

SUBJECT: Creating a \$2 affordable housing fee for county property records

COMMITTEE: Urban Affairs — committee substitute recommended

VOTE: 6 ayes — Carter, Bailey, Burnam, Edwards, Ehrhardt, Hodge
1 nay — Clark
2 absent — Hill, Najera

WITNESSES: For — John Henneberger, Texas Low-Income Housing Information Service; Reymundo Ocanas, Texas Association of Community Development Corporations
Against — None

BACKGROUND: Local Government Code, sec. 118.011 requires a county clerk to collect fees for filing, registering, or indexing certain personal and real property records that are authorized or required to be filed in the county clerk’s office. The \$2 fee for personal property records does not apply to notary public records, marriage licenses, vital statistics records, real property records, documents filed in courts, or financial instruments for which the filing fee is fixed by the Business and Commerce Code. For real property records, the clerk must charge \$3 for the first page and \$2 for each additional page, plus 25 cents for each name in excess of five names that has to be indexed in all records in which the document must be indexed. The fee for real property records does not apply to map, condominium, notary public, marriage, vital statistics, or personal property records.

The Housing Trust Fund, administered by the Texas Department of Housing and Community Affairs (TDHCA), is the only state-funded low-income housing program. Funds may be used to buy, rehabilitate, and build affordable housing for households at or below 80 percent of the area’s average median family income. Funds are available to nonprofit organizations, local government units, public housing authorities, community housing development organizations, for-profit entities, and income-eligible individuals and families.

Funds are awarded on a competitive basis through periodic application cycles. Applications are evaluated against a number of criteria, including income categories, financial feasibility, and long-term affordability.

DIGEST:

CSHB 3654 would create a \$2 affordable housing fee to be collected by county clerks for each personal and real property record for which a fee is charged for recording. The fee would be in addition to other fees charged for recording documents. The clerk would have to collect the affordable housing fee at the time the document was presented for recording.

The county clerk would have to remit the affordable housing fee to the county treasurer on or before the next regular business day after the date on which the fee was received. By the last day of the month following each quarter, the county treasurer would have to remit to the comptroller \$1.80 of each fee received for that quarter.

The county treasurer would retain 20 cents of each fee and any interest earned on the entire fee to reimburse the county for expenses associated with collecting and remitting the fee. The comptroller would deposit the fee revenue to the credit of the Housing Trust Fund for use in accordance with the purposes of that fund.

The bill would take effect September 1, 1999, and would apply only to documents presented for recording on or after that date.

**SUPPORTERS
SAY:**

The Housing Trust Fund desperately needs revenue. Currently, TDHCA's low-income housing program can meet less than 1 percent of the affordable housing needs in the state. Additional funds from the fee proposed by CSHB 3654 could help offset the shortfall in federal resources for this program.

More than half of other states have dedicated revenue sources for housing, and many impose fees on real estate transactions similar to the fee proposed by this bill. The fee would fall mostly on real property records, providing a direct link between the source and the use of revenues.

Developers would be more interested in participating in affordable housing projects, which are by nature long-term projects, if a dedicated source of revenue ensured that the state would continue to support the project. It is difficult to convince developers to get involved in long-term projects if those

projects rely on state appropriations that must be approved every two years and may be influenced by the state economy, politics, and other factors.

As Texas' only state-funded low-income housing program, the Housing Trust Fund plays an important role in filling the gap when federal funding cannot meet Texas' affordable housing needs. The fund, created in 1991, received about \$6 million in state appropriations in its first biennium of operation. Since then, however, funding has plunged to about \$1 million a year. Although \$2 million in additional oil overcharge funds were available for fiscal 1998-99, those funds are declining and eventually will disappear. According to the bill's fiscal note, the fee proposed by CSHB 3654 would raise \$1.8 million in fiscal 2000 and \$2.5 million each year thereafter for the Housing Trust Fund.

Every resident of Texas should have a decent, safe, and affordable living environment, and government at all levels should be involved in assisting low-income individuals and families. In 1993, the Housing Trust Fund awarded \$1.3 million to the Lower Valley Housing Corporation to develop a 48-unit apartment complex six miles outside El Paso, where there was a great need for low-income housing. The result has been the Green Desert Apartment Complex, a well run and managed complex surrounded by a small subdivision of new self-help homes, funded in part by TDHCA. Many residents, encouraged by the progression of their neighbors from apartment rental to home ownership, have wound up joining the self-help program themselves.

OPPONENTS
SAY:

CSHB 3654 would add a \$2 fee on top of other document filing fees required by law. This fee would amount to a hidden tax to promote affordable housing. It is hard to see the legitimate connection between filing a personal or real property record in a county clerk's office and the support of affordable housing for low-income residents. These documents would include warranty deeds, deeds of trust, promissory notes, and liens filed by banks concerning money owed on personal property.

Many county clerks' offices charge records management fees and court security fees on top of the statutory fee amounts set in the Local Government Code. Fees for real property records already may be as high as \$9 for the first page and \$2 for each subsequent page. These costs are passed on to property

buyers by banks and real estate agents, so anyone who buys property for which a record must be filed must pay them.

If the Legislature wants to increase funding for the Housing Trust Fund, it should do so through the appropriations process or through a broad-based tax, not by increasing fees for first-time home buyers and others who must file property documents at county clerks' offices.

**OTHER
OPPONENTS
SAY:**

A \$2 fee is too much. The bill should be amended to set the affordable housing fee at \$1, with 10 cents going to the county.

NOTES:

The committee substitute corrected fee provisions in the original bill.

The Senate companion bill, SB 327 by Ellis, would set the affordable housing fee at \$1, of which the county treasurer would have to remit 90 cents to the comptroller and retain 10 cents. SB 327 was reported favorably by the Senate Intergovernmental Relations Committee on March 4.