

SUBJECT: Continuing the Texas Department of Housing and Community Affairs

COMMITTEE: Urban Affairs — committee substitute recommended

VOTE: 8 ayes — Carter, Burnam, Callegari, Edwards, Ehrhardt, Hill, E. Jones,  
Najera

0 nays

1 absent — Bailey

SENATE VOTE: On final passage, May 9 — voice vote

WITNESSES: *(On House companion bill, HB 3449:)*

For — Joseph Bishop; Shari Flynn, Lubbock Housing Finance Corp. and Texas Association of Local Housing Finance Agencies; John Garvin, Texas Affiliation of Affordable Housing Providers; Sally Gaskin; John Henneberger, Texas Low Income Housing Information Service; Jean Langendorf, United Cerebral Palsy and Home of Your Own; Glenn Lynch; Albert Magill; Bob Moss, Boston Capital; Reymundo Ocañas, Texas Association of Community Development Corporations; Sam Russell, Texas Manufactured Housing Association; Jonas Schwartz, Advocacy, Inc.; Terral Smith, El Paso Chamber of Commerce and Hunt Building Corp.; Michael J. Sugrue, Simpson Housing Solutions; *Registered but did not testify:* Dick Kilday; Mark Mayfield, Marble Falls Housing Authority; Chris Richardson; Jeanne Talerico, Texas Association of Local Housing Finance Agencies; Stacy Zoern, Coalition of Texans with Disabilities

Against — Marlene Hagesfeld

On — John Hawkins, Sunset Advisory Commission; Scott Haynes; Susan Maxwell, Texas Council for Developmental Disabilities; Terral Smith; *Registered but did not testify:* Sarah Andre and David Danenfelzer, Enterprise Foundation; Homero Cabello, Jr., Joe Garcia, and Bobbie Hill, Texas Department of Housing and Community Affairs; Terral Smith, El Paso Chamber of Commerce

**BACKGROUND:** The Texas Department of Housing and Community Affairs (TDHCA) promotes the availability of affordable housing, provides community assistance, and regulates the manufactured housing industry. The 72nd Legislature in 1991 created TDHCA by merging the Texas Housing Agency, the Texas Department of Community Affairs, and the Community Development Block Grant (CDBG) program from the Texas Department of Commerce. TDHCA has an annual budget of almost \$200 million, of which federal funds constitute about 90 percent. The department is subject to the Sunset Act and will expire September 1, 2001, unless continued by the Legislature.

**Low-income housing tax credits.** TDHCA's Low-Income Housing Tax Credits Program issues about \$25 million annually in federal tax credits to developers to build, acquire, or rehabilitate affordable housing. To receive the credits, developers submit competitive applications to TDHCA, which scores the applications according to how well they meet the goals of the department. Developers can secure funding to develop their projects by selling these tax credits to investors, who use the credits to reduce their federal income-tax liability. A developer may receive no more than \$1.8 million a year in tax credits under departmental rules. Under federal law, at least 10 percent of a state's tax credits must be set aside for nonprofit developers, and 15 percent must be reserved for rural development.

**State low-income housing plan.** Government Code, sec. 2306.0721 requires TDHCA to create an annual integrated state low-income housing plan, including a resource allocation plan that targets all available housing resources to low-income people and families and to people with special needs. The plan must include:

- ! an estimate and analysis of the housing needs of low-income people and families, people with special needs, and homeless people;
- ! an estimate of the number of federally assisted housing units available for low-income people and families and for people with special needs in each county;
- ! a description of state programs that govern the use of all available housing resources;
- ! a description of the department's efforts to monitor and analyze the unused or underused federal resources of other state agencies for

- housing-related services and for services for homeless people;
- ! strategies to provide housing for individuals and families with special needs;
- ! a description of the department's efforts to encourage the construction of housing units that incorporate energy-efficient construction features and appliances; and
- ! any other housing-related information that the state must include in the one-year action plan of the consolidated plan submitted annually to the U.S. Department of Housing and Urban Development (HUD).

In addition to this document, state and federal regulations mandate more than 20 individual planning documents.

**Fair housing.** The Section 8 voucher program is a federal rental assistance program that subsidizes housing for low-income individuals and families.

**Colonia initiatives.** In 1995, the 74th Legislature enacted SB 1509 by Zaffirini, et al. to create colonia self-help centers in five border counties (Cameron, El Paso, Hidalgo, Starr, and Webb). Through contracts with local nonprofit agencies and housing authorities, TDHCA operates these centers to help meet the housing, utility, and other community improvement needs of colonia residents. The act also created a colonia advisory committee of border and colonia residents to advise TDHCA on the colonia residents' needs. The Office of Colonia Initiatives, created by the department in 1996, manages the centers, as well as the owner-builder loan program and the contract-for-deed conversion program.

**Manufactured housing.** In 1995, the 74th Legislature enacted HB 785 by Seidlits, transferring the regulation of manufactured housing to TDHCA from the Department of Licensing and Regulation. TDHCA licenses installers, issues manufactured-home titles, inspects installations, and resolves consumer complaints. In fiscal 1999, TDHCA performed more than 10,400 routine installation inspections and resolved almost 2,200 complaints.

**Community Development Block Grant program.** The CDBG program provides annual grants to state and local governments to fund a broad variety of community improvement initiatives. On the basis of population, some communities — mainly urban areas — receive funds directly from the

federal government. All other communities, called non-entitlement jurisdictions, apply for grants for these funds from TDHCA's CDBG program.

**Private-activity bond allocation, including the single-family mortgage revenue bond loan program.** The federal Tax Reform Act of 1986 regulates the amount of private-activity bonds that a state may issue. In December 2000, Congress raised the per-capita cap for private-activity bond allocation volume. The cap is now \$63.50 per capita and will increase to \$75 per capita in January 2002, making Texas eligible to issue more than \$1 billion of private-activity bonds annually. Art. 5190.9a of the Texas Revised Civil Statutes sets the total amount of each type of bond that may be issued by various state entities in any one year. Of the total, the purposes listed below receive the following amounts:

- ! single-family housing, 31.5 percent, one-third of which may be issued by TDHCA and two-thirds of which is available for local development corporations;
- ! issues authorized by a state constitutional amendment, 13 percent;
- ! use in empowerment zones and enterprise communities 7.5 percent;
- ! residential rental (multifamily) project issue bonds, 7.5 percent;
- ! student loan bonds, 11 percent; and
- ! other, 29.5 percent.

The state may issue up to \$150 million in bonds authorized under the U.S. Internal Revenue Code, sec. 501(c)(3).

TDHCA issues three types of bonds: multifamily mortgage revenue bonds, single-family mortgage revenue bonds, and 501(c)(3) tax-exempt bonds. Last year, TDHCA issued about \$108.6 million in single-family bonds.

**Owner-builder loan program.** TDHCA operates an owner-builder loan program, called the "bootstrap" program, to help property owners build or improve housing on land they own or intend to buy. TDHCA provides these loans through nonprofit owner-builder programs that certify the eligibility of a loan applicant, including income and residency requirements. A loan from the department may not exceed \$25,000, and the total amount of a loan, if

other sources are used, may not exceed \$60,000. The loan term may not exceed 30 years. The program is scheduled to expire September 1, 2005.

**HOME funds.** The Cranston-Gonzalez National Affordable Housing Act (42 U.S.C., sec. 12701 *et seq.*) provides federal funds to state and local governments to increase the supply of affordable housing for low- and moderate-income families. Communities that receive funds directly from the federal government — primarily urban areas — are called participating jurisdictions. All other communities, called nonparticipating jurisdictions, apply for grants for these funds from TDHCA's HOME program.

Government Code, sec. 2306.111(c) requires TDHCA to give the highest priority to nonparticipating jurisdictions in awarding HOME funds unless the department finds that there is insufficient need and demand for housing funds within these areas.

**Governing board.** TDHCA's governing board includes nine members, of which six represent specific housing interests and three are public members. Board members are appointed by the governor to serve staggered six-year terms and may not serve more than two terms. The board must authorize all bonds issued by the department, approve loans, review and approve the agency's budget, and set departmental policy.

DIGEST:

CSSB 322 would continue TDHCA for a two-year probationary period. The Sunset Advisory Commission would have to evaluate TDHCA's success in implementing the bill's requirements before the 2003 legislative session.

**Low-income housing tax credits.** TDHCA would have to score and rank applications using a point system based on published criteria set by the department. TDHCA would have to give the most weight to criteria that would allocate housing tax credits for developments serving the lowest-income tenants and would produce the greatest number of high-quality units committed to remaining affordable to qualified tenants for extended periods. The criteria would have to include:

- ! income levels of the development's tenants;
- ! rent levels of the units;
- ! the period of guaranteed affordability for low-income tenants;

- ! the cost per square foot of the development;
- ! the size, quality, and amenities of the units;
- ! the services to be provided to the development's tenants;
- ! the commitment of funding to the development from local political subdivisions;
- ! community support for the application;
- ! whether the development would serve traditionally underserved areas;
- ! whether the development would be equipped with energy-saving devices;  
and
- ! an agreement by the applicant to provide a qualified nonprofit or tenant organization a right of first refusal to buy the property at the minimum price provided in the Internal Revenue Code.

TDHCA could not fund projects for which the applicant proposed to replace any private-activity bond financing of the development within 15 years, unless the applicant would maintain 100 percent of the units supported by the housing tax credits for individuals and families earning 50 percent or less of the area median income for at least 30 years and at least one-third of all the units would be reserved for public housing or Section 8 vouchers.

TDHCA would also have to establish by rule a voluntary pre-application process to provide a preliminary assessment of an application for funding under this program. Any application that failed to meet threshold criteria would have to be rejected. Applications that participated in and continued through the process would be awarded additional points toward approval.

Applicants could not make changes or supplements to an application after the filing deadline except at the board's request, or after the board had allocated funding for the project if the change would change the project materially, according to criteria set by the bill or by the board. TDHCA would have to maintain an application log that included information about each proposed project, the score of the application in each scoring category, and any decision on the application. The department would have to notify members of the Legislature and the chief executive officer of a political subdivision about any application for a development in areas they represented and would have to allow those officials to comment on the application.

Applications receiving the highest scores in each region and set-aside category would be underwritten by TDHCA until enough applications were underwritten to enable the allocation of all available housing tax credits according to regional allocation goals and set-aside criteria, and to create a waiting list. The board would have to issue tax credit commitments and create a waiting list based on the rankings and staff recommendations. It would have to include an explanation of the reasons for any decisions that conflicted with the staff recommendations. Applicants who were denied credits could meet with TDHCA to discuss the application.

The board could not allocate credits in any unnecessary amount and could not allocate more than \$1.6 million in a single allocation round. It could rescind committed tax credits if the project was altered in a manner that would harm the development or would have adversely affected the selection of the application. An evaluation of a material change would have to consider whether the applicant reasonably could have foreseen or prevented the need for the modification.

TDHCA could enforce each representation made by an applicant to secure a housing tax-credit application. Applicants who received tax credits would have to attempt to contract for at least 30 percent of the construction and management with historically underutilized businesses (HUBs) and would have to report contracts with HUBs to TDHCA. TDHCA could debar a person from participating in the program based on past compliance problems and would have to debar people who violated conditions imposed by the department in connection with the allocation of a credit, were debarred from participating in federal housing programs, or were in noncompliance with or had violated repeatedly a land-use restriction agreement. Former board members and certain agency staff could not participate in an application for at least two years. A violation would be a Class A misdemeanor, punishable by up to one year in jail and/or a maximum fine of \$4,000.

TDHCA would have to reserve at least 15 percent of the housing tax credits available in a calendar year for at-risk developments, which would include developments that received any of several federal subsidies and whose affordable housing requirements might expire soon. Any money left over from the set-aside after the initial allocation round would be available for any eligible applicant. TDHCA would have to work with the rural

development agency to develop the threshold, scoring, and underwriting criteria for the federally required rural set-aside. To ensure sufficient applications for the rural set-aside, TDHCA, in conjunction with the rural development agency, would have to conduct outreach, training, and rural capacity building.

CSSB 322 would create a process for appealing TDHCA decisions on the application's satisfaction of threshold and underwriting criteria, scoring of the application, and a recommendation as to the amount of housing tax credits to be allocated to the application. An applicant would have to file an appeal within seven days of the date the application evaluation results were published. The director would have to respond in writing to an appeal within 14 days. Applicants who were unsatisfied with the response could appeal directly to the board. The board's decision would be final.

An applicant could transfer an allocation of housing tax credits or ownership of a development supported with these credits only to a person other than an affiliate with the director's prior, written approval. Transferees would have to meet compliance criteria and demonstrate sufficient experience with developments supported through housing tax credits. A property owner would have to notify tenants at least 30 days before submitting the transfer request.

TDHCA and the Department of Information Resources would have to evaluate the feasibility of creating an on-line application system for the program. As feasible, TDHCA would have to post on its Internet web site all applications received by the board, including supporting documents and scoring information, results of each stage of the application process, information regarding amendments, and appeals filed with the department or board and any documents relating to the processing of the appeal. TDHCA could keep financial statements confidential.

**Compliance assessment and review, including fair housing.** CSSB 322 would require TDHCA to complete a compliance history of a project applicant before the board could approve funding. The board would have to document and disclose any instances in which the board approved a project application for which the department had found compliance problems.



TDHCA would have to monitor the entire construction phase of a project for compliance with all applicable requirements. The department would have to review the performance of the project periodically after construction to confirm compliance. TDHCA would have to create a database containing all compliance information required under the bill.

The department could not provide housing funding assistance to an applicant unless the applicant was certified to be in compliance with fair housing laws, including the federal Civil Rights Act of 1964 and the federal Americans with Disabilities Act of 1990. In conjunction with the Texas Commission on Human Rights, TDHCA would have to adopt rules for certifying, monitoring, and enforcing compliance with fair housing laws, including sanctions for noncompliance, such as a public reprimand, termination of assistance, or a bar on future eligibility for assistance. Properties that received assistance through the low-income housing tax credit program or multifamily rental housing developments funded by TDHCA could not discriminate against people who received Section 8 housing vouchers toward rent assistance.

Owners of housing developments that received financial assistance from the department and that contained 20 or more living units would have to submit an annual fair housing sponsor report. A housing sponsor that failed to file a report timely could be denied requests for additional funding or could be assessed an administrative penalty of up to \$1,000.

Owners of state or federally assisted housing developments with 20 or more housing units would have to report information regarding housing units designed for people with disabilities, including special features of the units and rental rates, that TDHCA would make available to the public.

**State low-income housing plan.** CSSB 322 would require TDHCA to customize its low-income housing plan by region. In addition to information that the department already has to include, the plan would have to include:

- ! an estimate of the housing supply in each region;
- ! an inventory of all publicly and privately funded housing resources, as possible;
- ! strategies for meeting rural housing needs; and
- ! information on the demand for services for colonia residents.

TDHCA would have to allocate its housing funds to each region based on the region's need for housing assistance and on the availability of housing resources, as determined by the strategic regional plan. The department would have to establish funding priorities to ensure that:

- ! funds were awarded to project applicants who were best able to meet recognized needs for affordable housing;
- ! the least restrictive funding sources were used to serve the lowest-income residents when practicable; and
- ! funds were awarded on the basis of a project applicant's ability to provide the greatest number of high-quality residential units, serve people with the lowest family incomes relative to the area median, extend the duration of the project to serve housing needs, use other funding sources to minimize the amount of subsidy needed to complete the project, and provide integrated, affordable housing for people and families with different levels of income.

TDHCA also would have to employ or contract with a regional development coordinator for each region of the state to help local communities determine and meet their housing needs. The regional planning commission and other regional partners would have to establish an advisory committee to advise TDHCA as to the region's needs.

**Housing needs assessment.** CSSB 322 would require TDHCA to assess the present and future needs for affordable housing in the border region and in the uniform state service regions. At a minimum, this assessment would have to include:

- ! the number of low-income households;
- ! the amount and type of publicly subsidized housing units;
- ! the number and amount of loans and grants provided by TDHCA;
- ! the number of substandard housing units and costs estimates for correcting that housing;
- ! the number of households that spend more than half of their household income on rent or mortgage payments, and cost estimates for relieving that burden;
- ! an analysis of market demand for housing for low-income households;
- ! an analysis of the home and mortgage lending rates available to low-

income borrowers and an analysis of the principal barriers to credit; and  
! the rate of subprime mortgage loan products.

TDHCA would have to project each region's affordable housing needs at five-year intervals through 2031, including the costs and nature of the housing that would be needed. The department could contract with any education or research center to conduct the assessment. Provisions for the housing needs assessment would expire October 1, 2004.

**Affordable Housing Preservation Program.** TDHCA would have to create a program to preserve affordable housing in Texas and would have to prioritize available funding and financing resources for affordable housing preservation projects. The department would have to establish a housing preservation incentives program that could provide loan guarantees, loans, and grants to public and private entities toward the acquisition, rehabilitation, and preservation of affordable housing. TDHCA also could make low-interest financing and grants available to buyers who intended to acquire, preserve, and rehabilitate affordable housing. The department also would have to maintain data on housing projected to lose its affordable status, develop policies necessary to ensure the preservation of affordable housing, and advise and assist other program areas in implementing the policies.

CSSB 322 would establish two classes of housing, Classes A and B, that are at risk of losing their affordability status. TDHCA would have to contact owners of Class A developments, which would include any federally subsidized multifamily housing development whose contract requiring affordability was nearing expiration or whose mortgage was eligible for prepayment, determine the number of units in each of these developments, and attempt to negotiate with those owners to ensure the properties' continued affordability. To the extent possible, TDHCA would have to allocate low-income housing tax credits to applications that would preserve Class A developments.

TDHCA would have to consider long-term affordability provisions in scoring applications for multifamily development funding. An applicant who received a loan or grant for more than 33 percent of the market value of a property the applicant intended to possess to create a multifamily development or who received a low-income housing tax credit would have to

maintain the affordability of a development either for 30 years or for the remaining term of the existing federal government assistance, whichever was longer. The recipient also would have to renew rental subsidies, if available and sufficient to maintain the economic viability of the development.

An owner of a property that had received state funding assistance and who intended to change the affordability of that property, through means such as prepaying a HUD-insured loan, opting out of HUD's Section 8 housing assistance program, or selling a property, would have to notify TDHCA at least 12 months in advance of the action so that the department could attempt to locate a buyer who would conform to the department's affordability restrictions. This requirement would not apply to a development supported by qualified 501(c)(3) bonds. Similar projects funded with federal dollars would have to notify their tenants and the department at least 90 days in advance of the action. These provisions would apply to developments beginning January 1, 2002.

**Colonia initiatives.** TDHCA would have to establish a colonia model subdivision program to promote the development of new, high-quality residential subdivisions that provided affordable housing options to very low- and extremely low-income people and families who otherwise would move into substandard colonias. TDHCA would have to create a colonia model subdivision revolving loan fund and could provide up to \$2 million in loans each fiscal year to colonia self-help centers or community housing development corporations from the CDBG program to create affordable housing subdivisions that complied with all state and local laws. A loan made by TDHCA could not bear interest nor last longer than 36 months, although each borrower would be eligible for one loan renewal. Money received in repayment of a loan would have to be returned to the fund. The authority to transfer CDBG money into the fund would expire August 31, 2010.

TDHCA would have to adopt rules regulating subdivision standards, loan application procedures, program guidelines, contract award procedures, and affordability of housing funded by the program. A charitable organization developing a model colonia subdivision with loans provided by TDHCA under this program would be entitled to certain property-tax exemptions for five years after buying the property. The bill would impose penalties on an

organization that sold the property to a person other than those allowed by the bill, in an amount equal to the amount of taxes that would have been imposed in each year the property was exempt from taxation, plus 12 percent interest.

The board would have to establish a colonia initiatives advisory committee to recommend new colonia programs or improvements to existing programs. The committee would have to include a colonia resident, a representative of a nonprofit organization that served colonia residents, a local government representative, a person representing private banking or land development interests, and a public member. Each member other than the public member would have to live within 150 miles of the Texas-Mexico border.

The Office of Colonia Initiatives would have to prepare a biennial action plan setting policy goals for colonia programs, strategies to meet those goals, and projected outcomes. The office would have to solicit public comments on the draft of the plan, request review of and comment on the plan by the colonia initiatives advisory committee, and submit the plan to the board for final approval.

TDHCA would have to enter into four-year contracts for the operation of self-help centers directly with the local nonprofit organization or housing authority that would operate the center. TDHCA would have the sole responsibility for contract oversight and monitoring of the self-help centers.

**Manufactured housing division.** CSSB 322 would create a separate governing board to manage the manufactured housing regulatory program. The program would remain attached to TDHCA administratively and would receive a separate appropriation from the Legislature within the appropriation to TDHCA. The board would comprise five public members that served staggered six-year terms. The bill would include standard provisions for governing boards.

The board would have to employ the division director, develop a budget for the division, and reduce administrative costs by entering into an agreement with TDHCA to share personnel, equipment, and facilities. The board also would have to adopt rules for regulating manufactured housing.

The bill would amend the Texas Manufactured Housing Standards Act to allow the board of the division to place on probation a person whose license had been suspended. The board could limit the practice of that person or require the person to take continued education or review courses. The bill also would set specific provisions regarding license renewal and continuing education that the board could require for license holders.

The bill would repeal a provision of current law that allows a licensed real estate broker or salesperson to act as a manufactured housing broker or salesperson without holding a license.

**Single-family mortgage bond program.** TDHCA would have to conduct a market study to determine the home mortgage needs of extremely low-, very low-, low-, and moderate-income people in underserved economic and geographic areas, including rural counties, census tracts in which the median family income was less than 80 percent of the median family income for the county in which the tract was located, and the border region. The market study would have to analyze, at a minimum:

- ! home ownership rates;
- ! loan volume;
- ! loan approval rates;
- ! loan interest rates;
- ! loan terms;
- ! loan availability;
- ! type and number of dwelling units; and
- ! use of subprime mortgage loan products.

On the basis of the market study and related analysis, TDHCA would have to propose a bond program to provide loan services to these areas in a manner proportionate to their credit needs and could propose specific set-asides of mortgage loans for underserved areas. The department would have to conduct a public hearing on the market study's results and proposed bond program and submit the results and proposed program, if approved by the TDHCA board, to the Bond Review Board.

TDHCA would have to allocate at least 40 percent of the total single-family revenue bond loan volume to meet the credit needs of borrowers in

underserved regions. The department could appeal to the Bond Review Board for a modification or waiver of the required allocation levels if TDHCA determined that the bonds that were to be issued for the purposes of the bill would be unfeasible or would damage the department's financial condition. Proposed bond issuances under the program would have to undergo review by the Bond Review Board. TDHCA would have to structure all single-family mortgage revenue bond issuances in a manner designed to recover the full costs associated with conducting the program.

TDHCA also could use any source of funds or subsidy available to provide credit enhancement, down-payment assistance, home buyer counseling, interest rate reduction, and payment of incentive lender points. The highest priority in allocating these funds would have to be given to underserved areas. If sufficient funds were available after fully meeting the credit needs of borrowers in underserved areas, TDHCA could provide assistance to other borrowers.

Loan originators selected by TDHCA would make the loans financed by the bond program on behalf of the department. In addition to any other loan originators selected, TDHCA would have to authorize colonia self-help centers and any other nonprofit institutions considered appropriate by the TDHCA board to originate loans. Nonfinancial institutions that acted as loan originators would have to undergo adequate training, and the department could require lenders to participate in ongoing training and underwriting compliance audits to participate in the bond program.

**Owner-builder loan program.** CSSB 322 would repeal the provision of current law under which the owner-builder loan program would expire on September 1, 2005. The bill would create an owner-builder revolving loan fund into which TDHCA would have to transfer at least \$3 million each year from the federal HOME program, the housing trust fund, or funds appropriated by the Legislature. Money received in repayment of a loan would have to be returned to the fund. No more than 10 percent of the money for the owner-builder loan program could be used by nonprofit organizations to implement the program.

The bill would specify that a nonprofit owner-builder housing program must be operated by a 501(c)(3) tax-exempt organization, and it would direct

TDHCA to adopt procedures for certifying nonprofit owner-builder housing programs.

The bill would allow an organization that operated a nonprofit owner-builder program to originate or service, rather than simply administer, loans made under the owner-builder program.

The maximum loan that could be made to an owner-builder would be raised from \$25,000 to \$30,000. The bill also would remove the requirement that an owner-builder must live with at least two other related people to be eligible for loans made available by TDHCA.

**Allocation of HOME funds.** TDHCA would have to spend at least 95 percent of HOME funds on nonparticipating jurisdictions. The bill would strike the provision allowing TDHCA to spend less if it finds that there is insufficient need and demand for housing funds within these areas. All funds not set aside for nonparticipating jurisdictions would have to be used for the benefit of people with disabilities who lived in areas other than small cities and rural areas.

**Private-activity bond allocation.** CSSB 322 would amend the set-aside percentage amounts for allocating private-activity bonds. The new rates set by the bill would be:

- ! single-family housing, 29.6 percent;
- ! issues authorized by a state constitutional amendment, 8 percent;
- ! use in empowerment zones and enterprise communities, 4.6 percent;
- ! residential rental (multifamily) project issue bonds, 23 percent;
- ! student loan bonds, 8.8 percent; and
- ! other, 26 percent.

One-quarter of the residential rental project bonds would be reserved for TDHCA, while 75 percent would be available to housing finance corporations. The board would have to apportion the bond amount to each region according to population. The maximum bond amounts allowed for each corporation also would be determined by population. If a corporation failed to use at least 95 percent of the bonds allocated to it, the corporation's reservation would be reduced in the subsequent allocation.



The board would have to give priority to projects in which all units in the project would have restricted rents of between 30 and 50 percent of the area median family income.

TDHCA would have to certify that home mortgage loans made using proceeds from department-issued bonds would not include a mandatory arbitration requirement.

**Governing board.** CSSB 322 would reduce the number of TDHCA board members from nine to seven and would remove the specific member designations. Board members would have to be public members with a demonstrated interest in issues related to housing and community support services. The governor would have to appoint a new board as soon as possible on or after September 1, 2001. The new board then would have to employ a new department director. The board would have to develop a strategic plan to implement the bill's requirements.

The board would have to post meeting agendas containing all projects the staff was recommending for assistance at least seven days in advance of a meeting, as well as make available in several formats any materials relevant to a matter proposed for discussion at the board meeting. The board could not consider any materials not made available to the public by this date. The board would have to provide time for public comment on each agenda item.

The TDHCA director would have to provide the board with any necessary administrative support, including personnel, office space, furnishings, and equipment, and in-house legal assistance.

The bill would apply standard sunset provisions regarding appointment of the presiding officer, conflicts of interest, training and grounds for removal of board members, reimbursement for travel expenses, appeals of board decisions, separating policy-making and management functions, and maintaining records of complaints.

The bill also would:

- ! require a consolidated public hearing in each service region of the state and require that information relevant to the meeting be provided to the

- public at least two weeks in advance;
- ! require TDHCA to adopt rules outlining formal rulemaking procedures, including procedures for allowing interested parties to petition the department for the adoption of a new rule or the amendment of an existing rule;
  - ! require TDHCA to establish a uniform application and funding cycle for all single-family and multifamily housing programs it administered, and, to the extent possible, use uniform threshold requirements for project applications;
  - ! create additional responsibilities for the Housing Resource Center to provide information and assistance to local governments, develop a consumer education program, and act as a clearinghouse on housing and departmental information; and
  - ! amend the department's purposes to state explicitly that TDHCA is to provide for the housing needs of individuals of extremely low income and that the department serves as a source of information to the public regarding all affordable housing resources and community support services in the state.

The bill would take effect September 1, 2001.

SUPPORTERS  
SAY:

CSSB 322 would reform the troubled TDHCA to ensure public accountability of the agency and its governing body and to require that housing funds be allocated to meet the most pressing needs statewide. The bill would ensure compliance with these changes by requiring the department to undergo sunset review again before the next legislative session.

**Low-income housing tax credits program.** This has been one of the department's most popular programs among developers, as well as the most controversial. Large allocations of these tax credits to a relatively small number of developers have resulted in the appearance of favoritism and have created a high level of discontent with the program. This was an even greater problem in the past, when the board approved several projects (in 1995) that the underwriting division had determined were not viable.

CSSB 322 would set criteria for the board to consider when making allocation decisions in order to take advantage of the highly competitive market and to provide the best affordable housing options for state residents.

By providing additional points for proposed developments that met particular state housing goals, the criteria would encourage the creation of higher-quality, longer-term affordable housing. Defining the criteria and making the application process more open to public review, particularly the decision-making process, also would reduce the appearance of favoritism and make the process more user-friendly. Also, by reducing the amount of credits a developer could receive in a year to \$1.6 million, the bill would ensure participation by a greater number of developers.

The bill would create a set-aside of 15 percent for at-risk developments. With the state at risk of losing about 50,000 affordable housing units over the next five years, it is imperative that the department target its funds to maintain these properties as affordable housing.

The voluntary pre-application process would reduce costs for both TDHCA and developers by removing projects from consideration earlier in the process if they did not meet the minimum requirements for an allocation.

**Compliance assessment and review, including fair housing.** CSSB 322 would require TDHCA to ensure an applicant's prior and continued compliance with respect to all applicable requirements. Developers who have failed to meet departmental, state, or federal requirements in the past should not have access to more housing funds.

Although state and federal laws prohibit discrimination in the state's housing programs, TDHCA does not ensure that these laws are followed. Some tax-credit properties discriminate against families who receive Section 8 vouchers, either by refusing to rent to them or by setting minimum income requirements for properties that place these units out of reach. Many developments also fail to implement adequately all of the requirements relating to making housing accessible to people with disabilities. CSSB 322 would ensure that these requirements were met and would require that contractors provide information about affordable housing units accessible to people with disabilities so that these people could find affordable housing created for them. Making sure that TDHCA fulfills this duty also would protect the state from liability to litigation.

Developers already must report the information in the fair housing sponsor report to TDHCA so that the department can put together its Low-Income Housing Report for the Legislature each year. Two-thirds of developers, however, do not file the report as required. The bill would add penalties to ensure compliance with the law.

**State low-income housing plan.** Although current law requires TDHCA to conduct an annual low-income needs assessment, this assessment is inadequate to target resources to Texans with the greatest need. The department does not assess existing resources available at the local level, including federal funds granted directly to some areas, to meet unfilled needs. As a result, TDHCA has allocated an inappropriate share of housing funds to areas that already receive a proportionally large amount of housing dollars. Small cities, rural areas, and the border, meanwhile, have not received their fair share of housing funds. TDHCA also has failed to target its funds at the lowest-income residents. Despite legislative mandates, the department continues to spend only a very small proportion — in fiscal 1999, about 10 percent — of its funds on the very lowest-income residents.

CSSB 322 would require TDHCA to customize its needs assessment by region and to allocate housing funds based on each region's housing needs and resources. The bill would require the department to collect additional information on currently available housing resources in each region through regional coordinators and partners to better assess unmet housing needs across the state. Also, TDHCA would have to award its housing funds on the basis of criteria that ensured that funded projects would provide the state with higher numbers of longer-term, integrated developments that maximize the length of time that the units were affordable. By creating a uniform application and fund allocation cycle, TDHCA also could consider proposals for different programs together and could assess how different funding allocations would meet regional objectives. These changes would ensure that TDHCA's funds were used strategically to assist the state's neediest areas and families.

**Housing needs assessment.** The housing needs assessment would provide the department and the Legislature with a more detailed assessment of the current and future housing needs in Texas by region in order to determine how to spend the state's limited housing funds. Even with the changes that

the bill would require in the low-income housing plan, the plan does not collect or analyze information on many of the factors that would be included in the assessment, such as the number of households that spend more than half of their income on rent or mortgage payments or the barriers that low-income borrowers face in obtaining home mortgage credit. Neither does the plan project the state's future housing needs, as the assessment would require. This information is critical not only to make decisions about how to allocate current funding, but also to determine the adequacy of existing programs and the need for new programs.

**Affordable Housing Preservation Program.** Over the next five years, the state could lose more than 50,000 affordable apartments as owners of affordable housing units pay off their HUD mortgages and complete their obligations regarding the amount of time that they must keep rents low. Many of the people living in these apartments are elderly or disabled and would have nowhere to go if they were forced out of their apartments by rent increases. The state must ensure that as many of these units as possible remain affordable and that new developments built with state housing funds remain affordable for extended periods. By creating an incentive program for the acquisition, rehabilitation, and preservation of affordable housing, attempting to find buyers for housing developments that are about to lose their affordability, and considering long-term affordability provisions in scoring applications, CSSB 322 would contribute to the stock of affordable housing in Texas.

**Single-family mortgage revenue bond program.** CSSB 322 would ensure that the state's limited single-family mortgage revenue bond loan funds went toward helping the state's neediest citizens obtain affordable housing. TDHCA has been using these funds inappropriately to provide loans that banks typically would be willing to make without government aid. These funds should be targeted toward helping people who would not be able to receive a loan without government assistance.

TDHCA also would have to distribute these funds across the state in a manner proportionate to each region's needs, as determined by a market study, to ensure that the housing needs of all areas were met. An analysis of all the loans made between 1995 and 1999 went into the largest metropolitan areas, with very few loans going to small cities, rural areas, or the border.

Although these areas have the greatest loan assistance needs, more than half of all loan applications made to banks in these areas were rejected.

The bill also would make it easier for colonia residents to access these loans by requiring that the colonia self-help centers be authorized by TDHCA to originate loans.

The bill would not impose any additional financial obligations on the state, since TDHCA would have to structure all bond issuances to meet program costs. The department also would have to give the people receiving these loans priority in receiving the department's current down-payment assistance funds, which would negate the need for additional down-payment funding. Moreover, TDHCA could apply to the Bond Review Board for a waiver or reduction of the requirement if meeting the requirement were unfeasible or would damage the department fiscally.

**Colonia initiatives.** The Sunset report found that TDHCA has “provided limited leadership and initiatives in addressing colonia issues.” CSSB 322 would ensure that the needs of colonia residents are addressed by creating a colonia initiatives advisory committee to recommend new programs or improvements to existing programs. The committee would serve a different task than the current colonia resident advisory committee, which was created with the sole intention of providing input on the colonia self-help centers. The colonia initiatives advisory committee would be a more strategic committee to recommend broader policy goals. Keeping these functions separate is appropriate, since the experiences and expertise of the two committees and their members would be substantially different. The resident advisory committee could advise the department on day-to-day colonia life information, while the initiatives advisory committee would offer a more comprehensive outlook.

The bill also would reduce the administrative burden on colonia self-help centers created by the yearly contract renewal process by allowing them to enter into four-year contracts rather than yearly contracts.

Although enactment of HB 1001 by Cuellar in 1995 effectively stopped the proliferation of colonias, continued population growth in the border region has put an enormous strain on the area's housing, and the need for more

affordable housing remains extremely high. By creating a model program and a source of funding, the colonia model subdivision program would promote the development of high-quality, affordable housing options in the border region. This program not only would help house the region's growing population, but also could provide a means for moving colonias residents out of their substandard housing and into quality homes, an option that in many cases would be more economical than attempting to hook the colonias into sewer and water lines.

**Manufactured housing division.** Creating a separate board for the manufactured housing division would ensure that this division received the attention and oversight it needs. Because the TDHCA board spends nearly all of its time on housing fund allocation issues, the manufactured housing division has received very little oversight. As the only regulatory program at the department, the division also has different needs from the rest of the agency's divisions. As with the motor vehicle commission at the Texas Department of Transportation, creating a separate board would enable the division to remain at the housing agency, the most logical department for the regulation of housing, while ensuring adequate oversight.

**Owner-builder loan program.** CSSB 322 would strengthen the owner-builder loan program by creating a revolving loan fund to ensure the program permanent funding. This would allow the program to recapture the money it provided in loans in order to offer future loans. The bill also would direct TDHCA to transfer through 2010 at least \$3 million into the fund, a very modest increase of \$200,000 over the current \$2.8 million that TDHCA had to allocate toward the program to create a base amount in the fund. The bill also would provide more flexibility to TDHCA by removing the requirement that the money it provided for the program must come from the Housing Trust Fund or the HOME program.

The bill also would make it easier for people to build or improve their homes by raising the maximum loan amount from \$25,000 to \$30,000. These higher loan amounts are needed not only to build or improve the residences, but also to make securing additional loan money easier for these projects.

**HOME funds.** CSSB 322 would ensure that all jurisdictions in the state received their fair share of federal housing funds to help provide affordable

housing for low- and moderate-income families. HOME funds administered by TDHCA, about \$38 million in fiscal 2001, are granted by the federal government specifically to address the housing needs of nonparticipating jurisdictions throughout the state. Participating jurisdictions, now 39 cities and counties, receive their share of these funds, about \$62 million, directly from the federal government.

In the past, TDHCA inappropriately has granted some of its HOME funds to participating jurisdictions, giving these areas an unfairly large share of the funds available. Although TDHCA has improved its policies in the past few years and now grants about 85 to 90 percent of its HOME funds to nonparticipating jurisdictions, it is important to make this distribution a statutory requirement to ensure that TDHCA will continue to award this money appropriately. CSSB 322 would clarify exactly how much the department must spend on nonparticipating jurisdictions and would guarantee that these areas' housing needs were met.

Nonparticipating jurisdictions contain some of the poorest, neediest parts of the state, including most of the colonias. There is more than enough need to guarantee that all of the housing funds granted to the state would be used and that no unspent money would have to be returned to the federal government. Historically, there have been few community housing development organizations (CHDOs), which under federal law must receive 15 percent of TDHCA's housing funds. Adequate capacity now exists to spend all of these funds in nonparticipating jurisdictions.

Requiring that these funds go to nonparticipating jurisdictions also would help stimulate the growth of new CHDOs in these areas. Even if the state were to have trouble spending these funds, other solutions would enable the money to be spent in nonparticipating jurisdictions, such as creating a statewide program in partnership with a CHDO to provide housing down-payment assistance for low-income families.

**Private-activity bond allocation.** By strategically allocating the greater bond authority recently approved by Congress, the state could provide thousands more affordable housing units for low-income families. CSSB 322 would set new allocation percentages to place the majority of the federal increase toward multifamily housing. The state desperately needs more



money for affordable housing, as Texas is addressing less than 2 percent of its affordable housing needs. The multifamily bond category is heavily oversubscribed; the demand for multifamily housing bonds is more than 10 times the available amount. The new percentages contained in the bill would more than double the amount of affordable units and provide housing for thousands more people. Regional set-asides for the first part of each year would ensure that each part of the state received a portion of these funds.

CSSB 322 would not take money away from any category except small issue bonds. Although the bill would lower the percentages for the other categories, the dollar amount of these categories would be maintained or increased due to the greater total volume of bonds available to the state.

**Governing board.** By restructuring the board to remove the specific member designations, CSSB 322 would create a board more relevant to the agency's current functions and would remove the appearance of and potential for conflicts of interest. The current composition of the board, which consists almost entirely of housing-related professionals, does not reflect the non-housing functions of the department and may create biases among board members for types of housing projects with which they are most familiar. The members' ties to the housing industry also create a perception of a conflict of interest, including improprieties in the allocation of housing funds and tax credits. Creating a public board would remove these conflicts of interest and guarantee a board more responsive to all functions of the department.

The bill also would ensure greater public participation at board meetings by giving members of the public the information they need to bring their concerns before the board effectively. Currently, members of the public are forced to guess whether attending a meeting or making a presentation to the board would be valuable, since board agendas rarely list the projects that the board will vote on at a meeting and public testimony is generally conducted at meetings prior to staff presentations and board motions. Members of the public also do not have access to the materials relevant to the meeting until after decisions are made. The bill would require the board to post its agenda, including all items up for discussion, as well as all materials relevant to the discussion before the meeting so that members of the public could participate effectively.

OPPONENTS  
SAY:

CSSB 322 would micromanage TDHCA and remove the department's flexibility in administering its programs. The importance of providing affordable housing in Texas requires that TDHCA maintain as much flexibility as possible to address the state's diverse needs.

Some provisions would cost the state a total of almost \$800,000 in fiscal 2002-03, after taking into consideration savings due to other provisions in the bill.

**Low-income housing tax credits program.** The scoring criteria that the bill would impose are too detailed and would remove too much of the board's discretion in awarding housing tax credits. Proposed housing developments cannot be reduced to a single black-and-white score. Some developments may provide more services, others better housing, and others lower costs, or some combination thereof. TDHCA should retain as much flexibility as possible to award these credits in ways that it determines best meet the housing needs of the state. These changes would cost the state an additional \$206,000, which it cannot afford at this time.

Considering the cost per square foot of proposed developments in the application scoring process could lead to the funding of a greater percentage of projects in very low-income areas. To achieve lower square-foot costs and receive a higher application score, developers would have to find ways to reduce their costs significantly. This could induce developers to locate their projects in impoverished neighborhoods where land is cheaper, leading to greater segregation of people by income level.

CSSB 322 would hinder the ability of nonprofit organizations to compete for housing tax credits by requiring that the members of the organization's board live within 90 miles of the proposed development, unless the development was located in a rural area. This provision would prevent nonprofit organizations from competing with other developers on a statewide basis.

The bill unwisely would lower the maximum amount of tax credits that a developer could receive from \$1.8 million per year to \$1.6 million in a single application round, generally once yearly. The lower limit would prevent the department from awarding more credits to developments that provided the best value for the state. The objective of the tax credit program

should be to maximize the number of high-quality, affordable housing units, regardless of the developer that provides those units.

Requiring developers who receive a housing tax credit allocation to amend their applications for changes to proposed projects would increase the burden on these organizations. The bill would require these amendments even for potentially minor changes in a proposed development, such as a modification of the number of units or the bedroom mix of units or a 3 percent reduction in square footage. The board should maintain the flexibility to waive the amendment requirement if the applicant can convince the board that the change to the proposed project would not be significant.

Creating a specific set-aside for at-risk developments would be unwise. Although preserving these developments is important, TDHCA should be able to weigh the benefits of these proposed projects against all applications and to allocate tax credits in the manner most beneficial to the state. The department already has a nonprofit and a rural set-aside. Creating another set-aside would leave even less money for all other developers.

**Compliance assessment and review, including fair housing.** Requiring the department to monitor a project during the entire construction phase would be unduly invasive on the developer and would create an additional burden for TDHCA. The bill's fiscal note estimates that additional compliance would require an additional \$385,000 in fiscal 2002-03 and six additional employees. The required annual sponsor report regarding fair housing compliance also would create an additional burden for developers. The housing application and development process in Texas already is too complex, and the Legislature should simplify the process rather than create new requirements.

**Colonia initiatives.** With the creation of the colonia initiatives advisory committee required by the bill, TDHCA would have two colonia-related advisory committees in addition to the Office of Colonia Initiatives. Rather than create yet another advisory committee, the bill ought to amend the current committee or assign the duties of the proposed committee to the Office of Colonia Initiatives.

The bill's provisions relating to the colonia model subdivision could conflict with federal law. The bill would authorize TDHCA to make up to \$2 million in loans with CDBG funds for the program, but federal regulations only allow the department to make grants, not loans. Additionally, federal regulations only permit these grants to be made to units of local government, while the bill would authorize TDHCA to make loans through political subdivisions, which may not be the same thing. Additional language in the bill would restrict making these loans to anyone other than colonia self-help centers or community housing development corporations, which are not authorized to receive these funds through TDHCA under federal law.

By requiring TDHCA to contract directly with local nonprofits to operate the colonia self-help centers, the bill would prevent the department from using its current funding source for their operation, resulting in the need for an increased appropriation of \$2 million. TDHCA now funds the colonia self-help centers through CDBG funds, which, under federal regulations, must go to units of local government. To use these funds, TDHCA grants the money to the counties in which the centers are located, and the counties then provide the funds to the centers. By requiring TDHCA to contract directly with the local nonprofits that operate the centers, the bill would remove this option and would require a new funding source.

**New studies required.** In addition to the changes the bill would make to the state low-income housing plan, CSSB 322 would require two new studies, one of mortgage loan needs and another of the state's current and future housing needs. While the information that these studies would provide probably would be valuable, the state should hesitate before requiring additional reports beyond the more than 20 plans and reports already required of TDHCA. Rather than require more reports, the current reports should be expanded to require the collection and analysis of this information. One integrated, comprehensive report would be more valuable than having this information diffused throughout multiple reports. The bill also should be amended to remove the duplicative requirements of these reports, such as information relating to mortgage loan needs across the state.

**Manufactured housing.** Creating an additional quasi-independent housing body — TDHCA would have little authority over the division — is unnecessary and could create confusion. Requiring an additional board and

director would be redundant and could lead to additional expenses. The bill's fiscal note estimates that each member would be entitled to about \$5,000 per year in reimbursements. The division should be transferred to the Department of Licensing and Regulation, which performs these licensing functions for many industries, including the manufacture of very similar modular housing, and can take advantage of administrative efficiencies. The state should simplify, not further complicate, the distribution of licensing and regulation in the state.

**Single-family mortgage bond program.** Requiring TDHCA to allocate at least 40 percent of its single-family loan volume to underserved groups would impose a greater financial burden on the department and the state. The bill would require TDHCA to target these loans to people who generally do not meet underwriting criteria, which makes the loans less attractive to investors who buy the loans from TDHCA. This would require TDHCA to keep greater reserves on hand as a guarantee to investors that they would recoup their investments if the loans failed. The bill's fiscal note estimates that even if TDHCA structured an issue that covered most of this reserve requirement, the department still would need an additional \$1.8 million per year of general revenue. TDHCA also would need an additional \$4.3 million per year for down-payment assistance to make the loans feasible.

**Allocation of HOME funds.** The provision requiring that 95 percent of these funds go to nonparticipating jurisdictions is unnecessary and could cost the state millions of dollars in federal housing aid. Current law already requires TDHCA to give the highest priority to nonparticipating jurisdictions. Requiring that an even greater percentage of these funds go to nonparticipating jurisdictions would separate inappropriately the level of funding from any assessment of need. Moreover, if TDHCA cannot spend all of the funds within a specified number of years, those funds must be returned to the federal government.

Since most CHDOs are concentrated in participating jurisdictions, it would be very difficult for TDHCA to spend almost all of the required set-aside funds for CHDOs in nonparticipating jurisdictions. The state's affordable housing need is too great to be sending money back to the federal government. The department should maintain the flexibility to award these funds in areas that have the capacity to build affordable housing.

**Private-activity bond allocation.** The new bond allocation caps would not allocate enough funding to student loan bonds. With enrollment in college increasing and tuition rates rising rapidly, the state must provide adequate loan volumes for student loans.

**Governing board.** The specific member designations of the board members should not be removed. On a complex issue like housing, it is imperative that the board have representation from and the expertise of all of the different parties interested in housing.

**Duplication of provisions.** CSSB 322 contains many provisions that are duplicated in other parts of the bill. For example, references to affordable housing preservation appear in four different areas. The proliferation of provisions on several topics could create the potential for conflicting interpretations of TDHCA's responsibilities and duties. These provisions should be consolidated to ensure that the department's instructions are clear.

OTHER  
OPPONENTS  
SAY:

**Abolish the agency.** Several reports and audits over the past few years have identified many significant shortcomings and weaknesses at TDHCA. The department has been cited for weaknesses in contract management, inadequate monitoring of program data, inappropriate destruction of records, noncompliance with contract award procedures in the Housing Trust Fund program, failing to allocate sufficient dollars to extremely low-income households, and noncompliance with underwriting standards in the low-income housing tax credit program. A department this badly mismanaged should be abolished and its functions given to other appropriate agencies. An amendment to SB 1 by Ellis, the general appropriations bill for fiscal 2002-03, adopted by the conference committee would provide a contingency for exactly this occurrence and would determine to which agencies TDHCA's functions would go. For example, the Housing Trust Fund and the HOME program could be moved to the new Office of Rural Affairs, while the single-family and multifamily mortgage revenue bond programs could be moved to the Bond Review Board. Moving these functions to agencies where they would be better managed would aid the provision of affordable housing in Texas by ensuring that more of this money ends up going to the purposes for which it was intended.

NOTES: The companion bill, HB 3449 by Gallego, passed the House as amended on May 3 but died in the Senate Health and Human Services Committee.

The committee substitute removed provisions from the Senate engrossed version that would have prohibited a development that received a tax-credit allocation from discriminating against people receiving Section 8 federal housing assistance and provisions establishing an Office of Rural Community Affairs and transferring CDBG funds to the new agency. It added provisions requiring a uniform application and funding cycle and requiring TDHCA to certify that home mortgage loans made with revenue from department-issued bonds would not include mandatory arbitration requirements.

HB 7 by Chisum et al., which would establish an Office of Rural Community Affairs and transfer CDBG funds to the new agency, passed the House on April 10 and passed the Senate as amended on May 16, and the House concurred with the Senate amendments on May 18.