

BILL ANALYSIS

C.S.S.B. 264
By: Lucio
Urban Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Sunset Commission finds that the Texas Department of Housing and Community Affairs (the “department”) 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. C.S.S.B. 264 continues the department for four years; the bill also strengthens the weight of community input with regard to the department’s decision-making while better informing neighborhoods and community leaders of proposed housing projects, and prioritizes the department’s evaluation scheme for awarding tax credits so as to emphasize projects’ financial feasibility, community support, and income levels of families served. C.S.S.B. 264 requires housing projects funded by the department to maintain appropriate reserve accounts to fund needed maintenance and repairs. The bill also adjust the priority tiers governing private activity bond allocations to give developers greater flexibility in serving needy populations. C.S.S.B. 264 also includes clean-up language for Chapter 2306 of the Government Code.

RULEMAKING AUTHORITY

It is the committee’s opinion that rulemaking authority is expressly granted to the governing board of the Texas Department of Housing and Community Affairs (the “department”) in SECTION 5 (Section 2306.0661, Government Code); to the department in SECTION 8 (Section 2306.082, Government Code); to the department in SECTION 10 (Section 2306.111(g), Government Code); to the department in SECTION 14 (Section 2306.186, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2306.001, Government Code, to make a non-substantive statutory drafting change.

SECTION 2. Amends Section 2306.004(14), Government Code, to include a public housing authority as a “housing sponsor.”

SECTION 3. Amends Section 2306.021(b), Government Code, to eliminate the community development division, and make a non-substantive change.

SECTION 4. Amends Section 2306.022, Government Code, to provide that unless continued in existence as provided by Chapter 325 (Texas Sunset Act), the department is abolished and this chapter expires September 1, 2007, rather than 2003.

SECTION 5. Amends Section 2306.0661, Government Code, by adding Subsection (f), which provides that the governing board of the department adopt rules governing the topics that may be considered at public hearings regarding proposed housing programs; specifies required topics.

SECTION 6. Amends Section 2306.0721(c), Government Code, to require the department’s Low Income Housing Plan to include a biennial action plan for colonias that addresses policy goals, strategies to meet these goals and projected outcomes.

SECTION 7. Amends Section 2306.0722(a), Government Code, to require the department to meet with members of the Colonia Resident Advisory Committee before preparing the annual low income housing report.

SECTION 8. Amends Subchapter D, Chapter 2306, Government Code, by adding Section 2306.082, which requires the department to develop and implement negotiated rulemaking and alternative dispute resolution procedures, as well as designate a trained person to coordinate implementation, serve as a resource, and collect data on effectiveness.

SECTION 9. Amends Section 2306.111, Government Code, by adding Subsections (c-1), (c-2), (d-1), and (i), setting forth entities eligible to apply for set-aside funds; prohibiting preference to be given to non-profit providers of affordable housing, except as required by federal law; permits allocations deviating from the regional allocation formula if funds or credits are reserved for contract-for-deed conversions or set-asides mandated by law or if each contract-for-deed allocation or set-aside is not more than ten percent of the total allocation; requiring the department to be an information officer and liaison with the public.

SECTION 10. Amends Sections 2306.111(d)-(g), Government Code, to specify department funds, plans, and programs apply to urban, exurban, and rural areas; adds clarifying language.

SECTION 11. Amends Section 2306.1113, Government Code, by excepting from the prohibition against ex parte communications members of the Executive Award and Review Advisory Committee; allows ex parte communications by employees of the department subject to certain restrictions and recordkeeping requirements; allows unrestricted communication by employees and board members at board meetings or public hearings.

SECTION 12. Amends Subchapter F, Chapter 2306, Government Code, by adding Section 2306.1114 to require notification by the department of receipt of tax credit applications or proposed applications within two weeks to public officials, school boards, and neighborhood organizations, specifying information to be included in notice.

SECTION 13. Amends Section 2306.185, Government Code, to require the department to monitor development owner compliance with the section, as well as require developer compliance with Section 2306.186, added below; changes the date for determination of market value from the date the recipient took legal possession to the date construction was completed.

SECTION 14. Amends Subchapter H, Chapter 2306, Government Code, to create a reserve account for necessary repairs of multifamily developments; requires owners to make mandatory deposits in specified amounts; defines terms; sets forth land use restriction agreements or restrictive covenants between the department and owners to specify terms of trust fund deposits; requires a reserve to be established; restricts withdrawals from fund to fund capital improvements; requires owner to contract for a third-party physical needs assessment after the 11th year after the awarding of financial assistance by the department; provides for department entry onto property for completion of repairs if owner fails to do so; provides that duties under the section transfer with change in ownership; requires compliance with deposit requirements only if there is a first lien lender; provides for rulemaking authority by the department over the fund, as well as administrative penalties on owners who fail to conduct inspections and make required repairs. 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 15. Amends Section 2306.252(b), Government Code, to delete language relating to portions of the department's Housing Resource Center which have been transferred to the Office of Rural Community Affairs.

SECTION 16. Amends Subchapter P, Chapter 2306, Government Code, by adding Section 2306.359 to require TDHCA to score private activity bond applications on basis of tenant income,

rents, level of community support for the application, periods of affordability, unit costs, size, quality, amenities, services provided to tenants, local commitment, and other criteria as developed by the board; permits penalties for application extensions; requires website posting of scoring system; requires department underwriting of applications with highest scores; requires criteria weight for low income and affordable developments.

SECTION 17. Amends Section 2306.589(c), Government Code, to delete language allowing for use of colonia set-aside funds to reimburse colonia initiatives advisory committee members.

SECTION 18. Amends Sections 2306.6702(a)(5), (10), and (16), Government Code, to define “at-risk development” as a development that has received the benefit of a specified subsidy, adding equity incentives and subsidies under Section 42, Internal Revenue Code of 1986 to the list of specific subsidies; clarifies the definition of “qualified allocation plan,” by allowing plans that give preferences based on documented, committed, and available third-party funding that serve the lowest income tenants per housing tax credit, and produce the greatest number of high quality units affordable to low income housing tax credit program income-eligible tenants; removes language requiring units to have separate facilities and fixtures for living, sleeping, eating, cooking, and sanitation.

SECTION 19. Amends Section 2306.6703, Government Code, to prohibit the department from allocating tax credits to a development located one linear mile or less from an existing tax credit project serving the same type of household that has received an allocation during the previous three years and has not been withdrawn or terminated; also prohibits the department from allocating tax credits to a development located in a municipality or county that contains two times the state average of units per capita, unless the applicant has obtained prior approval of the development from the governing body of the municipality or county containing the development and has included a written statement of support from the governing body; exempts projects receiving HOPE VI funds, locally approved funds or located in counties with a population of less than one million from the requirements of the section.

SECTION 20. Amends Section 2306.6704, Government Code, to require pre-applicants for tax credit allocations to provide evidence to the department of notification provided to affected state, local, school, and neighborhood officials regarding the proposed project.

SECTION 21. Amends Section 2306.6705, Government Code, to require tax credit applicants to provide evidence to the department of notification provided to affected state, local, school, and neighborhood officials regarding the proposed project’s applications.

SECTION 22. Amends Subchapter DD, Chapter 2306, Government Code, to add Section 2306.67055 which requires market analyses submitted in conjunction with a tax credit application be prepared by a department-approved market analyst and include an assessment of other tax credit developments within the market area; requires the department to develop rules governing the process for approving market analysts and a methodology for determining the market area for analysis.

SECTION 23. Amends Section 2306.6710, Government Code, to require the department to evaluate tax credit applications with criteria that prioritize, in order of importance, projects’ financial feasibility, community support, income levels of tenants served, unit size and quality, local funding provided, state elected officials’ input, rent levels, cost per square foot, and tenant services provided; requires the criteria developed to impose penalties on applicants, developers, or principals that have been removed previously for failure to perform obligations under loan documents or limited partnership agreements; requires that the department underwrite applications only to determine the amount of tax credits to be awarded, and requires the department to ensure that the cost of the development does not exceed acceptable cost parameters; requires that the department award preference points, as part of its scoring evaluation process, to developments that use third-party funding sources and produce housing for eligible families for the longest economically feasible time. Sets forth that in evaluating letters from state elected officials, positive points be assigned for positive statements, negative points be assigned for negative statements, and zero points for neutral statements, with equal points and weights to be

assigned.

SECTION 24. Amends Section 2306.6711, Government Code, to increase the amount of tax credits that a developer may receive each year from \$1.6 million to \$2.0 million; authorizes the department's board to allocate tax credits to more than one development in a community provided that the developments are located more than one mile apart.

SECTION 25. Amends Section 2306.6716(b) to require the department to publish an updated schedule for tax credit application fees, but removes language requiring publication before July 1 of each year.

SECTION 26. Amends Section 2306.6717(b) to require the department to make available on its website information regarding the tax credit program, and notices regarding public hearings, meetings, opening and closing dates for applications, submitted applications, and applications approved by the Board. Requires that the department provide the information required by the subsection to relevant community groups, local and state elected officials, community periodicals, nonprofit and for-profit organizations, and property managers of developments subject to acquisition as part of a tax credit application.

SECTION 27. Amends Section 2306.6725(b), Government Code, to authorize the department to provide appropriate incentives, by rule, to locate developments in census tracts in which there are no other existing tax credit developments.

SECTION 28. Amends Section 1372.0231, Government Code, to state that the Bond Review Board must grant reservations set aside for the department at the department's governing board's direction. In addition this section specifies that Bond Review Board allocations at the department's board's direction are subject to review and approval by the department's board.

SECTION 29. Amends Section 1372.0321, Government Code, to adjust priorities for reservations among issuers of qualified residential rental project issues.

SECTION 30. Implementation language regarding the Act.

SECTION 31. Repeals sections of the Government Code, as indicated below:

- Section 2306.072(d), regarding Annual Low Income Housing Report requirements regarding the Neighborhood Partnership Program;
- Section 2306.185(g), exempts long-term affordability requirements for 501(c)(3) bond developments;
- Section 2306.590, Colonia Initiatives Advisory Committee;
- Section 2306.591; Biennial Action Plan;
- Section 2306.6732; Public Information (applicable to the tax credit program).

SECTION 32. Effective date.

EFFECTIVE DATE: September 1, 2003

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.S.B. 264 continues the Department for four years instead of the original's twelve year term. The substitute restores language deleted in the original in regard to elected official input, but places restrictions on such input's evaluation in regard to an application's scoring. The substitute fails to restore language deleted in the original allowing for written statements from local officials. All other language explained in detail above in the Section By Section Analysis is new to the substitute.