HOUSE RESEARCH ORGANIZATION bill analysis — 5/23/2003

SB 264
Lucio (Callegari, et al.)
(CSSB 264 by Talton)

SUBJECT: Continuing the Texas Department of Housing and Community Affairs

COMMITTEE: Urban Affairs — committee substitute recommended

VOTE: 5 ayes — Talton, Van Arsdale, Edwards, Hunter, Wong

0 nays

2 absent — Menendez, Bailey

SENATE VOTE: On final passage, April 1 — voice vote

WITNESSES: *(On original version:)*
For — Donna Chatham, Association of Rural Communities in Texas; John Garvin, Texas Affiliation of Affordable Housing Providers; John Henneberger, Texas Low Income Housing Information Service; Jean Langendorf, United Cerebral Palsy of Texas; David Mintz, Texas Apartment Association; Mike Sugrue, Simpson Housing Solutions; Jeanne Talerico, Texas Association of Local Housing Finance Agencies; William J. Lee; Diana McIver; Michael Clark

Against — None

BACKGROUND: The 72nd Legislature in 1991 created the Texas Department of Housing and Community Affairs (TDHCA) by merging the Texas Housing Agency, the Texas Department of Community Affairs, and the Texas Department of Commerce's Community Development Block Grant program. TDHCA promotes the availability of affordable housing, provides community assistance, and regulates the manufactured housing industry.

In fiscal 2002-03, TDHCA operated with a budget of about $364 million (four-fifths from federal funds) and about 325 full-time employees. TDHCA last underwent sunset review in 2001, when the 77th Legislature continued the agency for two years and directed the Sunset Advisory Commission to reevaluate the agency for this legislative session. TDHCA will expire on September 1, 2003, unless continued by the Legislature.

Governing structure. TDHCA's governing board is made up of public members who serve staggered six-year terms. The governor appoints the board members and designates the chair. The board hires the executive director to manage the agency's day-to-day operations. The board also determines departmental policy, makes final program award decisions, and reviews the agency's budget.

Affordable housing. TDHCA supports affordable housing through construction and rehabilitation programs, preservation, rental assistance, and home purchasing assistance. The agency's low-income housing tax credit program awards federal tax credits to developers to build, acquire, or rehabilitate affordable housing. To receive the credits, developers submit competitive applications to TDHCA, which 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's multifamily bond division issues private activity and tax-exempt 501(c)(3) bonds to fund affordable housing loans to developers. The HOME program awards federal HOME funds to community housing development organizations (CHDOs), local governments, and other organizations that do not receive HOME funds directly from the federal government.

TDHCA allocates Section 8 vouchers and federal HOME rental assistance funds to local governments to aid low-income renters in areas not covered by local public housing authorities. TDHCA also administers the First Time Home Buyer Program, which provides low-interest loans to qualified low-income people through tax-exempt mortgage revenue bonds.

Under Government Code, sec. 2306.111, TDHCA administers federal housing funds allocated to the state under the Cranston-Gonzales National Affordable Housing Act. The statute requires TDHCA to set aside 95 percent of these funds for small cities and rural areas that do not qualify for funds directly from the U.S. Department of Housing and Urban Development. It also requires the agency to allocate funds under this program to each uniform state service region on the basis of the need for housing assistance and the availability of housing resources, provided that those allocations are consistent with state and federal requirements.

Sec. 2306.6704 allows a developer to file a pre-application for housing development funds to prevent unnecessary filing costs. As an incentive, additional points are awarded to an applicant who participates in the prefiling process.

Colonia initiatives. In 1995, the 74th Legislature enacted SB 1509 by Zaffirini to create colonia self-help centers in El Paso, Maverick, Webb, Starr, Hidalgo, and Cameron counties. These centers provide housing, infrastructure improvements, community development activities, and education to low-income households and colonia residents. TDHCA also administers a program to allow colonia residents to convert land titles held under contracts for deed into traditional mortgages and a program to provide home loans to low-income residents who provide at least 60 percent of the labor to build their own houses.

CDBG services. TDHCA administers the federal Community Development Block Grant (CDBG) program, which provides annual grants to state and local governments to fund a variety of community improvement initiatives. The agency allocates CDBG funds to communities based on a formula that considers poverty and population density. TDHCA also awards federal and state funds for homeless prevention programs, emergency assistance, food and nutrition, energy assistance, and weatherization.

State ceiling for private activity bonds. Government Code, ch. 1372 governs private activity bonds. A private activity bond is a bond issued by the state that allows private interests to benefit from the bond. The amount of tax-exempt private activity bonds that may be issued during a given calendar year is subject to a cap, referred to as the "state ceiling." Sec. 1372.022 allots portions of the state ceiling to six different purposes. Twenty-five percent of the state ceiling is reserved for qualified mortgage bonds to fund home loans by TDHCA and housing finance corporations. Another 16.5 percent of the state ceiling is reserved for issuers of qualified residential rental project bonds. Sec. 1372.0321 governs the prioritization of reservations among issuers of qualified residential rental project issues.

DIGEST: CSSB 264 would continue TDHCA until 2007 and would make numerous changes to the agency's low-income housing development programs.

Public notification. CSSB 264 would create new public notification and input procedures for prospective housing projects governed by TDHCA. The agency would have to adopt rules governing topics that could be considered at a public hearing for a state-aided housing project. The rules would have to require TDHCA to consider:

- the development's market study;
- the development's location;
- the developer's compliance history;
- financial feasibility;
- the development's size and configuration;
- proximity to other low-income housing developments;
- availability of public services;
- impact on local school districts;
- zoning and land use; and
- any other appropriate topics.

TDHCA would have to provide written notice within 14 days of receiving an application for housing funds to the community's U.S. representative, the community's members of the Legislature, the presiding officer and member of the political subdivision's governing body, the school district's superintendent and presiding officer, and any neighborhood organizations in whose jurisdiction the project was located. The notice would have to include relevant dates affecting the application, relevant facts about the development, a summary of public benefits resulting from the development, and the contact information for the agency employee who would serve as a public contact on the application.

An applicant would have to include in pre-application evidence that the applicant had notified any neighborhood organization whose boundaries would contain the development, the superintendent and presiding officer of the school board, the presiding officers of the governing bodies of the municipality and the county, and the state senator and representative of the district containing the development. Evidence of this notification also would have to be included in the general application for the development.

TDHCA would have to make available on its Internet website submitted and approved applications for underwriting that had been recommended to

TDHCA's board. In addition to local housing departments, newspapers, nonprofit organizations, and on-site peroperty managers to whom this information currently must be provided, TDHCA would have to provide this information to locally affected community groups, local and state elected officials, and for-profit organizations.

Concentration of affordable housing. CSSB 264 would establish various provisions to address the issue of affordable housing concentration in Texas communities. An applicant would be ineligible under the low-income tax credit program if the applicant proposed to build a new development that was within one mile of another development serving the same type of household, had received tax credits within the three-year period before the application round began, and had not been withdrawn from the tax credit program. This condition would not apply to a development in a county with a population of less than 1 million, to a development using federal HOPE VI funds, or to a development receiving locally approved funds from a public improvement or tax increment financing district. An applicant also would be ineligible if the development was located in a municipality or county that had more than twice the state average of units per capita that were supported by tax credits or private activity bonds, unless the applicant had obtained approval from the appropriate municipal or county governing body.

TDHCA would have to provide incentives to reward an applicant who agreed to locate a housing development in a census tract in which there were no other existing developments supported by housing tax credits.

Deposits for repairs. CSSB 264 would establish a deposit system for a property improvement account for units in projects benefitting from state aid. The deposit system would not apply to a development for which an owner had to maintain a reserve account under any other state or federal law. For a development on which TDHCA was the first lien lender, each owner receiving agency assistance for a development with 25 or more rental units would have to deposit into a reserve account at least $150 per unit per year for units one to five years old and at least $200 per unit per year for units six or more years old. A restrictive covenant or land-use restriction agreement between TDHCA and the owner would have to require the owner to make annual deposits on the date when occupancy stabilized or when permanent financing was in place, whichever was later. TDHCA would have to define what constituted stabilized occupancy. Deposits would continue until the date of an involuntary change in ownership, the date on which the owner suffered a property loss, the date when the development became functionally obsolete, the date on which the development was demolished, the date on which the development ceased to be a multifamily rental property, or the end of the specified affordability period.

If a reserve fund had not been required by a development's first lien lender, the owner would have to set aside reserve amounts for capital improvements for each unit in the development, regardless of the rent charged.

An owner would have to contract with a third party for a physical needs assessment at appropriate intervals beginning with the eleventh year after TDHCA awarded the development financial assistance. If the first lien lender did not require a physical needs assessment or if TDHCA was the first lien lender, the owner would have to have a needs assessment conducted at least once every five years beginning 11 years after assistance was awarded. The owner would have to submit to TDHCA copies of the most recent third-party physical needs assessment, the owner's response to the assessment, repairs made in response, and information on any necessary changes to the required reserve based on the assessment.

TDHCA could complete necessary repairs if the owner failed in that respect, and the owner would have to pay for these repairs directly or through the reserve account. The agency could enter the owner's property to maintain compliance with local health, safety, or building codes and could pay for that activity through the reserve account.

The owner's deposit requirement duties would cease after a voluntary change in ownership, though the subsequent owner would be subject to these requirements. The first lien lender on a development would have to maintain the reserve account. If there was no longer a first lien lender, the owner would not have to set aside a repair reserve fund.

TDHCA would have to adopt rules governing deposits to the fund. For first lien lenders and bank trustees, the rules would have to cover maintenance reserve accounts, asset management, transfers of money for repairs, and oversight of the accounts. For owners, the rules would have to govern inspections and identification of needed repairs. TDHCA would have to determine when reserve account money could be used for non-repair-related expenses such as property taxes or insurance. TDHCA would have to decide when money in the fund could fall below mandatory deposit levels without resulting in department action. TDHCA also would have to establish the nature of its oversight of reserve accounts and repairs, provide consequences for failure to make a required deposit, specify processes by which the agency would obtain needed repairs for developments, and provide for the appointment of a bank trustee as necessary.

TDHCA would have to assess a penalty of $200 per housing unit against an owner who did not contract for the third-party needs assessment and make the identified repairs. The attorney general's office would have to assist in the collection of any penalty.

Setaside funds. CSSB 264 would authorize both nonprofit affordable housing providers (including CHDOs) and for-profit housing providers to apply for federal Cranston-Gonzales National Affordable Housing Act setaside funds. TDHCA could not give preference to nonprofit providers, except as provided by federal law. Funds or credits would not have to be allocated according to the regional allocation plan based on need and availability if the funds or credits were reserved for contract-for-deed conversions or state and federally mandated setasides, provided that the contract-for-deed or setaside allocation did not exceed 10 percent of the total allocation. TDHCA would have to designate an employee as a contact with the public regarding each application for setaside funds. The bill also would add language to specify that the state must allocate Cranston-Gonzales funds to all "urban, exurban, and rural areas" of each uniform state service region.

Private activity bonds. TDHCA would have to score and rank applications for an issuance of private activity bonds using a point-based system that the agency would establish. This system would have to include criteria regarding:

- tenants' income levels;
- rent levels of the units;
- cost per unit of the development;
- community support;
- period of guaranteed affordability;

- size, qualities, and amenities of the units;
- services to be provided to tenants;
- funding by local political subdivisions enabling additional low-income units; and
- other relevant criteria.

TDHCA would have to impose penalties on applicants for private activity bonds who had requested extension of the agency's deadlines.

Details of the scoring system would have to be made available on TDHCA's website. The agency would have to underwrite the application by determining that the general contractor's profit, overhead, and requirements were within the agency's maximum limit. TDHCA also would have to determine that the developer fee did not exceed the maximum allowed amount and would have to determine the amount of available tax credits for the proposed development. In adopting criteria for underwriting applications, TDHCA would have to attach additional weight to criteria resulting in bond issuance for developments serving the lowest-income tenants and producing the greatest number of high-quality units committed to remaining affordable.

Low-income housing tax credit program. CSSB 264 would amend the scoring process for applications for the low-income housing tax credit program. Criteria used in scoring would have to include, in descending order:

- financial feasibility;
- community participation based on written statements from neighborhood organizations and the superintendent or presiding officer of the school district;
- tenants' income levels;
- size and quality of the units;
- commitment of funding by local political subdivisions;
- level of community support based on written statements from elected state officials;
- rent levels;
- cost of the development per square foot; and
- services to be provided to tenants.

TDHCA would have to impose penalties on the developer or principal of an applicant that had been removed by a lender, equity provider, or limited partner for failure to perform obligations under a loan document or limited partnership agreement.

Priority of reservations under the rental project subceiling. CSSB 264 would alter the prioritization of reservations to issuers of the 16.5 percent private activity bond subceiling for rental projects. TDHCA would have to give first priority to:

- projects in which 50 percent of the residential units were restricted such that their rents were equal to 30 percent of 50 percent of the area median family income, minus utility costs, and were reserved for families and individuals earning no more than 50 percent of the area median income. Rents in the other half of the units would have to be equal to 30 percent of 60 percent of median family income, minus utility costs, and these units would have to be reserved for families and individuals earning no more than 60 percent of area median income;
- projects in which rents in 15 percent of the units were equal to 30 percent of 30 percent of the area median family income, minus utility costs, and these units were reserved for families and individuals earning no more than 30 percent of the area median income. Rents in the remaining 85 percent of the units would be restricted to 30 percent of 60 percent of the area median family income, minus utility costs, and reserved for individuals and families earning no more than 60 percent of the area median income;
- projects in which rents in all of units were equal to 30 percent of 60 percent of area median family income, minus utility costs, and reserved for families and individuals earning more than 60 percent of area median income. These projects also would have to be located in a census tract in which the median income was higher than the median income for the county, metropolitan statistical area, or primary metropolitan statistical area in which the census tract was located; or
- projects located in counties, metropolitan statistical areas, or primary metropolitan statistical areas with area median family incomes at or below the statewide median family income.

TDHCA would have to give second priority to projects in which all units were reserved for families who did not earn more than 100 percent of area median income, and to projects in which maximum rents were equal to 30 percent of 60 percent of area median family income, minus utility costs.

Market analysis. A market analysis submitted with a housing tax-credit application would have to be prepared by a TDHCA-approved market analyst and would have to include an assessment of other tax-credited developments in the market area. TDHCA would have to establish a process for approving market analysts and defining market areas.

Other provisions. The bill would add standard sunset language governing conflicts of interest. It would repeal statutes governing:

- a portion of the annual low-income housing report relating to the Neighborhood Partnership Program;
- exemption of 501(c)(3) bonds from long-term affordability and safety policies for multifamily rental developments;
- the Colonia Initiatives Advisory Committee;
- the biennial colonia action plan; and
- certain public information requirements for the low-income housing tax credit program.

The bill would take effect September 1, 2003.

SUPPORTERS SAY:

CSSB 264 would continue TDHCA, which serves an important mission in the state and largely has overcome the major problems that prompted lawmakers to continue the agency conditionally last session. However, TDHCA needs to be monitored closely and should undergo sunset review again in four years.

Public notification. CSSB 264 would strengthen the weight of community input in TDHCA's decision-making process, increasing public awareness of and participation in the agency's evaluation of housing applications. The bill would outline topics to be discussed at public hearings, require notification of elected officials when TDHCA received an application, and direct the agency to inform affected community organizations on prospective housing projects. These provisions would facilitate the solicitation of public input and help build the public support that is crucial for successful housing developments.

The public has every right to be made aware of a low-income housing development planned for a community. The public notification requirements in CSSB 264 would inform neighborhoods and community leaders better, leading to constructive engagement with communities that would be affected by low-income housing developments.

Housing concentration. CSSB 264 would address concerns that affordable housing in Texas is becoming overly concentrated in limited, less desirable areas and away from quality schools and employment opportunities. By rendering ineligible a proposed development within one mile of a similar development that received tax credits, the bill would help disperse housing developments throughout a city and minimize undue burdens on local taxing entities. Also, the bill would not allow a development in a city or county with more than twice the state average of units per capita unless approved by a city council or commissioners court, ensuring that unwanted and unneeded projects would not commence.

Deposits for repairs. CSSB 264 would help ensure that low-income housing developments provided an acceptable level of habitability to their residents by requiring establishment of a deposit system to pay for repair and improvement of residential units. A regular needs assessment by an independent third party would be an appropriate and balanced method to determine which repairs were needed.

Prioritization and scoring. By adjusting the priority tiers for TDHCA's portion of the state ceiling, CSSB 264 would provide developers greater flexibility in serving needy populations. The bill's evaluation scheme for awarding tax credits appropriately would emphasize financial feasibility, community support, and the income levels of families served, important priorities for the state. The bill also would create a system to help TDHCA allocate limited private activity bonds according to such criteria as tenant income levels, unit rent levels, and rental unit quality.

OPPONENTS SAY:

Public notification. CSSB 264 would introduce new barriers that could impede seriously the construction and availability of affordable housing in the state. Because of the widespread "not in my backyard" mindset, CSSB 264's extensive public notification requirements would allow public misconceptions about affordable housing to eliminate many potential development sites.

Public housing developments already are scarce in many more desirable suburban communities with solid bases of employment and strong schools. CSSB 264 would make it more difficult for needed affordable housing to move into those areas.

Housing concentration. Although the bill commendably would attempt to address the difficult issue of concentration of affordable housing, a development should not be ineligible for tax credits simply because its surrounding metropolitan statistical area had a relatively high level of affordable housing. The need remains great for affordable housing in many of the areas that this provision would eliminate, particularly in suburban or underdeveloped metropolitan areas. For example, in a region witnessing rapid, localized economic expansion, CSSB 264 would require a developer to go through public approval processes that could slow construction of needed affordable housing significantly.

Setaside funds. The bill's language specifying that TDHCA could not give preference to nonprofit housing providers could lead TDHCA unfairly to allocate these organizations the minimum of funds required by law. Also, drawing a distinction among urban, exurban, and rural areas in allocation of setaside funds could lead to fewer funds to rural areas that need affordable housing.

Deposits for repairs. The required amount of deposits for repairs and maintenance under CSSB 264 would not be high enough to improve conditions significantly for residents of affordable housing.

NOTES:

The Senate engrossed version of SB 264 would have extended TDHCA for 12 years and would have removed the provision requiring written statements of support from state and local officials for an application to the low-income housing tax credit program.