

## **BILL ANALYSIS**

S.B. 659  
By: West  
Urban Affairs  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

The Texas Department of Housing and Community Affairs (TDHCA) is responsible for annually distributing hundreds of millions of dollars in federal and state funds to construct affordable single and multi-family housing for low-income Texans. In 2001, the legislature recognized the potential for misuse of these funds and granted TDHCA the authority to prohibit bad actors from participating in certain programs. Currently, TDHCA is authorized to debar, or prohibit, applicants who violated state and federal rules from application to, or participation in, future awards through the Low-Income Housing Tax Credit program. However, this program only involves a fraction of the funds allocated by TDHCA.

The Sunset Advisory Commission noted this deficiency in its recent review of TDHCA. The November 2012 report stated that TDHCA "continues to lack appropriate sanction authority to ensure bad actors are prohibited from future participation in department programs." This is due to the fact that existing statute does not authorize TDHCA to use debarment as an enforcement action. Without statutory backing, the use of this tool would likely result in legal challenges.

S.B.659 remedies this by clearly authorizing the TDHCA board to adopt rules to debar violators for failure to comply with TDHCA polices across programs. It also provides program applicants a reasonable opportunity to cure minor issues with non-compliance before they are cited by TDHCA for those issues. This will give TDHCA the ability to protect taxpayer-supported programs and ensure the best use of existing state and federal housing resources.

S.B.659 amends current law relating to compliance with certain requirements of programs administered by the Texas Department of Housing and Community Affairs.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to governing board of the Texas Department of Housing and Community Affairs in SECTION 1 (Section 2306.0504, Government Code) of this bill.

### **ANALYSIS**

**SECTION 1.** Transfers Section 2306.6721, Government Code, to Subchapter B, Chapter 2306, Government Code, redesignates it as Section 2306.0504, Government Code, and amends it as follows:

Sec. 2306.0504. DEBARMENT FROM PROGRAM PARTICIPATION. (a) Requires the Texas Department of Housing and Community Affairs (TDHCA) to develop, and the governing board of TDHCA (board) by rule to adopt, a policy providing for the debarment of a person from participation in programs administered by TDHCA, rather than the low-income housing tax credit program (program) as described by this section.

(b) Authorizes TDHCA to debar a person from participation in a TDHCA program on the basis of the person's past failure to comply with any condition imposed by TDHCA in the administration of its programs. Deletes existing text authorizing TDHCA to debar a person from participation in the program on the basis of the person's past failure to comply with any condition imposed by TDHCA in connection with the allocation of housing tax credits.

(c) Requires TDHCA to debar a person from participation in a TDHCA program if the person materially or repeatedly violates any condition imposed by TDHCA in connection with the

administration of a TDHCA program, including a material or repeated violation of a land use restriction agreement regarding a development supported with a housing tax credit allocation. Deletes existing text requiring TDHCA to debar a person from participation in the program if the person materially violates any condition imposed by TDHCA in connection with the allocation of housing tax credits. Deletes existing text requiring TDHCA to debar a person from participation in the program if the person is in material noncompliance with or has repeatedly violated a land use restriction agreement regarding development supported with a housing tax credit allocation.

(d) Authorizes a person debarred by TDHCA from participation in a TDHCA program, rather than the program, to appeal the person's debarment to the board.

**SECTION 2.** Amends Section 2306.6717(a), Government Code, to make a conforming change.

**SECTION 3.** Amends Section 2306.6719, Government Code, by adding Subsections (c), (d), (e), and (f), as follows:

(c) Requires TDHCA, for a violation other than a violation that poses an imminent hazard or threat to health and safety, to provide the owner of a development with the following periods to correct a failure to comply with a condition or law described by Subsection (a)(1) (relating to authorizing TDHCA to contract with an independent third party to monitor a development during its construction or rehabilitation for compliance with any conditions imposed by TDHCA in connection with the allocation of housing tax credits to the development) or (a)(2) (relating to authorizing TDHCA to contract with an independent third party to monitor a development during its construction or rehabilitation for compliance with appropriate state and federal laws, as required by other state law or by the board):

(1) 30 days for a failure to file the annual owner's compliance report; and

(2) 90 days for any other failure to comply under this section.

(d) Authorizes the executive director of TDHCA (director), for good cause shown, to extend the periods provided under Subsection (c).

(e) Prohibits a development, for purposes of determining eligibility to apply for and receive financial assistance from TDHCA, from being considered to be in noncompliance with an applicable condition or law if the owner of the development takes appropriate corrective action during the period provided under Subsection (c).

(f) Requires TDHCA, notwithstanding Subsection (e), to:

(1) submit to the applicable federal agency any report required by federal law regarding an owner's noncompliance with a condition or law described by Subsection (a)(1) or (a)(2); and

(2) for purposes of developing and administering the policy relating to debarment under Section 2306.0504, consider recurring violations of a condition or law described by Subsection (a)(1) or (a)(2), including violations that are corrected during the applicable period provided under Subsection (c).

**SECTION 4.** Effective date: September 1, 2013.

#### **EFFECTIVE DATE**

September 1, 2013.