HOUSE
RESEARCH
ORGANIZATION bill digest 5/22/2007

CSSB 1908
Ellis, et al. (Menendez)
(CSSB 1908 by Mallory Caraway)

SUBJECT: Revising provisions for affordable housing programs

COMMITTEE: Urban Affairs — committee substitute recommended

VOTE: 5 ayes — Bailey, Menendez, Latham, Mallory Caraway, Martinez Fischer

0 nays

2 absent — Murphy, Cohen

SENATE VOTE: On final passage, May 3—28-2 (Shapleigh, West)

WITNESSES: None

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.

Low-income housing tax credits. 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 media 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.

TDHCA must 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 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 tax credits that remain after the initial set are available for allocation to eligible applicants as provided by the QAP.

Housing Trust Fund. The Housing Trust Fund (HTF) is the only state-authorized affordable housing program. Non-profit organizations, public housing authorities, community housing development organizations (CHDOs), local government units, and income-eligible individuals and families may apply for funds to acquire, rehabilitate, or build affordable housing. The fund also provides technical assistance and capacity building to non-profit organizations and CHDOs engaged in developing affordable housing. Multifamily housing developed through the fund must remain affordable for income-qualified persons for at least 20 years.

DIGEST:

CSSB 1908 would create statutory authorization for a first-time homebuyers program administered by TDHCA. The bill would amend provisions governing TDHCA's allocation formula for distributing tax credits, criteria for evaluating tax credit applications, administrative revisions to agency operations, and other provisions.

Texas First-Time Homebuyer Program. The bill would establish the Texas First-Time Homebuyer Program to facilitate the origination of single-family mortgage loans for eligible first-time homebuyers and to provide loans for down payment and closing cost assistance. The board of TDHCA would adopt rules governing:

- the administration of the program;
- the provision of loans through the program and criteria for approving participating lenders;
- insurance policies for loans and homes financed under the program, as necessary;
- the verification of occupancy of the home as the homebuyer's principal residence; and

- the terms of any contract made with a mortgage lender for the processing, originating, servicing, or administration of loans issued through the program.

To be eligible for a mortgage loan through the program, an individual would have to qualify as a first-time homebuyer, have an income no more than 115 percent of AMFI or 140 percent of AMFI in certain targeted areas, and meet additional departmental requirements. To be eligible for a loan to assist with down payment and closing costs, an individual would have to be a first time homebuyer, have an income no more than 80 percent AMFI, and meet additional departmental requirements. TDHCA could contract with other entities for processing applications and could establish fees to cover processing expenses.

Modifying the regional allocation formula (RAF). CSSB 1908 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 received federal financial assistance through the Texas Rural Development Office. Tax credits allocated to these developments for rehabilitation would have to come from funds set aside for at-risk developments.

Housing Trust Fund (HTF) revenue in an amount less than $3 million and funds 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. References to the term “exurban” would be deleted from requirements pertaining to the RAF.

Revising low-income tax credit allocation. The bill would require all applicants for tax credits to obtain approval of the proposed development from the governing body of the appropriate municipality or county containing the development. Applicants that proposed constructing housing less than one linear mile from a development that served the same type of household as the proposed development could be eligible if they served families, elderly individuals, or other types of households different than the existing development. Developments proposing to use federal funds to assist in the preservation of distressed, federally assisted housing through reconstruction or rehabilitation would be exempt from the one-mile requirement. Added provisions would apply equally to developments located outside of a metropolitan statistical area.

Tax credits could be allocated for development proposals that were or would be located one linear mile or less from each other if:

- the community was located in a county with a population less than one million (all counties but Dallas, Harris, Bexar, and Tarrant);
- one or more of the nearby allocations involved rehabilitating existing developments;
- no more than one of the nearby allocations involved new construction; and
- the developments each served different types of households.

The bill would amend provisions governing the points allocated for housing tax credit applications. Statutes providing for points to be administered on the basis of written statements from elected officials would be modified to be specify that such statements would have to be from the state representative or senator representing the district containing the proposed development site. Provisions requiring each written statement received to be equally weighted would be repealed. An applicant would be awarded full points for demonstrating a good faith effort to obtain community participation in the event there was no neighborhood association corresponding to the proposed development. The absence of an association would have to be verified by an officer of a municipality or county clerk, as applicable.

Modifications to TDHCA. The bill would make conforming revisions and additions to definitions of terms contained in statutory provisions governing TDHCA. The TDHCA board would have to keep full transcripts of meetings and post them on its website. The bill would exempt personal information from disclosure as part of open meetings and records policies. TDHCA could be required to participate in a public hearing convened by a legislator to discuss a prospective rule to be adopted. The annual low-income housing report would be treated as an administrative rule and TDHCA would follow standard statutory rulemaking procedures to adopt it as such.

TDHCA could impose an administrative penalty for a violation of applicable rules and statutes in an amount not to exceed $1,000. Penalties would be based on the severity of the violation as determined by the nature and potential hazard of the violation, the history of previous violations, efforts taken to rectify a violation, and other factors. Penalties would have to be preceded by due reports and notices, and a person subject to a penalty would be entitled to a hearing and subsequent judicial review. Procedures for alternative dispute resolutions would be adopted and implemented.

Additional provisions. A person who was awarded state or federal funds through TDHCA to construct affordable, single family housing would have to ensure that each breaker box was located no higher than 48 inches above the floor inside the building on the first floor. Any lease agreement signed with a tenant in a housing development that received tax credits through TDHCA would have to comply with applicable laws and state standards identified by departmental rules. TDHCA would establish an e-mail system for notifications associated with tax credit applications.

The bill would apply to the applicants for the first-time homebuyer program on or after January 1, 2008. Provisions in the bill would take precedence over any potentially irreconcilable provisions set forth in other acts passed by the 80th Legislature.

CSSB 1908 would also repeal statutes that:

- designate divisions that compose TDHCA;
- determine departmental procedures for hearings and other administrative provisions;
- provide for TDHCA to employ or contract with a regional development coordinator to assist local communities in a variety of tasks;
- establish TDHCA programs, including a tenant services program, the Texas Youthworks Program, the Emergency Nutrition and

Temporary Emergency Relief Program, and the Builder Incentive Partnership Program; and
- other conforming changes to TDHCA administrative and programmatic operations.

The bill would take effect September 1, 2007.

NOTES: The Senate-passed version of the bill would strike statutory provisions that allowed for awarding points for tax credit applicants based on the level of community support for the application as indicated by written statements from state elected officials. The House committee substitute added provisions from a number of engrossed House bills, all authored by Rep. Menendez, including:

- HB 1637, creating the Texas First-Time Homebuyer Program;
- HB 2063, revising the allocation of low-income housing tax credits;
- HB 3871, modifying the evaluation of applications for low income housing tax credits;
- HB 3872, changing standards for eligibility of certain low income housing tax credit applicants; and
- HB 3873, amending provisions relating to the administration of TDHCA.