

BILL ANALYSIS

Senate Research Center

S.B. 264
By: Lucio
Government Organization
7/30/2003
Enrolled

DIGEST AND PURPOSE

The Sunset Commission finds that the Texas Department of Housing and Community Affairs (TDHCA) has improved responsiveness to public input, making the department more accountable to public interests; assesses housing needs and allocates funds to meet the most pressing needs; and has adopted compliance rules and procedures to better ensure fair access to the housing units it funds. S.B. 264 continues the department for 12 years and addresses the funding mechanisms for existing programs.

RULEMAKING AUTHORITY

This bill expressly grants rulemaking authority to the governing board of the Texas Department of Housing and Community Affairs in SECTION 4 (Section 2306.0661, Government Code) of this bill.

This bill expressly grants rulemaking authority to the Texas Department of Housing and Community Affairs in SECTION 13 (Section 2306.186, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2306.001, Government Code, as follows:

Sec. 2306.001. PURPOSES. Provides the purposes of the Texas Department of Housing and Community Affairs (TDHCA).

SECTION 2. Amends Section 2306.021(b), Government Code, to delete the community development division as an entity of TDHCA.

SECTION 3. Amends Section 2306.022, Government Code, to provide that unless continued in existence as provided by that chapter, TDHCA is abolished and this chapter expires September 1, 2011, rather than 2003.

SECTION 4. Amends Section 2306.0661, Government Code, by adding Subsection (f), as follows:

(f) Requires TDHCA to adopt rules governing the topics that may be considered at a public hearing. Requires the rules to require TDHCA to consider certain topics in relation to a proposed housing development.

SECTION 5. Amends Section 2306.0721(c), Government Code, to require the plan to include a biennial action plan for colonias that addresses current policy goals for colonia programs, strategies to meet the policy goals, and the projected outcomes with respect to the policy goals.

SECTION 6. Amends Section 2306.0722(a), Government Code, to require TDHCA, before preparing the annual low income housing report under Section 2306.072 and the state low income housing plan under Section 2306.0721, to meet with regional planning commissions created under Chapter 391, Local Government Code, representatives of groups with an interest in low income housing, nonprofit housing organizations, managers, owners, and developers of affordable housing, local government officials, residents of low income housing, and members of

the Colonia Resident Advisory Committee. Requires TDHCA to obtain the comments and suggestions of the representatives, officials, residents, and members about the prioritization and allocation of the department's resources in regard to housing.

SECTION 7. Amends Subchapter D, Chapter 2306, Government Code, by adding Section 2306.082, as follows:

Sec. 2306.082. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE RESOLUTION. (a) Requires TDHCA to develop and implement a policy to encourage the use of negotiated rulemaking procedures under Chapter 2008 for the adoption of department rules and appropriate alternative dispute resolution procedures under Chapter 2009 to assist in the resolution of internal and external disputes under TDHCA's jurisdiction.

(b) Requires TDHCA's procedures relating to alternative dispute resolution to conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) Requires TDHCA to designate a trained person to coordinate the implementation of the policy adopted under Subsection (a), serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution, and collect data concerning the effectiveness of those procedures, as implemented by TDHCA.

SECTION 8. Amends Section 2306.111, Government Code, by adding Subsections (c-1), (c-2), (d-1), and (i), as follows:

(c-1) Provides that certain entities are eligible to apply for set-aside funds under Subsection (c).

(c-2) Prohibits TDHCA, in allocating set-aside funds under Subsection (c), from giving preference to nonprofit providers of affordable housing, except as required by federal law.

(d-1) Provides that funds or credits are not required to be allocated according to the regional allocation formula under Subsection (d) if certain conditions apply.

(i) Requires the director to designate an employee of the department to act as the information officer and as a liaison with the public regarding each application seeking an allocation of housing funds described by this section.

SECTION 9. Amends Sections 2306.111(d) through (g), Government Code, to specify that the required distribution of housing funds is to be made to urban/exurban areas and rural areas in uniform state service regions.

SECTION 10. Section 2306.1113, Government Code, as follows:

Sec. 2306.1113. EX PARTE COMMUNICATIONS. (a) Deletes a member of the advisory committee established under Section 2306.1112 from the list of individuals who may not speak with certain persons.

(a-1) Authorizes an employee of TDHCA, subject to Subsection (a-2), during the period beginning on the date a project application is filed and ending on the date TDHCA's governing board (board) makes a final decision with respect to any approval of that application, to communicate about the application with certain persons.

(a-2) Authorizes a communication under Subsection (a-1) to be oral or in any

written form, including electronic communication through the Internet, and requires it to satisfy certain conditions.

(b) Authorizes a board member or TDHCA employee, rather than an advisory committee member, to communicate without restriction with a person listed in Subsection (a) or (a-1) at any board meeting or public hearing held with respect to the application, notwithstanding Subsection (a) or (a-1).

SECTION 11. Amends Subchapter F, Chapter 2306, Government Code, by adding Section 2306.1114, as follows:

Sec. 2306.1114. NOTICE OF RECEIPT OF APPLICATION OR PROPOSED APPLICATION. (a) Requires TDHCA, not later than the 14th day after the date an application or a proposed application for housing funds described by Section 2306.111 has been filed, to provide written notice of the filing of the application or proposed application to certain persons.

(b) Requires the notice provided under Subsection (a) to include certain information.

SECTION 12. Amends Section 2306.185, Government Code, by amending Subsections (a) and (e) and adding Subsection (h), as follows:

(a) Requires TDHCA to adopt policies and procedures to ensure that, for a multifamily rental housing development funded through loans, grants, or tax credits under this chapter, the owner of the development keeps the rents affordable for low income tenants for the longest period that is economically feasible and provides regular maintenance to keep the development sanitary, decent, and safe and otherwise complies with the requirements of Section 2306.186.

(e) Provides that Subsections (c) and (d) and Section 2306.269 apply only to multifamily rental housing developments to which TDHCA is providing one or more of the following forms of assistance a loan or grant in an amount greater than 33 percent of the market value of the development on the date the recipient completed the construction, rather than took legal possession, of the development, a loan guarantee for a loan in an amount greater than 33 percent of the market value of the development on the date the recipient took legal title to the development, or a low income housing tax credit.

(h) Requires TDHCA to monitor a development owner's compliance with this section.

SECTION 13. Amends Subchapter H, Chapter 2306, Government Code, by adding Section 2306.186, as follows:

Sec. 2306.186. MANDATORY DEPOSITS TO FUND NECESSARY REPAIRS.

(a) Defines "bank trustee," "department assistance," "first lien lender," and "reserve account."

(b) Requires each owner who receives TDHCA assistance for a multifamily rental housing development that contains 25 or more rental units to deposit annually into a reserve account for the year 2004 not less than \$150 per unit per year for units one to five years old and not less than \$200 per unit per year for units six or more years old, and for each year following the year 2004, the amounts per unit per year as described by Subdivision (1), if TDHCA is the first lien lender with respect to the development.

(c) Requires a land use restriction agreement or restrictive covenant between the owner and TDHCA to require the owner to begin making annual deposits

to the reserve account on the date that occupancy of the multifamily rental housing development stabilizes or the date that permanent financing for the development is completely in place, whichever occurs later, and to continue making deposits until the earliest of certain dates.

(d) Requires the development owner, with respect to multifamily rental developments, if the establishment of a reserve fund for repairs has not been required by the first lien lender, to set aside the repair reserve amount as a reserve for capital improvements. Requires the reserve to be established for each unit in the development, regardless of the amount of rent charged for the unit.

(e) Requires the owner of a multifamily rental housing development, beginning with the 11th year after the awarding of any financial assistance for the development by TDHCA, to contract for a third-party physical needs assessment at appropriate intervals that are consistent with lender requirements with respect to the development. Requires the owner, if the first lien lender does not require a third-party physical needs assessment or if TDHCA is the first lien lender, to contract with a third party to conduct a physical needs assessment at least once during each five-year period beginning with the 11th year after the awarding of any financial assistance for the development by TDHCA. Requires the owner of the development to submit to TDHCA copies of the most recent third-party physical needs assessment conducted on the development, any response by the owner to the assessment, any repairs made in response to the assessment, and information on any necessary changes to the required reserve based on the assessment.

(f) Authorizes TDHCA to complete necessary repairs if the owner fails to complete the repairs as required by Subsection (e). Requires payment for those repairs to be made directly by the owner of the development or through a reserve account established for the development under this section.

(g) Authorizes TDHCA, if notified of the development owner's failure to comply with a local health, safety, or building code, to enter on the property and complete any repairs necessary to correct a violation of that code, as identified in the applicable violation report, and to pay for those repairs through a reserve account established for the development under this section.

(h) Provides that the duties of the owner of a multifamily rental housing development under this section cease on the date of a voluntary change in ownership of the development, but the subsequent owner of the development is subject to the deposit, inspection, and notification requirements of Subsections (b), (c), (d), and (e).

(i) Requires the first lien lender to maintain the reserve account. Provides that in the event there is no longer a first lien lender, then Subsections (b) and (d) no longer apply.

(j) Requires TDHCA to adopt certain rules.

(k) Requires TDHCA to assess an administrative penalty on development owners who fail to contract for the third-party physical needs assessment and make the identified repairs as required by this section. Authorizes TDHCA to assess the administrative penalty in the same manner as an administrative penalty assessed under Section 2306.6023. Provides that the penalty is computed by multiplying \$200 by the number of dwelling units in the development and requires it to be paid to the department. Requires the office of the attorney general to assist TDHCA in the collection of the penalty and the enforcement of this subsection.

(l) Provides that this section does not apply to a development for which an owner is required to maintain a reserve account under any other provision of federal or state law.

SECTION 14. Amends Section 2306.252(b), Government Code, to delete certain actions required of TDHCA.

SECTION 15. Amends Subchapter P, Chapter 2306, Government Code, by adding Section 2306.359, as follows:

Sec. 2306.359. **ISSUANCE OF PRIVATE ACTIVITY BONDS.** (a) Requires TDHCA, in evaluating an application for an issuance of private activity bonds, to score and rank the application using a point system based on criteria that are adopted by TDHCA, including certain criteria.

(b) Requires TDHCA to make available on its website details of the scoring system used by TDHCA to score applications.

(c) Requires TDHCA underwrite the applications by determining certain information.

(d) Requires TDHCA, in adopting criteria for underwriting applications under this section, to attach additional weight to criteria that will determine the maximum amount that can be awarded that will result in an issuance of private activity bonds for developments serving the lowest income tenants and produce the greatest number of high-quality units committed to remaining affordable to qualified tenants for extended periods.

SECTION 16. Amends Section 2306.589(c), Government Code, to delete reimbursing colonia initiatives advisory committee members from the list of uses for money in the colonia set-aside fund.

SECTION 17. Amends Subdivisions (5), (10), and (16), Section 2306.6702(a), Government Code, to redefine "at-risk development," "qualified allocation plan," and "unit."

SECTION 18. Amends Section 2306.6703, Government Code, as follows:

Sec. 2306.6703. **INELIGIBILITY FOR CONSIDERATION.** (a) Creates this subsection from existing text. Provides that an application is ineligible for consideration under the low income housing tax credit program under certain circumstances, including when the applicant proposes to construct a new development that is located one linear mile or less from a development that meets certain criteria or if the development is located in a municipality or, if located outside a municipality, a county that has more than twice the state average of units per capita supported by housing tax credits or private activity bonds, unless the applicant meets certain criteria.

(b) Provides that Subsection (a)(3) does not apply to a development that is using certain funds or that is located in a county with a population of less than one million.

SECTION 19. Amends Section 2306.6704, Government Code, by adding Subsection (b-1), to require the preapplication process to require the applicant to provide TDHCA with evidence that the applicant has notified certain entities with respect to the filing of the application.

SECTION 20. Amends Section 2306.6705, Government Code, to include in an application's required minimum written, detailed information in a form prescribed by the board, evidence that the applicant has notified certain entities with respect to the filing of the application.

SECTION 21. Amends Subchapter DD, Chapter 2306, Government Code, by adding Section 2306.67055, as follows:

Sec. 2306.67055. MARKET ANALYSIS. (a) Requires a market analysis submitted in conjunction with an application for housing tax credits to be prepared by a market analyst approved by TDHCA and include an assessment of other developments that are supported by housing tax credits within the market area.

(b) Requires TDHCA, through the qualified allocation plan, to develop a process for approving market analysts and a methodology for determining the market area to be examined in a market analysis.

SECTION 22. Amends Section 2306.6710, Government Code, by amending Subsections (b), (d), and (e) and adding Subsections (f) and (g), as follows:

(b) Requires TDHCA, if an application satisfies the threshold criteria, to score and rank the application using a point system that prioritizes in descending order certain criteria, rather than being based on criteria that are adapted to regional market conditions and adopted by TDHCA, and uses criteria imposing penalties on applicants or affiliates who have requested extensions TDHCA deadlines relating to developments supported by housing tax credit allocations made in the application round preceding the current round or a developer or principal of the applicant that has been removed by the lender, equity provider, or limited partners for its failure to perform its obligations under the loan documents or limited partnership agreement.

(d) Requires TDHCA to underwrite an application to determine the financial feasibility of the development and an appropriate level of housing tax credits. Requires TDHCA, in determining an appropriate level of housing tax credits, to evaluate the cost of the development based on acceptable cost parameters as adjusted for inflation and as established by historical final cost certifications of all previous housing tax credit allocations for the county in which the development is to be located; if certifications are unavailable under Subdivision (1), the metropolitan statistical area in which the development is to be located; or if certifications are unavailable under Subdivisions (1) and (2), the uniform state service region in which the development is to be located.

(e) Requires TDHCA, in scoring applications, rather than adopting criteria for and underwriting applications, for purposes of housing tax credit allocations, to award, rather than attach, consistent with Section 42, Internal Revenue Code of 1986 (26 U.S.C. Section 42), preference points to a development that will when practicable and feasible based on documented, committed, and available third-party funding sources, serve the lowest income tenants per housing tax credit, if the development is to be located outside a qualified census tract; and produce for the longest economically feasible period the greatest number of high quality units committed to remaining affordable to any tenants who are income-eligible under the low income housing tax credit program.

(f) Requires TDHCA, in evaluating the level of community support for an application under Subsection (b)(1)(F), to award positive points for positive written statements received, negative points for negative written statements received, and zero points for neutral statements received.

(g) Requires TDHCA, in awarding points under Subsection (f), to give equal weight to each written statement received.

SECTION 23. Amends Section 2306.6711, Government Code, by amending Subsection (b) and adding Subsection (f), as follows:

(b) Increases the cap on the applicant's housing tax credits from \$1.6 million in a

single application round to \$2 million in a single application round.

(f) Authorizes the board to allocate housing tax credits to more than one development in a single community, as defined by TDHCA rule, in the same calendar year only if the developments are or will be located more than one linear mile apart. Provides that this subsection applies only to communities contained within counties with populations exceeding one million.

SECTION 24. Amends Section 2306.6716(b), Government Code, to require TDHCA to publish each year an updated schedule of application fees that specifies the amount to be charged at each stage of the application process. Deletes the requirement that the schedule be published not later than July 1 of each year.

SECTION 25. Amends Section 2306.6717(b), Government Code, to require TDHCA to make available on its website information regarding the low income housing tax credit program, including notice regarding public hearings, meetings, rather than board meetings, the opening and closing dates for applications, submitted applications, and applications approved for underwriting and recommended to the board, and requires TDHCA provide that information to certain entities.

SECTION 26. Amends Section 2306.6725(b), Government Code, to require TDHCA to provide appropriate incentives as determined through the qualified allocation plan to reward applicants who agree to locate the development in a census tract in which there are no other existing developments supported by housing tax credits.

SECTION 27. Amends Section 1372.0231, Government Code, by amending Subsection (b) and adding Subsection (h), as follows:

(b) Requires the board, with respect to the amount of the state ceiling set aside under Subsection (a)(1), to grant reservations at the direction of TDHCA as provided by Section 2306.359 and in a certain manner. Deletes the provision that reservations be granted in the order determined by the board by lot.

(h) Provides that allocations by the board at the direction of TDHCA under Subsection (b) are subject to review and approval by the board as provided by Section 1231.041.

SECTION 28. Reenacts Section 1372.0321, Government Code, as added by Chapters 1367 and 1420, Acts of the 77th Legislature, Regular Session, and amends it, as follows:

Sec. 1372.0321. PRIORITIES FOR RESERVATIONS AMONG ISSUERS OF QUALIFIED RESIDENTIAL RENTAL PROJECT ISSUES. (a) Requires the board, in granting reservations to issuers of qualified residential rental project issues, to give first priority to:

(1) projects in which 50 percent, rather than 100 percent, of the residential units in the project meet certain criteria;

(2) projects in which 15 percent of the residential units in the project are under the restriction that the maximum allowable rents are an amount equal to 30 percent of 30 percent of the area median family income minus an allowance for utility costs authorized under the federal low-income housing tax credit program and reserved for families and individuals earning not more than 30 percent of the area median income; and the remaining 85 percent of the residential units in the project are under the restriction that the maximum allowable rents are an amount equal to 30 percent of 60 percent of the area median family income minus an allowance for utility costs authorized under the federal low-income housing tax credit program and reserved for

families and individuals earning not more than 60 percent of the area median income;

(3) projects in which 100 percent of the residential units in the project are under the restriction that the maximum allowable rents are an amount equal to 30 percent of 60 percent of the area median family income minus an allowance for utility costs authorized under the federal low-income housing tax credit program, and reserved for families and individuals earning not more than 60 percent of the area median income; and which are located in a census tract in which the median income, based on the most recent information published by the United States Bureau of the Census, is higher than the median income for the county, metropolitan statistical area, or primary metropolitan statistical area in which the census tract is located as established by the United States Department of Housing and Urban Development; or

(4) on or after June 1, projects that are located in counties, metropolitan statistical areas, or primary metropolitan statistical areas with area median family incomes at or below the statewide median family income established by the United States Department of Housing and Urban Development. Subdivision (4) is redesignated from Subdivision (B).

(a-1) Creates this subsection from existing text. Requires the board, in granting reservations to issuers of qualified residential rental project issues, to give second priority to projects in which 100 percent of the residential units in the project meet certain criteria. Makes nonsubstantive changes.

(a-2) Creates this subsection from existing text. Requires the board, in granting reservations to issuers of qualified residential rental project issues, to give third priority to any other qualified residential rental project.

(b) Prohibits the board from reserving a portion of the state ceiling for a first or second priority project described by this section, rather than Subsection (a), unless the board receives evidence that an application has been filed with TDHCA for the low-income housing tax credit that is available for multifamily transactions that are at least 51 percent financed by tax-exempt private activity bonds.

SECTION 29. (a) Makes application of this Act, except as otherwise provided by this section, prospective.

(b) Requires TDHCA to adopt the rules required by Section 2306.186, Government Code, as added by this Act, not later than December 1, 2003.

(c) Makes the application of Section 2306.186, Government Code, as added by this Act, prospective to January 1, 2004.

(d) Makes the application of Chapter 1372, Government Code, prospective to January 1, 2004.

SECTION 30. (a) Requires the Senate Committee on Intergovernmental Relations and the House Urban Affairs Committee to jointly investigate whether subdividing uniform state service regions into urban/exurban areas and rural areas would impact the provision of state and federal financial assistance to meet the housing needs of rural areas.

(b) Requires the Senate Committee on Intergovernmental Relations and the House Urban Affairs Committee, not later than January 1, 2005, to submit a report giving details of the investigation's findings to the lieutenant governor and the speaker of the house of representatives. Requires the findings of the investigation to include a

proposed definition for exurban areas and an assessment of the housing needs of exurban areas and recommended solutions to address those needs.

SECTION 31. Repealer: Section 2306.072(d) (sets forth the required content of the report to be submitted in each even-numbered year), Section 2306.185(g) (Exempts a multifamily rental housing development supported by qualified 501(c)(3) bonds), Section 2306.590 (Colonia Initiatives Advisory Committee), Section 2306.591 (Biennial Action Plan), and Section 2306.6732 (Public Information), Government Code.

SECTION 32. Effective date: September 1, 2003.