SUBJECT: Revising the Texas Department of Housing and Community Affairs

COMMITTEE: Urban Affairs — committee substitute recommended

VOTE: 6 ayes — Talton, Wong, Bailey, Blake, Menendez, Rodriguez

0 nays

1 absent — A. Allen

WITNESSES: For — Richard D. Garcia, Neighborhood Associations (Memorial Heights); Manuel Garza, Edgewood Neighborhood Association; George Hopper, Continental Realty, Inc.; Teri Kilmer, Loma Park Neighborhood Association; Paul Patierno, Apartment Investment and Management Company (AMCO); Patrick A. Barbolla; Brian Cogburn; Jack Dill; Michael Hartman; Les Kilday; R.R. (Dick) Kilday; Albert E. Magill

Against — John Henneberger, Texas Low Income Housing Information Service; Bob Kafka, Institute for Disability Access; Jean Langendorf, United Cerebral Palsy of Texas; Jennifer McPhail, Stephanie Thomas, ADAPT of Texas

On — Donna Chatham, Association of Rural Communities in Texas; John Garvin, Texas Affiliation of Affordable Housing Providers; Antoinette M. Jackson, Texas NAHRO; Susan Maxwell, Texas Council for Developmental Disabilities; Reymundo Ocanas, Texas Association of Community Development Corporations; Sandra Williams, Alamo Area Mutual Housing Association and Texas Association of Community Development Corporations

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 2004-05, TDHCA operated with a budget of about $323 million (approximately 87 percent from federal funds) and almost 300 full-time employees.

Fair housing. TDHCA may provide funding only to project applicants that certify compliance with specific state and federal fair housing laws, including the Americans with Disabilities Act of 1990 and the Civil Rights Act of 1964, among others. In conjunction with the Texas Commission on Human Rights, TDHCA is required to establish rules for certifying, monitoring, and enforcing compliance. Owners of developments that have received financial assistance from TDHCA and contain 20 or more units must submit an annual fair housing sponsor report with information on fair housing violations and units in the development accessible to persons with disabilities. The department provides information on currently available accessible units upon request.

Affordable housing. TDHCA supports affordable housing through construction and rehabilitation programs, preservation, rental assistance, and home purchasing assistance. Recipients of funding for certain multifamily developments, including all recipients of tax credits, must maintain affordability for the longer of 30 years or the remaining term of existing federal assistance. TDHCA is required adopt minimum property standards for department-financed housing developments. TDHCA must monitor the entire construction phase of a project for compliance with all applicable requirements and review the performance of the project periodically after construction to confirm compliance. Both the department and tenants may enforce affordability and maintenance requirements on multifamily housing developments.

A development owner who intends to sell the development, prepay a HUD loan, or opt out of the federal Section 8 housing assistance program must notify TDHCA at least 12 months in advance so that the department may attempt to locate a buyer who will comply with affordability restrictions. Housing sponsors may not terminate the tenancy of a person or family whose income exceeds the level allowed unless it has exceeded that by at least 25 percent for six months and the sponsor receives departmental approval.

Low-income housing tax credits. TDHCA's Low-Income Housing Tax Credit Program awards federal tax credits to developers to build, acquire, or rehabilitate affordable housing. Federal law requires that a minimum of 20 percent of the residential units be reserved for individuals and families with incomes of 50 percent or less of the area median 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 a state's tax credits must be set aside for nonprofit developers.

Under federal law, these tax credits must be allocated pursuant to a qualified allocation plan (QAP) that sets forth locally appropriate criteria and gives priority to projects serving the lowest-income tenants for the longest periods, contributing to a concerted community revitalization plan, and providing a procedure for monitoring and compliance. Texas' QAP is revised annually by TDHCA and must be approved by the governor.

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. An applicant may receive no more than $2 million per year in tax credits. An applicant that is denied tax credits may appeal to the director. If the applicant is unsatisfied with the director's response, the person may appeal to the board. The board's decision is final.

TDHCA may debar a person from participating in the program based on past compliance problems and must debar people who violate conditions imposed by the department in connection with the allocation of a credit, have been debarred from participating in federal housing programs, or are not compliant with or repeatedly have violated a land-use restriction agreement.

HOME funds. TDHCA administers federal housing funds allocated to the state under the Cranston-Gonzales National Affordable Housing Act. The state receives about $40 million annually in HOME funds. Under U.S. Department of Housing and Urban Development (HUD) guidelines, these funds are reserved for people at or below 80 percent of the average median family income for an area. TDHCA awards funding through an application process to cities, non-profit organizations, and for-profit and public housing agencies around the state to administer program activities for HOME-eligible recipients. The agency must allocate funds to each uniform state service region on the basis of the need for housing assistance and the availability of housing resources.

TDHCA is required under state statute to set aside at least 95 percent of these funds for small cities and rural areas, also known as nonparticipating jurisdictions, that do not qualify for funds directly from HUD. Any funds not set aside must be used for housing in urban areas for persons with disabilities. State statute also sets aside 25 percent of HOME funds for housing assistance for individuals or families with very low and extremely low incomes.

Housing Trust Fund. In 1991, the 72nd Legislature created the Housing Trust Fund, which is the only state authorized affordable housing program. Non-profit organizations, public housing authorities, community housing development organizations (CHDOs), units of local government, and income-eligible individuals and families may apply for funds to acquire, rehabilitate, or construct 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.

State law sets aside the first $2.6 million available in each funding cycle for local units of government, public housing authorities, and non-profit organizations. Of the remaining funds, at least 45 percent must be set aside for non-profit organizations. Additional funds may be awarded to for-profit organizations.

Owner-builder loan program. TDHCA operates an owner-builder loan program, called the "bootstrap" program, to help property owners build or improve housing on land they own or intend to buy. TDHCA provides these loans through nonprofit owner-builder programs that certify the eligibility of a loan applicant, including income and residency requirements.

Governing structure. TDHCA's governing board is made up of seven public members who serve staggered six-year terms. The governor appoints the board members and designates the chair. With the approval of the governor, the board hires the executive director to manage the agency's day-to-day operations. The board also sets departmental policy, makes final program award decisions, reviews the agency's budget, and authorizes all bonds issued by the department. A person who controls more than 10 percent interest in a business entity or organization regulated by or receiving money from TDHCA, or who receives a substantial amount of goods, services, or money from TDHCA, is prohibited from serving on the board. Board members are required to attend a training program on the department and relevant state and federal laws.

DIGEST: CSHB 1167 would make numerous changes to TDHCA's low-income housing development programs.

TDHCA would be prohibited from adopting rules, requirements, or costs not expressly required by federal or state law or establishing standards that exceeded or deviated from federal housing program requirements. The department would be allowed to adopt rules necessary to fulfill its purposes.

Fair housing. CSHB 1167 would require applicants for TDHCA funding to comply with any applicable state and federal fair housing laws, rather than list specific fair housing laws. The department would be required to obtain the information necessary to enable it to comply with state and federal reporting requirements. TDHCA's authority to adopt additional rules for monitoring and ensuring compliance would be eliminated, as would the requirement that TDHCA notify the state Commission on Human Rights if a program participant was not in compliance. The bill also would eliminate the fair housing sponsor report.

Affordable housing. CSHB 1167 would require certain recipients of funding for a multifamily development to maintain affordability for the minimum affordability period under the respective federal or state program through which the financing is provided or the remaining term of any existing government assistance. These affordability requirements would apply to tax credits that provided more than 33 percent of the total development costs of the development. The bill would authorize the department exclusively to enforce affordability and maintenance requirements. It would eliminate the requirement that a development owner who intended to sell the development, prepay a HUD loan, or opt out of the Section 8 program notify TDHCA at least 12 months in advance and remove the requirement that owners renew rental subsidies if those subsidies were available and sufficient to maintain the economic viability of the development.

The bill would require TDHCA to adopt minimum property standards only for those housing developments financed or acquired with bond proceeds. The department would be required periodically to monitor projects based on the financial risk to TDHCA unless the agency determined there was reasonable justification for a higher level of monitoring. Monitoring during the construction phase would occur through the periodic review of the construction inspection reports submitted by the project architect. The annual cost of compliance monitoring for each project would be limited to $25 per monitored unit in 2006 and adjusted thereafter for inflation.

TDHCA would be required to provide notice of proposed developments to neighborhood associations. A "neighborhood association" would be defined as an organization of persons living near one another whose primary purpose is to maintain or improve the general welfare of the neighborhood. The term would include a homeowners' association, tenants' association, residents' council, and property owners' association. It would not include a broader-based community organization, a chamber of commerce, a community development corporation, a school-related organization, civic organizations such as the Rotary Club, Habitat for Humanity, Boys and Girls Clubs, charities, public housing authorities, organizations composed of only board members of the organization, or any governmental entity.

Low-income housing tax credits. CSHB 1167 would set exclusive criteria for an applicant to qualify for a tax credit allocation and specify the number of points that would be awarded to or deducted from an application for a development for each criterion. TDHCA would be prohibited from imposing additional criteria or requiring additional information beyond that required by statute, including the unit mix or bedroom arrangement of any development not reserved exclusively for occupancy by elderly individuals.

The bill would remove underwriting from the evaluation of applications. An applicant would be required to provide written amendments to the application only if a proposed modification adversely would alter it. The bill would eliminate the requirement that the staff consider whether the applicant reasonably could have foreseen or prevented the need for the modification.

An applicant that was not satisfied with the director's explanation of a tax credit allocation would be able to request alternative dispute resolution in addition to making an appeal to the board. The board's decision would be a final administrative decision subject to judicial review. The bill specifies that a person debarred from the program would not be eligible to participate for at least five years.

Prior to determining the regional allocation formula for 2006 and 2007, TDHCA would be required to set aside $2 million per year to region 9 (San Antonio), $1 million per year to region 13 (El Paso), and $750,000 per year to region 11 (Brownsville/Harlingen). Five percent of tax credits in each region would have to be set aside for housing rehabilitation, or construction of fewer than 48 units, of developments financed through the Texas Rural Office of the federal Department of Agriculture. The department also would be required to allocate, based on population, a portion of urban funds to historically underserved urban areas. Money for all of these priorities would come from funds set aside for at-risk developments.

The bill specifies that only the department could enforce a representation made by an applicant to secure a tax credit allocation. TDHCA could contract with an independent third party to monitor a development if that development was not being monitored by a federal agency that provided TDHCA with copies of its reports.

The bill also would:

- exempt from the $2 million cap certain developments and entities;
- raise the amount of minimum income a development could require of a person participating in the Section 8 program from two-and-a-half times to three times the family's share of rent;
- eliminate TDHCA's rulemaking authority to monitor and enforce Section 8 compliance;
- remove notification requirements for individual tenants and the school district that would contain the development;
- remove the requirement that developers attempt to contract for at least 30 percent of the construction and management with historically underutilized businesses (HUBs); and
- integrate the allocation of tax credits to nonprofit applicants with that for all applicants.

HOME funds. CSHB 1167 would require 100 percent of the state's HOME funds to be used for non-participating communities or for the preservation of existing affordable housing that receives financing from the federal Department of Agriculture. Five percent of these funds would be set aside for housing for persons with disabilities in rural areas if a sufficient number of financially feasible applications were received. The bill would set aside $10 million for multifamily housing construction or rehabilitation. The 25 percent set-aside for housing assistance for families with extremely low and very low incomes would apply only if it was possible to obtain from other governmental sources the rental assistance operating subsidies necessary to meet that goal. The department would only be able to consider applications for loans during the first 120 days of an application-and-funding cycle for HOME or housing trust funds.

Housing Trust Fund. CSHB 1167 would remove the statutory set asides for non-profit organizations, public housing authorities, and local units of government, and allow for-profit organizations to apply for all available funds. The bill would give preference to applications for loans from the fund and would allow for grants only if there was money still available. If less than $5 million was available for disbursement in a calendar year, the department would be required to give the first award of funds in each region to rural applicants. A portion of funding to urban areas would have to go to historically underserved urban areas, based on population.

Multifamily housing developed with these funds would have to remain affordable for the term of the loan or for 30 years in the case of a grant. The bill would remove the provision allowing funds to be used for technical assistance and capacity building. It would remove the ability of TDHCA to acquire property to endow the fund. The bill would set a more detailed list of criteria by which to judge applications for funding.

Alternative dispute resolution process. CSHB 1167 would require TDHCA to implement negotiated rulemaking procedures under chapter 2008 and appropriate alternative dispute resolution procedures under chapter 2009. Any adverse decision, other than a decision on allocation of low-income housing tax credits, would be binding on TDHCA.

Governing structure. CSHB 1167 would require the governor to attempt to appoint at least one member with experience with neighborhood associations to the board. A person who owned or controlled any interest in a business entity or organization regulated by or receiving money from TDHCA, or who received any goods, services, or money from TDHCA, would be prohibited from serving on the board. Board members would be required to disclose any ownership, interest, or involvement with a multifamily development or tax credit development in any state. Board members also would be required to attend an industry training program at no cost to the department, if one was available. The bill also would authorize the governor to remove the director at any time, rather than in the first 90 days after assuming office.

Other provisions. The bill also would:

- eliminate the $3 million in funding set aside for the "Texas Bootstrap Loan Program";
- amend the department's purposes to include the protection of established neighborhoods, the minimization of administrative costs, and the simplification of the financing system;
- restrict the ability of the department to purchase and own real property, and eliminate the property ownership program;
- eliminate the affordable housing research and information program;
- exempt the financial statements and business financial information of an applicant from open records statutes;
- remove the requirement that the agency's annual housing report include information on specific on performance targets;
- remove TDHCA's authority to require tenant services;
- require TDHCA to explain to the Legislature projected increases or decreases in fees of 3 percent or more;
- require the homebuyer education program to be funded from fees charged to persons attending the program rather than excess fees;
- eliminate the requirement for TDHCA to employ or contract with a regional development coordinator for each region of the state; and
- change the agency's Sunset date from 2011 to 2009.

The bill's provisions related to applications for TDHCA-administered financial assistance would apply only to an application submitted on or after the bill's effective date.

The bill would take effect September 1, 2005, except for the provision modifying the QAP timeline, which would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

SUPPORTERS SAY:

CSHB 1167 would ensure that TDHCA implemented the Legislature's will regarding state housing policy while also simplifying the overly complex and burdensome housing application and development process in Texas.

TDHCA has been one of the most troubled and mismanaged state agencies. The 2001 Sunset review of the department found gross mismanagement of the department's programs and recommended significant reforms. In 2003, the Legislature required, in SB 264 by Lucio, additional reforms of the agency to further ensure the proper administration of its programs. However, the agency has failed to implement many of those reforms. CSHB 1167 would ensure that the agency followed the Legislature's expressed will regarding housing policy, as well as federal requirements, by removing its ability to adopt rules deviating from statutory requirements. While the state has every right to exceed the minimum guidelines required under federal law, the state would continue to be able to set additional requirements to meet Texas' needs through the legislative process.

Fair housing. All TDHCA-financed developments would be required to comply with applicable state and federal fair housing laws, as well as state and federal reporting requirements. The information provided through these reports is that which already has been deemed sufficient to monitor compliance with fair housing laws. Consequently, the bill would remove additional, burdensome reporting requirements. The bill would not eliminate monitoring and enforcement, just the agency's ability to adopt additional rules beyond those provided in federal law. Fair housing laws already provide adequate mechanisms for monitoring and compliance.

The bill also would redirect the HOME set-aside for accessible housing from urban to rural areas to ensure that the housing needs of persons with disabilities in rural areas were met. Urban areas receive funding directly from the federal government and may use these for accessible housing.

The bill would strike a reasonable balance between providing housing for persons receiving federal Section 8 assistance and the need to maintain financial viability. Many families that have applied for places in these units have been unable to pay their share of the rent, jeopardizing the viability of the development for all of the low-income tenants. CSHB 1167 simply would require that these tenants demonstrate that they had sufficient income to pay the rent. The bill would remove references to Section 8 compliance that have been misused to prohibit owners from denying housing to or evicting persons that presented a danger to the other tenants, such a drug dealers.

Affordable housing. CSHB 1167 would maximize the agency's resources for housing by requiring TDHCA to minimize administrative costs and simplify the financing system. The bill also would ensure continued funding for affordable housing by prioritizing loans over grants in the department's programs. It also would maximize use of scarce housing dollars by requiring the department to obtain additional federal subsidies when setting aside funds for extremely low-income individuals and families.

Long-term affordability of housing developments would continue to be guaranteed through the requirement that developers follow state and federal affordability period requirements. These statutes already contain sufficient rules and regulation, and Texas should not add to them.

The bill would clarify that the agency's funding priorities should be those imposed under federal requirements. The federal government already has determined the appropriate targeting levels for these housing funds. The bill would ensure affordable rents by requiring the developments to maintain rents at or below the maximum allowable amount for the housing program and by providing, in the tax credit program, higher scores for developments that reserve more of their units for the lowest income Texans.

Development of long-term affordable housing would be promoted by eliminating unnecessary, redundant, and burdensome requirements. For example, the bill would eliminate the redundant requirement that TDHCA impose minimum property standards for most developments, since these standards already are required and monitored by local governmental entities. Property owners still would be required to certify that they were in compliance with local or international building codes. Similarly, the bill would delete the unduly invasive requirement that TDHCA monitor a project during the entire construction phase, especially as the task can be more easily accomplished through the architect's construction reports. Housing resources would be maximized by requiring TDHCA to monitor properties based on their financial risk to the agency. The department would continue to be able to enforce compliance issues, and tenants who believed that an owner was not in compliance could report that information to the agency for action.

CSHB 1167 would increase community input and tenant participation. The neighborhood association notification requirements in CSHB 1167 better would inform citizens, community leaders, and tenants, leading to constructive engagement with communities and tenants that would be affected by low-income housing developments. Tenant groups also would be better able to ensure that tenants' needs were met. The bill would require, if possible, that one board member have experience with neighborhood associations. Together, these provisions would allow for the maximum input from the most locally affected portion of the community and help residents to preserve the character of established neighborhoods.

Low income housing tax credits. In 2003, the 78th Legislature set specific criteria in statute for the allocation of these tax credits to create a fair and objective allocation process following reports of widespread corruption, favoritism, and misadministration of the program. However, in June 2004, an attorney general's opinion (GA-0208) determined that the agency had failed to follow the legislative intent of SB 264. In December 2004, the governor rejected the agency's QAP for the first time in Texas history.

Since TDHCA clearly has demonstrated that it is unable to follow legislative intent, CSHB 1167 would specify the exact number of points to be awarded to an applicant for meeting each criterion. This would not "legislate" the QAP because the QAP already is legislated through numerous requirements throughout the code. However, it would bring all of the scoring requirements together in one section, providing much needed clarification and ensuring that the department understood the clear intent of the Legislature. The state would continue to be able to shape the housing program to meet changing needs within the state through the legislative process, which also provides a forum for public participation.

CSHB 1167 would ensure the financial viability of developments by making this the single most important criterion when scoring an application and requiring that costs be audited by a certified public accountant. The bill would deduct points from an applicant that deferred a high percentage of the developer's fee because this fee commonly is used as a contingency fee to ensure the viability of the project during unexpected contingencies. The bill would amend the language to more closely reflect that in federal law. For example, it would specify that the department evaluate, not underwrite, these developments because this is what federal law requires. Underwriting should be left to the private market, which is best positioned to determine financial feasibility.

The funding set-asides for three regions partially would alleviate underfunding experienced by these regions in prior years. Similarly, the requirement that a portion of urban funding go to historically underserved areas would ensure that these funds more fairly were distributed. These provisions 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.

Current law does not indicate how long the disbarment period is. The bill would clarify that this period must be at least five years to ensure that developers who failed to meet requirements receive significant punishment.

HOME funds. Requiring 100 percent of funds to go to nonparticipating jurisdictions would ensure that each area of the state received its fair share of federal housing funds. Large urban areas already receive their share of these funds directly from the federal government. HOME funds administered by TDHCA are granted by the federal government specifically to address the housing needs of nonparticipating jurisdictions throughout the state. These nonparticipating jurisdictions contain some of the poorest, neediest parts of the state, including most of the *colonias*. All of these housing funds should be used for the areas for which they were granted. The bill would not reduce funding for housing for persons with disabilities because it still would require a 5 percent set-aside for this housing.

The set-aside for multifamily housing would bring the state into line with federal HOME program requirements that stipulate that rental housing must receive primary attention. However, considerable funding still would be available for single family homes.

Alternative dispute resolution process. TDHCA has failed to implement a policy to encourage the use of an alternative dispute resolution process as required by SB 264. Consequently, CSHB 1167 would specify the alternative dispute resolution procedures to be used, which already are in statute. The alternative dispute resolution process would create an impartial mechanism for solving appeals for allocations that often have been viewed as overly subjective. The bill would allow developers and board members to communicate during this time to ensure that all parties had the information they needed to successfully resolve the dispute. The bill would not allow an applicant to overturn tax credit allocation decisions through the dispute resolution process because the bill specifies that the process would not be binding on these allocations.

Owner-builder loan program. Federal law requires the HOME program to give primary attention to rental housing. This provision would bring the state into line with federal requirements. The bill would not eliminate the program, which still could be funded from other sources.

OPPONENTS SAY:

CSHB 1167 would micromanage TDHCA and remove the department's flexibility in administering its programs. It would cripple the agency's ability to monitor and enforce program compliance, decrease accountability in how funds are spent, and refocus the agency away from the needs of the state's poorest citizens. The importance of providing affordable housing in Texas requires that TDHCA maintain as much flexibility as possible to address the state's diverse needs and retain the ability to enforce compliance among often recalcitrant developers.

Prohibiting TDHCA from adopting rules, requirements, or costs not expressly required by federal or state law would hamstring the agency and its programs. Federal housing requirements are meant to be minimum guidelines that, once established, may be built upon and adapted to meet the state's unique needs. The state has a right and duty to expect more from developers who receive highly contested funding.

Fair housing. By eliminating monitoring and enforcement mechanisms for fair housing laws, the bill would undermine fair housing and civil rights protections and make it more difficult for people with disabilities to obtain affordable housing. Prior to 2001, when these monitoring and enforcement provisions were added, many developments failed to implement adequately all of the requirements relating to making housing accessible to people with disabilities, and some tax credit properties discriminated against families who received Section 8 vouchers. Requiring developers to comply with applicable state and federal laws would be inadequate if there was no way to ensure that they were followed. Moreover, eliminating the requirement that development owners provide information about affordable housing units accessible to people with disabilities would eliminate an extremely useful system that has helped these people find affordable housing created for them. By abdicating the state's responsibility to ensure fair housing, the bill could open the state to potential litigation.

Requiring the agency to preserve the existing character of established neighborhoods could promote racial and economic segregation. This provision could be used by affluent, predominantly white communities to exclude affordable housing developments. Fair housing requires a balanced geographic and racial distribution of affordable housing.

Raising the cap on rent requirements for persons receiving Section 8 assistance, allowing developers to cancel existing subsidies when they purchased existing properties, and eliminating the agency's ability under the low-income housing tax credits program to monitor and enforce Section 8 compliance would make it harder for these persons to find and afford housing.

Affordable housing. CSHB 1167 would reverse the Legislature's previous commitment to prioritize low-income families with the greatest housing needs by eliminating references to serving persons of extremely low income and requiring the agency to serve this population only if it obtained additional subsidies. While these subsidies are helpful and should be pursued, the agency should remain focused on the state's neediest citizens.

The bill would reduce the availability of affordable housing by reducing the long-term affordability requirements imposed on developers from 30 years to the minimum required by law and exempting many tax credits from these requirements. Eliminating provisions requiring TDHCA to be notified prior to the sale of a development would prevent the agency from locating new owners willing to maintain the affordability requirements and thus reduce the amount of affordable housing. The bill also would eliminate incentives to keep rents affordable. For example, the bill would give only one point to applicants for tax credits that agreed to extend the affordable housing period for an additional five years.

Removing TDHCA's ability to adopt property standards and reducing compliance monitoring would limit the agency's ability to ensure that developers built safe, quality units - especially in non-urban areas that do not have the resources to enforce building codes - and maintained the value of surrounding properties. Limiting this monitoring during the construction phase to reports submitted by architects employed by the developer would eliminate the agency's ability to ensure that developers did not cheat taxpayers by cutting corners on the quality and safety of the units they built. The bill also would remove the ability of those persons best informed about a development's current compliance with affordability and maintenance requirements - the tenants - to enforce those requirements. It would strip a number of other consumer protections from tenants, including the right to be notified of a proposed rehabilitation, before the sale of a property that could result in a loss of the development's affordability requirements and of other programs for which a terminated tenant qualifies.

While increased local participation would be welcome, the bill's narrow definition of "neighborhood association" would exclude churches, fair housing groups, disability rights groups, and civil rights groups. In short, the bill would prioritize the concerns of property owners while silencing most advocates of affordable and fair housing. Moreover, by removing requirements to notify tenants and school districts for certain programs, the bill would reduce the ability of these groups to participate.

Low-income housing tax credits. By setting the QAP in statute, the bill would establish an overly prescriptive process for the allocation of low income housing tax credits that would remove the ability of the board to shape the housing program to meet changing needs within the state. As such, the bill would restrict the state from determining the type and quality of housing to be created with public funds and would leave these decisions to low-income housing developers. Proposed housing developments cannot be reduced to a single black-and-white score. Some developments may provide more services, others better housing, and others lower costs, or some combination thereof. TDHCA should retain as much flexibility as possible to award these credits in ways that it determines best meet the housing needs of the state. Setting the QAP in statute also would eliminate the public participation currently guaranteed through the public comment period, which allows for significant local, democratic participation.

The QAP designated in the bill would set several inappropriate point values that would reduce the affordability and quality of housing developments. Deducting points from an applicant that agreed to defer a certain percentage of the developer's fee would penalize applicants, typically non-profit organizations, that were willing to accept a lower profit to provide higher quality apartments, charge lower rents, or provide housing to lower income families. The state should encourage, rather than penalize, developers to create a better product at lower cost. The bill would provide just one point for the provision of tenant services, such as child care, high school equivalency preparation, and other programs that help tenants obtain work and reduce their dependency on the state.

Eliminating underwriting requirements for the financial viability of low-income housing tax credit developments would lower the quality and quantity of housing developed through the program. This provision was established in 2001 after numerous scandals in the program to ensure the efficiency and integrity of the program, and it remains vital to ensuring that tax credits are not wasted on unsound developments or awarded in amounts greater than necessary.

The bill would detract from the state's objective, needs-based system of allocation by creating arbitrarily a set-aside for three regions without any needs assessment. Moreover, the bill inappropriately would allow money set aside for at-risk developments for this purpose. The bill would eliminate the regional coordinators and partners that help the agency to better assess unmet housing needs across the state and ensure the fairness of the regional allocation process. It also would concentrate tax credits in a small group of suburban communities, labeled historically underserved urban areas, at the expense of inner cities with greater demand, even though these areas have some of the highest per capita numbers of low-income housing tax credits in the state. These provisions would drain funds from urban and rural areas with more pressing housing needs.

Limiting the debarment period to five years would allow developers with serious compliance issues to requalify for this valuable financial assistance. Developers who have failed to meet departmental, state, or federal requirements in the past should not have access to more housing funds.

HOME funds. CSHB 1167 would reduce funding for single-family homes by creating a 25 percent set aside for multi-family housing without any demonstrated need. Rural areas have a limited ability to absorb large apartment complexes but have a significant need for single family homes, including the rehabilitation of substandard homes occupied by low-income, elderly persons. This bill would reduce single-family housing at a time when funding requests significantly outstrip supply, while multifamily housing requests for the most part have been met. Moreover, creating a large set-aside for multi-family housing would reduce the ability of local communities to determine and meet their specific needs, which undermines local input.

Alternative dispute resolution. TDHCA has complied with SB 264 and established a process for alternative dispute resolution. As with any new mechanism, the department is working out the kinks, but it should be allowed to continue to develop the process. The process proposed in this bill would enable virtually any applicant denied funding to seek to overturn that decision by requesting alternative dispute resolution and appealing the board's decision in court. Consequently, the bill would create more litigation by moving funding decisions from the agency to outside arbitrators and the courts. The bill also would remove the ban on *ex parte* communications between developers and TDHCA board members during arbitration, effectively allowing developers to lobby board members for funding.

Owner-builder loan program. The bootstrap loan program has been one of the agency's most successful and innovative programs for promoting home ownership by the state's neediest residents. Funding should be maintained for this award-winning program.

NOTES:

The committee substitute made numerous changes to the bill as introduced. Some of these changes include:

- amending the threshold and scoring criteria for the tax credit program;
- repealing TDHCA's authority to adopt additional rules for monitoring and ensuring compliance with fair housing laws;
- amending the definition of neighborhood association to include tenants' groups and residents' councils;
- repealing the affordable housing research and information program; and
- specifying that the changes made would apply only to applications submitted on or after the effective date of the bill.