

## **BILL ANALYSIS**

C.S.H.B. 3171  
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Urban Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

C.S.H.B. 3171 requires the Texas Department of Housing and Community Affairs (TDHCA) to administer programs to achieve the agency's purposes and to implement procedures to improve the efficiency of state programs, maximize federal funding, and ensure compliance with federal laws. The bill requires TDHCA to conduct a study to determine if the creation or expansion of existing services would improve the department's ability to perform its duties. The bill requires TDHCA to provide financial assistance for local initiatives regarding the homeless and to seek federal funding for that purpose. The bill increases the amount over which the governing board of TDHCA may not allocate to an applicant for low-income housing tax credits in a single application round and provides for an adjustment of that amount based on the consumer price index for all urban consumers.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Department of Housing and Community Affairs in SECTIONS 4, 9, and 10 of this bill.

### **ANALYSIS**

C.S.H.B. 3171 amends the Government Code to include in the purposes of the Texas Department of Housing and Community Affairs (TDHCA) the administration of programs to achieve the other specified purposes of TDHCA and implementation of procedures to improve the efficiency of those programs and to maximize federal funding. The bill requires, rather than authorizes, the governing board of TDHCA to impose an administrative penalty on a person who violates provisions governing TDHCA or a rule or order adopted under those provisions. The bill requires TDHCA to develop and implement procedures to ensure that all programs administered by TDHCA comply with the requirements of provisions governing TDHCA and applicable federal laws. The bill requires TDHCA to conduct a study to determine whether the creation of new programs or expansion of existing services would improve TDHCA's ability to perform its assigned duties.

C.S.H.B. 3171 requires TDHCA to provide financial assistance to political subdivisions, housing finance corporations, for-profit corporations, and nonprofit organizations that provide services for individuals and families who are homeless. The bill requires the assistance to be used only to support local initiatives regarding homeless individuals and families. The bill requires TDHCA to seek any federal funding available for the purposes of the program. The bill authorizes TDHCA to adopt rules to administer these provisions.

C.S.H.B. 3171 includes the nonprofit set-aside mandated under the Internal Revenue Code provision relating to the portion of the state ceiling set-aside for certain projects involving qualified nonprofit organizations among the set-asides for which TDHCA is not required to allocate certain low income housing tax credit commitments according to the regional allocation formula.

C.S.H.B. 3171 requires TDHCA, to the extent permitted by federal law and in administering money provided to TDHCA under the American Recovery and Reinvestment Act of 2009, to secure the interests of Texas through bonds, retention of ownership interests in the affected properties, or restrictive covenants or liens filed in real property records for the affected properties. The bill requires the interests of the state to be secured with respect to the use of federal money described above until TDHCA and the state do not have any specified liability to repay or recapture that money.

C.S.H.B. 3171 establishes that an application is ineligible for consideration under the low income housing tax credit program if the applicant proposes to replace in less than 15 years any private activity bond financing of the development described by the application unless certain conditions are met, including that the applicable private activity bonds will be redeemed only in an amount consistent with their proportionate amortization; or if the redemption of the applicable private activity bonds will occur in the first five years of the operation of the development and will reduce the amount of bonds outstanding to less than 50 percent of the cost of the real property plus depreciable basis: the Bond Review Board determines that there will be money available to fund all other multifamily developments financed by the bonds without requiring any reduction in the financing for those developments; the applicable private activity bonds will be redeemed according to underwriting criteria established by TDHCA; and the applicable private activity bonds will be redeemed only in an amount necessary to ensure the financial feasibility of the development described by the application.

C.S.H.B. 3171 increases from \$2 million to \$3 million the amount over which the governing board of TDHCA may not allocate to an applicant for low-income housing tax credits in a single application round. The bill makes an exception to the prohibition for provisions added by the bill relating to an adjustment of this amount. The bill authorizes the board, beginning in 2012, to adjust on January 1 of each even-numbered year the maximum amount of the allocation by an amount equal to the amount prescribed by statute multiplied by the percentage change during the preceding state fiscal biennium in the Consumer Price Index for All Urban Consumers, U.S. City Average, published monthly by the U.S. Bureau of Labor Statistics, or its successor in function. The bill requires TDHCA to publish the new amount in the qualified allocation plan.

C.S.H.B. 3171 establishes that except as described below, a reference in the law governing TDHCA to the administration of the low income housing tax credit program applies to federally administered money received by TDHCA under the American Recovery and Reinvestment Act of 2009 or any similar federal legislation that is enacted on or after January 1, 2009, and that is required to be allocated by TDHCA in the same manner and subject to the same limitations as allocations of housing tax credits. The bill authorizes TDHCA to establish a separate application procedure for the federally administered money described above, the application period of which must begin on the date TDHCA begins accepting applications for the money and must continue until all the available money is allocated. The bill establishes that the provisions described above relating to the low income housing tax credits financed under the American Recovery and Reinvestment Act of 2009 expire August 31, 2011.

C.S.H.B. 3171 prohibits the owner of a development supported with a housing tax credit allocation from locking out or threatening to lock out any person residing in the development except by judicial process unless the exclusion results from a necessity to perform bona fide repairs or construction work or an emergency, or from seizing or threatening to seize the personal property of any person residing in the development except by judicial process unless the resident has abandoned the premises. The bill requires each development owner to include a conspicuous provision in the lease agreement prohibiting the owner from engaging in such a practice and, in the manner specified by TDHCA rule, to remove any provisions in the agreement that are contrary to the prohibitions established by the bill. The bill requires TDHCA to adopt rules to implement and enforce these provisions not later than November 1, 2009.

**EFFECTIVE DATE**

September 1, 2009.

**COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 3171 adds provisions not in the original to establish provisions relating to financial assistance for local initiatives regarding the homeless; allocations of low income housing tax credit commitments; assistance from the American Recovery and Reinvestment Act of 2009; eligibility criteria for the low income housing tax credit program; adjustments to the maximum amount of low income housing tax credits that may be allocated to an applicant; low income housing tax credits financed under the American Recovery and Reinvestment Act of 2009; and prohibited practices for an owner of a development supported with a housing tax credit allocation.

C.S.H.B. 3171 adds a provision not in the original requiring the Texas Department of Housing and Community Affairs to adopt rules necessary to implement and enforce the provisions related to prohibited practices of an owner of a development supported with a housing tax credit allocation not later than November 1, 2009. The substitute adds a standard savings provision not in the original.