

## **BILL ANALYSIS**

H.B. 3361  
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Urban Affairs  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

The Legislature created the Texas Department of Housing and Community Affairs (Department) in 1991 by merging the Texas Department of Community Affairs and the Texas Housing Agency.

The Department's main functions include assisting low- and moderate-income Texans to obtain affordable housing by awarding federal funds, state funds, and tax credits; assisting low-income Texans to obtain community-based support services, including services to address homelessness, foreclosure, high utility costs, home weatherization, and other concerns; acting as an information clearinghouse on affordable housing resources; and regulating the manufactured housing industry.

The Department underwent Sunset review in 2011, but the agency's Sunset bill was vetoed. The Commission was continued for two years and under the Sunset Act will be abolished on September 1, 2013, unless continued by the Legislature. Based on its re-examination of the agency, the Sunset Commission concluded that the State has a continuing need for the Department, but identified areas for improvement that are addressed in this legislation.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the Board of the Texas Department of Housing and Community Affairs is modified in SECTION 1.07 of this bill.

Rulemaking authority is expressly granted to the Board of the Manufactured Housing Division in SECTION 3.05 of this bill.

### **ANALYSIS**

#### ***Continues the Texas Department of Housing and Community Affairs for 12 years.***

H.B.3361 changes the Sunset review date of the Department to September 1, 2025, to continue the agency for 12 years.

#### ***Clarifies the Department's ability to refer penalty appeals hearings to the State Office of Administrative Hearings.***

The bill requires the Department to refer penalty appeals to the State Office of Administrative Hearings (SOAH), instead of the Department's board. The bill requires SOAH to hold the hearing, make findings of fact and conclusions of law regarding the violation and penalty, and issue a proposal for decision to the Department's board. After receiving the proposal for decision, the board is required to issue an order. The bill provides that any administrative proceedings related to the imposition of a penalty by the Department's board is a contested case under Chapter 2001, Government Code. The bill specifies that changes in the hearings process apply only to violations committed on or after the effective date of the bill.

#### ***Requires judicial review of appeals of the Department's decisions to be based on the substantial evidence rule.***

H.B.3361 provides that judicial review of a board order imposing an administrative penalty is under the substantial evidence rule, instead of by *de novo* review. The bill specifies that changes

in the judicial review standard apply only to violations committed on or after the effective date of the bill.

***Authorizes the Department to use debarment as a sanction and protection in all its programs.***

The bill authorizes the Department to debar individuals for significant performance failures across all housing and community affairs programs, not just the housing tax credit program. H.B.3361 requires the Department's board to adopt debarment policies in rule. The bill clarifies that repeated violations of Department conditions may lead to debarment. The bill authorizes participants facing debarment to appeal decisions to the Department's board.

***Changes the basis for quantifying a community's participation in a proposed tax credit development to the receipt of a voted resolution from the local city council or county commissioners court.***

H.B.3361 replaces neighborhood organization letters with voted resolutions, adopted by the governing body of the municipality or commissioners court in the area of the proposed development, as the second highest scoring criterion required by law in the scoring of tax credit applications. The bill specifies that changes in the tax credit awards process apply only to applications submitted on or after the effective date of the bill.

***Maintains letters from neighborhood organizations as statutorily prioritized, but moves them from second to last on the list of criteria used to score and rank tax credit applications.***

The bill requires the Department to continue to score and rank letters from neighborhood organizations as the last statutorily required item in the tax credit scoring process. The bill specifies that changes in the tax credit awards process apply only to applications submitted on or after the effective date of the bill.

***Eliminates the priority for letters from state senators and representatives in the scoring of low-income housing tax credit applications.***

H.B.3361 changes the application scoring and ranking process by removing the statutory priority for letters from state-level elected officials. The bill continues to permit state senators and representatives to provide input in the tax credit awards process, and requires the Department to consider all input, but their participation will not be a prioritized scoring item. The bill specifies that changes in the tax credit awards process apply only to applications submitted on or after the effective date of the bill.

***Allows the Department to create additional tax credit allocation cycles to take advantage of non-standard federal assistance opportunities.***

In the event the State receives emergency tax credits or related federal funding, the bill authorizes the Department to release credits or funds for development by creating a separate application cycle that does not follow the uniform application cycle, as needed.

***Authorizes Manufactured Housing Division staff to administratively dismiss baseless and non-jurisdictional manufactured housing complaints and report these actions to the Division's director and Board.***

H.B.3361 authorizes the Division's director to allow staff to administratively dismiss baseless and non-jurisdictional complaints and requires staff to report these actions to the Division's director and board. Staff must provide sufficient explanation of the reason the complaint was dismissed. The bill specifies that changes in the complaint dismissal process apply only to complaints filed on or after the effective date of the bill.

***Applies the standard Sunset across-the-board requirement for the Manufactured Housing Division to develop a policy regarding negotiated rulemaking and alternative dispute resolution.***

The bill requires the Division to develop and implement a policy to encourage alternative procedures for rulemaking and dispute resolution conforming, to the extent possible, to model guidelines issued by SOAH. The bill requires the Division to coordinate implementation of the policy, provide training as needed, and collect data concerning the effectiveness of these procedures.

***Eliminates manufactured housing branch and rebuilder licenses from statute.***

H.B.3361 eliminates the branch and rebuilder, including salvage rebuilder, license types and related fees. The bill clarifies that functions previously performed under branch or rebuilder licenses are performed under a retailer license. The bill specifies that a retailer licensed to operate one or more branch locations is not required to comply with changes made to the licensing law until March 1, 2014. The bill specifies that changes to the rebuilder license only apply to applications filed on or after the effective date of the bill.

***Authorizes the Division to establish a fee for reprinted manufactured housing licenses.***

H.B.3361 authorizes the Division board by rule to establish a fee for reprinting licenses.

***Requires the Department to conduct a fingerprint-based criminal background check of all manufactured housing licensees.***

H.B.3361 requires the Department to require applicants for manufactured housing licensure to submit fingerprints, on a form prescribed by the Manufactured Housing board, to the Department or the Department of Public Safety (DPS) so that the Department may obtain state and federal criminal history information on the applicant. The bill requires prospective licensees to provide fingerprints at the time of application, and requires existing licensees to provide fingerprints upon renewal. The bill authorizes the Department to enter into an agreement with DPS to administer criminal history checks. The bill requires applicants to pay the cost of the criminal history check. The bill specifies that all changes to licensing requirements apply only to applications filed for a license or license renewal with the Manufactured Housing Division on or after the effective date of the bill.

***Authorizes the Division to order direct refunds as part of the manufactured housing complaint settlement process.***

The bill expands the Division's consumer compensation options by authorizing the director to order a licensee to pay a refund directly to a consumer who sustains actual damages resulting from a claim against a manufactured housing licensee. This option can be used instead of or in addition to current law that permits consumers to seek refunds from the manufactured homeowners' recovery trust fund. H.B.3361 requires the director to post notifications of this direct compensation option on the Division's website and to provide copies upon request.

***Grants cease-and-desist authority to the Division for unlicensed construction, sale, and installation of manufactured homes.***

H.B.3361 expands the Division's existing cease-and-desist authority to allow the director to issue cease-and-desist orders to unlicensed operators, in addition to licensed operators, who are in violation of Division laws or rules. Through expanding this authority, the bill authorizes the director to assess administrative penalties against unlicensed individuals or entities that violate a cease-and-desist order.

***Abolishes three unnecessary reporting requirements.***

The bill abolishes one reporting requirement by striking provisions regarding the report on energy and peak demand savings. The bill abolishes two other reporting requirements by repealing provisions regarding the report on the statutory Contract for Deed Conversion Guarantee Program and the report on transfers of funds, personnel, or in-kind services to the Texas State Affordable Housing Corporation.

***The bill repeals the following statutory provisions effective September 1, 2013.***

- Section 2306.255(h), Government Code;
- Section 2306.560(d), Government Code; and
- Section 2306.6710(f), Government Code.

**EFFECTIVE DATE**

September 1, 2013.