

BILL ANALYSIS

H.B. 862
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Urban Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Texas Department of Housing and Community Affairs (TDHCA) is required to inspect and license migrant labor housing facilities to ensure the facilities meet a minimum standard of cleanliness and safety. However, recent reports have shed light on the extent of the deplorable housing conditions migrant agricultural workers are often subject to because of the lack of safe and clean housing. There have been calls for the TDHCA to assume a more proactive role in annually inspecting licensed housing to help identify any housing facilities that are operating under unlivable conditions. Since the state economy heavily relies on these agricultural workers for a vital agricultural industry, the state has a responsibility to ensure that, at a minimum, housing conditions meet basic safety standards. H.B. 862 seeks to address this issue by providing for improved TDHCA inspection procedures to enforce basic living conditions in migrant labor housing facilities and for the reporting of dangerous housing conditions under anonymous complaints.

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 rulemaking authority is expressly granted to the governing board of the Texas Department of Housing and Community Affairs (TDHCA) in SECTIONS 3 and 11 of this bill and to the TDHCA in SECTIONS 7, 8, 9, and 12 of this bill.

ANALYSIS

H.B. 862 amends the Government Code to prohibit a person from procuring, making arrangements for, or otherwise providing housing for migrant agricultural workers without ensuring that the applicable migrant labor housing facility is licensed by the Texas Department of Housing and Community Affairs (TDHCA). The bill does the following with respect to certain matters related to the licensing of migrant labor housing facilities:

- requires the TDHCA to prescribe the form and manner of the license application;
- requires an applicant who seeks to substitute an inspection conducted by the U.S. Department of Labor or the Texas Workforce Commission for a pre-occupation inspection conducted by the TDHCA to include certain individualized affirmations and electronically submitted digital images with the application;
- removes the requirement that the governing board of the TDHCA set the fee for a migrant labor housing facility license in an amount not to exceed \$250 and specifies that the license fee is instead established by the board by rule in a reasonable amount sufficient to cover applicable costs;

- requires the fee for such a license to be deposited to the credit of the general revenue fund and authorizes the appropriation of the fee to the TDHCA for the administration of migrant labor housing facilities provisions;
- revises provisions relating to a migrant labor housing facility for which a license application is made but which does not meet reasonable minimum standards of construction, sanitation, equipment, and operation and shortens the period within which a license applicant may request the TDHCA to reinspect the facility;
- requires the TDHCA to give notice of the expiration of a migrant labor housing facility license to the license holder not later than the 60th day before the date the license is scheduled to expire;
- requires the TDHCA by rule to adopt procedures through which third parties may appeal the issuance or denial of a license or the imposition of a condition on a license; and
- requires a license holder to post in the licensed migrant labor housing facility at all times during the maintenance or operation of the facility a copy of information describing in English and Spanish the complaint procedures applicable to such a facility.

H.B. 862 requires an authorized representative of the TDHCA, before conducting an inspection of a migrant labor housing facility, to give or make a reasonable attempt to give notice to the following persons:

- the persons who are the providers of the facility, based on evidence available to the TDHCA; and
- the persons who, if applicable, are alleged to be the providers of the facility in any applicable complaint.

H.B. 862 does the following with respect to inspections of a migrant labor housing facility:

- requires an authorized representative of the TDHCA, after giving or making a reasonable attempt to give the applicable notice, to inspect the facility on receipt of a complaint, including a report of an unlicensed facility, and at least once during the probable period of use of the facility as stated in the license application;
- requires the inspector, during such an inspection, to conduct interviews with not less than 10 percent of the occupants of the facility, make written notes regarding the inspection at the time of the inspection or immediately after the inspection, and take photographs of any violations;
- requires an interview with a facility occupant to be conducted after working hours or on rest days, to the extent possible, and out of the presence of any person who owns or establishes or who maintains, operates, or otherwise provides the migrant labor housing facility or any person who employs the migrant agricultural workers occupying the facility;
- requires the TDHCA by rule to establish an annual quota of proactive inspections of suspected unlicensed or noncompliant migrant labor housing facilities and establishes that this requirement is in addition to the required inspections; and
- prohibits the quota from being less than 50 percent of the number of migrant labor housing facilities licensed in the preceding state fiscal year.

H.B. 862 requires an inspector, after an inspection of a migrant labor housing facility, to submit to the TDHCA a report containing a narrative regarding the alleged violation and the methods used to investigate the alleged violation, a determination of whether the alleged violation or any other violation exists, and evidence supporting the determination. The bill requires the TDHCA by rule to establish and require the use of a standardized inspection report form for conducting inspections and does the following with respect to a report:

- requires the report to be made available to the public on the TDHCA website; and
- requires the TDHCA to redact each migrant agricultural worker's name and other personal information contained in the report.

H.B. 862 requires the TDHCA by rule to establish procedures for the submission, investigation, and resolution of complaints of alleged violations of provisions governing migrant labor housing

facilities and to adopt a standardized complaint form. The bill does the following with respect to complaints:

- requires the standardized complaint form to allow for the collection of certain specified information;
- requires the procedures to allow the submission of complaints:
 - anonymously or by a third party; and
 - through the TDHCA website, in person at any nonprofit organization that assists migrant agricultural workers in finding employment, or at any state agency, by telephone, or in writing;
- requires the TDHCA to consider a report regarding an unlicensed migrant labor housing facility to be a complaint; and
- requires the TDHCA to make available to a person submitting a complaint, if the identity of that person is known, information regarding other housing and transportation resources available to the person.

H.B. 862 requires the TDHCA by rule to establish procedures requiring the owner or provider of a migrant labor housing facility, on suspension or revocation of a migrant labor housing facility license, to relocate or provide for the relocation of the occupants of the facility to another facility that meets applicable occupancy standards and is located in the same area as the vacated facility. An owner or provider required to relocate an occupant must pay any rental cost of the relocation facility that exceeds the rent of the vacated facility.

H.B. 862 requires the governing board of the TDHCA to adopt rules that provide for the immediate suspension or revocation of a license for certain violations that constitute threats to the health and safety of persons living in migrant labor housing facilities.

H.B. 862 changes the amount of the civil penalty for a violation of provisions governing migrant labor housing facilities or a rule adopted under such provisions from \$200 for each day that the violation occurs to a minimum of \$50 for each person occupying the migrant labor housing facility in violation of those provisions for each day that the violation occurs. The bill does the following with respect to the violations and penalties:

- extends the authority to bring an action to collect a penalty to the TDHCA through a prescribed contested case hearing process and to a migrant agricultural worker who, at the time of the violation, lived in the migrant labor housing facility that is the subject of the violation;
- requires the TDHCA by rule to adopt a penalty schedule that increases the amount of the penalty assessed against a person who repeatedly violates provisions governing migrant labor housing facilities or rules adopted under those provisions;
- requires a penalty collected through an action brought by the TDHCA, a county attorney, or the attorney general to be deposited to the credit of the general revenue fund and restricts appropriation of the penalty to the TDHCA for the enforcement of provisions governing migrant labor housing facilities; and
- makes a person against whom a civil penalty is assessed liable for paying the costs and attorney's fees of the person who brought the action.

H.B. 862 prohibits the following from retaliating against a person for filing a complaint or providing information in good faith relating to a possible violation of provisions governing migrant labor housing facilities:

- a person who owns, establishes, maintains, operates, procures, makes arrangements for, or otherwise provides a migrant labor housing facility;
- a person who employs a migrant agricultural worker who occupies a migrant labor housing facility; or
- a farm labor contractor.

H.B. 862 provides for outreach and education by the TDHCA regarding migrant labor housing facilities. The TDHCA must adopt the rules necessary to implement the bill's provisions not later than March 1, 2022.

EFFECTIVE DATE

September 1, 2021.