

SUBJECT: Continuing the Texas Department of Housing and Community Affairs

COMMITTEE: Urban Affairs — favorable, without amendment

VOTE: 6 ayes — Dutton, Alvarado, Elkins, Leach, J. Rodriguez, Sanford
0 nays
1 absent — Anchia

WITNESSES: For — Daniel Markson, Texas Association of Builders - Multifamily Council; (*Registered, but did not testify:* Donna Chatham, Association of Rural Communities in Texas; Ginger McGuire, Rural Rental Housing Association of Texas; David Mintz, Texas Apartment Association; Scott Norman, Texas Association of Builders; Deena Perkins, Texas Association of Community Development Corporations; Cyrus Reed, Lone Star Chapter, Sierra Club; Jeanne Talerico, Texas Association of Local Housing Finance Agencies)

Against — None

On — Eric Beverly, Sunset Advisory Commission; Joe Garcia and Timothy Irvine, Texas Department of Housing and Community Affairs; (*Registered, but did not testify:* Brooke Boston and Cameron Dorsey, Texas Department of Community Affairs; Ken Levine, Sunset Advisory Commission)

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. The TDHCA underwent a full Sunset review in 2011, and the 82nd Legislature passed HB 2608, which included most of the Sunset Commission's recommendations for the continued operation of the department. In June 2011, the governor vetoed HB 2608 over concerns about language pertaining to the department's disaster recovery functions. During the special legislative session in 2011, the 82nd Legislature made changes to the disaster recovery program and continued the department until September 1, 2013. The General Land Office now operates the disaster recovery program previously operated by the TDHCA. Before last

biennium, the TDHCA last underwent Sunset review in 2003.

Agency function. The TDHCA works to improve the availability of affordable housing and provide funding for community assistance, and it regulates the manufactured housing industry. The department's functions include:

- administering federal and state programs that provide homebuyer assistance, serve the homeless, finance multifamily housing development, assist Texans with utility payments, and rehabilitate homes;
- acting as a conduit for federal funds for housing and community services, such as housing tax credits for affordable housing, rental assistance, foreclosure assistance, and home weatherization;
- assisting low- and moderate-income families with home rehabilitation, reconstruction, or first-time home purchase;
- operating as a housing finance agency by managing housing programs requiring the participation of private investors and private lenders;
- serving as an information clearinghouse on affordable housing resources in Texas;
- regulating the manufactured housing industry and maintaining official records of manufactured home ownership, location, and status, including liens; and
- ensuring program compliance with state and federal laws that govern housing programs.

Governing structure. The governor appoints the seven members of the TDHCA board, including the five members of a separate Manufactured Housing Division board. The governor also designates the presiding officers of each board. Board members are public and serve staggered, six-year terms.

Staffing. As of November 2012, the department employed a staff of 311, including 64 in its Manufactured Housing Division.

Funding. The Legislature appropriated \$171.8 million to the department in fiscal 2011, with \$22.6 million from general revenue. General revenue funds decreased to \$8.1 million per year in fiscal 2012 and 2013 because of a decrease in the Housing Trust Fund and the discontinuation of appropriations for a homelessness initiative for Texas' eight largest cities.

Most funds that flow through the department do not go through the standard legislative appropriations process. Long-standing federal programs, including housing tax credits and single- and multi-family bonds, authorize the state to issue tax credits or bonds to raise capital for development or home ownership activities. Only administrative funds for these programs are included in the legislative process. The TDHCA receives these administrative funds as appropriated receipts. The federal government determines the amount of credits and bonds each state can issue according to a population-based formula.

In fiscal 2011, the department expended or encumbered about \$386 million in funds for activities predominantly benefiting low- and moderate-income Texans. About 98 percent of these housing and community services funds came directly from the federal government as grants and payments. Manufactured housing funds came from licensing fees, documentation fees, and some federal funds.

DIGEST:

HB 3361 would continue the TDHCA until September 1, 2025. The bill would:

- change the scoring and application process for housing tax credits;
- expand the department's cease-and-desist authority to apply to the unlicensed, not just licensed, construction, sale, and installation of manufactured homes;
- clarify the department's penalty appeals hearings to the State Office of Administrative Hearings and require judicial review to be based on the substantial evidence rule;
- allow the department to administratively dismiss baseless and nonjurisdictional complaints regarding manufactured housing;
- allow the Manufactured Housing Division to order direct refunds to consumers as part of the manufactured housing complaint settlement process;
- authorize the department to use debarment as a sanction and protection in all its programs;
- require the Manufactured Housing Division to develop and implement a policy on negotiated rulemaking and alternative dispute resolution;
- change manufactured housing licensing requirements and fees; and
- eliminate certain statutorily required reports.

Housing tax credits. HB 3361 would remove written statements of support from state-elected officials as a scoring item for ranking applicants

for low-income housing tax programs. It would add adopted resolutions from a local city council or commissioners court as the second-highest scoring item. The department still could consider letters from state elected officials as part of a housing tax credit application, but they would not affect an applicant's score. Letters from neighborhood organizations would continue to be scored as part of a housing tax credit application, but would be ranked last.

In the event the state received emergency housing tax credits or related federal funding, the department could consider applications for these funds outside the usual housing tax credit application cycle. Changes to the tax credit application process would apply only to applications submitted on or after the effective date of the bill.

Cease-and-desist authority. HB 3361 would allow the director of the Manufactured Housing Division to issue cease-and-desist orders to unlicensed manufactured home sellers, builders, and installers who had violated a law, rule, or written agreement related to the sale, financing, or installation of a manufactured home, unless the violation was regulated by another agency. The TDHCA would continue to have cease-and-desist authority over licensed violators.

Appeals, complaints, and debarment. HB 3361 would transfer the TDHCA's penalty appeals hearings to the State Office of Administrative Hearings and require judicial reviews based on a substantial evidence review rather than a *de novo* review. The Manufactured Housing Division director could allow an authorized employee to administratively dismiss baseless and nonjurisdictional complaints after an investigation without having to involve the division governing board, except to inform them of the reason for such dismissals.

Under the bill, the Manufactured Housing Division could order direct refunds to consumers as part of the manufactured housing complaint settlement process. HB 3361 would also authorize the TDHCA to use debarment as a sanction and protection against repeat violators in all of the department's programs. A person debarred from participation in a department program could appeal their debarment to the TDHCA board.

Finally, the bill would require the Manufactured Housing Division to develop and implement a policy to encourage the use of negotiated rulemaking for the adoption of division rules and alternative dispute

resolution procedures to resolve internal and external disputes under the division's jurisdiction. The new procedures would have to conform to model guidelines issued by the State Office of Administrative Hearings. The division would have to collect data concerning the effectiveness of the new rulemaking and alternative dispute resolution procedures.

Licensing, fees, and background checks. HB 3361 would remove from statute the department's issuance of a license to a rebuilder of manufactured housing. It also would remove manufactured housing retailers from operating more than one location under a single license. It would allow the department to charge a fee for reprinting a manufactured housing license and would require a fingerprint-based criminal history background check for individuals licensed as manufactured housing manufacturers, retailers, brokers, or installers.

Reporting requirements. The bill would remove requirements for the TDHCA to issue reports on energy and peak-demand savings, the Contract for Deed Conversion Program, and transfers of funds, personnel, or in-kind services to the Texas State Affordable Housing Corp.

The bill would take effect September 1, 2013.

**SUPPORTERS
SAY:**

Housing tax credits. HB 3361 would improve allocation of housing tax credits by providing more equal community input in the application process. The bill would ensure evaluations in the application process were more representative of the community as a whole by removing weighted written statements from state-elected officials from the application process and adding a resolution of support adopted by a city council or commissioners court to replace neighborhood association letters as the second-most highly ranked scoring item. Written statements from neighborhood associations still would be ranked as a lesser scoring item.

Under HB 3361, state officials still could write letters voicing their support for or opposition to a development but these statements would not carry more weight than other important criteria, such as cost, location, and services. Given the size of many electoral districts and the short application time frame for allocating credits, state officials are often not in a position to meaningfully evaluate a proposed development or obtain constituent input sufficient to draft an informed letter required by statute. Under the current system, if a state legislator opts not to write a statement, the lack of a statement could kill an otherwise strong housing application.

While input from a state elected official is important, the current requirement puts legislators on the spot to make decisions about a development or endorse a developer without having the time to sufficiently vet a project.

HB 3361 would ensure community members' support or opposition was voiced with input through their local elected officials.

HB 3361 also would weigh neighborhood association letters as a lesser scoring item. While community input is important, neighborhood association statements are not always representative of the community as a whole and are regularly contested. In the past, neighborhood letters outweighed other important criteria, such as the size, quality and cost of a development and gave small neighborhood organizations the equivalent of veto power over an application. Giving less weight to neighborhood association letters and more weight to local elected officials would prevent community members from being denied input in the application process because they did not belong to the right neighborhood or homeowners association.

HB 3361 also would improve efficiency by allowing the department to allocate emergency housing tax credits during a separate emergency tax credit cycle. Statute restricted the department's ability to allocate emergency tax credits the state received as part of the federal American Recovery and Reinvestment Act in 2009. HB 3361 would ensure the TDHCA could act quickly in future emergency circumstances to allocate credits as needed. Stakeholders wanting to express support or opposition during a different allocation cycle could always attend the department's hearings, which are open to the public.

Cease-and-desist authority. HB 3361 would improve the Manufactured Housing Division's ability to protect consumers from unlicensed and unsafe installation and sale of manufactured homes. The division already has this authority over licensed activities, but it lacks the ability to prevent unlicensed operators from selling a consumer a repossessed manufactured house with tax liens on the property or from improperly installing an illegal bootlegged home. Having cease-and-desist authority would allow the division to punish unlicensed operators and encourage them to obtain a license and follow the law so consumers were protected and manufactured housing was produced to a high standard. The department could assess violators administrative penalties of \$1,000 a day.

This expanded authority would help the division to enforce what is already against the law. TDHCA does not have a financial incentive to use its authority more than necessary, as the division is funded through appropriated receipts and the majority of funds from any fines assessed are funneled to the state. The department would probate any fines assessed if the unlicensed operator became licensed.

Appeals, complaints, and debarment. By clarifying that the department can refer penalty hearings to the State Office of Administrative Hearings and requiring a substantial evidence review, HB 3361 would ensure that appeal hearings were unbiased and reviews were based on the established record rather than a completely new trial. Under HB 3361, the TDHCA board could still reverse, modify, or accept the SOAH judge's proposal for decision, preserving their role in final decision making. The Manufactured Housing Division already uses SOAH for its enforcement hearings.

By allowing Manufactured Housing Division staff to administratively dismiss baseless and nonjurisdictional complaints, HB 3361 would save the department time by eliminating the need for the TDHCA board to consider each complaint while preserving accountability. Allowing a licensee to pay a refund directly to consumers would increase efficiency without risking a manufactured housing licensee's ability to maintain a surety bond.

Under HB 3361, the department would improve safety and protect consumers by barring from participation in TDHCA programs bad actors who misappropriate funds, construct unsafe homes, or repeatedly fail to comply with department policy. The bill would not grant any new powers to the department but would expand its authority to issue sanction across all its programs. Those facing debarment would always have the right to cure their violations and to appeal decisions to the TDHCA board.

By requiring the TDHCA to develop a policy regarding negotiated rulemaking and alternative dispute resolution, HB 3361 would bring the department and the Manufactured Housing Division in line with model guidelines adopted by other state agencies. This requirement would not require additional staffing or other expenses.

Licensing, fees, and background checks. HB 3361 would further improve consumer protection and safety by strengthening the

Manufactured Housing Division's practice of conducting background checks for those applying for manufactured housing licenses. The division currently performs background checks using a person's name. Under the bill, those applying for a license would submit fingerprints to obtain a criminal history from the Department of Public Safety (DPS) and the Federal Bureau of Investigation. Fingerprint background checks are the most reliable way to uncover criminal history and would replace the need for background checks for those renewing a license because the DPS would automatically notify the division of subsequent arrests. HB 3361 would help protect the public from entering into an expensive financial transaction with an individual with a criminal history of fraud or theft.

HB 3361 would make common-sense changes to licensing, such as establishing a fee for reprinting of licenses and removing unnecessary licenses for rebuilders and eliminating the ability for a manufactured housing seller to operate more than one location under a single license. The division has never issued a branch office license, has not issued a rebuilder license since 2006, and does not anticipate issuing these licenses in the future.

Reporting requirements. HB 3361 would improve department efficiency by eliminating reports that were no longer relevant or duplicate reports issued by other agencies.

TDHCA as separate agency. Despite claims by some to the contrary, TDHCA should continue to operate as a separate agency and not be combined with the Texas State Affordable Housing Corp. (TSAHC). TDHCA performs an essential role by improving Texans' quality of life through the development of better, affordable communities. TSAHC, as a state authorized nonprofit, can receive tax-exempt donations and raise private funds that it could not access under a combined, quasi-governmental agency. In contrast, TDHCA has a better capacity to perform activities such as underwriting and the administration of federal grants and state funds that TSAHC cannot.

Moreover, because TSAHC does not receive state appropriations, TSAHC employees do not receive state benefits, such as retirement benefits that could increase costs to the state. Combining TDHCA under TSAHC also would negatively impact the department's ability to run its colonia initiatives and would prevent the department from administering federal grants and state funds.

OPPONENTS
SAY:

Housing tax credits. HB 3361 would limit community input in the housing tax credit process. The department should continue to rank community input highly because local community organizations know best the needs of their neighborhood. A city council resolution may not accurately reflect the particular concerns of the neighborhood association members who would live next to a housing development.

Letters from state elected officials should also continue to receive points. Constituents who may not live in the area surrounding a proposed housing development but would nonetheless be affected by it should be able to express their concerns through their state senator or representative. HB 3361 would allow only neighborhood associations whose boundaries included the development to submit ranked input. This means tightly drawn neighborhood association boundaries could exclude the input of a neighbor from a different association who lived down the street from a development while including the input of a neighbor who lived farther away, but still inside the neighborhood association's boundaries.

While it is important to respond quickly to emergencies, changing the application cycle for federal emergency housing funds could make it more difficult for stakeholders to express concerns about a housing development.

Cease-and-desist authority. By expanding the TDHCA's authority to issue cease-and-desist orders, HB 3361 inappropriately would give a dangerous tool that could be misused to attack problems that should be solved by the marketplace or, as a last resort, the courts. Giving the TDHCA expanded cease-and-desist authority would pose a clear risk of regulatory overreach.

Appeals, complaints, and debarment. The housing industry and the marketplace are already effective at identifying and punishing bad actors without giving the department full debarment authority. By allowing the TDHCA to debar participants from all programs, HB 3361 could unnecessarily push out operators for minor violations.

HB 3361 also would create an unnecessary barrier to entry for operators in the Manufactured Housing Division by requiring fingerprint-based background checks instead of name checks. Requiring fingerprint-based background checks for individuals also would erode unnecessarily

individual privacy rights without adding much more information than a name check.

TDHCA as separate agency. To save money and increase government efficiency, Texas should consolidate its functions with the Texas State Affordable Housing Corp. Combining the agencies would streamline low- and moderate-income housing functions, improve efficiency, and save the state money on administrative overhead. It also would allow the departments to privatize functions that could be better handled by private industry.

NOTES: The identical companion bill, SB 214 by Birdwell, was referred to the Senate Intergovernmental Relations Committee on March 12.