SUBJECT: Continuing the Texas Department of Housing and Community Affairs

COMMITTEE: Urban Affairs — committee substitute recommended

VOTE: 7 ayes — Dutton, Alvarado, Callegari, Mallory Caraway, Parker, Paxton, Simpson

0 nays

2 absent — Gutierrez, P. King

WITNESSES: For —Michael Clark, Texas Apartment Association; Debra Guerrero, NRP Group; John Henneberger, Texas Low Income Housing Information Service; Deena Perkins, Texas Association of Community Development Corporations; Granger MacDonald; Justin MacDonald; Cynthia Bast; (*Registered, but did not testify*: Don Baylor, Center for Public Policy Priorities; Jim T. Brown, Texas Affiliation of Affordable Housing Providers; Matt Hull, Habitat for Humanity Texas; Diana McIver, Texas Affiliation of Affordable Housing Providers (TAAHP); Scott Norman, Texas Association of Builders; TJ Patterson, City of Fort Worth; Madison Sloan, Texas Appleseed; Jeffrey Smith, Texas Association of Local Housing Finance Agencies; Jeanne Telerico, Texas Association of Local Finance Agencies; Tim Thetford, Metro-Dallas Homeless Alliance; Woody Widrow, Raise Texas; Ron Williams, Texas Association of Local Housing Finance Agencies; Barry Kahn; Kathy Tyler)

Against — None

On — Michael Gerber, Texas Department of Housing and Community Affairs; (*Registered, but did not testify*: Kent Conine, Texas Department of Housing and Community Affairs; Michelle Downie, Sunset Advisory Commission; Joe Garcia, Texas Department of Housing and Community Affairs, Manufactured Housing Division)

BACKGROUND: The 72nd Legislature created the Texas Department of Housing and Community Affairs (TDHCA) in 1991 by merging the Texas Housing Agency and the Texas Department of Community Affairs. TDHCA ensures the availability of affordable housing, provides community assistance, and regulates the manufactured housing industry. The department's mission is to help Texans achieve an improved quality of life through better community development.

Governing structure. TDHCA is governed by a board of seven public members, and the Manufactured Housing Division is governed by a separate board of five public members. Members are appointed by the governor and serve staggered six-year terms. TDHCA's board is assisted by three advisory committees including the Executive Award and Review, Colonia Resident, and Colonia Initiative advisory committees.

Staffing. TDHCA employs about 380 people. About 80 percent of employees fulfill housing and community services functions, and the remainder work in the Manufactured Housing Division.

Funding. For fiscal 2009, TDHCA operated with a budget of $330.9 million in total appropriated and authorized funds. Federal programs, including housing tax credits and single and multifamily bonds, require federal authorization rather than direct funding, and $178.1 million of the total funds were federally authorized funds.

For fiscal 2009, the Legislature appropriated $152.8 million to TDHCA, with $7.3 million from general revenue. Additional appropriations to TDHCA's Housing Trust Fund and the creation of a new homelessness initiative increased general revenue funding to $22.6 million per year in fiscal 2010 and 2011.

TDHCA last underwent Sunset review in 2003. The agency is subject to the Texas Sunset Act and is scheduled to expire September 1, 2011, unless continued by the Legislature.

DIGEST:

HB 2608 would continue TDHCA until September 1, 2023. It would require the TDHCA to develop a long-term disaster recovery plan and to make changes to the administration of the housing tax credit program, the manufactured housing installation inspection program, the penalty appeals hearing process, and manufactured housing licensing requirements.

The bill would apply the standard Sunset across-the-board requirement for the Manufactured Housing Division to adopt a policy regarding negotiated rulemaking and alternative dispute resolution.

Long-term disaster recovery plan. The bill would require TDHCA, in consultation with the Texas Department of Rural Affairs (TDRA) and the governor, to develop a long-term disaster recovery plan by March 1, 2012. TDHCA would have primary responsibility over housing-related matters, and TDRA would have primary responsibility over infrastructure-related matters. Each agency would have to consult with existing disaster recovery entities and other stakeholders.

The bill would prescribe the contents of the plan, including that it would have to establish or identify the method of distribution of disaster relief funding to local areas, the guidelines for outreach to program applicants and eligible housing and infrastructure activities, and the procedures for coordination and communication among federal, state, and local entities.

The plan would have to be updated biennially and approved by the governor, who would have to designate a state agency as the primary agency in charge of coordinating the distribution of long-term disaster recovery funding by May 1, 2012.

Housing tax credit program. The TDHCA board would have to adopt a qualified allocation plan and corresponding manual for the housing tax credit program biennially instead of annually, but the board could adopt it annually if preferred. TDHCA also could create a separate application procedure for federal emergency funds.

CSHB 2608 would not change the scoring criteria for quantifiable community participation in proposed tax credit developments.

Manufactured housing installation inspection program. TDHCA would have to inspect at least 75 percent, instead of at least 25 percent, of installed manufactured homes on a sample basis for compliance with the standards, rules, and orders of the department. By January 1, 2015, the TDHCA would have to report whether it had inspected at least 75 percent of manufactured homes installed in 2012, 2013, and 2014 to the Legislative Budget Board, the governor, and the appropriate legislative committees

If TDHCA had not met this goal, the director would have to establish a supplementary third-party installation inspection program. The bill would prescribe the contents of the program, including that it would have to establish a biennial registration and renewal process for third-party inspectors, set timelines for occurrence of inspections relative to installations, authorize the department to charge a filing fee and inspection fee for third-party inspections, and establish procedures to revoke the registration of inspectors who failed to comply with the program's rules.

If TDHCA met its goal and did not have to establish the third-party installation program, the requirement would expire on September 1, 2016.

Licensing and enforcement processes. CSHB 2608 would transfer TDHCA's penalty appeals hearings to the State Office of Administrative Hearings.

CSHB 2608 would decrease the core education requirements for manufactured housing licensees from 20 hours to eight hours. For retailers, management officials would have to fulfill these requirements. An applicant for a retailer's or installer's license would have to complete four hours of specialized instruction, and an applicant for a joint installer-retailer license would have to complete eight hours of specialized instruction.

The TDHCA would not be able to issue a license to an applicant who did not submit to a fingerprint-based criminal background check. The applicant would have to pay the cost of the criminal background check.

The bill would expand TDHCA's cease-and-desist authority to apply to unlicensed, not just licensed, builders, retailers, and installers of manufactured housing.

Direct consumer compensation. The bill would allow the TDHCA director to order a manufactured housing licensee found guilty of certain violations to pay a refund directly to a consumer, instead of requiring the consumer to apply for compensation from the manufactured homeowners' recovery trust fund.

Effective date. The bill would take effect September 1, 2011.

SUPPORTERS SAY:

Long-term disaster recovery plan. Texas has numerous state and local plans to address emergency management and short-term recovery, but has not developed a comprehensive plan for long-term disaster recovery. Failure to plan for long-term recovery has slowed the pace of recovery in areas affected by natural disasters.

CSHB 2608 would require TDHCA to coordinate with TDRA and the governor to have a plan in place to execute federal funding to rehabilitate or reconstruct housing and infrastructure. The clear and consistent plan would be based on the knowledge gained from administering federal disaster funds. A long-term disaster recovery plan would facilitate faster allocation of funds, allowing the program to serve more people and prevent damage caused by delays in service. This would ensure better service delivery to Texas communities for long-term recovery.

Housing tax credit program. The current basis for awarding points for community participation is representative of what a community supports and should not be changed. Neighborhood associations and legislators should continue to play active roles in evaluating a proposed tax credit development.

Having to set deadlines for the tax credit application cycle prevents adjustments to accommodate emergency circumstances. CSHB 2608 would allow TDHCA to create additional tax credit allocation cycles to take advantage of nonstandard federal assistance opportunities.

Generally, the qualified allocation plan does not require an update annually. The process is time consuming and unnecessary, since most of the criteria do not change from year to year. CSHB 2608 would give the TDHCA board the flexibility to update the plan annually or biennially.

Manufactured housing installation inspection program. In 2009, the Manufactured Housing Division inspected 5,200 homes, or 42 percent of all manufactured home installations in Texas. Although the division exceeded the statutorily required 25 percent, staff found code violations in 16 percent of the examined installations. If this rate of violation remained constant across all installations, more than 1,150 homes would have uninspected violations. When left undetected, homes with unknown violations can be at risk for structural and weather-related damage.

The division’s inspection process is slow and inefficient. Although it attempted to inspect about 80 percent of installations in 2009, it failed to complete 53 percent of those inspections, citing an inability to access the homes. In 2009, the median time between an installation and an inspection was more than nine months.

There are many qualified home inspectors statewide who could conduct inspections if the Manufactured Housing Division was not able to meet the goals set out in CSHB 2608. However, if TDHCA met the new inspection goals and was not required to establish a third-party installation program, the requirement would expire on September 1, 2016.

Licensing and enforcement processes. Transferring the TDHCA's penalty appeals hearings to the State Office of Administrative Hearings would improve the efficiency, reduce the cost, and ensure the independence of the department's hearings.

CSHB 2608 would change the educational requirements for manufactured housing licensees by reducing the hours devoted to broad understanding of the industry and instead target the specific skills needed to perform different functions. This specialized curriculum would ensure better competence among licensees.

Criminal background checks of licensees would help to protect the public. Several state agencies have switched from name-based background checks to fingerprint-based background checks, which provide more accurate, real-time information than name-based checks.

OPPONENTS SAY:

Housing tax credit program. CSHB 2608 should base scoring for quantifiable community participation on letters from the local city councils or county commissioners courts instead of neighborhood associations. Letters from local elected bodies would ensure the evaluation of community participation was more representative of the community as a whole.

Scoring based on neighborhood association input is a serious impediment to fair housing and should not be the second-highest criteria for approving a proposed tax credit development. There has been an exclusionary pattern in the designation of tax credit developments in Texas. There are communities in the state where low-income tax credit housing is necessary for the working population. However, organized neighborhood opposition to such developments has prevented people from having the opportunity to live where there are good jobs and good schools.

CSHB 2608 should eliminate the requirement for letters from state representatives and senators to be weighed as criteria in scoring proposed developments. TDHCA still should be required to weigh the comments of legislators, but this should not be a determining factor in the process.

Scoring should be changed to award the same level of points to communities that do not have neighborhood associations as those with associations that are favorable of the proposed development. In some areas of Texas, particularly rural areas, there are no neighborhood associations. Proposed developments in these areas are outscored by places that do have supportive neighborhood associations. CSHB 2608 should address this discrepancy.

CSHB 2608 should allow a civic club or homeowners association to participate in the community participation scoring process. The bill should allow a neighborhood association to extend its letters for up to five years. The bill also should permit neighborhood associations to file a position letter 30 days after an application is submitted, regardless of whether a developer filed a pre-application.

The bill should amend the cap on the amount of housing tax credits that can be allocated to any single developer in a given year, which was set at $2 million dollars per developer in 2001. While it is important to ensure that housing tax credits are not monopolized by any single developer, construction costs have increased and developers no longer can build the same number of units for $2 million. The cap should be increased to $3 million per developer to adjust for the increased costs of construction.

CSHB 2608 should amend the application of the tax credit cap to allow related parties to apply for the tax credit program independently. Currently, related parties, such as a father and son, are aggregated when the tax credit cap is applied. When two family members are independently qualified to participate in the tax credit program, they should be considered separately under the tax credit cap.

Third-party installation inspection program. The provision to establish a third-party installation inspection program is unnecessary because the Manufactured Housing Division will meet the inspection goals laid out in CSHB 2608. The Manufactured Housing Division’s staff has a solid record of finding and reporting issues and overseeing corrections, and the division has reorganized the installation inspection program to achieve a higher number of inspections.

With these new changes, the division is able to perform inspections within several days of installation, and estimates the successful inspection rate will increase to 90 percent, which would eliminate the need to use third-party inspectors.

Third-party inspectors would not be more efficient or effective. The division attempted to use third-party inspectors in 1998, but the program failed due to staff turnover, failure to train and educate new employees, and conflicts of interest.

Licensing and enforcement processes. Reducing the education requirements for manufactured housing licensees from 20 hours to eight would not be beneficial to licensees and could result in increased violations and harm to the consumer.

NOTES:

The original bill contained changes to the scoring criteria for the low-income housing tax credit program, while the substitute would maintain the current law.

The companion bill, SB 665 by Hinojosa, was considered in a public hearing on April 26 and April 28 by the Senate Government Organization Committee.