

- SUBJECT:** Revising requirements for public facilities used for affordable housing
- COMMITTEE:** Urban Affairs — committee substitute recommended
- VOTE:** 8 ayes — Lozano, Bernal, Cortez, Cunningham, J. González, Hayes, Romero, Tepper
- 1 nay — Gates
- WITNESSES:** For — Adam Harden, Cantu Harden Montoya LLP; Michael Hornes, City of Kerrville; Nathan Kelley, Houston Region Business Coalition; Nick Walsh, Texas Affiliation of Affordable Housing Providers; Renee Zahn, Texas Apartment Association; Jim Plummer (*Registered, but did not testify*); Greg Stoll, Broadway Homes; Clifford Sparks, City of Dallas; TJ Patterson, City of Fort Worth; Angela Hale, City of McKinney; Nadia Islam, City of San Antonio; Rick Ramirez, City of Sugar Land; Christian Bionat, Greater Houston Partnership; Richard Buquet, Habitat for Humanity Greater Garland; Chris Akbari, ITEX Group; Neal t Buddy Jones, Jefferson Properties Inc; Bill Kelly, Mayor’s Office, City of Houston; Angela Hale, McKinney Chamber if Commerce; Katie Stewart-Anchondo, New Hope Housing; Brian Sledge, NRP Group; Neal Rackleff, Rackleff LLP; Karsten Lowe, Joel Pollack, TAAHP/Streamline Advisory Partners; Dan Allgeier, Roger Arriaga, Debby Bobbitt, Ja’net Huling, Eve Pearce, Dan Pence, Rick Sheffield, Texas Affiliation of Affordable Housing Providers; Eric Woomer, Texas Chapter of the National Association of Housing and Redevelopment Officials (TXNAHRO); Nathan Fernandes, Travis County; and 11 individuals
- Against — Dan Healy, Civitas Capital Group; John Jeter, Post Investment Group; Cynthia Bast, Texans for Workforce Housing; Ben Martin, Texas Housers (*Registered, but did not testify*); Matthew Avital, Ascenda Capital; Nate Walker, Foundation Communities; Henry Bohnert)
- On — Heather Way
- BACKGROUND:** Local Government Code ch. 303 authorizes a municipality, county, school

district, housing authority, or special district to create a public facility corporation (PFC). Sec. 303.021 exempts a leasehold or other possessory interest in the real property of a public facility corporation from property taxes. For a development owned by a PFC created by a housing authority, the exemption applies only if the authority holds a public meeting to approve the development and at least half of units in the development are reserved for households earning less than 80 percent of the area median family income.

Some have called for statutory reforms to ensure that public facility corporations serve the public purpose and interest of incentivizing the provision of affordable housing intended by the PFC tax exemption.

DIGEST:

CSHB 2071 would revise and add to the requirements for a multifamily residential development owned by a public facility corporation to receive an exemption from property taxes. The bill would establish that a public facility corporation or sponsor could finance, own, or operate a multifamily residential development only if the development was located within the area of operation of the sponsor, if the sponsor was a housing authority, or otherwise within the sponsor's boundaries. A public facility corporation would be required to deliver written notice to the presiding officer of the governing body of each taxing unit in which the development would be located at least 30 days before:

- the corporation approved a new development or acquired an occupied development; and
- any required public hearing.

Definitions. The bill would define “lower income housing unit” to mean a residential unit reserved for occupancy by a household earning no more than 60 percent of the area media income (AMI), adjusted for family size.

“Moderate income housing unit” would mean a unit reserved for a household earning up to 80 percent of adjusted AMI.

“Public facility user” would mean a public-private partnership entity,

developer, or other private entity that had an ownership interest or leasehold or other possessory interest in a public facility that was a multifamily residential development.

Rent requirements. In order for the tax exemption to apply to a development, at least 10 percent of units would have to be reserved as lower income housing units unless the majority of the corporation's board members were elected officials or the development was approved by the municipality or county in which it was located. The bill also would revise the current requirement that at least 50 percent of units must be reserved for households earning up to 80 percent of area median family income to apply to all multifamily residential developments owned by a public facility corporation, not only those created by housing authorities. Reserved lower and moderate income housing units would have to be proportionally distributed through each category of unit based on number of bedrooms.

Monthly rent per unit could not exceed:

- for lower income units, 30 percent of 60 percent of AMI, adjusted for family size; or
- for moderate income units, 30 percent of 80 percent of AMI, adjusted for family size.

A public facility user could not refuse to rent a unit to a household that participated in the federal housing voucher program if the voucher amount was enough to cover monthly rent as limited by the bill. The public facility user also could not use a financial or minimum income standard requiring a household participating in the voucher program to have a monthly income of more than 250 percent of the household's share of rent. A public facility corporation would have to include on its website information about a development's compliance with the bill's requirements and policies regarding tenant participation in the voucher program. The public facility user would be required to affirmatively market available residential units directly to participants in the housing voucher program and notify local housing authorities of the

development's acceptance of voucher holders.

Acquisition of occupied developments. Other than during the first year following acquisition, an occupied multifamily residential development that was acquired by a public facility corporation and not otherwise subject to a land use restriction agreement could receive the tax exemption only if:

- at least 15 percent of the cost of the development was expended on rehabilitating, renovating, reconstructing, or repairing the development and at least 20 percent of the units were reserved as lower income housing units; or
- at least 50 percent of the units were reserved as lower income units.

Lease requirements. Each lease agreement for a unit in a multifamily residential development receiving a tax exemption under the bill's provisions would have to:

- provide that the landlord could not retaliate against the tenant or the tenant's guests because the tenant established, attempted to establish, or participated in a tenant organization;
- provide that the landlord could choose not to renew a lease only under certain conditions established in the bill; and
- require the landlord to serve written notice of proposed nonrenewal of the lease to the tenant at least 30 days in advance.

A tenant could not waive the protections above.

Reports. CSHB 2017 would require a public facility user to submit an annual compliance audit report to the chief appraiser of the appraisal district in which the development was located. The report would be at the facility user's own expense and conducted by an experienced independent auditor. Failure to submit the audit report or submitting a report that did not verify compliance would disqualify the development for a tax exemption in that tax year.

Before the initial occupancy of a development, or within 30 days of acquiring an occupied development, a public facility user would have to submit to the Texas Department of Housing and Community Affairs (TDHCA) a report including certain documents and data about the development's location, tenants, and units.

Other provisions. CSHB 2071 would require the TDHCA or appropriate appraisal district to give a public facility user written notice of noncompliance with the bill's provisions. The facility user would have 60 days from receiving such notice to cure the relevant matter.

The bill's requirements would not apply to a multifamily residential development that:

- reserved at least 20 percent of units for public housing;
- participated in the federal Rental Assistance Demonstration program; or
- received financial assistance through certain bonds or the low income housing tax credit program.

The bill would specify that materials used to improve the real property of a public facility corporation would be exempt from all sales and use taxes.

The bill would establish that the tax exemption granted for property owned by a housing authority would not apply to a public facility corporation created by a housing authority.

CSHB 2017 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2023. The bill would apply only to a tax imposed on a development approved on or after its effective date.