

## **BILL ANALYSIS**

C.S.S.B. 1861  
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Urban Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

C.S.S.B. 1861 relates to the transfer of powers, duties, and programs to, and the continuation of, the Texas Department of Housing and Community Affairs (TDHCA); to the establishment and administration of certain other programs and divisions within TDHCA; and to other provisions relating to fair or affordable housing.

C.S.S.B. 1861 continues TDHCA until September 1, 2013, and transfers the powers and duties of the Texas State Affordable Housing Corporation to TDHCA effective January 1, 2010. The bill requires the executive director of TDHCA to prepare an integrated long-range state low income housing plan covering at least six years. The bill establishes a homeless grant program, a supplemental assistance program for residential weatherization-related measures, and a weatherization pilot program. The bill provides for the state's use of assistance from the American Recovery and Investment Act of 2009. The bill creates the Texas Affordable Housing Initiative Task Force to coordinate interdepartmental and interagency plans to prevent unnecessary and expensive institutionalization of the state's extremely low income elderly and homeless populations and persons with disabilities. The bill updates provisions relating to the low income housing tax credit program administered by TDHCA.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the executive director of the Texas Department of Housing and Community Affairs in SECTIONS 4 and 31 of this bill.

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Department of Housing and Community Affairs in SECTIONS 6, 18, 33, and 35 of this bill.

It is the committee's opinion that rulemaking authority is expressly granted to a rulemaking authority in SECTION 19 of this bill.

### **ANALYSIS**

C.S.S.B. 1861 amends the Government Code to include among the purposes of the Texas Department of Housing and Community Affairs (TDHCA) the administration of programs to achieve the purposes of TDHCA and implementation of procedures to improve the efficiency of those programs and to maximize federal funding.

C.S.S.B. 1861 continues TDHCA as provided by the Texas Sunset Act until September 1, 2013, rather than September 1, 2011.

C.S.S.B. 1861 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.

C.S.S.B. 1861 requires the executive director of TDHCA by rule to adopt a transition plan for TDHCA's assumption of the former powers and duties of the Texas State Affordable Housing Corporation as prescribed by the bill. The bill requires the plan to include a timetable with specific steps and deadlines needed to fully complete the transfer and ensure that the transfer is fully implemented not later than January 1, 2010. The bill authorizes the director to adopt rules necessary to improve the efficiency or effectiveness of any program that is transferred to TDHCA as a result of its assumption of the former powers and duties of the corporation, including rules that provide for consolidating the operation of programs already administered by TDHCA and a program or programs that are transferred to TDHCA from the corporation. The bill requires the director to adopt the rules not later than October 1, 2009. The bill prohibits the director from consolidating or eliminating the Professional Educators Home Loan Program or the Fire Fighter, Law Enforcement or Security Officer, and Emergency Medical Services Personnel Home Loan Program.

C.S.S.B. 1861 requires the executive director of TDHCA to prepare and submit to the board of TDHCA an integrated long-range state low income housing plan covering at least six years. The bill requires the board, not later than the 30th day after the date the board receives and approves the plan, to submit the plan to the governor, the lieutenant governor, and the speaker of the house of representatives. The bill requires the director to submit to the governing board the first long-range state low income housing plan not later than March 18, 2010.

C.S.S.B. 1861 requires the plan to establish policy goals for meeting low income housing needs on a statewide and regional basis and prescribe strategies to meet those goals. The bill requires the plan to include an estimate and analysis of the housing needs of the following populations in each uniform state service region: individuals and families of moderate, low, very low, and extremely low income; individuals with special needs, with specific emphasis on the needs of elderly individuals and individuals with disabilities; and homeless individuals.

C.S.S.B. 1861 requires the plan to include a proposal to use all available housing resources to address the housing needs of the populations described above by establishing funding levels for all housing-related programs and an estimate of the number of federally assisted housing units available in each uniform state service region for individuals and families of low and very low income and individuals with special needs.

C.S.S.B. 1861 requires the plan to include a description of state programs that govern the use of all available housing resources; a resource allocation plan that targets all available housing resources to individuals and families of low and very low income and individuals with special needs in each uniform state service region; and a description of TDHCA's efforts to monitor and analyze the unused or underused federal resources of other state agencies for housing-related services and services for homeless individuals and TDHCA's recommendations to ensure the full use by the state of all available federal resources for those services in each uniform state service region.

C.S.S.B. 1861 requires the plan to include strategies to provide housing for individuals and families with special needs in each state service region; a description of TDHCA's efforts to encourage in each state service region the construction of housing units that incorporate energy efficient construction and appliances; an estimate and analysis of the housing supply in each state service region; and an inventory of all publicly and, where possible, privately funded housing resources, including public housing authorities, housing finance corporations, community housing development organizations, and community action agencies.

C.S.S.B. 1861 requires the plan to include strategies for meeting rural housing needs; an 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; and strategies for eliminating redundant and inefficient practices. The bill requires the priorities and policies in

each housing plan adopted by TDHCA to be consistent to the extent practical with the priorities and policies established in the long-range state low income housing plan. The bill authorizes the director to subdivide the uniform state service regions as necessary for purposes of the long-range state low income housing plan.

C.S.S.B. 1861 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.S.B. 1861 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.S.B. 1861 requires TDHCA to provide grants, supportive housing services, and housing retention services to support services offered to homeless persons by political subdivisions, housing finance corporations, for-profit corporations, and nonprofit organizations. The bill requires the grants to be used only for support services for homeless persons, including case management; job training, placement, and retention; housing placement and retention; and mental health services. The bill authorizes TDHCA to adopt rules to administer these provisions.

C.S.S.B. 1861 requires TDHCA to establish, in addition to the Energy Services Program for Low-Income Individuals established under state law, a program that provides financial assistance for residential weatherization-related measures that do not qualify for federal funds under the existing weatherization assistance program for low-income persons but that, if performed, would allow a person to receive that federal assistance.

C.S.S.B. 1861 requires TDHCA by rule to establish eligibility criteria for a person to receive the financial assistance for residential weatherization-related measures and requires the criteria to ensure that any weatherization-related measures performed will allow a person to receive federal assistance under the weatherization assistance program. The bill requires the income criteria to be equivalent to the income criteria for a person to receive federal assistance under the weatherization assistance program. The bill requires TDHCA to adopt the rules required by these provisions not later than December 1, 2009.

C.S.S.B. 1861 authorizes TDHCA to establish a pilot program to study the effectiveness of weatherization measures in increasing residential energy efficiency for individuals and families of low income. The bill requires TDHCA, if it establishes such a pilot program, to submit a report to the legislature regarding its findings and recommendations not later than December 1, 2010. The bill provides that provisions relating to the pilot program expire September 1, 2011.

C.S.S.B. 1861 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.S.B. 1861 specifies that, with respect to an application filed under an affordable housing program administered by TDHCA, the requirement to provide written notice of the filing to any neighborhood organization on record with the state or county in which the development described in the application is to be located and whose boundaries contain the proposed development site is also for any neighborhood organization on record with the municipality in

which the development described in the application is to be located and whose boundaries contain the proposed development site.

C.S.S.B. 1861 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. The bill establishes that these provisions take effect immediately or September 1, 2009, depending on whether the bill receives the vote necessary for immediate effect.

C.S.S.B. 1861 authorizes TDHCA to fund existing pilot programs or create new pilot programs as appropriate using federal supplemental appropriations under the American Recovery and Reinvestment Act of 2009 or any other similar federal legislation enacted on or after January 1, 2009. The bill establishes that this provision expires December 31, 2011.

C.S.S.B. 1861 transfers the powers and duties of the Texas State Affordable Housing Corporation to TDHCA. The bill requires the corporation to transfer to TDHCA all assets owned or distributed by the corporation, including any real or personal property owned by the corporation and any bond revenue distributed by the corporation; all records related to the operation of any home loan programs; and any applications pending with the corporation on the date the corporation is dissolved by the board of the corporation. The bill requires the board of the corporation to take all necessary actions to dissolve the corporation and, at the request of the director, to assist the director in formulating the transition plan required by the bill. The bill specifies that a reference in law to the corporation is a reference to TDHCA. The bill requires all earnings from bonds issued by the corporation under specified provisions of the law to be allocated to the homeless grant program prescribed by the bill.

C.S.S.B. 1861 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.S.B. 1861 specifies that, with respect to processes governing an application or preapplication filed under the low income housing tax credit program administered by TDHCA, the requirement to provide written notice of the filing to any neighborhood organization on record with the state or county in which the development described in the application is to be located and whose boundaries contain the proposed development site is also for any neighborhood organization on record with the municipality in which the development described in the application is to be located and whose boundaries contain the proposed development site.

C.S.S.B. 1861 requires TDHCA, in evaluating the level of community support in connection with an application filed under the low income housing tax credit program, to award one-half of one positive point for each written statement received that generally supports affordable housing in the district containing the proposed development site, except that the total number of positive

points awarded under this provision may not exceed the total number of positive points awarded for written statements in support of the application; and one-half of one negative point for each written statement received that expresses no additional need for affordable housing in the district containing the proposed development site, except that the total number of negative points awarded under this provision may not exceed the total number of negative points awarded for written statements in opposition to the application.

C.S.S.B. 1861 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 this prohibition by authorizing 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.S.B. 1861 establishes that, except as described below, a reference to the administration of the low income housing tax credit program in the law governing TDHCA 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 these provisions take effect immediately or on September 1, 2009, depending on whether the bill receives the vote necessary for immediate effect, and expire August 31, 2011.

C.S.S.B. 1861 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.

C.S.S.B. 1861 establishes the Texas Affordable Housing Initiative to promote housing independence and prevent unnecessary and expensive institutionalization of the state's extremely low income elderly and homeless populations and persons with disabilities. The bill provides that a regulatory official has broad authority to administer, interpret, and enforce these provisions and that a rulemaking authority has broad authority to adopt rules to implement these provisions to carry out the legislature's intent.

C.S.S.B. 1861 creates the 11-member Texas Affordable Housing Initiative Task Force and sets forth the composition of the task force. The bill sets forth provisions for qualifications of task force members and the operation of the task force. The bill requires the governor and the heads of the applicable state agencies to appoint the members of the task force as soon as possible after the effective date of this bill. The bill exempts the task force from provisions of the Government Code relating to state agency advisory committees. The bill authorizes the task force to solicit and accept gifts, grants, and donations from a public or private source for use in carrying out the task force's duties. The bill defines "elderly person," "extremely low income," "initiative plan," "noninstitutionalized housing," "participating agency," "service-enriched housing," and "task

force."

C.S.S.B. 1861 requires the task force to coordinate interdepartmental and interagency plans and to develop and annually update a unified initiative plan to:

- reduce by January 1, 2020, at least 20 percent of the number of persons desiring and capable of living independently who are compelled to live in Medicaid-supported nursing homes, state institutions, and publicly supported shelters by making it possible for those persons to remain and live independently in noninstitutionalized housing, especially their own homes;
- ensure that the numbers of persons and households assisted in each uniform state service region are in approximate proportion to the numbers of eligible persons and households residing in each region;
- develop new, more cost-effective programs and strategies to use existing public and private resources to provide housing and reduce the residential energy cost burden on extremely low income homeless or elderly persons or persons with disabilities;
- affirmatively further fair housing opportunities by making available noninstitutionalized housing opportunities to extremely low income homeless or elderly persons or persons with disabilities; and
- coordinate housing and health services to meet the demands of extremely low income homeless or elderly persons or persons with disabilities by promoting service-enriched housing opportunities within a wide range of noninstitutionalized housing, including homes currently owned and rented by those persons to the extent possible.

C.S.S.B. 1861 requires the task force to determine programmatic approaches, levels of funding, and funding sources necessary to carry out the initiative plan; research housing needs and programs to achieve the goals of the initiative plan; and aggregate, analyze, and report the program initiatives and resource commitments of participating agencies and certify whether sufficient programs and resources have been initiated and committed to meet the goals of the plan. The bill adds a temporary provision, set to expire December 31, 2010, to require the task force to submit a copy of the initiative plan by September 1, 2010, to the governor and other appropriate leaders, agencies, and oversight committees to include an accounting of the funds allocated or expended and the number and geographic, demographic, and economic characteristics of persons served through the initiative plan.

C.S.S.B. 1861 sets forth provisions for a service-enriched housing initiative. The bill requires the task force to plan and take necessary actions to improve coordination between housing and health services programs to increase state efforts to offer service-enriched housing, including identifying barriers preventing or slowing service-enriched housing efforts. The bill requires the task force to develop a system and plan to cross-educate selected staff in agencies represented on the task force, as well as other state and local agencies, and to identify opportunities to assist local housing and health services entities in similar efforts. The bill requires the task force to develop performance measures to track progress in programs relating to the advancement of service-enriched housing. The bill requires the task force to implement the related portions of the initiative plan and track the progress of the implementation. The bill requires service-enriched housing initiative services to be made equally available to individuals who wish to remain in a private home or who choose to move into a noninstitutionalized housing development with enriched services. The bill requires the task force to act to ensure that no state action or policy forces an elderly person or a person with a disability to choose between living independently and obtaining services similar to those provided in an institutional setting.

C.S.S.B. 1861 amends the Property Code to require each state agency and municipality to administer state and municipal programs and activities, as applicable, relating to housing and urban development in a manner that affirmatively furthers the goals of fair housing under the Texas Fair Housing Act.

C.S.S.B. 1861 amends the Tax Code to establish that an owner of improved or unimproved real property that is not a community housing development organization, a charitable organization, or an organization that owns and repairs housing to sell or rent without profit to a low-income or moderate-income individuals is entitled to an exemption from taxation of the property if the owner otherwise qualifies for the exemption and the owner is a limited partnership of which 100 percent of the interest of the general partner is owned or controlled by a prescribed organization or an entity 100 percent of the interest in which is owned or controlled by a prescribed organization. The bill provides that a reference to an organization includes a limited partnership or other entity described by the bill. The bill removes the requirement that an organization seeking an exemption must control 100 percent of the interest in the general partner if the project is owned by a limited partnership and removes the provision specifying that real property receiving an exemption includes a housing project constructed after December 31, 2001. The bill makes a conforming change relating to a change in the ownership of the property. The bill requires an organization to have applied for or received, rather than only received, an exemption in the 2003 tax year to be considered for an exemption. The bill clarifies that an organization may control the parent of an entity, in addition to controlling the general partner interest or is the parent of the entity, to qualify for the tax exemption. The bill makes the changes to the Tax Code effective January 1, 2010, and apply only to a tax year beginning on or after the effective date of the bill.

C.S.S.B. 1861 amends the Government Code, Health and Safety Code, Human Resources Code, and Utilities Code to require state agency representation on the Texas Affordable Housing Initiative Task Force as prescribed by the bill.

C.S.S.B. 1861 abolishes the Texas State Affordable Housing Corporation on January 1, 2010, and requires all powers, duties, obligations, rights, contracts, funds, unspent appropriations, records, and real or personal property of the corporation to be transferred to the TDHCA not later than January 1, 2010. The bill provides that a policy, procedure, or decision of the corporation relating to a duty of the corporation that is transferred to the authority of TDHCA continues in effect as a policy, procedure, or decision of TDHCA until superseded by an act of the director of TDHCA. The bill provides that, except as otherwise provided by specified provisions, the validity of a plan or procedure adopted, contract or acquisition made, proceeding begun, grant or loan awarded, obligation incurred, right accrued, or other action taken by or in connection with the authority of the corporation before the corporation is abolished is not affected by the abolishment. The bill requires the director of TDHCA to adopt rules relating to the transfer of the programs assigned to TDHCA by the provisions of the bill, not later than October 1, 2009.

C.S.S.B. 1861 specifies that it does not make an appropriation and that a provision in the bill that creates a new governmental program, creates a new entitlement, or imposes a new duty on a governmental entity is not mandatory during a fiscal period for which the legislature has not made a specific appropriation to implement the provision.

C.S.S.B. 1861 repeals Sections 2306.255(g) and 2306.552, Government Code.

### **EFFECTIVE DATE**

Except as otherwise provided, September 1, 2009.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.S.B. 1861 adds provisions not in the original to revise the purposes of the Texas Department of Housing and Community Affairs (TDHCA), revise the expiration date of the law governing TDHCA, revise the authority of the board of TDHCA to impose a penalty, provide for TDHCA's assumption of the powers and duties of the Texas State Affordable Housing Corporation, require

a long-range low income housing plan, establish a homeless grant program, revise the low income housing tax credit program administered by TDHCA, provide for assistance from the American Recovery and Reinvestment Act of 2009, revise the distribution of earnings from bonds issued by the corporation, establish the Texas Affordable Housing Initiative and the Texas Affordable Housing Initiative Task Force, revise the Texas Fair Housing Act, and revise the law governing property tax exemptions for community housing development organizations.