HOUSE
RESEARCH
ORGANIZATION bill analysis | 5/8/2007 | HB 2063
Menendez, R. Cook, Chisum
(CSHB 2063 by Menendez)

SUBJECT: Revising the allocation of low-income housing tax credits

COMMITTEE: Urban Affairs — committee substitute recommended

VOTE: 6 ayes — Bailey, Murphy, Menendez, Latham, Mallory Caraway, Martinez Fischer

1 nay — Cohen

WITNESSES: For — None

Against — None

On — Kevin Hamby, Brooke Boston, and Michael Lyttle, Texas Department of Housing and Community Affairs; Matt Hull, Texas Association of Community Development Corporations; Jean Langendorf, United Cerebral Palsy of Texas; Sarah Mills, Advocacy, Inc; Jeff Smith, Houston Housing Finance Corporation; Stephanie Thomas, ADAPT of Texas

BACKGROUND: The Texas Department of Housing and Community Affairs (TDHCA) maintains a low-income housing tax credit program that awards federal tax credits to developers to acquire, build, or rehabilitate affordable housing. Federal law requires that a minimum of 20 percent of residential units financed with tax credit funds be reserved for individuals and families with incomes of 50 percent or less of the area median family income (AMFI), or that 40 percent of the units be reserved for people with incomes of 60 percent or less of the AMFI. At least 10 percent of the state's tax credits must be set aside for nonprofit developers.

Existing statutory provisions require TDHCA to use a regional allocation formula (RAF) to distribute tax credits, HOME funds, and housing trust funds geographically. The 2007 RAF allocates credits based on affordable housing needs and available resources in 13 state service regions used for planning purposes. The RAF also allocates funding to rural and urban/exurban areas within each region. The RAF distributes funding primarily through calculations based on U.S. Census data concerning poverty, the number of households paying rent or mortgage dues that exceed 30 percent of their income, overcrowded housing facilities, and the number of households with deficient plumbing and kitchen facilities.

Under federal law, these tax credits must be allocated pursuant to a qualified allocation plan (QAP) that sets forth locally appropriate criteria and gives priority to projects that serve the lowest-income tenants for the longest periods, contribute to a concerted community revitalization plan, and provide a procedure for monitoring and compliance. Texas' QAP is revised annually by TDHCA through a public process and must be approved by the governor. To receive low-income housing tax credits, developers submit competitive applications to TDHCA, which then scores the applications according to how well they meet the agency's goals. Developers can secure funding to develop their projects by selling these tax credits to investors and using the proceeds to develop affordable housing units.

TDHCA is required to set aside at least 15 percent of the total annual allocation of tax credits per calendar year for at-risk developments. "At-risk development" is defined as a development that has received the benefit of a subsidy in the form of a below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive under federal law and for which the contractual requirement to maintain affordability is nearing expiration. Any amount of tax credits that remain after the initial set are available for allocation to eligible applicants as provided by the QAP.

TDHCA also is required to expend at least 95 percent of federal HOME Investment Partnership funds for the benefit of small cities and rural areas that do not qualify to receive funds directly as part of metropolitan entitlement grants from the United States Department of Housing and Urban Development (HUD). All remaining funds must be used for the benefit of persons with disabilities who live in areas other than small cities and rural areas.

DIGEST:

CSHB 2063 would require TDHCA to allocate 15 percent of available housing tax credits for at-risk developments prior to distributing funding through the RAF. The bill would require TDHCA to allocate 20 percent or more of the housing tax credits in an application cycle to developments in rural areas. Of this allocation, at least $500,000 would be reserved for rural development in each service region designated by the RAF. Any funds that remained following an initial allocation for rural developments would be available for allocation in urban areas in each service area.

TCHCA would allocate 5 percent of housing tax credits in each application cycle to developments that receive federal financial assistance through the Texas Rural Development Office. Tax credits allocated to these developments would have to come from funds set aside for at-risk developments.

Housing Trust Fund (HTF) revenue in an amount less than $3 million designated primarily to serve disabled persons would be exempt from distribution through the RAF. The bill would reserve 5 percent of statewide HOME funding for persons with disabilities living in any area of the state. The bill also would recodify requirements relating to regional allocation developed by TDHCA that accounted for the need for housing assistance and the availability of housing resources in urban or rural areas. Reference to the term "exurban" would be deleted from requirements pertaining to the RAF.

The bill would take effect September 1, 2007. Provisions in the bill would supersede any irreconcilable provisions in other bills enacted by the 80th Legislature.

SUPPORTERS SAY:

CSHB 2063 would make important changes to the point in the funding allocation process at which funds are reserved for low-income housing located in rural areas or in support of the development of housing for disabled persons. The bill would take positive measures to resolve shortcomings in the current application of the RAF that results in an insufficient availability of funds in some areas and an oversaturation in others.

Current statutory provisions result in setting aside funds for at-risk developments and applicants in rural areas subsequent to applying the RAF. CSHB 2063 would effectively address problems that result from this process. Current allocation practices often result in a deficiency of funds for at-risk developments in certain service regions. The bill would require 15 percent of the annual allocation of tax credits to be set aside for at-risk developments statewide. This would enhance the statewide availability of funds for low-income housing rehabilitation applications aimed at preserving and increasing the quality of existing affordable housing. Similarly, 20 percent of the total annual allocation of tax credits would be reserved for low-income housing applications in rural areas. This provision would resolve deficiencies and other problems that result from the allocation of rural funds based on the application of the RAF in each of TDHCA's 13 service areas. The bill would assure a $500,000 minimum for rural developments in each service area, which would provide a necessary baseline of funding while allowing for variations in the number and extent of development proposals by service area over time. Designated funds that were not used to fund rural or at-risk tax credit development proposals could be reallocated.

The bill also would require that THDCA set aside 5 percent of available HOME funds for applications providing or improving housing for persons with disabilities statewide. This would ensure that sufficient funds were available for major proposals improving the availability of housing accessible to disabled persons. A portion of non-federal HTF revenue also would be exempted from the regional allocation formula, which would enable TDHCA to leverage those funds in sufficient quantity to ensure the maximum benefit for low-income housing proposals anywhere in the state.

CSHB 2063 would recodify statutory standards to be used in the adoption of the RAF annually and would eliminate indefinite terminology regarding exurban areas. The bill would clarify that the RAF must account for the demand for low-income housing options in a service area because it is influenced by the current availability of affordable housing in the area. Clarifying the relevant statutory provisions would highlight TDHCA's ability to modify the RAF to accommodate changing patterns of low-income housing development and need statewide and improve the accessibility of statutory language governing the RAF.

OPPONENTS SAY:

CSHB 2063 would limit the effectiveness of TDHCA's regional allocation formula, which is designed to ensure an equitable distribution of resources for low-income housing around the state. The bill would guarantee 20 percent of tax credits to rural areas without regard to need in each service area. Establishing a mandatory allocation for rural areas by statute would not allow the RAF to adjust for changing demands and market conditions annually. Tax credit allocations must respond to both a societal need for affordable housing and sufficient development activity to produce tax credit proposals. Setting aside a fixed percentage for rural proposals statewide could result in underserving metropolitan areas with significant needs for low-income housing. The RAF represents an objective, quantifiable instrument that can be modified incrementally and on the basis of public input. Any statutory provisions that would limit the funds subject to the RAF should be considered with great caution.

OTHER OPPONENTS SAY:

CSHB 2063 could have unintended consequences for the geographic distribution of low-income housing tax credits. By removing set-aside funding for at-risk development proposals from the RAF, the bill could make available roughly $6 million in fiscal 2008 for development proposals involving the rehabilitation of low-income housing. This could privilege such proposals in high-demand areas and leave a small remainder for other applicants around the state. There is much annual variation in low-income tax credit development proposals, and setting aside 15 percent of funding prior to allocation could jeopardize funding in underrepresented areas in the state. Legislation providing for an initial set-aside should include provisions to ensure the equitable distribution of funding.

The bill also would guarantee 5 percent of the annual allocation for the Texas Rural Development Office but would restrict the use of these funds to developments that involved rehabilitation and were drawn from funding set asides for at-risk developments. Limiting the use of these tax credits to rehabilitation projects could impede developers who might have intended to remove older housing funded through similar agricultural grants and construct new housing in its place.