

BILL ANALYSIS

Senate Research Center
87R16171 JAM-D

C.S.S.B. 591
By: Bettencourt
Local Government
3/30/2021
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

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 (PFCs) 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.

What's more, current minimum requirements for these tax exemptions fall short in achieving the true public benefit of affordability the State of Texas intends to gain in proportion to such generous tax breaks, requiring only half of affordable multifamily units be affordable to those earning a full 80 percent of median family income (MFI). Finally, refusal to accept federal housing vouchers is also permissible under current law for these tax-exempt affordable housing developments.

S.B. 591 would address these issues by: (1) requiring the governing bodies of affected taxing entities, prior to the PFC granting a tax exemption, to adopt a resolution approving the development; (2) requiring an additional 25 percent of units in multifamily affordable housing units be reserved for families and individuals earning up to 30 percent and 60 percent of the area median family income, at 12.5 percent of the total units, respectively; and (3) prohibit refusal to rent to an individual or family based on participation in the federal Section 8 Housing Choice Voucher Program.

(Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 591 amends current law relating to requirements for beneficial tax treatment related to certain public facilities used to provide affordable housing.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 303.042, Local Government Code, by amending Subsections (d) and (f) and adding Subsections (d-1) and (d-2), as follows:

(d) Provides that this subsection applies only to a multifamily residential development that is owned by a corporation created under Chapter 303 (Public Facility Corporations) by a housing authority and that does not have at least 20 percent of its units reserved for public housing units, participate in the Rental Assistance Demonstration program administered by the United States Department of Housing and Urban Development

(HUD), or receive financial assistance administered under Chapter 1372 (Private Activity Bonds and Certain Other Bonds), Government Code, or Subchapter DD (Low Income Housing Tax Credit Program), Chapter 2306 (Texas Department of Housing and Community Affairs), Government Code. Provides that, notwithstanding Subsections (a) (relating to the requirement that public facilities be assessed to the user of the public facility to the same extent and subject to the same exemptions from taxation as if the user owned the public facility) and (b) (relating to the user of a public facility being considered the owner of the facility for certain purposes), an exemption under Section 303.042 (Taxation) for a multifamily residential development applies only if:

(1) the housing authority holds a public hearing, at a meeting, rather than at a regular meeting, of the authority's governing body, to approve the development;

(2) 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 income, rather than area median family income;

(3) the requirements under Sections 303.0425 and 303.0426 are met; and

(4) for an occupied multifamily residential development that is acquired by a corporation:

(A) the governing body of each municipality or county for which the sponsor of the corporation was created approves a resolution of "no objection" for the development; and

(B) a sum of not less than 50 percent of the total gross cost of the existing project in its entirety is expended on rehabilitating, renovating, reconstructing, or repairing the project.

Makes nonsubstantive changes.

(d-1) Provides that this subsection applies only to a multifamily residential development that is owned by a corporation created under Chapter 303 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, participate in the Rental Assistance Demonstration program administered by HUD, or receive financial assistance administered under Chapter 1372, Government Code, or Subchapter DD, Chapter 2306, Government Code. Provides that, notwithstanding Subsections (a) and (b), an exemption under Section 303.042 for a multifamily residential development applies only if:

(1) 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; and

(2) the requirements under Section 303.0426 are met.

(d-2) Provides that this subsection applies to a multifamily residential development that is owned by a corporation created by any sponsor under Chapter 303. Provides that, notwithstanding Subsections (a), (b), (d), and (d-1), an exemption under Section 303.042 for an occupied multifamily residential development that is acquired by the corporation applies only if the development comes into compliance with the requirements of Subsection (d) or (d-1), as applicable, not later than the first anniversary of the date of the acquisition.

(f) Provides that, notwithstanding Subsections (a) and (b), during the period that a corporation owns a particular public facility that provides multifamily housing, rather than during the period of time that a corporation owns a particular public facility:

(1) creates this subdivision from existing text; a leasehold or other possessory interest in the real property of the public facility granted by the corporation is required to be treated in the same manner as a leasehold or other possessory interest in real property granted by an authority under Section 379B.011(b); and

(2) the materials used by a person granted a possessory interest described by Subdivision (1) to improve the real property of the public facility is required to be exempt from all sales and use taxes because the materials are for the benefit of the corporation.

Makes nonsubstantive changes.

SECTION 2. Amends Subchapter B, Chapter 303, Local Government Code, by adding Sections 303.0425 and 303.0426, as follows:

Sec. 303.0425. ADDITIONAL REQUIREMENTS FOR BENEFICIAL TAX TREATMENT RELATING TO CERTAIN PUBLIC FACILITIES OWNED BY CORPORATIONS CREATED BY HOUSING AUTHORITIES. (a) Defines "developer," "housing choice voucher program," "lower income housing unit," and "public facility user."

(b) Provides that the requirements prescribed by this section do not apply to a multifamily residential unit that is:

(1) owned by a corporation that was not created by a housing authority; or

(2) owned by a corporation created by a housing authority and:

(A) in which at least 20 percent of the units are reserved for public housing units;

(B) that participates in the Rental Assistance Demonstration program administered by HUD; or

(C) that receives financial assistance administered under Chapter 1372, Government Code, or Subchapter DD, Chapter 2306, Government Code.

(c) Requires a corporation to use an open, transparent, and competitive process for selecting a developer for the purpose of constructing a housing development.

(d) Requires that at least 10 percent of the units in the development be reserved as lower income housing units. Prohibits a unit from being used to satisfy the reservation required under this subsection if every tenant in the unit is:

(1) a part-time or full-time student at an institution of higher education;

(2) under the age of 24; and

(3) ineligible for housing assistance under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437f).

(e) Requires that 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, be the same as the percentage of lower income housing units reserved in the housing development as a whole.

(f) Prohibits the monthly rent charged for a lower income housing unit from exceeding:

- (1) 30 percent of 60 percent of area median income, adjusted for family size; or
- (2) if the unit is occupied by a participant in the housing choice voucher program, the payment standard used by the housing authority that administers the voucher for the unit.

(g) Requires the public facility user, in calculating the income of an individual or family for a lower income housing unit, to consider the income of every individual who will be living in the unit.

Sec. 303.0426. ADDITIONAL REQUIREMENTS FOR BENEFICIAL TAX TREATMENT RELATING TO CERTAIN PUBLIC FACILITIES OWNED BY CORPORATIONS CREATED BY ANY SPONSOR. (a) Defines "housing choice voucher program," "lower income housing unit," and "public facility user."

(b) Provides that the requirements prescribed by this section do not apply to a multifamily residential development owned by a corporation:

- (1) in which at least 20 percent of the units are reserved for public housing units;
- (2) that participates in the Rental Housing Demonstration program administered by HUD; or
- (3) that receives financial assistance administered under Chapter 1372, Government Code, or Subchapter DD, Chapter 2306, Government Code.

(c) Prohibits a public facility user from:

- (1) refusing to rent a lower income housing unit to an individual or family because the individual or family participates in the housing choice voucher program; or
- (2) using 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.

(d) 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 Internet website information about the development's:

- (1) compliance with the requirements of this section; and
- (2) policies regarding tenant participation in the housing choice voucher program.

(e) Requires a public facility user to:

- (1) affirmatively market available residential units directly to individuals and families participating in the housing choice voucher program; and
- (2) notify local housing authorities of any available units in the development.

(f) Requires a public facility user of a multifamily residential development, not later than April 1 of each year, to:

(1) 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 to determine whether the public facility user is in compliance with the requirements of this section; and

(2) submit to the Comptroller of Public Accounts of the State of Texas (comptroller) a report that includes, for each housing development;

(A) the name of the development;

(B) the street address and municipality or county in which the development is located;

(C) the name of the developer;

(D) the total number of residential units, reported by bedroom size;

(E) the total number of lower income housing units, reported by bedroom size, level of income restriction, and rent;

(F) 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 the area median income, adjusted for family size;

(G) the number of residential units rented by individuals and families who participate in the housing choice voucher program, reported by bedroom size;

(H) the race, ethnicity, and age of all occupants; and

(I) if not previously submitted in a report to the comptroller, or if amended since the previous submission:

(i) a copy of the ground lease; and

(ii) a copy of the partnership agreement for the public facility.

(g) Provides that the reports submitted under Subsection (f) are public information and are subject to disclosure under Chapter 552 (Public Information), Government Code, except that information containing tenant names, unit numbers, or other identifying information is authorized to be redacted as allowed under that chapter. Requires the comptroller to post a copy of the report received under Subsection (f)(2) on its Internet website.

(h) Requires that each lease agreement for a unit in a multifamily residential development subject to this section provide that:

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

(2) the landlord is only authorized to choose to not renew the lease if the tenant:

(A) is in material noncompliance with the lease, including nonpayment of rent after the required cure period;

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

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

(D) committed repeated minor violations of the lease that:

(i) disrupt the livability of the property;

(ii) adversely affect the health and safety of any person or the right to quiet enjoyment of the leased premises and related project facilities;

(iii) interfere with the management of the project; or

(iv) have an adverse financial effect on the project, including the repeated failure of the tenant to pay rent in a timely manner;

(3) except in the case of a termination for lease violations based on criminal activity that pose a threat to the safety of staff and other residents or in the case of a termination of a lease of a tenant who has been issued a written notice under this subsection more than once during the preceding 180-day period, to terminate or not renew the lease the landlord is required to serve a written notice of proposed termination on the tenant:

(A) at least 30 days before the effective date of the termination or nonrenewal; and

(B) before issuing a notice to vacate under Section 24.005 (Notice to Vacate Prior to Filing Eviction Suit), Property Code; and

(4) any written notice of a proposed termination that is required to be provided under Subdivision (3) is required to:

(A) specify the date of the proposed termination;

(B) state the grounds for termination;

(C) advise the tenant of the tenant's right to defend the action in court; and

(D) advise the tenant that the tenant has a 10-day period following the date of service of the notice to discuss the proposed termination of the tenancy with the landlord and cure the alleged lease violation if the lease violation is not based on drug activity, violent criminal activity, or other serious criminal activity.

(i) Prohibits a tenant from waiving the protections provided by Subsection (h).

(j) Requires a public facility corporation to be given:

(1) written notice of an instance of noncompliance with this section; and

(2) 90 days after the notice is received under Subdivision (1) to cure the matter that is the subject of the notice.

(k) Provides that, notwithstanding any other law, an occupied multifamily residential development that is acquired by a public facility corporation is eligible for an exemption under Section 303.042(d-2) for the one-year period following

the date of the acquisition regardless of whether the development complies with the other requirements of that section or with this section, as applicable.

SECTION 3. Amends Section 392.005, Local Government Code, by amending Subsection (c) and (d) and adding Subsection (c-1), as follows:

(c) Provides that an exemption under Section 392.005 (Tax Exemption) for a multifamily residential development which is owned by a housing development corporation or a similar entity created by a housing authority, rather than owned by a public facility corporation created by a housing authority under Chapter 303, a housing development corporation, or a similar entity created by a housing authority, and which does not have at least 20 percent of its units reserved for public housing units, applies only if certain conditions are met.

(c-1) Provides that an exemption under Section 392.005 for a multifamily residential development that is owned by a public facility corporation created by a housing authority under Chapter 303 and that does not have at least 20 percent of its units reserved for public housing units, does not participate in the Rental Assistance Demonstration program administered by HUD, and does not receive financial assistance administered under Chapter 1372, Government Code, or Subchapter DD, Chapter 2306, Government Code, applies only if:

(1) the authority holds a public hearing, at a meeting of the authority's governing body, to approve the development;

(2) 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;

(3) the requirements under Sections 303.0425 and 303.0426 are met; and

(4) for an occupied multifamily residential development that is acquired by the corporation:

(A) the governing body of the municipality or county for which the sponsor of the corporation was created approves a resolution of "no objection" for the development; and

(B) a sum of not less than 50 percent of the total gross cost of the existing project in its entirety is expended on rehabilitating, renovating, reconstructing, or repairing the project.

(d) Defines "public housing unit" for the purposes of Subsections (c) and (c-1), rather than for Subsection (c).

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 2021.