Public Facility Corporations:
Their Impact on Economic Development and Taxes

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Chapter 303 (LGC)

- Chapter 303 is titled "Public Facility Corporations."
  - There's a whole chapter!
- Purpose?
  - To authorize the creation and use of PFCs with the broadest possible powers to finance or to provide for the acquisition, construction, rehabilitation, renovation, repair, equipping, furnishing, and placement in service of public facilities in an orderly, planned manner and at the lowest possible borrowing costs.
- Public Facility?
  - Any real, personal, or mixed property, or an interest in property devoted or to be devoted to public use, and authorized to be financed, refinanced, or provided by sponsor obligations or bonds.

Chapter 303 (LGC)

- "Sponsor" is a municipality, county, school district, housing authority, or special district that causes a PFC to be created.
- A sponsor may create one **or more** PFCs to: (1) issue bonds, **(2) finance public facilities on its behalf,** or (3) loan proceeds of the obligations [issued or incurred to finance, refinance, or provide a public facility] to other entities.
- The sponsor's governing body, by resolution, is required to determine that it is in the public interest and to the benefit of the sponsor's residents and citizens of Texas that a PFC be created to finance, refinance, or provide the costs of public facilities of the sponsor.

Chapter 303 (LGC)

Sec. 303.042. TAXATION.

(a) A public facility, including a leasehold estate in a public facility, that is owned by a corporation and that, except for the purposes and nonprofit nature of the corporation, would be taxable to the corporation under Title 1, Tax Code, shall 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. If there is more than one user of the public facility, the public facility shall be assessed to the users in proportion to the value of the rights of each user to occupy, operate, manage, or use the public facility.

Chapter 303 (LGC)

Sec. 303.042. TAXATION.

(b) The user of a public facility is considered the owner of the facility for purposes of the application of:

(1) sales and use taxes in the construction, sale, lease, or rental of the public facility; and

(2) other taxes imposed by this state or a political subdivision of this state.

How does this work?

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Sec. 303.042(f) (LGC)

Sec. 303.042. TAXATION.

(f) Notwithstanding Subsections (a) and (b), during the period of time 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 shall 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).**

Sec. 379B.011(b) (LGC)

- Chapter 379B is titled "Defense Base Development Authorities."
  - Huh?
- A leasehold or other possessory interest in the real property of a PFC will be treated the same way as a leasehold or other possessory interest granted by a Defense Base Development Authority ("DBDA").
  - PFC = DBDA

Sec. 379B.011(b) (LGC)

Sec. 379B.011. TAX EXEMPTIONS.

(b) **Section 25.07(a), Tax Code,** applies to a leasehold or other possessory interest in real property granted by an authority for a project designated under **Section 379B.009(a)** in the same manner as it applies to a leasehold or other possessory interest in real property constituting a project described by **Section 505.161,** except for the requirement in **Section 505.161** that the voters of the municipality that created the authority have authorized the levy of a sales and use tax for the benefit of the authority.

Sec. 25.07(a) (Tax Code)

Sec. 25.07. LEASEHOLD AND OTHER POSSESSORY INTERESTS IN EXEMPT PROPERTY.

(a) Except as provided by Subsection (b) of this section, a leasehold or other possessory interest in real property that is exempt from taxation to the owner of the estate or interest encumbered by the possessory interest shall be listed in the name of the owner of the possessory interest if the duration of the interest may be at least one year.

Sec. 505.161 (LGC)

Sec. 505.161. PUBLIC PURPOSE DESIGNATION; EXEMPTION FROM TAXATION.

(a) The legislature finds for all constitutional and statutory purposes that:

(1) a project of the type added to the definition of "project" by this subchapter is owned, used, and held for a public purpose for and on behalf of the municipality that authorized the creation of the Type B corporation; and

(2) except as otherwise provided by this section, Section 501.160 of this subtitle and Section 25.07(a), Tax Code, do not apply to a leasehold or other possessory interest granted by a Type B corporation during the period the corporation owns projects on behalf of the authorizing municipality.

What did you just say?

- **Section 25.07(a), Tax Code,** provides that leasehold interests in tax-exempt real property of greater than a year shall be listed on the tax rolls in the name of the tenant.
  - The leasehold interest is taxable if the tenant is not exempt.
- **Section 379B.011(b), LGC,** says that **Section 25.07(a), Tax Code,** applies to DBDA projects in the same manner as a project described by **Section 505.161, LGC.**
  - **Section 505.161, LGC,** provides that **Section 25.07(a), Tax Code,** does not apply to a leasehold or other possessory interest granted by a Type B EDC (so long as the EDC owns the project on behalf of the authorizing municipality).
- **Section 303.042(f), LGC,** requires that a leasehold or other possessory interest in the real property of the public facility granted by a PFC be treated the same as a leasehold or other possessory interest in real property granted by an authority under **Section 379B.011(b).**

PFCs in Practice

- Provide for lower income housing.
- Ideally, local taxing authorities work together to maintain balance and determine how to account for these tax breaks and lost ad valorem tax revenue.

What could go wrong?

- When one governmental entity takes property off the tax rolls in another governmental entity's jurisdiction, there is no balancing act.
- One entity receives the monetary benefits while shifting the tax burden to another.

City of Shadyville

- Creates a PFC (sponsored by Shadyville).
  - PFC purchases property in City of Sunshine.
  - PFC holds a public hearing (doesn't involve City of Sunshine).
- PFC leases the property to a private developer to build multifamily housing.
- The property is taxed in the name of the PFC and is 100% exempt from property taxes.

City of Shadyville

- The private developer receives:
  - 100% property tax break
    - For an apartment complex, this can be around $1-$1.5 million per year.
  - 100% sales tax break on construction materials
  - No rent restrictions whatsoever on 50% of the units

City of Shadyville

- The City of Shadyville:
  - Suffers no ad valorem tax consequences.
  - Receives income from fees paid by private developer tenant.

City of Shadyville

- The City of Sunshine:
  - Has no say in the matter.
  - Loses significant tax revenue.
  - Must recoup the tax exemption by increasing taxes and fees on its own citizens.

Impact on Local Jurisdictions

- School districts are among the hardest hit.
  - About ½ of property taxes in Texas go to school districts.
- In one Texas MUD, removing a single apartment complex off the tax rolls through a PFC resulted in a 23% loss in MUD tax revenue.

AG Opinion No. KP-0437

- Opinion issued March 8, 2023.
- Can one governmental entity legally impose such a burden on another?
- As a general matter, a PFC can acquire real estate for leasehold outside its geographic boundaries.
- "Whether a PFC should have this authority and the limitations of such authority are policy questions for the Legislature, especially when impacting taxing authority for another district."

HB 2071

- PFCs can only finance, own, or operate a multifamily residential development if it is located within the sponsor's boundaries.
- Requires written notice to the presiding officer of the governing body of each taxing unit in which the development is located.

Comparison

EXISTING LAW

- 50% of units reserved for households at 80% of the Area Median Income ("AMI").
  - No adjustments for family size.
- Maximum lease term of up to 99 years.

HB 2071

- New Construction:
  - 10% of units reserved for households at 60% AMI.
  - 40% of units reserved for households at 80% AMI.
  - Adjustments are made for family size.
- Notification to local taxing units.
- No discrimination on source of income (i.e., federal housing vouchers).
- Reporting and compliance monitoring requirements.
- Lease terms reduced to 30- or 60-year max.

Thank you!

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