonrenewal; and
- that any requisite written notice of a proposed nonrenewal must specify the date of the proposed nonrenewal.

The bill prohibits a tenant from waiving these protections.

S.B. 591 requires that a public facility corporation be given written notice of an instance of noncompliance with the applicable requirements imposed under the bill and be given 90 days after the day notice is received to cure the matter that is the subject of the notice.

The requirements prescribed by these provisions of the bill do not apply to a multifamily residential development that is owned by a corporation:

- in which at least 20 percent of the units are reserved for public housing units;
- that participates in the RAD program; or
- that receives financial assistance through the state's low income housing tax credit program or through private activity bonds or certain other bonds.

**The Housing Authorities Law**

S.B. 591 excludes a multifamily residential development which is owned by a public facility corporation created by a housing authority under the Public Facility Corporation Act from eligibility for the tax exemption under the Housing Authorities Law.

**EFFECTIVE DATE**

September 1, 2021.